Wielding the Gavel or Balancing the Scales?
Domestic Legal Systems and Post-Conflict Justice

Authors: Joseph M. Cox and Rachel D. Van Nostrand

Abstract:

This study analyzes the institutional variation across domestic legal systems, with a focus on common law system's adherence to precedent and reduced recourse to judicial deference, as well as on the degree of independence afforded to courts. These institutional qualities of judiciaries provide the opportunity for courts to play a more active role in the implementation of post-conflict justice, increasing uncertainty for other policymakers concerning the ultimate contours of post-conflict justice processes. To reduce such uncertainty, policymakers ensconced in these types of institutional contexts will be less likely to implement post-conflict justice. Using data from the Post-Conflict Justice Dataset, we find that states with common law systems are less likely to pursue and implement post-conflict justice compared to states with civil or Islamic law systems. Moreover, independent courts will be less likely to pursue mixed or restorative forms post-conflict justice, though the impact of judicial independence is weak overall.

Key Words: Civil War; Post-Conflict Justice; Courts; Institutions; Post-Conflict Reconstruction; Conflict Management/Resolution

Word Count: appx. 10,951

Whether through retribution or reconciliation, post-conflict decision makers can rarely avoid confronting whether to punish or to forgive combatants or elites from the previous regime accused of committing wartime atrocities and crimes (Binningsbø, et al. 2012; Olsen, et al. 2010; Kim & Sikkink, 2010; Huntington 1991). States have convened domestic trials and truth commissions to address crimes committed during civil conflicts as well as their legacies (Kim and Sikkink 2010; Sikkink and Walling 2007). Amnesties have been adopted in various forms, including constitutional mandates, legislative actions, and popular referenda. States have created reparations programs to compensate victims for physical and emotional injuries suffered as a result of wartime violence (Adhikari, et al. 2012; Binningsbø, et al. 2012).

The prevalence of post-conflict justice (PCJ) implementation following civil conflicts has generated considerable scholarly research, with previous work finding that the adoption of post-conflict justice can have important consequences for the post-conflict environment. As examples, more severe forms of lustration can help to improve the level of representation in new democracies (Ang and Nalepa 2019); restorative justice can reduce the likelihood of conflict recurrence (Loyle and Appel 2017); and trials with guilty verdicts can help prevent future human rights abuses (Dancy et al. 2019). Yet, decisions concerning the nature, scope, and implementation of post-conflict justice will be constrained by the conditions of the post-conflict environment, which is likely to be suffused with uncertainty and volatility. Therefore, a key question addressed by scholars concerns the determinants of post-conflict justice implementation, with previous studies finding that the decision to pursue post-conflict justice can be driven by conditions of the prior conflict (DeTommaso et al. 2017, Kim and Hong 2019), the potential for economic growth (Appel and Loyle 2012), or the desire to avoid human rights censures from domestic or international actors (Winston 2021, Loyle and Davenport 2016).

Despite the scope of this research, prior work has not addressed whether policymakers' decisions regarding post-conflict justice is influenced by states' legal institutions and judicial organizations, and we contend these factors are an indispensable consideration in explaining and predicting the implementation of post-conflict justice because the tools of post-conflict justice either directly implicate judicial proceedings or are such that they will be amenable to judicial processes. As examples, the legality of amnesties, regardless of the form they may take, remains open to judicial contestation—amnesty provisions have been challenged, nullified, or narrowed through judicial review in several states including Argentina, Indonesia, Honduras, El Salvador, Algeria, and Fiji (Freeman 2009). Trials and truth commissions often directly require the imposition and oversight of judiciaries and judicial actors (Binningsbø, et al. 2012; Cobban 2007); exiles and purges have acquired the attention of international legal experts and been encased in law (Sznajder and Roniger 2007); and amnesties and reparations frequently require memorialization in constitutions, peace agreements, or legislation, the constitutionality of which may be subject to judicial review (Adhikari, et al. 2012; Freeman 2009). Even mechanisms not directly linked to judicial tribunals may often require either legal expertise to sort through procedure or are subjected to judicial review (Adhikari, et al. 2012; Freeman 2009; Bell 2006; Elster 2004). Judicial oversight may be absent at the implementation stage, such as with amnesties or exiles, yet all forms of PCJ can experience judicial influence at later stages of their implementation because they implicate legal rights or powers subject to judicial review. In both Argentina and Chile, amnesty laws were initially supported by the courts, but were later revisited to determine constitutionality (ICTJ 2005, Correa 2017). In Malaysia, guerilla leader Chin Peng challenged his exile numerous times, but was rejected by the Malaysian High Court (Van der Vat 2013). Thus, post-conflict justice can become entangled in legal processes, necessitating research

into how legal institutions may impact the implementation of PCJ and influence the dynamics of the post-conflict environment.

Despite these linkages between legal processes and post-conflict justice, to our knowledge, this study presents an initial foray into the quantitative analysis of certain salient questions arising from this link. How might legal institutions influence efforts to address wartime legacies? Specifically, do legal institutions influence policymakers' decisions to pursue post-conflict justice? Lastly, do the effects, if any, of legal institutions vary across legal systems? This article contributes to our understanding of post-conflict justice and the aftermath of conflict, generally, by pursuing answers to these questions through a large-*N* study of post-conflict states in the post-World War II era.

We argue that post-conflict policymakers recognize the fragility of the post-conflict environment and wish to maintain as much control over public policy as possible in the midst of instability and uncertainty. However, given the legal nature of post-conflict justice processes (Elster 2004), national judiciaries may be called upon to deliberate on the legality and implementation of justice processes. We assume that all forms of post-conflict justice have the potential to be challenged or influenced by the courts, though not all forms of justice may be equally likely to be challenged, which works to produce uncertainty in the PCJ process. Under such circumstances, courts can impact the nature and scope of post-conflict justice; however, the degree to which they do so turns on the institutional context within which judges operate.

In this study, we focus on two institutional qualities of courts: (1) the nature of the legal system within which judicial actors operate and (2) the degree to which these actors enjoy independence from non-judicial actors. We argue the effects of these institutional dimensions turn on the level of input they provide judicial actors in adjudicating the legality and implementation

of post-conflict justice processes. That is, legal institutions imbuing judicial actors with greater discretion in the policymaking process should create greater uncertainty in the minds of policymakers contemplating efforts to pursue post-conflict justice, thereby instilling a reticence to engage in endeavors over which they will have less control. Thus, we anticipate fewer processes of post-conflict justice in these states.

In terms of legal systems, states that incorporate the doctrine of *stare decisis* and reduce the pressures of judicial deference to state activities should be most likely to empower courts to be critical actors in the post-conflict environment. As the power of courts increases relative to non-judicial actors, the uncertainty concerning the form of the eventual implementation of post-conflict justice, which may be altered by judicial intervention, increases and disincentivizes the pursuit of PCJ. Since these legal institutions are generally associated with common law systems relative to civil law or Islamic law systems, our theory posits that non-common law states will be more likely to implement post-conflict justice relative to states with common law systems. In terms of judicial independence, we argue that the degree to which national courts are independent from non-judicial, political actors should also impact the likelihood of post-conflict justice processes being implemented. We suggest that states with either dependent courts or highly independent courts should be most likely to pursue the implementation of post-conflict justice. Ultimately, the empirical analyses support the theoretical logic underpinning our expectations concerning the effects of legal systems, however, they provide little evidence regarding the influence of judicial independence.

This study contributes to the literature's understanding of the dynamics of post-conflict recovery and state-building by analyzing the disparate effects legal institutions may exert on the pursuit and implementation of post-conflict justice. Furthermore, it identifies legal obstacles that

could complicate a post-conflict state's capacity to address the atrocities that may have occurred within the theater of civil war. Lastly, the paper follows the burgeoning "judicialization of politics" literature by explicating certain of the conditions under which national courts influence the implementation of public policy in post-conflict environments.

I. The Fragility of the Post-Conflict Environment

Civil wars prove to be costly ventures for policymakers and combatants, but especially for civilian populations. A conflict could have displaced a state's previous regime, or otherwise necessitated a reconfiguration of the state's political power and institutions (Matanock 2017; Flores and Nooruddin 2012). Civilians may have been displaced or victimized directly by belligerents, imposing a lasting legacy and memory of violence that must be addressed—via retribution, reconciliation, or both (Balcells 2018; Kalyvas 2006); Binningsbø, et al. 2012; Cobban 2007; Humphreys and Weinstein 2007; Kalyvas 2006). The success or failure of policymakers in rectifying the damage in each of these areas is likely to have a lasting impact on the health of the state (Collier, et al. 2008).

The possibility of recurrent war engulfs policymakers as they seek to enact policies to rebuild the state, which can be the difference between peace and war (Flores and Nooruddin 2012, 2009). Policymakers, while cognizant of these benefits, may avoid pursuing justice altogether due to political pressures and possible destabilization (Skaar 1999, Englebert and Tull 2008), financial costs to the already weakened state (Appel and Loyle 2012, DeTommaso, et al. 2017), or from challenges from other elites (Huyse 1995, Hartzell 1999, Nalepa 2010, Escribà-Folch and Wright 2015). Domestic guarantees to pursue post-conflict justice may create expectations among the public that could be used against the government should it fail to fulfill its promises (Appel and Loyle 2012). Backlash may also emerge from belligerents and the international community based

on the government's response or lack thereof (Huyse 1995, Nalepa 2010, Meernik et al. 2010, Adhikari et al. 2012). Policymakers may fear being held accountable when justice mechanisms are taken out of their hands and into the courts (Helmke and Rosenbluth 2009).

Conversely, policymakers may pursue post-conflict justice for nefarious purposes, including "promoting denial and forgetting, perpetuating violence, and legitimating authoritarianism and state repression" (Englebert and Tull 2008, Nalepa 2010, Escribà-Folch and Wright 2015, Loyle and Davenport 2016). Moreover, Governments can propose post-conflict justice without having the needs of victims at heart, instead focusing on how PCJ can shield elites from responsibility.

Governments can selectively use transitional justice to pursue political goals as well. Taiwan used post-conflict justice to increase state legitimacy and regional sovereignty, promote a collective identity, and distance themselves from an authoritarian past (Rowen and Rowen 2017). Sri Lanka prosecuted crimes against women to increase state legitimacy and garner public support, while ignoring accountability for other crimes that would negatively impact the current regime (Loken et al. 2018). These "half measures," or the partial implementation of post-conflict justice, can be used to gain support from domestic and international audiences without investing in comprehensive PCJ (Cronin-Furman 2020).

One view of post-conflict justice could be that state leaders in the post-conflict environment are presented with a menu of options concerning PCJ, and leaders have free reign to select any or all of the mechanisms. In other words, the adoption of post-conflict justice mechanisms can be wholly explained by the intentions of policymakers, negating consideration of constraints that may be imposed upon policymakers by the circumstances of the post-conflict environment. However, the pursuit of post-conflict justice is a costly venture (DeTommaso, et al. 2017), so policymakers will be forced to weigh the relative costs of different policy options. Among other considerations,

these calculations will likely be influenced by the domestic legal institutions in which elites operate, affecting both the cost and feasibility of pursuing certain justice mechanisms.

The literature has found correlations between conflict dynamics and the behavior of policymakers in the post conflict environment in the adoption of post-conflict justice. The issues giving rise to the conflict, the conflict's intensity and severity, the conflict's duration, and how the conflict concluded all impact the likelihood of post-conflict justice adoption and the form it takes (DeTommaso, et al. 2017; Reiter, et al. 2013; Binningsbø, et al. 2012). Conflict dynamics pose as structural conditions pressuring post-conflict decision makers to pursue or avoid post-conflict justice; however, policymakers within these contexts also choose to adopt justice mechanisms to endeavor toward a wide range of goals including social reconciliation, deterring future abuse, and attracting foreign investment (Loyle and Davenport 2016; Appel and Loyle 2012; Sikkink 2011). The increasing prevalence and relevance of justice norms in the international community may indirectly confer political legitimacy on domestic governments which adopt and implement post-conflict justice mechanisms consistent with international standards (Appel and Loyle 2012).[1]

This literature reveals the myriad of factors and pressures influencing decisions to pursue post-conflict justice to address wartime legacies and atrocities. In sum, certain considerations disincentivize post-conflict justice efforts, whereas others induce post-conflict policymakers to implement one or more processes of PCJ. However, we argue the quantitative literature has largely overlooked states' legal structures as key structural factors with the capacity to influence decisions to pursue post-conflict justice, and the next section identifies and discusses the legal institutions we anticipate affecting the implementation of PCJ.

II. Domestic Legal Systems and Post-Conflict Justice

As described at the outset of this study, post-conflict justice processes are often legal in nature (Elster, 2004). Trial processes, whether conducted at the international level or within states, involve judicial processes (Kim and Sikkink 2010; Sikkink and Walling 2007). Courts in a number of states have issued rulings both upholding or abrogating amnesty laws (Freeman 2009). Constitutional courts in several states in Central and Eastern Europe have considered the legality of lustration laws (Nalepa, 2010). Ultimately, the pursuit, implementation, and sustainability of post-conflict justice processes is likely to be filtered through legal processes. That is, while the decision to engage in different forms of post-conflict justice may be spurred by political demands and desires, these examples reflect how its administration is often undertaken through legal methods and institutions. Thus, institutional frameworks created for the administration of justice are innately a mixture of politics and law (Girelli 2017).

What aspects of law should have the greatest effect on decision makers' propensity to pursue post-conflict justice? We focus on two institutional dimensions of states' judicial systems to answer this question. First, we evaluate how the structural differences between common law and non-common law systems incline states with non-common law systems toward post-conflict justice implementation. Second, we argue that the independence of states' judiciaries will influence the degree to which courts will be willing to rule upon the legality or form of post-conflict justice, thereby affecting the decision-making processes of policymakers contemplating PCJ. In the next two subsections, we identify the salient structures of these institutional dimensions of judiciaries and describe our theoretical expectations related to the influence of these structures on the propensity of states to implement post-conflict justice.

A. Legal Systems and Post-Conflict Justice

As Zartner (2012) describes, legal systems influence nearly all aspects of the state and its citizenry:

> Law is a foundational component of society and evolves as society develops. Law not only creates the rules that govern everyday action, but also provides the shared understandings by which people are able to live together in a society. There can be no society without a system of law to regulate the relations of its members with one another. Legal tradition is the embodiment of this set of beliefs. The unique cultural and institutional characteristics of a state's legal tradition thus create certain beliefs about law and appropriate actions under the law that should guide transitional justice efforts.

Domestic legal systems, then, foster an acceptance of norms and expectations among the population as they concern the nature of law and its application to human interactions; however, legal systems vary considerably across space and time, both in terms of their structure and impact (Mitchell and Powell 2011).[2] We follow existing literature in distinguishing among four types of legal systems that allows us to identify the two salient institutions of precedent and judicial deference: common, civil, Islamic law, and mixed law systems.

One of the unique features of a common law system is its adherence to *stare decisis*, where judicial decisions in particular cases create precedent that should apply to future cases involving substantially similar issues of law and sets of facts thereby largely binding the actions judiciaries can take. Consequently, a common law system allows for new rules to be produced from the generalizations made from past legal decisions, where any rule not already specified by legislation could be declared by the courts (Knight and Epstein 1996, Dainow 1966). This gives judiciaries leverage in their past interpretations of the law, which then take on legal weight alongside the written letter of the law (Knight and Epstein 1996, Powell and Wiegand 2010). Last, a common law system recognizes the decisions of the highest courts as generally binding, where court decisions can only be overturned by the court itself or through legislation (Powell and Mitchell 2007). Ultimately, the doctrine of *stare decisis* should give judges in a common law system more

involvement in public policy because precedent carries forward to influence future applications of law.

Conversely, a civil law system does not abide by the doctrine of *stare decisis* but holds legislation rather than the decision of courts as most the binding type of law (Dainow 1966, Powell and Mitchell 2007). A civil law system grants less flexibility to judges and has a greater codification of laws, including those to protect individual rights. Moreover, this type of system prefers more legalized dispute resolution mechanisms that complement the institutions of its system (Powell and Wiegand 2010). Islamic states prefer to engage in dispute resolution that is non-binding, but this is in line with Islamic approaches to conflict resolution and cultural norms rather than evidence of legal ambiguity (Powell and Wiegand 2010, Wiegand 2012, Powell 2019).

An Islamic legal system generally emphasizes religious duties and obligations rather than precedent (Badr 1978, Powell and Mitchell 2007). Relative to the other legal systems, an Islamic legal system is minimally codified and therefore less likely to result in formal judgements, but this system is neither arbitrary nor unsystematic in its approach to justice (Powell and Wiegand 2010). Instead, an Islamic law system is both rational and procedural when examined within the Islamic cultural context (Rosen 1980). These systems are also especially focused on reaching consensus, reconciliation, and resolution, which is not the case in common law systems which have a greater focus on individual justice and punishment (Powell and Wiegand 2010, Powell 2019). Conciliation and mediation are infused in the Islamic legal tradition, while arbitration and adjudication are more likely to be present in secular systems that prefer more binding resolution methods (Powell 2019).

Importantly, particularly in relation to post-conflict justice, these reflect differences between Western and Middle Eastern approaches to conflict resolution and justice (Abu-Nimer 1996). Eastern approaches tend to be focus more on community interests, repairing broken

relationships, and maintaining honor and unity for future generations (Abu-Nimer 1996, Philpott 2007). The traditions within the Abrahamic religions are especially conducive to both nonviolence and peacebuilding, and thus should contribute to the likelihood of Islamic law states to pursue post-conflict justice (Abu-Nimer 2001). Furthermore, these orientations may also influence the type of post-conflict justice pursued, that is, religious influences in transitional justice emphasizing the importance of reconciliation over retribution may link Islamic law systems with restorative forms of justice, contrasting these systems from those incorporating other forms of justice involving trial processes (Philpott 2007).[3]

Ultimately, legal systems vary in a number of ways; however, we argue that two specific institutional characteristics should explain how variation across legal systems impacts the pursuit of post-conflict justice: (1) each system's approach to *stare decisis* and (2) the relationship between the state and the individual embodied in judicial orientations (Mitchell, et al. 2013).[4] As noted above, the doctrine of *stare decisis* encapsulates the idea of judicial precedent—in essence, *stare decisis* holds that judicial decisions rendered in one case carry forward and apply to future cases involving the same or similar law and facts, as in the case of common law systems (Knight and Epstein 1996). S*tare decisis* protects against arbitrary changes in judicial decisions and increases judicial consistency (Nelson 2001). In so doing, s*tare decisis* confers upon judges the latitude to issue rulings on cases before their courts that carry the force of law; thus, judicial interpretation of constitutions, statutes, and regulations carry the force of law. Consequently, judges in systems that incorporate the doctrine of stare decisis have a greater say in the nature and implementation of public policy.

How does *stare decisis* relate to public policy in a post-conflict environment? If a state's legal system enshrines the doctrine of *stare decisis*, it empowers judicial actors with the option to

become active members in the generation of public policy. While policymakers may institute a particular form of post-conflict justice, judges may be able to change the nature and form of the process away from the initial intentions of the non-judicial policymakers, and any deviations from the original intent of the process will apply to future cases through the application of precedent. Furthermore, judicial interventions will occur after the enactment of the process; therefore, the potential for change represented by judicial review will generate an air of uncertainty until a court acts. Uncertainty in the post-conflict environment should be anathema to policymakers given the fragility of the political context. Therefore, the discretion afforded to judges in systems enshrining the doctrine of *stare decisis* may deter policymakers from instituting post-conflict justice processes in cases where they expect judicial intervention—in the absence of precedent, the same pressures should not be an obstacle for decision makers. Since *stare decisis* is an attribute of a common law system, we anticipate states with common law institutions will be less likely to implement post-conflict justice relative to states without these structures.

However, we think a second critical institutional distinction among legal systems impacts post-conflict justice implementation, and this institutional quality arises from the view concerning the relationship between the state and the individual, that is, whether individual rights should be given preeminence over state interests or vice versa (Mitchell, et al. 2013). This relationship identifies a court's role in delineating state power and individuals' rights especially when they clash. One perspective argues that state power is preeminent, and the judiciary is a means to effectuate state law and regulate the citizenry (Mitchell, et al. 2013; Joireman 2001). A separate view holds that individual rights can be subordinated to the state and the duty of the judiciary is to protect individuals' rights from state encroachment (Mitchell, et al. 2013).

According to Mitchell, et al. (2013), states with civil law and Islamic law systems tend to center around the former conception of the relationship between the state and the individual, whereas common law systems developed around the idea of the latter view. Furthermore, they argue that the preference for individual interests over state interests leads common law systems to act as a greater check on executive power, particularly in the realm of human rights. In comparison, civil and Islamic law systems tend to afford greater deference to state power as codified in non-judicial institutions (Scully 1987: 602). Presumptions favoring state power should influence the perspectives of judicial actors, leading to judicial outcomes that involve greater deference to state decisions. Should a citizen, in a hypothetical case, bring an action against the government challenging an aspect of post-conflict policy, the system's influence on the judge may swing the case toward the state's position or the individual's claim depending on the prominence given to the legal interest given prominence in the system. Thus, in systems predisposed toward government policies, post-conflict elites should have greater confidence in their judiciaries to eschew interventions in the application of public policy.

> *Hypothesis 1: Post-conflict states with a common law legal system will be less likely to pursue post-conflict justice as compared to post-conflict states with civil law or Islamic law systems.*

B. Judicial Independence and Post-Conflict Justice

While the type of legal system will work to either increase or restrict judicial discretion, the degree to which courts are independent may similarly impact the uncertainty for policymakers and the degree to which state and judicial interests align. Judicial independence constitutes the ability of courts to make decisions independently of external, political influences (including from other government branches) without fear of losing their jobs or their lives (Tiede 2006, Helmke

and Rosenbluth 2009, Ríos-Figueroa and Staton 2014, Linzer and Staton 2015).[5] Judicial independence assumes that judges are able to rule on all cases outlined in law and that the legislative and executive branches comply with and implement judicial decisions (Feld and Voigt 2002, Helmke and Rosenbluth 2009, Ríos-Figueroa and Staton 2014). This influence may also be measured to the degree to which the executive complies with, or otherwise directly challenges decisions made by lower and higher courts (Ríos-Figueroa and Staton 2014, Linzer and Staton 2015).

Other branches of government may perceive independent courts as an impediment to pursuing favorable policies and may therefore become actively hostile toward the courts (Helmke and Rosenbluth 2009). Independent judiciaries may be more capable of keeping states accountable for pursuing post-conflict justice in cases where they might otherwise choose to eschew justice altogether. Ultimately, policymakers will view any discretion or independence afforded to judicial actors over public policy as an increased cost associated with the promulgation of post-conflict justice. *De facto* judicial independence reduces the likelihood of repression, alongside common law legal systems which instill more independence to courts through *stare decisis* (Hill and Jones 2014, Mitchell, Ring, and Spellman 2013, Powell and Staton 2009). Common law systems may reduce the likelihood of repression, while increasing the uncertainty policymakers face when pursuing post-conflict justice.

Independence does not mean that courts will always oppose the state (Iaryczower et al. 2002). Courts can be complicit in crimes of the past, actively aiding the government in carrying out repression rather than opposing it. Spanish courts were directly involved in the repression of the Franco regime, and were reluctant to pursue trials that would highlight their own involvement (Aguilar 2013). Authoritarian regimes in African states (with common law backgrounds) used

courts as an extension of their repressive capacity, granting the incumbent regime more legitimacy and turning the public against challengers (Shen-Bayh 2018). Courts vary in terms of their level of complicity and cooperation within repressive regimes, though this has remained difficult to detect and measure (Shen-Bayh 2018). Legal norms often persist when courts are heavily influenced by the government, suggesting that complicit courts may still abide by legal norms.

Courts in authoritarian systems, which tend to have low levels of independence, struggle to have an impact on domestic politics (Moustafa 2007). However, there is evidence that "dependent" or nominally independent courts within authoritarian regimes can also explain important political outcomes (Sievert 2018; Moustafa 2007, 2014; Ginsburg and Moustafa 2008). State leaders can use courts to implement potentially controversial policies that will both direct nascent ire toward judicial systems while also providing an argument that these policies have the veneer of legality (*ibid.*). When courts affirm or promulgate policy through judicial adjudications, they place a legal imprimatur on such policies. If leaders can ensure judicial outcomes because domestic judicial actors work in environments of low judicial independence, policymakers will be more likely to pursue and implement post-conflict justice.

Taken together, existing work on judicial politics suggests that both independent courts and dependent courts may incline post-conflict states to implement post-conflict justice, albeit through different incentive structures. Based upon this theoretical framework, the following hypothesis can be derived:

> *Hypothesis 2: Post-conflict states with low levels of judicial independence and post-conflict states with high levels of judicial independence will be more likely to implement post-conflict justice as compared to post-conflict states with moderate levels of judicial independence.*

III. Post-Conflict Justice and Common Law in Nepal

Before reaching our empirical analyses, we briefly discuss Nepal as an illustrative case as to how courts can dictate the scope of post-conflict justice. Nepal is a common law system where PCJ legislation was adopted after the end of the civil war in 2006 (Urscheler 2012). The Comprehensive Peace Agreement in 2006 and the Transitional Justice Act in 2014 both promised justice to victims, but neither were carried out (Human Rights Watch). The government was met with continued resistance from the Supreme Court over the type, scope, and implementation of these PCJ mechanisms. Nepal helps to illustrate how judiciaries in common law states can challenge the government throughout the post-conflict justice process, increasing the costs for leaders who try and pursue post-conflict justice, which may discourage leaders in common law states from pursuing PCJ at all.

The Nepali Supreme Court has been widely recognized as a progressive human rights advocate, pushing for post-conflict justice in the face of government resistance (Human Rights Watch). The Transitional Justice Act was especially controversial due to its stipulation that crimes like torture, rape, and forced disappearances would be eligible for amnesties (*ibid*). In 2015, the Supreme court rejected the government's right to grant amnesties for these crimes, which the government petitioned, and was again denied in 2020 (*ibid*). The government attempted to use the court's reliance on precedent to force the court to overturn its own rulings, which would have allowed the government to sidestep its own responsibility to provide accountability (*ibid*).

Government actors were aware of the domestic legal system in place, solidifying the notion that policymakers' have incentives to be aware of domestic institutions that could influence post-conflict justice. The Supreme Court acted independently of state preferences while maintaining its previous rulings, becoming an active participant in the creation of public policy.

Judicial independence in Nepal has increased to slightly above the global average over the last thirty years, though others have suggested that judicial independence is decreasing due to the process of re-democratization - to what extent this impacts PCJ is unclear (Linzer and Staton 2015, Jeffery and Timilsina 2021). While it is hard to say conclusively whether the behavior of Nepal's courts can be solely or in part attributed to the legal system or to judicial independence, these two attributes have potentially allowed the court to shape how the government pursues post-conflict justice. In other common law states, this may act as a deterrent to pursuing post-conflict justice at all.

IV. Research Design

The theoretical framework and empirical analysis in this paper seek to understand how the legal context in which policymakers are embedded in post-conflict environments shapes, constrains, and determines the likelihood and nature of post-conflict justice. In seeking an operationalization of post-conflict justice implementation, which will be our dependent variable, we begin with the Post-Conflict Justice dataset created by Binningsbø, et al. (2012), which includes data for trials, truth commissions, purges, exiles, amnesties, and reparations implemented in the five-year period following a sample of civil wars that occurred between 1946 and 2007.

Ultimately, we are interested in testing the effects of domestic legal institutions on the implementation of post-conflict justice, regardless of its form. To that end, we leverage a dichotomous indicator in the Post-Conflict Justice dataset that indicates whether a state implemented one or more forms of post-conflict justice ("1") or abstained from pursuing post-conflict justice ("0").

However, considering the different forms post-conflict justice can take, we also test the effects of legal institutions on the propensity of states to pursue specific types of justice, dividing post-conflict justice processes into retributive and restorative processes (DeTommaso, et al. 2017).[6] We follow DeTommaso, et al. (2017) in constructing a four-point scale of post-conflict justice that identifies four types of regimes: the absence of post-conflict justice, retributive justice, mixed justice, and restorative justice. We use data from the Post-Conflict Justice dataset (Binningsbø, et al. 2012) to create the different categories of post-conflict justice regimes. In line with the literature, retributive justice includes trials, exiles, and purges, whereas restorative justice mechanisms take the form of amnesties, reparations, and truth commissions (DeTommaso, et al. 2017; Binningsbø, et al. 2012). If present following conflict, we assign restorative mechanisms a positive "1" and retributive forms of justice a negative "1." We then add the results for each individual civil war, which yields either a positive or negative integer. If positive, policymakers are deemed to have adopted restorative justice; however, if the integer is negative, the data codes the post-conflict government as having pursued retributive justice. Zeroes in the data may refer to the absence of post-conflict justice or instances in which the number of retributive mechanisms equates with the number of restorative mechanisms. If policymakers do not adopt any form of justice, we code the cases as an "absence," whereas a zero occurring as a result of multiple forms of justice being adopted is coded as a "mixed" regime. Figure 1 depicts the distribution of the post-conflict justice regimes variable.

[Figure 1]

One of our key independent variables focuses on whether states maintain common law legal structures or not. We leverage Mitchell and Powell's (2011), and Mitchell, et al.'s (2013) data and conceptualization that categorize states' legal systems into common law, civil law,

Islamic law, or mixed law systems.[7] According to our theoretical framework, the influence of legal systems on the implementation of post-conflict justice is attributable to the distinction between states with common law structures and those with non-common law systems. Therefore, we combine civil law, Islamic law, and mixed law systems into a single category, creating a dichotomous variable with common law systems as the baseline category.

Figure 2 shows the distribution of different types of post-conflict justice implementation across our legal systems measure. The left-hand graph in Figure 2 depicts post-conflict justice implementation, whereas the right-hand graph shows the degree to which the four types of post-conflict justice regimes are distributed across the legal systems in the sample. In terms of pure implementation, non-common law states make up the greater proportion of states in which post-conflict justice was implemented following civil conflict. Within the subsample of common law states, there are more states abstaining from post-conflict justice than implementing any one of the six forms of justice. A similar dynamic is depicted in the right-hand side of Figure 2. Across the three types of post-conflict justice regimes, non-common law states exhibit significantly more instances of post-conflict justice implementation than common law states. Within the subsample of common law states, the modal category in Figure 2 for these types of states reflects the absence of post-conflict justice.

[Figure 2]

Our second independent variable of interest is the independence of post-conflict states. To test the hypotheses associated with levels of judicial independence, we use Linzer and Staton's (2015) latent measure of judicial independence, which is bounded between "0" and "1" with higher values indicating greater levels of independence.[8] Since Hypothesis 2 posits a U-shaped relationship between judicial independence and the implementation of post-conflict justice, we

include a squared term of this measure in the analyses. We separated this measure into quartiles and mapped the frequency distribution of each category across the two dependent variables in the study, and the results are presented in Figure 3. In terms of implementation of any form of post-conflict justice, Figure 3 provides preliminary evidence for the hypothesis that states with low levels of judicial independence will be more likely to implement post-conflict justice than states with high levels of independence. This description also extends to the descriptive data presented in the right-side of Figure 3. Interestingly, the hypothesis arguing for a U-shaped relationship finds modest, descriptive evidence in relation to mixed justice regimes.

[Figure 3]

The literature identifies several factors that have a bearing on the implementation of post-conflict justice. First, there is considerable evidence indicating the importance of the previous conflict in explaining the pursuit of justice following the war, and we include several control variables in line with this previous literature (DeTommaso, et al. 2017; Reiter, et al. 2013; Binningsbø, et al. 2012). We account for the nature of the issues separating the warring parties, the length of the conflict, the intensity of the hostilities, the severity of the casualties and how the conflict concluded. The data for these variables are taken from the UCDP/PRIO Armed Conflict dataset ("ACD") (Gleditsch, et al. 2002). In terms of the issues giving rise to war, we include a dichotomous measure which distinguishes secessionist conflicts ("1") from issues over government control ("0"). The duration of each civil conflict is captured in the log-transformed number of days the conflict lasted. The severity of the civil conflict variable measures the total number of battle-related deaths and accounts for a non-linear effect by taking the natural log of these data. We include an indicator for genocide or politicide from the Political Instability Task Force to account for violence characterizing the civil conflict (Marshall, et al. 2018). We account

for the material capabilities of the warring parties leveraging data from the UCDP's Non-State Actor dataset (Cunningham, et al. 2009).

Using the UCDP Conflict Termination ("CT") dataset (Kreutz 2010), we account for the form conflict termination took by distinguishing peace agreements, ceasefires, outright victories, and instances of low activity between the warring parties—each is included in the model as a dichotomous variable with "1" identifying the particular form of conflict termination and "0" otherwise. We include the presence of a United Nations peacekeeping mission in the post-conflict state, the data for which we leverage from Rustad and Binningsbø (2012). The inclusion of this measure should proxy for the influence of international pressure on domestic elites to pursue some form of post-conflict justice. We include a measure for the occurrence of mediation attempts undertaken during the civil conflicts alluded to in the sample, using data from the Civil Wars Mediation dataset (DeRouen and Bercovitch 2012; DeRouen, et al. 2011).

The models also include controls for salient state characteristics. First, democratic norms typically demand the resolution of political competition and conflicts be carried out through peaceful means, that is, negotiation and compromise is preferable to violence and conflict (Bayer 2010; Mitchell 2002). This may include an inherent bias toward restorative forms of justice intended to bring together belligerents, adversaries, and society to remedy the discord separating competing factions in the previous conflict. The post-conflict state's regime type is identified using the Polity index, which places states on a 21-point scale bounded by "stable autocracies" at -10 and "stable democracies" at a 10 (Marshall, et al. 2018). Second, the implementation of post-conflict justice, particularly in the form of trials, often proves to be an expensive pursuit (*see* DeTommaso, et al. 2017). Post-conflict states with greater levels of pecuniary stability are better positioned to facilitate and sustain the implementation of post-conflict justice mechanisms. To

account for this factor, the analysis leverages GDP per capita data generated by the Maddison Project Database (2018). We use the natural log of each post-conflict state's GDP per capita to account for the diminishing effect of higher economic levels. Lastly, we account for two aspects of states' socio-demographic characteristics, leveraging data from the Maddison Project Database (2018) to account for states' populations and data from the Ethnic Power Relations dataset (Wimmer, et al. 2009) to measure ethnic diversity in the states in the sample.

V. Analysis

To test our hypotheses, we undertake two separate analyses. The first analyzes the effects of legal institutions on the implementation of post-conflict justice *writ large* with a logit estimator. The second analysis focuses on the effects of legal institutions on different types of post-conflict justice regimes using a multinomial logistic estimator. The results presented below include robust standard errors clustered on each state in the sample.

The analyses begin with the overall implementation of post-conflict justice with Figure 4 presenting the results of the logit regression analysis. As depicted in Figure 4, the indicator for non-common law systems has a statistically significant, positive effect on the implementation of post-conflict justice. From these results, we infer that post-conflict states that do not incorporate common law features will be more likely to implement a form of post-conflict justice than states characterized by common law legal institutions. These empirics provide evidence in support of Hypothesis 1.

Turning to the second hypothesis focused on the anticipated effects of judicial independence, the squared term for the judicial independence measure is in the expected direction, suggesting a U-shaped relationship. However, this indicator does not attain statistical significance

at conventional levels; therefore, we are unable to conclude that the actual effect of judicial independence is different from zero. Consequently, the findings presented in Figure 4 do not provide evidentiary support for Hypothesis 2.

[Figure 4]

Given the nature of the logit estimator, the results in Figure 4 cannot be interpreted as direct, substantive effects of the various independent variables on the likelihood of post-conflict justice implementation. Therefore, we calculated the marginal effect for implementation when moving from a state with common law structures to a non-common law state, and the result is presented in Figure 5. In essence, according to Figure 5, the effect of moving from a state adhering to common law principles to one that does not result in a nearly 40% increase in the likelihood that post-conflict justice will be implemented.

[Figure 5]

Figures 4 and 5 reveal the salience of legal institutions in the occurrence of justice methods in the wake of civil conflict; however, these efforts do not evaluate whether such legal institutions have nuanced effects in terms of influencing the type of justice implemented. To that end, Figure 6 presents the results from a multinomial logistic regression analysis that evaluates how legal institutions affect the implementation of specific types of justice regimes. Ultimately, Hypothesis 1 finds additional support in the findings presented in Figure 6, as non-common law states are more likely to implement post-conflict justice, regardless of the type of justice regime, relative to common law states. Described in another way, common law states are likely to avoid justice in the wake of war relative to states that do not incorporate common law principles into their legal system. Notably, the effect of non-common law states on the likelihood of the implementation of

a retributive justice regime attains statistical significance at the 0.1 level, whereas the results for mixed and restorative justice regimes reach the 0.01 level of statistical significance. Thus, while the results in Figure 6 bolster those depicted in Figure 4, the influence of legal systems appears more salient in terms of implementing restorative forms of justice or a combination of methods of post-conflict justice.

In addition, the results in Figure 6 provide support for Hypothesis 2; however, these results suggest a more muted effect for judicial independence when compared to the results attributable to domestic legal systems. While the distinction between legal systems influences the implementation of each type of post-conflict justice regime, the anticipated effect of the squared term for judicial independence has positive and statistically significant effect only in relation to the implementation of mixed and restorative forms of justice; however, the impact of the squared term is only statistically significant at the 0.1 level in relation to restorative justice regimes. Taken together, the findings in Figures 4 and 6 present a relatively murky portrait of the relationship between judicial independence and post-conflict justice, with Hypothesis 2 finding modest support in the results depicted in Figure 6.

[Figure 6]

Due to the machinery of multinomial logistic regression, the coefficients presented in Figure 6 cannot be interpreted as direct effects of the various measures on the implementation of post-conflict justice. To evaluate the substantive impacts of legal institutions on post-conflict justice regimes, Figure 7 depicts the marginal effects for the dichotomous measure distinguishing different types of legal systems. Second, we calculate the predicted probabilities for the values of judicial independence in the sample and present them in Figure 8.

Looking first at the marginal effects for states with non-common law states, we find that movement from common law states to non-common law states leads to more than a 50% decrease in the probability of a post-conflict state eschewing justice. However, the strongest, substantive effect in terms of the specific regime implemented resides with restorative justice regimes. Specifically, the transition from a common law state to a non-common law state increases the likelihood of restorative justice being pursued in the post-conflict period by approximately 40%.

[Figure 7]

Turning next to Figure 8, which depicts the substantive effects associated with judicial independence, the probability of a post-conflict state deciding against post-conflict justice increases as its independence increases, with the top-end values on the independence measure yielding a null, substantive effect. The opposite effects are present when evaluating the substantive influence of judicial independence on mixed and restorative justice regimes, that is, states with highly dependent courts are more likely to implement either a mixed justice regime or a restorative justice regime relative to states with more independent courts. Characterized in a different way, the probability of a post-conflict state implementing either type of justice regime decreases as the state's judicial system becomes more independent.

[Figure 8]

[Figure 9]

VI. Conclusion

Among the many issues confronting post-conflict policymakers is how the state and its communities reckon with wartime legacies and atrocities. Notwithstanding the manifestations of

post-conflict justice, these processes involve the creation and implementation of legal rules and procedures, thereby potentially implicating existing legal institutions. Our analyses demonstrate how states' legal systems impact their likelihood to implement post-conflict justice, where states with common law systems are less likely to pursue post-conflict justice relative to states with either civil or Islamic law systems. Interestingly, the variation in states' legal systems proved to be a better indicator of post-conflict justice implementation than the degree of judicial independence characterizing those states' judiciaries.

The conclusions we draw from the empirical findings advocate for future research concerning the effects of legal systems in post-conflict environments. That is, subsequent research should delve into whether the institutional characteristics of different domestic legal systems influence other policy domains in a manner like the effect on post-conflict justice—many legislative and constitutional endeavors concerning economic or political policies are as likely to be open to judicial review as matters of post-conflict justice. Second, many scholars, in applying a bargaining model to conflict recurrence, argue that credible commitment problems are the fulcrum dividing war from peace, and judicial independence, as a constraint on executive action, has been used as a proxy for good governance and leveraged to overcome credible commitment problems (Walter 2015). However, the literature has often not integrated domestic legal systems into the bargaining model of civil war. Elite interests in policy control may clash with efforts to institute credible commitments between the government and rebel groups with domestic legal systems playing the mediator role. Therefore, future research could inquire into whether one form of legal system provides a better solution to credible commitment problems.

In conclusion, the motivations and intentions that underlay decisions to adopt justice mechanisms remain important areas of scholarly inquiry because they influence the ways in which

post-conflict states reckon with their wartime legacies. Ultimately, due to the fragile stability following conflict, policymakers will want control over the pursuit and implementation of post-conflict justice, which non-common legal systems can provide. Knowing how domestic legal systems influence inherently legal processes of justice may enable policymakers and scholars to better chart a safe passage through the waters of the post-conflict environment.

Notes

1. Policymakers must address whether wartime atrocities should be prosecuted and punished, or whether forgiveness should be pursued (Dancy 2018). Sikkink (2011) describes a "justice cascade" in which norms within the international community shifted from providing amnesties to abusive regimes, while a concurrent branch of scholarship emphasizes the importance of peace facilitated by amnesties and related policies, leading to the "peace versus justice" debate (Sikkink and Kim 2013; Dancy 2018; Freeman 2009). Peace position advocates argue that fearing post-war prosecution, belligerents will try to avoid the potential for prosecution while peace position advocates argue that the provision of amnesties to warring parties should be effective in bringing combatants to the negotiating table (*ibid.*). The decision to pursue peace versus justice may result in debates among elites and the public over the appropriate course of action, which may require the judiciary to arbitrate on both the legality of post-conflict justice and how it should be implemented.

2. Differences across legal systems impact the propensity of states to adopt international law (Powell and Staton 2009), to operate within international tribunals (Powell 2013a, 2013b; Mitchell and Powell 2009;

Powell and Mitchell 2007), to resolve international disputes through non-violent means (Powell 2015; Fattore 2014; Powell and Wiegand 2010), and to protect human rights (Mitchell, et al. 2013).

3. The focus of Islamic law systems on repairing harm and healing relationships suggests that these systems are more likely to pursue PCJ and should prefer restorative over retributive forms of justice. Table M in the appendix presents a regression analysis with Islamic law systems as the baseline category, which finds that these states are more likely to pursue restorative forms of justice as compared to common law or civil law counterparts.

4. While other institutional qualities like *bona fides (*good faith in contracting*)* and *pacta sunt servida* (keeping promises) are important for differentiating between legal systems (Mitchell and Powell 2011), we anticipate these characteristics to have less of an impact on PCJ.

5. Often, scholars conceptualize judicial independence as either *de jure* (institutional independence) or *de facto* (independence in practice) (Linzer and Staton 2015). In this study, we focus on *de facto* judicial independence.

6. While the individual processes involved in these different post-conflict justice regimes differ in form (Loyle and Appel 2017; Binningsbø, et al. 2012; Olsen, et al. 2010), we argue they are all amenable to legal processes and influences, leading to consistent effects of common law institutions (Elster 2004). We use the four-category variable as a different means to test the same underlying theoretical expectations.

7. The doctrine of *stare decisis* and the relationship between state power and individual rights both differentiate legal systems and drive our theoretical expectations. Mitchell and Powell (2011) and Mitchell, et al. (2013) highlight these two institutional dimensions in outlining the differences between legal systems; therefore, the data in those studies should be an effective tool to use in testing our theoretical expectations.

The original data begin in 1976; however, we supplement these data for observations prior to 1976 to align with the post-conflict justice data by reviewing country reports promulgated by Brill through the Foreign Law Guide. Page 6 in the appendix discusses this endeavor.

8. As we discuss on pages 14 through 15, judicial actors may be complicit in repression and violence against domestic actors (Shen-Bayh 2018; Pereira 2008). Trials may be used to target internal rivals of state elites, and complicit judiciaries may increase the likelihood of retributive forms of justice (Shen-Bayh 2018). Judicial complicity may open judicial actors to scrutiny and accountability; therefore, judges may wish to assist policymakers in pursuing PCJ processes that can shield actors from accountability, such as amnesties. Although related to judicial independence, we believe judicial complicity is a separate characteristic of courts for two reasons. First, judicial independence relates to the degree to which judicial decisions are influenced by non-judicial, political actors coupled with the likelihood of external actors enforcing judicial decisions (*see* Linzer and Staton 2015), whereas we view judicial culpability as involving the active participation of judicial actors in the repressive activities of a state. Second, the theoretical foundation generating Hypothesis 2 relies on the level of judicial independence in the post-conflict environment in which decisions concerning the implementation of PCJ are occurring. Conversely, judicial complicity would impact post-conflict justice,

if at all, through the past behavior of judicial actors having an influence on their post-conflict decisions concerning the implementation of different justice processes. Notwithstanding these differences, we believe the theoretical expectations concerning judicial (in)dependence and judicial complicity would mirror one another, that is, post-conflict justice is likely in states with low levels of judicial independence, due to the relative lack of judicial pushback on state policies, and in states with high levels of judicial complicity, based upon the logic described on pages 14 through 15 and at the outset of this endnote.

The potential complicity of judges should be accounted for, however, to our knowledge, there is no cross-national dataset to account for judicial complicity. Since our theoretical expectations would be consistent across judicial independence and complicity, we do not think the absence of an independent measure for judicial complicity casts doubt on our findings.

9. "CL" refers to common law systems whereas "Non-CL" denotes non-common law systems.

10. The marginal effects in Figures 5 and 7 along with the predicted probabilities depicted in Figure 8 are calculated for anocratic states embroiled in a civil conflict concerning the control of the central government while holding continuous variables at their means and categorical variables at their modal categories.

References

Abu-Nimer, Mohammed. 1996. “Conflict Resolution in an Islamic Context: Some Conceptual Questions.” *Peace & Change* 21(1): 22–40.

———. 2001. “A Framework for Nonviolence and Peacebuilding in Islam.” *Journal of Law and Religion* 15(1): 217–65.

Adhikari, Prakash, Wendy L. Hansen, and Kathy L. Powers. 2012. “The Demand for Reparations: Grievance, Risk, and the Pursuit of Justice in Civil War Settlement.” *Journal of Conflict Resolution* 56 (2): 183-205.

Aguilar, Paloma. 2013.“Judiciary Involvement in Authoritarian Repression and Transitional

Justice: The Spanish Case in Comparative Perspective.” *International Journal of Transitional Justice* 7(2): 245–66.

Allan, T. R.S. 2006. “Human Rights and Judicial Review: A Critique of ‘Due Deference.’”

Cambridge Law Journal 65(3): 671–95.

Ang, Milena, and Monika Nalepa. 2019. “Can Transitional Justice Improve the Quality of Representation in New Democracies?” *World Politics* 71(4): 631–66.

Appel, Benjamin J., and Cyanne E. Loyle. 2012. “The Economic Benefits of Justice: Post-Conflict Justice and Foreign Direct Investment.” *Journal of Peace Research* 49 (5): 685-699.

Badr, Gamal M. 1978. “Islamic Law: Its Relation to Other Legal Systems. *American Journal of Comparative Law*26(2): 187-198.

Balcells, Laia. 2018. “Dynamics of Internal Resettlement during Civil War: Evidence from Catalonia (1936-39).” Journal of Peace Research 55 (2): 236-251.

Bayer, Resat. 2010. “Peaceful Transitions and Democracy.” *Journal of Peace Research* 47(5): 535-546.

Bell, Christine. 2006. “Peace Agreements: Their Nature and Legal Status.” *American Journal of International Law* 100 (2): 373-412.

Binningsbø, Helga M., Cyanne E. Loyle, Scott Gates, and Jon Elster. 2012. “Armed Conflict and Post-Conflict Justice, 1946-2006: A Dataset.” *Journal of Peace Research* 49 (5): 731-740.

Cheibub, Jose A., Jennifer Gandhi, and James R. Vreeland. 2010. “Democracy and Dictatorship Revisited.” *Public Choice* 143 (1): 67-101.

Clark, Janine N. 2008. “The Three Rs: Retributive Justice, Restorative Justice, and Reconciliation.” *Contemporary Justice Review* 11 (4): 331-350.

Cobban, Helena. 2007. Amnesty after Atrocity? Healing Nations after Genocide and War Crimes. Boulder, CO: Paradigm Publishers.

Collier, Paul, Anke Hoeffler, and Mans Soderbom. 2008. “Post-Conflict Risks.” *Journal of Peace Research* 45 (4): 461-478.

Correa, Cristián. 2017. “Two Judgments in Chile Mark Progress in Prosecuting State Agents for Enforced Disappearances.” *International Center for Transitional Justice*, www.ictj.org/news/judgments-chile-progress-prosecuting-state-disappearances.

Cronin-Furman, Kate. 2020. “Human Rights Half Measures: Avoiding Accountability in Postwar Sri Lanka.” *World Politics* 72(1): 121–63.

Dainow, Joseph. 1966. “The Civil Law and the Common Law: Some Points of Comparison.” *The American Journal of Comparative Law* 15(3): 419.

Dancy, Geoff. 2018. “Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace.” *International Organization* 72 (2): 387-421.

Dancy, Geoff et al. 2019. “Behind Bars and Bargains: New Findings on Transitional Justice in Emerging Democracies.” *International Studies Quarterly* 63(1): 99–110.

Dancy, Geoff, and Veronica Michel. 2016. “Human Rights Enforcement from Below: Private Actors and Prosecutorial Momentum in Latin America and Europe.” *International Studies Quarterly* 60 (1) :173-188.

Davies, Victor. 2008. “Postwar Capital Flight and Inflation.” *Journal of Peace Research* 45 (4): 519-537.

DeTommaso, Meghan M., Mario Schulz, and Steve B. Lem. 2017. “Choices of Justice: Effects of Civil War Termination on Postconflict Justice Mechanisms Implemented by the State.” *International Journal of Transitional Justice* 11 (2): 218-238.

Elster, Jon. 2004. Closing the Books: Transitional Justice in Historical Perspective. Cambridge: Cambridge University Press.

Englebert, Pierre, and Denis M. Tull. 2008. “Postconflict Reconstruction in Africa: Flawed Ideas about Failed States.” *International Security* 32(4): 106–39.

Escribà-Folch, Abel, and Joseph Wright. 2015. “Human Rights Prosecutions and Autocratic Survival.” *International Organization* 69 (2): 343–73.

Eylon, Yuval, and Alon Harel. 2006. “The Right to Judicial Review.” *Virginia Law Review* 92(5): 991–1022.

Fattore, Christina. 2014. “Domestic Legal Traditions and the Dispute Settlement Body: Are Certain States More Litigious than Others?” *Journal of International Trade Law and Policy* 13 (2): 123-135.

Feld, Lars P., and Stefan Voigt. 2003. "Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators." *European Journal of Political Economy* 19 (3): 497–527.

Flores, Thomas E., and Irfan Nooruddin. 2012. "The Effect of Elections on Postconflict Peace and Reconstruction." *Journal of Politics* 74 (2): 558-570.

———. 2009. "Democracy under the Gun: Understanding Postconflict Economic Recovery." *Journal of Conflict Resolution* 53 (1): 3-29.

Freeman, Mark. 2009. Necessary Evils: Amnesties and the Search for Justice, Cambridge, UK: Cambridge University Press.

Garoupa, Nuno, and Tom Ginsburg. 2015. Judicial Reputation: A Comparative Theory, Chicago, IL: University of Chicago Press.

Gibson, James L., and Gregory A. Caldeira. 2003. "Defenders of Democracy? Legitimacy, Popular Acceptance, and the South African Constitutional Court." *Journal of Politics* 65 (1): 1-30.

Moustafa, Tamir, and Tom Ginsburg. 2008. "Introduction: The Functions of Courts in Authoritarian Politics." In Rule by Law: The Politics of Courts in Authoritarian Regimes, eds. Tom Ginsburg and Tamir Moustafa. Cambridge University Press: 1-22.

Girelli, Giada. 2017. Understanding Transitional Justice: A Struggle for Peace, Reconciliation, and Rebuilding, London: Palgrave Macmillan.

Gleditsch, Kristian S. 2002. "Expanded Trade and GDP Data." *Journal of Conflict Resolution* 46 (5): 712-724.

Gleditsch, Nils Petter, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Havard Strand. 2002. "Armed Conflict 1946-2001: A New Dataset." *Journal of Peace Research* 39 (5): 615-637.

Hartzell, Caroline A. 1999. “Explaining the Stability of Negotiated Settlement to Intrastate Wars.” *Journal of Conflict Resolution* 43 (1): 3–22.

Hegre, Havard. 2014. “Democracy and Armed Conflict.” *Journal of Peace Research* 51 (2): 159-172.

Hegre, Havard, and Havard M. Nygard. 2015. “Governance and Conflict Relapse.” *Journal of Conflict Resolution*59(6): 984-1016.

Helmke, Gretchen, and Frances Rosenbluth. 2009. “Regimes and the Rule of Law: Judicial Independence in Comparative Perspective.” *Annual Review of Political Science* 12 (1): 345–66.

Humphreys, Macartan, and Jeremy M. Weinstein. 2007. “Demobilization and Reintegration.” *Journal of Conflict Resolution* 51 (4): 531-567.

Huntington, Samuel P. 1991. The Third Wave: Democratization in the Late Twentieth Century, Norman, OK: University of Oklahoma Press.

Huyse, Luc. 1995.“Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past.” *Law & Social Inquiry* 20 (1): 51–78.

Iaryczower, Matias, Pablo T. Spiller, and Mariano Tommasi. 2002. “Judicial Independence in Unstable Environments, Argentina 1935-1998.” *American Journal of Political Science* 46 (4): 699.

International Center for Transitional Justice (ICTJ). 2005. “ACCOUNTABILITY IN ARGENTINA: 20 Years Later, Transitional Justice Maintains Momentum.”

Jeffery, Renée, and Bikram Timilsina. 2021. “Re-Democratising Nepal: Transitional Justice and the Erosion of Judicial Independence.” *Contemporary Politics* (May): 1–22.

Joireman, Sandra F. 2004. “Inherited Legal Systems and Effective Rule of Law.” *Journal of Modern African Studies* 39 (4): 571-596.

Kalyvas, Stathis N. 2006. The Logic of Violence in Civil War, Cambridge, UK: Cambridge University Press.

Kim, Nam Kyu, and Mi hwa Hong. 2019. "Politics of pursuing Justice in the Aftermath of Civil Conflict." Journal of Conflict Resolution 63(5): 1165-92.

Kim, Hunjoon, and Kathryn Sikkink. 2010. "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries." *International Studies Quarterly* 54 (4): 939-963.

Knight, Jack, and Lee Epstein. 1996."The Norm of Stare Decisis." *American Journal of Political Science* 40(4): 1018–35.

Kreutz, Joakin. 2010. "How and When Armed Conflicts End: Introducing the UCDP Conflict Termination Dataset." Journal of Peace Research 47 (2): 243-250.

Linzer, Drew A., and Jeffrey K. Staton. 2015. "A Global Measure of Judicial Independence, 1948-2012." *Journal of Law and Courts* 3 (2): 223-256.

Loken, Meredith, Milli Lake, and Kate Cronin-Furman. 2018. "Deploying Justice: Strategic Accountability for Wartime Sexual Violence." *International Studies Quarterly* 62(4): 751–64.

Loyle, Cyanne E., and Benjamin J. Appel. 2017. "Conflict Recurrence and Postconflict Justice: Addressing Motivations and Opportunities for Sustainable Peace*." International Studies Quarterly* 61 (3): 1-14.

Loyle, Cyanne E., and Christian Davenport. 2016. "Transitional Injustice: Subverting Justice in Transition and Postconflict Societies." *Journal of Human Rights* 15 (1): 126-149.

Matanock, Aila M. 2017. "Bullets for Ballots: Electoral Participation Provisions and Enduring Peace after Civil Conflict." *International Security* 41 (4): 93-132.

McBride, Michael, Gary Milante, and Stergios Skaperdas. 2011. "Peace and War with Endogenous State Capacity." *Journal of Conflict Resolution* 55 (3): 446-468.

Meernik, James D., Angela Nichols, and Kimi L. King. 2010. "The Impact of International Tribunals and Domestic Trials on Peace and Human Rights after Civil War." *International Studies Perspectives* 11 (4): 309–34.

Michel, Veronica, and Kathryn Sikkink. 2013. "Human Rights Prosecutions and the Participation Rights of Victims in Latin America." *Law and Society Review* 47 (4): 873-907.

Mitchell, Sara M. 2002. "A Kantian System? Democracy and Third-Party Conflict Resolution." *American Journal of Political Science* 46 (4): 749-759.

Mitchell, Sara M., Jonathan J. Ring, and Mary K. Spellman. 2013. "Domestic Legal Traditions and States' Human Rights Practices." *Journal of Peace Research* 50 (2): 189-202.

Mitchell, Sara M., and Emilia J. Powell. 2011. Domestic Law Goes Global: Legal Traditions and International Courts, Cambridge, UK: Cambridge University Press.

———. 2009. "Legal Systems and Variance in the Design of Commitments to the International Court of Justice." *Conflict Management and Peace Science* 26 (2): 164-190.

Moustafa, Tamir. 2007. The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt. New York, NY: Cambridge University Press.

———. 2014. "Law and Courts in Authoritarian Regimes." *Annual Review of Law and Social Science* 10: 281-299.

Nalepa, Monika. 2010. Skeletons in the Closet: Transitional Justice in Post-Communist Europe, Cambridge: Cambridge University Press.

Nelson, Caleb. 2001. “Stare Decisis and Demonstrably Erroneous Precedents.” *Virginia Law Review* 87(1): 1–84.

"Nepal: Supreme Court's Decision Reaffirms the Need to Amend Transitional Justice Law." Human Rights Watch. May 1, 2020. Accessed August 20, 2020. https://www.hrw.org/news/2020/05/01/nepal-supreme-courts-decision-reaffirms-need-amend-transitional-justice-law.

Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2010. “Transitional Justice in the World, 1970-2007: Insights from a New Dataset.” *Journal of Peace Research* 47 (6): 803-809.

Philpott, Daniel. 2007. “Religion, Reconciliation, and Transitional Justice: The State of the Field”. SSRC Working Papers.

Powell, Emilia J. 2019. Islamic Law and International Law: Peaceful Resolution of Disputes, New York, NY: Oxford University Press.

———. 2015. “Islamic Law States and Peaceful Resolution of Territorial Disputes.” *International Organization* 69 (4): 777-807.

———. 2013a. “Islamic Law States and the International Court of Justice.” *Journal of Peace Research* 50 (2): 203-217.

———. 2013b. “Two Courts Two Roads: Domestic Rule of Law and Legitimacy of International Courts.” *Foreign Policy Analysis* 9 (4):349-368.

Powell, Emilia J., and Krista E. Wiegand. 2010. “Legal Systems and Peaceful Attempts to Resolve Territorial Disputes.” *Conflict Management and Peace Science* 27 (2): 129-151.

Powell, Emilia J., and Jeffrey K. Staton. 2009. “Domestic Judicial Institutions and Human Rights Treaty Violation.” *International Studies Quarterly* 53 (1): 149-174.

Powell, Emilia J., and Sara M. Mitchell. 2007. "The International Court of Justice and the World's Three Legal Systems." *Journal of Politics* 69 (2): 397-415.

Quinn, J. Michael, T. David Mason, and Mehmet Gurses. 2007. "Sustaining the Peace: Determinants of Civil War Recurrence." *International Interactions* 33 (2): 167-193.

Reiter, Andrew G., Tricia D. Olsen, and Leigh A. Payne. 2012. "Transitional Justice and Civil War: Exploring New Pathways, Challenging Old Guideposts." *Transitional Justice Review* 1 (1): 137-169.

Ríos-Figueroa, Julio, and Jeffrey K. Staton. 2014. "An Evaluation of Cross-National Measures of Judicial Independence." *Journal of Law, Economics, and Organization* 30 (1): 104–37.

Rosen, Lawrence. 1981. "Equity and Discretion in a Modern Islamic Legal System." *Law & Society Review* 15(2): 217–46.

Rowen, Ian, and Jamie Rowen. 2017. "Taiwan's Truth and Reconciliation Committee: The Geopolitics of Transitional Justice in a Contested State." *International Journal of Transitional Justice* 11(1): 92–112.

Rustad, Siri A., and Helga M. Binningsbø. 2012. "A Price Worth Fighting For? Natural Resources and Conflict Recurrence." *Journal of Peace Research* 49 (4): 531-546.

Scully, Gerald W. 1987. "The Choice of Law and the Extent of Liberty." *Journal of Institutional and Theoretical Economics* 143 (4): 595-615.

Shapira, Amos. 1974. "The Status of Fundamental Individual Rights in the Absence of a Written Constitution." *Israel Law Review* 9(4): 497–511.

Shen-Bayh, Fiona. 2018. "Strategies of Repression: Judicial and Extrajudicial Methods of Autocratic Survival." *World Politics* 70(3): 321-57.

Sievert, Jacqueline M. 2018. “The Case for Courts: Resolving Information Problems in Authoritarian Regimes.” *Journal of Peace Research* 55 (6): 774-786.

Sikkink, Kathryn. 2011. The Justice Cascade: How Human Rights Prosecutions are Changing World Politics, New York, NY: W.W. Norton.

Sikkink, Kathryn, and Hun Joon Kim. 2013. “The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations.” *Annual Review of Law and Social Science* 9: 269-285.

Skaar, Elin. 1999. “Truth Commissions, Trials - or Nothing? Policy Options in Democratic Transitions.” *Third World Quarterly* 20 (6): 1109–28.

Sznajder, Mario, and Luis Roniger. 2007. “Political Exile in Latin America.” *Latin American Perspectives* 34 (4): 7-30.

Tiede, Lydia B. 2006. “Judicial Independence: Often Cited, Rarely Understood.” *Journal of Contemporary Legal Issues* 15 (129): 129–62.

Urscheler, LH. 2012. “Innovation in a Hybrid System: The Example of Nepal.” *Potchefstroom Electronic Law Journal* 15(3): 98-119.

Van der Vat, Dan. 2013. “Chin Peng Obituary.” The Guardian, https://www.theguardian.com/world/2013/sep/22/chin-peng.

Walter, Barbara F. 2015. “Why Bad Governance Leads to Repeat Civil War.” *Journal of Conflict Resolution* 59(7): 1242-1272.

Walter, Barbara F. 2004. “Does Conflict Beget Conflict? Explaining Recurring Civil War.” *Journal of Peace Research*41(3): 371-388.

Winston, Carla. 2021. “Truth Commissions as Tactical Concessions: The Curious Case of Idi Amin.” *The International Journal of Human Rights* 25(2): 251–73.

Zartner, Dana. 2012. “The Culture of Law: Understanding the Influence of Legal Tradition on Transitional Justice in Post-Conflict Societies.” *International and Comparative Law Review* 22 (2): 297-315.

Figure 1: Distribution of Post-Conflict Justice Regimes

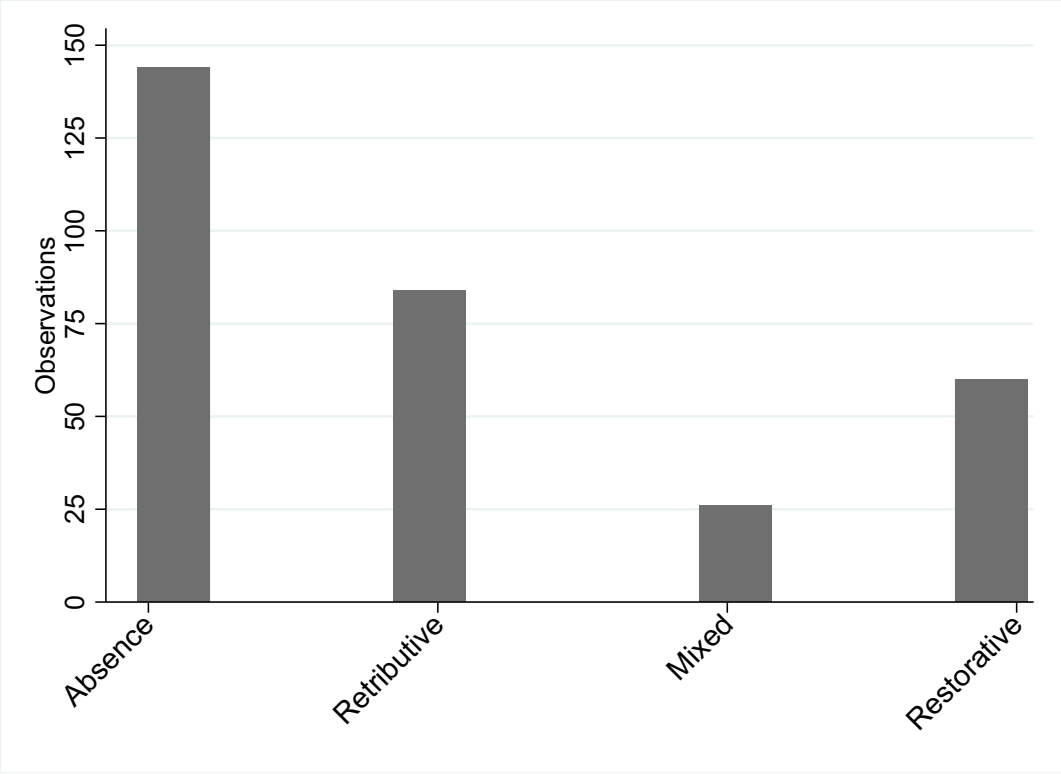


Figure 2: Distribution of Post-Conflict Justice across Legal Systems[8]

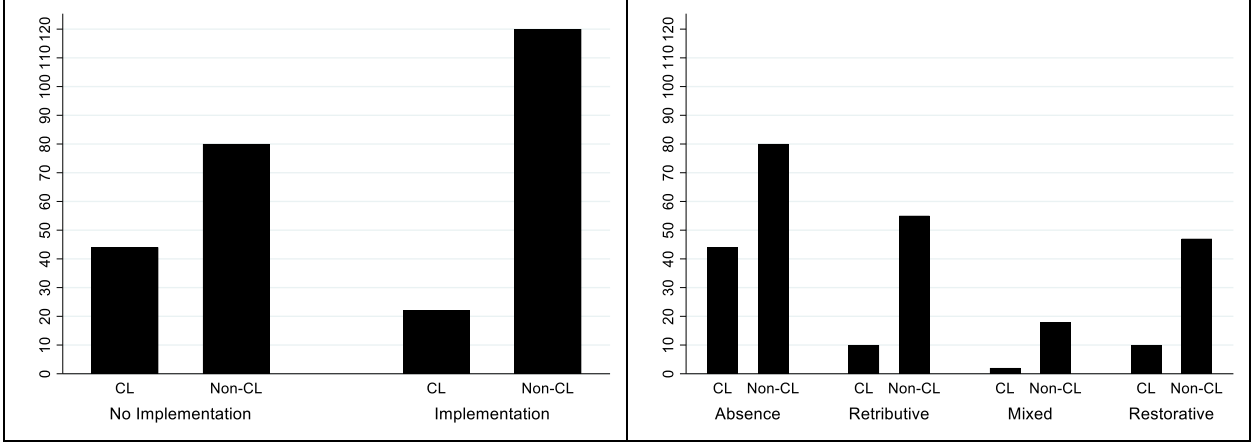
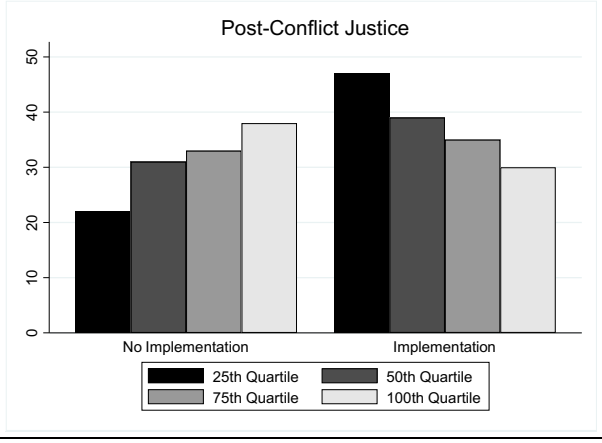


Figure 3: Distribution of Post-Conflict Justice across Legal Systems



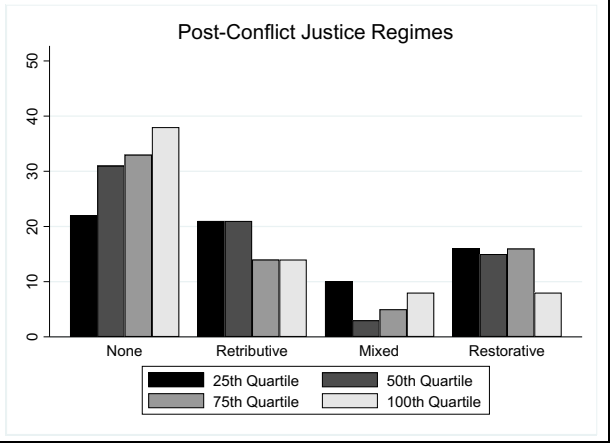


Figure 4: Post-Conflict Justice Implementation

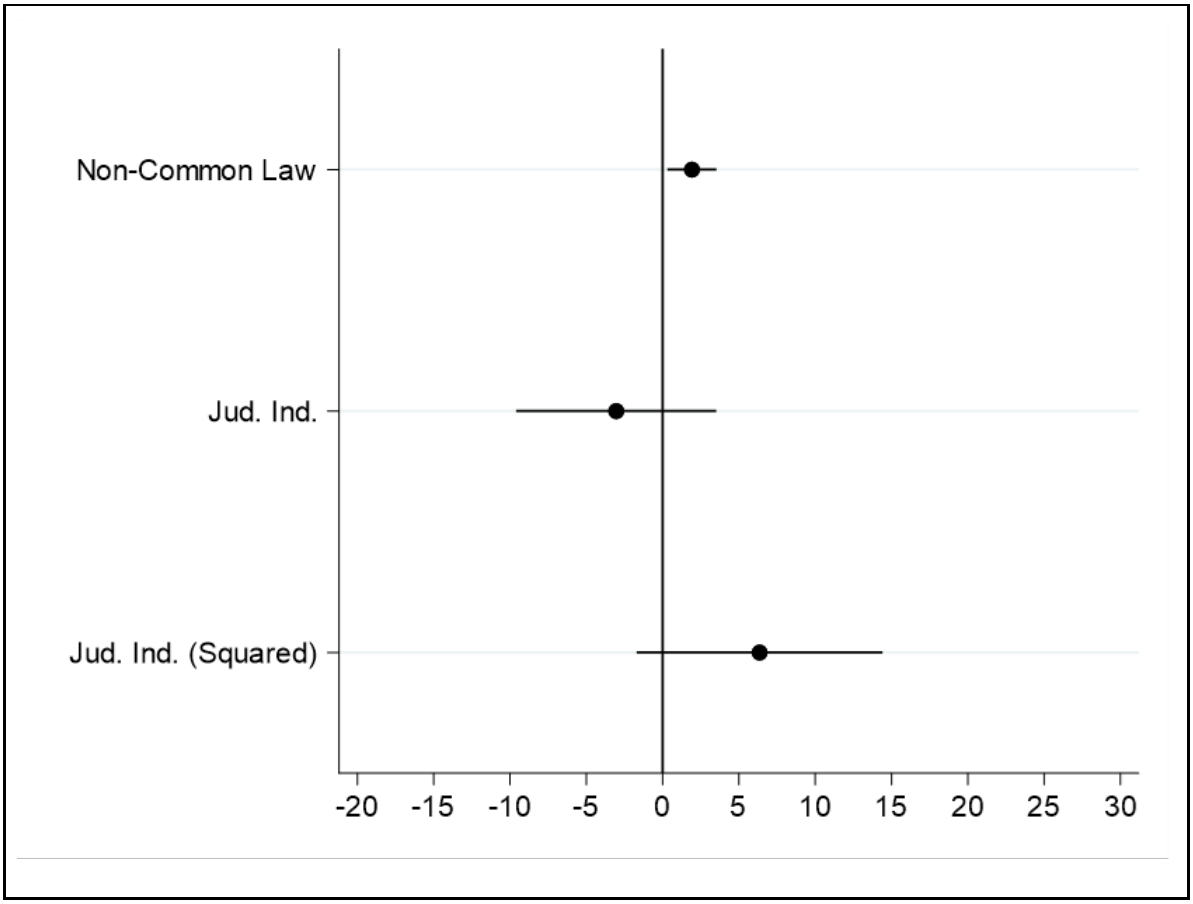


Figure 5: Marginal Effect for Non-Common Law Systems[10]

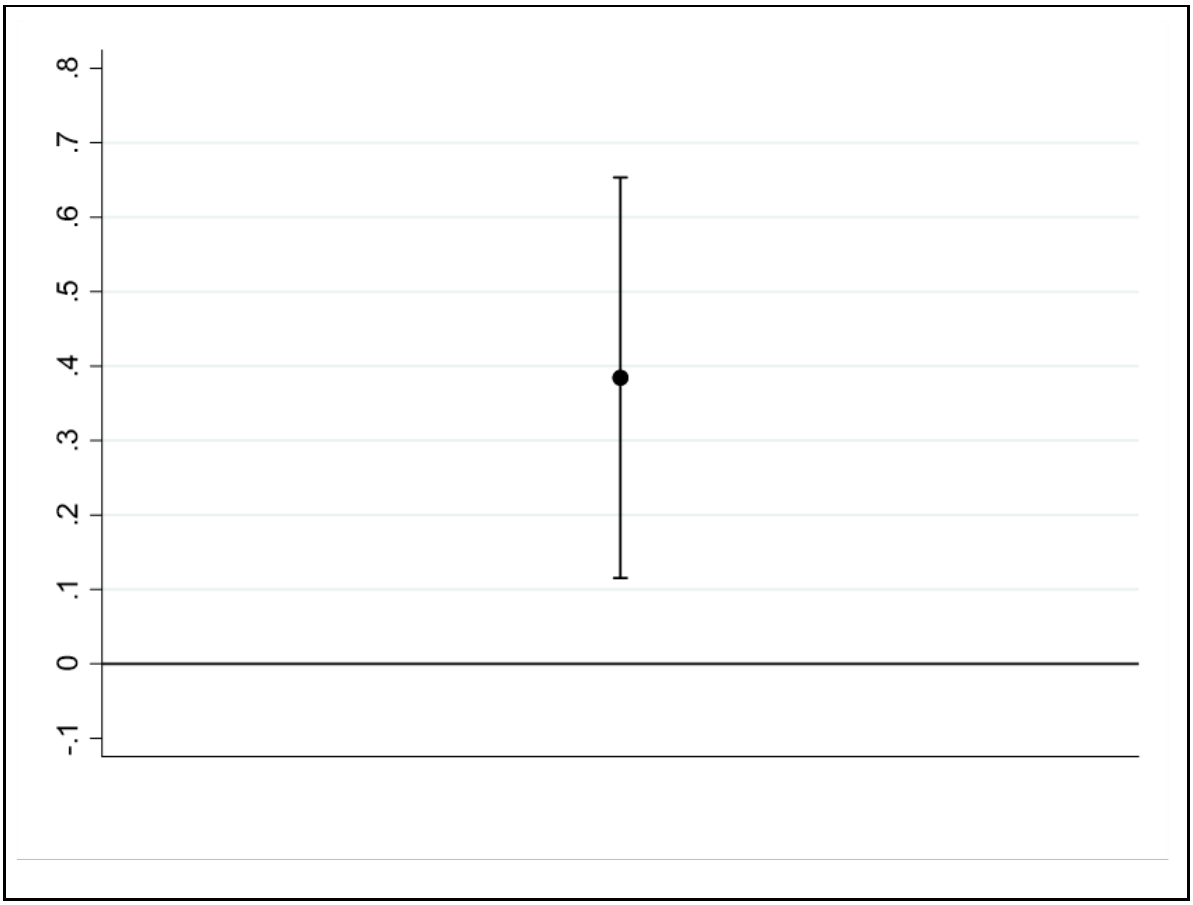

.8
.7
.6
.5
.4
.3
.2
.1
0
-.1

Figure 6: The Implementation of Post-Conflict Justice Regimes

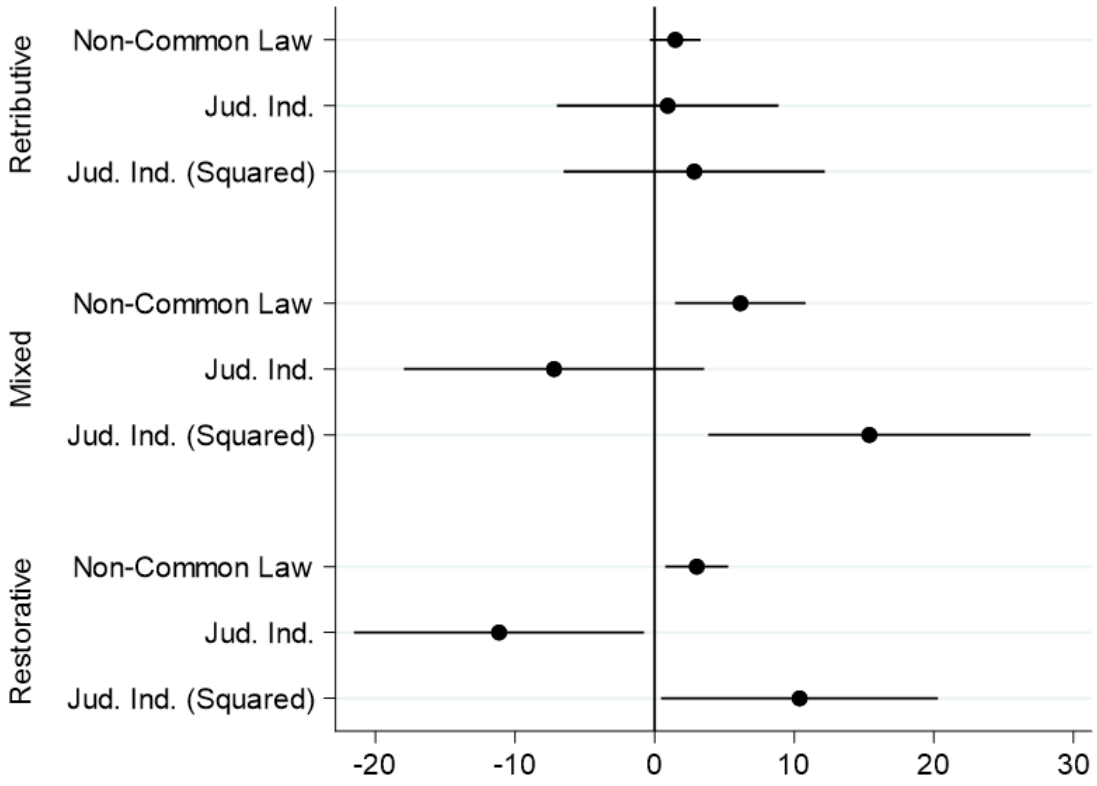


Figure 7: Marginal Effects for Non-Common Law Systems

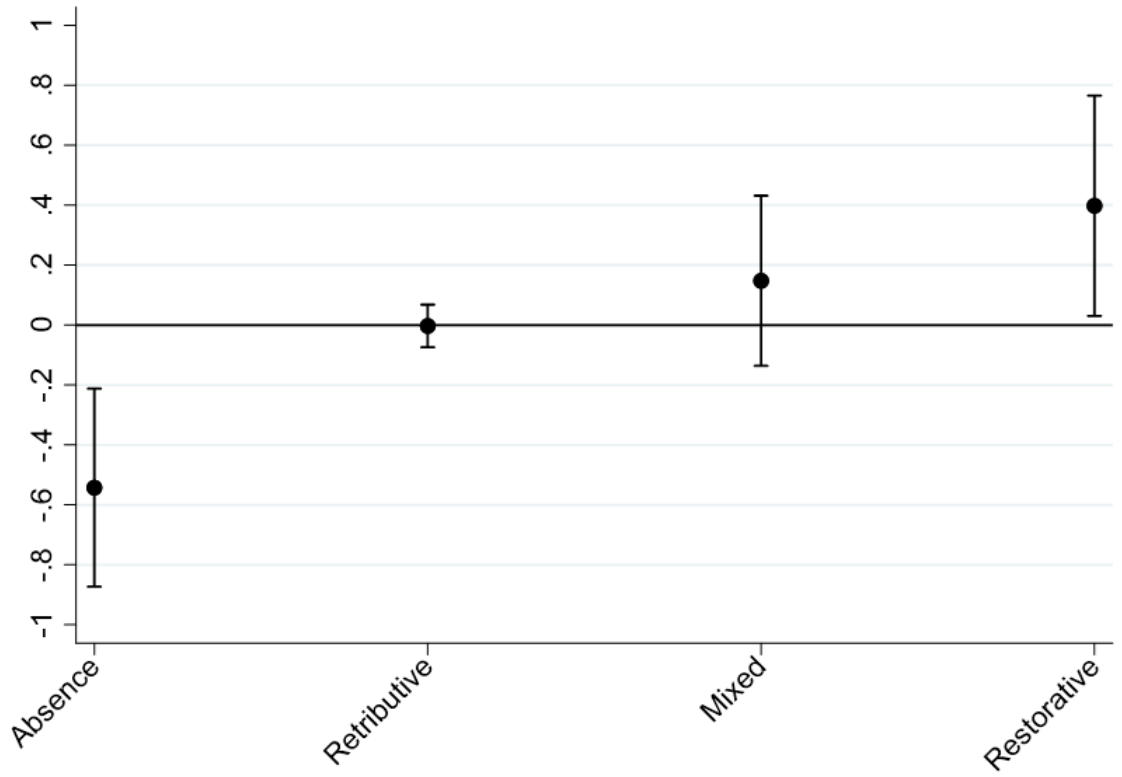
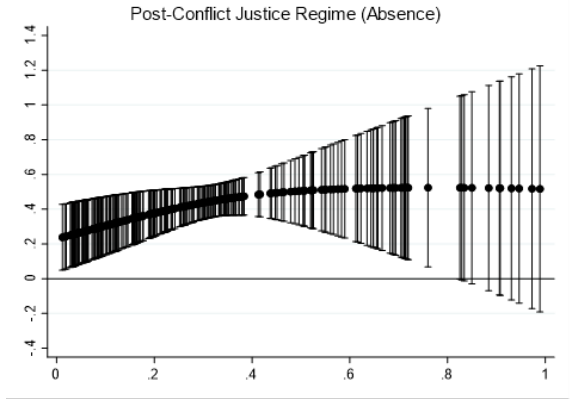
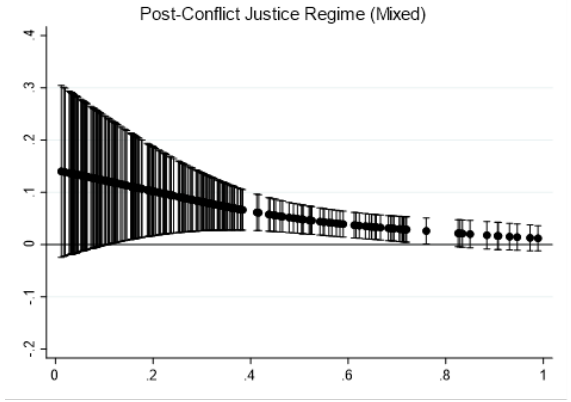


Figure 8: Marginal Effects for Judicial Independence





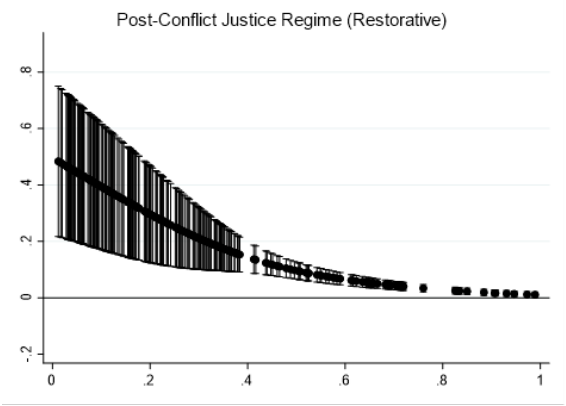


Figure 9: Post-Conflict Justice Regimes (Individual Legal Systems)