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## Trust in justice

“Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.” (President’s Task Force 2015: 1) This quote is the first line of the report of US President Barack Obama’s Task Force on 21<sup>st</sup> century policing and proves that trust in justice has recently been given attention not only by researchers, but practitioners as well. The reason is that multiplying evidence proves that trust in justice fosters compliance with laws and cooperation with justice institutions, such as the police.

This chapter intends to give an overview of the related issues and the state-of-the-art of the literature on trust in justice. Its basic aim is to present to the reader what we seem to know on the roots and practical relevance of trust in justice and what problems would possibly need further clarifications. It also includes a section on policy challenges and possible recommendations.

Trust is defined as an expectation that the given institution will produce positive outcomes (Levi and Stoker 2000). That is, trust is an attitudinal variable, which, however, may have an effect upon actual behaviour. This paper is about trust in the justice system. However, the justice system is a complex institutional setting, including the police, the courts, the public attorney, the prisons, but justice policy as such and laws or other regulatory instruments are also part of it. Similarly, potential trust relations concerning the justice system also offer a complex picture, as they may run between different social actors in different directions. So we can distinguish at least between:

- people’s confidence in justice institutions
- trust of the justice system in people
- trust inside the justice system, between its institutions and actors.

Researches on trust in justice favour the first approach and usually limit themselves on trust in *the courts* and *the police*, the institutions people may have information about, or even experience with. However, trust of specific stakeholder groups towards other institutions may also be considered, like the attitudes of inmates towards the prison (see Hawdon 2008).

The second and the third relationships have been largely neglected by researchers, although in principle they raise interesting questions (see Bouckaert (2012)). Therefore, for the sake of analytical clarity and following the academic convention on researching trust in justice the paper will focus on the first issue: that of trust of people in justice institutions.

### Potential drivers for eroding trust

In order to point to the potential drivers that may contribute to the erosion of trust we should identify the factors that may have an effect on trust – for better or worth. First, trust in justice is believed to be largely influenced by *perceptions on the justice system* in terms of

- its performance (effectiveness, outcomes etc.)
- the normative legitimacy of its operations. Most of the studies stress the importance of procedural fairness norms, but other normative considerations may also play a role.

However, perceptions are not given or unmediated: they are not neutral observations but rather attitudes. Therefore an important question concerns the nature of information and information sources that people use when forming their attitudes, as well as the different factors and actors that influence or even construct those views. Researches stress the potential role of *personal experience, media, peer-groups* and *politics*.

At the same time trust in justice, just as confidence in other state institutions, is also influenced by some

- macro-level factors (level of development, social inequalities, political culture)
- individual-level factors (education, wealth, sociotropic evaluations and political attitudes).

### Perceptions on the justice system

It is well-established in the literature that in terms of perceptions trust in justice has two major determinants: perceptions of effectiveness/competence (how well the justice system is believed to maintain order) and that of normative legitimacy (the belief that justice institutions serve the common good, act rightly and fairly). It comes as no surprise that people need to believe that the justice system is effective (the police and courts are professional, able to fulfil their roles, laws are well designed and properly implemented etc.) in order to trust it. For instance, empirical evidence suggests that perceptions about police effectiveness are positively related to trust in the police ( Hough 2007; Jackson, Bradford et al. 2011; Sprott and Doob 2009; Tyler 2011a; b). The literature has made more effort to demonstrate and analyse the role of normative legitimacy in building trust and fostering compliance with the law – apparently the weight of normative considerations is less obvious. By now researches have gathered enough evidences to prove that it should be: most of the

studies actually argue that normative considerations are just as, or even more, important than instrumental ones in shaping institutional trust.

Tom Tyler argues that trusting attitudes are rooted in the belief that laws serve the common good, and that the judicial system is both effective and fair (Tyler, 1990). Jackson, Bradford, et al. (2011) define trust in the police as a belief that the police have the right intentions towards citizens and are competent to act in specific ways in specific situations. Jackson and Sunshine (2007) argue that normative expectations about the police acting as the guardian of moral values are more important than instrumental concerns for building trust. Similarly, Stoutland (2001) claims that besides perceptions about police competence, trust in police is also associated with normative perceptions of shared priorities ('Do the police share local residents' priorities and concerns?') and respectfulness ('Are the police respectful, courteous, and fair in their interactions with local residents?'). Jackson *et al.* (2011) also stress the expectations concerning the moral alignment of the police with the community and the fairness of the procedures the police are applying. Similarly, trust in courts was found to be related to the assessment of procedural justice of the actions of the authorities and evaluations of the trustworthiness of the motives of the authorities (Tyler and Huo 2002). Again, it was demonstrated that the way citizens are treated by legal authorities, that is the process-based problem solving of the courts and the extent to which some concept of public good is embodied in the functioning of the authorities influence trusting attitudes of the people. Analysing ESS 2010 data the research under the FIDUCIA project<sup>1</sup> demonstrated that people do not trust justice institutions primarily because of instrumental concerns, or self-interest, but because they believe that the institutions represent their basic values and operate in a procedurally fair way (Jackson et al. 2012). An important finding of FIDUCIA research is that although there are differences in trust levels across countries, the same mechanisms seem to be at work at the individual level in different parts of Europe. That is, people in the new democracies of Eastern and Central Europe and in the old democracies of the West use similar evaluative criteria when developing trusting attitudes towards the legal authorities. These criteria are to a great extent linked to moral evaluations of police and court performance. Trust and legitimacy depends to a great extent on the perceived moral alignment of the authorities and the perceived fairness of their operations.

As we can see several studies argue that among the normative considerations affecting trust in justice, perceptions about procedural fairness are of crucial importance (Bradford et al. 2013; Hawdon 2008; Hough 2007; Paternoster et al. 1997; Tyler and Huo 2002; Tyler 1990, 2011b). According to Tyler (2011a), procedural fairness may refer to norms of both decision making (consistency, lack of bias, transparency, stakeholder inclusion, participation, etc.) and treatment (respect, benevolence, reliability).

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<sup>1</sup> FIDUCIA – New european crimes and trust-based policy is az EU FP7 collaborative research project, see at [www.fiduciaproject.eu](http://www.fiduciaproject.eu)

## Information

In addition to the substance of information about legal authorities (what people take into account when they formulate trusting attitudes towards the police), the sources of those information may also influence trust. For instance, in spite of the declining crime levels in the US and in the UK in the 2000s, overall trust in police has not increased (Tyler 2011b). This is either because people's normative expectations about procedural fairness were not met or they were simply unaware of the improving crime statistics and had false perceptions about the work of the police. Indeed, in the same period, according to several public surveys, people consistently thought that crime was on the rise (Hough et al. 2013). It seems that citizens were not aware of the real trends in terms of both criminality and police activity and this may have influenced their attitudes.

One of those channels through which people receive information about the justice system is the media. However, the media and especially the tabloids may invoke distorted and exaggerated perceptions about crime that undermine their confidence in justice (see Hohl 2012). In addition, the media is also blamed for irrationally inflating public fear of crime by reporting in detail about otherwise not too frequently occurring brutal, violent crime events (Singer and Cooper 2008).

Besides the media another way people may get information about how justice works is through personal encounters. Data confirm that personal experiences do have an effect on trusting attitudes: if people believe that the legal authorities treated them fairly and in a competent way then their confidence in the justice system gets stronger (Tyler 1990, Tyler and Huo 2002). Strong evidence suggests that police visibility and personal encounters are key factors in determining confidence in policing (Fitzgerald *et al.* 2002, Skogan 2006). Some research, however, found that the average effect of personal encounters on trust in legal authorities is negative: people who had contact with the police or the courts tend to trust them less (Bradford *et al.* 2009). This is strange, because generally the opposite is true: people having had contacts with public bodies expressed a higher level of confidence towards them (Bradford *et al.* 2009). An obvious assumption could be that there is a self-selection bias at work here: for instance people who were stopped by the police may have good reasons to be dissatisfied or angry at the police. First, being stopped is an inconvenient situation. Second, people may feel that they are treated as potential suspects. However, data shows that those people who initiated the contact with the police themselves were, on average, even more dissatisfied with the treatment than those who were contacted by the police (Bradford *et al.* 2009). One reason could be that the police have little to offer immediately: victims cannot hope to get back their stolen belongings or to see criminals arrested. This may explain why the effect of contacts on trust is asymmetrical: bad experiences destroy trust, but good ones do not have a positive effect on public confidence – maybe because there cannot be “good” contact with the police (Skogan 2006). Similar reasons may explain why personal experience with the courts has also mostly negative effect on trust. However, other studies suggest that the quality of contacts, measured in terms of

procedural fairness, does have a positive effect on trust (Tyler 1990, Tyler and Huo 2002, Bradford *et al.* 2009).

However, even media and personal experiences might not make the whole story. In a qualitative study combining media analysis and focus group research, Boda and Szabó (2011) found that young people's views about crime and the police were quite similar to the dominant interpretive frames of the media – despite the fact that participants in the research reportedly had only very limited media consumption and were extremely critical towards the media. They also had very limited personal experiences with the police or the justice system. But then where did their opinions originate, and how is it that their opinions corresponded so closely to media content on crime and justice? Boda and Szabó (2011) suggest that these contradictions may be resolved if we consider theories that model circular, non-direct and socially filtered interactions between the media and public opinion on one hand, and take into account communications in social networks, peer groups and the role of opinion leaders, on the other. However, confirming these ideas certainly needs further investigations.

The role of politics in boosting or eroding trust in justice can also be interpreted under the angle of information gathering and attitude formation. As Zaller (1992) argued, people rarely have fixed attitudes on specific issues; rather, they construct “preference statements”, making use of ideas that are, for any reason, the most immediately salient to them. Zaller also argued that political elites and political discourses have a strong influence on the dynamics of mass opinion. Therefore if political discourse is critical towards the justice system, it may have an effect on what people tend to believe in that matter.

In the criminology literature penal populism refers to a policy discourse about crime, justice and punishment which suggests that the justice system privileges criminals and prisoners at the expense of crime victims and the law-abiding public (see Hough, Jacobson, and Millie 2003; Hough and Sato 2011; Pratt 2007; Roberts *et al.* 2003). Researchers argue that it appeals to emotions rather than reason as “penal populism usually feeds on expressions of anger, disenchantment and disillusionment with the criminal justice establishment” (Pratt 2007: 12). It usually takes the form of ‘feelings and intuitions’ rather than some tangible outcomes: for example, phrases of layman communication which revolves around public concerns about crime and disorder; anger and anxiety over the ‘impotent’ justice system which are gladly covered by the popular press in particular (Pratt 2007). When penal populism becomes an influential way of talking about criminal justice, politicians are eager to ensure that policy in this sphere is more reflective of the public will than the values of the criminal justice establishment (Pratt 2007: 14, Roberts *et al.* 2003: 4). By employing a tabloid style communication that usually brings simplicity in the discourses, penal populism seeks to step over formal political institutions to become ‘*of the people but not of the system*’. Consequently, populist discourse about punishment spins more around the emotion that such representations invoke, rather than around rational, objective and professional judgment (Pratt 2007: 17).

Therefore if penal populism spreads in the public political discourse one may expect a decline in confidence towards justice.

#### Other, micro- and macro-level social variables

Trusting attitudes may be also influenced by social factors, operating both at the individual or the macro-level. Individual level factors may include education level, age or income, while macro-level factors refer to the features of the specific social/political culture, level of development of the given country or income inequalities in the society.

At the individual level evidences are mixed about how possible factors (income, age, education etc.) may influence institutional trust and whether there are – and if so, what kind of – differences between countries or the regions of Europe (see Boda – Medve-Bálint 2014 and Medve-Bálint – Boda 2014). However, a consistent finding of the studies is that the so-called sociotropic evaluations are positively associated to institutional trust (see e.g. Zmerli and Newton 2008; Zmerli et al. 2007). That is, those who think that the country is heading into a good direction or are satisfied with the performance of the economy express significantly higher level of confidence in state institutions, including the judiciary. This is important and suggests that trust in justice is also an expression or even indicator of legitimacy.

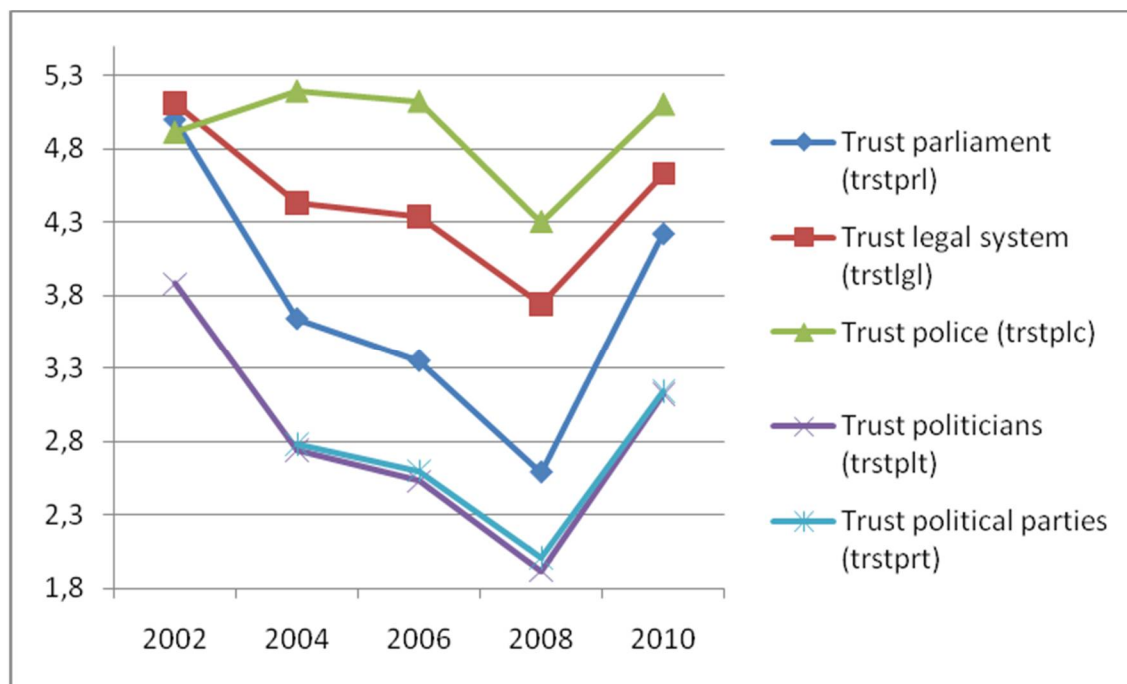
At the macro level several considerations deserve attention. For instance, some argue that institutional trust is part of a general trust culture. Those approaches that emphasize the role of culture argue that institutional trust originates “in long-standing and deeply seeded cultural norms and is an emergent property of interpersonal trust which is projected onto political institutions” (Campbell 2004:402). These approaches hold that institutional trust is part of a larger belief-system that influences how and how much people trust each other or impersonal organisations. To put it simply, the level of institutional trust is higher in societies where – because of specific historical and cultural factors – general social trust is higher (Kunioka and Woller 1999). Indeed, when analysing European Social Survey (ESS) data, we find that there is a remarkably strong association ( $r = 0.96$ ,  $p < 0.001$  for ESS 2010 data) between interpersonal trust and institutional trust at the country level.

This observation suggests that those scholars who emphasize the role of culture in shaping trust may be right in a sense that the general level of trust (both institutional and interpersonal) can be interpreted as an attribute of a given society. At the same time, it is also possible that another background variable is associated with the two main dimensions of trust. This factor, as suggested by Knack and Keefer [1997] or Dearmon and Grear [2011] can also be the level of economic development. Indeed, there is a strong and statistically significant relationship ( $r = 0.76$ ;  $p < 0.001$ ) between the indicator of economic development and institutional trust (Medve-Bálint and Boda 2014).

It is important to note that when editing these data into chart one finds the countries take almost identical positions. It follows from this that at the country-level institutional trust,

interpersonal trust, and economic development are strongly and positively associated with each other. One may thus assume that certain societal attributes create a favourable atmosphere for trust that may also facilitate economic development, which, in turn may strengthen people's trust towards each other and in public institutions.

Now, we may dismiss them as factors that are not specific to the justice system, however, let us not forget that the correlation between different institutional trust indicators is high everywhere in Europe, although it is slightly higher in Eastern European countries than in Western Europe (Boda – Medve-Bálint 2014). We can also observe that there is a strong association between levels of GDP and institutional trust in a given country. But there is also a strong association between measures of institutional and interpersonal trust, which is confidence towards other people. If we add that the volatility of trust is relatively small, that is, trust levels are stable, and especially so in Western Europe (Boda – Medve-Bálint 2014), one could conclude that there is no need to pay special attention to the confidence in specific institutions, as institutional trust may be interpreted as a general evaluative pattern which is changing only slowly and which is influenced by macro-level factors, like the level of development, inequalities, the trust culture of the country and so on. However, this would be a hasty conclusion. Trust in institutions indeed has a “slow motion” which is suspected to be largely influenced by the socio-political development and the cultural background of a country. Still, other factors, specific to a given institution have an influence on short- or medium-term changes. For an illustration, see Figure 1 showing the change of institutional trust indicators for Hungary. One striking feature of the chart is how the different institutional trust indicators move together, which is consistent with the observation on the strong association between different kinds of institutional trust. However, we may also note that trust in the police behaved slightly differently: while trust in political institutions and even the legal system was steadily declining between 2002 and 2008, trust in police remained stable and was even increasing a little bit till 2006. All this may suggest that, on the one hand, trust in institutions is presumably highly influenced by some other background variables (like, for instance, the satisfaction with the performance of the polity) that make them move together on the middle run. So we may assume that the level of institutional trust is dependent on the development level of a country and its change on the long run is slow, but – at least within a range – institutional trust may considerably vary, presumably subject to general sociotropic evaluations of the polity, the direction of the country etc. However, on the other hand, trust in specific institutions may be influenced by some factors on their own, causing short-term fluctuations and disjunction from general institutional trust trends.



**Figure 1. Institutional trust indicators for Hungary, 2002-2010** (source: ESS, author's calculation).

Summarizing the main drivers, and the potential dynamics, of trust in justice:

- Trust in justice is closely related to other types of trust (both institutional and interpersonal) and as such its level is relatively stable over the long run. More developed countries with generally high trust levels tends to exhibit high public confidence in justice.
- On the middle run, and within limits, trust in justice may change, and this is largely influenced by general evaluative attitudes on the political system and the legitimacy of governance. That is, trust in justice tends to move together with other indicators of confidence in state institutions and politics. Let us mention that the justice system is not only influenced by general legitimacy belief, but it can also have an effect on legitimacy. For instance Tankebe (2013) argues that police are a visible representation of the state's monopoly of violence and moral identity, and as such, conceptions of illegitimacy are likely to stem from interactions between criminal justice agents and citizens.
- However, trust in justice is also influenced by public perceptions concerning the effectiveness and normative rightness of the justice institutions themselves.

From a policy perspective this latter effect is probably the most important to be considered, as this is the one which is specific to the justice system. However, when analysing changes of trust in justice one should not forget to pay attention to the different interactions with other social variables at different levels.



## The impact of trust in justice

Above we defined trust as an attitudinal variable, which, however, may have an effect upon actual behaviour. Trust in justice is important because it increases the probability of law abiding behaviour and the willingness of the citizens to cooperate with legal authorities. That is, trust in justice helps sustaining ordered social relationships and potentially increases the effectiveness of the justice system.

Tom Tyler argues that people do not obey the law because they fear the sanctions, but because they put trust in it (Tyler 1990). Trusting attitudes and more generally speaking social motivations based on normative considerations explain the willingness of people to cooperate with authorities, including the police (Tyler 2011a). Cooperation may involve simple acts like obeying an officer's requests, but it may also mean reporting a crime event and sharing witnessed information, or actively contributing to crime prevention (Tyler 2011b).

FIDUCIA research shows that legitimacy and trust are the strongest predictors of the willingness to obey the law and to cooperate with authorities across countries (Jackson et al. 2012). Distrusting citizens, on the other hand, are more likely to calculate the costs and benefits of compliance and this might lead to free-riding practices (Tyler 2006). The International Social Survey Programme (ISSP 1998) included a questionnaire module, asking respondents whether it was wrong to misreport income in order to pay less tax and whether it was wrong to claim government benefits if one is not entitled to receive them. Dalton (2004) found that there was a strong association between these two variables and trust in parliament and trust in the courts. At the same time both trust measurements proved to be strongly related to upholding norms with regard to taxes and social benefits. Hough et al. (2010) argue that perceived police legitimacy is a powerful predictor of compliance. At the same time, if police "treat people unfairly, legitimacy suffers and people become cynical about human nature and legal systems of justice. This then leads them to view certain laws and social norms as not personally binding." (Hough et al. 2010: 207)

Now, most of the studies use attitudinal surveys measuring cooperative attitudes instead of observing actual behaviour, however, some researches focus on the latter as well. For instance, in a longitudinal study Tyler and Huo (2006) found that those who expressed higher trust in legal authorities reported a lower amount of norm infringement in the subsequent weeks. Trust also was found to increase the likelihood of cooperation with the police like obeying an officer's requests (McCluskey et al. 1999).

Nivette (2014) argues that a lack of trust and legitimacy may lead citizens to: (1) reject the monopoly of physical force to employ self-help and/or (2) withdraw commitment from institutions, breaking down social control. The first possibility is that a lack of legitimacy discourages citizens from using the criminal justice system to solve interpersonal conflicts. This argument is based on the ability of the state to hold the monopoly of force, solve conflicts and to provide justice in return. Where the police are perceived as illegitimate

agents of social control, citizens may fill this gap using their own tools of conflict resolution, including violence (Black, 1983). Upon interviewing a sample of young men (ages 16–24) recently involved in violent offences, Wilkinson et al. (2009) found that the youth experienced a “profound lack of access to the law” (Nivette 2014: 101). The participants in their study continually expressed a lack of confidence in the police that drove them to keep guns for protection and use violence to solve conflict. In a study of retaliatory homicides in St Louis, Missouri, Kurbin and Weitzer (2003) found that violent self-help is part of the ‘code of the streets’ (Anderson, 1999), and that this ‘code’ functions where police are seen as illegitimate. At the same time Varese (2011) argues that state ineffectiveness and illegitimacy are key ‘local conditions’ for the migration and growth of organized crime groups. When a state cannot protect its citizens, settle disputes or enforce economic contracts, a demand arises for extra-legal protection typically provided by mafias. In his cross-national study Van Dijk (2007) found that effective and ‘incorruptable’ criminal justice systems are negatively associated with the presence of organized crime groups. At the same time Nivette (2014) argues that we have much less empirical evidence based on observed behaviour supporting the second possible effect of falling trust, that is, growth of norms-breaking behaviour. However, the mechanism seems to be theoretically well-founded and attitudinal surveys offer some empirical underpinnings to it.

### Signals of trust at risk

How can we measure trust in justice and foresee the potential threats to it?

Trust as an attitude may be measured through attitudinal surveys asking people explicitly how much trust they have in the justice system.<sup>2</sup> Besides explicit trust measures it is also meaningful to investigate people’s perceptions about the crucial explanatory variables that we identified above: the performance and the normative legitimacy of the justice system. That is, indicators of the public perceptions about police effectiveness, fear of crime, corruption in the justice system etc. may be relevant to assess whether trust in justice is under threat. However, signalling changes needs time series data which are not necessarily available, and certainly not at the EU level for comparative purposes. Large scale and regular international surveys, like the European Social Survey, ask people about their trust in justice institutions, but they fail to cover the perceptions on the performance as well as the normative legitimacy of justice institutions.

In terms of perceptions and attitudes general sociotropic evaluations on the state of the polity, the direction of the country’ development etc. may also be relevant, given their importance in explaining institutional trust, on one hand, and the strong association of different institutional trust indicators, on the other.

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<sup>2</sup> EUROJUSTIS, an EU FP7 research project worked out and tested the methodology of measuring trust in justice through attitudinal surveys. See at [eurojustis.eu](http://eurojustis.eu).

(Dis)trust in justice may have its consequences not only on people's attitudes, but their behaviour as well. Trust in justice is believed to foster compliance with the law and cooperative behaviour with legal authorities (Tyler 1990, 2011a, Tyler and Huo 2002). Therefore declining trust may lead to, or declining trust may be signalled by, increasing non-compliance with the law and signs of non-cooperation vis-à-vis the justice system. Distrust may also be reflected rising popularity of 'alternatives' to the justice system (e.g. organizations of self-defence, vigilantism, or the growing market of security equipment etc.).

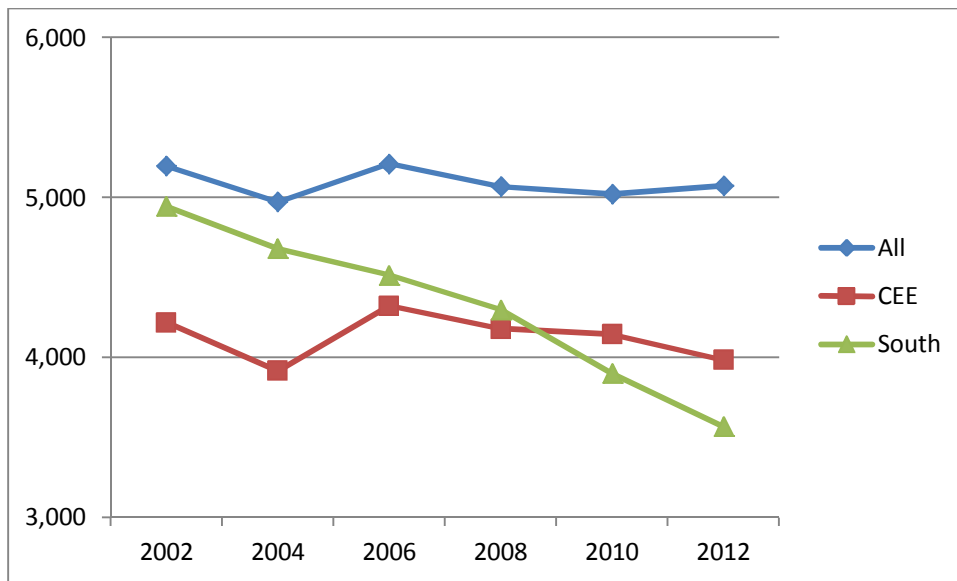
Above we identified two factors that may potentially influence trust in justice: media and politics. If the salience of crime and justice issues increases on the media agenda, this might signal a growing distrust in justice. Similarly, if populist parties increase their popularity and/or the discourse of penal populism is spreading in public discourse on justice issues than we may suspect that distrust is growing. (Whether penal populism is only a signal or also a cause of distrust remains to be shown.)

It is far beyond the scope of this paper to draw a detailed picture of the state of the art of trust in justice in Europe. In the following I present some data exclusively for illustrative purposes.

Figure 5 shows ESS data on trust in the courts on a 11 digit scale (0-10). While trust has been remained stable at the EU level<sup>3</sup>, it has, however been consistently deteriorating in the South-European countries (Greece, Portugal and Spain), and in the past six years it also shows a slow, but steady decline in the CEE countries (Czech Rep., Estonia, Hungary, Poland, Slovakia and Slovenia). Identifying the underlying causes would need a research on its own, therefore I retain myself from speculating on the possible roots of these phenomena. However, these data certainly suggest that trust in justice should be given attention.

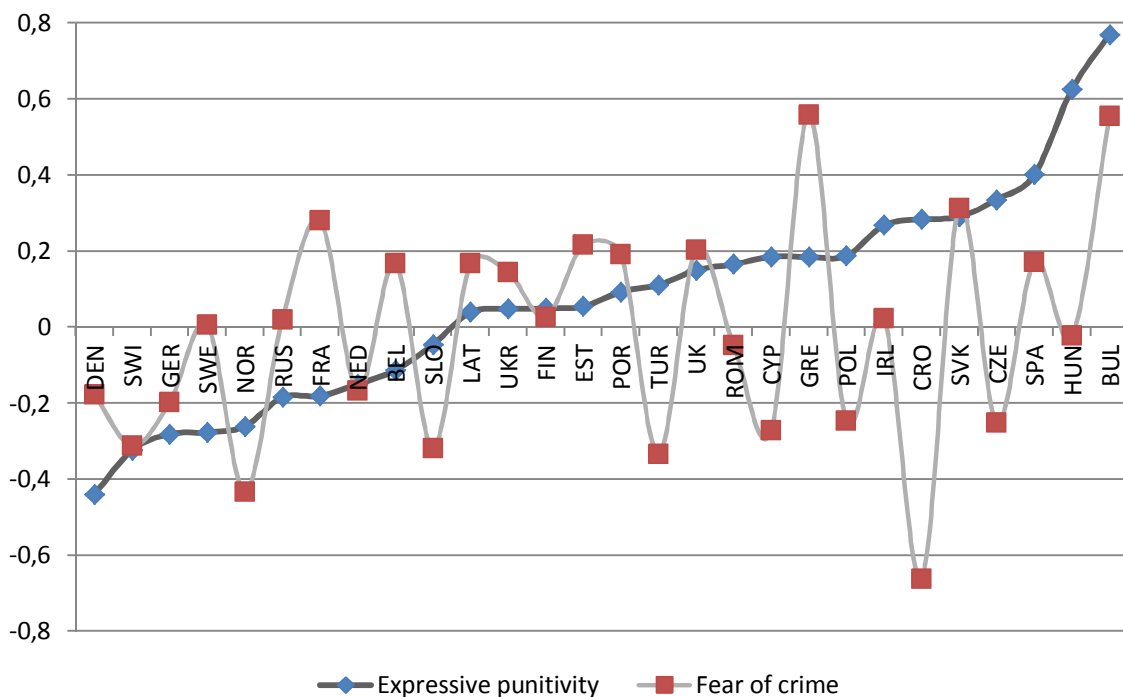
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<sup>3</sup> Only those countries are included where ESS surveys were not missed more than two times from 2002 till 2012: Belgium, Czech Rep., Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Netherlands, Poland, Portugal, United Kingdom, Slovakia, Slovenia, Spain, Sweden,



**Figure 5. Trust in courts in EU countries** (source: author's calculation, ESS)

Fear of crime and punitive attitudes are related to each other, several studies find (see e.g. Lappi-Seppälä 2008). Both measures show a great variation across countries (see Figure 6 below). As for the trends: fear of crime has been slowly decreasing in the past two decades across Europe (Smolej and Kivivuori 2008, Jackson 2008). The same is not necessarily true for punitive attitudes, although punitiveness is a more complex concept, which is difficult to measure (see Adriaenssen and Aertsen 2015).



**Figure 6. Punitive attitudes and fear of crime across Europe.** (Source: Boda et al. 2014, ESS data, 2010.) Note: The indicators have been standardized to have a mean of zero and standard deviation of one.

Looking at the indicators of actual behaviour, the starting point is that non-compliance or crime are not easy to measure, for instance, data from victimisation survey and police statistics may considerably differ (Van Dijk 2009). However, despite the methodological difficulties Aebi and Linde (2012) argues that different indicators show a consistent picture: that of stagnating or declining crime levels throughout Europe. This does not exclude the possibility that specific countries may represent unique cases and we should differentiate between crime types as well. For instance, while, consistent with general trends, crime has been declining in Eastern and Central European countries as well, corruption has actually been increasing in most of them (Linhartová and Volejniková 2013). Or Pitts (2012) is warning to the proliferation of youth street gangs in the UK (Pitts 2012).

The decline of crime in the past two decades is a somewhat surprising turn, as crime levels have generally been increasing in both the US and Europe since the 1960s. However, Mooney and Young (2006) argue that this may not be the whole story: while crime has been shrinking, some studies suggest that anti-social behaviour has been on the rise. A whole range of behaviours was identified under the rubric of anti-social behaviour: begging, public drunkenness, letting off fireworks, neighbourhood noise, hoax calls, urinating in public, etc. Criminology has not yet devoted much effort to analyse the patterns and roots of anti-social behaviour. But if Mooney and Young are right, this may be considered as a possible weak signal of trust at risk. Another, and possibly related, issue is that of unreported cases of delinquency: in some countries a huge difference exists between police statistics and surveyed victimisation in terms of simple assaults (Van Dijk 2009). Petty delinquency and anti-social behaviour are difficult to tackle by the police and people may fail to report those cases to the authorities. This might be alone a signal of lack of trust, but it can also contribute to growing distrust, if the authorities do not care about these (unreported) issues.

Obviously there are no international databases available on media content, but some studies corroborate our everyday experience that the media coverage of crime has been steadily increasing over the past decade (Smolej and Kivivuori 2008). Strangely, its most probable suspected effect, that is, boosting the fear from crime, has not been proven, on the contrary – while media coverage of crime grew, fear of crime declined. Another hypothesised effect of the media is that they strengthen punitive attitudes and support penal populism. Roberts et al. (2003) argue that by devoting special attention to the coverage of violent crime, the media indirectly promote harsher sentences and penal populism. Furthermore, the way crime is framed in the media directly influences both politicians and the public on what (typically harsh) policy response would be appropriate for certain types of crime. In fact, some studies revealed an association between tabloid media consumption and punitive attitudes (Adriaenssen and Aertsen 2015: 103). In the Eastern European context, mostly

drawing on the example of Poland, Kossowska et al. (2012) find that the mass media are to a great extent responsible for generating punitive attitudes in the public, which also affects politicians' stances on penal measures. Although Boda et al. (2014) could not prove that the media would have supported the 2010 punitive policy turn in Hungary, we cannot exclude a more indirect effect: contributing to the discourse of punitiveness.

The spread of punitive attitudes and penal populism might also be considered a signal (weak? strong?) of eroding trust in justice, as this approach criticizes the legal system for its alleged impotence and lenience to criminals. Penal populism is suspected to be supported by the media, but it is certainly spread around by populist movements and parties. Populism is on the rise since 1990s. This is reflected in the constantly improving electoral results of the so-called populist, typically radical right-wing parties in Europe – a phenomenon starting sometimes in the 1990s and leading to a kind of breakthrough in the 2014 European elections when right-wing parties received the relative majority of votes both in France and the UK (Le Front National and the UK Independent Party, respectively) while increasing their share in other countries as well. Populist parties generally argue for measures to restrict immigration (Ivaldi 2011, Bale 2013). Indeed, immigration is one of the most salient political issues for populist parties in Europe, as “migration has been constructed as an international and domestic security issue linked to urban unsafety, international organised crime, terrorism, illegality, environmental issues and public health” (Martiniello and Rath 2010: 8). Another policy field is that of justice: populist parties embrace law-and-order discourses and argue for punitive measures (Fekete and Weber 2010). Some populist parties, like for instance the Hungarian Jobbik, owe their popularity mainly to having problematized the allegedly growing crime and the inability of the authorities to take the necessary measures (Karácsony and Róna 2011). Ivaldi (2011: 5) argues that we should place immigration policies in the more general context of legislation change on issues of law-and-order and cultural liberalism. Indeed, apart from taking stance against ‘liberal immigration policies’, and arguing for punitive measures populist politics usually share a repulsive approach towards unpopular minorities, like Gipsies (Karácsony and Róna 2011) or gay and lesbian movements (Pappas et al 2009). Populism is typically associated with a rejection of multiculturalism and liberal globalization (Liang 2013, Spargue-Jones 2011).

## Policy responses

Data do not suggest that trust in justice would be under systematic threat in Europe in general. However, we have seen that in some countries in Southern and Eastern Europe trust in justice has been declining over the past years. This decline is partly attributable to general legitimacy problems related to economic problems and the perceived performance of the polity as well as the deterioration of some social well-being indicators (like growing inequalities). However, apart from the general problems of trust and legitimacy, the justice system may also face some challenges, and not only in the aforementioned countries and regions. Maybe the biggest challenge comes from multiculturalism and its enemies.

Multicultural societies pose a challenge to the justice system at different levels. Minority groups are often less trustful to the legal authorities – and sometimes not without reasons (Hough et al. 2010).

But more importantly, multiculturalism is referred to by populist movements as the main problem, and those movements are the main pushers of penal populism. What is the problem with penal populism? It is beyond the scope of this paper to offer a throughout analysis on this issue. However, it is worth mentioning that critiques point to problems concerning both the effectiveness and the fairness of punitive justice policies (Hough and Sato 2011). It is ineffective because the severity of punishment has negligible influence on criminal behavior (Darley 2005; Doob and Webster 2003) and it is costly because it incurs growing expenses on the justice system, for instance by increasing the number of prisoners (Hough, Jacobson, and Millie 2003). A frightening example is offered by the US in this respect where the imprisonment rate has been boosting in the past 30 years, reaching the level of 700 prisoners/100,000 inhabitants, as compared to 200 in the 1980s. In the same period imprisonment rate of the Scandinavian countries has remained well beyond 100 (Lappi-Seppälä 2008). Punitive measures, like the ‘three strikes’ principle are also unfair as they command strict punishment without giving due attention to the circumstances of a crime act. As such, some punitive measures may become problematic from a legal or human right perspective.<sup>4</sup>

The trust-based approach is less costly, has no inconvenient side-effects and is in line with the respect of human rights. It proposes measures such as increasing the procedural fairness of the justice system, which would reinforce citizens’ normative compliance with it, or framing norm infringements as *mala per se* (wrong in itself), instead of being seen as *mala prohibita* (something that is wrong only because it is sanctioned), thus awakening people’s moral sense and normative compliance (see Hough and Sato 2011).

However, a paradox may be detected here. If penal populism, by its critical discourse, triggers dissatisfaction and distrust towards to the justice system, then the punitive measures may be the appropriate means to regain popular confidence. In other words, the populist (punitive/deterrence based) and the trust-based approaches are usually contrasted to each other. But what if punitive (popular) measures seem to increase trust in justice? “Sentencing criminals in a way that does not reflect public opinion would surely have undesirable consequences (for example, decreasing confidence in the courts).” (Adriaenssen and Aertsen 2015: 93)

However, one may argue that punitive policy cannot offer but selective and short-term relief to the trust problem. Selective, because it may appease the middle classes, but probably strike unevenly the lower strata and minorities who will grow dissatisfaction and distrust towards the authorities. And short-term, because disproportionately harsh sanctions will

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<sup>4</sup> For instance, recently the European Court of Human Rights ruled that imprisonment for life without eligibility for parole amounted to inhuman and degrading treatment. (Case Laszlo Magyar vs. Hungary, see at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144109#{%22itemid%22:\[%22001-144109%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144109#{%22itemid%22:[%22001-144109%22]}))

sooner or later be seen as unfair by larger social groups as well (imagine the middle-class mother who faces that his teenage son is arrested because of smoking weed with friends in a party).

Therefore inclining before the populist demand is probably a wrong way to go for justice policies around Europe. Populism should be properly addressed by politics while justice policies should follow the trust-based approach stipulating legitimacy and normative compliance. How can this be done? Generally speaking, “since normative compliance rests generally on an individual’s morality and institutional legitimacy, the state has two routes by which to maintain order: influencing the individual and improving institutional legitimacy” (Nivette 2014: 96). However, the first has its own problems, and one must not overstate the role of the state in shaping individual or group morality. The second route is more promising.

Policy measures in this respect may include the following measures (Hough et al. 2014, President’s Task Force 2015).

1. Improving the legitimacy of criminal law
  - Reconnecting the criminal law with morality. This may include communication campaigns stressing the *mala per se* nature of non-compliance (as opposed to the *mala prohibita* approach). A paradigmatic example of this can be found in the history of drink and drive legislation in the UK (and probably in other countries), where government advertising campaigns have successively transformed drunken driving from a tolerated minor infraction into a matter of public censure (Hough et al. 2014).
  - Decriminalisation. Reconnecting the law with morality may also means that overcriminalising banal offences should be avoided and whenever it is possible other regulatory means than criminal law should be used (Hough et el. 2014).
2. Improving the legitimacy of the police, courts and other institutions of justice
  - Judicial reforms that aim at making the justice system fairer in procedural terms: treating people with dignity and fairness, increasing the accountability, integrity and legality of institutional operations, providing ‘voice’ to people, etc.
  - Judicial reforms that aim at making the justice system more effective (see for instance the duration of cases at courts).
  - Initiating justice reforms that do not follow the punitive approach, like restorative justice. Restorative justice seeks to resolve the disputes arising from norm-breaking behaviour via reintegrative shaming that combines strong disapproval of bad conduct with respect for the person who committed those bad acts. (Braithwaite, 2002) Restorative justice shifts to focus from punishment to restoring communities, persons and emotions. It also seeks to motivate rule breakers to become more self-regulating in their future conduct (Tyler 2006).

## Recommendations for research

As we have seen, previous researches have mainly focused on:



- the role of trust in fostering compliance and cooperation
- measuring trust in justice
- identifying the main drivers of trust in justice in terms of people's perceptions on justice institutions

However, there is a number of questions that have not (or only sparsely) been covered by studies so far. In particular:

- 1) The cultural/political differences between countries and how these differences impact expectations about/trust in justice. Researches have established that trust and legitimacy are equally important across countries to secure compliance with the law. However, other studies have pointed to cultural and/or political differences in terms of what makes people trust justice institutions (see Boda and Medve-Bálint 2015, Bradford et al. 2014) Are there universal recipes on how to increase trust in justice? How much is their relevance depending on the particularity of a given political culture?
- 2) The interaction of different level factors in influencing trust in justice. What is the role of the different factors: macro-level factors (like the legitimacy of the polity, economic development, political culture etc.) vs. individual level factors (like income, education, personal experience with crime or the police etc.)? What is more important: factors influencing trust in specific institutions vs. those determining general institutional trust level and trend? How do different levels interact with each other?
- 3) The higher effectiveness of trust-based approach over the deterrence-based paradigm. Can we convincingly argue for the higher effectiveness of a trust-based justice system? Should we at all, or should we consider it as normatively and politically more appealing independently from the costs and other consequences? How can we measure effectiveness? Assuming that trust-based justice is more effective, are there any social and political conditions of it? In other words, is the effectiveness of trust-based policies dependent on some political, social and cultural contextual variables, or is it apparent in any context?
- 4) The patterns and relevance of other trust relations than the citizens-to-the-system relation. Researches so far have focused on the problem of citizen's trust towards the justice system. However, confidence of the system towards the citizens might be equally interesting, because the way justice institutions relate to people may influence people's attitudes and conduct. Trust is expected to yield trusting responses, but distrust will probably spur similar reactions. Finally, both the patterns and roots of trust between different institutions and/or levels of the justice system may also be worth studying, because lack of trust may increase transactions costs and duplicate works related to the judiciary process therefore rendering the justice system less effective.

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