ERODING THE BARRIER BETWEEN PEACE AND JUSTICE: TRANSITIONAL JUSTICE MECHANISMS AND SUSTAINABLE PEACE

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Abstract

The expansion of international trials over the last decades has reinvigorated the debate surrounding the efficacy of retributive justice over restorative justice in response to mass humanitarian crises. This study examines the ways different transitional justice models contribute to stable peace. It suggests that a hybrid utilization of both restorative justice mechanisms (e.g., amnesty) and retributive justice mechanisms (e.g., trials) is most effective in achieving a stable peace in a post-accord state, and that context is an important intervening factor. Using a mixed method approach, I first examine a group of 25 test cases, analyzing the relationship between restorative and retributive justice and post-conflict stability. I then examine more closely the paradigmatic case studies of El Salvador, Rwanda, and Mozambique in order to see how the three dominant models worked within individual country contexts. While the data suggests some linkage between the hybrid model and post-conflict stable peace, there are intervening factors (such as culture, alignment of narratives with elite and popular interests and values, and international legitimacy), which are also at work.

Keywords
transitional justice, peace, retributive justice, restorative justice, Rwanda, Mozambique, El Salvador

Introduction

The large number of liberation, post-colonial, and post-Cold War internal conflicts over the past decades, and the mass killing and human rights abuses that have accompanied many of them have led to a debate concerning the efficacy of different sorts of transitional justice (TJ) mechanisms as states adapt to a new reality after undergoing violent conflict. A country which has faced mass humanitarian crises – crimes against humanity, genocide, or war crimes – usually must bear the weight of how to bring peace to its citizens while at the same time utilizing mechanisms of justice to restore law and order and punish perpetrators of crimes. This debate has centered around the question of which justice mechanisms are more likely to produce sustainable peace – those mechanisms which seek reconciliation through forgiveness or amnesty without a strict form of trial punishment (i.e., "restorative justice") or those mechanisms which promote accountability for past wrongdoing, most often through trials (i.e., "retributive justice").

While the universal norms of international law to honor the protection of human dignity and the common good are central to any discussion regarding human rights and TJ, there are a variety of ways in which further mechanisms are utilized to punish unjust aggressors and work towards sustainable peace and reconciliation in a given society. Some proponents of international

trials, which are charged with prosecuting criminals of mass crimes across borders, dismiss movements of reconciliation and amnesty—restorative means of justice—as the modicum for a culture of impunity.   Skeptics of these tribunals, however, often highlight the importance of amnesty for ending violence and garnering reconciliation, and claim that trials—the surest form of retributive justice—may make it more difficult to achieve peace (Lyons, 2012). Yet such a debilitating separation often neglects the reality that faces most post-conflict states. Not only do means of amnesty and reconciliation remain important factors in convincing parties to participate in peace accords, but trials also add a legitimizing force to the peace efforts while addressing past wrongs committed by perpetrators.

This article examines which mechanisms – restorative or retributive, or a hybrid form of both – are most efficacious in sustaining peace and stability in a post-conflict State, and the degree to which country-level contextual factors affect the type of mechanism that is chosen and its effectiveness in producing sustainable peace. Paradigmatic case studies then shed light on how and why particular mechanisms work, and in what contexts--lending support to the argument that there is not one automatic prescription for effective transitional justice, although there is at least some tentative evidence that incorporating multiple mechanisms that balance between retributive and restorative justice increases the likelihood of sustainable peace. Rather, I argue that the most important factors influencing TJ design and effectiveness are local context, political interests, and the mobilization of persuasive narratives that resonate with society.

This study is important because much of the debate concerning post-conflict States focuses either on retributive justice or restorative justice, without taking into consideration hybrid institutions that incorporate elements of both models. Many of the best-known studies that have addressed the combination of mechanisms have focused on outcomes like improvements in democracy or human rights practices, rather than peace or stability. Moreover, because the study of TJ in domestic and international contexts is organic, this article will contribute to the growing research in this field, and will produce useful policy implications for institutional designers and international organizations.

Theorizing transitional justice

The presence of international tribunals in the fight for international justice in response to genocide, war crimes, and humanitarian offenses, has recently been the subject of a significant cluster of literature examining their efficacy, legitimacy and normative importance as international interventions. International actors and state leaders alike have questioned their efficacy in consolidating democratic transitions and peace. Underneath such discussions, however, is a pressing empirical dilemma: do tribunals used to judge war criminals (especially of mass humanitarian atrocities, such as genocide, crimes against humanity, or war crimes) help to foster stable peace in the longer term – or do they inhibit it? William Zartman (2005: 1) points out that "Attempts to bring current combats to an end may interfere with efforts to bring the entire conflict to an end and prevent its future reemergence. The contrast between the terms, 'peace' and 'justice,' where both are necessary but one is often possible only at the expense of the other, reflects this potential contradiction." Even after a peace agreement has been reached, efforts to ensure accountability and build institutions capable of ending impunity in the future (by showing that aggressors have been punished) sometimes undermine the momentum for cooperating on a shared national project, which can disrupt security and stability as spoilers turned off by the 'hard' aspects of TJ use this as an excuse to resume fighting. Additional

questions arise about how this balance is managed during the negotiations themselves. Much of the debate has focused on this question.

Much of the literature involved in analyzing stable peace and the efficacy of different international TJ mechanisms falls into three theoretical camps, which can be organized following the categories proposed by Wenzel et al (2008): 1.) *retributive justice*, or holding those responsible for killing and human rights violations accountable through trials and other judicial or criminal processes; and 2.) *restorative justice*, or allowing amnesties and a focus on forgiveness to exempt past participants in conflict from individual accountability, usually in order to make it possible to reach a peace agreement and end combat. 3.) In addition to the categories developed by Wenzel et al, I also highlight the large number of studies that unpack the grey areas between these two extremes by proposing *hybrid models* that includes elements of both accountability and forgiveness (and often truth).

The following section elaborates on the three major theoretical schools in order to establish the foundation for the analysis of empirical cases in the second half of the article.

Competing mechanisms

Retributive justice

Some scholars (Akhavan, 2001; Rosenberg, 1996; Mendez, 1997) have argued that TJ is best fostered by institutional mechanisms that hold accountable those who have transgressed international norms regarding human rights or mass killing. These authors claim that the presence of such trials is a better predictor of success than amnesty or truth commissions, and thus fall into the first camp. They argue that in the period since the 1970s, the norm of international accountability has proliferated, and as a result of this 'justice cascade', the use of trials has grown much faster than other mechanisms, and has been more successful (Lutz and Sikkink, 2001; Sikkink and Walling, 2007).[1] This camp is openly "optimistic" about the efficacy of international justice accountability mechanisms (such as trials or international war tribunals), holding that tribunals can serve to consolidate peace within a state affected by mass humanitarian crimes, either serving as a deterrent to rogue individuals within the State, or offering a mechanism for victims to cope and move on with the peace process.

The first theoretical camp – favoring retributive justice mechanisms – finds significant support in the current human rights literature. Payam Akhavan (2001: 9) argues this position, claiming that the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have contributed to peace as these two post-war societies rebuilt themselves by bringing in criminal accountability to domestic and international culture. He notes that "Both institutions have helped to marginalize nationalist political leaders and other forces allied to ethnic war and genocide, to discourage vengeance by victim groups, and to transform criminal justice into an important element of the contemporary international agenda." Rosenberg (1996) falls into a similar camp, arguing that peace is fostered when nations (in addition to individuals) seek to understand traumatic past events before they can transition to normalcy. Accountability through international criminal justice, Rosenberg argues, helps victims heal and prevents the return of dictatorships. Former President Ricardo Lagos of Chile, who rejected an amnesty for top leaders from the Pinochet dictatorship that was established in the Chilean constitution and affirmed by a previous truth commission, recalls why

he sought to ensure accountability and truth, despite the risk of reviving latent resentment and conflict: "It was a very difficult decision – will you open the problems of the past, or will you face the past as it was? When I appointed the commission I said – 'there is no tomorrow without yesterday.' You have to look back to look forward." [2]

Richard Goldstone (2007: 7), a former Justice of the Constitutional Court of Africa, argued the "optimistic" position, that criminal tribunals have made peacemaking through negotiations more attainable. He claims that the indictment of Radovan Karadzic, a Bosnian Serb politician accused of war crimes against Bosnian Muslims in the 1990s, was instrumental in allowing for peace negotiations in Dayton to commence, which resulted in the end of the Bosnian war in 1995: "There was no way that President Izetbegovic or any other Bosnian leader would have considered being in the same room as Karadzic in November of 1995. So the indictments assisted in bringing an end to the war in Bosnia and Herzegovina." This practical application and personal testimony reinforces the retributive justice approach. In cases like Colombia, the presence and active engagement with the International Criminal Court (ICC) actually helped to shape the substance of the negotiated peace accords as well as specific policies of the Colombian government related to peace and accountability for ex-combatants (Rincón et al, 2019)

Juan Mendez (1997: 266) offers evidence against the so-called positive effects of amnesty and impunity in order to bolster the case for accountability. He notes, "It is far from proven that a policy of forgiving and forgetting automatically deters future abuses. In fact, at least in Haiti one can more easily make the case that the opposite is true: each self-amnesty by the military has only led to further interruptions of democracy and to further atrocities. This deference to democratically elected leaders, who supposedly know better than anyone what is best for their country and what the traffic will bear, is unwarranted." He also uses the case of Guatemala in the mid-1980s, in which amnesty only allowed President Vinicio Cerezo and his military to commit even more violations of human rights. This argument is typical of this camp in its conviction that any peace agreement that does not include measures of accountability is shallow, empty, and likely to be short-lived—in short, no peace at all.

Restorative justice

The second theoretical camp favors 'restorative' justice mechanisms over retributive justice mechanisms. These scholars (Scharf, 1996; Graybill, 2004; Fletcher and Weinstein, 2002) argue that trials inhibit peace, and stable peace is sustained through mechanisms such as amnesty, falling into the second camp. They find that cases of forgiveness (amnesty) and impunity are just as likely, if not more likely, to propel a transitional state toward democracy, arguing that tribunals are costly, distrusted, and sometimes counterproductive. Snyder & Vinjamuri (2004) argue, "Preventing atrocities and enhancing respect for the law will frequently depend on striking politically expedient bargains that create effective political coalitions to contain the power of potential perpetrators of abuses (or so-called spoilers). Amnesty—or simply ignoring past abuses—may be a necessary tool in this bargaining. Once such deals are struck, institutions based on the rule of law become more feasible." The United States State Department has argued that this insight should be incorporated into practice in reference to international justice, and that accountability policies must be balanced against the need to move on and encourage armed groups to disarm and reintegrate into society (Scharf, 1996).

The studies in this camp range from legal defenses of amnesty to empirical examinations relying on large-N datasets or case studies that conclude that retributive justice does not improve peace, human rights practice, or democracy. Scharf (1996: 59) argues that the practice of granting amnesty for crimes against humanity is not necessarily in defiance of international law. He claims that the "practice of states does not yet support the present existence of an obligation under customary international law to refrain from conferring amnesty for [these massive] crimes." Scharf cites as evidence that at the same time as the term 'crimes against humanity' was coined, amnesty was offered simultaneously to the Turkish perpetrators of the Armenian genocide of the twentieth century, a historical precedent which shows that international law does not obligate states to utilize tribunals.

A study of attitudes within a nation regarding TJ, focusing on Rwanda, South Africa, and Mozambique, finds that the cases in which states favored reconciliation over tribunals were unexpectedly successful in achieving peace (Graybill, 2004). The author attributes this outcome, at least in part, to factors related to cultural context, in which the adversarial legal system developed largely in Western countries and reflected in the retributive approach to international law, may not resonate appropriately within some non-Western cultural contexts. This is an important observation that this study will build on, especially in the analysis of two of these same cases, plus an additional case representing hybrid forms of both mechanisms.

Fletcher and Weinstein (2002: 575) note that international criminal mechanisms bear no inherent relationship to building peace in a transitional democracy. In fact, they argue that trials undermine broader domestic peacebuilding by focusing exclusively on legal cases: "The significant limitations of justifying trials as symbols are that the focus on legal processes may divert attention from the multiplicity of symbolic efforts helpful to establish the credibility of a new regime." Burdening TJ trials with symbolic meaning may interfere with the ability of judges, lawyers, and juries to produce legitimate verdicts.

In the Center for the Study of Human Rights debate referenced earlier, Leslie Vinjamuri (2007: 11-12) argues that in situations where institutions are too weak to ensure effective implementation, or where the political will of powerful actors supporting trials is absent, war crime trials are typically ineffective. She argues that "in the face of ongoing conflict, war crime trials can be inherently destabilizing and may impede efforts to negotiate a peace."

Hybrid model

A final, third theoretical camp (David and Yuk-ping, 2005; Bell, 2006) analyzes the complex interactions between the positions of the previous two types of TJ mechanisms, arguing that the evidence is not strong enough to suggest that only one mechanism (amnesty *or* tribunals, for instance) can adequately predict the consolidation of stable peace. This is not simply a moderate "in-between" position, but a more complex synthesis, which recognizes that both goals (peacemaking and justice) must be balanced and present simultaneously. The 'justice balance' approach advanced by Olsen, Payne, and Reiter (2010) argues that a holistic approach that combines trials and selective amnesties (and sometimes also truth commissions) is more effective in improving democracy and human rights practices than either amnesty or trials alone. The current article further develops this insight and seeks to evaluate it against a different outcome: sustainable peace over time. Extending the argument beyond improvements in

democracy and human rights, I seek to explore the impact of a holistic 'justice balance' hybrid approach on the maintenance of stable peace.

In addition to those advocating for combining elements of retributive and restorative justice, other contributions to the hybrid model approach emphasize that any one-size-fits-all approach is destined to fail. These scholars argue that different contextual factors – such as culture, historical legacies, and trust in international organizations – are key elements of a more complex theoretical model, and that 'one-size-fits-all' prescriptions are unlikely to be very helpful. They are also aware of the potential for unexpected variations due to local context. Alexander Hinton (2010: 1) argues that, "However well-intentioned, transitional justice needs to more deeply grapple with the messiness of global and transnational involvements and the local, on-the-ground realities with which they intersect, complexities that are too often glossed over…." David and Yuk-ping (2005) argue that individual reparations through international criminal justice are successful only if coupled with broader socio-political efforts at domestic democratization. Using a large-N study of survey data from former political prisoners in the Czech Republic, these authors found that reparation is a two-dimensional process that incorporates both changes in social and political reconstruction as well as internal psychological healing by victims. They argue that different societies may have different understandings of concepts of justice, healing, reconciliation and forgiveness. Thus, an understanding of the relationship between trials, peace negotiations, and their role in fostering sustainable peace must also consider these relative, cultural and sociological presuppositions. This critique, coupled with the concern of some scholars that the issues underlying TJ are far too complex for quantitative data alone (Bell, 2006), have led us to design a multi-method study that incorporates some quantitative comparisons in addition to brief case studies that unpack some of the contextual factors that affect the interaction of different TJ mechanisms.

While a great deal of literature studying democratization and human rights improvements has focused on TJ mechanisms, several key questions remain: why do some states, affected by massive humanitarian crises, utilize retributive justice mechanisms, such as international tribunals, while others utilize restorative justice mechanisms, such as amnesty? Which mechanism, or combination of mechanisms, is likely to lead not only to human rights improvements, democratization, or negotiations, but also to longer-term sustainable peace and stability? Most importantly, why, and in what contexts does the institutional design have this effect? This article seeks to contribute to the literature by addressing this set of questions. In particular, it posits that post-conflict states that utilize complementary methods of *restorative* and *retributive* justice are somewhat more likely to engender sustainable peace and stability than post-conflict states that utilize either retributive or restorative justice alone. More importantly, a more detailed analysis of three paradigmatic case studies sheds light on the contextual factors that influence which TJ mechanisms are selected in a given country, and under what conditions they are likely to lead to sustainable peace. The most important of these contextual factors that I analyze are whether there is a match between elite and popular interests, the availability of symbols and narratives that can be mobilized by institutional designers, and the relative share of blame for the conflict by the parties in the conflict.

Evidence from cases

This section examines the effects of three different types of TJ mechanisms across a medium-N set of states that have undergone violent conflict. I measure the average degree of political

stability and lack of violence characterizing states that utilized retributive, restorative, and hybrid models of TJ. I draw upon an existing data set to measure political stability (a proxy for *sustainable* peace), operationalized by Kaufmann, et al. (2003) and compiled by Breuning and Ishiyama (2007). [3] Additional indicators of sustainable peace are drawn from the Human Security index, including its Peacefulness sub-index. In order to determine whether a state used restorative justice, I use the Peace Accords Matrix database, published by the University of Notre Dame. [4] This database identifies cases where amnesty was used. I draw on the Transitional Justice Database Project to examine where domestic or international trials were used over a number of cases. [5]

The second part of the empirical section goes into more detail for three post-conflict country cases to examine the factors involved in helping to maintain peace (or not). This qualitative analysis provides richer insights into intervening factors within specific country contexts, seeing which mechanisms within retributive justice, restorative justice, and the hybrid model contributed to the greatest amount of stable peace and *why* this was so. Mozambique serves as the paradigmatic case for restorative justice, Rwanda for retributive justice, and El Salvador for the hybrid model.

The outcome I am most interested in with this study is stable peace. This variable is operationalized through an index of variables measuring political stability of a given post-accord state. I use one of the six dimensions of the governance index calculated by the World Bank and utilized by Kaufman, et al (2003) to measure political stability and absence of violence. The definition of political stability in this index refers to "perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including domestic violence and terrorism" (Kaufman 2010: 4). [6] The measure is based on many underlying variables that reflect perceptions of a wide range of governance issues, using surveys from firms and individuals, nongovernmental organizations (NGOs) and think tanks, as well as multilateral aid agencies. As an additional check on the dependent variable, I also analyze the relationship between different TJ mechanisms and alternative measures of peace: the Peacefulness Index and the Human Security Index. [7]

The first factor examined in this study is *utilization of retributive justice.* This is measured using data from the Transitional Justice Database on international or domestic tribunals. Trials are further assessed based on their frequency. Countries that initiated more than 5 trials are classified as "High Trial," countries that initiated less than 5 trials but more than 2 are classified as "Medium Trial," countries that initiated fewer than 2 trials are classified as "Low Trial," and countries that initiated no trials at all will be classified as "No Trial". The Transitional Justice Database categorizes those post-conflict states that experienced some form of international or domestic criminal trial.

The second factor to be examined is *utilization of restorative justice.* This will be operationalized using both the Peace Accords database as well as the Transitional Justice Database, which lists all issuances of amnesty from 1970-2007. This variable will reflect two factors: whether or not formal amnesty was involved in a comprehensive peace agreement and whether truth commissions were used. Formal amnesty will be assessed on four levels: No amnesty, low amnesty, medium amnesty, and high amnesty. Countries which had 10 or more issuances of amnesty are classified as "high amnesty,"; countries with 5-10 issuances as "medium amnesty," those that had less than 5 issuances as "low amnesty," and countries which had no issuances as "no amnesty". [8] The indicators of restorative justice are listed in Table 1 as

two separate measures (i.e., amnesty and truth telling body or commission). Truth commissions are assessed at the binary level: namely, whether or not any truth commission was utilized. The Peace Accords database defines amnesty as "a legal guarantee that exempts former combatants, rebel leaders, and/or government officials from liability for criminal or political offences committed during the conflict." The Accords database defines truth and reconciliation mechanisms/truth commissions as follows: "A temporary body established and officially sanctioned to investigate and report on patterns of human rights abuses occurring over a period of time in a particular country or in relation to a particular conflict." The Peace Accords database traces post-conflict States that have experienced some form of a comprehensive peace agreement involving amnesty and truth-telling since 1989.

The third factor to be examined is utilization of a hybrid of retributive and restorative justice. This will be operationalized at the binary level—namely, whether or not both measures of retributive justice and restorative justice were utilized together. If both mechanisms were utilized, the case will be listed as a hybrid; if only one was utilized, it will be listed as not a hybrid.

The data summarized in Table 1 below compares the political stability of States that have emerged from conflicts or humanitarian crises with the existence of mechanisms of restorative and retributive justice. On the one hand, for the majority of "middle cases" of post-conflict states with a medium political stability, there is nothing significant concerning whether solely restorative, solely retributive, or some hybrid of the two was utilized. In fact, across most levels of political stability, there does not seem to be any trend in whether higher levels of either restorative or retributive justice contributed more to sustainable peace. Yet, looking at the more radical cases of political stability – the most and least stable post-accord states – there is an apparent trend. For the five states with the highest levels of political stability, all but one (Mozambique) utilized the hybrid model of restorative and retributive justice. Likewise, for the 5 states with the lowest levels of political stability, there is a similar pattern. All but one (Serbia and Montenegro) *did not* utilize the hybrid model. Interestingly, of the lowest three countries on the scale (Burundi, Tajikistan, and Angola), none had trials, but all had some level of amnesty. In comparing countries with hybrid forms of TJ and those without hybrid forms, the mean value for all three indices--political stability, peacefulness, and human security--is greater for countries utilizing hybrid TJ mechanisms than for those without them. [9] Given the small sample size, these effects are significant at the .10 level of significance using a one-tailed T test, so the finding should be viewed as a suggestive trend rather than a solid conclusion.

Country	Political Stability	Peacefulness Index	HS Index	Restorative Justice Mechanism (Amnesty)	Restorative Justice Mechanism (Truth Commission)	Retributive Justice Mechanism (# Domestic International Trials)	Hybrid of Restorative and Retributive Justice
1. Croatia	**0.48**	0.694	0.725	Low*	No	Low	Yes
2. El Salvador	**0.25**	0.456	0.616	High*	Yes	Low	Yes
3. Morocco	**-0.06**	0.384	0.606	Medium	No	Medium	Yes
4. Nicaragua	**-0.10**	0.436	0.540	High*	No	Medium	Yes

5. Mozambique	**-0.16**	0.354	0.482	Low*	No	None	No
6. Philippines	**-0.19**	0.146	0.535	High	No	Low	Yes
7. Armenia	**-0.33**	0.277	0.666	Low	No	None	No
8. Russia	**-0.55**	-0.037	0.645	Medium*	No	Low	Yes
9. Peru	**-0.58**	0.231	0.629	Medium	No	Medium	Yes
10. Ethiopia	**-0.60**	0.045	0.415	High	Yes	None	No
11. Azerbaijan	**-0.69**	0.126	0.673	Medium	Yes	Medium	Yes
12. Guatemala	**-0.79**	0.058	0.492	Medium	Yes	Medium	Yes
13. Georgia	**-1.08**	-0.133	0.646	Low	No	None	No
14. Chad	**-1.16**	-0.225	0.409	High*	Yes	None	No
15. Uganda	**-1.21**	-0.135	0.453	Medium*	No	Low	Yes
16. Iran	**-1.24**	-0.134	0.603	Medium*	No	Low	Yes
17. Rwanda	**-1.26**	-0.021	0.423	Low*	Yes	High	Yes
18. Indonesia	**-1.27**	-0.065	0.584	Medium	Yes	Medium	Yes
19. Nigeria	**-1.38**	-0.269	0.447	Medium	No	Medium	Yes
20. Somalia	**-1.50**	-0.442	0.296	High	Yes	Low	Yes
21. Dem Rep of the Congo	**-1.52**	-0.415	0.350	Medium*	No	None	No
22. Serbia & Montenegro	**-1.64**	-0.123	0.715	Low*	No	High	Yes
23. Burundi	**-1.68**	-0.368	0.396	Medium*	Yes	None	No
24. Tajikistan	**-1.87**	-0.246	0.550	Low	No	None	No
25. Angola	**-1.99**	-0.329	0.460	High*	No	None	No

Table 1. Political stability (1997-2005) and TJ mechanisms among post-accord states whose conflicts ended after 1980

*Indicates whether general amnesty was granted (i.e., "Amnesty for all X, whether political, military, rebels, or general populace"). **Sources**: Kaufmann, et al. (2003); Breuning and Ishiyama (2007); Human Security Index; Transitional Justice Database; Peace Accords Matrix.

Going beyond a binary view of hybrid TJ or not, one can construct a TJ index that assigns a 1-3 value for low/medium/high trials and (reverse coded) amnesty, plus a binary variable for the presence of truth commissions (an indicator of restorative justice). This TJ index results in a value between 3 (most restorative) and 8 (most retributive). In Figure 1 on the nest page, the cases from the table above are analyzed, comparing the TJ index with their average stability/peace score over the 10 years following their transitions (or as close as is possible with the existing dataset). The relationship shows generally greater levels of political stability and peace over time for the countries with middle-range scores on the transitional justice index, with those having more extreme retributive or restorative scores having generally lower levels of political stability and peace. Given the small sample size, these effects are not statistically significant and should be taken as suggestive trends.
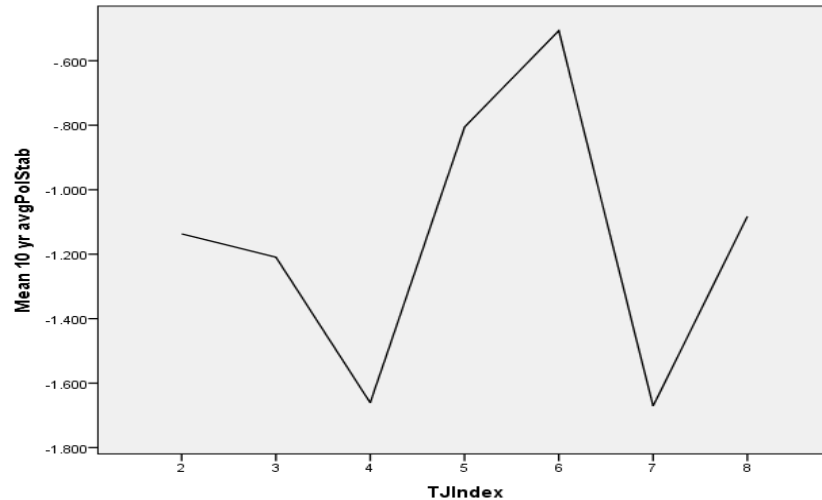
Figure 1: Average political stability/peace over 10 years compared with TJ index score

The preliminary comparative analysis suggests that there is some relationship between sustainable peace and the utilization of both restorative and retributive justice, although the tentative strength of the relationship seems to caution against a one-size-fits-all policy prescription. There need not be an inherent dichotomy. While this study does not purport to say that all cases that combine restorative and retributive justice lead to sustainable peace, the data do suggest a link between the utilization of the hybrid model and political sustainability of peace. In the next section, the article will examine paradigmatic cases for the three types of TJ mechanisms, examining the causes behind sustainable peace or the lack thereof.

Illustrative case studies of the three models

In this section, I examine in greater depth three cases that illustrate the three major approaches to TJ outlined above. Although El Salvador, Rwanda, and Mozambique have very different historical, regional and cultural contexts, all three were sites of intense internal conflict during the late 1980s or early 1990s, and they all ended around the same time, near 1994. None of the three cases have reverted to armed civil war since the conflicts ended in the 1990s (although of course many forms of structural and criminal violence and human insecurity persist). The variations in the forms of TJ that they employed at the end of the conflict help to shed light on the factors and process through which different mechanisms are selected and implemented, and which influence the effectiveness of TJ in leading to sustainable peace in the country. Figure 2 on the next page illustrates the changing levels of political violence in the three countries during and after their internal conflicts by comparing the Political Terror Scale score, a 5-point index calculated by Gibney et al (2015) on the basis of Amnesty International reports.
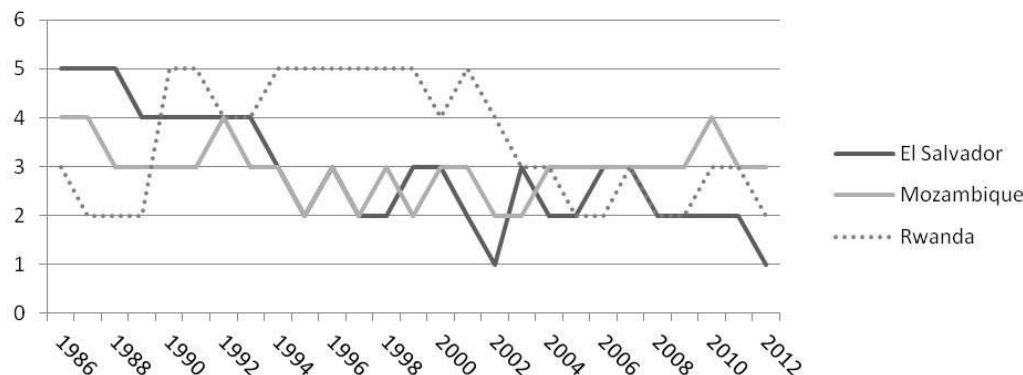
Source: Political Terror Scale score--Amnesty Intl (Gibney et al 2015)

Figure 2: Comparing the three cases over time on political violence

As the data shows, El Salvador's level of political violence dropped dramatically in the years immediately after its conflict ended, although it spiked a couple of times in the 2000s, especially leading up to election years. Rwanda's political violence score, on the other hand, remained rather high for the remainder of the 1990s, then dropped significantly at the beginning of the 2000s and remaining low. Mozambique's political violence score lowered moderately and inconsistently following the end of the conflict, and has risen somewhat again in the latter part of the 2000s. Of the three cases, El Salvador's decrease in organized political violence seems most directly tied to the transition that ended the war, whereas the other two cases seem to have improved their peace and security over a longer time frame, and possibly for other reasons than the design of transitional mechanisms (such as improving economic performance). [10]

Figure 3 on the next page shows the relationship between the three countries using the political stability score from the Governance Indicators of Kaufman et al (2014 update), available between 1996 and 2013. This also shows Rwanda recovering over a much longer time frame while El Salvador and Mozambique fluctuate over the 2000s (the fact that data are not available for the early 1990s is unfortunate, since this would likely better reflect the effects of the transitional justice process on Mozambique and El Salvador's stability and peace, given that their transitions happened earlier than Rwanda).

El Salvador was a country that utilized both restorative and retributive TJ measures, and ranked high on the list of sustainable peace in the previous section. Thus, I examine this country as an example of a hybrid model. For the first mechanism—retributive justice—I examine Rwanda, which scored the highest for the amount of criminal tribunals in a country. While Rwanda also utilized some means of amnesty (especially in an earlier episode of conflict during the 1970s, as opposed to the genocide of the 1990s) and truth telling, the amount of criminal tribunals outweighs the score for amnesty, which is far lower. [11] For the second mechanism—restorative justice—I examine Mozambique, as the paradigm for restorative justice. Although Mozambique did not use a hybrid model of restorative and retributive justice, the country nevertheless ranked in the top 5 of politically sustainable post-conflict States. I examine this counterexample in greater depth to flesh out the importance of context and political prudence for the effectiveness of TJ mechanisms, and as a warning against 'one size fits all' approaches.
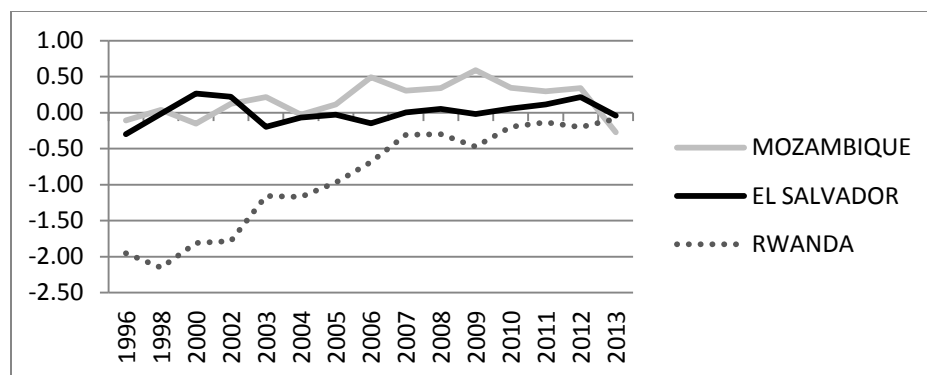
Source: Kaufman et al 2014

Figure 3: Comparing the three cases over time on political stability/sustainable peace

El Salvador: The hybrid model

I first examine in greater depth the case of El Salvador, a country that scored in the top five for political stability, and employed a hybrid TJ model that used both mechanisms of restorative and retributive justice. During some of the worst conflict years in El Salvador (1980-1991), many human rights abuses centered around the abuse and violent terror shown toward civilians, especially in human rights organizations and the Catholic Church, which was targeted by serious repression (Montgomery, 1995). As Cath Collins (2006: 726-727) points out, "Many of the most emblematic human rights violations of the war involved the violent death of prominent church figures, such as the 1980 assassination of Archbishop Oscar Romero, the 1981 rape and murder of four US churchwomen, and the 1989 killing of six Jesuit priests, their housekeeper and her daughter...In such circumstances legal responses could not and did not take root as primary responses to human rights violations in El Salvador." Yet this lack of judicial structure did not prevent El Salvador from later utilizing criminal trials in the aftermath of such wide-reaching human rights abuses. In fact, the truth commission in El Salvador that followed the end of the war recommended the investigation and removal of the military officers responsible for the worst human rights violations, which ultimately led to unprecedented levels of accountability for very high-level officials and officers. According to Charles Call (2002: 397), "the consequences of the Ad Hoc and Truth Commissions' reports signaled the most thorough housecleaning ever carried out of a Latin American military not defeated in war."

El Salvador implemented six amnesty laws, launched a truth commission that issued a public report, and conducted trials in four different years for wartime human rights abuses. In the aftermath of these hybrid forms of TJ, El Salvador's human rights and security record did improve significantly, as illustrated in the decrease in the Political Terror score in Figure 1. In fact, across the region, the existence of trials positively contributed to the change in Political Terror score—typically from higher levels of terror to lower levels. Sikkink and Walling (2007: 442) compare El Salvador and other Latin American countries that had both amnesty/truth-telling and trials, with countries that had trials, but no truth commissions. Their conclusion is that, "In Latin America, countries that choose to implement both trials and truth commissions seem to have better human rights practices than countries that choose to use fewer alternatives." Moreover, their study also debunks claims of the restorative camp that trials actually prolong conflict and human rights abuses, concluding that "in Latin America, the advocates of trials do not inadvertently promote atrocities; that trials do not increase human rights violations,

exacerbate conflict or threaten democracy; and that amnesties cannot be proven to be deterrents [by themselves] to future human rights abuses … [many] countries have held both truth commissions and human rights trials." (Sikkink and Walling, 2007: 442-443)

Going beyond national security and peace at a political level to human security and the experience of peace at an individual level, El Salvador also experienced a drastic decrease in the homicide rate, which was reduced by some 70% over the five years immediately following the peace accords that ended the conflict. Although El Salvador continues to have one of the highest homicide rates in the world and suffers from serious gang violence, it is notable that the rate has decreased compared to what it was, as seen in
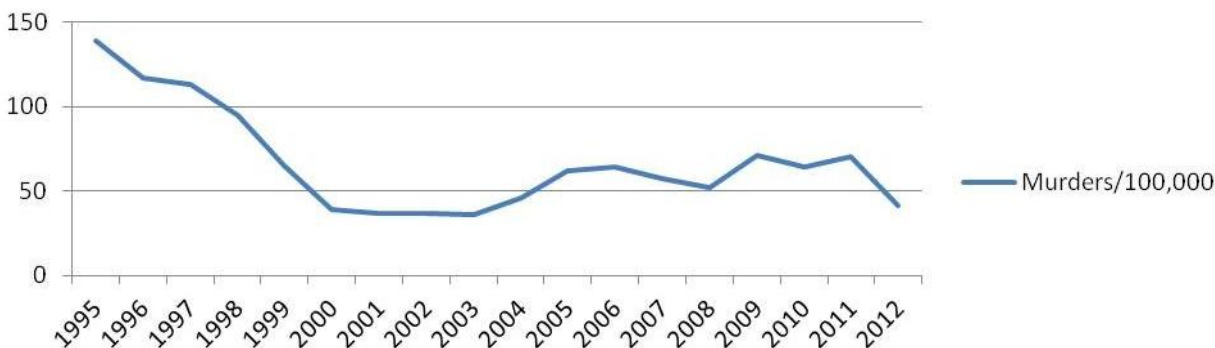
Source: UN Office on Drugs and Crime's International Homicide Statistics database

Figure 4: Homicide rate in El Salvador

El Salvador's combination of different mechanisms was relatively successful for several reasons. The Farabundo Marti National Liberation Front (FMLN), an effective guerrilla movement at war with the military, maintained substantial support in El Salvador, as well as from international actors. This international attention and support for conflict resolution efforts, combined with greater internal legitimacy and capability of the FMLN, put pressure on the government to negotiate and make meaningful concessions, especially after it was linked with serious human rights violations by death squads of civilian and church leaders (Pugh, 2009). El Salvador also was the subject of significant international attention, with the UN playing a crucial role as a mediator and observer, and in providing technical assistance. Because of the international significance of this UN assistance, the credibility of the truth commission was enhanced within the country, with public opinion polls reflecting widespread acceptance of its report. The truth commission also demonstrated its credibility and independence by naming high officials in the army as being responsible for the murder of Jesuit priests in 1989, and blaming Roberto D'Aubuisson, one of the founders of the ARENA political party, for helping to form death squads and planning the murder of Archbishop Oscar Romero, providing impressive levels of evidence to corroborate its accusations (Popkin and Roht-Arriaza, 1995).

The commission went out to peasant communities and interviewed victims' whose voices were never heard, which added legitimacy and a breadth of scope to the commission's efforts. The El Salvador case was also paradigmatic in that it "named names" in order to avoid impunity—it made sure that the people of El Salvador knew exactly who was responsible for crimes. The peace accord itself also recognized that perpetrators were not immune from legal

prosecution. Even if trials were not as frequent as amnesty, they were still implemented in tandem with the other mechanisms.

El Salvador also attempted to balance between preventing impunity by holding wrongdoers accountable and achieving an efficient and quick transition by applying retributive justice selectively. Instead of reforming functional institutions of justice, Salvadorans "confront a need to totally transform the structure of government…focusing on immediate judicial and political reform," according to Popkin and Roht-Arriaza (1995: 102). Ruben Zamora, former presidential candidate for the leftist FMLN/CD/MNR coalition, recalled that the decision to tackle deep social justice and institutional reforms in the peace agreement, rather than focusing only on a cease-fire, was an important way that accountability was built into the transition in a way that would address root injustices. He also claimed that, despite some evidence of fraud in the democratic elections that he lost in the aftermath of the transition, he decided to continue supporting the process within the new system, because a degree of restorative justice and forgiveness was necessary to consolidate the fragile new democratic institutions. [12] These dual recollections illustrate the hybrid nature of El Salvador's justice balance.

Thus, in the case of El Salvador truth-commissions were key alongside trials and amnesty. This was due in part to international legitimacy, the efficiency of the commissions, and the public approval of the commissions. The people of El Salvador generally desired some form of accountability, without impunity, and a quick transition and overhaul of less-than-adequately functioning political and judicial structures. At the same time, the acceptance of governance authority, the demobilization of the guerrilla forces, and the good offices of ONUSAL, the UN verification mission, helped to facilitate peacebuilding and prevented escalating feuds based on retribution. El Salvador remains a paradigmatic case for a country that had a large shift in political terror, which utilized a hybrid model of restorative and retributive justice. This brief case study has offered a handful of reasons why this was so.

Rwanda: Retributive justice through human rights trials

For the case study of a country that received one of the highest trial scores, Rwanda provides a useful exemplar. Although Rwanda did utilize limited amnesty, the country retains the highest score for trials, and is a paradigmatic case for a focus on retributive over restorative justice.

One of the worst genocides in recent decades, the Rwandan conflict claimed 800,000 lives at the hands of over 200,000 perpetrators. The civil war centered around radical extremists of the Hutu clan who blamed the minority of Tutsi civilians for the country's social, political, and economic problems. There was also a widespread belief among Hutu that past abuse and discrimination from the Tutsi needed to be rectified by efficient and violent means. The civil war and genocide came to a conclusion when the RPF (Tutsi dominated rebel group) defeated the Hutu fighters in 1994 (Genocide, 2012).

The Rwandan political context following the conflict was significant, as there was pressure to hold those responsible for the genocide accountable to ensure that it never happened again. The fact that the conflict ended largely through military victory rather than through a negotiated pact also meant that the 'winners', the RPF and the government of Paul Kagame, could (and needed to for their political legitimacy) push for 'maximal accountability' that penetrated to all levels of society, and not only to top leaders. Despite pressure from the international community to follow the South African model and focus more on restorative justice that would include some form of amnesty and truth commissions, the Rwandan government

focused its TJ efforts mostly on the retributive side, and international responses mostly followed suit. Trials and tribunals were initiated at multiple levels: the national judicial system aggressively prosecuted genocide perpetrators, and when it was obvious that it did not have the capacity to try the hundreds of thousands of potential cases, a local-level process was devised through the gacaca courts to have community leaders try the accused. [13] Finally, an international tribunal was initiated to address war crimes, crimes against humanity, and genocide—namely, the International Criminal Tribunal for Rwanda (ICTR). According to its statute, the ICTR was designed to complement the domestic judicial process by prosecuting those responsible for genocide, mass killing, and crimes against humanity during 1994, both within Rwanda and in neighboring countries, since quite a few atrocities were orchestrated from the Democratic Republic of the Congo and other bordering territories (UNICTR, 2012).

At its outset, however, the Rwandan delegation to the United Nations was skeptical of the proposition. The delegation argued that the ICTR's temporal limitations would prevent accountability for those involved in planning the genocide before the beginning of the year 1994, and that unlike the Rwandan criminal justice system, the ICTR statue did not allow for the death penalty to be imposed as a sentence (Fink 2005). Thus, while the international community maintained that judicial intervention was necessary, the Rwandan government was not in agreement about exactly how this should be directed within the country. A dichotomy of opinion and skepticism of international powers were present—two things which were not as prominent in the El Salvador case.

The ICTR was seen by some as an "imperial gesture," which did not allow Rwandan society to come to terms with a proper method of reconciliation, taking into account specific societal and cultural constructions. Instead, Jason Fink (2005: 123) notes, "its retributive orientation is directed toward rectifying the injury sustained by an abstract, a-historical and luminal subjectivity and is not able to address the needs for social reintegration marking Rwandan's dualist post-genocidal society." Such factors largely contributed to the perceived lack of legitimacy that the international tribunal endured.

Because truth commissions were not widely used in concurrence with trials in Rwanda, and there was not much foresight given to the specific cultural and societal characteristics of the State, Rwanda had a harder time translating international efforts into local-level reconciliation, and moving toward inclusive and sustainable peace. For certain situations, trials work well—but when they are not coupled with some form of truth telling, reconciliation, or amnesty—that is restorative justice—they tend to neglect distinct cultural and societal needs. Fink (2005: 130) notes, "The legal process of arriving at issues of individual guilt, as such, may be inappropriate under certain types of dualist post-genocidal societies," like Rwanda.

In contrast to this critical view of Rwanda's retributive justice approach to TJ, other observers defend the focus on accountability. Genocide survivor Bukumura Egide dismisses the pressure from some sectors for a more restorative approach in Rwanda. "I see the way they postpone things and if there is no immediate justice in Rwanda, if there is no truth, if there is no trial proceeding, and if there is no clear punishment, which is an important foundation then I can assure that there will be no unity." Pointing out the limitations of the 'confession' and community reconciliation components of the gacaca courts in particular, he argues,

> How can one force someone to ask for forgiveness? Because one admits his or her
> mistakes and later asks for forgiveness after realizing that he or she really did

wrong. But in our case, people are forced to ask for forgiveness, yet in reality they [perpetrators] don't even accept that they killed. That act may later on lead Rwanda into problems. Another thing is the perpetrators are the ones who are catered for. The survivors are not remembered, no one talks for them [survivors]. The government and gacaca court are biased. If the gacaca court does not work in transparency, they will not reconcile people. (Aegis, 2014)

A report by the International Institute for Democracy and Electoral Assistance (IDEA) provides a more robust defense of the potential for the gacaca courts to achieve accountability more effectively than the overburdened national courts, while also introducing elements of community participation and truth telling that could potentially lead to reconciliation more than generally occurs through court trials. It argues, "there seem to be a number of real-world reasons that may render the human rights and criminal law violations embedded in the gacaca process less devastating than may appear, either because there are few real-world alternatives, or because the process can be argued to constitute a locally appropriate, and popularly legitimate, form of justice, with a higher potential for contributing to reconciliation (Uvin, 2003: 119)." This report was written near the beginning stages of the implementation of the gacaca experiment, but later analyses agreed that gacaca was more effective than the ICTR or domestic court trials (Gasanabo, 2019).

Other analyses of the system's results critically portray the use of the *gacaca* courts—or local, participatory legal mechanisms seeking a hybrid form of restorative justice and especially retributive justice—as ineffectual. Max Retting (2008: 45), for example, argues that such courts were really not helpful at all, from either a retributive or restorative situation: "*Gacaca's* punitive model raised the stakes of participation and provided the opportunity for individuals in the community to use *gacaca* as a mode of personal revenge." Retting also claims that there is considerable evidence that *gacaca* did not eradicate distrust in the community, but in fact, exacerbated it, due to the damaging relationship between the people and authorities.

Thus, in the case of Rwanda, unlike El Salvador, there was not an effective mechanism for truth-telling or reconciliation, and the international tribunals were often seen as a top-down imperial imposition, and not a truly domestic effort on behalf of the Rwandan people. Even the *gacaca* court experiment, which meant to be both retributive and restorative, often failed to adequately address the underlying social distrust and polarization which impeded genuine healing and reconciliation. They were seen by many people on the ground as an imposed solution that often advanced the political interests and grievances of local and central government officials more than promoting genuine social integration.

Mozambique: Successful restorative justice without trials?

This section analyzes Mozambique, a unique case that ranks in the top 5 post-conflict states experiencing stable peace, and yet only utilized reconciliation and amnesty. Mozambique is an interesting case because it actually suffered two major armed conflicts: the first was a bitter liberation war against Portuguese colonialism from 1964-1975. Following independence, the Mozambican FRELIMO government implemented a program of trials and retributive justice against the 'comprometidos' accused of collaboration with the Portuguese. This campaign, named "'let us not forget the past', set out to 'transform the compromised based on the presumption of guilt, repentance, punishment and re-education'." (ICTJ 2008: 36)   This

aggressive pursuit of retributive justice did not succeed in transforming social relations within the country, and simmering conflict eventually erupted in 1978 in what would become a fifteen-year civil war between the socialist FRELIMO government and the RENAMO rebel insurgency. A peace accord was signed in 1992 which prompted elections in 1994; yet, as Graybill (2004: 1125) notes, "Despite the fact that one million civilians were killed, thousands tortured, and some of the most horrendous acts of barbarism were committed, there were no calls for justice, punishment, or accountability."

Unlike Rwanda, which pursued international and domestic criminal trials, there was a definite decision to avoid such retributive mechanisms in Mozambique (Cobban, 2007). Andrea Bartoli, an active participant in the talks as a member of the Community of Sant'Egidio, a Catholic organization which helped to facilitate the peace process, recalls several reasons for this. First, neither the RENAMO insurgency leaders nor the FRELIMO government was interested in playing the 'justice game' or pointing fingers, since both were implicated in atrocities during the war and had their share of dirty laundry. Second, there was a genuine war weariness and fear among the mass population of anything that might restart the war. The dominant narrative blamed the war itself as a collective trauma, rather than focusing on blame for a particular party or individuals. Third, because Mozambique had only recently gained independence from colonial Portugal, and the new government was immediately contested by internal guerrilla fighting, there was never a chance to consolidate a legitimate, widely trusted rule of law and governing institutions. For that reason, 'accountability' measures that would involve government-run trials were not attractive to a mass public having little experience with state institutions that they trusted. [14] Bartoli argues,

> Although human rights were always in the background of all talks, no truth commission was established to address RENAMO's prior violent activity, and no provisions were made for indicting or prosecuting war criminals. The text of the agreement represented the reality that Mozambicans wanted peace more than they wanted retributive justice. Mozambicans preferred to accept those involved in horrible war crimes into their own communities again rather than follow the Western-oriented way of dealing with the consequences of war. Very soon they started blaming the war--not RENAMO or FRELIMO--for the suffering that had marked the life of the country. (Bartoli, 1999: 265)

The interests of political elites to avoid a damaging retributive justice process were translated into a narrative that resonated with the cultural and symbolic repertoires of the mass population by employing a discourse of forgiveness, of healing, and by legitimizing the decentralization of local, non-state approaches to reconciliation, especially through civil society and religious actors. In Mozambique's unique cultural context, blame and revenge were seen as inimical to a society seeking to move on. Instead, traditional healers, called "curandeiros," were responsible for "defusing the cultures of violence the war had wrought" through rituals, ceremonies, and local healing processes (Graybill, 2004: 1125). These ceremonies reflect a very communal atmosphere in Mozambique, in which reintegration processes for victims and reconciliation were seen as keys to political and social success. The fact that Mozambican society is predominantly Christian [15], and that Catholic leaders played a significant role in facilitating the peace process, means that shared religious beliefs represented a powerful set of principles on which to establish

social reconciliation processes requiring trust and a shared vocabulary of healing and peace. According to an ICTJ (2008: 43) report, the avoidance of trials and retribution and the emphasis on forgiveness was seen as necessary for political and social healing, and was legitimized as spiritually and psychologically healthy. As Honwana (1999: 30) argues, "recent studies of war-affected populations in Mozambique show that talking about traumatic experiences does not necessarily help patients to come to terms with their distress." In fact, in some instances, it might add to that distress. Reconciliation is viewed most essentially between the living and the dead—one must cut one's links with an evil past, and not continue to over-analyze what has already ended (Graybill, 2004).

Amnesty worked within the social and cultural context of Mozambique because the discourse of forgiveness resonated with broadly shared principles within society, and because this narrative provided a frame for action that met the political interests of mutually implicated former fighters and governmental elites while also responding to the fear among the population of re-igniting a destructive conflict. As an exception to the general finding that hybrid forms of TJ seem to produce more sustainable peace than cases that rely exclusively on restorative or retributive forms, Mozambique provides an important case to understand the social construction of peace and the role that specific cultural and political contexts play in influencing the effectiveness of different TJ mechanisms. Although systematic studies measuring the outcomes of different mechanisms across cases are very useful, Mozambique serves as a cautionary example of the limitations of broad generalizations *across* cases, and the importance of understanding the social and political interactions *within* cases. A more expansive, integrative and locally contextualized approach to determining what effective transitional justice looks like is an important contribution (Ben-Josef Hirsch et al, 2012).

Conclusion

At the outset, this study sought to understand a phenomenon which plagues any post-conflict State: how does a country deal with past atrocities? Much of the contemporary literature on this matter has focused on a dichotomy between retributive and restorative justice, often neglecting the hybrid forms that fall between these two models. Even the growing number of studies that do consider the value of 'hybrid' models often seek to establish generalizable conclusions about their effectiveness or ineffectiveness in producing a variety of outcomes, including improved human rights, democracy, and security. While this is a worthwhile endeavor, and more systematic empirical work is certainly needed (Thoms et al, 2010), there is a real risk of oversimplified policy recommendations when TJ theories ignore the social/historical context and the internal political incentives of particular cases in favor of blanket recommendations or rejections of a specific mechanism, like trials, amnesty, or truth commissions (Ben-Josef Hirsch et al, 2012).

The data from the medium-N comparison of post-conflict cases reinforces the 'justice balance' conclusions of Olsen et al (2010) that, all other factors being equal, hybrid TJ mechanisms tend to work better than either punitive or restorative mechanisms alone. This is a useful finding that suggests that their analysis of TJ mechanisms' effects on human rights and democracy improvements can also be extended to the establishment of stable peace. However, the in-depth mini case studies of El Salvador, Rwanda, and Mozambique also show the need for caution in drawing bold generalizable conclusions, since all other factors are often not equal, and

the political and social context of individual cases have an important role in shaping whether this general finding applies to any particular case.

The analysis in the preceding article leads to several observations about the way different TJ mechanisms are selected and their impact on sustainable peace. These should be considered to be suggestive and helpful in identifying areas for further systematic research, rather than being proposed as conclusive prescriptions. First, the specific TJ mechanisms that are chosen depend primarily on political interests, especially of elites who are responsible for negotiating the transitional institutions, and on the mechanisms that are 'available' (as a result of demonstration effects or technical advice through epistemic communities) in a given society. Second, the mechanisms that are available and accessible to post-conflict negotiators and policy entrepreneurs are influenced by the rhetorical and symbolic repertoires constructed by a given society (and the cultural, historical, religious shared understanding that give these repertoires shared meaning). Third, the availability of these rhetorical/symbolic repertoires are affected by the 'distribution of guilt' and relative victimhood of each side. A conflict in which the perpetration of violence was very unbalanced toward one side or the other (or one party can persuasively portray itself after the conflict as having been the main victim) can legitimize a moral high ground and a discourse of accountability by the side that suffered greater violence. This makes it more likely that retributive justice mechanisms are included in the TJ design, and that these mechanisms will gain greater acceptance and legitimacy. If both sides were equally implicated in widespread atrocious behavior, it may lead to less emphasis on backward-looking accountability, and retributive justice mechanisms are less likely to be perceived as legitimate. This is illustrated in the different mechanisms that prevailed in Rwanda, where a genocidal massacre was largely carried out by one group against another, and the post-conflict victorious power structure was led by the victims (who pushed for retributive mechanisms), in contrast to Mozambique, where both sides were implicated in the conflict, the post-conflict government relied more on a negotiated settlement, and amnesty was favored above trials. Of course, the power relations between victors and aggressors, and the way that the war ends (i.e. through military dominance, negotiated settlement, etc.) also significantly influences whether one party has the ability and interest to impose a particular form of transitional justice on the other.

Finally, and importantly, whatever the TJ mechanism(s) that are selected, the likelihood that they will succeed in producing stable peace in any given case is largely a function of how much the interests of elites draw on and 'match' the cultural/contextual factors within the broader society. As Andrea Bartoli argues, the effectiveness of any TJ mechanism depends on "the cultural coherence, how much elite and populations speak the same language at the same time, and how much the transitional justice that is proposed, pursued, and applied is actually expressed in that alignment." Tying this observation to the post-colonial statebuilding challenge, Bartoli observes, "Transitional justice is one of the many instances which a new state formation needs to be put together after a fundamental trauma. And so the credibility, the sustainability, the success of the formation is clearly dependent on the elite but it's also dependent on the people and if the design is palatable to both...the chances of the strategy to be successful is greater." [16]

The expanding activities of international tribunals, and the call to end impunity and amnesty, has led to a focus within the international community on the need for retributive justice. Yet, as this study shows, such a focus should be balanced with the importance of restorative mechanisms for preventing a cycle of vengeance, and this 'justice balance' hybrid approach seems to have a greater tendency to produce peace, all other factors being equal. As the

medium-N analysis showed, countries that utilized a hybrid of restorative and retributive justice were more likely to have a higher peace sustainability than countries which only utilized one mechanism—most commonly, failing to utilize international or criminal prosecution through trials. Such a broad sketch, however, needed further clarification, so the case studies of El Salvador, Rwanda, and Mozambique – each representing a paradigmatic example of one of the three TJ models – helped to unpack *why* certain mechanisms worked, and why others did not (not just *whether* or not they worked). A key insight that also should inform (and caution) policymakers and institutional designers is the realization that the cultural context, and the resonance of elite interests with widely held norms and narratives, can make all the difference in whether a specific TJ mechanism will successfully lead to greater peace: there is no one-size-fits-all prescription. This article should serve the international community at large and countries emerging from disaster as they seek to foster justice and peace for the common good of all.

Notes

1. Note, however, that this literature has been criticized by some who say that it overstates the 'justice cascade' effect by counting the frequency of trials rather than their rate as a proportion of all democratizing transitional countries, and that much of the growth is driven by increased democratization, which drives movement in all types of transitional justice mechanisms. See Olsen et al (2010).
2. Personal interview with Ricardo Lagos, former president of Chile, October 4, 2011, Providence, RI.
3. This index of political stability and the absence of violence/terrorism "reflects perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism," and captures the degree of 'negative peace' in the various countries, averaged over a seven year period between 1997 and 2005. Since all of these cases had conflicts that ended after 1980, the selection of this time frame attempts to measure the effects of TJ across a comparable temporal window.
4. Data is publicly available at https://peaceaccords.nd.edu/.
5. Payne, Olsen, and Reiter (2010). The Transitional Justice Database is publicly available at http://www.tjdbproject.com/.
6. It should be noted that peace here is not restricted to democratic regimes per se; yet because of the "voice and accountability" measure within the political stability score, the case is made that an oppressive authoritarian regime, which was nevertheless politically stable, would still not meet these criteria.
7. Data is publicly available from the Human Security Index web site: http://www.humansecurityindex.org/ . This alternative indicator also allows a check on the longer-term peace and human security in each country, as it reflects more recent comparative data as of 2010.
8. Note that all of the states in this set issued at least some form of amnesty, with no state being listed as 'no amnesty'. Measuring "amnesty" only as "high (number of issuances)," "medium," or "low" appears to be insufficient, since a state could issue amnesty which covered a multitude of people, so the data set also includes an asterisk indicating which States had provisions for granting amnesty "to all," or "to everyone." This asterisk will prove useful in seeing which cases did maintain higher amnesty scores, in addition to the calculations just mentioned.
9. The mean values for states with hybrid forms of transitional justice on the political stability, peacefulness, and human security index, are -0.73, 0.08, and 0.56, respectively, while the respective mean values for states without hybrid forms are -1.15, -0.12, and 0.49.
10. It is also important to note that the political terror score measures organized political violence; it does not necessarily capture generalized criminal violence. In other words, it is more a 'negative peace' indicator of state-level peace than a 'positive peace' indicator of human security and well-being for individuals in the country. The importance of this caveat can be seen by El Salvador, which has improved its political violence score dramatically, but remains with one of the highest levels of criminal violence in the world (although this has also improved from its prior levels, as discussed below).
11. In the 25 cases included in the list here, there is no case that included only trials with no amnesty at all. Given this phenomenon, Rwanda was chosen as the paradigmatic case for retributive justice because of its substantive focus on trials and rhetorical rejection of amnesty.

12. Personal interview with Ruben Zamora Rivas, former presidential candidate of El Salvador, Monterrey, Mexico. June 25, 2003.
13. The gacaca courts were a modification of a traditional form of local justice administered by civilian justices of the peace, relying heavily on witness accounts and confessions above investigation and evidence collection (Megwalu and Loizides, 2010).
14. Skype interview with Andrea Bartoli, member of the Community of Sant'Egidio facilitation support team for Mozambique. February 16, 2015.
15. According to the CIA World Factbook, 56% of the population is Christian (half of these are Catholic), 18% is Muslim, and 26% identifies with some other religion or none.
16. Skype interview with Andrea Bartoli, former member of the Community of Sant'Egidio facilitation support team for Mozambique. February 16, 2015

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