Justice during armed conflict: A new dataset on government and rebel strategies

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Abstract

While armed conflict is ultimately about violent interaction between combatant groups, a variety of policies are pursued in conjunction with violence that contribute to the course of conflict and its outcomes. One underdeveloped area of research is the use of judicial and quasi-judicial processes during armed conflict. These processes, including trials, truth commissions, reparations, amnesties, purges or exiles, are directly related to the actions and abuses of the conflict itself—a phenomenon we refer to as during-conflict justice (DCJ). To enable researchers to answer questions about when and why governments and rebels resort to these strategies, and to what effect, we created a global, cross-national dataset which includes 2205 justice processes implemented during 204 internal armed conflicts between 1946 and 2011. Using these data, this paper investigates the conditions under which governments and rebels employ DCJ as well as the potential effects of DCJ usage on conflict dynamics and outcomes.

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In December 1999, ten years into the war against the Lord’s Resistance Army (LRA), the Ugandan government adopted a national amnesty that offered pardon to any rebel willing to renounce rebellion and lay down his or her arms. The Amnesty Act included farming provisions and a onetime cash payment to individuals who accepted the offer. Over 13,000 LRA rebels took advantage of the amnesty, however it would be another five years before the LRA would agree to peace negotiations. The amnesty offer was an explicit switch in strategy for the Ugandan government from a justice policy which had focused on prosecutions of LRA members. Why did the Ugandan government choose to make an amnesty offer while the conflict was ongoing? What factors led the government to move its policy away from trials to a more conciliatory approach? How did this move on the part of the Ugandan government impact the overall outcome of the conflict?

To date most of the empirical work on the use of justice processes in war settings has focused on institutions implemented in the post-conflict period. This work has assumed, either implicitly or explicitly, that these policies are offered and put in place once violence has ended. As the Uganda example demonstrates, this need not be the case. The same institutions which we associate with transitional justice, such as amnesty and reparations, are often implemented during armed conflict—a phenomenon we refer to as during-conflict justice (DCJ). DCJ refers to a judicial or quasi-judicial process initiated during an armed conflict that attempts to address wrongdoings that have taken or are taking place as part of that conflict. In this article we present a new global dataset on DCJ initiated during 204 internal armed conflicts occurring between

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2 In relevant research, these institutions are often referred to as ‘transitional justice’ however for the purposes of our discussion we focus exclusively on processes put in place during armed conflict rather than during political transition. Furthermore, we use the term ‘justice’ in line with the relevant research language while we do not presuppose that these processes are ‘just’ in the common understanding of the word.
1946 and 2011 in order to explore the use of these processes and their impact on conflict
dynamics and outcomes.

The DCJ dataset contributes to the growing literature on conflict and transitional justice
by providing scholars with an important tool for understanding the behavior of governments and
insurgents during armed conflict and to apply this study to existing research agendas. Our focus
on the use of justice processes during armed conflict parallels recent trends in armed conflict and
civil war research. Until recently, work in this field had predominantly focused on why conflicts
erupt, or, to a lesser degree, why conflicts end. Lately, however, scholars have turned to studying
the during-conflict period as well, examining the strategies chosen by the belligerents (e.g.
Cohen 2013, Humphreys and Weinstein 2006, Wood 2010), when these strategies are used
across time and space and in which contexts (e.g. LaFree et al. 2009), and the likely impact of
these strategies on the conflict and its outcomes (e.g. Lyall 2009).

The recent research on variations in violent actions that governments and rebel groups
engage in does not take into account how governments and rebels respond to their challenger’s
strategy during conflict (e.g. Cohen and Nordås (2014) on sexual violence; Conrad and Moore
how wrongdoings are addressed will broaden our understanding of the tactics governments and
rebels use while conflict is ongoing as well as the potential impact that DCJ can have on conflict
dynamics and outcomes. By combining the DCJ data with data on violent tactics we are able to
deepen our insights into these relationships. In this article, we highlight a few central
relationships between contextual factors and justice processes based on the literature on
government and rebel behavior during conflict as well as potential areas of impact based on DCJ
usage.
During-conflict justice comprises a range of government and rebel behaviors. A few examples illustrate the phenomenon; throughout the late 1990s the Sri Lankan government carried out a series of domestic trials against suspected leaders and rank-and-file members of the Liberation Tigers of Tamil Eelam (LTTE), an armed opposition group. Insurgent groups may also initiate trials such as in the case of Chechen rebels, who convened a military court in 2009 that tried and sentenced to death fellow rebel Akhmed Zakayev for being unfaithful to the cause.

DCJ can, conversely, be pursued with less punitive and more conciliatory intents. In 2004, Thai Prime Minister Thaksin Shinawatra established a commission of inquiry to investigate government and insurgent actions surrounding ‘the Tak Bai incident’—a Pattani rebel riot and related police retaliation that left 88 protesters dead. The commission’s report was made public in 2005 and a compensation fund was set up for victims. Opposition groups can employ similar conciliatory strategies. In 2001, the Palestinian National Authority offered a conditional amnesty to individuals guilty of collaboration with Israel. In order to avoid prosecution, collaborators had to come forward voluntarily and disclose the details of their involvement. Such efforts illustrate the different ways in which governments and challengers navigate the conflict through judicial or quasi-judicial means. While during-conflict justice has not frequently been analyzed as a strategy during armed conflict, our data suggests it is a relatively common tool for both governments and insurgent groups. Over 60 percent of conflicts since the Second World War have included at least one DCJ process.

The data on judicial and quasi-judicial measures presented in this article contributes to the broader trend in conflict studies to examine government and belligerent behavior while conflict is ongoing in order to better understand the progress of the conflict over time and its likely outcomes. We begin with a presentation of the new dataset. We describe how the DCJ data
was collected and what information is contained within the dataset. This is followed by an exploration of the DCJ strategies chosen by governments and rebels in different contexts: across different types of political regimes and under different power relations between government and rebels. We then examine the potential impact of DCJ use on conflict intensity and termination. We conclude with a discussion of how the DCJ data can be used to explore many of the main debates in the conflict literature.

The During-Conflict Justice Dataset

The During-Conflict Justice dataset catalogues DCJ across 204 internal armed conflicts in 108 countries between 1946 and 2011, using the UCDP/PRIO Armed Conflict Dataset version 4-2012 (Gleditsch et al., 2002; Themnér & Wallensteen, 2012) as our basis for defining country-years that exhibit active conflict. Similar to post-conflict justice (Binningsbø et al. 2012), DCJ is defined to focus exclusively on crimes or wrongdoings related to the events of a particular conflict. While it is possible for these institutions to be implemented in the midst of political transitions as well, the DCJ data includes only judicial and quasi-judicial processes implemented during violent conflict.

The DCJ dataset includes information on six forms of addressing wrongdoing: trials, truth commissions and commissions of inquiry, reparations, amnesties, purges, and exiles. Each DCJ process is a separate observation in the dataset. A given country-year can have multiple observations as more than one DCJ process can be implemented in that year. This format gives

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3 Within this time period there are 396 separate conflict episodes active in 1937 conflict years.
4 We only include DCJ when the sources specifically mention the name of the rebel group, rebel leader(s) or some other information that makes us certain about which conflict the process relates to. Because of this, we are able to separate processes related to different conflicts or exclude processes related to non-conflict events.
5 While we use a DCJ/year format, it is possible to collapse the data on conflict year to directly mirror the UCDP/PRIO dataset.
us yearly variation on DCJ use to allow for the analysis of sequences of government and rebel behavior and conflict events. The dataset includes a total of 2205 during-conflict justice processes. Among the countries experiencing conflict, 76% used at least one form of DCJ and 65% initiated two or more processes. The median armed conflict has one DCJ process, but some conflicts have more than 50 processes.6

The data was collected by five research assistants at West Virginia University between September 2012 and August 2014. The primary sources of information for coding DCJ processes were LexisNexis and Keesing’s World News Archive.7 When needed, we gathered additional information from secondary sources.8 Furthermore we accessed the full text of peace agreements, cease-fire agreements, memorandum of understandings and truth commission reports available from various sources.9 When none of these sources provided adequate information to complete our full coding protocol, we consulted other sources on a case-by-case basis.10 Coders searched each of these sources with a unified list of search terms modified for each conflict. Each coder received a docket of conflict cases to code independently as well as a sub-sample of cases randomly selected for inter-coder reliability checks. Twenty-five percent of conflicts (50 conflicts total) were coded by two independent coders and disagreements in coding decisions

6 Among these, Israel stands out with 294 trials and 365 DCJ in total throughout the Palestinian conflict (1949–1996, 2000–ongoing).
7 When using news media as the main source for data collection we may encounter problems of reporting bias (Davenport 2010). For example sources may cover certain regions, conflicts, actors, or time periods more extensively than others. Still, we have reason to believe our data represent the true distribution of DCJ across conflicts in the UCDP/PRIO dataset. The increase in DCJ over time reflects the increase in conflict over time, whereas the low number of rebel-initiated processes compared to government-initiated ones is likely an effect of low rebel capacity rather than reporting bias. Potential over-reporting of certain DCJ processes in certain countries may be remedied analytically by collapsing the total numbers of DCJ processes by conflict, country, or year.
9 E.g. UCDP database, US Institute of Peace, and the UN peacemaker webpage.
10 We treated these sources equally, thus a process recorded in one source but not the others is included in our data. We maintain a narrative document of all coding text and sources used for the coding of each process.
were discussed and reconciled.\footnote{11 For more information on the data collection and coding of the dataset please refer to the DCJ dataset codebook (Loyle and Binningsbø 2016) and the project website (www.justice-data.com).}

The DCJ dataset collects unique information for each process type (e.g. variables specific to trials, truth commissions, etc.) as well as general descriptive information on each process (e.g. start and end date, sender and target) to help us better understand the universe of strategies employed by governments and rebels during armed conflict. In the following sections we present the definitions, prevalence and variables unique to the six DCJ processes, and thereafter give a brief presentation of the general descriptive variables.

*Types of During-Conflict Justice*

The six different forms of DCJ in the dataset represent the most central judicial or quasi-judicial options for governments and challengers to address violence (Elster 2004). Figure 1 shows the total number of each DCJ type included in the dataset by sender. Governments adopted 70.4% of all DCJ processes in the dataset, while rebel groups were responsible for 10.3%.\footnote{12 For the purpose of this article we discuss the behavior of governments and rebels, however, researchers interested in other actors are also able to use the DCJ dataset. The remaining DCJ efforts are accounted for by both parties implementing DCJ in tandem (1.5%), international actors (1.1%) and others (16.7%), for example neighboring countries prosecuting alleged war criminals.} While governments are by far the largest adopter of DCJ, there is variation in DCJ usage by insurgent groups. For example, insurgents are more likely to use trials, purges and amnesty rather than more capacity-intensive processes such as reparations and truth commissions. Below we describe each of the DCJ types in detail.
The most commonly employed DCJ process is putting purported wrongdoers on trial. More than a third of the conflict episodes in our dataset (139 of 396) have at least one during-conflict trial process. In total, there are 1383 separate trial processes. We define a trial as the formal examination of alleged wrongdoing through judicial proceedings within a (quasi-) legal structure. Trials can include domestic prosecutions, military courts (by either the government or rebel group), ad hoc tribunals, or international prosecutions. We include separate variables for each type of trial so that researchers can single out and distinguish between each type according to their interests. We also include variables reporting whether there was any international involvement in the trial process; whether or not the defendant was tried in absentia; whether or not the defendant was sentenced to death; and whether the trial involved a suspected breach of justice (e.g. evidence of show trials or summary executions following arrests with no due process). As we are interested in (quasi-) judicial proceedings, we only code a trial process

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13 Our conception of breach of justice differs from Jo and Thomson’s (2014) study of rebel and government compliance with international law. Their study examines access to detention centers by the International Committee of the Red Cross, a phenomenon not included in our data. Researchers interested in both the (quasi) judicial
when there is evidence that an actual trial took place. We therefore do not include events where we have evidence of an arrest, but no formal hearing.

The large number of trials in the DCJ dataset is driven, in part, by a small number of countries. Seven conflict episodes occurring in six countries each have more than fifty trial processes. Israel stands out as a special case. The Palestinian conflict has two distinct conflict episodes in the UCDP/PRIO dataset (1949–1996 and 2000–ongoing). The first episode had 132 trials and the second had 162 trials. Interestingly, whereas almost all trial processes between 1949 and 1996 were initiated by the Israeli government against members of the Palestinian opposition, the opposition initiated 32 out of 162 trials during the second conflict episode. This includes trials held in state security courts of the Palestinian National Authority until 2002 (when PNA was no longer a party to the conflict) and Hamas military courts in Gaza. Latin America has also seen high numbers of during-conflict trial processes. In Peru, the majority of trials (48 of 82) were conducted by the Shining Path rebels. This group set up a number of ‘People’s court’ trials, in particular during the first half of the 1982–1999 conflict. Quite often the defendant was sentenced to death due to collaboration with the enemy.\textsuperscript{14}

Truth commissions are defined as temporary investigative bodies that focus on a pattern of abuse over a particular period of time. This includes formal truth commissions (Hayner 2011) as well as commissions of inquiry. There are 69 commissions in the dataset.\textsuperscript{15}

\textsuperscript{14} Additional conflicts with high numbers of trials include USA/al Qaida (72 trials 2004–ongoing), Turkey/PKK (73 trials 1984–ongoing), Colombia/FARC, ELN (80 trials 1964–ongoing), and United Kingdom/IRA (106 trials 1971–1991).

\textsuperscript{15} While the number of truth commissions globally is increasing, such commissions are often mandated to investigate broad legacies of abuse and violence outside of the scope of a particular armed conflict. In line with our coding scheme, the DCJ dataset includes only commissions implemented specifically to address a given armed conflict.
or commissions of inquiry are often capacity-intensive processes in which commissioners must be selected, testimonies and other forms of evidence must be gathered and then some sort of report or presentation of the findings is made. The dataset includes a variable stating whether such a report was released, as well as variables reporting whether the international community was involved and whether there was a suspected breach of justice. Commissions differ from trials as they do not follow the same standards for burden of proof or due process, making it easier to determine patterns of events, but sometimes at the expense of the rights of the accused (Leebaw 2008). Commissions are often implemented to systematically investigate events where evidence may be lacking, culpability may be difficult to determine or issues of motives and intentions are more central to the broader understanding of the event.

The truth commissions and commissions of inquiry in the DCJ data vary in scope. Some commissions have broad mandates to investigate a wide range of abuses across multiple actors over the course of the conflict. In 1993, the Guatemalan government presented its plan for a truth commission investigating human rights violations and acts of violence connected to the ongoing Guatemalan National Revolutionary Unity (URNG) insurgency. The commission was officially established in 1994 and carried out its work until 1999 when it published a final public report detailing the human rights violations which took place during the civil war from 1949 to 1995. Similar to in Guatemala, most of the comprehensive truth commissions are established towards the end of the armed conflict, but before the conflict is finally settled. Other commissions have more specialized mandates to investigate single incidents. In 1992 the Ethiopian government established a commission of inquiry to investigate killings which took place in Bedeno province in order to determine whether the government or Oromo Liberation Front rebel group was responsible for those deaths (BBC 1992a).
Reparations are compensation given to an individual or group who was harmed in some way during the conflict. Reparations have been broadly defined in the literature (De Grieff 2006) and are similarly defined in the DCJ dataset to include monetary reparations, property transfer, skills training, education and employment assistance, and/or compensation to war-affected communities as a whole. As with trials, each of these categories is distinguished in the data to allow researchers to differentiate between each reparation type according to the researcher’s interests. There are 154 during-conflict reparation processes in our dataset. In addition to the variables for the type of reparation we also include a variable reporting the funder of the process.

Reparations can be offered to civilians. For example, in 2008 Uganda's president Museveni set up a fund to compensate civilians for cattle and other livestock stolen by the Ugandan army or Lord’s Resistance Army (LRA) rebels during the conflict. The insurgents and government forces have taken a reported 245,046 animals and the government agreed to pay compensation for each animal lost (Ocowun 2008). Alternatively, reparations can be offered as compensation directly to combatant groups. In conjunction with a 1983 amnesty offer to the Shanti Bahini rebels, the Bangladeshi government sought to encourage rebel rehabilitation by offering a cash payment, a year’s supply of food rations, and five acres of land in exchange for the rebels’ willingness to abandon the insurgency and return to civilian life. Rebel groups also offer reparations, just as the CPI-Maoists in India did in 2008 when providing compensation to the families of group members killed in the conflict (Indo-Asian News Service 2008).

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16 We exclude symbolic reparations, such as changes in history books, days of remembrance, and the creation of memorials and monuments.
17 The dataset does not include foreign aid or emergency relief, but does include reparations funded by international actors such as the UN.
18 We include compensation to rebels and soldiers as well as reparations to victims. By this we follow the logic of DDR programs which acknowledge that former combatants have been negatively affected by the conflict.
Amnesty is defined as a promise (or in some cases formal legislation) on the part of a party to the conflict to not prosecute or punish (alleged) violators of human rights or domestic laws now or in the future. There are 442 amnesty offers in the DCJ dataset.\footnote{This includes amnesties or pardons granted to people who are incarcerated or have already been sentenced in a trial.} We include a variable reporting if amnesties were limited to certain types of actions, crimes, wrongdoers, or periods of time in which the crimes were committed. This variable refers to different categories of targets who may or may not be eligible for amnesty, e.g. amnesty could be limited to those who did not commit violence against civilians, or to those who were not in leadership positions in the rebel group. The dataset also singles out unconditional amnesties, i.e. there are no conditions or restrictions put on the amnesty offer, and the target does not have to do anything in order to receive the amnesty.\footnote{This variable refers solely to conditions put on the targets in order to receive amnesty. It is therefore possible to have an unconditional amnesty that is limited to a certain group (for example, all rank and file members are granted unconditional amnesty but leaders of the rebel group will be tried).} Moreover, we code a renewal of an amnesty as a separate DCJ observation if it was the result of new legislation or part of a new peace agreement.\footnote{When an amnesty is a renewal of an earlier amnesty we use a ‘related to another DCJ’ variable to connect the two observations in the data.}

A purge is defined as the act of removing politicians, members of the armed forces or judiciary, or other members of society for their (alleged) collaboration with or participation in a conflict and limiting their influence accordingly. Purges are used to target suspected individuals or supporters of the opposing side, as well as targeting an entire organization, such as the disbandment of the army. The DCJ dataset includes 62 purges which are coded according to whether they occurred in the military, judiciary, among politicians, or were targeted at civil service, as well as whether the purges were temporary or permanent. Purges are more common among opposition groups; 34 of the 62 purges in the dataset were initiated by a rebel group.
Exile or expulsion is defined as a *period of forced absence from the country of interest*. There are 92 exiles in the dataset. Similar to purges, we record whether the exile was permanent or temporary. We do not include forced relocation within a given country among the exiles in our dataset. Exiles are most often initiated by the government. For example, the Haitian government deported three captured army officers allegedly responsible for a 1989 coup attempt. Insurgent groups can use exiles to remove threats from within their organization, although it rarely happens in practice as insurgent groups lack the institutional structure to forcibly remove an individual from a country. Of the exiles in the data, only 3 are initiated by rebel groups.

*During-Conflict Justice across Space and Time*

Patterns in DCJ implementation vary across space and time. Figure 2 shows the number of DCJ processes across five regions. Trials are the most common DCJ in all regions, but the Middle East stands out with 433 processes taking place during 250 conflict years. Europe has the lowest number of trial processes (197), but the highest percentage as 52% of all conflict episodes in Europe have at least one trial. Granting amnesty is also quite common across region, with Africa and Asia showing the highest numbers (165 and 135, respectively), while Europe and Africa have the highest percentage of conflict episodes with at least one amnesty (43.6% and 40.3%, respectively). The four other DCJ processes are infrequently implemented in all regions, with reparations in Asia and exiles in the Middle East being noteworthy exceptions. Of the 154 reparations in the dataset, 79 occur in Asia, in particular in India (19) and the Philippines (14). In the Middle East there are 50 exiles and expulsions between 1946 and 2011, almost all of these (39) occur as part of the Israel/Palestine conflict.

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22 Regional variable is taken from the UCDP/PRIO Armed Conflict Dataset version 4-2012 (Gleditsch et al., 2002; Themnér & Wallensteen, 2012).
Figure 2. Number of DCJ processes by region.

Note: The figure shows 2204 DCJ processes and 396 conflict episodes.

Further variation is seen in the changing use of DCJ over time. In particular, figure 3 reveals a marked increase in the number of trials since 1946 with a noticeable increase in the mid-1990s, a period of time corresponding to Kathryn Sikkink’s ‘justice cascade’ (Sikkink, 2011). The ‘justice cascade’ suggests that accountability through human rights trials is a global norm which has been increasing in influence. Figure 3 demonstrates also that the use of trials has increased at a rate which exceeds the total number of ongoing armed conflicts (shown in the shaded area of Figure 3). Of note, the rate of amnesties has also increased slightly.
**DCJ Descriptive Variables**

In addition to measuring the presence or absence of DCJ while conflict is ongoing, across all of our DCJ types we collect and code information on the start date and end date of the process, the target and sender of the process, the scope of the process, whether or not the process was related to a peace agreement or another DCJ process, and whether or not there is direct evidence that the process was implemented (as opposed to proposed, or offered).

The *start date* records the first evidence of a DCJ process in our sources (such as the start of a trial or the agreement to convene a truth commission). The *end date* codes the day a DCJ process ended (such as the public release of a truth commission report or the deportation of an individual being exiled).
The target is the individual or group who is subject to the process (e.g. the rebel leader who is exiled or the military commander put on trial). The target variable separates between side A, side B, both, and other. 23 ‘Other’ refers to processes that are clearly conflict-related, but where the target is not party to the conflict, for example reparations given to civilians in war affected areas. We also include a target rank variable, reporting whether the target was a civilian, rank and file, or elite.

The sender is the individual, group or government who initiates the process. The sender variable also separates between side A, side B, both, and other but adds the ‘international community’ as a potential sender. ‘Other’ is used when there is more than one sender (in addition to side A or side B) or when the sender is a different, specific country other than the country where the conflict occurs, while ‘international community’ relates in particular to international tribunals or DCJ initiated by international organizations.

The scope refers to the level of inclusivity of the targeting of the process, such as whether an amnesty extends to only rebel leaders or to the whole organization. The variable separates between specific individuals, a named group, and a general group/community. In addition we include a scope count variable if the specific number of targeted people is available, for example ‘five rebels were tried’ or ‘250 victims received compensation’.

The implementation variable captures whether or not there is evidence that a process was successfully implemented, i.e. there is evidence that the process was actually put in place rather than simply proposed or promised. 24 For example, if a reparations law was passed it is only

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23 Target and sender are coded by identifying the actors for a given conflict episode using the UCDP coding for side A and side B of the conflict. In an internal conflict, side A generally refers to the government and side B, the rebel group or opposition. We coded targets and senders only if the name of an individual or rebel group was mentioned in relation to the DCJ process.

24 In the case of small or poorly documented conflicts we may find reference to a DCJ, but no specific information to suggest that the process was implemented. This variable allows researchers to choose whether or not to include these particular DCJ in their analysis depending on their own research question and objectives.
coded as ‘implemented’ if there is evidence that individuals actually received reparations (e.g., monetary payments were received). We also code whether the process is related to another DCJ, e.g. if a purge is the result of a trial or an amnesty is a renewal of a previous amnesty offer. Finally, we include a variable reporting whether the DCJ process was initiated as part of a peace agreement regardless of whether that agreement brought an end to the conflict or not.

Dynamics of During-Conflict Justice

Research on during-conflict justice is well placed to address current questions in the conflict studies literature about the strategies that governments and rebels use in the midst of armed conflict. The DCJ dataset helps us understand the conditions under which during-conflict justice is used as a conflict tactic and the type of process most likely to be put in place as a result. The two main research questions to emerge from our study of DCJ are: when are governments and rebels most likely to employ DCJ and what are the likely consequences of its usage. Below we examine the impact of two central factors —regime type and rebel strength— on the decisions of governments and rebels to adopt DCJ. Furthermore, we discuss the potential impact that DCJ has on conflict intensity and termination. Our exploratory analyses uncover several interesting relationships that warrant further investigation within the fields of conflict studies and transitional justice, and demonstrate the need for incorporating the study of DCJ into our broader discussions of government and rebel behavior during conflict.

Regime Type

One of the main predictors of government behavior during conflict is regime type. We would expect domestic audience costs and international commitments to have a stronger impact on
democratic governments and their challengers than these actors in non-democratic states (Jo and Thomson 2014; Reiter and Stam 2002). We should therefore anticipate that democratic governments are more likely to use non-violent or alternative approaches, such as judicial and quasi-judicial processes, during armed conflict because these strategies will be in line with the judicial structure of that country and potentially adhere to international law.

Figure 4 shows the relationship between regime type and justice processes initiated by governments during conflict. The figure shows the percentage of active conflict years with government DCJ across regime as categorized by Polity (Marshall and Jaggers 2002); following convention, countries with an overall score of 6 or higher on the Polity scale are categorized as democracies, countries with scores of -6 or lower are autocracies, and countries with scores from -5 to 5 are classified as anocracies (mixed regimes).

*Figure 4. Percentage of conflict years with at least one government-initiated DCJ process by regime type (N=1588).*
Not surprisingly, we do see that democratic governments are more likely to use DCJ than anocracies and in particular autocracies.\textsuperscript{25} We know that democracies are less likely to attack civilians (Eck and Hultman 2007) and more likely to comply with international law during civil conflict (Jo and Thomson 2014) compared to other regimes. Figure 4 shows that government-initiated trials are quite common across all political regimes, but in particular in democracies and mixed regimes compared to autocratic ones. This lends support to the contention that governments abiding by the rule of law may be more likely to use trials than those countries without a strong legal tradition. The countries with the highest numbers of trial processes in our dataset are consolidated democracies with strong and independent judiciaries such as Israel, the United Kingdom, and the United States.

From figure 4 we also see that democracies are more likely to investigate and compensate crimes involving civilians.\textsuperscript{26} Although truth commissions are not common, 28 of the 43 government-initiated commissions in the dataset are in democracies with eight in mixed regimes and three in autocracies.\textsuperscript{27} The majority of the commissions initiated by democracies occur in India, where riots and subsequent police retaliation prompted investigations in the 1980s.

Among those commissions adopted in autocracies, two were mandated to investigate the

\textsuperscript{25} We present the relationship between political regime and DCJ for those processes initiated by the government. The picture differs when comparing rebel groups’ DCJ use. Rebel groups mainly use DCJ when fighting democracies; in autocratic and anocratic regimes rebels do not normally pursue DCJ. The numbers for rebel DCJ is highest in democratic countries such as Colombia, India, Israel, Peru, and the United Kingdom.

\textsuperscript{26} Since we are able to separate between DCJ processes by target type we know that 81 of the 122 reparation processes initiated by governments (Side A) are targeting civilians, 41 of these again are in democratic countries. For truth commissions, the ‘target’ variable refers to those who committed the crimes under investigation. A qualitative assessment of the data reveals that a clear majority of the TCs initiated by democratic governments focus on violent events involving civilian victims and casualties.

\textsuperscript{27} The remaining four government TCs are initiated in years of anarchy (polity value -77) or transition (-88).
opposing sides’ violations only, whereas the third was initiated by the Ugandan government in 1988 to investigate crimes committed by the government’s army in Northern Uganda.²⁸

Further, as Figure 4 demonstrates, at least one reparation process is initiated by a government in 10% of all democratic conflict years. The number is similar for anocracies, but almost no autocratic government initiates a reparation process. Among these reparations, the majority (four of seven) are cash payments made available to rebels who accepted amnesty offers from the government. Together, these findings on truth commissions and reparations suggest that governments pursue conciliatory strategies when they are accountable to their domestic constituencies and therefore inclined to investigate and remedy wrongdoings during war.

Figure 4 also reveals that amnesties have the least (relative) difference in usage across regimes. Regardless of how a country is ruled, all types of governments turn to pardoning crimes at some point during an internal armed conflict. Together with purges, however, amnesties are initiated more often in mixed regimes than in democracies. This suggests that mixed regime governments choose to implement DCJ outside of the existing judicial structure—perhaps mixed regimes have more political freedom in their justice choices during conflict as they are less likely to be held to constitutional or judicial regulations. Surprisingly, democracies are most likely to use exiles. This result is driven, however, by the high number of expulsions from Israel as 14 of the 24 democratic exiles take place within the Israel/Palestine armed conflict. In particular in the late 1980s Israel expelled quite a few Palestinians on charges of terrorism or supporting the Palestinian opposition.

Overall, governments and rebels pursue justice processes as expected given previous research on combatant behavior and political regime (Jo and Thomson 2014). Rebels are also

²⁸ Ultimately the Ugandan Truth Commission was unable to achieve many of its aims. See Quinn (2004) for a detailed analysis of this process.
more active users of DCJ when fighting against democracies than against non-democratic
countries. However, the above figure reveals some unanticipated patterns, such as the large
difference in DCJ usage between autocracies on one hand and democracies and anocracies on the
other. Further research is necessary to fully understand the judicial and quasi-judicial
calculations made by governments and rebel groups in different political contexts.

**Balance of power**

In addition to the domestic context, such as political regime, we expect the conflict itself to
impact the strategies employed by governments and rebel groups (Cunningham et al. 2009;
Kalyvas & Balcells 2010). The ability and desire of governments and rebels to employ DCJ is
likely to be a product of the overall capacity of these actors as well as the balance of power
between the two groups. For example, during the Angolan civil war (1975–1995) UNITA rebels
conducted various DCJ processes, including a 1992 commission of inquiry into the deaths of two
senior UNITA military defectors as well as other ‘irregularities’ (BBC 1992b). At this time,
UNITA had an estimated 45,000 men at arms and was considered on parity with the Angolan
government.

To investigate the claim that capacity matters for DCJ implementation, we use the Non-
State Actor dataset (Cunningham et al. 2009) which measures rebel strength in relation to the
government. Figure 5 demonstrates that as rebel strength increases in a given conflict year,

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29 This finding is similar to that in the civilian targeting literature which demonstrates that rebels are more likely to
attack civilians (one-sided violence) when facing democracies (Eck and Hultman 2007:244).
30 The Non-State Actor dataset has five categories for rebel strength relative to government: much weaker, weaker,
parity, stronger, and much stronger. Given the low number of conflict years with stronger (26) and much stronger
(7) rebels we group these two categories together in one ‘(much) stronger’ category.
government use of DCJ decreases, while rebel use of DCJ increases. This pattern supports our contention that DCJ use is likely related to measures of capacity for both government and rebels.

*Figure 5. Percentage of conflict years with DCJ across rebel strength (N=1927).*

Furthermore, the DCJ strategy that each group employs varies across this measure of relative capacity. For example, the DCJ data reveals that while governments are almost always more likely to use trials compared to amnesties, this pattern shifts when weak governments fight strong rebels (results not shown). In situations where the balance of power favors the rebels, governments are more likely to use conciliatory strategies, such as amnesties, potentially in an attempt to signal a willingness to negotiate. Purges are also used when rebels are much stronger, suggesting their potential use as a strategy of last resort for a weak government. In Liberia, just months before he was assassinated in September 1990, President Doe purged the army of soldiers not belonging to his own ethnic group (The New York Times 1990). Further, trial use decreases as rebel strength increases, with only three trials in conflict years with (much) stronger rebels. One of these trials was held in early 1991, when a group of 20 (alleged) Rwandan Patriotic Front supporters were sentenced to death or prison by the Rwandan state security court.
Yet this group, together with more than 3,000 others, was released in an amnesty just a few months after the sentences were passed (Inter Press Service 1991).

Rebels have a different calculus. Both trials and amnesty offers increase as rebels gain strength. On possible explanation is that trials are a mark of rebel capacity, and amnesty is only a credible strategy for strong rebels who appear likely to win the war or who are simultaneously able to threaten trials. Rebel use of DCJ is likely to be more prominent across groups with a higher capacity to use justice processes. For example, the Maoist rebels in Nepal held and governed a large territorial area during the conflict. They formed People’s Courts, which were used to try alleged criminals for everyday offenses, as well as alleged government supporters and others for war-related charges. These courts would not have been possible without a high level of capacity in certain areas of Nepal (Sivakumaran 2009).

It seems reasonable that rebels increase their overall DCJ activity when capacity increases as military capacity likely reflects opportunity for DCJ usage. However, it is more puzzling that governments decrease their overall activity as rebels get stronger. We know that governments are more inclined to grant concessions, such as offers of power sharing, when rebels are relatively stronger (Gent 2011), as weak governments will try to accommodate stronger rebels to avoid military defeat (Cunningham et al. 2009). Surprisingly, this pattern does not seem to hold for all justice initiatives during armed conflict. Why do relatively weak governments grant some types of concessions, but not others, to stronger rebels? Taking advantage of the DCJ dataset we can address this and similar puzzles when advancing the research on government and rebel behavior during conflict.

Conflict Intensity
In addition to the conditions under which during-conflict justice is most likely to be employed, there is the question of the potential impact of its usage. Specifically what impact, if any, does DCJ use have on the armed conflict itself? To examine this possible impact we look at conflict intensity (battle deaths) in the year following a DCJ process and how conflict episodes with and without DCJ have ended.

In figure 6 we compare conflict years with government and rebel DCJ to conflict years without, and show the change in battle deaths the following year. We use Lacina & Gleditsch’s (2005) battle deaths dataset version 3 (updated to 2008) which records the total number of combatants (both government and rebel), and civilians caught in cross-fire, killed in a given conflict year. Of the 481 conflict years without any government-initiated DCJ process, half of them (53%) did not see any change in battle deaths the following year whereas 19% saw less and 28% saw more battle deaths.31 When the previous conflict year had at least one government-initiated DCJ process, there are noticeable changes in intensity: 38% of the 341 conflict years with government DCJ see a reduction in battle deaths the following year, whereas 31% see an increase. For rebel-initiated DCJ the pattern is similar, although the number of conflict years with rebel DCJ is much lower than conflict years without (85 and 737, respectively). Overall, the above pattern, that DCJ usage one year is correlated with larger changes in conflict intensity the following year (both more and less), stay the same regardless of type of DCJ process and whether the initiator of the process was the government or the rebel group.

31 More or less battle deaths are defined as 10% more or less people killed than in the previous year.
While DCJ usage can lead to both more and less intense armed conflicts, what is striking from figure 6 is that twice as many conflict years with government-initiated DCJ than without are followed by fewer battle deaths in the subsequent year. In other words, when a government initiates a justice process the conflict becomes less violent. This reduction in intensity is particularly clear when governments adopt trials, reparations, amnesties, or purges.

Although conflict years with government-initiated DCJ are also followed by years with more battle deaths compared to those without the change is not as large. One would assume governments do not initiate DCJ in order to escalate violence, yet this sometimes happens. A possible explanation may be that offering concessions, for example by setting up commissions of inquiry or granting amnesties, signals a weak government that can be further destabilized and thus inspires rebels to use more violence to reach their aims (Davies 2014). Initiating both conciliatory as well as coercive justice strategies may send unclear signals from the government and increase instability (Davies 2014).
**Conflict Termination**

Another important question regarding government and rebel behavior during conflict is if certain behaviors influence how and when a conflict ends. Most of the episodes in the UCDP/PRIO dataset end because conflict activity waned (44%) without an obvious termination event; about one third of conflicts end in military victory and one fourth end with a negotiated settlement. To what extent may DCJ usage have an effect on how conflicts end? Figure 7 shows the relationship between armed conflicts with and without government and rebel DCJ and the type of conflict termination. We use Kreutz’ (2010) UCDP Conflict Termination Dataset version 2010-1, but recode the six termination categories into three: negotiated settlement, victory, and other/low activity.\(^3\) From the figure it is clear that for armed conflicts where the government initiated at least one DCJ process, the likelihood of the conflict ending in a negotiated settlement doubles compared to conflicts without any government DCJ. Similarly, the likelihood of military victory is reduced from 37% (no government DCJ) to 23% (at least one government DCJ). The pattern is parallel, but not as strong, for armed conflicts with and without rebel-initiated DCJ.

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\(^3\) Kreutz (2010) has the following termination categories: peace agreement, cease-fire agreement with conflict regulation, cease-fire agreement (we group all three into the ‘negotiated settlement’ category), victory, low activity, and other (the last two are grouped into one category).
Breaking down government and rebel DCJ by type (results not shown), we find that negotiated settlements are associated with government-initiated exiles (62% of all conflict episodes with at least one government exile end with a negotiated settlements), truth commissions (47%), and amnesties (44%). While it is difficult to discern a causal effect based on only eight government exiles and eight truth commissions, our data suggests that amnesties may signal governments’ conciliatory attitudes and willingness to negotiate an end to conflict. For example, the amnesty granted by the Indian government in 2003 inspired substantial numbers of rebels in Bodoland (Assam) to surrender and join rehabilitation programs. In late 2004 negotiations started between the rebels and the government and a cease-fire pact was signed the following year.

Although DCJ may not be the best strategy for a government if it aims to win the war militarily (16% of conflict episodes with at least one government-initiated DCJ end with government victory, 26% of conflicts without DCJ do the same), it clearly is a viable strategy if the goal is a negotiated settlement. Studying the data in detail, the number of DCJ processes
increases towards the end of conflict, often occurring simultaneously with a reduction in conflict intensity (see discussion above). Whereas the extensive use of DCJ revealed by our data confirm that justice processes are relevant policy tools for governments and rebels during internal armed conflict, the above findings on intensity and termination imply the motivation behind and intended consequences of this usage. Our data suggests a deliberate use of DCJ aimed at ending armed conflict. Further research is necessary to understand more about which processes are initiated in which contexts, potential endogeneity issues with DCJ use, and, more importantly, which factors influence the effect these DCJ processes have on intensity and termination of war.

**Moving forward with the DCJ dataset**

Understanding government and rebel use of during-conflict justice is part of the emerging research agenda within conflict studies which focuses on broader aspects of combatant behavior during armed conflict. The DCJ dataset allows us to expand this study to include justice processes as both a dependent and independent variable in our investigation of conflict dynamics and processes. In this article, we feature some of the central relationships between contextual factors and DCJ based on the literature on government and rebel behavior during conflict. We find noteworthy differences in government and rebel DCJ strategies, and uncover several interesting relationships warranting further study.

For example, democratic governments are more likely to offer reparations and compensation than other regimes, indicating a stronger motivation to remedy the grievances of its citizens for the harm done by war. However, this does not explain why autocracies rarely implement DCJ at all as one would expect the lack of institutional safeguards in authoritarian regimes opens the autocrats’ ability to use DCJ at its own discretion (Jo and Thomson 2014: 328-
We further find that government use of DCJ decreases as rebel strength increases, lending support to our assertion that there is a diminishing opportunity to target the opposition when the opposition is strong. Nonetheless, one could also expect that relatively weak governments would grant concessions such as amnesties and reparations when fighting stronger rebels, as a means to accommodate rebel demands and prevent rebel victory (Cunningham et al. 2009). It remains a puzzle why weak governments grant some types of concessions, such as power sharing, to stronger rebels (Gent 2011), but choose not to grant others, such as conciliatory justice measures.

We make the claim that regime type and rebel strength are important factors in explaining why, when, and where governments and insurgents use DCJ and which processes they choose. Expanding on our findings, there are a number of other factors to examine in order to integrate the study of DCJ into the broader understanding of government and rebel behavior during armed conflict. For example, regarding variation across regime type the study of during-conflict justice could be incorporated into existing work on international law, human rights treaties and international reputation costs (e.g. Jo & Thomson 2014; Simmons 2009; Sikkink 2011): Are signatories to the Rome Statute more active implementers of justice at home than non-signatories? Are governments which are receptive to international pressure (e.g. through dependence on foreign aid or investment) more likely to turn to DCJ (e.g. Appel and Loyle 2012)? Similar questions can add to the literature on rebel group characteristics (e.g. Gates 2002): How does incompatibility or the overall goals of the rebel group affect the use of DCJ? What does DCJ use tell us about variation in types of rebel recruitment and organization?

Both governments and insurgents pursue a wide range of activities while conflict is ongoing. They may practice violent strategies such as guerilla warfare (Valentino et al. 2004), sexual violence (Cohen 2013, Cohen and Nordås 2014), and civilian targeting (Hultman 2012),
but they may also choose to engage in conciliatory non-violent actions (Chenoweth and Stephan 2011), for example by joining peace negotiations (Fortna 2004; Slantchev 2003), granting concessions (Walter 2006), or engaging in public goods provision (Crowley 1991).

Understanding DCJ use can help us further explain when and why certain behaviors will be pursued: Are combatants that use sexual violence less likely to prosecute and punish their own? Are governments more likely to initiate truth commissions and reparations in conflicts where civilian targeting is common?

Finally, the DCJ data can help in understanding the consequences of DCJ on important aspects of the war. We find that DCJ usage may influence both the intensity and termination of armed conflict. On one hand, it may be that prosecuting wrongdoers, compensating victims and pardoning rebels are viewed as government acts of concessions, acknowledging grievances and subsequently diminishing rebel motivation to use violence. On the other hand, granting concessions may signal a weak government, thus strengthening rebel resolve (Davies 2014).

Preliminary findings suggest governments and rebels deliberately use DCJ in order to end armed conflict, in particular aiming at a negotiated settlement. This is in line with previous findings from the transitional justice literature (e.g. Lie et al. 2007; Olsen et al. 2010), which suggest that DCJ could have a pacifying effect on armed conflict and be a potential tool for conflict resolution or de-escalation. Work by Loyle and Appel (2014) finds that post-conflict justice strategies which address rebel grievances decrease the likelihood of conflict reoccurrence in the post-conflict period. We find that the same type of justice strategies initiated during armed conflict lead to negotiated settlements. These findings support a belief that DCJ processes, in particular those providing concessions and acknowledging grievances, may have a peace

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33 See Mendeloff (2004) for a review of transitional justice and civil conflict arguments.
strengthening effect. Yet there is much to be explored regarding this relationship. For example, how do justice processes initiated during internal armed conflict affect rule of law and good governance once the conflict has ended? Do DCJ that lead to conflict termination also lead to a durable peace?

Nonetheless, even if the DCJ data suggest that during-conflict justice processes have a decreasing effect on conflict intensity and an increasing effect on the likelihood of a negotiated settlement, DCJ may also be associated with less beneficial conflict developments. More research is necessary to entangle the causes and consequences of DCJ processes, how governments and rebels respond to each other’s judicial and quasi-judicial initiatives, as well as how these initiatives influence conflict trajectories over time. Fortunately, in line with recent trends in the conflict literature to disaggregate conflict activities across time, we can take advantage of the conflict year format of the DCJ data to investigate these questions, in particular analyzing the sequencing of during-conflict justice processes. Sequencing allows us to answer questions regarding how governments and rebels change strategy during conflict and when during the conflict certain processes are used (e.g. Fearon 2004).

To further the aim of incorporating the study of DCJ into the broader field of conflict studies, the DCJ dataset was designed and coded to be easily combined with existing conflict data sources such as the UCDP/PRIO Armed Conflict Dataset. By including the use of DCJ processes with other conflict data, conflict, peacebuilding and transitional justice scholars can use the DCJ dataset to better understand the effect that during-conflict justice has on transitions to peace and further our insights into the conditions and environments that make different justice responses most effective.
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