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Citizen or Subject? Forum Shopping and Legal Pluralism in Rural Liberia*

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Abstract

Most poor people in the developing world are governed by overlapping systems of customary and formal law. The core hypothesis of this paper is that the poor make rational, albeit severely constrained, choices in navigating this dual legal system, weighing the repressive aspects of the custom against the formal sector's focus on punishing perpetrators rather than providing restitution to victims/plaintiffs. We present a simple model of forum choice and test it using new survey data on over 4,500 legal disputes taken to either customary or formal institutions in rural Liberia. Consistent with the model, survey evidence shows that (i) plaintiffs facing a disadvantageous pairing under customary law (e.g., ethnic minorities suing ethnic majority members, etc.) are more likely to choose formal law, and (ii) customary remedies appear to be Pareto superior to formal verdicts, in the sense of providing greater satisfaction to plaintiffs while engendering less dissatisfaction among defendants. We highlight implications of our results for the design of legal empowerment initiatives.

Keywords: customary law, legal dualism, Liberia

JEL Classification Numbers: O17, K40

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1 Introduction

In recent years, economists have developed a broad body of empirical evidence suggesting that the quality of formal legal institutions is a primary driver of economic growth (Acemoglu et al., 2001; Rodrik et al., 2004), and that extending access to, e.g., formal property rights (Field, 2005; Galiani & Schargrodsky, 2010), credit market institutions (Castelar Pinheiro & Cabral, 2001) and the judiciary (Chemin, 2009) has significant welfare benefits for the poor.

Yet most poor people in the developing world have little if any contact with such formal legal institutions; their marriages, property ownership, debts and even crimes are instead governed by informal customs and traditional leaders, i.e., customary law (Commission on Legal Empowerment of the Poor, 2008). Furthermore, as we attempt to show in this paper, when formal and customary law come into conflict, the poor often *choose* to seek justice under customary rather than formal law. This forum shopping behavior presents a *prima facie* challenge to models of legal reform that either ignore customary law or assume plaintiffs will seek out formal justice if impediments are removed.

We distinguish three distinct conceptions of legal pluralism in academic and policy debates. The first is a model of forced segregation, in which individuals with certain characteristics are assigned to either the formal or customary sphere. This is the central thesis of Mahmood Mamdani's influential book on the post-colonial African state, *Citizen and Subject* (1996), which equates legal dualism with a "deracialized legal apartheid" that restricts formal rights to a select few while relegating the rural poor to the "decentralized despotism" of customary rule.

The second view assigns greater agency to the poor, while maintaining a strict hierarchy between the systems. Initiatives promoting 'access to justice' often equate justice with formal law, and implicitly assume that agents make a constrained choice between multiple legal forums, where financial costs and ignorance of the law are the most commonly cited obstacles to the formal system.

Finally, a third view, with a long pedigree among Western scholars of African law (Allott, 1968; Epstein, 1951), contrasts the punitive, "zero-sum, winner-take-all model of justice" of formal courts with a somewhat romanticized view of customary law in which "a high value is placed on

reconciliation and everything is done to avoid the severance of social relationships." (Adinkrah, 1991)

We organize these competing thoughts in a formal model that allows for individual agency by plaintiffs in choosing forums, as is implicit in policy debates about access to justice, while also allowing for the positive features of customary justice stressed by many legal anthropologists.

The model proceeds in three steps. Defendants choose to inflict harm on plaintiffs. Plaintiffs face a choice between seeking justice in a customary or formal forum, or taking no action. Depending on the forum choice, the customary or formal judge then issues a verdict, in the form of a remedy compensating the plaintiff at the expense of the defendant. The key distinction between formal and customary law in our model is twofold: (i) customary judges have different preferences, evincing bias against certain social and demographic groups, and (ii) formal law is more punitive, which we depict crudely as a gap or 'leakage' between the utility that formal punishments extract from defendants and the utility they deliver to plaintiffs.

Our main contribution is empirical. We present the results of a bespoke household survey which interviewed 2,500 households in rural Liberia, collecting information on over 4,500 disputes. This dispute database spans both civil and criminal disputes, and includes cases taken to a range of formal and customary forums. We use this survey data to test the core hypotheses underlying our model: (i) individuals engage in strategic forum shopping, and (ii) face a trade-off between their 'rights' under formal law and 'remedies' offered by the customary system.

In its implications, our approach is broadly in line with existing critiques of what Golub (2003) terms 'rule of law orthodoxy' in development thinking. This orthodox approach focuses on the promulgation of new laws and reforming formal institutions, often taking for granted the supremacy of the judiciary and central role of trained lawyers. Our results suggest that initiatives to promote justice for the poor in pluralistic legal systems would do well to acknowledge and incorporate the positive features of customary law that attract most disputes to these forums.

2 Context

Liberia has one of the poorest populations in the world, ranking 162 out of 169 countries in the 2010 Human Development Index. Decades of unrest and civil war have led to "an almost unanimous distrust of Liberia's courts, and a corresponding collapse of the rule of law." (**?**). In a 2010 survey carried out by Transparency International, 89 percent of survey respondents reported paying bribes to access public services in the country - the highest rate in the global sample (**?**). Within Liberia, the police were viewed as the most corrupt institution. Formal courts are hard to access, expensive, and slow; few justice practitioners are legally literate; and the laws and procedures of the formal system are alien to most Liberians (Isser et al., 2009).

In contrast, the customary system is both accessible and culturally acceptable, but operates under patriarchal and communal norms rather than the notions of individual rights enshrined in Liberian statutory law (International Crisis Group, 2006). The qualitative database compiled by (Isser et al., 2009) documents a range of customary practices that violate international standards, such as sassywood, or trial by ordeal, as well as local laws and practices that run contrary to generally accepted notions of women's rights and the rights of vulnerable groups.

Since the end of Liberia's second civil war in 2003, international donors have led a push to reform Liberia's legal system. Community-level interventions by local and international NGOs have sought to improve human rights awareness through training and education programs. At the same time, top-down initiatives have introduced progressive laws into the formal legal code that are often in tension with existing customary practices. While such changes can in theory make customary law more progressive by creating a better alternative option, too-rapid or radical changes can adversely affect the poorest individuals who have the least recourse to outside options (Aldashev et al., 2007). Furthermore, rapid changes in statutory law and in the allocation of judicial and administrative responsibilities have created widespread confusion about the substance of the law, the proper passage of appeal, and the rights and responsibilities of different actors in the justice system.

2.1 Legal dualism

The history of customary law and legal dualism in Africa is well-documented in anthropological scholarship. In his seminal work *Citizen and Subject*, Mamdani describes the judicial system in colonial Africa as a deeply bifurcated institution, and argues that 'apartheid' in the form of legal dualism is the generic form of the post-colonial African state.

> The judicial system ... was everywhere a bipolar affair. ... The hallmark of the modern state was civil law through which it governed citizens in civil society. The justification of power was in the language of rights. ... In contrast to this civil power was the Native Authority that dispensed customary law to those living within the territory of the tribe. ... Customary law was not about guaranteeing rights; it was about enforcing custom. (Mamdani, 1996, pp. 109-110)

Historically, Liberia's justice system, though outside the orbit of British colonialism, has displayed many of the hallmarks of discriminatory segregation described by Mamdani:

> At Liberia's founding, the state established the dual system to ensure that statutory law would govern 'civilised' people – Americo-Liberians and missionaries – while customary law would regulate 'natives'. The non-Christian, indigenous Africans, who were considered 'uncivilised', could not use the statutory system, and chiefs could not adjudicate cases to which a 'civilised' person was party. (International Crisis Group, 2006, pp. 7)

At present, Liberian statutory law applies, in principle, to all Liberians. Yet statutory law explicitly recognizes the dual nature of the legal system, with magistrates' courts and Justices of the Peace administering a system of Anglo-American style common law, and a parallel, idiosyncratic customary system administered by local chiefs.

The formal system comprises, for the most part, a vertical hierarchy of statutory courts, including the Supreme Court, circuit courts, magistrates' courts, and justice of the peace (JP) courts. They are supported in their workings by public attorneys, specialized institutions such as land commissioners to arbitrate land matters, and the police.

The most direct provider of customary justice is the town chief, who is the *de jure* leader of the community. He or she is typically selected by a council of elders, who advise and regulate her/his decisions. Chief and elders in turn receive support from several other customary justice providers, including quarter chiefs, the local pastor or imam, women's leaders, youth leaders, and representatives of the local secret society. Outside the village, the town chief is the lowest rung in a vertical hierarchy of chiefs of increasing degrees of formal recognition: the general town chief, the zone chief, the clan chief, and finally the paramount chief. Chieftaincy is recognized and receives some support from the state, and is regulated by state-appointed district commissioners and county superintendents.

2.2 An illustrative anecdote

To illustrate a few of the salient features of Liberia's dualistic legal system, we present a case drawn from the qualitative interviews conducted by Isser et al. (2009). This case highlights the prevailing ambiguity about where legal cases should be taken, and as a result of this ambiguity, the scope for individual plaintiffs to exercise wide discretion in shopping for an agreeable legal forum. This particular case involves an accidental killing, initially sent to the formal sector but ultimately withdrawn and resolved through customary institutions:

> "In a hunting accident, A killed B. A denied the act until marks were discovered on his back. At that point he was brought to the Poro [customary secret society] bush where he confessed (the interviewee insisted that in this case there was no trial by ordeal or other coercive means). He was then brought to the police and jailed.
>
> "A's relatives pleaded with B's family to resolve the case traditionally. While they initially refused, an uncle of B, acting as a mediator, persuaded the family to withdraw the case as it was an accident. After a series of apologies, B's family agreed, as long as A's family paid for the expenses they had accrued, which amounted to more than 50,000 Liberian dollars [USD 700] (covering transport fees for their lawyers and fees for those who had searched for B). When A's family responded that they did not have money to cover the expenses, B's family agreed that instead they should sacrifice one

> sheep, one goat, and one hog for the spirit of the deceased to depart in peace. The two families ate together and "knocked glasses together which proves true reconciliation." (Isser et al., 2009)

This case also illustrates not only the high costs of formal justice, but also the popular perception that formal judgments focus excessively on punishment rather than restitution.

> "'What satisfied us, was he confessed that he is the doer of the act. And even myself asked him and he said that he didn't do it intentionally. So he asked for forgiveness and that he didn't mean to kill the boy.'
>
> "The uncle, a male elder in Nimba who recounted the case, explained why traditional resolution was best for both parties: 'If this man had remained in the hands of the police or court, bribery was going to take place and this man was going to be released by the police or court overnight. And that could brought misfeelings between his and us, the victim's parents. . . . There won't be satisfaction between the both parties because the court's ruling could have decided that A, even though he did not do it intentionally, but the penalty was that he will be sent to prison for either five or ten years. After this length of time in prison, he will be declared freed and come home. These will bring some dissatisfaction in our mind about the way he was treated."' (Isser et al., 2009)

One key element of our model which is not highlighted in this particular case, is the set of egalitarian norms and rights in the formal system favoring – relative to customary law – disadvantaged social groups such as women and ethnic minorities.

3 Model

We model three stages of a dispute between a plaintiff and a defendant, and the strategic verdicts of a customary chief and a formal magistrate. The timing of the game is as follows. First, the defendant (D) chooses whether or not to inflict some harm ($h \in [0, \infty)$) on the plaintiff (P).

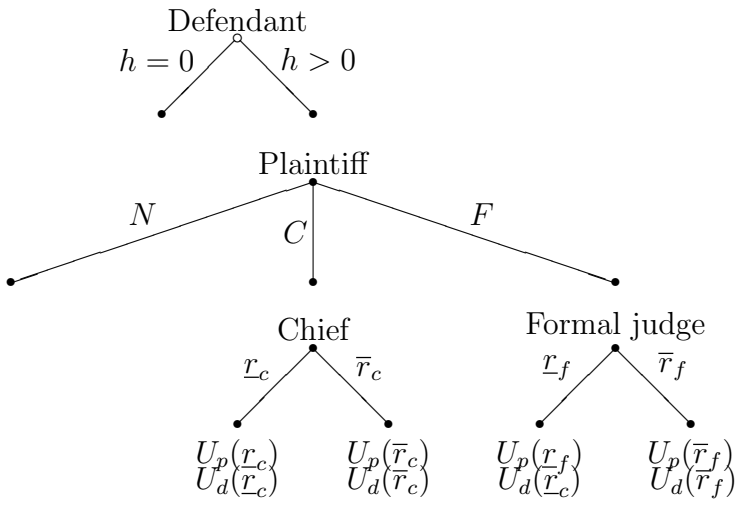

Figure 1: Game Tree

We conceive of harm broadly, to encompass both violent crime and economic losses resulting in civil disputes.

Second, in response to this harm, the plaintiff chooses whether to carry the case to either the chief (C), the formal magistrate (F), or neither (N). Finally, the chosen judge offers a judgment, or legal remedy (r), which is essentially an offer to redistribute resources from the defendant to the plaintiff.[1] We assume that all parties possess full information about each other's utility functions and the structure of payoffs.

In addition to the forum shopping decision, there are just two choice variables in the model to consider, denoted by roman letters: h denotes harm inflicted on the plaintiff by the defendant, and r_j denotes the remedy granted by judge j to the plaintiff. Subscripts i and j index the disputants and judges (or forums), respectively. The exogenous parameters of the model that will determine players' strategies are denoted by Greek letters: β_j denotes the bias of judge j; $\beta > 1/2$ denotes pro-defendant bias; and ϕ_j measures 'leakage' in the judge's remedy, with $\phi > 0$ implying the plaintiff's utility from r_j is less than the cost to the defendant. ϕ can be conceived of simply as a cost to access the formal court paid by the plaintiff but which does not accrue to the defendant.

[1]In an extension not included in the current draft, we allow either the plaintiff of defendant to appeal this initial verdict. This introduces strategic interaction between the judges. In the basic setup shown here judges decisions are final and, thus, judges lack any ability to commit to deviations from their ex post optimal remedies.

Conversely, but also consistent with our model, ϕ may capture the punitive nature of remedies in the formal sector, in which the cost borne by the defendant (say physical punishment) does not deliver material gain to the plaintiff.

The core conceit of the model rests on two key assumptions about institutional differences between the customary and formal courts. Our first basic assumption regarding institutional differences between the formal and customary legal systems relates to judges' preferences or biases.

Assumption 1. *The custom is biased against certain identifiable social and demographic groups.*

In the empirical application, ethnographic information on specific biases in the customary system will play a role in our tests of the model: e.g., limits on land rights for widows, ethnic minorities, or persons born outside the village; recognition of a right of a husband to beat or demand sexual intercourse from his spouse; etc.

Judges choose remedies r to maximize social welfare, u_j, subject to their own biases. Biases, denoted by $\beta_j \in [0, 1]$, may be pro-defendant ($\beta_j > 1/2$) or pro-plaintiff ($\beta_j < 1/2$). In the empirical analysis the direction of the bias will hinge on disputant characteristics. In accordance with the full information assumption, players also know each judge's biases in advance of making decisions about inflicting harm or choosing a forum. Judges are primarily concerned with rectifying inequalities between the disputants:

$$\max_{r_j} u_j = (1 - \beta_j) \ln u_p(r_j) + \beta_j \ln u_d(r_j) \tag{1}$$

Assuming *ex ante* equality, this amounts to repairing harms inflicted by defendants on plaintiffs. All other things being equal, judges prefer peace to conflict, and reparation to impunity. We assume that imposing remedies is costless to judges.

Our second fundamental assumption regarding the difference between the formal and customary legal systems is technological, relating to the remedies at the judges' disposal.

Assumption 2. *Customary courts can more efficiently redistribute physical and social capital from defendants to plaintiffs. In short, customary courts are zero sum; formal courts are negative sum.*

In the jargon of public economics, redistribution within formal courts is 'leaky'; when a formal court rules in favor of a plaintiff, the utility lost by the defendant does not fully accrue to the plaintiff.

This technological assumption is reflected in the structure of the payoffs to the two disputants. Defendants derive benefit from the harm h, and experience the full disutility of the remedy r_j in both systems:

$$u_D = \begin{cases} u_0 + h & \text{if } j = N \\ u_0 + h - r_j & \text{otherwise} \end{cases} \tag{2}$$

In contrast, punitive formal remedies cause the defendant to suffer more than they console the plaintiff. ("Two wrongs don't make a right.")

$$u_P = \begin{cases} u_0 - h & \text{if } j = N \\ u_0 - h + r_C & \text{if } j = C \\ u_0 - h + r_F - \phi & \text{if } j = F \end{cases} \tag{3}$$

The key assumption is $\phi > 0$, i.e., the formal system is more costly or less efficient at delivering justice to plaintiffs. Equation (3) also shows that harm reduces plaintiff utility through the convex invertible function $f(h)$.

The equilibrium of the game can be determined by backward induction. In the third and final stage of the game, the chosen judge sets his or her optimal remedy, $r_j^*(h, \beta_j, \phi_j)$, by solving the maximization problem in equation (1), yielding:

$$r_C^* = h + (1 - 2\beta)u_0 \tag{4}$$

$$r_F^* = h + \frac{\phi}{2} \tag{5}$$

Because their decisions cannot be appealed, both formal and customary judges choose their unconstrained optimum. Attempts to attract cases by signalling an intention to offer more favorable remedies to the plaintiff would not be credible in this set up.

In the second stage, a forward-looking plaintiff with knowledge of the judges' remedies chooses $j = \{N, C, F\}$ by comparing her utility in each potential forum (Equation 3). This is equivalent to comparing the remedy she would receive from the customary judge, r_c^*, and the remedy from the formal judge accounting for 'leakage', ϕ. Remedies in turn depend on customary bias, β.

The two empirically-testable propositions that we highlight from the model both relate to the comparative statics of the solution to this second-stage forum-shopping decision by the plaintiff.

Proposition 1. *As β_C increases, the probability of reporting declines, and the probability of carrying the case to the formal sector increases.*

This result follows directly from comparison of the solutions to the judges' maximization problem in () and (). Higher levels of pro-defendant bias (β) yield lower remedies in the customary system, rendering it less attractive to plaintiffs *vis-à-vis* not reporting or carrying the case to the formal system.

The second proposition relates to the utilities of the parties conditional on P's forum shopping decision. Here the role of ϕ in creating a disconnect between the gains to the plaintiff and the losses to the defendant is central.[2]

Proposition 2. *For ϕ above some threshold: (i) plaintiffs experience higher utility in the formal sector if $\beta > \frac{1}{2} + \frac{\phi}{4u_0}$; (ii) the pattern for defendants is the mirror image of plaintiffs. For ϕ below this threshold: (i) results for plaintiffs are unaffected; (ii) defendants' utility is always lower in the formal sector.*

4 Data

4.1 Household survey design

The data set is drawn from an original household survey conducted by the authors in August 2008 and February 2009. The full sample includes 2,500 households spread across 176 communities in five Liberian counties: Bong, Grand Gedeh, Lofa, Maryland and Nimba, shown in Figure **??**. Together these counties account for nearly two-fifths (38 percent) of the population of Liberia, and more than half (56 percent) of the population outside Monrovia. First-stage sampling of communities within each county was based on random probability-proportional-to-size (PPS) sampling from

[2]In the appendix we show that for given values of β and ϕ, equilibria exist with either zero or positive harm, and with cases subsequently taken to each of the three forum options, N, C and F. In principle it is possible to derive predictions relating disputant characteristics (affecting β) to the incidence of victimization, but this is beyond the scope of our analysis to date.

Table 1: Descriptive Statistics: Dispute Type (%) by Plaintiff Characteristics

		Gender		Employment		Powerful		Ethnicity	
	Cases	Female	Male	Farm	Non-farm	No	Yes	Minority	Dominant
Debt Dispute	1,374	25.8	31	30.2	28.2	29.2	33.3	29.1	30.1
Family/Marital Dispute	728	19.3	15	15.8	16.8	15.9	15.6	13.6	16.2
Assault	561	14	11.8	12.4	10.5	12.9	9.4	14	12
Theft	502	11.2	10.9	10.9	11.1	11.1	10.2	13	10.7
Land Dispute	339	5.5	7.9	7.4	7.6	6.8	10.2	7	7.4
Property Destruction	275	4.8	6.3	6	5.9	5.8	6.9	5.4	6.1
Witchcraft	175	5.8	3.3	3.9	3.1	3.7	4.2	2.8	3.9
Labor Dispute	125	1.8	3	2.8	2.4	2.9	1.9	2.4	2.8
Rape/Sexual Abuse	85	2.8	1.6	1.9	1.5	2.1	0.8	1.6	1.9
Murder	66	1.4	1.5	1.4	1.5	1.6	0.8	2	1.4
Property Dispute	61	1.7	1.2	1.3	1.8	1.3	1.3	1.4	1.3
Bribery/Corruption	13	0.3	0.3	0.2	0.9	0.3	0.2	0.2	0.3
Other	282	5.8	6.3	5.9	8.7	6.3	5.3	7.6	6
	4,586	100	100	100	100	100	100	100	100

the full list of communities in the 2008 Census of Liberia; in the second stage, 12-16 households were selected through simple random sampling within each community.

A simple random sample of household was drawn within each selected community. In the design of the survey it was anticipated that legal disputes would be rare events, requiring the need to screen respondents and over-sample those with disputes relevant to the study. However, a pilot survey conducted in July 2008 showed (*i*) widespread incidence of crime and conflict across all communities, and (*ii*) existence in all communities of vulnerable groups, such as women and refugees, who appeared to have greater numbers of conflicts and disputes.

Disputes are the basic unit of analysis in much of what follows, yet the boundary of what qualifies as a 'dispute' was left deliberately vague, and respondents were free to report disputes as they defined them. Thus it is important to analyze the incidence of and response to disputes within well-defined sub-categories of crimes and civil cases. In total, the 2,081 houseolds in our final estimation sample – restricted to those with full socio-economic data on both parties to any dispute – reported 4,586 separate disputes. Disputes were solicited through a 60-90 minute interview focusing on respondents' experience of a wide range of crimes and conflicts, including assault, sexual violence, murder and theft, as well as disputes involving land, debt, property, and family. Respondents provided details of each dispute that occurred within the past year, including the forums visited, the time and costs incurred, details of the judgment including reported subjective satisfaction with respect to each dispute recorded.

Limited socio-economic and demographic information is available for both parties (plaintiff and defendant) to each dispute, including sex, occupation, relationships to powerful figures, and ethnicity. However, this information was solicited from only one party to a given dispute – i.e., no attempt was made to track down the adversary when a household reported a particular dispute to collect full dyadic data. In the analysis we include dummies wherever appropriate for whether the respondent was the plaintiff or defendant in the dispute.[3]

[3]While we rely on demographic information on, say, a defendant as reported by the plaintiff, subjective views about fairness or satisfaction with case outcomes are only reported in the first person by party being interviewed.

Table 2: Descriptive Statistics: Forum Choice by Dispute Type

		% of All Cases Taken to:		
	Cases	None	Customary	Formal
Debt Dispute	1,374	69.9	28.6	1.5
Family or Marital Dispute	728	61.1	37.5	1.4
Assault	561	53.8	42.8	3.4
Theft	502	45.8	47.0	7.2
Land Dispute	339	37.8	56.0	6.2
Other Crime	282	54.3	42.2	3.5
Property Destruction	275	65.1	29.5	5.5
Witchcraft	175	48.0	48.0	4.0
Labor Dispute	125	61.6	38.4	0.0
Rape/Sexual Abuse	85	47.1	31.7	21.2
Murder	66	43.9	30.3	25.8
Property Dispute	61	55.7	36.1	8.2
Bribery/Corruption	13	61.5	23.1	15.4
Total	4,586	58.2	37.9	3.9

4.2 Mapping theory to data

In this section we begin with some descriptive statistics, then attempt to map the data to the key variables in our model.

Table 1 breaks down dispute types by plaintiff characteristics to show who takes which kind of disputes to any court. Columns 2 and 3 show, for example, that men are somewhat more likely to bring disputes over debt, land, property destruction and labor, while women are more likely to bring disputes over family/marital issues, assault, witchcraft and rape/sexual abuse [4].

The core hypothesis of the theoretical model concerns forum choice. The raw data includes disputes taken to dozens of different forums on a fairly continuous spectrum, from 'family head' or 'elders' at the customary extreme, to police and magistrates at the formal extreme. For most of the analysis, forums are grouped into just three options corresponding to the theoretical model: 'no forum' if the respondent reports that the case was not taken to any third party; 'formal', which is limited to justices of the peace, magistrates, police and other military/government officials; and 'customary', which encompasses all other forums, including town, clan and paramount chiefs, as well as elders, family leaders and secret societies.

[4]It should be noted at this point that the plaintiff is not necessarily the 'victim' of the dispute - a man from the household may well represent a woman's case at the forum, or vice versa.

Table 3: Descriptive Statistics: Who Takes Disputers to Whom?

			Percentage (%) of all cases taken to		
		No.	No forum	Customary	Formal
Gender	Female	939	55.4	41.5	3.1
	Male	3,647	59	36.9	4.1
Employment	Farm	4,128	58.2	38.2	3.6
	Non-farm	458	58.3	35.2	6.6
Powerful	No	3,721	56.1	40	3.9
	Yes	865	67.4	28.7	3.9
Ethnicity	Minority	501	55.7	37.9	6.4
	Dominant	4,085	58.5	37.8	3.6
Total		4,586	58.2	37.9	3.9

Using these broad categories, 38 percent of disputes were taken to the customary system, while just 4 percent were taken to the formal system. In addition, 58 percent of disputes were not reported to any forum, and were either resolved by the disputing parties themselves or left unresolved. Table 2 disaggregates these patterns by dispute category. There is a clear tendency for violent crimes to be taken to the formal system (25.8 percent of murders, 21.2 percent of rapes and cases of sexual abuse) while the civil cases that dominate the sample are very rarely taken to the formal system (1.5 percent of the debt disputes and 1.4 percent of the family or marital disputes, which together comprise almost two-thirds of the sample).

Table 3 examines the relationship between forum shopping and plaintiff characteristics. At first glance, the numbers seem counterintuitive - women are more likely than men to take a case to the customary sector (42 percent versus 37 percent); farmers more so than non-farmers (38 percent versus 35 percent) and the 'powerless' more so than the powerful (40 percent versus 29 percent). However, it stands to reason that the same groups that are vulnerable to bias are also least likely to be able to afford the relatively high cost of accessing the formal system. The model predictions in the previous section relied heavily on the ability to afford the costs of accessing either system: plaintiffs compare the expected benefits from reporting to the costs of access. Plaintiffs unable to afford access to either or both systems are either constrained to a sub-optimal forum, or do not report at all. This could also partly explain the high level of non-reporting in the dataset.

Table 4: Descriptive Statistics: Subjective Evaluations of Justice Outcomes

	Customary	Formal
Outcome was fair	92.3	85.0
Outcome was in respondent's favor	70.3	59.0
Somewhat or very satisfied with outcome	89.3	78.2
Somewhat or very satisfied with respect shown	89.2	75.7
Would return to this forum	90.5	76.4

This emphasizes a key point: relative privilege vis--vis one's opponent determines bias, and forum choice must be analyzed bearing in mind the characteristics of both plaintiff and defendant. *Absolute privilege*, on the other hand, serves well as a proxy for the ability to pay the costs of access to justice.

Table 4 presents favorable response rates for self-reported subjective evaluations of five justice outcomes: 'fairness', 'satisfaction', 'winning', 'willingness to return to the forum', and 'respect received'. 'Satisfaction' and 'respect' were solicited through a five-level Likert scale ('very satisfied', 'somewhat satisfied', etc.); 'winning' was a three-level scale measuring in whose favor the verdict was given ('my favor', 'neutral', or 'other party's favor'); and 'fairness' and 'willingness to return' were binary variables ('yes' or 'no') measuring whether the respondent felt the decision was fair and whether they would be willing to bring another dispute to the forum. The table summarizes the relevant favorable response for each of these measures (respondents answering 'yes', 'my favor', and 'somewhat satisfied' or 'very satisfied', as appropriate), as a percentage of all disputes resolved in customary forums and formal forums, respectively. Thus 92 percent of respondents who had a dispute resolved in a customary forum thought that the outcome was fair, compared to 85 percent of respondents at formal forums. It is worth noting that in all measures, people appear to be happier with the customary system.

Figure 2 reproduces the theoretical game tree from Figure 1, overlaying descriptive statistics from the dispute database. The following paragraphs describe how we reduce complex empirical information into a manageable number of variables and dimensions at each level of the game tree. Formal modeling is necessarily reductionist. Our task in this section is to reduce nuanced legal concepts like justice to simple numerical scales that enable statistical hypothesis testing. For readers accustomed to more fine-grained analysis, we would plead that the model be judged by its falsifiable

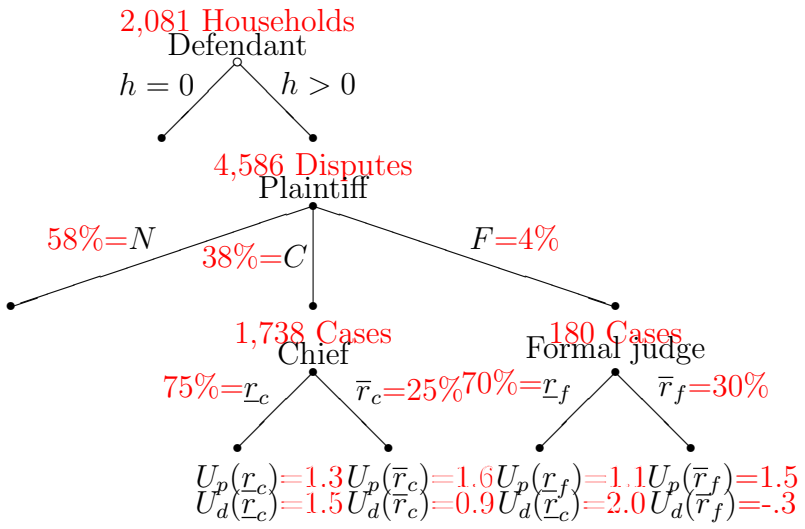

Figure 2: Game Tree & Empirical Proxies

predictions in the next section, rather than the *prima facie* reasonableness of the simplifications we make.

Starting at the bottom of the figure, our model equates justice with the utility (U_p and U_d) that it generates. In the empirical analysis, utility is proxied by self-reported evaluations of justice outcomes: notably the five measures of fairness, satisfaction, 'winning', willingness to return, and respect received summarized in Table 4. For brevity, we rely mostly on an aggregate index of all these subjective measures of justice, based on the first principal component taken from a factor analysis. The average values of this PCA index for plaintiffs and defendants, respectively, in cases where any remedy or punishment including apology was ($\overline{r}_j$) or was not ($\underline{r}_j$) incurred are listed at the bottom of Figure 2. The relationship between model predictions and the relative values of these conditional means are discussed in detail in Section **??**.[5]

Remedies, r_c and r_f, in rural Liberia are difficult to quantify. Monetary compensation is rare, especially in the customary sector. Instead, remedies are often in-kind or focus on loss of stature or reputation through mandated apologies. We rely on two dummies to measure remedies: the first

[5]It should be noted that we interview only one party to the dispute. While the objective characteristics underlying the bias measures referred to earlier (sex, ethnicity, etc.) are solicited for both the plaintiff and defendant from a single respondent, this is clearly not appropriate for subjective evaluations of justice. Thus justice outcome data is available for either the plaintiff or defendant for a given case, not both. However, we can speak about both plaintiffs and defendants in the aggregate, as we interview plaintiffs in some cases and defendants in others.

indicating whether any physical punishment or material compensation was incurred, and a second which encompasses the first and also includes apologies as a form of compensation.

Our analysis relies heavily on an empirical measure of customary judges' bias (β). While we do not observe biases directly, we posit that the chief's bias in a given case will be determined by the characteristics of the plaintiff and defendant, reflecting the hegemony of certain social and economic groups. In particular, we hypothesize that bias will favor disputants who are male, wealthy (based on a dummy for whether the household head has any non-farm employment), powerful (based on a dummy for whether the disputant is or is related to a local leader), and drawn from the largest ethnic group in the community. Characteristics that work in one's favor are coded as positive values in defining β. Both the plaintiff's and defendant's characteristics are clearly relevant. β equals the difference between defendant and plaintiff characteristics, such that $\beta > 0$ is pro-defendant bias. For example:

$$\beta(\text{Sex}) \equiv \text{male dummy for defendant} - \text{male dummy for plaintiff.}$$

As coded, this implies that we expect customary judges to be more likely to side with the defendant when, say, a woman sues a man ($\beta = 1 - 0 =$ pro-defendant bias).

Moving up the game tree, the core hypothesis of our model concerns forum choice, and we present the relative take-up rates for different forums as described in Table 2. Finally, at the very top of the game tree, the level of harm, h relates to the incidence and severity of losses incurred by the plaintiff. Harm is not observed directly. (Monetary losses are measured when the respondent is the plaintiff, but are applicable for only a sub-set of disputes.) Instead, we control somewhat crudely for variation in the severity of harm using dispute-type dummies, covering 19 different categories of dispute. Thus we analyze the relationship between, for instance, disputant characteristics and forum choice by comparing land cases to land cases, thefts to thefts, and so on, but do not control for variation in severity of harm within these dispute categories.[6]

[6]A special case occurs when the level of harm is zero, and no dispute is observed. As noted in Figure 2, the estimation sample covers 2,081 households. Because these households comprise a representative sample their respective communities, it is possible to examine the endogenous decision to inflict harm by defendants, by relating the probability of victimization to household characteristics. Due to limits of time and space, this analysis is not included here.

5 Hypothesis testing

The fundamental premise of our modeling framework is that plaintiffs exercise agency in choosing a forum to hear their case, and that these choices are made strategically to maximize plaintiffs' own welfare, possibly at the expense of defendants. An extreme alternative hypothesis would be that agents are bound by laws or norms to one sector or another: legal dualism as legal apartheid. At the other extreme (more in keeping with our rational choice approach but taking its logic further than we feel is warranted), one might speculate that rational forum shopping and strategic behavior by judges could lead to an equilibrium where judgments are indistinguishable between forums, something analogous to the race to the middle in a Hotelling model.

This section econometrically tests the propositions generated by our model, implicitly weighing it against these alternative approaches. As detailed below, we find that individuals likely to suffer negative bias in the customary system are more inclined to exit to the formal system – consistent with rational forum shopping. We also show that plaintiffs bearing these (disadvantaged) characteristics receive greater differential utility from the formal versus the customary system. Furthermore, defendants with traits favored by the customary system do on occasion end up in the formal system and suffer utility losses when they do, all suggesting that judgments in the two systems have not converged and judgements 'stick', in the sense that infinite appeals are not feasible.

5.1 Forum shopping

The key theoretical prediction regarding forum shopping from Section **??** is encapsulated in Proposition 1. The basic notion is that a combination of plaintiff and defendant personal characteristics associated with pro-defendant bias (i.e., a higher score for the defendant relative to the plaintiff as measured by indicator variables for being male, employed, related to powerful people, and a member of the dominant ethnic group) will encourage the plaintiff to essentially avoid the customary sector, either by not reporting or by taking recourse to the formal sector.

We test the two parts of this hypothesis separately. First, we examine the incentives to take a case to the formal sector using a linear probability model (LPM), regressing an indicator for the formal sector on empirical proxies for β. Second, we estimate correlates of reporting a dispute to

Table 5: Do Expected Patterns of Bias Predict Forum Choices?

	Went to Formal Sector	Reported to Any Forum
	(1)	(2)
Defendant minus plaintiff characteristics:		
Male	.063	.067
	(.019)***	(.019)***
Non-farm employment	.059	-.030
	(.017)***	(.025)
Powerful	.038	-.059
	(.016)**	(.030)**
Ethnic majority	-.005	.004
	(.017)	(.026)
Plaintiff characteristics:		
Male	.657	.203
	(.164)***	(.069)***
Non-farm employment	.644	-.103
	(.164)***	(.096)
Powerful	.428	-.343
	(.162)***	(.100)***
Ethnic majority	-.154	-.015
	(.156)	(.087)

Each column represents a separate OLS regression (i.e., linear probability model) where the dependent variable is listed in the top row. All equations include dispute-type dummies and control for whether the respondent was the plaintiff or defendant.

any third-party forum by regressing a dummy for reporting on the same β proxies.

$$I_i(j = F | j \in \{C, F\}) = \alpha_0 + \alpha_1 \beta_i + \alpha_2 X_i + \varepsilon_i \quad (6)$$

$$I_i(j = C, F | j \in \{N, C, F\}) = \gamma_0 + \gamma_1 \beta_i + \gamma_2 X_i + \upsilon_i \quad (7)$$

In Equation (6) the sample is limited to cases that went to either the customary or formal sector, $j \in \{C, F\}$, while in Equation (7) it includes all disputes, $j \in \{N, C, F\}$.

Translating Proposition 1 into empirical coefficients, our model predicts $\hat{\alpha}_1, \hat{\alpha}_2 > 0$ and $\hat{\gamma}_1 < 0, \hat{\gamma}_2 > 0$; plaintiffs who are disadvantaged relative to the defendant (high β) will be less likely to report disputes, but more likely to go to the formal system if they do. Plaintiffs who can afford the costs of access (high ϕ) will be more likely to report and to go to the formal system.

As noted earlier, our empirical measures of β are defined such that $\beta(X) = X_d - X_p$, where X is the vector of disputant personal characteristics. Relative privilege vis-à-vis one's opponent determines bias; absolute privilege is used as a proxy for the ability to pay the costs of access to justice. The risk of multi-collinearity between these terms is unavoidable given the limited vector of characteristics available for both parties to the dispute.

Looking at the results in Table 5, on the whole the model is quite successful in explaining the decision to choose the formal over the customary sector; it is less successful in predicting the decision to report or not to report. Column 1 shows that three of the four measures of β are significantly and positively associated with taking a case to the formal sector, as predicted. Similarly, in three of four cases, the level of the plaintiff's own characteristics also bears a significant, positive coefficient as predicted. (In both cases, variables constructed from the ethnicity variable fail to conform to the predicted pattern.) In short, the results confirm that plaintiffs who face severe bias in the customary system and have the means to go elsewhere do so.

Column 2 shows the results for the decision to report to any forum, customary or formal. For both the β proxies and plaintiff characteristics, coefficients display conflicting signs, with no clear pattern corresponding to the theoretical predictions. The model's treatment of the decision to report was relatively sparse compared to the attention given to the distinction between the formal and customary systems, and further attention to the possibility of bargaining and reconciliation

Table 6: 'Utility' by disputant characteristic & forum

	Bench-mark	Male	Non-Farmer	Ethnic Majority	Social Power
	(1)	(2)	(3)	(4)	(5)
Plaintiff	.43	.45	.43	.40	.44
	(.12)***	(.12)***	(.12)***	(.12)***	(.12)***
Plaintiff $\times\beta$		.11	.08	-.25	.10
		(.09)	(.17)	(.12)**	(.13)
Plaintiff $\times$ Formal	-.16	-.25	-.15	-.12	-.28
	(.21)	(.21)	(.21)	(.21)	(.25)
Plaintiff $\times$ Formal $\times\beta$		1.68	-.29	.54	-.40
		(.56)***	(.51)	(.65)	(.41)
Defendant	.51	.53	.51	.52	.60
	(.16)***	(.16)***	(.16)***	(.16)***	(.17)***
Defendant $\times\beta$		-.03	-.11	-.10	-.34
		(.18)	(.28)	(.29)	(.23)
Defendant $\times$ Formal	-1.13	-1.17	-1.14	-.91	-1.20
	(.28)***	(.28)***	(.28)***	(.30)***	(.32)***
Defendant $\times$ Formal $\times\beta$		-1.15	-.05	-1.36	.22
		(.57)**	(.52)	(.75)*	(.54)
Obs.	940	940	940	940	940

Coefficients correspond to an OLS regression where the dependent variable is 'utility', i.e., the first principal component of the subjective justice metrics, as described in the text. β represents the gap between the defendant and plaintiff values ($X_d - X_p$) for the characteristic listed in the column heading.

outside a third-party forum appears to be merited.

5.2 Justice outcomes

The key theoretical prediction regarding disputants' satisfaction (or perceptions of justice) from Section **??** is encapsulated in Proposition 2. Plaintiffs who face bias in the customary system will experience higher utility in the formal sector. For defendants, the theoretical prediction hinges on the relative efficiency of the formal sector (i.e., the level of ϕ): if it is relatively efficient, defendants' preferences over the formal versus the customary system are the mirror image of plaintiffs'; if it is relatively inefficient, defendants always prefer the customary sector.

This proposition suggests a series of interaction effects among the empirical determinants of utility, combining dummies for plaintiff/defendat status, personal characteristics that will engender

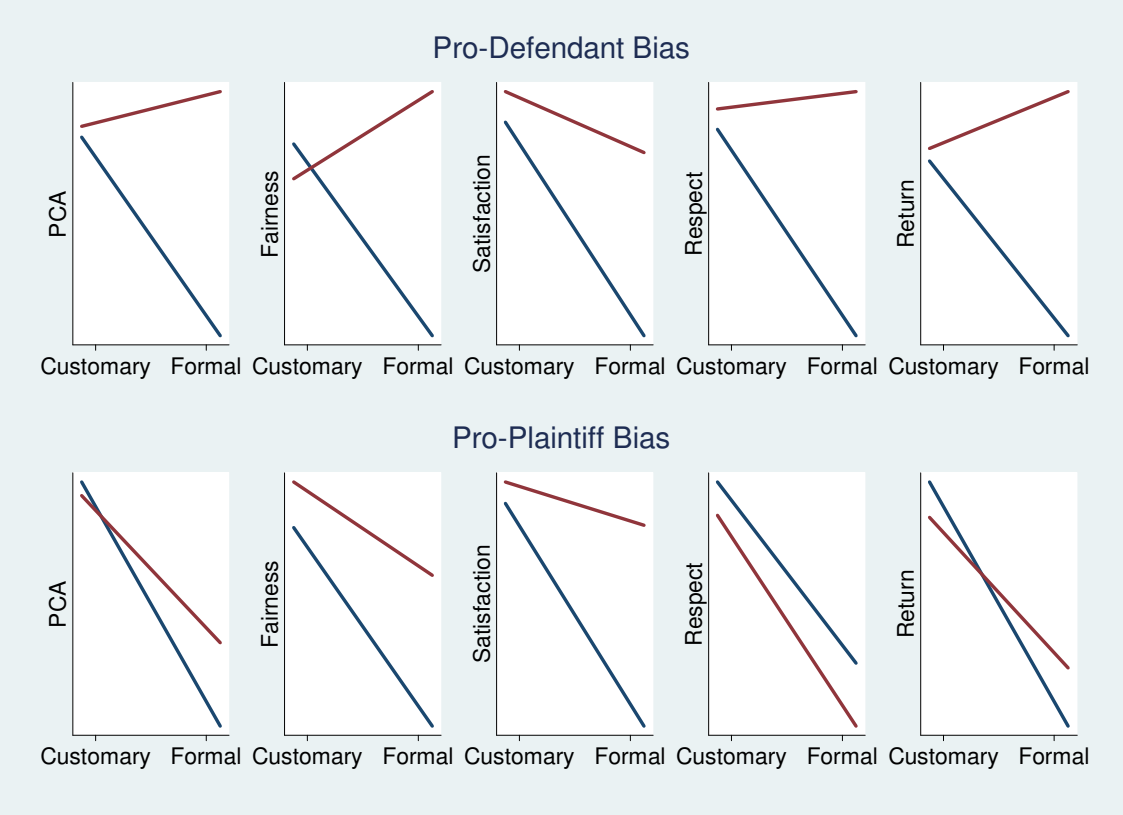

Figure 3: Plaintiffs' and defendants' subjective outcome measures

bias in the customary court, and a dummy for whether the case was taken to the formal sector.

$$\begin{aligned} U_i &= \beta_1 P + \underset{(-)}{\beta_2}(P \times \beta) + \underset{(-)}{\beta_3}(P \times F) + \underset{(+)}{\beta_4}(P \times F \times \beta) \\ &\quad \beta_5 D + \underset{(+)}{\beta_6}(D \times \beta) + \beta_7(D \times F) + \underset{(-)}{\beta_8}(D \times F \times \beta) + u_i \end{aligned} \tag{8}$$

where U_i is a proxy for utility, P is a dummy denoting that the respondent is the plaintiff, and F is a dummy for cases taken to the formal sector. For convenience, Equation (8) is annotated with the anticipated sign of for each coefficient stipulated by Proposition 2, which are repeated in the first column of Table 6. The predicted sign of $\hat{\delta}_7$ is ambiguous but informative: a negative value would imply a high degree of leakage (i.e., extremely 'negative sum' remedies, or high ϕ) in the formal sector.

The empirical results in Column 2 of Table 6 are broadly consistent with the theoretical predictions. Defendants who have characteristics favored by customary judges (high β) are indeed happier in the customary system ($\hat{\delta}_5 > 0$, significant at 1% level), although disadvantaged plaintiffs do not report being any less happy in the customary system ($\hat{\delta}_2$ indistinguishable from zero). In general, as predicted, plaintiffs are significantly less happy in the formal system ($\hat{\delta}_3 < 0$; likewise for defendants $\hat{\delta}_7 < 0$, but this latter result is not significant). This pattern is consistent with punitive formal sector remedies that harm defendants to a greater extent than they benefit plaintiffs. Finally, and most striking, in cases with a strong indication of pro-defendant bias (high β) the previous pattern is reversed and plaintiffs are dramatically happier in the formal system ($\hat{\delta}_4 > 0$, significant at 1% level). Conversely, and also as predicted, defendants in these cases are much *less* happy in the formal system ($\hat{\delta}_8 < 0$, significant at 1% level).

On the whole, this pattern of results suggests not only that forum choices are made rationally to benefit the interests of the plaintiff, but that the judgements received in the chosen forum have utility consequences which are not bargained away or overridden through appeal.

6 Conclusion

Our goal in this paper has been to explore the hypothesis that justice outcomes in rural Liberia can be explained through strategic forum shopping by plaintiffs. The assumption of individual agency (and, in particular, forward-looking rational choice) in forum shopping is non-trivial, running counter to prevailing depictions of legal dualism in the qualitative literature on African customary law 1996.

Our claim that plaintiffs exercise strategic choice in forum shopping confronts a *prima facie* tension between (a) well-documented bias in Liberian customary law, depriving women and marginalized groups of basic rights, and (b) the the simple empirical fact documented here that even these disadvantaged plaintiffs take most (but not all) of their cases to customary forums. Why would marginalized groups choose to bring cases to customary courts that systematically repress them?

An obvious answer, in theory, is provided by high costs of entry to the formal sector, i.e., barriers to "access to justice" in development speak. In rural Liberia, such barriers are undeniable. For plaintiffs in remote villages, travel costs alone to reach a police station or formal court are significant relative to the material stakes in many disputes. Court officials routinely solicit bribes and rural peasants may be ignorant of formal legal procedures.

Our results suggest that barriers to entry may not be the whole story, and that there are positive features of customary justice that attract even disadvantaged plaintiffs. Notably, while plaintiffs who win favorable verdicts in the customary system exhibit higher satisfaction than those who do not, no such pattern exists in the formal system. Looking across sectors, plaintiffs are generally less satisfied with the justice provided in formal than customary forums, questioning any notion of a clear hierarchy in the attractiveness of these systems. Finally, defendants are overwhelmingly less pleased with outcomes in the formal system – even after controlling for demographic characteristics and the nature of the dispute.

These patterns conform to the predictions of our simple game-theoretic model of strategic forum choice in which plaintiffs trade off the *rights* afforded them in the formal sector in favor of the more efficient legal *remedies* delivered by customary courts. Our empirical evidence on the impotence of

the formal system in generating utility for plaintiffs, combined with its success in creating disutility for defendants, corroborates one of our basic modeling assumptions: formal courts are relatively punitive, while customary law is more 'restorative', in the sense of efficiently redistributing utility from defendant to plaintiff with fewer Pareto losses.

To conclude, we briefly indulge ourselves by taking these empirical findings as given, and consider the normative policy implications of the underlying model.

As a thought experiment, consider a social planner with progressive preferences (very low β) and the power to influence both the customary and formal system, e.g., Liberia's central government under the leadership of the first popularly-elected female head of state in Africa, President Ellen Johnson Sirleaf. This planner has a choice between attempting to reform customary norms (reduce β) or increase the appeal of formal justice by making the system less punitive and more focused on delivering tangible benefits for plaintiffs (raising ϕ). Both will be effective in theory. In practice, these alternatives are manifested, respectively, in ongoing collaborations by domestic civil society organizations and international NGOs to train customary leaders in their judicial responsibilities, and to provide quasi-formal alternative dispute resolution mechanisms that are less costly and punitive than police and magistrates' courts. (One of the long-term goals of the research project underlying this paper is to provide a rigorous experimental evaluation of the latter approach.)

A third policy option for the social planner is to further reform the already-progressive norms of the formal system, and to assert greater dominance over customary institutions. This alternative lacks clear coherence in our model, and seemingly fails to recognize the revealed preferences of the rural poor in seeking out customary justice approach focused on reconciliation and less punitive remedies. Aldashev, et al. 2007 model this approach of top-down reform more explicitly, and highlight the potential for unintended negative consequences from increasing the distance between customary and formal systems in terms of judicial norms. Exploring the response of customary courts to progressive formal-sector reforms is a potentially fruitful area for further empirical research.

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