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Power Sharing and Transitional Justice

Argyro Kartsonaki, Stefan Wolff, Christalla Yakinthou

Power sharing and transitional justice in a post-civil war *context*

POWER SHARING AND TRANSITIONAL JUSTICE ARRANGEMENTS

- Are quasi-default ingredients of civil war settlements, reflecting needs and interests of conflict parties and international mediators
- Are at the critical core of institutional design because they determine the participants and rules of the political process after a civil war
- Exist, often uneasily, alongside each other and alongside a range of further provisions
 - What are the empirically observable instances and combinations of power sharing and transitional justice arrangements?
 - How do these combinations affect the durability of civil war settlements?

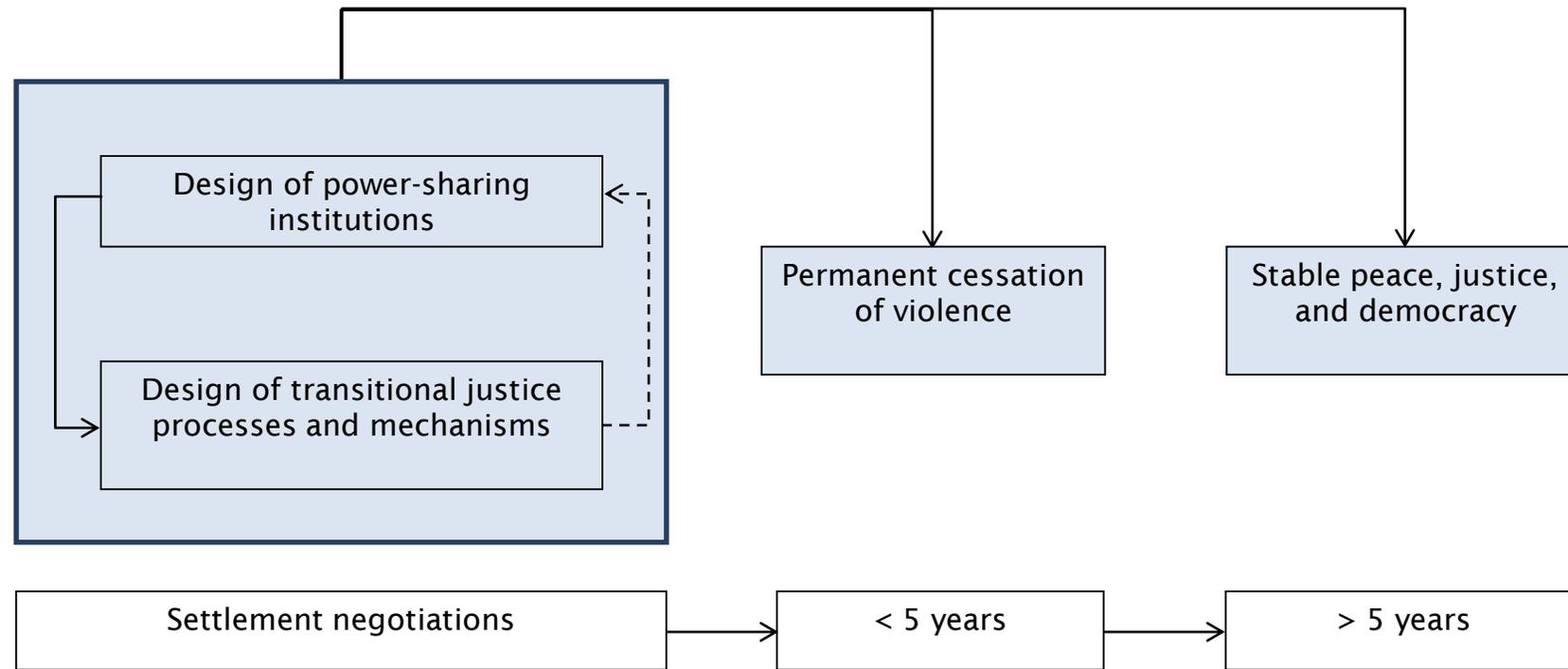


Power sharing and transitional justice in a post-civil war *context*

- Peace as primary goal in civil war settlement negotiations
- Distinctions:
 - conflict settlement ≠ conflict transformation
 - Negotiation ≠ implementation/operation
- Importance of timing and sequencing



A model of relationships between institutions and outcomes in post-civil war transitions



Power sharing and transitional justice *as content* of civil war settlements

- What do conflict parties negotiate?
 - Power sharing arrangements
 - Transitional justice mechanisms
- What combinations of institutions of power sharing and transitional justice do emerge from negotiations?
- Can institutions/combinations of institutions explain durability of settlements?



Conceptualisation: power sharing and transitional justice

POWER SHARING

- Accommodation of different (ethnic) groups within democratic systems of governance across political, economic, military, and territorial dimensions
- Who governs → rules of representation
- How is governance exercised → rules of participation
- Centripetal approach: focus on electoral systems meant to foster pre-election coalitions of 'moderates'
- Consociational approach: focus on arrangements of shared and self-governance

TRANSITIONAL JUSTICE

- Advance political and societal transformation by developing shared norms;
- Embed commitment to rule of law;
- Create institutions that can facilitate development and security goals.
- Counter denial and promote accountability;
- Expanding dialogue and include marginalised voices;
- Alleviate volatility and desire for revenge
- Judicial (top-down)/non-judicial (bottom-up mechanisms)



Conceptualisation: power sharing and transitional justice

‘SOFT’ (enabling) MECHANISMS

- Power sharing: arrangements that enable power-sharing outcomes; e.g., by making it **possible** for different ethnic groups to be represented in legislative bodies through a PR election system
- Transitional justice: **commitment** to transitional justice principles or underpinning mechanisms; e.g., a commitment to promote truth seeking processes

‘HARD’ (specifying) MECHANISMS

- Power sharing: specific, pre-determined outcomes; e.g., by making it **mandatory** that for a bill to be passed in parliament it has to have super-majority support
- Transitional justice: **detailed outcomes** associated with those principles or mechanisms; e.g., the development of a technical committee to oversee the creation of a truth commission and develop its mandate



Operationalisation: power sharing

VARIABLES	INDICATORS	
	ENABLING ('SOFT')	SPECIFYING ('HARD')
Representation	<p>Legislature: PR, PR preferential, Majoritarian preferential, regional or communal electoral rolls</p> <p>Executive: Appointment by (sequential) selection procedure; requirement for qualified majority support in parliamentary for appointment or confirmation</p>	<p>Legislature: Reserved seats for particular groups Pre-determined distribution of seats in absolute or relative terms</p> <p>Executive: Pre-determined distribution of seats in absolute or relative terms; pre-determined allocation of portfolios</p>
Participation	<p>Legislature/executive: possibility to invoke qualified majority voting procedure (incl. quorum, absolute, super, and concurrent majorities)</p>	<p>Legislature/executive: Requirements for qualified majority voting procedure</p>



Operationalisation: transitional justice

VARIABLE	INDICATORS	
	ENABLING ('SOFT')	SPECIFYING ('HARD')
judicial	<p>Prosecution of conflict-related crimes: Expression of commitment to domestic, international, or hybrid criminal prosecution/tribunals; Expression of commitment to vetting of officials and public servants; Expression of commitment to incorporate traditional forms of justice; gender justice</p>	<p>Prosecution of conflict-related crimes: Outline/detail of mandate and procedure for domestic, international, or hybrid criminal prosecution/tribunals; Outline/detail of vetting policy or setup of body to oversee policy & procedure, institutions & crimes subject to vetting; Outline/detail of procedure or establishment of body to create mechanism for traditional justice; achieving justice for gender-related crimes; creation of legislation to protect against crimes such as enforced disappearance and torture</p>



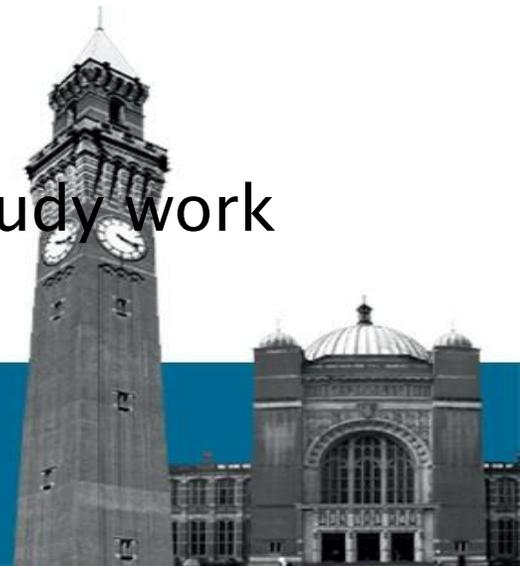
Operationalisation: transitional justice

VARIABLE	INDICATORS	
	ENABLING ('SOFT')	SPECIFYING ('HARD')
Non - judicial	<p>Truth commission/truth seeking: Expression of commitment to establishment/negotiation of truth commission/commission of enquiry/historical clarification body;</p> <p>Reconciliation: mention of Reconciliation including need for/ commitment to dialogue;</p> <p>Reparation: Expression of commitment to restoring rights of victims/reparations;</p> <p>DDR: indication of commitment to DDR programmes</p>	<p>Truth commission/truth seeking: Outline or incorporation of specific provisions to establish truth commission or commission of enquiry;</p> <p>Reconciliation: incorporation of specific provisions towards reconciliation (possibly incorporated into truth-seeking);</p> <p>Reparation: Outline or incorporation of reparations policy or of body to create reparations policy, of funding basis, of support structures/symbolic reparations;</p> <p>DDR: outline of DDR programming or clear commitment to DDR programmes in specified sectors and for specific parties</p>



The PSTJ Dataset

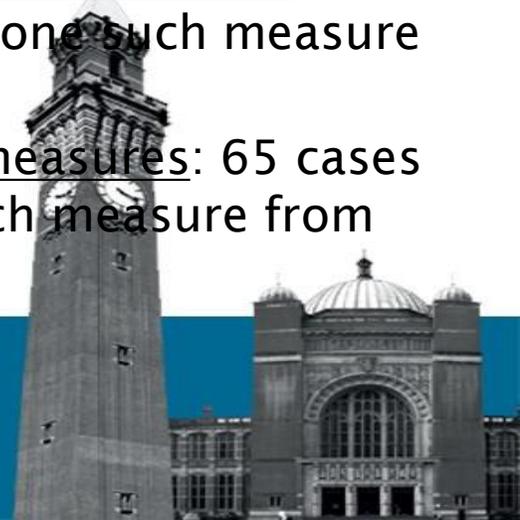
- 72 substantive peace agreements, 1989-2006
- Based on UCDP Peace Agreements Database and PSED Database (re-coded, plus additional variables)
- Work in progress:
 - More comprehensive set of variables to include territorial and economic power sharing and ‘guarantee’ mechanisms
 - Expansion of universe of cases over time
 - Combination and interaction effects
 - Complement to specific in-depth and comparative case study work



Preliminary findings: negotiation outcomes

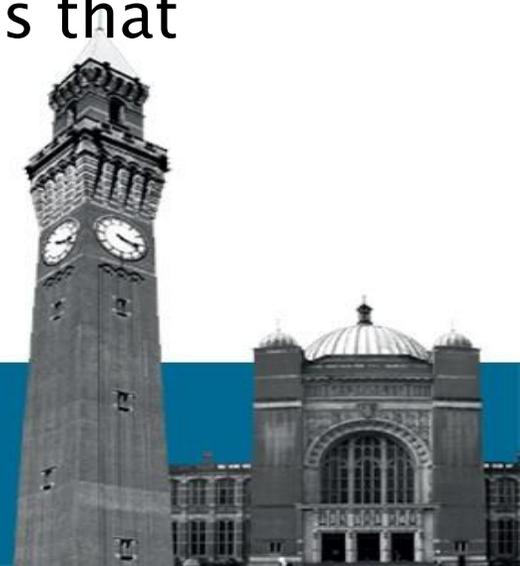
INSTITUTIONS AND INSTITUTIONAL COMBINATIONS

- Most/Least frequent measures:
 - Power sharing: total of 253 measures across all 72 agreements (including 216 **representation** measures/144 **hard**), only 4 agreements with no such measure at all
 - Transitional justice: total of 166 measures across all 72 agreements (including 153 **non-judicial** measures/129 **hard**; 13 judicial measures/9 **hard**), only 8 agreements with no such measure at all
- Most/Least frequent combinations:
 - Hard rules for representation and hard forms of non-judicial transitional justice measures: 22 cases without such a combination, **50 cases** of agreements in which at least one such measure from each category is present
 - Hard rules for representation and hard forms of judicial transitional justice measures: 65 cases without such a combination, **7 cases** of agreements in which at least one such measure from each category is present



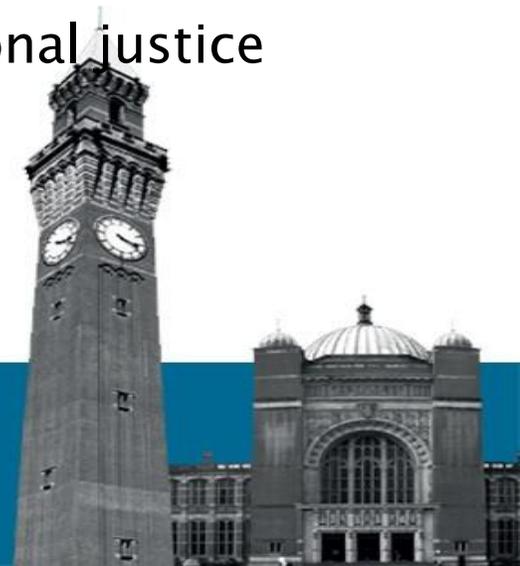
Preliminary findings: settlement durability

- 45 agreements **survived** for at least five years, 27 **collapsed** because one or more parties withdrew
- Strongest finding on **power sharing** is the correlation of agreement survival with the presence of one or more ‘hard’ arrangements for ‘representation’: of the 45 survivor cases,
 - 38 included one or more such arrangements
 - 7 did not include one or more such arrangements
- Strongest, but inconclusive, finding on **transitional justice** is that agreements can survive almost equally with and without amnesty provisions:
 - Of 45 survivors, 26 had no amnesty provision and 19 did
 - Of the 27 failures, 16 had no amnesty provision , and 11 did



Preliminary findings: settlement durability

- Of the 45 survivor settlements:
 - 34 combined hard representation rules and hard non-judicial transitional justice measures
 - Only 5 had no transitional justice measures at all, and only 2 had no power sharing measures at all
 - Only 7 had hard judicial transitional justice measures (all of which were lustration policies)
- Of the 27 failed settlements:
 - 16 combined hard representation rules and hard non-judicial transitional justice measures, 3 had neither, and 4 each had none of just one measure
 - Only 5 had no transitional justice measures at all, and only 2 had no power sharing measures at all



Conclusions

- What are the empirically observable instances and combinations of power sharing and transitional justice arrangements?
 - Representation rules and non-judicial measures are most common in agreements
 - Hard representation rules and hard non-judicial measures dominate individually and in combination
- How do these combinations affect the durability of civil war settlements?
 - Combination of hard representation rules and hard non-judicial measures is present in 34 out of 45 survivor agreements (76%)



Conclusions

- Correlation \neq causation
- More work needs to be done on:
 - Possible further interaction effects, expanding also the number of combinations (including territorial and economic power sharing plus control variables)
 - Implementation and implementation processes (including the role of guarantee mechanisms)
 - Peace processes, rather than just individual peace agreements (i.e., evolution of agreements over time)
 - ...



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