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# Popular Punitiveness? Punishment and Attitudes to Law in Post-Soviet

## Georgia

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### Abstract

*Georgia is the only country in the post-Soviet region where incarceration rates significantly grew in the 2000s. Did this punitiveness and its sudden relaxation after 2012 impact attitudes to the law? We find that these attitudes remained negative regardless of levels of punitiveness. Furthermore, the outcomes of sentencing may be less important than procedures leading to sentencing. Procedural justice during both punitiveness and liberalization was not assured. This may explain the persistence of negative attitudes to law. The Georgian case shows that punitive turns or politically-driven mass amnesties are unlikely to solve the problem of legal nihilism in the region.*

## *Introduction*

Law-breaking was a major issue that preoccupied scholars of the former Soviet Union directly after the Soviet collapse (Lotspeich 1995; Frisby 1998; Chervyakov et al. 2002; Galeotti 2002; Karstedt 2003; Kim & Pridemore 2006). There were huge increases in many forms of crime throughout the 1990s across the former Soviet Union (see Zvekic 1998). Yet, throughout the 2000s, the most egregious forms of violent criminal activity such as homicide, violent assault and the prevalence of organized crime appeared to decline in countries such as Russia and the Baltic States. In these countries, this decline has occurred without the emergence of an overt politics of crime. That is to say, crime control did not become a fixating object of government intervention, a contentious electoral issue or a means for governing a wide array of social problems (Garland 2001; Simon 2007). Moreover, there was no 'punitive turn' in response to the crime issue – incarceration rates have declined across the entire post-Soviet region from their level in 2000.

There is one exception to this general trend and that is post-Soviet Georgia. A punitive shift, framed in terms of 'zero tolerance,' clearly emerged in 2004 following the Rose Revolution and the rise to power of the United National Movement (UNM) under Mikheil Saakashvili. Georgia was alone in the post-Soviet region in joining many Western countries in a trend, noticeable since the 1990s, of what has been described as 'the new punitiveness' (Pratt et al. 2013; Baker & Roberts 2013). This punitive turn is most straightforwardly measured by the increase in incarceration by 300% between 2003-2010, remaining high (within the top ten in the world per capita) until the UNM left power in 2012

despite some efforts at liberalization of the system after 2009 (International Centre for Prison Studies 2004-2012; Slade 2012; 2013). During this punitive turn, crime also rapidly decreased. Victimization surveys from 2010 and 2011 show that Georgia had become an incredibly safe place to live in international comparison (Georgian Opinion Research Business International, hereafter GORBI 2011). During this time, Saakashvili described Georgia as a 'laboratory for reform' in which a 'mental revolution' had taken place regarding attitudes to the state (Brookings Institute 2011). Indeed, at times criminal justice policy in Georgia resembled an experiment. Following the UNM's departure from government in 2012, punitiveness was significantly decreased. The new incoming Georgian Dream coalition almost halved the prison population within a few months and sentencing policies were liberalized.

The goal of this paper is to understand how these turns towards and away from punitiveness have impacted on Georgian attitudes to the law and law-abidingness. We first discuss the literature on legal nihilism, zero tolerance and punitiveness and introduce the Georgian case in more detail. We then investigate three theoretical propositions derived from the literature:

- Zero tolerance improves attitudes to law by reducing discretion, signaling the credibility of law enforcement, and inducing respect for the supremacy of the law through uncompromising sanctions for all lawbreakers.
- Levels of punitiveness must chime with popular beliefs about acceptable punishment to affect positive feelings towards the law.

- Direct experiences of criminal justice are vital in shifting attitudes to the law.

In the Georgian case, we find little support for the first two propositions, but more support for the third. We conclude that the Georgian case suggests that punitiveness is not a remedy for the legal nihilism of the post-Soviet region. However, leniency also appears to make little difference. Instead, Georgia's experience indicates the salience of the arguments for procedural justice, both in the everyday application of the law, and in the making of that law.

### *Legal Nihilism and Zero Tolerance*

During the 1990s and early 2000s, a particularly strong vein of scholarship identified legal culture in former Soviet countries as a potential source of criminal behavior (Solomon 1997; Ledeneva 1998; 2006; Humphreys 2002; Galligan & Kurkchian 2003; Nethercott 2007). Essentially, negative attitudes to law facilitated activity which broke that law. Such negative attitudes possibly emerged from historical disregard for formal rules emanating from an aloof state that broke these rules with abandon as well as low levels of legal literacy (Hendley 2000; 2012). Legal nihilism, an academic term, entered the policy lexicon as an obstacle to the rule of law and one root cause among others of pernicious phenomena from corruption to anti-social behavior.

Hendley (2012: 150) defines legal nihilism as referring to 'a lack of respect for law...legal nihilists obey the law when convenient, and otherwise ignore it.' A number of scholars have shown that legal nihilism is not as

widespread as is often thought, at least in the case of Russia (Hendley 1999; 2000; 2012; Gibson 2003; Gans-Morse forthcoming). Yet, scholars of Georgia often characterized Georgian legal consciousness in terms of nihilism. For example, Nordin & Glonti (2006) argued that Georgians automatically resisted law in its various forms. Kukhianidze (2003; 2009) suggested Georgians suffered from an acute form of 'alienated statehood' in which social norms always overcame any sense of obligation to state law. This seemingly followed from a historic disregard for the rule of law. The countries of the Caucasus region during Soviet times were regarded as particularly deviant (Law 1974; Friedgut 1976; Sampson 1987). Various estimates suggested that Georgia, proportionate to its size, had one of the biggest, if not the biggest, second economy in the Soviet Union (Feldbrugge 1989; Suny 1994; Grossman 1977; 1998; Alexeev & Pyle 2003).

Some argued that this was a result of cultural traits (Mars and Altman 1983). On top of the legal alienation fostered by Soviet political theory, the pre-modern, familial networks of the Georgian economy, largely agricultural in nature, framed exchange and social relationships outside of legal frameworks. Informal practices became even more prevalent in the 'time of troubles' of the early 1990s (Zurcher 2005). Informal institutions became key mechanisms for economic survival and physical safety in the context of separatist conflicts and civil war (Round and Williams 2010; Kupatadze 2012). Eduard Shevardnadze, the former Soviet Foreign Minister and Georgian President from 1992-2003, managed to establish some political order toward the mid-1990s but himself relied on informal practices of cooptation and bargaining to survive in power (Christophe 2004; Godson et al. 2004; Nodia 2005). Under Shevardnadze crime

control was mainly confined to instrumentalising anti-corruption as a tool for political purposes, using it to punish political dissenters and blackmail potential rivals (Stefes 2006). By 2003, Georgia's scores for control of corruption and citizen's feelings of safety were abysmal and some of the worst in the post-Soviet region (Slade 2012). Moreover, survey data from 2003 and 2004 show that scores for trust in law enforcement were some of the lowest for any institutions (International Republican Institute 2003; 2004). Georgians had no faith in the law.

In 2004, with Shevardnadze gone and the UNM coming to power, a major goal of reform was to fight corruption and crime in the country. In late 2005 and early 2006, the UNM declared a policy of 'zero tolerance' that involved significant change to the criminal justice system (Slade 2012; Strakes 2013; Kupatadze 2016). 'Zero tolerance' has become a frequently used term around the world for 'get tough' policies (see Bowling 1999; Bowling & Sheptycki 2012). It first referred to a policing strategy adopted in New York City in the 1990s (Greene 1999). This strategy had many tactical elements, but its fundamental principle was quite simple. According to Willie Bratton, the author of the policy in New York, crime and disorder emerge from minor crimes and neglect being allowed to fester in communities; this was the central premise of 'broken windows theory' (Wilson & Kelling 1982). Thus, by targeting petty crime the police can create an inhospitable environment for criminal and anti-social behaviour (Bratton 1997; Nelson et al. 1997; Greene 1999). In the US context, zero tolerance is now associated with other aspects of a punitive approach to crime such as 'three strikes' laws, truth in sentencing and mandatory minimum initiatives.

Saakashvili's version of zero tolerance, declared in 2006, first and foremost involved directing a reformed police force towards active and targeted intervention applying non-discretionary penalties and extraordinary powers, such as the use of lethal force against those resisting arrest. But zero tolerance was also broader than that and crucially included changes to sentencing policy. In Saakashvili's own words from March 2006: 'I am announcing a new draft law with zero tolerance for petty crimes...There will be no probation sentences...Everyone who commits these crimes will go to prison' (Slade et al. 2014: 12). As a result of these sentencing changes and the vastly more efficient police and prosecutors, the prison population grew from around 6,000 to 24,000 people, a 300% increase in seven years (2003-2010) and Georgia was in the top five incarcerators in the world per capita by 2010.

It is fair to describe Georgia's criminal justice between 2004 and 2012 as punitive. Punitiveness is a complex and abstract concept, yet it can be measured in a variety of ways. These include inflexibility in the application of the law, severity of deprivation suffered by those punished, or the simple probability of punishment for law-breaking (Lynch 1988). Despite these multifarious indicators, there is some agreement (see Garland 2001; Frost 2006; Campbell 2015) that deprivation of freedom is inherent to state punitiveness in the present day. Thus, as Frost (2006) and others (see Campbell 2015) argue incarceration rates, while imperfect, give a relatively reliable proxy measure of a state's punitiveness for purposes of comparison.

On this measure, the Georgian state remained punitive throughout Saakashvili's time in office. Saakashvili was re-elected president in 2008 after snap elections were called following the violent dispersal of peaceful opposition



demonstrations in November 2007. There was growing concern, domestically and internationally, about the high levels of incarceration and police violence in the country at this time (Kupatadze 2012). A 'liberalization' of the criminal justice system was declared in 2009. This had many good intentions. A new criminal procedural code promised to curb police excesses, diversion programmes and investment in probation and alternatives to imprisonment were made. However, again using incarceration rates as a proxy for punitiveness, the situation only stabilized. The prison population stopped growing, but it did not decrease between 2009 and 2012. On top of the 24,000-strong prison population, 38,000 people were also in the growing probation system. There is evidence that torture continued and perhaps worsened in the prison system (Slade et al. 2014). Thus, 'zero tolerance' was never officially relaxed until 2012.

Under zero tolerance crime also dramatically declined. A person was twice as likely to be a victim of burglary, four times more likely to be robbed and 10 times more likely to be assaulted in Germany than in Georgia by 2010 (European Society of Criminology 2012). Walking on the street at night in Georgia's cities became safe and surveys suggested that feelings of security improved significantly (Slade 2012; GORBI 2011). Perceptions of corruption improved quickly. Transparency International's Corruption Perception Index shows that outside the Baltic States, Georgia is now perceived as the least corrupt of all post-Soviet countries by its own citizens. It has even surpassed European Union members such as Italy and Greece (Slade 2012; Light 2014; Kukhianidze 2009; Kupatadze 2012).

It would make sense to ascribe these declines in crime and corruption to the probability of prosecution, the credibility of reformed law enforcement

bodies, and the increased severity of punishment. However, a further argument was made both by the Saakashvili government and international observers. The essence of this argument is that from punitiveness positive legal consciousness can follow; strict application of tough sanctions for all law-breakers produces respect for the supremacy of the law and is a first step to shifting consciousness. Thus, Georgian interior minister, Ivane Merabishvili, suggested that the rule of law 'needs to become entrenched tradition, recognised by Georgian society as a whole...for the time being...it is the government that is best equipped to administer justice' (The Economist 2008). The World Bank argued that Georgia's fight against corruption successfully prioritized prosecutorial action over and above institution building. Using 'unconventional solutions' – that is, avoiding due process – and utilizing strong-arm tactics to signal credibility, the World Bank suggests, was an important step in creating legal order in Georgia and could be replicable in other contexts (World Bank 2012).

Beyond this, Saakashvili and his team declared a 'mental revolution' time and again, for example in Washington DC at the Brookings Institute (2011) and in different appearances at the Council of Europe's Parliamentary Assembly (Civil.ge 2010; Council of Europe 2013). The phrase, 'mental revolution' was in fact borrowed from a positive analysis of Georgia's reforms in *The Economist* magazine (2008). The essence of this shift in mentality is summed up by Saakashvili himself: 'fundamental reforms and a mental revolution have changed Georgia...In particular, as a result of the complete renovation of law enforcement bodies...Georgians have stopped thinking of their country as a post-Soviet state' (Civil.ge 2010). The term 'mental revolution' expresses renewed engagement

with the state, active citizen participation, positive orientations to law and its institutional manifestations, and an end to passivity and fatalism.

In 2012, a new government known as Georgian Dream won parliamentary elections, in part due to public abhorrence at torture scandals revealed on social media in the burgeoning prison system. This new government sought to distance itself from its predecessor by relaxing zero tolerance and implementing an amnesty of those imprisoned under it. In late 2012 and early 2013, a wide-ranging release of prisoners was underway. Over 8,000 people were amnestied and by the end of 2013 Georgia had slipped back down to 63<sup>rd</sup> in the world in terms of the number of prisoners per capita. The new government claimed that it was reacting to popular demand to end the harsh criminal justice policies of the Saakashvili government and to relegitimize the judiciary (Slade et al. 2014). On this account, greater leniency and discretion was needed in the system to chime with popular demands regarding punitiveness, without which attitudes to the law and law enforcement would worsen.

Criminological research (Roberts 2002; Roberts et al. 2003; Frost 2010; Campbell 2015) has approached variation in state punitiveness by focusing on the interaction between public demands, political agendas, and media campaigns. This has led to a debate concerning 'popular punitiveness' (Campbell 2015: 180). This term refers the degree to which political turns towards or away from punitiveness are responses to pre-existing dispositions and fear of crime (Innes 2004) among the electorate itself. While certainly politically expedient, the Georgian Dream's policy of leniency was framed as driven by the electorate and a democratic move that focused on legitimacy-building.

Thus, both the UNM and Georgian Dream wanted to make important claims about the interactions between state punitiveness and attitudes to law in the country. On the one hand, zero tolerance can create positive legal consciousness – a ‘mental revolution’ - through revealing the irresistible power of non-discretionary and efficient application of the law. On the other hand, when leniency chimes more with popular preferences, policies that speak to those preferences can legitimate state law. This paper seeks to investigate these two propositions. They are important suppositions given the continuing problems of high crime rates, corruption and nihilistic legal cultures in many post-Soviet countries. Saakashvili has declared ‘zero tolerance’ once more in his new role as governor of Odessa, Ukraine (Rekhviashvili 2015). Georgian reforms have been examined and Georgian reformers employed from nearby Azerbaijan to faraway Kazakhstan and Kyrgyzstan.

We find that there is little to support either proposition in the data that we examine. This leads us to ask why this is. We move away from macro-level policies and political signals of punitiveness to micro-level interactions between citizens and the state in the field of criminal justice. When citizens experience procedural justice – defined as such goods as transparency, neutrality, voice and respect in their interactions with the law - legitimacy for its fundamental coercive force is nurtured (Tyler 1990; Sunshine & Tyler 2003). The outcome of the procedure, even if undesirable for an individual, will not negatively affect views of the law if those procedures are just. These propositions have been tested and supported in many jurisdictions, including the UK (Jackson et al. 2012a; 2012b; Singer 2013), Ghana (Tankebe 2008), Jamaica (Reisig and Lloyd 2009), Slovenia (Reisig, Tankebe and Mesko 2014), and South Africa (Bradford

et al. 2014). These studies corroborate the hypothesis that citizens' views of law are contingent upon procedural fairness, bringing about a moral sense of obligation to law-following. Finally, then the paper will ask what evidence there is for this in the case of Georgia and whether procedural (in)justice can help explain the persistence of the 'negative myth of law' (Kurkchiyan 2003) in the country.

### *Data*

The data for this paper come from two rounds of opinion surveys in 2011 and 2014. As part of the Judicial Independence and Legal Empowerment Project (JILEP), under the auspices of the East West Management Institute (EWMI), the social research NGO Caucasus Research Resource Centers Georgia Office (CRRC) conducted polls of attitudes to the judiciary (cited as EWMI 2011 & 2014). This research included repeated nationally representative public opinion surveys as well as focus group discussions with three target groups: the general public, court users and legal professionals in Tbilisi, Batumi and Kutaisi, as well as qualitative and quantitative interviews and surveys with legal professionals and business representatives. The surveys were conducted in exactly the same way by the same team and using the same measures in both years. The study in 2014 intended to trace changes in the knowledge and attitudes towards the justice system over a two-year period in Georgia and used the same research design to achieve this. The survey targeted all Georgian and Russian-speaking adults in Georgia. Overall, 3,814 people were interviewed using the face-to-face PAPI (Paper and Pencil Interviewing) method in 2014 and 4,308 were interviewed in

2011. The sampling was representative to Georgia (excluding the breakaway territories of Abkhazia and South Ossetia).

In particular, we were interested in questions from the surveys and focus groups that focused on trust in legal institutions. Moreover, we looked at questions of moral obligations to follow the law. In both rounds of the EWMI surveys, respondents are asked what constitutes being a good citizen. They are presented with a list of eight options and can choose only three. One option is 'obey the law'.<sup>1</sup> While this is a thin measure of 'moral alignment' with the law or 'positive legal consciousness,' it allows an imperfect measure of the degree to which respondents hold law-abidingness as important for civic 'goodness'. This allowed some basic tests of relationships between interaction with criminal justice and a belief in law-following as an obligation. In what follows, we utilize analyses of the survey and focus group data with other data sources including from the police, the Ministry of Corrections and public opinion surveys. The latter include two victimization surveys carried out on behalf of the Ministry of Justice in 2010 and 2011 (GORBI 2010; 2011), a survey on punitiveness by Penal Reform International (2009), a 2014 survey of prisoners and ex-prisoners by Open Society Georgian Foundation (Slade et al. 2014) and voter opinion polls from various years conducted on behalf of international organizations.

### *Attitudes to Law under Zero Tolerance*

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<sup>1</sup> The other options are: help the poor, do volunteer work, vote in elections, vote for the ruling party, follow traditions, participate in protests, and form opinions independently of others.

Trust in the institutions of the judiciary has been among the lowest of any institutions in Georgia since independence (International Republican Institute 2003; Stefes 2006; Slade 2013). Survey data from before and after the period in which zero tolerance was announced in late 2005 shows that trust in the judiciary declined around this time from an already relatively low level when Saakashvili came to power. In October 2004, a minority of respondents (44%) saw the court system favourably. This had declined to 34% in April 2006. It had spiraled to 22% by September 2007 (see Graph One; IRI 2004-2007). A similar trend can be noted for prosecutors. By 2011, the EWMI surveys showed that the courts, judges and prosecutors were the least trusted institutions in the country; only NGOs scored worse.

GRAPH ONE ABOUT HERE

There was one exception to this negative picture. The Georgian police are easily the most trusted criminal justice institution: 66% 'completely trusted' or 'trusted' the police in 2011. The police were completely overhauled in 2004-2006. The reforms involved a huge turnover of personnel, the creation of new divisions, such as the community oriented Patrol Police, and new uniforms and technology (Kupatadze, Siradze and Mitagvaria 2007; Light 2014). The creation of this police force was one of the things that Georgians were most satisfied with in their government as well as the fight against corruption and the lower crime rates (IRI 2007).

However, despite the high levels of trust reported in the police Georgians display very low willingness to report crime (GORBI 2010; 2011). Georgians

most frequently cite the police's ineffectiveness in helping them as a reason not to turn to the police. This skepticism is complemented by the fact that 11% of Georgians state a fear of reprisals as a reason for not turning to the police (GORBI 2011). For comparison, this figure stands at less than 1% when scores on this question are averaged in European Union nations utilizing data from international victimization surveys. This fear of reprisals relates to the fact that a greater percentage of people in the EWMI survey in 2011 give 'following traditions' as a citizen's duty compared to 'obeying the law'. Traditional understandings of conflict resolution, normative codes of honour and customary law compete with state law still.

Saakashvili and the United National Movement were elected in the wake of an electoral corruption scandal. The electorate certainly demanded a fight against corruption and cleaner politics, including disentangling political elites from mafia bosses and reducing the power of local warlords (Areshidze 2007; Kupatadze 2012). It is not clear however that such demands extended to a zero tolerance approach to all types of crime. Polling data from 2003, 2004 and 2005, show that crime was not viewed as anywhere near as pressing an issue as the other mammoth tasks facing the country such as unemployment and separatism (International Republican Institute 2003; 2004; 2005). The zero tolerance policies concerning police powers and sentencing were rather executive-driven, emerging from the anti-corruption struggle (Tangiashvili & Slade 2014). There seems to have been a degree of political expediency and 'elite punitiveness' that led to the adoption of zero tolerance (Beckett 1997; Slade 2013; Tangiashvili & Slade 2014).



Survey data complements this interpretation. Punitiveness is not particularly popular among the Georgian population. Penal Reform International South Caucasus office (PRI) conducted a survey in 2009 that demonstrated that 54% of the population believed that punishments were too severe and unjust at that time. In contrast, around 32% were in favour of strict punishment for offenders (PRI 2009: 11). The same survey showed that the majority of Georgians would like to see alternative sentences for minor crimes. Moreover, 69% thought that the prison population, the fourth largest in the world per capita at that time, was 'too large'. Further evidence for a lack of popular punitiveness comes from the EWMI attitudes to the judiciary survey in 2011. This shows that most (65%) of people would like to see the circumstances of the individual taken into account during sentencing rather than the simple, strict application of the law. This preference increased to 69% in 2014. This preference is a straightforward rejection of the mandatory custodial sentencing principle where judges are given little discretion to take circumstances into account.

In summary, zero tolerance policies did not shift attitudes to the law in the abstract or to legal institutions significantly. In regard to the judiciary, these policies are correlated with declining trust. Moreover, low levels of willingness to report crime offset gains in trust in the police. Finally, zero tolerance appeared to go against popular demand for punitiveness among the Georgian population. This was despite the fact that the Rose Revolution of 2003 had initially been instigated by protest against corruption and criminal behavior. When the Georgian Dream came to power in 2012, punitiveness was reduced in line with popular sentiment – did this shift relegate the criminal justice system?

### *Popular Leniency?*

The mass amnesty of more than 8,000 prisoners in 2013 under the Georgian Dream was a direct response to 'unpopular punitiveness'. This move was an answer to protest against the criminal justice system that had directly affected the 2012 parliamentary election results. The amnesty can therefore be seen as not purely elite-driven. This should be positive for legal consciousness as Georgians who see their political system as 'democratic' are also more likely to express a duty to obey the law (EWMI 2011; 2014). We now consider whether the dovetailing of levels of punitiveness with public sentiment coincided with improving measures of trust in law enforcement and obligations to follow the law.

Attitudes in 2014 showed little improvement to those in 2011. Around 41% of respondents in 2014 suggested that there was only a slight improvement in criminal justice and 32% claimed that everything was just the same. There is little change in results concerning the obligation to follow the law between 2011 and 2014. Around 55% believed innocent people are imprisoned 'often' or 'occasionally' in 2014 just as in 2011. Numbers of court users reporting that their experience in court had ended with a 'completely illegitimate' court ruling got worse. As we discuss below, analysis of the 2014 survey showed that, as in 2011, there were significant relationships between these indicators and the feeling of duty to obey the law.

Analyzing focus group data from 2014 of those who had had most direct experience of court - court users - shows that this group was the most

unconvinced as to whether the courts had become trustworthier. Most thought that nothing had changed. Some complained that there had been no turnover of staff in the system. Indeed, during the mass amnesty in 2013 the same courts and judges reassessed sentences that they themselves had passed only recently, coming to different conclusions in most cases. This only reinforced the notion that judges were impotent and subordinate to politics. Thus, trust in judges remained low – the third lowest ranked institution of any in both the 2011 and 2014 survey.

The amnesty in itself was a contentious procedure. Firstly, a list was drawn up of political prisoners who were to be released prior to the mass reappraisal of cases of ordinary prisoners. The process for doing this created controversy amid claims of political partisanship. Secondly, the review of cases of ordinary prisoners was done in a rushed manner; thousands of cases were reappraised in just a couple of months. Thirdly, prisoners were often unceremoniously removed from prison with no forewarning and no preparation for release. Long-term reforms to sentencing and alternatives to prison took second stage to the amnesty. Procedurally, even during this period of clemency and leniency, the justice system could be perceived as unjust.

To compound matters, signal crimes - those that elicit fear of crime and are interpreted as indicators of levels of risk regardless of how accurate this is (Innes 2004) - since the amnesty, made the judiciary look even more incompetent. For example, two police officers were shot dead and another badly wounded in two separate incidents after the amnesty in 2013 (Lomsadze 2015). Furthermore, a spate of high profile murders of businessmen led to the impression that disorder was once again returning (Ibid). 'Special police checks'

were set up in Tbilisi seemingly to tackle rising insecurity. Moreover, prison disturbances in 2014 were allegedly resolved only with the help of Georgian mafia figures - so called 'thieves-in-law'. Regardless of this moral panic about the mass amnesty, there is little official evidence that former prisoners turned to crime after release. According to a report of the Ministry of Corrections and Legal Assistance, 8,729 individuals were released from Georgian prisons on the basis of mass amnesty (Ministry of Corrections 2013). Only 523 (6.1%) of those released individuals committed crimes in 2013 and only 423 (4.8%) committed crimes in the first 10 months of 2014 (Fact Check Georgia 2014).

Some indicators for the courts did improve in the 2014 survey. In 2011, 28% of respondents agreed or fully agreed with the idea that judges were independent in Georgia; this had increased to 35% in 2014, a statistically significant increase. This result is still problematic when we consider the role prosecutors play. In 2014, trust in prosecutors remained incredibly low – only 16% 'fully trust' them. Focus group respondents said the same things in 2014 as in 2011 – the judges are 'puppets' of the prosecutors. However, trust in courts did increase in the period 2011-2014. In 2014, 37% of respondents said that they either 'fully trust' or 'partially trust' the courts, up from 32% in 2011. Yet, while this difference is statistically significant, and may have been caused in part by the mass amnesty and abandonment of zero tolerance, these are still very low figures compared to other institutions such as trust in the patrol police, parliament, president, army or church.

The police's positive image meanwhile has been declining since the change of government in 2012. While attitudes to the police have remained relatively constant, the introduction of new police powers and intentional efforts

by the current authorities to downplay some of the positive outcomes of reforms by the previous government put police reputation under threat. One problem is the new stop and search powers introduced at the beginning of 2014. These powers coincide with a decrease in public confidence in police according to International Republican Institute polls. The last survey under the previous authorities was conducted in June-July 2012 and it shows that 88% of respondents viewed police work favourably. A February 2014 survey however shows that the number of the respondents favourable to police work had decreased to 82% (Agenda 2014). NDI (National Democratic Institute) studies of public attitudes also reveal this. In an August 2012 survey 58% of respondents viewed the performance of police work as 'very well' or 'well' while in a similar survey of August 2014 this number had decreased to 40%.

In summary, policies of punitiveness or leniency by themselves do not seem to easily shift negative views of law enforcement and obligations to the law regardless of how much those policies are derived from popular will. We now turn, finally, to a possible explanation for the entrenched and persistent nature of negative attitudes to the law and legal institutions. Drawing from the literature on procedural justice, we examine the data on how individual-level interactions with criminal justice relate to attitudes to the law. We suggest that macro-level signals of punitiveness or leniency are less important for promoting the rule of law, if these are not followed by fair and just procedures.

### *Procedural Justice and Trust*

Direct experiences of criminal justice are vitally important for fostering legitimacy in the system (Tyler 1990; Jackson et al. 2012a; 2012b). When citizens experience neutral and transparent procedures they are more likely to feel compliant towards the law regardless of the particular outcome of those procedures. The data in the EWMI surveys show that direct experience of criminal justice in Georgia regularly undermines legitimacy and a sense of obligation to law. We examine a number of cases where this appears true including contact with the police and courts. We highlight the issue of procedural justice through a discussion of the practice of plea-bargaining introduced in 2004. We argue that procedural justice has remained a serious problem during zero tolerance and after it, helping to explain the persistence of negative attitudes to law over time.

Survey data show that when people actually interact with the police satisfaction with them declines (EWMI 2011 & 2014). This type of relationship is also true of the courts. The survey data for 2011 show that among people who themselves or close friends or relatives had been to court in the last two years, the perceived legitimacy of the court decision was positively related with mentioning obeying the law as important to being a good citizen. This held true in 2014 also: a greater percentage of those who viewed the court ruling as legitimate also mentioned that it is important to obey the law (61% n=174). Only 45% (n=107) of those who saw their court decision as lacking legitimacy said the same and this was statistically significant.<sup>2</sup> The court system was seen as lacking transparency. In 2007, 79% of people opposed the government decision to

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<sup>2</sup> $\chi^2 = 7.1, df = 2, p < 0.03$

prohibit trials from being videoed (IRI 2007). In 2004-2012, acquittal rates were incredibly low at around 0.1% (Transparency International 2010).

Vicarious experiences of illegitimacy and injustice also have an impact, particularly given the rise of social media. This is in line with other procedural justice studies (Jackson et al. 2012a; Singer 2013). The more frequently people believe innocent people are sent to prison the less likely they are to mention obeying the law as a citizen's duty. In 2011, of those who believed that innocent people were put in prison 'frequently' or 'very frequently' only 42% (n=429) mention law-following as a citizen's duty. This figure stands at 62% (n=390) for those who believe innocents are 'rarely' or 'very rarely' put in prison;<sup>3</sup> this relationship also held in 2014. Perceptions of the justice of opaque court processes and decisions then may have some effect on the strength of positive orientations towards law-abidingness. One practice stands out to demonstrate this point: plea-bargaining.

Plea-bargaining was introduced into the Georgian system in 2004 as one of the earliest changes to criminal justice procedure following the Rose Revolution. It became the dominant practice for resolving criminal cases. Due to a lack of judicial independence, and the Soviet legacy of a largely inquisitorial court procedure, cases only go to court where there is overwhelming evidence that the prosecution will succeed; going to court means being found guilty. Due to this, plea bargains became very popular for the defence for reasons of leniency and for the prosecutors for reasons of efficiency. By 2012, 87% of cases ended with a plea (Supreme Court of Georgia, 2016). After 2012, the use of plea-bargaining did not decline increasing to 89% in 2013 (Ibid).

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<sup>3</sup> The difference is statistically significant ( $X^2 = 34.423$ ,  $df = 4$ ,  $p < 0.000$ ).

An American innovation of the nineteenth century, plea-bargaining arguably emerged as a means of state re-legitimation during periods of turmoil or following authoritarian rule (Vogel 1999; 2007). In principle, citizens are empowered and better able to control the judicial process through the offer of a plea. It is not clear what exactly motivated the adoption of plea-bargaining in Georgia and whether re-legitimation of the court process was a factor. Data from a range of sources show that it certainly did not re-legitimize the system, if that was ever the intention; the effect of plea-bargaining was quite the opposite.

In 2011, respondents were asked what they thought the purpose of plea-bargaining was. Over and above all else, respondents felt that the purpose of plea-bargaining was the transfer of money to the state budget (see Graph Two below). This was a distinct element of the practice. In the early days of plea-bargaining, business people were held in pre-trial detention and released for a payment into the state budget as part of a plea (Areshidze 2007; World Bank 2012). After the change of government in 2012, a freedom of information request revealed that over 140 million Georgian lari (70 million USD) had been transferred into the state budget in the period 2009 to 2012 from plea bargain agreements alone (Institute for the Development of Freedom of Information 2013).

This skeptical perception of plea-bargaining as an extortion has declined since 2012 (see Graph Two). Yet, the notion that plea-bargaining is simply a mechanism for speeding up trials remains (EWMI 2014). Georgians maintain a healthy skepticism towards the idea that plea-bargaining is in any way about increasing fairness or justice in the system. Given the prevalence of the practice, it seems a safe inference to suppose that personal or vicarious experiences of



plea-bargaining do not increase a sense of obligation to the law. Since 2014 the use of plea bargaining has declined to 64% of cases, though this change comes too late to see if there is a correlation with changing attitudes in the EWMI survey data.

#### GRAPH 1 ABOUT HERE

More controversial evidence on the use of plea-bargaining and procedures in pre-trial detention comes from a survey of 1,199 prisoners and ex-prisoners conducted by Open Society Georgia Foundation in 2014. This found widespread evidence of torture and inhuman treatment in prisons and remand facilities, particularly Gldani #8, a notorious pre-trial detention centre that holds some 3,000 people. Respondents believed that one key reason for their torture was to produce confessions or force plea-bargains. Respondents further indicated that they knew significant numbers of people who did indeed provide plea bargains under duress. Almost half, 48%, of respondents stated they know 'many' individuals (6+) who, as a result of torture and inhuman treatment, had agreed to a plea bargain. Moreover, 15% of respondents claimed they had personally agreed to a plea bargain as a result of torture and inhuman treatment. Approximately every third respondent (35%) claimed to know 'many' individuals who, as a result of torture and inhuman treatment, had paid money or given up property to the state. Some 10% of respondents claimed they themselves had done this (Slade et al. 2014: 48-49).

These results suggest that the procedures of criminal justice, from arrest through pre-trial detention to sentencing, were operated without due

acknowledgement of the need for procedural justice. This did not change significantly after 2012, suggesting that the lack of procedural justice, rather than radical shifts in punitiveness accompanied by political slogans, drives negative feelings towards the law and criminal justice. Under zero tolerance, interactions with criminal justice actors were more likely, and given that these were often negative the overall effect was to undermine the law. However, not enough was done to improve these procedures after zero tolerance was relaxed, as even the conduct of the 2013 amnesty became contentious. Procedurally, Georgians do not feel their system delivers justice, regardless of how punitive or lenient it is.

## *Conclusion*

Georgia, uniquely in a post-Soviet region marked by a trend towards decreasing use of prison, took a punitive turn in the early 2000s. Similar to many Western countries and some developing ones, politics became punitive. This 'politics of crime' is familiar in contexts such as the US, the UK, Brazil, or South Africa (see Garland 1996; 2001; Simon 2007; Super 2010; Melossi et al. 2011). In these contexts the 'criminal question' and the 'spectacle of crime' (Super 2010) mobilized governments to focus on law enforcement as a way of tackling wider social ills, often due to a mixture of electoral and cultural pressures and political expediencies (Campbell 2015). In the Georgian case, popular punitiveness towards corruption and organized crime in the Rose Revolution of 2003 morphed into elite punitiveness towards all forms of deviance around 2006. This change was framed in the internationalized slogan of 'zero tolerance'. This in

turn added to societal disillusionment that, in part at least, contributed to a change of government and a radical shift towards decarceration from 2013 onwards. Georgia truly has been then, as Saakashvili put it, a 'laboratory for reform.'

This paper has examined a number of sources - crime surveys, opinion polls and focus group data - to look at what has happened to attitudes to the law during these radical shifts in punitiveness. The available data suggest that negative attitudes to the law and to concrete law enforcement bodies have persisted, some improvements to attitudes to the police notwithstanding, since 2004 regardless of grand punitive and lenient turns. Analysis of two surveys conducted in 2011 and 2014 across the change of government in 2012 and relaxation of zero tolerance show that punitiveness itself appears to have little effect on public attitudes. There was no mental revolution towards the law under zero tolerance; however, equally, rapid liberalization of punishment in the form of mass amnesty also did not produce one.

This suggests that the outcome of a criminal trial is not as important for attitudes to law as the procedure of that trial. The quality of individual-level interactions with criminal justice agents have an effect on the belief in law-following as a civic duty generally and trust in criminal justice institutions specifically. Interaction effects in the Georgian case are almost uniformly negative. This emerges from practices that followed opaque, partisan and unjust procedures such as the use of duress and violence in detention, murky processes of plea-bargaining, and mandatory custodial sentencing carried out by politically subordinate judges.

These findings relate strongly to broader criminological discussions in vastly different contexts. For example, Pratt (2008) finds that in New Zealand very popular punitiveness required continuing engagement with legitimacy-building. As in Georgia, scandal in the execution of punishment quickly turned punitiveness unpopular. The procedural justice literature provides examples from around the world of how attitudes to law depend on procedural fairness in criminal justice systems (Tyler 1990; Tankebe 2008; Jackson et al. 2012a); this seems highly pertinent to Georgia. Visible and tangible procedural justice both in the making and application of the law may be one remedy to legal nihilism. The relationship between direct experience of criminal justice and legal nihilism in Georgia and the post-Soviet region should be more fully explored with survey and interview questions expressly intended to test constitutive elements of procedural justice such as transparency, fairness and neutrality as well as more pointed questions concerning attitudes to the law.

The Georgian case shows that punitive turns or politically-driven mass amnesties are unlikely to solve the problem of legal nihilism in the post-Soviet region. Opaque amnesties are often used as legitimating moves by unpopular or increasingly authoritarian regimes. On the other hand, the political potential to shift towards punitiveness, popular or otherwise, is present too. The region is an area where violent crime rates remain high and social norms often take prevalence over the law (Ledeneva 1998; 2006; Galligan & Kurkchian 2003). Despite recent decreases, the post-Soviet region maintains some of the highest prison populations per capita in the world. The historical use of the prison to stimulate economic development and stymy social problems during the Soviet period provides a model that can be tempting to return to, albeit under different

modernizing and westernizing slogans such as zero tolerance. The case study of Georgia reveals that punitiveness is not a simple solution to the problems of social disorder and legal nihilism. Nor is it the most appropriate way to signal the supremacy of the law to society through strict non-discretionary application of tough criminal sanctions. Equally, liberalization under conditions of mass amnesty without due attention to procedure is more likely to entrench or even proliferate negative attitudes to the law than it is to ameliorate them.

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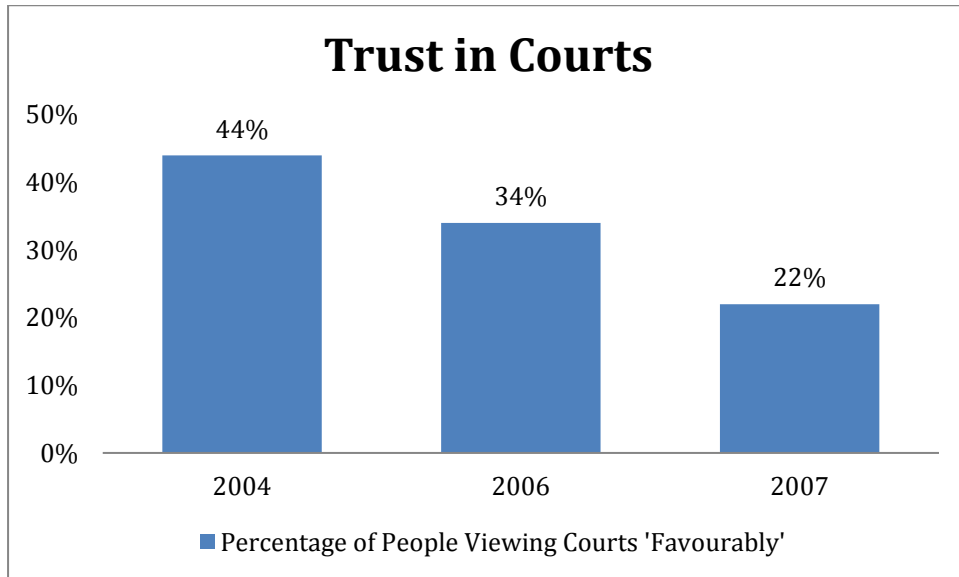
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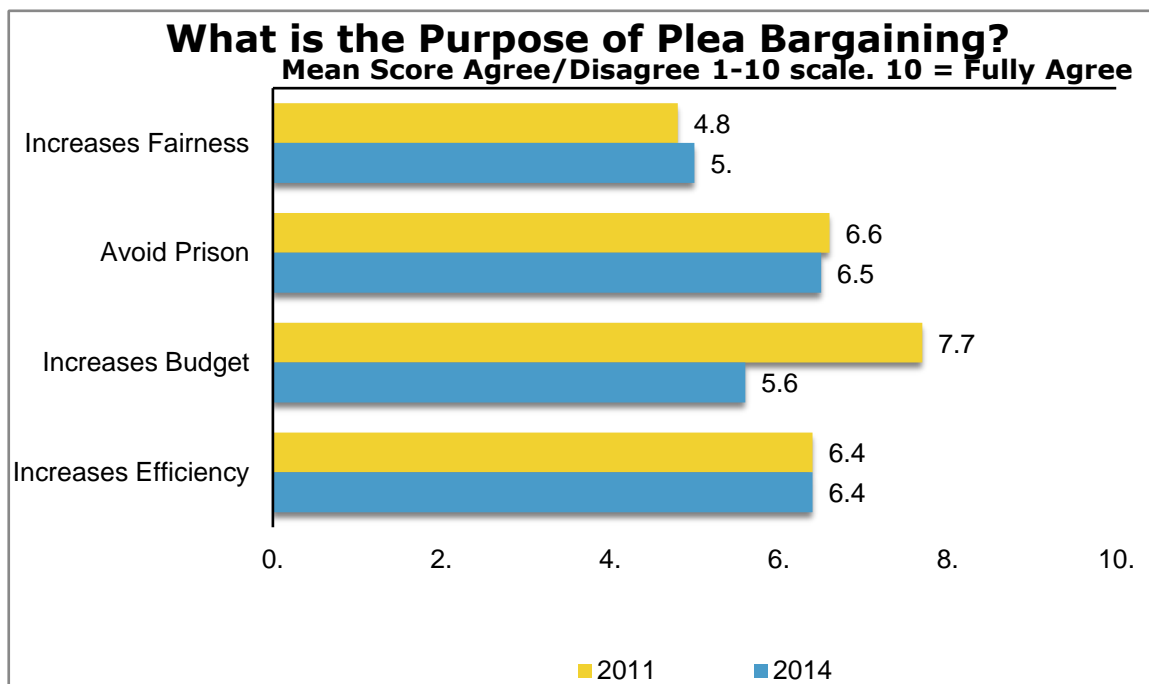
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Graph 1 to show favourability to court workings from 2004-2007



*Graph 2 to show beliefs about the purpose of plea-bargaining. Source EWMI 2011 & 2014.*