Politics of Pursuing Justice in the Aftermath of Civil Conflict

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Politics of Pursuing Justice
in the Aftermath of Civil Conflict

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ABSTRACT

Why do some states pursue transitional justice in the immediate aftermath of armed conflict while others do not? What drives a state to select a particular type of justice mechanism over another? Building on the political explanations of transitional justice, we argue that post-conflict justice decisions are driven by the interests and power of political elites shaped by recently ended conflicts. Our empirical analysis shows that conflict outcomes and their subsequent impact on the balance of power between the government and rebel groups are the most important determinants of post-conflict justice decisions. Domestic trials are most likely to emerge out of a decisive, one-sided victory while truth commissions and reparations are most likely to occur after a negotiated settlement. We also find that conflict severity interacts with conflict outcomes to affect post-conflict justice decisions.

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Introduction

About one third of post-conflict episodes between 1945 and 2006 established trials, truth commissions, or reparations within the five-year period following armed conflict. In particular, trials and truth commissions have become an important part of most post-conflict peace-building processes (Bates, Hampson, Levi, & Ross, 2007; Brahm, 2007). Why do some states pursue domestic trials against wrongdoers in the immediate aftermath of armed conflict while others do not? Why do some states institute truth commissions or provide reparations immediately after conflict? How do the characteristics of the conflict shape these decisions?

Current scholarship on transitional justice (TJ) stops short of providing definitive answers to these questions although many scholars have investigated the conditions under which states pursue transitional justice. Much scholarship has focused on post-authoritarian societies whereas relatively scant attention has been paid to transitional justice in post-conflict societies (e.g., Grodsky, 2010; Huntington, 1993; Huyse, 1995; Kim, 2012; Nalepa, 2010). Among the few studies that have examined post-conflict settings, the majority have been qualitative in nature, focusing on individual or very limited sets of cases with a single TJ mechanism, such as international tribunals (e.g., Peskin, 2008; Subotic, 2009). It is difficult to uncover a far-reaching pattern of post-conflict justice (PCJ) processes\(^1\) by examining a limited set of instances. Olsen, Payne, and Reiter (2010) and Rothe and Maggard (2012) are exceptions in that they conduct cross-national analyses of the relationship between conflict characteristics and multiple transitional justice mechanisms. However, these studies find little correlation between conflict outcomes and post-conflict justice. This is surprising given that scholars have long recognized the importance of the transition mode and power distribution in shaping opportunities for TJ processes (e.g., Huntington, 1993; Huyse, 1995; Snyder & Vinjamuri, 2004).

The questions raised above deserve further investigation. Many scholars have examined whether particular modes of post-conflict justice bring about desired outcomes, such as

\(^1\)We consider post-conflict justice a specific subset of transitional justice.
durable peace, democratic consolidation, and better human rights protections (e.g., Kim & Sikkink, 2010; Lie, Binningsbø, & Gates, 2007; Meernik, Nichols, & King, 2010). Without understanding the process through which a state implements particular modes of post-conflict justice, it would not be possible to link the enactment of certain modes of PCJ to the corresponding outcomes (Nobles, 2010, 179; Snyder & Vinjamuri, 2004, 20; Vinjamuri & Snyder, 2015).

In this article, we aim to explain how previous conflicts’ attributes shape post-conflict justice decisions in the immediate aftermath of civil conflict. To this end, we combine research on transitional justice with research on post-conflict stability and peace and emphasize the difference between post-conflict and post-authoritarian circumstances: the government that carried out conflict tends to stay in power after a conflict, while a new regime confronts wrongdoings of the authoritarian predecessor regime after democratization. Building on the political explanation of transitional justice (e.g., Grodsky, 2010; Huntington, 1993; Huyse, 1995; Nalepa, 2010; Snyder & Vinjamuri, 2004; Subotic, 2009), we argue that decisions of whether to pursue justice and how to address past atrocities are driven by ruling elites’ political interests and power, which are substantially shaped by the recent conflicts. Given the different natures of TJ strategies, the purpose and institutional means of addressing past atrocities vary significantly across post-conflict environments.

Our empirical analysis provides several important findings that confirm the importance of politics in shaping PCJ choices. First, we find that the mode of conflict termination and its subsequent impact on the balance of power between the government and rebel groups are the most important predictors of PCJ decisions during the initial post-conflict years. Domestic trials are most likely to occur when conflicts end in a decisive victory by one side, while reparations and truth commissions are most likely to emerge as part of the peace process after conflicts ending in a negotiated settlement. In particular, decisive victories make prosecutions against the defeated side more likely and against the victors less likely.

Second, we find that conflict severity is associated with an increased likelihood of adopting
PCJ processes, but this relationship is conditional on conflict outcomes; only when conflicts end in negotiated settlement does conflict severity increase the likelihood of establishing PCJ mechanisms. Our analysis also shows that, as a conflict is more severe, victory is less likely to produce domestic trials, but a negotiated settlement is more likely to include reparations and truth commissions. Overall, the results demonstrate that preconditions for pursuing criminal prosecutions are clearly distinct from those for seeking reparations and truth commissions.

This article contributes to the transitional justice and conflict literature. By focusing on the immediate post-conflict periods, we find a significant relationship between recently ended conflicts and PCJ decisions that has not been uncovered in previous cross-national studies. Our findings also show the importance of political motivations in initiating and implementing PCJ processes emphasized in other TJ studies (Grodsky, 2010; Loyle & Davenport, 2016; Nalepa, 2010; Peskin, 2008; Snyder & Vinjamuri, 2004; Subotic, 2009). This article is also relevant to conflict studies outside the field of transitional justice; scholarship in conflict studies shows that features of the previous conflict significantly shape post-conflict stability (Kreutz, 2010; Mason, Gurses, Brandt, & Quinn, 2011; Toft, 2010), the level of democracy (Toft, 2010), and the adoption of post-conflict elections (Brancati & Snyder, 2011).

**Transitional justice**

Encompassing different transitional settings, such as democratization and transition to peace, transitional justice is “the set of institutions, policies, and practices designed to deal with atrocities and major politically motivated human rights violations in the process, anticipation, or aftermath of regime change or violent conflict” (Vinjamuri & Snyder, 2015, 305). Over the last decades, countries have adopted various strategies to address past human rights abuses. The strategies generally include the following: 1) retribution against wrongdoers, 2) reparations to victims, and 3) promotion of truth. The first strategy seeks to hold perpetrators accountable and punish them for wrongdoing (Elster, 2004; Teitel, 2000). Retribution against wrongdoers mainly takes the form of criminal prosecutions through courts.
Second, reparations address victims’ justice and include both material and moral/symbolic components. The former includes monetary compensation, return of property, or rehabilitative services, such as medical and psychological care, while the latter includes official apologies or acknowledgement of wrongdoing from perpetrators (Powers & Proctor, Forthcoming). Last, the third category seeks to promote truth revelation and reconciliation. Truth commissions are officially organized institutions that aim to document broad patterns of rights violations by collecting testimony from victims and sometimes from perpetrators (Gibson, 2006; Hayner, 2010).

These TJ procedures have different goals and procedures but share the belief that a public accounting of past human rights abuses is necessary for human rights, democracy, and peace. Trials tend to be riskier, more provocative, and more confrontational than reparations and truth commissions, since trials personalize responsibility and present more severe repercussions for wrongdoers (Grodsky, 2010, 54). Reparations and truth commissions usually aim to promote social healing and reconciliation rather than retribution (Brahm, 2007; Hayner, 2010; Lambourne, 2009; Minow, 1998). However, this does not mean that they are free of political risk; truth commissions can provoke resistance and protest by singling out individual perpetrators for blame, and reparations can be perceived as an indirect attack on the former regime by defining its victims (Grodsky, 2010, 45–47). Nevertheless, criminal prosecutions inflict greater costs on perpetrators than truth commissions and reparations and therefore pose a greater threat to wrongdoers. Many scholars and practitioners consider truth commissions an alternative approach to justice in situations where the prosecution of perpetrators is not politically acceptable or legally feasible (Chapman & Ball, 2001; Hayner, 2010; Nobles, 2010; Roper & Barria, 2009; Sieff & Wright, 1999; Skaar, 1999). These contrasting attributes imply varying preconditions for seeking each TJ procedure.

Many scholars stress the critical role of political power and political interests in determining the choice of TJ institution. They document that political leaders have used several TJ strategies to augment and consolidate their political power (e.g., Grodsky, 2010; Loyle
& Davenport, 2016; Nalepa, 2010; Peskin, 2008; Subotic, 2009). They also show that the transition mode and its ensuing impact on power distribution heavily determine whether new elites will pursue retributive justice mechanisms (e.g., Huntington, 1993; Huyse, 1995; O’Donnell & Schmitter, 1986; Pion-Berlin, 1994; Snyder & Vinjamuri, 2004). New elites have incentives to address the former regime’s human rights abuses, since transitional justice helps construct a new political identity for the regime and distances the new government from past repression (Teitel, 2000, 225). However, pursuing criminal prosecutions can disrupt political stability and endanger efforts to consolidate power since it threatens the elites implicated in past abuses and provokes their resistance to the new regime. Accordingly, democratic elites, whether empowered following a negotiated transition or through an elite-led transformation, often refrain from prosecuting still-powerful members of the old regime. By contrast, those who achieved power through revolution need not worry about the potential repercussions of threatening outgoing elites and are more willing and able to pursue criminal prosecutions. As examples of the latter, Argentina and Greece held trials following the dissolution of their military regimes. Conversely, democratization in Brazil, Chile, and Honduras, where the military remained powerful after transition, or South Africa, where South African whites still held economic power, did not produce trials (Nobles, 2010). Chile and South Africa instead adopted truth commissions and reparations.

Scholars also emphasize the role of public demand for transitional justice in encouraging states to address past wrongdoings. Where the former regime committed severe, widespread human rights abuses, the public, including victims and civil society, issue stronger calls for justice than where the human rights abuses were not as severe (Huyse, 1995; Nino, 1996; Roper & Barria, 2009). Other scholars argue that public support for transitional justice is strongest immediately after transition (Elster, 2004; Huntington, 1993; Nino, 1996). Emotions such as revenge and anger significantly shape the demand for justice but tend to be short-lived, thereby decreasing the demand for justice over time. Last, international demand for transitional justice also spurs and/or strengthens domestic pressure while supporting civil
society and government (Sikkink & Kim, 2013; Sikkink & Walling, 2007). The norms of individual criminal accountability for atrocities and other wrongdoings, called the justice cascade, have emerged and diffused regionally and globally. Domestic and international advocacy networks play an important role in the spread of the justice cascade (Kim, 2012). Other scholars also emphasize the role of international organizations in promoting mechanisms of individual legal accountability (Bassiouni, 2002).

**How do features of the previous conflict affect post-conflict justice?**

Why do some countries initiate strategies for dealing with atrocities committed during conflict while others do not? What drives a state to select a particular strategy over another? To answer these questions, we focus on how features of the previous conflict influence the adoption of domestic trials, truth commissions, and reparations.

Above all, it is important to note that after conflict, ruling elites that carried out conflict tend to stay in power, clearly a different circumstance than a post-authoritarian context in which the predecessor government carried out repression. Only when a conflict ends in a rebel victory (only 10% of conflicts) do the incumbent leader and governing coalition tend to be replaced. Data show that of the 303 conflicts under study, only one third saw leadership changes within two years of the end of conflict, and most of those changes were regular turnovers. This implies that conflicts tend to end in *de facto* victories for the government. Moreover, both sides of a conflict are likely to commit human rights abuses, making it difficult to determine clearly who is a perpetrator and who is a victim (Sriram, 2007, 587). Thus, the motivation to signal a break with the past and distance itself from the previous illegitimate regime’s wrongdoings is not as relevant in the post-conflict context. Other political motivations matter more.

The political explanations of transitional justice suggest that the manner in which a conflict concludes limits and shapes the range of possible justice mechanisms (Sieff & Wright, 1999; Snyder & Vinjamuri, 2004). First, conflict termination type determines the balance of
power in post-conflict societies. The winning side almost always gains full control over the state, since military victory destroys the losing side’s organizations, and the defeated side capitulates and abandons its political objectives (Licklider, 1995). Moreover, military victory itself tends to lend domestic and international recognition and legitimacy to victors (Toft, 2010, 28). Accordingly, the victor can pursue its favored policies without considering the losing party’s wishes. In contrast, a negotiated settlement preserves both sides as relevant political actors in post-conflict situations, giving neither side free rein to impose its will unilaterally (Mason et al., 2011; Toft, 2010).

Next, the mode of conflict termination significantly influences post-conflict peace and stability. A country that has experienced one civil war is highly likely to experience another within a short time interval (Mason et al., 2011; Walter, 2009). However, decisive victories are the least prone to recurrent conflict because military victories damage the defeated side’s organizational capacity, making return to violence difficult (Licklider, 1995; Mason et al., 2011; Toft, 2010). Contrarily, after a negotiated settlement, the protagonists maintain the capacity to resume armed conflict if they become dissatisfied with the terms and/or the implementation of the peace agreement (Mason et al., 2011). Rebels can utilize peace agreements to amass their strength (Licklider, 1995).

Therefore, when a conflict ends in decisive victory, trials are politically attractive to the victors, who are able to limit the scope of the trials and control the prosecutorial agenda. Above all, donning the mantle of victimhood while castigating the other side as an aggressor increases the victor’s political power, conferring legitimacy and increasing international support (Peskin, 2008, 13-14). The winning side can use trials to prosecute wrongdoers on the losing side, which serves to mete out vengeance, consolidate victory by delegitimizing and politically neutralizing enemies, and eliminate the immediate cause of war and deter future attack (Elster, 2004, 85-86; Minow, 1998; Olsen et al., 2010, 116; Snyder & Vinjamuri, 2004, 10; Subotic, 2009). Meanwhile, a decisive victory allows the winner to implement harsh forms of retributive justice as it pleases. Seeking retribution does not conflict with the goal
of returning to and securing peace after a decisive victory. For example, critics argue that, in post-genocide Rwanda, the Rwandan Patriotic Front (RPF)-led regime exploited criminal prosecutions to consolidate its power and marginalize Hutu opponents (Loyle & Davenport, 2016; Peskin, 2008; Waldorf, 2011, 1272). The RPF government officially designates only Hutus as perpetrators and Tutsi as victims (Lambourne, 2009, 45). The RPF’s military defeat of the Hutu regime made this political use of trials feasible.

Conversely, when a conflict ends in a negotiated settlement, any attempt to prosecute perpetrators of abuses threatens to exacerbate antagonisms between combatants and inspires a backlash from spoilers, imperiling the fragile peace in the immediate aftermath of civil war (Minow, 1998; Snyder & Vinjamuri, 2004). Enemies are likely to regard any attempts to prosecute their members as proof of an intention to reinitiate conflict. Furthermore, domestic war crime trials tend to lack legitimacy in the atmosphere of deep mistrust and mutual hatred. Rebel groups are likely to believe that judges, prosecutors, and administrators, employed by the government, are biased against them. As the failed talk between the Ugandan government and the Lord’s Resistance Army rebel group and the four years long negotiation between the Colombian government and the Revolutionary Armed Forces of Colombia illustrate, it is extremely difficult for recent combatants to agree on whom and how to prosecute.

Additionally, victims and survivors may not strongly call for individual accountability after a negotiated settlement or stalemate. After conflict, victim groups are still exposed to renewed violence by those who committed mass abuses, since the use of violence between adversaries does not simply disappear with ceasefire and peace agreements. Security concerns are more pronounced when warring parties maintain the capacity to resume fighting and cannot credibly honor their commitments to peace. Under this condition, “many fear that prosecutions will divide society just when unity is most needed” (Peskin, 2008, 23). The fear of the negative consequences of post-conflict trials may dampen the demand for them.

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2The surveys conducted in Northern Uganda (2007) and Liberia (2011), both of which had no decisive victory, indicate that the vast majority of respondents were willing to compromise through amnesties to secure the peace and supported truth commissions (Pham et al., 2007; Vinck, Pham, & Kreutzer, 2011).
(Hayner, 2010; Samii, 2013). Therefore, popular demand for criminal prosecutions will be higher after a conclusive military victory compared to other conflict outcomes (Olsen et al., 2010; Sieff & Wright, 1999).

Hence our first hypothesis:

**H1** Civil conflicts ending in victory by one side are most likely to produce domestic trials.

The manner of conflict termination also affects the likelihood of truth commissions and reparations. According to prior research, “truth commissions emerge out of negotiated settlements in which there are not clear victors and vanquished” (Chapman & Ball, 2001, 12; see also Roper & Barria, 2009 and Sieff & Wright, 1999). In many peace talks, including Guatemala in 1994, Sierra Leone in 1999, and Liberia in 2003, leaders supported truth commissions in order to avoid trials (Hayner, 2010, 91). Because they are less provocative and confrontational than criminal prosecutions, truth commissions and reparations are less likely to endanger peace-building efforts. In addition, the UN and other international organizations play an important role in sponsoring peace agreements and establishing truth commissions and reparations as part of peace agreements, as the examples of Sierra Leone, El Salvador, and Guatemala illustrate. Addressing recent human rights abuses during conflict has become an integral part of peacebuilding by international organizations, such as the United Nations (UN) (Sriram, 2007; Subotic, 2009). The UN often supports the establishment of post-conflict justice mechanisms to further promote human rights, the protection of civilians, and justice for crimes committed during the war (Bassiouni, 2002; Brahm, 2007; Kim, 2012; Roper & Barria, 2009; Sriram, 2007). Rebel groups may be inclined to adopt procedures for victims’ justice since a peace deal offers them the opportunity to be treated as legitimate political actors by the outside world (Fortna, 2008, 90).

Truth commissions and reparations are less politically attractive to the victorious side than trials. In many cases, the winner is an incumbent authoritarian government, having little respect for civil liberties and human rights. If atrocities have been committed by both sides of the conflict, the government will hesitate to implement truth commissions
for fear of unearthing their own transgressions (Nalepa, 2010). Exposing the government’s role in atrocities undermines the official history of the conflict, which serves to strengthen the incumbent regime’s grip on power (Peskin, 2008, 15), and prompts international scorn or sanction. Some governments may want to establish a truth commission “in order to manipulate the public perception of its own tarnished image” (Hayner, 1994, 22) or to blame human rights abuses on its opponent (Grodsky, 2010). However, truth commissions often assign blame to all sides of the conflict (Gibson, 2006). For instance, the Peruvian Truth Commission was initially expected to assign blame only to the communist guerrilla group but ultimately found both the guerrillas and the government guilty of human rights violations (Nalepa, 2010). The truth commissions in El Salvador and Guatemala concluded that the government was responsible for 80 and 93 percent, respectively, of the estimated deaths (Lehoucq, 2012, 92–93). Moreover, reparations programs and truth commissions incur high financial costs. Argentina’s reparations program has cost approximately $3 billion, and Chile has paid $225 million in reparations since 1997 (Powers & Proctor, Forthcoming, 7). Similarly, South Africa’s truth commissions cost about $20 million (Olsen et al., 2010, 67). These costs loom large for the post-conflict government facing scarcity of resources.

Lastly, when groups are stuck in a military stalemate, combatants with conflicting goals are unlikely to agree on a certain type of transitional justice given that they have failed to agree on anything else. In turn, negotiated settlements show that actors are willing to come to the table to talk with each other, which implies greater possibility of adopting truth commissions and reparations than when the conflict simply fades over time. This discussion leads to the following hypothesis:

**H2** Civil conflicts ending in negotiated settlements are most likely to produce truth commissions and/or reparations.

The studies on transitional justice in post-authoritarian countries find that a greater level of repression in the previous authoritarian regime makes the implementation of TJ processes more likely (Huyse, 1995; Kim, 2012; Nino, 1996; Olsen et al., 2010). Similarly, as
the domestic population suffers more casualties, the impetus for accountability, reconciliation, truth, and reparations increases (Pion-Berlin, 1994; Roper & Barria, 2009). More intense conflicts tend to produce a greater level of violence against civilians by both warring parties (Hultman, 2007). High levels of conflict severity and civilian victimization mobilize citizens and domestically and internationally organized human rights groups to insist upon post-conflict justice (Olsen et al., 2010, 113). In sum, conflict severity increases demand for addressing past human rights violations, particularly in the immediate aftermath of armed conflict, as emphasized by other scholars (Elster, 2004; Huntington, 1993; Nino, 1996).

We further expect that conflict severity interacts with conflict termination type to influence PCJ adoption. When a conflict ends through a peace deal, domestic and international actors calling for accountability and justice exert more influence on warring parties, pressuring peace negotiations to include PCJ measures. Additionally, the UN and other international organizations are more likely to intervene in and send peacekeepers to more severe conflicts (Fortna, 2008). They have increasingly promoted transitional justice as an important pillar of successful post-conflict reconstruction (Subotic, 2009). When these outsiders play an important role in peace talks, the country is more vulnerable to their demand for PCJ policies.

In contrast, after a decisive victory, the government’s willingness to adopt TJ policies decreases according to the severity of the conflict. In severe conflicts, both sides are likely to kill civilians as a result of collateral damage or intentional targeting. When complicit in atrocities during a conflict, governments hesitate to establish PCJ procedures for fear of exposing incriminating evidence (Nalepa, 2010; Peskin, 2008). Truth commissions and reparations, not attractive to the victors, become even less attractive and less likely to be established even with strong pressure from victim groups, the public, and the international community. Similarly, conflict intensity not only increases the demand for trials but also dampens the victor’s incentive to use trials to delegitimize and politically neutralize opponents. These two opposing effects offset each other, producing a weak total effect of conflict severity on justice procedures after one side’s military victory. To the extent that ruling elites’ political
interests drive the decision to pursue post-conflict trials, we expect the total effect to be negative.

Finally, when actors face a stalemate without a victory or any type of agreement, conflict casualties have little impact on the establishment of justice procedures. Under such circumstances, neither side is able to impose its will, and any agreement between the two sides is difficult to achieve.

**H3a** Only when civil conflicts end with a negotiated settlement does conflict severity increase the likelihood of adopting PCJ processes.

**H3b** As the conflict is more severe, the effect of settlements on reparations and truth commissions, compared to other conflict outcomes, increases, and the effect of victory on trials decreases.

Finally, we argue that conflict duration has cross-cutting effects on PCJ decisions that cancel each other out. Long conflicts are most likely to occur when opponents are evenly matched and both are convinced there is value in continuing to fight (Walter, 2009). Thus, long periods of conflict significantly drain both the government’s and rebels’ resources, reducing their capacities to successfully implement and administer systems of post-conflict justice. Additionally, “protracted wars tend to heighten the degree of societal complicity in the abuses” (Olsen et al., 2010, 116). The public’s demand for post-conflict justice will be weaker when a large segment of the population is complicit in past abuses (Huntington, 1993; Huyse, 1995). Yet conflict duration can also positively affect PCJ mechanisms, since the duration of the previous conflict reduces the risk of a recurrent war, thereby making the justice versus peace dilemma less severe. As wars become longer, warring parties are more likely to become convinced that they cannot win and to collect more information about each other, reducing the incentives for dissident groups to return to armed conflict (Mason et al., 2011, 178; Walter, 2009, 256). The total effect of conflict duration on PCJ depends on which effect dominates, and it is not clear how conflict durations influence them when we account
for conflict outcomes and conflict casualties.

**H4** The effect of conflict duration on PCJ decisions is indeterminate.

**Data and method**

To test our hypotheses in a cross-national analysis, we used a dataset constructed by Binningsbø, Loyle, Gates, and Elster (2012), which contains data on post-conflict justice processes covering 357 armed conflict episodes from 1946 to 2006. PCJ is defined as “any process initiated within five years following an armed conflict that attempts to address wrongdoings which took place as part of that conflict” (Binningsbø et al., 2012, 733). This dataset includes information on multiple PCJ processes that are implemented following and related to a given armed conflict. This dataset is well-suited to test our hypotheses since the PCJ dataset uses a conflict-episodes structure built on the UCDP/PRIO Armed Conflict Dataset rather than a country-year structure. This data structure allows data coders to ensure which specific conflict the PCJ processes target, making them better able to address concurrent conflicts in a country.

We focus on peace episodes following internal conflicts that ended in the post-World War II period, including internationalized internal conflicts. This decision removes ongoing or extrasystemic conflicts between colonial powers and independence movements (54 cases) from the sample. This leads to 303 post-conflict episodes from 1949 to 2006. When we introduce control variables, the sample decreases to 286. The unit of analysis is the post-conflict peace period or the first five years following the end of the internal conflict as coded in Binningsbø et al. (2012).

**Dependent variable**

To explain the choice of a PCJ process, we estimated a model for each PCJ process in which the dependent variable indicates whether a specific PCJ type is employed in the post-conflict...
peace period. *Trial* includes domestic trials, while *TRC/Rep* includes truth commissions and/or reparations. A trial is “defined as the formal examination of alleged wrongdoing through judicial proceedings within a legal structure” (Binningsbø et al., 2012, 734). Unlike the studies on post-authoritarian cases, the focus on post-conflict countries produces many authoritarian countries in the sample. We removed 11 domestic trials devoid of due process such as show or summary trials, analyzing 59 domestic post-conflict trials in the sample.4

“Truth commissions are officially-sanctioned, temporary investigative bodies that focus on a pattern of abuse over a particular period of time” (Hayner, 2010, 11), while reparations are defined as “compensation given by the state to an individual or group who was harmed in some way during the conflict” (Binningsbø et al., 2012, 735). Twenty-five post-conflict episodes have established truth commissions or reparations.

It is worth noting that we only considered domestic PCJ mechanisms because our theoretical argument should hold for domestic PCJ processes, but not necessarily for processes initiated or implemented by international actors in which not only domestic actors but also influential international actors play an important role. Therefore, we removed 6 trials involving an international tribunal, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) or hybrid courts such as the Special Court for Sierra Leone, and two truth commissions involving no domestic processes.

[Figure 1 here.]

In Figure 1, we present simple, descriptive evidence that trials have different political implications than truth commissions and reparations in the immediate aftermath of civil war. The left panel of Figure 1 shows that only 3 of 303 post-conflict episodes established trials as well as either truth commissions or reparations. This contrasts with the pattern reported by Sikkink and Walling (2007) regarding transitional justice mechanisms in democratizing countries. They find that every country in Latin America that implemented a truth commission

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4 The PCJ dataset includes a variable flagging “the presence of a deliberate breach of justice in the process or weak legal standards.” Out of 11 trials that are suspected of a breach of justice, 10 were implemented following victory.
also held domestic trials to address past human rights violations of previous regimes. This marked difference illustrates the importance of distinguishing between post-conflict and post-authoritarian contexts. Next, the inspection of targets in different PCJ processes provides some insights into the nature of post-conflict trials. Among 59 domestic trials that were established following civil conflict, no trial prosecuted perpetrators on both warring sides. Only international tribunals, such as the ICTY, or hybrid courts, such as the Special Court, targeted all parties. In contrast, all truth commissions and most reparations target both parties. Last, as the right panel of Figure 1 strikingly reveals, almost every trial is directed toward the losing side of the conflict when a conflict ends with a decisive one-sided victory.

**Independent variables**

The main independent variables are conflict characteristics taken from the post-conflict justice dataset. We utilized a conflict termination variable taken from the post-conflict justice dataset, originally collected by Kreutz (2010). The termination outcome of the previous conflict is trichotomously measured: victory, bargained settlement, and other outcomes including no or low activity. We set bargained settlement to the baseline category and created two dummy variables: Victory and Other Outcomes. Next, we operationalize conflict severity as the log-transformed number of battle deaths in the conflict. The post-conflict justice dataset includes data on battle deaths collected by Lacina and Gleditsch (2005), which define battle deaths as “deaths resulting directly from violence inflicted through the use of armed force by a party to an armed conflict during contested combat.” Battle deaths include combatants and civilians killed by one-sided violence, genocide, and terrorist attacks since contested combat requires only that the perpetrator faces an immediate threat of lethal force from opposing forces. Therefore, the battle death measure can capture atrocities against both combatants and civilians during conflict. Finally, we used the natural log of a conflict spell measured in months, since conflict durations are highly rightward skewed.
Control variables

Although our discussion focuses on characteristics of the now-ended civil conflict, we controlled for country-specific variables that affect the demand and supply of post-conflict mechanisms. We averaged their values at the conflict termination year and the first two years of the post-conflict period.

First, we included a measure of electoral democracy (scale 0/1), as coded in the V-Dem data (Coppedge et al., 2016), since democracies are more prone to establish any type of PCJs. To control for the possibility of the transition from armed conflict coinciding with democratization, we also included a binary indicator marking whether democratization, as coded in Boix, Miller, and Rosato (2013), occurred at the conflict end-year or within the first two years of the post-conflict period.

Conversely, as the number of veto points increases, agreeing on the adoption of a PCJ mechanism becomes more difficult for the government. While there may be consensus throughout the country on the need for PCJ, parties may disagree over the form of justice or the severity of punishments. A greater number of veto points is less likely to produce any PCJ. We used Henisz’s (2002) political constraints index.

The level of economic development is positively associated with the likelihood of establishing post-conflict justice systems. In order to supply post-conflict justice, a state must have the resources needed to establish the institutions required to operate a PCJ system (Fletcher, Weinstein, & Rowen, 2009; Olsen et al., 2010; Powers & Proctor, Forthcoming). Therefore, as Elster (2004) notes, economic constraints can limit a government’s ability to pursue post-conflict justice. To control for these constraints, we included the natural log of GDP per capita.

By emphasizing the increasing global trend toward the adoption of varying transitional justice mechanisms, several scholars have noted that the diffusion process plays an important role in the spread of PCJ mechanisms (Sikkink & Kim, 2013; Sikkink & Walling, 2007). Thus, we controlled for spatio-temporal clustering of PCJ mechanisms. To measure the regional
preponderance of PCJ mechanisms, we used the percentage of countries that previously used each type of PCJ mechanism within a state’s geographic region.\textsuperscript{5} Similarly, we also controlled for a binary indicator measuring whether there was at least one UN peacekeeping operation tied to the conflict. We obtained information on UN peacekeeping operation from Rustad and Binningsbø (2012). As we briefly discuss above, the presence of United Nations (UN) peacekeeping operations in a country increases the supply and demand for post-conflict justice (Bassiouni, 2002; Roper & Barria, 2009; Rothe & Maggard, 2012).

Last, we included the number of ongoing conflicts in a country. A greater number of ongoing armed conflicts significantly drain the government’s resources and discourage the government from pursuing post-conflict justice. We obtained the information on the number of active armed conflicts from the UCDP/PRIO Armed Conflict Dataset.

**Results**

Table I reports the primary empirical results. Model 1 uses an indicator for any PCJ, Model 2 examines Trial, and Model 3 examines TRC/Rep. The results have several noteworthy features. First, they demonstrate that the effects of conflict characteristics sharply contrast across PCJ types, suggesting the importance of differentiating among PCJ processes. In Model 1, Victory and Other outcome are not statistically significant. However, when we differentiate between Trial and TRC/Rep, we find evidence consistent with \textbf{H1} and \textbf{H2}. Trials are most likely to be established after conflicts ending in victory and least likely to be adopted after conflicts ending in a negotiated settlement. To the contrary, TRC/Rep is most likely to emerge after conflicts ending in negotiated settlements. The substantive effects of conflict outcomes are large, as illustrated in Figure 2. A change from Settlement to Victory increases the probability of establishing domestic trials by about 20 percentage points. The

\textsuperscript{5}We included the following eight regions: Eastern Europe and the Soviet Union, Latin America, North Africa and the Middle East, sub-Saharan Africa, Western Europe, East Asia, Southeast Asia and the Pacific, and South Asia.
same change decreases the probability of TRC/Rep by 7 percentage points, and a change from Settlement to Other outcome decreases that probability by 8.2 percentage points.

[Figure 2 here.]

Conflict severity, reflecting demands for justice, also has heterogeneous effects on different types of PCJ processes and significantly correlates with the likelihood of TRC/Rep. Yet, we find little significant relationship between Conflict severity and Trial. Similarly, UN peacekeeping is also positive and statistically significant only in Model 3, confirming the UN’s role in promoting truth commissions as part of peace accords (Brahm, 2007; Roper & Barria, 2009; Sriram, 2007). It seems that as the justice cascade literature argues, the international community has been increasingly pushing for trials, but the pressure translates into international tribunals or mixed international-domestic courts, not into domestic trials. According to the PCJ dataset, no international criminal prosecution indeed occurred when conflicts ends with victory. Last, Conflict duration decreases the likelihood of pursuing both types of justice measures, although this decrease is not statistically significant at any conventional level.

Table I shows that country-related factors also influence PCJ in expected directions. In particular, ongoing civil conflicts significantly inhibit the establishment of all types of justice mechanisms, supporting the claim that countries with other urgent issues to address are less likely to pursue justice (Elster, 2004). Electoral democracy is positively correlated with all justice procedures, while the number of veto points is negatively correlated with them. Other variables have different impacts on Trial and TRC/Rep: Democratization and the post-Cold War period are associated only with the creation of truth commissions and reparations. Finally, it is important to note that dropping these country-specific factors does not significantly affect the estimates on conflict characteristics (see Table A2 of Supporting Appendix). Moreover, as Figure 2 shows, the substantive impacts of conflict characteristics tend to be greater in magnitude than those of country-specific variables.
In order to test H3a and H3b, we included interaction terms between conflict termination type and conflict severity in Models 4 through 6 of Table I. This generates two interaction variables for each model because we trichotomously measure conflict termination, setting negotiated settlement as the baseline category. If our argument is correct, the interaction term’s coefficient should be negative, and Conflict severity should be positive. Models 4 through 6 support this expectation. For ease of interpretation, Figure 3 displays how the mode of conflict termination conditions the marginal effect of Conflict severity on PCJ processes. Only when conflicts end in a settlement is Conflict severity correlated, in a positive and statistically significant manner, with the probability of addressing past wrongdoings. Otherwise, the marginal effects of Conflict severity are close to zero (after other outcomes) or negative (after victory). These results demonstrate that the mode of conflict termination significantly conditions the effect of conflict casualties, supporting H3a.

The top panel of Figure 4 demonstrates that, compared to victories and other conflict outcomes, settlements increase the likelihood of implementing truth commissions or reparations to a greater extent when the previous conflict is more intense. As the conflict is deadlier, both sides to the conflict are more likely to agree on including truth commissions and/or reparations in a peace deal. Importantly, the marginal effect of settlements is positive across most values of Conflict severity. The bottom panel shows that as conflict severity increases, the victorious side is less willing to adopt trials, supporting H3b. This finding confirms that conflict outcomes significantly shape preconditions for seeking post-conflict justice.

Table II subjects our results to more scrutiny by examining different subsamples. One potential concern with interpreting the results in Table I is that our results may simply

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6We created four binary variables indicating a subsample and interacted them with conflict-specific covariates. We reported the coefficients associated with the subsample in Table II.
reflect the effect of failed coup cases where trials are used to punish actors that attempted coups, since some civil conflicts coded in the Uppsala/PRIO dataset can be best described as coups. Using the background information for the PCJ coding in the PCJ dataset, Models 1 and 2 of Table II separate the 32 conflict events related to coups from other conflicts and re-estimate Models 2 and 3 of Table I. In a similar spirit, Models 3 and 4 limit the analysis to post-conflict episodes that produced more than 100 battle deaths. Third, Models 5 and 6 focus on the Post-Cold War period because since the end of the Cold War, the emphasis on transitional justice has increased and the nature of civil war may have changed. Finally, Models 7 and 8 restrict the analysis to the countries whose Polity2 scores are greater or equal to 5. As Table II shows, results remain similar to those presented in Table I. The only important difference is that Conflict severity turns negative although it is close to zero and statistically insignificant in Model 8.

[Table III here.]

We further differentiate government and rebel victories in order to test whether post-conflict trials are directed toward the losing party of the conflict. We rely on Kreutz (2010) to discern which side won. Table A2 replaces Victory with Government victory and Rebel victory. Table III presents the estimation results of a multinomial logit model where the dependent variable is a categorical variable with three categories (no trials, trials against rebels, and trials against the government). The results show that a victorious government is less likely to prosecute those on its side and more likely to prosecute individuals associated with rebel groups. The opposite pattern emerges in rebel victories. These results fit well with the finding, discussed above, that no domestic trial prosecuted perpetrators on both warring sides. Table III confirms the political aspects of domestic trials in post-conflict circumstances that serve the political interests of ruling elites.

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7 The government here refers to the group in power during the conflict, not after the conflict.  
8 When we test whether Government victory and Rebel victory have homogeneous effects on different types of trials, we reject the null at either the 5% or 10% level.
Finally, we performed several additional robustness checks and report them in the Supporting Appendix. We first examine whether which side wins the war matters. Government victories may be more conducive to adopting trials than rebel victories since the new government may face additional obstacles that the government, had it been victorious, would not have faced (Mason et al., 2011; Toft, 2010). Rebels have to build and staff bureaucratic and administrative arms of the new state, including the judiciary, while simultaneously overcoming resistance from supporters of the old regime and consolidating their power. In this situation, the constraints of navigating the post-conflict environment loom larger than the question of how to deal with past wrongdoers. However, Table A2 shows that both Government victory and Rebel victory have a positive sign and are not statistically different from each other.

Second, to ensure that our results are robust to alternative model specifications, we either dropped all country-specific factors or included additional variables. Table A3 includes only conflict-specific factors. Tables A4 and A5 add international variables that may be important to the adoption of post-conflict justice mechanisms: the extent of aid dependence; the number of human-rights treaty ratifications; the number of human rights INGOs, such as Human Rights Watch or Amnesty International, and human rights INGOs shaming directed at a country. Similarly, Tables A6 and A7 control for additional domestic factors: leadership changes, judicial constraint, judicial independence, and human rights conditions. Last, Tables A8 and A9 add regional or decade fixed effects to control for time-invariant region-specific effects or temporal common shocks to countries. None of these changes altered our main findings, and none of these additional variables are significantly associated with trials, reparations, and truth commissions.

Next, we examined how the exclusion of internationalized internal conflicts affect estimation results. In Table A10, we excluded all internationalized internal conflicts. Results remained similar.

Last, Table A11 examines whether our decision to combine reparations and truth
commissions is justifiable. To this end, we separately estimated models of reparations and truth commissions. Given the small number of truth commissions (7 cases), most variables in the model of truth commissions are not statistically significant. However, most variables, particularly conflict characteristics, have the same signs in both models.

**Conclusion**

To answer why some countries enact systems of post-conflict justice in the immediate aftermath of armed conflict while others do not, we build from literatures on both transitional justice and post-conflict stability and peace. Our analysis shows that the features of recently ended conflicts limit and shape opportunities and incentives for choosing strategies to address human rights abuses. The mode of conflict termination and its subsequent impact on the balance of power between the government and rebel groups are the most important predictors of PCJ decisions.

Our analysis has several implications for scholars and practitioners in the field of transitional justice. First, consistent with other studies (Grodsky, 2010; Loyle & Davenport, 2016; Nalepa, 2010; Peskin, 2008; Subotic, 2009), our findings demonstrate the importance of political motivations in using PCJ processes and shed light on the political functions of PCJ institutions. Different justice mechanisms may play a different role in post-conflict societies (see also Roper & Barria, 2009; Sieff & Wright, 1999; Snyder & Vinjamuri, 2004). At least for the initial unstable period immediately following conflict, domestic trials seem to serve the political ends of the victorious government, helping it consolidate power and deter future challenges. Victorious governments tend to exert political control over the courts. This implies that as Loyle and Davenport (2016, 142) argue, “justice processes can be subverted for other goals.” Accordingly, the degree of democracy and rule of law, not simply the implementation of a TJ process, should be emphasized.

Consistent with what tribunal advocates argue, this suggests that international tribunals may serve better as vehicles for human rights prosecutions in a post-conflict context than
domestic trials, since the international community, not directly involved in conflict, constructs and directs the tribunals (Peskin, 2008; Vinjamuri & Snyder, 2015). Of course, international tribunals do not always dispense justice impartially or successfully achieve prosecutions of wrongdoers. Targeted states can obstruct the tribunals or strategically adopt justice mechanisms, and powerful states can constrain or undermine them (Loyle & Davenport, 2016; Peskin, 2008; Subotic, 2009). Nevertheless, international tribunals are better able to prevent the winners from controlling the prosecutorial agenda and tampering with existing laws, which grants them greater legitimacy in the eyes of the losing side or rebel groups.

Finally, our study shows the importance of distinguishing between post-conflict settings and post-authoritarian settings. Strategies adopted by countries to address past wrongdoings in both tend to reflect dominant political interests, but the structural conditions are very different. In post-authoritarian settings, the new government is motivated to implement transitional justice strategies as a means of distancing itself from the previous regime, which was responsible for the human rights violations. In post-conflict settings, however, ruling elites tend to stay in power, and the line between perpetrators and victims blurs as both sides of the conflict are implicated in human rights violations. These differences produced distinct patterns in using trials and truth commissions/reparations: only 3 of 303 post-conflict episodes established trials as well as either truth commissions or reparations, which contrasts with the pattern of democratizing countries that tend to utilize both mechanisms, as emphasized by Sikkink and Walling (2007). Thus, scholars should be careful not to conflate post-conflict cases and post-authoritarian cases without considering the implications arising from these different political circumstances.

Our study provides two avenues for future research. First, the design of our study is temporally limited in that we focus on the immediate aftermath of civil conflicts. Power politics, defined by the recent conflict outcome, may be especially more pronounced soon after armed conflict, although public support for transitional justice may also be strong (Elster, 2004; Huntington, 1993; Nino, 1996). However, political landscapes change over time. Conflict
outcomes are less likely to influence the establishment of PCJ processes. Facing multi-faceted pressures at home and abroad, leaders may adopt multiple justice mechanisms in tandem. In future research we intend to extend the temporal scope of the study and study how the effect of conflict outcomes changes over time. Considering that “dealing with past injustices is an ongoing process, not a one-shot deal” (Nobles, 2010, 178), it is important to account for temporal dimensions of post-conflict justice decisions. Second, as Vinjamuri and Snyder (2015, 321) argue, it is important to examine how “one-sided justice, where perpetrators on only one side of a conflict are held accountable (as in Rwanda)” affects subsequent atrocities or strengthens rule of law. As we show, in most domestic post-conflict trials, trials target the losing party, yet scholars have not paid much attention to this fact.
References


Figure 1. Implementation of PCJ mechanisms (left) and cross-tabulation of domestic prosecution targets and conflict outcomes (right)
Figure 2. Substantive impacts of covariates

Notes: Dots show the point estimates of first differences, and vertical line segments associated with dots show the 95% and 90% confidence intervals. To obtain the first differences, we moved the covariate of interest from “low” to “high”, while setting all the other covariates to the values observed for each observation. For continuous variables, “low” is the 25th percentile, and “high” is the 75th percentile, while for binary variables, “low” is zero, and “high” is one. We used Models 2 and 3 of Table I to calculate the first differences.
Figure 3. Substantive impacts of conflict severity across conflict termination types

$\Delta Pr(\text{T}rials | \text{Conflict severity: 10th to 90th})$  $\Delta Pr(\text{TRC/Rep.} | \text{Conflict severity: 10th to 90th})$

Notes: Dots show the point estimates, and vertical line segments associated with dots show the 95% and 90% confidence intervals.
Figure 4. Substantive impacts of conflict termination across the extent of conflict severity

Notes: Solid lines display the change in the probability of truth commissions and/or reparations associated with a change from Victory to Settlement (left) and from Other Outcomes to Settlement (right). Shaded regions present 90% confidence bands.
<table>
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<tr>
<th></th>
<th>All PCJ</th>
<th>Trial</th>
<th>TRC+Rep.</th>
<th>All PCJ</th>
<th>Trial</th>
<th>TRC+Rep.</th>
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<td>2.41**</td>
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<td>2.38**</td>
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<td>0.41**</td>
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**Notes:** Probit estimates. Robust standard errors are in parentheses: +p < 0.1, *p < 0.05, **p < 0.01. Bargained settlement is the baseline category.
Table II. Testing for different samples.

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<td>(0.42)</td>
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<td>(0.11)</td>
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Notes: Probit estimates. Robust standard errors are in parentheses: \( +p < 0.1 \), \( *p < 0.05 \), \( **p < 0.01 \).
Table III. Who is targeted in trials.

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<td>Rebel</td>
<td>Government</td>
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<td>Government victory</td>
<td>2.294**</td>
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<td>-16.580**</td>
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<td>(0.703)</td>
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<td>Conflict severity</td>
<td>-0.079</td>
<td>0.418*</td>
</tr>
<tr>
<td></td>
<td>(0.103)</td>
<td>(0.177)</td>
</tr>
<tr>
<td>Conflict duration</td>
<td>-0.079</td>
<td>-0.256</td>
</tr>
<tr>
<td></td>
<td>(0.111)</td>
<td>(0.192)</td>
</tr>
<tr>
<td>UN peacekeeping</td>
<td>0.073</td>
<td>-0.435</td>
</tr>
<tr>
<td></td>
<td>(0.643)</td>
<td>(0.997)</td>
</tr>
<tr>
<td>Constant</td>
<td>-2.486</td>
<td>-6.235+</td>
</tr>
<tr>
<td></td>
<td>(1.974)</td>
<td>(3.333)</td>
</tr>
<tr>
<td>Controls</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Observations</td>
<td>273</td>
<td>248</td>
</tr>
<tr>
<td>Log-Likelihood</td>
<td>-114</td>
<td>-92</td>
</tr>
</tbody>
</table>

Notes: Multinomial logit estimates with robust standard errors in parentheses: +p < 0.1, *p < 0.05, **p < 0.01. The dependent variable takes on three values: No trials (the excluded category), Trials against rebels, and Trials against the government.