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Politics and the Declining Trust in Dependent Legal Institutions

Canada and the United States are both countries with rich, cultural connections to and histories of advocacy for the democratic rule of law. They have established systems that aim to uphold its core principles: equity, transparency, and efficiency in the application of justice. They both aspire to the universal application of the law, without exception for the wealthy or the elite. Although the principle is crucial, it is completely dependent upon the government that enforces it. Recently, political action within both countries has called into question whether we can trust the rule of law. Politicians maintaining their personal and party interests can limit legal transparency, covertly protect actors with party affiliation, and sometimes openly defy the law, which destroys the public trust that the judiciary depends on.

The majority of American people do not currently trust their legal system. A 2024 survey study and article by Gallup found that a record low of 35% of Americans responded “yes” when asked if they trust in the American judicial system (Vigers and Saad). This is significantly lower than the median response among OECD nations of 55%, and is a precipitous drop from 2020 when 59% of respondents recorded “yes”. This decrease in trust is, at least in part, attributable to the open violations of the rule of law by American politicians from 2020 onwards. President Donald Trump’s role in the January 6th attack on the capitol was an act of open defiance against democracy and the peaceful transfer of power, and his chiding ridicule of the rule of law as “rigged” has been undermining trust in the courts for years. When former President Joe Biden bragged about pushing his student loan forgiveness plan despite having been initially struck down by the supreme court, he demonstrated clearly his belief that his government, too, is above the law. Mr. Biden even went so far as to pardon his son, Hunter Biden, of his crimes after having made a point about respecting the rule of law and promising that his son would be

prosecuted fairly. It is no great mystery that Americans do not trust their courts when the rule of law is frequently and grossly undermined to suit the whims of politicians.

The National Justice Survey 2022 Infographic shows similar data in a Canadian context (Government of Canada). In 2022, 49% of respondents reported that they are not confident that the criminal justice system is fair to all people, and 39% are not confident that it is accessible to all people. Trust in the Canadian judiciary is lessening every year as more violations occur. In 2019, former Prime Minister Justin Trudeau and his aides allegedly pressured then Attorney General Jody Wilson-Raybould to overrule the Director of Public Prosecutions and grant SNC Lavalin, a Quebec firm that heavily lobbied for the Liberals, a deferred prosecution agreement that would allow them to escape corruption charges. This demonstrated a blatant violation of the law to protect a corporate-government relationship. Jean Chrétien's funnelling of millions of taxpayer dollars to advertising firms with Liberal Party ties in exchange for little to no work was another instance of corruption and misuse of public funds. The Liberal government's violation of Wet'suwet'en land sovereignty through the forcible installment of the Coastal GasLink pipeline and removal of protestors demonstrated further selectivity in the government's application of the law.

A comparative review of the statistics seems to suggest that today, Canadians have greater trust in their justice system than their American neighbours have in their own system respectively. It may be that this results from higher levels of partisanship in America, and it is actually political enmity that drives distrust in legal institutions. This theory is partly discredited by the Gallup data which suggests that there was a significant decrease in trust in the Judiciary

even among Democrats during Biden's presidency. Regardless, the citizens of both countries are rapidly losing trust in their institutions, and there can be little doubt that the frequent, public violations of the rule of law on both sides of the border contribute to this loss of confidence.

When citizens lose trust in the rule of law, when they no longer believe they are protected, that distrust often translates to cynicism. If the public comes to see the rule of law as an ideal that does not or cannot exist in practice, major consequences result. Firstly, subsequent violations of the rule of law seem less obscene. Citizens are lulled into a private acceptance that injustice is "just the way it is". Over time, this enables the government to get away with violations of a greater frequency and magnitude, until the rule of law is not respected at all. When Donald Trump implies he wants to run for a third term in an exclusive interview with NBC News, there is not a public uproar or a legal challenge (Welker and Lebowitz). Instead, thinking Americans let out an exasperated groan, and carry on, now all too familiar with regular threats to core American principles.

Secondly, cynicism degrades respect for and compliance with the law. If citizens perceive the law being applied only when convenient, and bending to accommodate politicians and lawmakers, they will be less compelled to abide by it. This does not necessarily mean that citizens who do not trust the courts are more likely to break the law, but rather that their distrust for the legal system creates an unwillingness to cooperate, dealing a blow to legal cohesion and undoing the benefits of procedural justice. In their study published April 15, 2024, entitled *Public Perceptions of Courts and Cooperation with Police*, Rylan Simpson and Laceé N. Pappas compared survey data to determine the correlation between trust in the courts and likelihood of

reporting minor crime, major crime, and likelihood of assisting police if asked. (Simpson and Pappas). They found a positive relationship between participants' perceptions of courts and their willingness to report minor crime and major crime, but that the participants' opinions of the courts were not significantly related to their likelihood of assisting police if asked. This indicates that when directly commanded by the police, citizens are just as likely to comply regardless of their trust in the justice system, but that citizens distrustful of the courts will be less likely to report the crimes they witness when they are not under the direct supervision of the police.

Finally, history tells us that a nation is most susceptible to violent citizen reaction when its legal institutions are not trusted by its people. The unfair legal treatment of Black and Indigenous people in Canada and the USA has contributed to the frustration of those populations, and various violent riots have occurred, usually spurred on by catalyst events. The police killing of Rodney King was met with six days of riots, 63 deaths, and billions in damage. George Floyd's death and the emergence of the Black Lives Matter protests is a similar example. The violation of Mohawk land and the Oka Crisis in Canada is one the largest instances of Indigenous resistance. Stability deeply depends on the trust citizens have in their legal institutions.

At every level of citizen interface with the justice system, whether it is reporting a crime, giving a testimony at trial, or filing a civil suit to get recompense, the system requires citizens to cooperate; not the kind of cooperation that only exists within striking distance of a police baton, but the kind that extends from the belief that the justice system will actually mete out justice. When politicians excuse themselves from the laws that apply to everyone else, the courts are

made to be untrustworthy in the eyes of the public, and the cynicism that results normalizes continued violations and, perhaps most destructively, undermines citizen cooperation. Without cooperation from the citizens it is supposed to protect, the justice system utterly fails to be able to continue serving its core purposes, and in the worst cases, the citizens respond violently.

While it seems that these countries are on a trajectory for greater cynicism and the resulting consequences, it is also possible that they may remedy these issues by building trust, optimism, and hope in the people. Political parties must unconditionally prioritize our institutions over their personal interests, and foster a sentiment that the government understands and is trying to address the issues of the people. No matter how trustworthy the courts actually are, politics is one of the most visible facets of the system. If the public perceives that the law is beholden to political maneuvering and that it is thus inconsistent in its justice, they will not trust the law when they need it or when it needs them. In this way, even the misfounded perception that a legal system is unjust tangibly impacts how effective that system can be, making that uncertainty a self-fulfilling prophecy. The rule of law fundamentally depends on the perceived transparency, legitimacy, and trustworthiness of politicians and political parties: when they lie or serve themselves first, the judicial system suffers.

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