CHAPTER 8

Institutional Trustworthiness, Transformative Judicial Education and Transitional Justice: A Palestinian Experience

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Domestic courts can help create conditions to enhance transitional justice strategies following periods of sustained violence. But these same courts are often untrustworthy, either because they are institutionally weak or because they have been deeply implicated in the abuses of the past. Before they can take on the material and symbolic tasks required of them, previously untrustworthy judicial institutions must demonstrate their trustworthiness. Unsurprisingly, judicial reform has taken on an increasingly important place in transitional justice theory and practice.[1] But transitional

[1] Chandra L. Sriram, Olga Martin-Ortega, and Joanna Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice*, JAD-PbP Working Paper

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justice theorists and practitioners do not often engage with judicial education as part of judicial reform theorising or programming. The modelling and delivery of judicial education programmes have been largely left to the development and rule of law experts.

Using Palestine as its case study, this chapter posits that judicial trustworthiness represents an important condition for transitional justice to take hold and that judicial education can nurture judicial trustworthiness. Judicial education thus constitutes an ameliorating factor of the type outlined by El-Masri, Lambert and Quinn in the introduction to this volume. We begin by briefly distinguishing among trust, distrust and trustworthiness and explain the importance of judicial institutional trustworthiness. We then turn to judicial education as an ameliorating factor. Laying out the elements of a judicial education model designed around the concept of human dignity that we developed in the Palestinian context, we explain why this model of judicial education was particularly suited to nurturing judicial institutional trustworthiness.

Our analysis draws on our own experiences developing and delivering judicial education programming focused on human dignity in Palestine between 2005 and 2012; 26 interviews with Palestinian judges who participated in our judicial education programme, and interdisciplinary scholarship from pedagogy, access to justice, trust/distrust/trustworthiness and transitional justice. Although we argue that judicial education can nurture judicial trustworthiness, we end with a note of caution. The Palestinian experience reinforces that judicial education can ameliorate efforts to nurture trustworthy national courts, but, contrary to the assumptions that are often made by development experts, education is necessary but not sufficient to foster institutional or political change. Ultimately, the Palestinian experience points to the inadequacies of pursuing rule of law programming, judicial reform and judicial education in the absence of transitional justice.

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Trust, Distrust, Institutional Trustworthiness and Transitional Justice

Societies function on trust; it has been linked to political stability, economic development and the rule of law. Widely studied, trust has been defined as "a psychological state comprising of the intention to accept vulnerability based on positive expectations of the intentions or behavior of another."[2] Economic growth requires some measure of interpersonal trust.[3] Good governance has been described in terms of trust.[4] Political stability correlates with trust in part because people who trust their government and its institutions are more likely to comply with official directives.[5] Higher degrees of trust in government also discourage "spoiler" networks that threaten change and dilute positive social capital.[6] Governments, public institutions, civil society and interpersonal relations are all objects of trust.[7] Trust is so important to some accounts of peace and stability that Pablo de Greiff has defined reconciliation as "the condition under which citizens can trust one another as citizens again (or anew)."[8]

Distrust defines dysfunctional or unreconciled societies.[9] Distrust is declarative and constitutive of political conflict, social divisions and economic instability. A diminished "willingness to coordinate action with others," a consequence of unwillingness to trust, has been linked to

[2] Denise M. Rousseau et al., "*Not So Different After All: A Cross-Discipline View of Trust*," *Academy of Management Review* 23 (1998): 395.

[3] Sjoerd Beugelsdijk, Henri L.F. de Groot, and Anton B.T.M. van Schaik, "Trust and Economic Growth: A Robustness Analysis," *Oxford Economic Papers* 56, no. 1 (2004).

[4] Margaret Levi, "A State of Trust" in *Trust and Governance*, ed. Valerie Braithwaite and Margaret Levi (New York: The Russell Sage Foundation, 2003), 77–101.

[5] Tom R. Tyler and Huo J. Yuen, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts,* (New York: The Russell Sage Foundation, 2002).

[6] Pablo de Greiff, "Transitional Justice and Development" in *International Development: Ideas, Experience, and Prospects*, ed. Bruce Currie-Alder et al. (New York: Oxford University Press, 2014), 943.

[7] Cynthia M. Horne, "Trust and Transitional Justice" in *Encyclopedia of Transitional Justice*, ed. Lavinia Stan and Nadya Nedelsky (New York: Cambridge University Press, 2012), 1–13.

[8] Pablo de Greiff, "Theorizing Transitional Justice," *Nomos: American Society for Political and Legal Philosophy* 51 (2012), 50.

[9] Suzanne McMurphy, "Trust, Distrust, and Trustworthiness in Argumentation: Virtues and Fallacies," (paper presented at the Ontario Society for the Study of Argumentation Conference, Windsor, May, 2013), https://pdfs.semanticscholar.org/ffdd/8dd29f4a20ad4eb4410dbffcb4451c414990.pdf.

poverty.[10] In cases of unreconciled societies marked by massive human rights abuses, those who benefit from such abuses seek to preserve the status quo precisely by feeding distrust between individuals and groups.[11] Dictators, for example, sow distrust between people to "disarticulate possible sources of organised opposition."[12]

Significantly, distrust is not simply the absence of trust, nor is distrust trust's mirror opposite. Distrust has its own dynamics and consequences. Unlike trust, distrust can be generalised.[13] The implication is that generalised distrust of government can readily mean that particular institutions within the government are also distrusted based on an overall assessment of government performance and not necessarily on the particular performance of the specific institution. Moreover, measures of particularised institutional distrust can signal the existence of generalised distrust of government. Distrust is also more durable than trust. While trust can wax and wane, accumulated grievances over time produce generalised distrust that is difficult to displace; "disaffection may occur not because of what each succeeding set of authorities is supposed to have done but simply because they are perceived to be authorities—and authorities are no longer thought worthy of trust."[14]

While the relationship between distrust and action is dependent on a number of variables including factors like levels of alienation from a particular regime, the efficacy of past actions against the regime and the distrustors' view of their own abilities, it is clear that distrust, once entrenched, is extremely difficult to overcome.[15] It can inspire a range of responses from uncooperative, spoiler behaviour to the severing of relationships.[16] At its best, distrust can inspire much-needed reforms.[17] In all circumstances,

[10] de Greiff, "Transitional Justice and Development," 417.

[11] Cynthia M. Horne, "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries: Repairing or Wresting the Ties that Bind?" *Europe-Asia Studies* 66, no. 2 (2014), 225.

[12] de Greiff, "Transitional Justice and Development," 417.

[13] Cynthia M. Horne, *Building Trust and Democracy: Transitional Justice in Post-Communist Countries* (Oxford: Oxford University Press, 2017), 28.

[14] David Easton, "A Re-Assessment of the Concept of Political Support," *British Journal of Political Science* 5, no. 4 (1975), 449.

[15] Margaret Levi and Laura Stoker, "Political Trust and Trustworthiness," Annual Review of Political Science 3, no. 1 (2000), 488.

[16] Levi, *Political Trust and Trustworthiness*, 476.

[17] Karen S. Cook, Russell Hardin, and Margaret Levi, *Cooperation Without Trust?* (New York: The Russell Sage Foundation, 2005), 2.

however, distrust generates instability; those who govern clearly wish to avoid becoming distrusted and aim to maintain citizens' trust. Whether people trust or distrust is a function of their "political lives, not their personalities or even their social characteristics."[18]

People's political lives are played out through institutions. In both reconciled and unreconciled societies, institutions mediate trust between citizens and governments and among citizens. "Institutions are the humanly devised constraints that structure political, economic and social interaction."[19] They discourage some actions and enable others. They distribute opportunities, resources and power across society. In unreconciled societies, institutions distribute resources and power unfairly and unevenly.

Trust in institutions and institutional trustworthiness are not synonymous. Trust is a condition of the trustee; trustworthiness refers to the features of the institution that merit trust. At the same time, trust in institutions and institutional trustworthiness form a positive feedback loop. Trustworthy institutions are well placed to garner broad trust and cooperation which, in turn, can be marshalled into actions that shield trustworthy institutions from inappropriate interferences that threaten their trustworthiness.[20] What makes institutions trustworthy? Or, put differently, what are the attributes of trustworthy institutions?

Various theories have been advanced. Trust scholars have identified three attributes of institutional trustworthiness that help keep the concept analytically and functionally distinct from trust, even as institutional trustworthiness is conceptually and practically related to trust. "Integrity" describes the requirement that the institution operates on shared values and principles as those whose trust it is seeking. These shared values can be expressed in a multitude of ways. In the case of legal institutions, for example, they can be expressed through judicial decision-making, speeches of leaders and sources of law, including but not limited to constitutions. The key question is whether "the trustee adheres to a set of principles that the trustor finds acceptable."[21] "Benevolence" indicates whether the institution assumes a "positive orientation" towards the trustor.[22] Does

[18] Levi, *Political Trust and Trustworthiness*, 481.

[19] Douglass C. North, "Institutions," *The Journal of Economic Perspectives* 5, no. 1 (1991), 97.

[20] Clause Offe, "How Can We Trust Our Fellow Citizens?" in *Democracy and Trust*, ed. Mark Warren (Cambridge: Cambridge University Press, 1999), 70–71.

[21] Roger C. Mayer, James H. Davis, and F. David Schoorman, "An Integrative Model of Organizational Trust," in *Academy of Management Review* 20, no. 3 (1995), 719.

[22] Mayer, "An Integrative Model of Organizational Trust," 719.

the institution care about and act to protect the interests of those whose trust it is seeking? While integrity and benevolence are related in the sense that they can both be subsumed under the question of whether the institution and its imagined trustors share normative commitments, "ability" describes a "group of skills, competencies, and characteristics that enable a party to have influence within some specific domain."[23] Ability addresses the institution's competence or ability to deliver on normative commitments. All three factors must exist for a trustor to deem an institution trustworthy. A trustee that is reliable or, alternatively, has ability or the capacity to influence results may not be trustworthy if they do not share the same goals, principles or interests as the trustor.[24] Similarly, a trustee with proven abilities and known integrity may not be trustworthy because it has not demonstrated a particular attachment to the trustor.[25]

Scholars tend to agree that popular trust, institutional trustworthiness and transitional justice co-exist in mutually reinforcing but not necessarily linear relationships.[26] In times of transition, institutions aim for redistribution of power, opportunities and resources. In the process, they make decisions for people that will alter their lives and define the systems that will shape the collective future. Societies need to believe in the goals, values and processes that the institutions offer so that they support the changes that institutions represent. When power relations are being changed and redistributed, individuals are asked to take risks in support of the change. This is not a fully rational process partly because the variables and consequences are unknown. In such circumstances, trust proves crucial. Trust means that individuals agree to make themselves vulnerable to institutional decision-making. Marking the relationship between institutional trustworthiness and successful transitions, de Greiff has noted that "the most that transitional justice can do is give reasons to individuals to trust institutions."[27]

Institutional trustworthiness is particularised. "Trust in one political institution is not necessarily generalised across other political institutions."[28] The fact that people trust a particular public institution does not mean that they trust government as a whole. Partly for this reason, transitional

[23] Mayer, "An Integrative Model of Organizational Trust," 717.
[24] Stephen Wright, "Trust and Trustworthiness," *Philosophia* 38, no. 3 (2010), 623.
[25] Mayer, "An Integrative Model of Organizational Trust," 718–719.
[26] Horne, "Trust and Transitional Justice," 26.
[27] de Greiff, "Theorizing Transitional Justice," 51.
[28] Horne, "Building Trust and Democracy," 27.

justice theorists insist that transitional justice strategies cannot be traded off against each other; experience has demonstrated that the trustworthiness in all institutions must be cultivated as part of a holistic approach to transitional justice.[29] The next section of this paper turns to the role of standing national courts in transitional justice praxis. It outlines four ways in which judicial trustworthiness, when present, might support successful transitions and help bolster transitional justice efforts.

The Importance of Judicial Institutional Trustworthiness in Transitional Justice

While there is a risk of extending its definition beyond recognition, transitional justice extends beyond redressing past wrongs.[30] It also recognises the importance of restoring relationships or creating new relationships based on a commitment to the equality dignity and worth of all peoples. It thus engages not only questions about providing victims remedy for past abuses but also equally important questions about how to prevent abuse in the future while simultaneously converting victims into citizens. Successful transitional justice practices help societies draw a line between a violent past and a more promising future by demonstrating the currency of desired norms[31] and ensuring that coveted norms have "continued relevance across time."[32]

What exactly is the relationship between transitional justice and the construction or reconstruction of coveted norms, especially the rule of law? Transitional justice scholars and practitioners have tended to focus on the ways in which transitional justice measures such as prosecutions, reparations and truth-telling help restore faith in the rule of law.[33] But transitional justice scholars and practitioners have paid insufficient attention to the inverse question, namely, how can reforms of standing national courts that are *not* specifically involved in the adjudication of past human rights abuses support transitional justice? And, in particular, on what basis

[29] de Greiff, "Theorizing Transitional Justice," 38–39.

[30] Joanna R. Quinn, "Whither The "Transition" of Transitional Justice," *Interdisciplinary Journal of Human Rights* 8, no. 1 (2014–2015), 66.

[31] de Greiff, "Theorizing Transitional Justice," 38–39.

[32] de Greiff, "Theorizing Transitional Justice," 55.

[33] Padraig McAuliffe, "Transitional Justice's Impact on Rule of Law: Symbol or Substance?" in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffet, Dov Jacobs (Cheltenham: Edward Elgar Publishing, 2017), 77.

might trustworthy national courts support transitional justice processes and augment their chances of taking hold?

Pablo de Greiff's holistic, value-based understanding of the meaning and function of transitional justice offers a fruitful lens through which to examine the role of national courts in helping nurture the pre-existing conditions for transitional justice. De Greiff argues that transitional justice measures will always be imperfect but their basic function is to demonstrate the currency of fundamental norms.

> [measures] that are weak in relation to the immensity of the task that they face are more likely to be interpreted as justice initiatives if they help ground a reasonable perception that their coordinated implementation is a multi-pronged effort to restore or establish anew the force of fundamental norms.[34]

Transitional justice turns victims into citizens by giving them "moral standing as individual human beings."[35] De Greiff's normative theory of transitional justice provides a useful backdrop against which to consider the role of trustworthy national courts in transitional justice spaces.

Trustworthy courts help set the normative conditions for successful transitions by connecting the promises of change inherent in the transitional moment itself with the longer-term promise of a new and different future. National courts play a key role in supporting transitional justice processes because they are a primary justice institution with the mandate and capacity to demonstrate the currency of fundamental norms in a sustained way. Through their decision-making, judges can help affirm that fundamental norms such as dignity, human rights, democracy, justice, fairness, equality and freedom have become institutionalised. They help set the normative conditions for successful transitions, promise non-recurrence of past violence and affirm that the fundamental norms have become internalised in three ways. First, national courts remain after the reparations have been made, the truth-telling exercises completed and the prosecutions advanced. National courts can help demonstrate to those abused in the past that fundamental norms pursued through transitional justice mechanisms will remain current the day after these transitional justice mechanisms have run their course. Second, national court decisions speak to the everyday, adjudicating the stuff of daily existence such as

[34] de Greiff, "Theorizing Transitional Justice," 38–39.
[35] de Greiff, "Theorizing Transitional Justice," 41.

labour and employment, family law, contracts, human rights, landlord-tenant, taxation, banking and corporate regulations. These courts help ensure that fundamental norms run deep, proliferate beyond special courts and will be available in the adjudication of the multiplicity of issues that impact people's lives. Finally, precisely because they are involved in day-to-day adjudication, national courts may directly engage more people living in transitional justice sites than special transitional justice processes. In this way, national courts can help ensure that fundamental norms have a broad impact, lending credence to the message that the future will look different than the past for more people.

Trustworthy courts, thus, assume material and symbolic importance in drawing a line between the violent past and a promising future. Their decisions can give people hope that the laws and processes that relegated them to second citizen status, defiled their dignity and produced the human rights abuses have been relegated to the past. Through their decision-making, judges sitting in the national courts can help people believe that the new political order will respect their status "as rights bearers and citizens."[36] As polities seek to move away from an unjust and unfair past, judicial decision-making through ordinary courts can help demonstrate that state power is exercised for the collective benefit and not to entrench, rationalise or mask elite interests. Their importance extends beyond those whose claims they are adjudicating. Judicial decision-making touches not only on the hopes and fears of those who stand before them but resonates with all those who have lived with the uncertainty and pain of an unjust and unfair world.

Moreover, trustworthy courts can help create socio-legal conditions for successful transitions by demonstrating the benefits of living in a society devoted to the rule of law and, ultimately, contributing to a culture of peace. When courts demonstrate themselves to be trustworthy, people are more inclined to use them to resolve disputes and also more inclined to accept their decision-making even if they disagree with the result.[37] National courts shape citizen-to-citizen interactions. If individuals do not trust and hence refuse to use justice institutions to help settle disputes or claim their rights, societies can unravel as the consequences of institutional distrust cascade across society. The reluctance of individuals to use institutions to resolve problems has collective impacts.

[36] de Greiff, "Transitional Justice and Development," 23.
[37] Tyler and Huo, "Trust in the Law".

In the context of distrust, violence and non-compliance can cascade. Individuals facing violence or non-compliance behaviour may resort in kind. If courts cannot or do not address these negative behaviours, those who witness or are impacted by them may question the state's ability to keep them safe or treat them fairly. They may themselves then adopt non-compliance behaviours. Other individuals, faced with violence or injustices, may simply opt out of the system. They may not pursue their rights. Eventually, unresolved rights claims may fester or spiral into larger societal problems. For example, where laws against workplace harassment do not exist or are not enforced, already vulnerable groups can be socially marginalised and economically disempowered. The willingness of individuals to use institutions to resolve problems has collective impacts. Racialised individuals, for example, may not pursue discrimination claims because they do not trust the impartiality of courts and tribunals. Reluctance to use available institutions to correct injustices, in turn, deprives society of its collective ability to deter further discrimination through education, reparations or rehabilitation of wrong-doers. Wrong-doers then may act with impunity and a cycle of greater wrong-doing may be spawned which in turn generates greater distrust in government institutions and greater social divides. In extreme cases, social divides produce revolts. In the most extreme cases, revolts escalate in a broader social, political and economic breakdown. Trustworthy courts thus help create a culture of peace, demonstrate the benefits of a system built on the rule of law and ultimately create the socio-legal conditions for transitional justice.

In addition to helping set the normative and socio-legal conditions for transitional justice measures, trustworthy courts can help create the political conditions for successful transitional justice strategies by acting as a mechanism to ensure the credibility of political actors. Successful transitions require trustworthy political leaders and institutions. Traditional transitional justice processes such as prosecutions, truth-telling and reparations must balance multiple political interests.[38] Even the best-devised and implemented traditional justice procedures face significant barriers.[39] Given the extent of human rights abuses, not everyone can be prosecuted. Where does one credibly draw the line? Whose pain matters ? In the same

[38] Patricia Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom Up" *Journal of Law and Society* 35, no. 2 (May 2008), 270.

[39] Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004), 84.

vein, truth-telling has to end somewhere at some point. That truth-telling can only ever be partial may spawn resentment rather than reconciliation. Reparations, for their part, are often symbolic gestures that cannot fully compensate for victims' suffering. Where does one draw the line between symbolic gesture and insult? The answers to these questions are often made by political leaders and the extent to which people see these decisions as justice advancing turns in part on the extent to which people trust the political leaders who make them.

Trustworthy courts shore up the trustworthiness of government leaders and institutions by helping shape the government-to-citizen relations. This is not because particularised trust in the judiciary is generalised across government, but because of the unique role that justice institutions play in government and governance. In societies where governments have abused their power and citizens have been treated unfairly, a trustworthy judiciary can help ensure that no one is above the law and that governments are accountable to the law. If individuals trust justice institutions and believe that their claims will be addressed fairly and efficiently, they are more likely to consent to broader institutional demands and regulations, including those relating to transitional justice, even if they do not necessarily agree with them.[40] Trust in government can also be cultivated out of the conviction that judicial oversight ensures that the leviathan has been chained.[41] Government commitments, including transitional justice commitments, can thus be seen as credible commitments.[42]

Finally, trustworthy courts help set the conditions for transitional justice because judges from the national courts might participate in transitional justice procedures and might help shape public attitudes towards these procedures. Teitel has observed that "supra-national rights institutions stand…aloof from the domestic politics of transitional justice."[43] But, they do not always stand apart. National and transnational processes sometimes overlap and domestic politics can shape the efficacy of supranational processes. Domestic judges may, for example, be called upon to participate in prosecuting offenders before international bodies. Palestinian public servants, including judges, have prepared case files with the

[40] Levi and Stoker, "Political Trust and Trustworthiness," 491.

[41] Cook, Hardin, and Levi, "Cooperation Without Trust," 153.

[42] Levi and Stoker, "Political Trust and Trustworthiness," 491.

[43] Ruti Teitel, "Transitional Justice and Judicial Activism—A Right to Accountability?" *Cornell International Law Journal* 48 (Winter 2015), 389.

International Criminal Court, and were mandated with investigating possible breaches of international law by Hamas during the firing of locally made rockets into Israel by militias in Gaza. Holding Hamas accountable in international fora has proven controversial from a Palestinian perspective because it points to a double standard within the international community. Hamas had been designated a terrorist organisation by Western states which, as a result, imposed crippling sanctions on the people of Gaza.[44] At the same time, Israel has yet to be held to account by the international community.[45] Trustworthy judges who participate in international processes can help lend credibility to these international transitional justice processes in the eyes of local actors notwithstanding the fact that the international systems as a whole may appear biased.

The Future Is Built on Remnants of the Past: Judicial Education as an Ameliorating Factor

Before national courts are harnessed to transitional justice efforts, they may themselves require reform to build their trustworthiness. National courts are often deeply implicated in massive human rights abuses. They may have helped rationalise the structural inequality that gave rise to the need for transitional justice in the first place. South African judges, for example, were the pillars of the apartheid regime. Or, national courts may have proven themselves unable to restrain executive or legislative power. Before the Palestinian Authority, Palestinian judges were appointed by Israel. They were formally part of the Israeli administrative scheme that governed Palestinians but lacked jurisdiction to oversee Israeli conduct and decision-making.

The challenge, of course, is how to transform courts from systems of oppression into institutions of justice. Lustration, vetting and legislative reform, including constitutional drafting, are often advanced as the primary judicial reform vehicles in transitional justice sites. But, lustration and vetting can be controversial and have been altogether rejected in some

[44] Norman G. Finkelstein, *Gaza: An Inquest Into Martyrdom* (Oakland: University of California Press, 2018), 12.

[45] Michael S. Lynk, "Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967," UN A/73/45717 (October 22, 2018), https://www.ohchr.org/en/hrbodies/sp/countriesmandates/ps/pages/srpalestine.aspx.

transitional justice sites.[46] Even where they are adopted, lustration and vetting cannot, on their own, produce trustworthy institutions.[47] Neither can legislative reforms, including constitutional reforms. Even if institutions are "re-peopled" and laws are reformed, courts may still not be ready to dispense justice or offer fair and equal decision-making.

To understand the limits of lustration, vetting and legislative reforms, it is imperative to examine the nature of legal decision-making. Judges in any jurisdiction, transitional, democratic or oppressive, have to interpret words. Words, by their very nature, are indeterminate and must be interpreted. Law does not define itself. Even in the absence of constitutions and legislative reforms and even outside constitutional challenges, judges choose whether or not to engage and affirm fundamental norms when making decisions from the bench.[48] They may face external pressures to produce a given result. Regardless, it is not always the words on the page that prevail. Justice is a product of judicial interpretation of texts and evidence. David Dyzenhaus argues that transitional justice problems represent nothing more than the "dramatic manifestations of problems faced by all stable societies."[49] Leaving aside the question of whether or not this statement is true relative to transitional justice as a field of inquiry and practice, it holds true relative to judges' interpretive tasks.

Though legal texts and precedents may constrain their decision-making, judges still hold significant interpretive power. They choose which facts are material facts, what constitutes evidence, which interpretations to give to written texts, including constitutions, and which inferences to draw from facts. In addition to written texts, institutional forms, political contexts and legal cultures matter to the ways in which laws are interpreted and applied. Institutional cultures "permit, shape and foster good judgement and thereby support the identification of plausible ways of judging situations and feasible proposals for action are required if law and regulation are to work well."[50] Judicial cultures help define the direction of legal

[46] Horne, "Lustration, Transitional Justice," 233.

[47] Horne, *Building Trust and Democracy.*

[48] Reem Bahdi, "Truth and Method in the Domestic Application of International Human Rights Law," *Canadian Journal of Law and Jurisprudence* (2002), 255–279.

[49] David Dyzenhaus, "Judicial Independence, Transitional Justice and the Rule of Law," *Otago Law Review* 10 (2003), 347.

[50] Onora O'Neill, "Accountable Institutions, Trustworthy Cultures," Second Annual T.M.C. Asser Lecture in The Hague (December 2016) https://www.asser.nl/about-the-institute/asser-today/accountable-institutions-trustworthy-cultures/.

rules. Consider, for example, the fact that the Syrian constitution under the Assad regime was arguably one of the most progressive constitutions in the world. The main problem lay not in the text but in its interpretation by the judiciary and its enforcement by the government.[51] On the other hand, judges do not always need explicit texts to render rights-respecting decisions. In one of its first decisions during the transition away from legal apartheid, South Africa's constitutional court used purposive interpretation to declare the death penalty unconstitutional even though the constitution itself did not specifically prohibit the death penalty and even though public opinion appeared to favour it.[52]

In jurisdictions around the world, not just transitional ones, human rights abuses are sometimes perpetrated because discriminatory legal cultures outlast discriminatory laws. Judges may work in a culture that presumes without justification that some groups share certain negative traits. Judges, in other words, harbour stereotypes about people. These stereotypes can be explicit or implicit. Judges who harbour stereotypes can be found in jurisdictions around the world, not just oppressive or transitional ones. For example, record numbers of indigenous children were removed from their homes and communities during "the Sixties Scoop" in Canada.[53] Injustices continue to be inflicted on Aboriginal peoples in Canada as a result of enduring stereotypes and biases.[54]

In transitional sites, notwithstanding lustration, vetting and legislative reforms, some judges may not be fully committed to change. They may continue to harbour some form of bias that structurally disadvantages some groups and presupposes an ontological hierarchy between groups. Changing the identity of judges may bring some new perspective to the bench on some issues or constructed identities, while leaving others unaddressed. Inequality is not uni-dimensional. Appointing Black judges in post-apartheid South Africa, for example, did not address other structural inequalities such as gender or class. Even if newly appointed judges are committed to eradicating a range of biases from the law, they may not

[51] Reem Bahdi, "Background Report on Women's Access to Justice in the Middle East," (Cairo: International Development Research Centre (IDRC)Women's Rights and Citizenship (WRC) Program and the Middle East Regional Office (MERO), 2007), 43.

[52] S v. Makwanyane and Another, South African Constitutional Court, June 6, 1995.

[53] Truth and Reconciliation Commission of Canada, *What We Have Learned* (Ottawa: Truth and Reconciliation Commission of Canada, 2015), 40.

[54] Melanie A. Morrison et al., "Old-fashioned and Modern Prejudice Toward Aboriginals in Canada" in *The Psychology of Modern Prejudice*, ed. Melanie A. Morrison and Todd G. Morrison (Hauppauge, NY: Nova Science Publishers, Inc. 2008).

have the professional skills or experience to help negate structural inequalities.[55] They may, for example, lack the knowledge, experience or skills with a range of interpretive techniques that might be needed to address undesirable legal precedents and overcome past traditions, especially where legislative reforms are inadequate.

In such circumstances, judicial education serves as an ameliorating factor that can help build institutional trustworthiness by changing legal cultures. Judicial education can be developed and implemented to maximise the chances that transitional justice measures, once implemented, may succeed. But, judicial education must be designed and delivered specifically to nurture institutional trustworthiness bearing in mind institutional history and the transitional context. The next section draws on the authors' experiences developing a model for judicial education in Palestine to briefly describe what became known as "the Karamah model." Developed jointly by a team that included the University of Windsor in Canada, Birzeit University in Palestine, senior Canadian judges and members of the Palestinian judiciary with financial support from the Government of Canada, the Karamah experience suggests that judicial trustworthiness can be nurtured even within the most complex political and institutional circumstances.

At the same time, the Karamah model may not be appropriate for all contexts. Palestine represents a unique transitional site. Transition in this context involves ending the Israeli occupation of Palestinian land, people and resources. Transitional justice sites usually involve a move from one regime to another with the result that the old regime is defunct. In the Palestinian context, however, the transition involves the devolution of power and control over Palestinian land and lives from Israel, an occupying state, to a Palestinian Authority. Unlike many other transition sites, Israel remains in control of important aspects of Palestinian lives. This situation created opportunities and challenges for judicial education programming. On the one hand, judicial education was grounded in the deep-reaching and long-standing Palestinian desire for liberation from occupation. On the other hand, judicial education programming had to contend with ongoing Israeli occupation alongside the Palestinian Authority's own institutional and political shortcomings.[56]

[55] Cathi Albertyn and Elsje Bonthuys, "A Transformative Constitution and a Representative Judiciary" in *Gender and the Judiciary in Africa: From Obscurity to Parity*? ed. Gretchen Bauer and Josephine Dawuni, (Routledge: New York, 2016), 49–68.

[56] Reem Bahdi and Mudar Kassis, "Decolonization, Dignity and Development Aid: A Judicial Education Experience in Palestine," *Third World Quarterly* 37 (2016), 2010–2027.

Building Institutional Trustworthiness Through Judicial Education: The Karamah/Palestine Model

Developed between 2005 and 2010 at a time when the possibilities of peace and a Palestinian state, though dwindling, remained viable, Karamah adopted a value-based model of judicial education. While the precise contours of the Karamah model were developed over several years through trial and error, the Karamah team chose dignity as its overarching theme from the start. We reasoned that dignity would have resonance for members of the Palestinian judiciary since they, like other Palestinians, had endured the hardships and humiliations of Israeli occupation. In the context of peace- and state-building efforts, dignity stood as an antidote to humiliation. Karamah's model of judicial education thus aimed to demonstrate the currency of dignity as a fundamental norm for Palestine. It presumed that justice was both an internal and external goal of Palestinian liberation.

As the model developed, the Karamah team came to understand more deeply the ways in which the dignity concept could serve as a basis for transformative judicial education programming that would enhance judicial trustworthiness by highlighting the judiciary's commitment to shared values, giving the judiciary a platform from which to express their commitment to serving the Palestinian people and enhancing the judiciary's ability to live up to its commitments. In retrospect, we have also come to better understand that the Karamah team would have benefited significantly from transitional justice practices and principles. Since we were learning by doing, we did not always have the vocabulary to succinctly articulate our model. We now realise that we were developing a judicial education model to enhance institutional trustworthiness. Our inability to fully recognise this rather simple and perhaps even obvious framework while we were in the midst of the Karamah programme can be traced to our disciplinary shortcomings. It can also be traced to the fact that the rule of law and transitional justice initiatives remain generally isolated from each other.[57] Moreover, transitional justice was never really part of the political discourse in Israel-Palestine and transitional justice processes and principles were conspicuously absent from peace-building and state-building in Palestine-Israel.[58]

[57] Padraig McAuliffe, "Symbol or Substance?" 77.

[58] Brendan Ciarán Browne, "Transitional Justice and The Case of Palestine" in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffett and Dov Jacobs (Cheltenham, UK and Northampton, MA, USA, 2017), 488–507.

To the extent that transitional justice has concerned itself with judicial reform and education, transitional justice programming often shares a *problematique* with the rule of law programming. Both presume that change comes as a result of knowledge acquisition. Transitional justice scholars and practitioners have taken a relatively recent interest in judicial reform, typically under the rubric of "guarantees of non-recurrence," but they tend to focus on technical training and knowledge acquisition. Even those who recognise that change is often a function of how judges see their role in society slip into a discussion of knowledge acquisition. It is sometimes presumed, for example, that training in international human rights law will result in judges adopting a new vision of the judicial office.[59] Despite the established centrality of trust and trustworthiness to transitional justice, insufficient attention has been paid to these constructs in modelling judicial education as a transitional undertaking.

Similarly, judicial education undertaken within the framework of the rule of law programming, particularly those programmes transported from reconciled societies, tends to treat judicial education as a capacity-building exercise which requires experts to provide technical training such as training in laws and statutory interpretation to judges who are deemed to hold insufficient knowledge about law and legal practice. Some programmes also address judicial attitudes towards vulnerable groups under the title "social context" education. The goal is usually to provide judges with new information and insights into the perspectives of individuals whose experiences are different from their own.[60] This enhanced understanding will produce different judicial decisions. These programmes thus focus on enhancing judicial competence and presume that individual judges and, eventually, whole institutions will change as they gather new information.

Judicial education programming in Palestine proved no exception. Most programmes focused on enhancing judicial competence in areas such as human rights or courtroom management. Competence remained an important aspect of Karamah's model. As a legal principle, dignity gave

[59] Rhodri Williams, "Judges as Peacebuilders: How Justice Sector Reform Can Support Prevention in Transitional Settings" International Legal Assistance Consortium (2018) http://www.ilacnet.org/wp-content/uploads/2018/04/ILAC-Judges-as-Peacebuilders-11.44.54.pdf.

[60] See, for example: Livingston Armytage, "Educating Judges—Where to From Here?" *Journal of Dispute Resolution* 25, no. 1 (2015), 1–7.

judges a distinctly legal framework through which they could respond to the problems that they were asked to adjudicate on a day-to-day basis. Participating judges examined questions like: what circumstances give rise to dignity considerations and why? Where can the dignity principle be found in Palestinian law? Is comparative or international law relevant? If so, how? Having access to legal research and resources at both Birzeit University and Windsor Law, the Karamah team was well positioned to provide judges with research about human dignity. Indeed, Karamah institutionalised by research into its judicial education model by introducing the concept of judicial clerks to Palestine. Lawyers and legal researchers from Birzeit University were assigned to judicial educations to provide them with research and analysis upon request. The researchers wrote memos about dignity in judicial decision-making in comparative law for example. Canadian judges acted as judicial advisors and discussed issues such as interpretive techniques with their Palestinian colleagues. Building competence through education remained a central pillar of Karamah because competence represented the ability dimension of institutional trustworthiness. Without the ability to incorporate dignity into their decision-making based on sound legal principles and techniques, participating judges would not have been able to demonstrate their trustworthiness. But, Karamah's model went beyond competence. Human dignity was both an input and output of the Karamah model, which committed to treating the judges with dignity as well as supporting judges to make decisions in light of human dignity.

Karamah's Pedagogy: Dignity as Threshold Concept

In order to ask judges to think about the meaning of dignity to their work, the Karamah team had to ensure that it respected the dignity of the participating Palestinian judges. In particular, the Karamah model aimed to ensure that judicial education was both institutionally and pedagogically sound. To remain institutionally sound, Karamah's model sought to respect the Palestinian judiciary's institutional independence even though some of the funding came from a foreign government, the government of Canada. Accordingly, Karamah emphasised the development and delivery of judicial education by Palestinian judges for Palestinian judges. There were no foreign trainers. Instead, Palestinian judges engaged with their Canadian counterparts as professional colleagues participating in transnational judicial dialogues. The Palestinian judges were not provided with educational materials that might have been adapted from other contexts

for use in Palestine. Instead, members of the Palestinian bench developed their own materials for themselves and their colleagues. They defined their educational priorities based on their professional experience and consultations with their colleagues. They created their own educational materials, tools and resources with the support of Karamah. Moreover, Karamah did not pick the judges with whom to work. Instead, sitting judges applied to the Palestinian High Judicial Council to become judicial educators.

Once selected by the Council, judges worked in teams that included law professors, philosophers, pedagogues and legal researchers. The teams developed judicial education materials and supported the judges who delivered their own judicial education seminars for their colleagues. The teamwork model encouraged reflective practice and transformative learning. As part of the process of developing their own materials, the judges embarked on a process of inquiry and self-reflection that in turn perpetuated a learning threshold that cannot be replicated by models that presented judges with ready-made materials to study. Karamah consciously engaged adult education principles for transformative learning.

> Transformative learning is not an add-on. It is the essence of adult education. With this premise in mind, it becomes clear that the goal of adult education is implied by the nature of adult learning and communication: to help the individual become a more autonomous thinker by learning to negotiate his or her own values, meanings, and purposes rather than to uncritically act on those of others.[61]

One of the most senior Palestinian judges observed that developing their own materials gave Palestinian judges the opportunity for reflective practice.

> We had the time to comprehend and internalise things throughout the process. We were only asked one question—what is the link between the material developed and human dignity? We started to discuss those issues within the group and we found all the answers in the law itself. Everything in the training material can be discussed from a dignity perspective. This is a change of approach.[62]

[61] Jack Mezirow, "Transformative Learning: Theory to Practice," in *Transformative Learning: Insights From Practice*, ed. Patricia Cranton (San Francisco, California: Jossey-Bass, 1997), 11.

[62] Judge No. 3, Interview with Karamah Staff, Ramallah, January 2013.

Ultimately, the prevailing consumerist approach, which regards judges as the consumers of the final product rather than leaders in the agency of production, was avoided.

Within the Karamah framework, dignity was understood as a threshold concept and not simply a legal principle that could be researched and applied in a strictly technical way. Threshold concepts transform the way individuals see and analyse the world around them by occasioning ontological and epistemological or conceptual shifts. Threshold concepts involve shifts in identity relative to a given role as well as an expanded or different approach to a given discipline.[63] They can be difficult to grasp but, once grasped, threshold concepts fundamentally alter the way learners see the world. They are "troublesome" because they challenge orthodoxy or custom, but, once adopted, threshold concepts prove difficult to "unlearn" in part because they allow the integration of knowledge, realities and subjectivity into a more coherent system of being and doing.[64]

As a threshold concept, dignity gave participating judges a lens through which they could think about their relationship with the Palestinian people. When the judges spoke about dignity, they spoke about legal rules, texts, sources, precedents and doctrines. But, the judges spoke about dignity more holistically. In addition to regarding dignity as a legal principle, the judges also saw dignity as a concept that helped them define and articulate their role in society, their responsibilities in the context of political transition and their personal and political reasons for pursuing political transition. In short, the dignity concept gave participating judges the language with which to express their shared values with the Palestinian people and it gave them the professional tools to be able to demonstrate their benevolence.

Dignity as Integrity: Shared Political Values

By identifying themselves as "the address for human dignity," Palestinian judges affirmed that they shared deep political values with Palestinian society. Dignity has deep political resonance and broad intelligibility across Palestinian society. It has long encapsulated popular Palestinian political objectives; a life of dignity stood as an alternative to the humiliations and oppression of living under Israeli occupation. Israeli occupation had delegated the Palestinian

[63] Ray Land, Jan H. F. Meyer, and Caroline Baillie, "Editor's Preface," in *Threshold Concepts and Transformational Learning* (Rotterdam: Sense Publishers, 2010), ii.

[64] Land, Meyer and Baillie, "Editor's Preface," v.

people and their interests to a lesser status than the people and interests of Israel. Living under occupation, the Palestinian people had endured decades of inequality, oppression, injustices and rights violations. In response, Palestinians have routinely invoked the language of dignity to articulate their desire for freedom, equality and self-determination. For example, dignity was invoked during the first intifada to describe "the contempt and arrogance" with which Israeli soldiers and officials treated Palestinians; it "seemed to be deliberately intended to humiliate them and undermine their dignity as human beings."[65] Similarly, dignity is also referenced in the Palestinian Declaration of Independence, which declares that the Palestinian state will protect the dignity of all within its jurisdiction.

> The State of Palestine shall be for Palestinians, wherever they may be, therein to develop their national and cultural identity and therein to enjoy full equality of rights. Their religious and political beliefs and human dignity shall therein be safeguarded under a democratic parliamentary system based on freedom of opinion and the freedom to form parties, on the heed of the majority for minority rights and the respect of minorities for majority decisions, on social justice and equality, and on non-discrimination in civil rights on ground of race, religion or colour or as between men and women, under a Constitution ensuring the rule of law and an independent judiciary and on the basis of true fidelity to the age-old spiritual and cultural heritage of Palestine with respect to mutual tolerance, coexistence and magnanimity among religions (emphasis added).[66]

Further, when in 1993, Israel and the Palestine Liberation Organization (PLO) entered into an agreement that is known as the Declaration of Principles (DOP), they publicly declared a mutual commitment to a formal peace process based on the promise of dignity. The two sides agreed to "recognize their mutual and legitimate political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation."[67]

[65] The Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Origins and Evolution of the Palestine Problem: 1917–1988, PART IV 1984–1988.* (UNISPAL, 1990) https://unispal.un.org/DPA/DPR/unispal.nsf/0/57C45A3DD0D46B09802564740045CC0A.

[66] Palestinian Declaration of Independence (1988) Annex III to UN Document A/43/827 S/20278 1988 https://unispal.un.org/DPA/DPR/unispal.nsf/0/6EB54A389E2DA6C6852560DE0070E392.

[67] Declaration of Principles on Interim Self-Government Arrangements (September 13, 1993), doi: 10.1177/096701069402500l014.

In addition to appealing to the Palestinian yearning for freedom from occupation, the dignity concept also held broader appeal based on its status as an international and regional norm. The concept was not new in international law and discourses. Adopted by the United Nations in 1948, the Universal Declaration of Human Rights, for example, declared that "all human beings are born free and equal in dignity and in rights" and dignity became widely recognised as a core international principle.[68] As the Karamah team refined its judicial education model through learning by doing, the dignity concept was gaining increasing traction in comparative constitutional law.[69] Dignity was also being increasingly invoked as part of reformist political platforms across the Middle East and culminated as a slogan across the Middle East as people rose up against their dictators demanding "bread, freedom, dignity." "The Arab Spring," as it was then known, erupted in the middle of the Karamah project. These revolts helped lend credibility and urgency to Palestinian demands for dignity.[70]

Karamah created a platform for the judiciary to join a broad spectrum of Palestinian society to discuss and affirm their common desire for dignity.[71] A number of discrete dialogue events were held with various individuals and institutions involved in delivering justice. The Minister of Justice, for example, adopted dignity as a principle that would guide the Palestinian Reform and Development Plan.[72] Civil society organisations referenced dignity in their advocacy and outreach. Lawyers held workshops to develop constitutional arguments based on dignity. A manual was prepared to support them.[73] The Palestinian media was also introduced to the notion of dignity. Several workshops allowed the members of the media opportunities to reflect on techniques for covering judicial decisions

[68] United Nations, The Universal Declaration of Human Rights (1948), https://www.un.org/en/universal-declaration-human-rights/.

[69] Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of Human Rights* 19, no. 4 (2008), 655–724.

[70] Asaad Alsaleh, *Voices of the Arab Spring: Personal Stories from the Arab Revolutions* (New York: Columbia University Press, 2015).

[71] Kim Inkaster, *Report of the End of Project Summative Evaluation of The Judicial Independence and Human Dignity Project in Palestine (Karamah)* (Just Governance Group, 2013), 74.

[72] Inkaster, *Report of the End of Project*, 74.

[73] Sawsan Zahar and Hassan Jabareen, "Training Manual: Human Dignity in Judicial Practice, Theoretical and Case Studies," (Ramallah: Jerusalem Legal Aid and Counselling Centre & Karamah, December, 2013).

while respecting the independence of the judiciary.[74] By speaking the language of dignity and demonstrating their commitment to delivering dignity to the Palestinian people through their judgements, the judiciary advanced judicial institutional trustworthiness by demonstrating their shared values with Palestinian society.

Dignity as Benevolence: Professional Identity

The possibility of a Palestinian state, the creation of a Palestinian Authority and the development of a national Palestinian judiciary represented the possibility that institutionalised power would, for a change, be exercised in the interest of the Palestinian people rather than against them.[75] Dignity offered the judges a lens through which they could explore and define their professional identities relative to long-standing national aspirations for freedom, equality, security and self-determination at the same time that they grappled with whether and how to invoke dignity as a legal principle to help resolve the concrete problems that faced them in their courtrooms. When they made a decision in a particular case, participating judges remained mindful that they were participating in the rejecting of occupation and the re-making of Palestine itself.

One senior judge, for example, emphasised that Israeli occupation gave the Palestinian judiciary particular motivation to respect and protect the dignity of the Palestinian people.

> Building judicial capacity is part of building our state and we are honoured to be chosen for this mission. It is our duty to bring to our society strong and merciful judges, judges who are able to protect the dignity of Palestinian citizens.
>
> The Palestinian people have suffered significantly and their dignity has been abused continuously by an occupier that treats the Palestinian people as if they have no dignity and ignores or abuses Palestinian rights without mercy.
>
> In this context, we as judges should be the address for human dignity, through our practice at court and through our efforts in building the capacity of new judges. We should remember that we are the servant of the people, not their master. This is how Palestine should be, and this is how the Palestinian judiciary should be.[76]

[74] Inkaster, *Report of the End of Project*, 74.
[75] Bahdi and Kassis, "Decolonization, Dignity and Development Aid".
[76] Bahdi and Kassis, "Decolonization, Dignity and Development Aid".

One judge provided a particularly profound example which illustrates that changed judicial decision-making is not a technical exercise of learning legal rules but, more profoundly, an exercise in expressing national aspirations by modelling, in de Greiff's words, "the force of fundamental norms."[77]

> Karamah encouraged me to think about my role as a judge in the way I manage the court session. I give witnesses enough space and time to provide their witness statement and to answer the questions. Last week, there was a court session regarding extending a detention. After hearing the lawyer, the person started to shout and he was very nervous. I was not obliged to listen. But I decided to hear him and provided him with water so that he could calm down and speak slowly. After listening to him, I decided to view the investigation file and review how evidence was obtained before issuing my decision.
>
> During the … program, we discussed the importance of listening to other opinions and perspectives. This has had a positive impact on my role as a judge.[78]

Judges also moved from a retribution model to a rehabilitation approach. Referencing the fact that the Palestinian Authority had indicated its consent to be bound by international laws, including The Convention on the Rights of the Child, the judges looked to the best interest of the child principle as an interpretive aid. This gave them the opportunity to adopt rehabilitation as the primary principle governing sentencing in the cases they decided. Because they were mandated with developing judicial education curricula for the rest of the judiciary, participating Karamah judges also reinforced the best interest of the child principle in the juvenile justice education materials that they developed for their colleagues.

One judge explained the impact of the rehabilitation approach on judicial decision-making.

> When we issue a decision in a juvenile case, my colleagues and I now try to take into consideration that there are not sufficient rehabilitation centres appropriate for young offenders, so sometimes, in minor cases, the juvenile is released. Usually I would write in my judgment that I want to give him the opportunity to come back to normal life outside prison.

[77] de Greiff, "Theorizing Transitional Justice," 38–39.
[78] Judge No. 2, Interview with Karamah Staff, Ramallah, January 2013.

> For example, I recently heard a case of a juvenile who was involved in drugs. I realised that imprisoning him would bring him to the criminal circle. In fact, his father was at the same prison, he was imprisoned for the same case, so I decided to send the juvenile home where he would have a chance at rehabilitation.
>
> Sometimes when I recite my decision at court, I recite it with much pain, because I know that the offender is often a victim too.[79]

Judges emphasised that their willingness to treat people with dignity had normative and instrumental justifications. It not only recognised the value and worth of the individual being judged but also helped produce better social and political relations. As one judge put it,

> Looking at the human side of a case and looking at rehabilitation rather than punishment when dealing with juveniles helps enhance justice. When the juvenile himself recognises that the aim of the decision is rehabilitation and not punishment for the sake of punishment, he will start to look at things differently himself. He will start to appreciate the value of human dignity and justice in society.[80]

Reiterating the importance of looking at the "human side" of cases, another judge emphasised that changes came when judges began to envision their role differently. He and his colleagues began to see themselves as transitional actors. They understood their power as part of the promise of a new Palestinian future and they expressed their determination to work for the betterment of Palestine and Palestinians.

Sustainability of Judicial Education

Even in the complicated Palestinian context, judges adopted the dignity principle to advance the wellbeing of the Palestinian people.[81] Karamah was internally and externally evaluated over several months in early 2013. The evaluations included interviews with 23 of 36 sitting judges who participated in the Palestinian intensive training programme along with the Director of the Palestinian Judicial Institute and former Chairs of the High Judicial Council's Judicial Education Department. The evaluations

[79] Judge No. 1, Interview with Karamah Staff, Ramallah, January 2013.
[80] Bahdi and Kassis, "Decolonization, Dignity and Development Aid".
[81] Inkaster, *Report of the End of Project*, 74.

confirmed that judicial education designed around dignity can help transform judicial decision-making.

But the Karamah experience also reinforced that judicial education programming alone cannot substitute for transitional justice measures. While donors have provided significant funding for Palestinian judicial education and other Palestinian reforms since the Declaration of Principles was signed approximately 20 years ago, donors have failed to insist on a holistic transitional justice programme to help end one of the most intractable conflicts in modern history. Increases in donor funding to Palestinians have coincided with growing despair in Palestine. [82] Rather than apply transitional justice theories and practice to Israel and Palestine, donors have instead maintained that the parties negotiate the terms of peace.

Ultimately, peace and reform efforts have broken down and the foundation of the Palestinian judiciary has shown significant cracks.[83] The ability of the judiciary to deliver justice remains compromised by Israeli occupation and internal interferences from the Palestinian Authority which has recently restructured the courts to favour executive interferences and political control. The colonial condition has become further entrenched in Palestine and Palestinians seem further away from a life of dignity now than when the Declaration of Principles was first negotiated. Gaza, for example, has been declared uninhabitable.[84]

Against this context, it sometimes seems futile, if not absurd, to reflect on a model of judicial education that has not been fully sustained and that was forged in more promising times. However, the history of transitional justice has shown that experience remains instructive.[85] If the international community eventually comes to see the wisdom of insisting on fulsome

[82] Jeremy Wildeman, *Donor Aid Effectiveness and Do No Harm in the Occupied Palestinian Territory: An Oral and Documentary Analysis of Western Donor Perceptions of Development and Peacebuilding in their Palestinian Aid Programming, 2010–2016,* (Aid Watch Palestine, 2018).

[83] Al-Haq, "Transparency in Action: The Unlawful Path to Lifting Parliamentary Immunity and Undermining the Independence of the Judiciary" (December 21 2016) http://www.alhaq.org/advocacy/topics/palestinian-violations/1091-transparency-in-action-the-unlawful-path-to-lifting-parliamentary-immunity-and-undermining-the-independence-of-the-judiciary.

[84] United Nations, "United Nations Country Team in the Occupied Palestinian. Gaza Ten Years Later July 2017," https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.

[85] John Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 1.

transitional justice for Israel and Palestine, or, if the parties somehow come to this conclusion on their own, future efforts may benefit from reflections on past experiences. Even if transitional justice is not pursued in Israel and Palestine, the sharing of past experiences remains important. Those legal scholars, educators, activists, reformers and/or allies who participate in state-building, peace processes or reform efforts more generally eventually, willingly or not, become historians who bear the responsibility of chronicling those possibilities that were transformed into opportunities and those that were lost to oblivion. This chronicling itself constitutes a form of accountability.

Conclusion

Trustworthy domestic courts can help create the pre-existing conditions to enhance transitional justice strategies that address past human rights abuses and nurture reconciliation following periods of sustained violence. Trustworthy courts help set the normative conditions for successful transitions; they can affirm that fundamental norms such as dignity, human rights, democracy, justice, fairness, equality and freedom have become institutionalised. Their decisions can give people hope that the laws and processes that relegated them to second citizen status, defiled their dignity and produced the human rights abuses have been relegated to the past. Through their decision-making, judges sitting in national courts can help people believe that the new political order will respect their status "as rights bearers and citizens."[86] Trustworthy courts can help create socio-legal conditions for successful transitions by demonstrating the benefits of living in a society devoted to the rule of law.

Before they can take on the role demanded of them in transitional spaces, national judiciaries often require reform to demonstrate their trustworthiness. The Karamah model of judicial education developed in the Palestinian context can ameliorate judicial institutional trustworthiness. Designed around the concept of human dignity, Karamah gave Palestinian judges a platform through which they invoked dignity as a legal principle, a statement of shared political values and an aspect of their professional identity. In the process, they nurtured the trustworthiness of Palestinian judicial institutions and demonstrated that carefully crafted judicial education can ameliorate institutional trustworthiness. But the

[86] de Greiff, "Transitional Justice and Development," 23.

Palestinian experience also suggests that judicial reform and judicial education must be undertaken as part of a holistic transitional justice programme. Judicial reform and judicial education cannot substitute for transitional justice.

Bibliography

Al-Haq. "Transparency in Action: The Unlawful Path to Lifting Parliamentary Immunity and Undermining the Independence of the Judiciary." December 21 2016. http://www.alhaq.org/advocacy/topics/palestinian-violations/1091-transparency-in-action-the-unlawful-path-to-lifting-parliamentary-immunity-and-undermining-the-independence-of-the-judiciary.

Albertyn, Cathi and Elsje Bonthuys. "A Transformative Constitution and a Representative Judiciary." In *Gender and the Judiciary in Africa: From Obscurity to Parity?* edited by Gretchen Bauer and Josephine Dawuni. New York: Routledge, 2016.

Alsaleh, Asaad. *Voices of the Arab Spring: Personal Stories from the Arab Revolutions.* New York: Columbia University Press, 2015.

Armytage, Livingston. "Educating Judges—Where to From Here?" *Journal of Dispute Resolution* 25, no. 1 (2015): 1–7.

Bahdi, Reem. "Truth and Method in the Domestic Application of International Human Rights Law." *Canadian Journal of Law and Jurisprudence* (2002): 255–279.

Bahdi, Reem. *Background Report on Women's Access to Justice in the Middle East.* Cairo: International Development Research Centre (IDRC)Women's Rights and Citizenship (WRC) Program and the Middle East Regional Office (MERO). 2007.

Bahdi, Reem and Mudar Kassis. "Decolonization, Dignity and Development Aid: A Judicial Education Experience in Palestine." *Third World Quarterly* 37 (2016): 2010–2027.

Beugelsdijk, Sjoerd, Henri L.F. de Groot, and Anton B.T.M. van Schaik. "Trust and Economic Growth: A Robustness Analysis." *Oxford Economic Papers* 56, no. 1 (2004). 118–134.

Browne, Brendan Ciarán. "Transitional Justice and The Case of Palestine." In *Research Handbook on Transitional Justice,* edited by Cheryl Lawther, Luke Moffett and Dov Jacobs. Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, 2017.

The Committee on the Exercise of the Inalienable Rights of the Palestinian People. *The Origins and Evolution of the Palestine Problem:* 1917–1988. PART IV 1984–1988. (UNISPAL, 1990). Accessed December 21, 2018, https://unispal.un.org/DPA/DPR/unispal.nsf/0/57C45A3DD0D46B0980254740045CC0A. June 30.

Cook, Karen S., Russell Hardin, and Margaret Levi. *Cooperation Without Trust?* New York: The Russell Sage Foundation, 2005.

de Greiff, Pablo. "Transitional Justice and Development." In *International Development: Ideas, Experience, and Prospects*, edited by Bruce Currie-Alder, Ravi Kanbur, David M. Malone, and Rohinton Medhora. New York: Oxford University Press, 2014.

de Greiff, Pablo. "Theorizing Transitional Justice." *Nomos: American Society for Political and Legal Philosophy* 51 (2012): 31–77.

"Declaration of Principles on Interim Self-Government Arrangements." Security Dialogue 25, no. 1 (March 1994):119–123.

Dyzenhaus, David. "Judicial Independence, Transitional Justice and the Rule of Law." *Otago Law Review* 10 (2003): 345–372.

Easton, David. "A Re-Assessment of the Concept of Political Support." *British Journal of Political Science* 5, no. 4 (1975): 435–457.

Elster, John. *Closing the Books: Transitional Justice in Historical Perspective.* New York: Cambridge University Press, 2004.

Finkelstein, Norman G. *Gaza: An Inquest Into Martyrdom*. Oakland: University of California Press, 2018.

Horne, Cynthia M. *Building Trust and Democracy: Transitional Justice in Post-Communist Countries.* Oxford: Oxford University Press, 2017.

Horne, Cynthia M. "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries: Repairing or Wresting the Ties that Bind?" *Europe-Asia Studies* 66, no. 2 (2014): 225–254.

Horne, Cynthia. "Trust and Transitional Justice." In Encyclopedia of Transitional Justice, edited by Lavinia Stan and Nadya Nedelsky. New York: Cambridge University Press, 2012. 1–13. https://www.academia.edu/38628876/Trust_and_Transitional_Justice.

Inkaster, Kim. *Report of the End of Project Summative Evaluation of The Judicial Independence and Human Dignity Project in Palestine* (Karamah). Just Governance Group, 2013.

Land, Ray, Jan H. F. Meyer, and Caroline Baillie. "Editor's Preface." In *Threshold Concepts And Transformational Learning*, edited by Ray Land, Jan H.F. Meyer and Caroline Baillie. Rotterdam: Sense Publishers, 2010.

Levi, Margaret. "A State of Trust." In *Trust and Governance*, edited by Valerie Braithwaite and Margaret Levi. New York: The Russell Sage Foundation, 2003.

Levi, Margaret, and Laura Stoker. "Political Trust and Trustworthiness." *Annual Review of Political Science* 3 no. 1 (2000): 475–507.

Lundy, Patricia and Mark McGovern. "Whose Justice? Rethinking Transitional Justice from the Bottom Up" *Journal of Law and Society* 35 no. 2 (9 May 2008): 265–292.

Lynk, Michael S. "Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967" (October 22, 2018) UNA/73/45717 https://www.ohchr.org/en/hrbodies/sp/countriesmandates/ps/pages/srpalestine.asx.

Mayer, Roger C. James H. Davis, and F. David Schoorman. "An Integrative Model of Organizational Trust." *Academy of Management Review* 20, no. 3 (1995): 709–734.

McAuliffe, Padraig. "Transitional Justice's Impact on Rule of Law: Symbol or Substance?" In *Research Handbook on Transitional Justice*, edited by Cheryl Lawther, Luke Moffet, and Dov Jacobs. Cheltenham: Edward Elgar Publishing, 2017.

McMurphy, Suzanne. "Trust, Distrust, and Trustworthiness in Argumentation: Virtues and Fallacies." Paper presented at the Ontario Society for the Study of Argumentation Conference. Windsor, Canada. May, 2013. https://pdfs.semanticscholar.org/ffdd/8dd29f4a20ad4eb4410dbffcb4451c414990.pdf.

McCrudden, Christopher. "Human Dignity and Judicial Interpretation of Human Rights." *European Journal of Human Rights* 19, no. 4 (2008): 655–724.

Mezirow, Jack. "Transformative Learning: Theory to Practice." In *Transformative Learning: Insights From Practice*, edited by Patricia Cranton. San Francisco, California: Jossey-Bass, 1997.

Morrison, Melanie A, Todd G. Morrison, Rebecca L. Harriman and Lisa M. Jewell. "Old-fashioned and Modern Prejudice Toward Aboriginals in Canada." In *The Psychology of Modern Prejudice*, edited by Melanie A. Morrison and Todd G. Morrison. Hauppauge, NY: Nova Science Publishers, Inc. 2008.

North, Douglass C. "Institutions." *The Journal of Economic Perspectives* 5, no. 1 (1991): 97–112.

Offe, Clause. "How Can We Trust Our Fellow Citizens?" In *Democracy and Trust*, edited by Mark Warren. Cambridge: Cambridge University Press, 1999.

O'Neill, Onara. "Accountable Institutions, Trustworthy Cultures." Second Annual T.M.C. Asser Lecture in The Hague (December 2016). https://www.asser.nl/about-the-institute/asser-today/accountable-institutions-trustworthy-cultures/.

Palestinian Declaration of Independence (1988) Annex III to UN Document A/43/827 S/202781988. https://unispal.un.org/DPA/DPR/unispal.nsf/0/6EB54A389E2DA6C6852560DE000E392.

Quinn, Joanna R. "Whither The "Transition" of Transitional Justice." *Interdisciplinary Journal of Human Rights* 8, no. 1 (2014–2015): 63–80.

Rouhana, Houda. 2013. "Interview with Palestinian Judges Participating in Karamah." Ramallah.

Rousseau, Denise M., Sim B. Sitkin, Ronald S. Burt, and Colin Camerer. "Not So Different After All: A Cross-Discipline View of Trust." *Academy of Management Review* 23, no. 2 (1998): 393–404.

S v. Makwanyane and Another, South African Constitutional Court. June 6, 1995.
Sriram, Chandra L., Olga Martin-Ortega, and Joanna Herman. *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice*. JAD-PbP Working Paper Series No. 1 (May 2009): 1–62. Accessed https://www.researchgate.net/publication/228914875_Evaluating_and_comparing_strategies_of_peacebuilding_and_transitional_justice.
Teitel, Ruti. "Transitional Justice and Judicial Activism— A Right to Accountability?" *Cornell International Law Journal* 48 (Winter 2015): 385–422.
Truth and Reconciliation Commission of Canada. *What We Have Learned*. Ottawa: Truth and Reconciliation Commission of Canada, 2015.
Tyler, Tom R., and Huo J Yuen, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: The Russell Sage Foundation, 2002.
United Nations. *The Universal Declaration of Human Rights*. 1948. Accessed https://www.un.org/en/universal-declaration-human-rights/.
United Nations. "United Nations Country Team in the Occupied Palestinian. Gaza Ten Years Later July 2017," https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.
Wildeman, Jeremy. *Donor Aid Effectiveness and Do No Harm in the Occupied Palestinian Territory: An Oral and Documentary Analysis of Western Donor Perceptions of Development and Peacebuilding in their Palestinian Aid Programming, 2010–2016*. (Aid Watch Palestine, 2018). http://www.alhaq.org/advocacy/topics/palestinian-violations/1091-transparency-in-action-the-unlawful-path-to-lifting-parliamentary-immunity-and-undermining-the-independence-of-the-judiciary.
Williams, Rhodri. "Judges as Peacebuilders: How Justice Sector Reform Can Support Prevention in Transitional Settings." *International Legal Assistance Consortium* (2018). http://www.ilacnet.org/wp-content/uploads/2018/04/ILAC-Judges-as-Peacebuilders-11.44.54.pdf.
Zahar, Sawsan and Hassan Jabareen. *Training Manual: Human Dignity in Judicial Practice. Theoretical and Case Studies* Ramallah: Jerusalem Legal Aid and Human Rights Center & Karamah, December, 2013.

Interviews by Houda Rouhana (Karamah staff member)

Judge No. 1. Interview with Karamah Staff. Ramallah. January 2013.
Judge No. 2. Interview with Karamah Staff. Ramallah. January 2013.
Judge No. 3. Interview with Karamah Staff. Ramallah. January 2013.