

The Cupola

Scholarship at Gettysburg College



Political Science Faculty Publications

Political Science

5-16-2019

Power Sharing and the Rule of Law in the Aftermath of Civil War

Caroline A. Hartzell
Gettysburg College

Matthew Hoddie
Towson University

Follow this and additional works at: <https://cupola.gettysburg.edu/poliscifac>

 Part of the [Peace and Conflict Studies Commons](#), and the [Political Science Commons](#)

Share feedback about the accessibility of this item.

Hartzell, Caroline A., and Matthew Hoddie. (2019). Power Sharing and the Rule of Law in the Aftermath of Civil War. *International Studies Quarterly* 63(3), 641-653.

This open access article is brought to you by The Cupola: Scholarship at Gettysburg College. It has been accepted for inclusion by an authorized administrator of The Cupola. For more information, please contact cupola@gettysburg.edu.

Power Sharing and the Rule of Law in the Aftermath of Civil War

Abstract

What effect do power-sharing institutions agreed to as part of civil war settlements have on the development of the rule of law in post-civil war states? We contend that power-sharing measures facilitate the emergence of the rule of law in two ways. First, they establish a form of institutional constraint that promotes judicial autonomy and independence. Second, they foster a sense of security among judges and other political actors that bolsters commitment to the law. We demonstrate the plausibility of a positive relationship between power sharing and the rule of law through an analysis of post-civil war states between the years 1948 and 2006. Our findings suggest that civil war settlements can help to establish the rule of law when they include mechanisms aimed at allaying the insecurities of political actors in the postconflict environment.

Keywords

civil war settlements, rule of law, power-sharing agreements

Disciplines

Peace and Conflict Studies | Political Science | Public Affairs, Public Policy and Public Administration

Creative Commons License



This work is licensed under a [Creative Commons Attribution 4.0 License](https://creativecommons.org/licenses/by/4.0/).

Power Sharing and the Rule of Law in the Aftermath of Civil War

CAROLINE A. HARTZELL

Gettysburg College

AND

MATTHEW HODDIE

Towson University

What effect do power-sharing institutions agreed to as part of civil war settlements have on the development of the rule of law in post-civil war states? We contend that power-sharing measures facilitate the emergence of the rule of law in two ways. First, they establish a form of institutional constraint that promotes judicial autonomy and independence. Second, they foster a sense of security among judges and other political actors that bolsters commitment to the law. We demonstrate the plausibility of a positive relationship between power sharing and the rule of law through an analysis of post-civil war states between the years 1948 and 2006. Our findings suggest that civil war settlements can help to establish the rule of law when they include mechanisms aimed at allaying the insecurities of political actors in the postconflict environment.

A significant body of scholarship finds that a commitment to the rule of law helps stabilize peace in countries emerging from civil war. The international community now incorporates strengthening the rule of law into its efforts to prevent such countries from sliding back into armed conflict. Although efforts to reestablish or strengthen the rule of law in these countries have spawned a “rule of law industry,” research suggests that these endeavors have been largely unsuccessful.¹ Explanations for the failure of reform programs to help effect the rule of law include their “apolitical” and “technical” nature (Mani 1998), as well as a reliance on imported legal models ill-suited to countries that often lack a democratic tradition (Upham 2002).²

In light of the struggles that reform programs have experienced in helping postconflict states to establish functioning rule-of-law systems, this study explores another means that might assist countries in this endeavor. We consider the potential that power-sharing institutions, adopted as part of civil war settlements, have to encourage the development of the rule of law in the aftermath of an intrastate war. We posit that there are two means by which power sharing helps to establish the foundations for an effective system of rule of law. First, by addressing the security concerns of civil war rivals, power-sharing institutions enhance the willingness of political actors to help create and operate within a rule-of-law environment. Second, and perhaps most importantly, by providing different forms of checks and balances, power-sharing institutions serve to restrain politically dominant actors. More specifically, the effect of these mechanisms is to provide judges, the actors at the center of our theory, with the will and ability to exercise a degree of judicial indepen-

dence they would otherwise not likely display in a post-civil war setting.

This study takes a distinctive approach to the study of the rule of law in the context of post-civil war states. Earlier studies generally have considered the rule of law as an explanatory variable that conditions the prospects for postconflict stability. In contrast, we consider the rule of law as a dependent variable and seek to identify the factors central to its establishment in states emerging from armed conflict.

We divide this article into seven sections. We first define the rule of law concept and consider its significance for postconflict states. We next describe the difficulties that states emerging from civil war face in developing a functioning rule-of-law system. In the third section, we introduce our theory regarding the effects the adoption of power-sharing institutions has on the rule of law. Sections that describe our research design and the findings of our empirical test follow. We also report the results from a series of robustness tests, including an examination of the potential for endogeneity bias to affect our findings. We then consider the case of post-civil war Liberia in order to explore the validity of the mechanisms through which we argue power sharing impacts the rule of law. We conclude with some observations regarding our analysis and suggestions for future research.

The Rule of Law: What It Is and Why It Matters for Postconflict States

Scholars vary considerably in their definitions of the rule of law. Perhaps the most significant difference among them is whether they favor a “thin” or “thick” understanding of the concept. “Thin,” “formal,” or “minimalist” conceptions of rule of law emphasize that these are transparent, publicly announced rules that are binding on the government. These rules provide citizens with the ability “to foresee with fair certainty how the authority will use its coercive powers in given circumstances.”³ This understanding of the rule of law is thus less concerned with the content of the laws than

Caroline A. Hartzell is a professor of political science at Gettysburg College. Her research focuses on civil war resolution and the effects ending civil war has on the quality of the peace.

Matthew Hoddie is a professor of political science at Towson University. His research focuses on the topics of ethnic conflict and civil war resolution.

¹The phrase “rule-of-law industry” appears in Hurwitz (2008, 2).

²These criticisms of the efforts by third parties to promote the rule of law in post-civil war states are also voiced by Haggard and Tiede (2014, 414), who note that, “[n]ot only do outside supporters of the rule of law often lack adequate commitment and resources, but they may make proposals that do not at all fit with lived experience and thus prove fragile as a result.”

³The quote, which is from Friedrich von Hayek (1968), is cited in Mani (2008, 23).

with assuring that they are predictable and nonarbitrary (Skaaning 2010, 451; Mani 2008, 27). “Thick,” “substantive,” or “maximalist” definitions of the rule of law, on the other hand, extend to the substantive content of rules or laws. Scholars who adopt this definition see formal justice as intertwined with social justice and, accordingly, evaluate rule-of-law systems on the basis of their ability to advance the rights of individuals (Mani 2008).

We adopt a minimalist or process-oriented definition of the rule of law for a number of reasons. First, we believe a minimalist understanding is most appropriate for states emerging from civil war given the concerns held by state and nonstate actors in that environment. Actors who only recently participated in armed violence are more likely to be concerned about who will exercise control over the state’s law-and-order forces and how these forces will be used vis-à-vis particular groups than the content of laws that may impact individuals’ rights. Second, we deem a minimalist form of the rule of law as the one that is most feasible for actors to construct in the immediate aftermath of civil war. Finally, we believe that it makes sense to exclude elements (e.g., social rights) from our definition that one might instead examine as outputs or factors conditioned by the rule of law.

It also bears noting that judicial independence, the indicator we employ for the rule of law, can be considered “thin” in nature; as such, it maps nicely on to our minimalist understanding of the rule of law. As Melton and Ginsburg (2014, 190) observe of the rule of law, “at its core, it involves the ability and willingness of courts to decide cases in light of the law without undue regard to the view of other government actors.”

Scholars often distinguish between *de jure* and *de facto* judicial independence when identifying the factors that make it feasible for a judiciary to act in this fashion. *De jure* judicial independence consists of formal rules that promote autonomy by insulating judges from undue pressure. *De facto* judicial independence exists when “judges resolve cases in ways that reflect their sincere preferences” and “these decisions are enforced in practice even when political actors would rather not comply” (Ríos-Figueroa and Staton 2012, 107).

We focus on *de facto* rather than *de jure* judicial independence as our indicator of rule of law. The types of rules associated with *de jure* independence (e.g., budgetary autonomy and fixed tenure for judges) assume a level of institutional structure and coherence that are unlikely to exist in a post-civil war context. Rather than focusing on a set of formal rules, *de facto* judicial independence is a behavioral concept (Ríos-Figueroa and Staton 2012). Its use makes it feasible to explore whether different types of institutional arrangements (e.g., power sharing) can help to promote the behaviors associated with higher levels of rule of law.

A definition of the rule of law consistent with the minimalist understanding we employ appears in the work of José María Maravall and Adam Przeworski (2003, 3). They characterize the concept in the following terms:

The rule of law emerges when . . . self-interested rulers willingly restrain themselves and make their behavior predictable in order to obtain a sustained, voluntary cooperation of well-organized groups commanding valuable resources. In exchange for such cooperation, rulers will protect the interest of these groups by legal means.

This definition appears particularly apt because, in the words of Hurwitz (2008, 10), it conceptualizes the rule of law “as a mechanism of power distribution between political

forces and state institutions.” Following a civil war, this distribution of power is one of the central issues of concern to groups. Collectivities that recently have engaged in violence against one another worry about the possibility that any single group will monopolize state power and promote its own interests while threatening the security of others (Hartzell and Hoddie 2007). In this environment, arrangements that distribute power in such a way as to preclude this outcome may be as important as other aspects of rule of law that tend to garner more attention, such as equality in the application of laws to all citizens.

Establishing a functioning rule-of-law system has the potential to play a vital role in assisting postwar states to build a durable peace. The literature that links the rule of law and post-civil war stability provides some support for this view. For example, research finds that countries with high-quality rule of law systems are less vulnerable to civil war onset (Taydas, Peksen, and James 2010). Studies also suggest that the rule of law provides communities with means by which to resolve their grievances and disputes peacefully, thereby helping to ensure that conflicts do not escalate to the level of armed violence (DeRouen and Goldfinch 2012). Finally, research identifies high-quality rule of law as a factor that reduces the incidence of armed intrastate conflict by contributing to good governance (Hegre and Nygård 2014).⁴

Establishing the Rule of Law in the Aftermath of Civil War

Reflecting the international community’s belief that a robust rule of law can help promote security, democracy, development, and human rights, rule-of-law programs are now typically designed to advance all of these goals simultaneously in postconflict states. Although efforts to foster the rule of law date back several decades, the multipronged approach is largely a post-cold war phenomenon, with rule-of-law programs becoming a central component of United Nations (UN) peace operations since 1999 (O’Neil 2008).

How successful have international efforts to help postconflict or fragile countries establish the rule of law been? A literature review that assessed more than two decades of rule-of-law programming concluded that rule-of-law strategies had produced few lasting results (Samuels 2006). The review partially attributes this lack of success to the absence of “basic agreement on the goals of rule-of-law reform, on how different aspects should be sequenced to avoid them working against each other, and fundamentally what sorts of strategies are effective” (Samuels 2006, *i*). These problems are compounded by the lack of systematic evaluations of rule-of-law reforms (Carter 2013).

An oft-mentioned criticism of programs that attempt to help build the rule of law in postconflict states is their failure to give sufficient consideration to the conditions that prevail in such countries. International actors understand that they are operating in an environment in which institutions and infrastructure have been decimated, judges and other legal professionals have been killed or fled the country, and society is divided. Despite this knowledge, rule-of-law reformers often appear to disregard or discount the political dynamics in place at the end of the war and the insecurities these engender. Rather than thinking strategically about the types of institutions needed to overcome the deficit of trust produced by such conditions, practitioners tend to recreate the institutional frameworks that they associate with

⁴Each of these studies defines and operationalizes the rule of law in a very different manner.

effective rule of law in the West (Samuels 2006; Mani 2008). It is little wonder that these rule of law institutions fail to become self-enforcing. Only when institutions help to address the pressing concerns felt by actors emerging from civil war is it possible to build a stable foundation for the rule of law.

Theory: How Power Sharing Can Help to Establish the Rule of Law

We posit that power-sharing institutions established at the conclusion of a civil war have the potential to facilitate the emergence of the rule of law in the years following the war's end. As we describe below, power-sharing institutions accomplish this by providing key political actors with a degree of security that makes them more willing to develop and act within the rule of law and by restraining politically dominant actors. Although we consider these mechanisms central to the process of constructing the rule of law, we do not claim that they will produce a fully developed rule-of-law system. Rather, we maintain that relatively stronger rule-of-law systems will emerge in those countries whose civil war settlements call for a range of power-sharing measures in comparison to those states that adopt no or limited types of power sharing.

Forms of Power Sharing

Consistent with previous studies, we define power-sharing institutions as “rules that, in addition to defining how decisions will be made by groups within the polity, allocate decision-making rights, including access to state resources, among collectivities competing for power” (Hartzell and Hoddie 2003, 320). A component of many settlements designed to end civil wars, power-sharing measures distribute various elements of state power among rival groups, thus helping to ensure that no single collectivity controls all of the levers of state power.

We focus on four key dimensions of power sharing: the political, military, territorial, and economic aspects of government authority. *Political power sharing* calls for groups to distribute central state authority in a proportional manner. A proportional strategy requires groups to share power on the basis of a demographic (e.g., ethnicity) or political (e.g., ideology) characteristic. This distribution of power takes place through the use of electoral proportional representation, administrative proportional representation, or proportional representation in the executive branch of the national government. *Military power sharing* aims to distribute authority within the security apparatus of the state. Means used to accomplish this include merging adversaries' armed forces into a unified state security force; giving key leadership positions within the newly united security forces to members of the weaker armed group; or, although this rarely occurs, allowing the nonstate actor to retain its arms or to keep its security forces. *Territorial power sharing* occurs in those cases in which a postwar state is structured along federal lines or provisions are made for regional autonomy. In both instances, the goal is to provide regionally based groups with some degree of power independent of that of the central government. Finally, *economic power sharing* seeks to distribute wealth and income among groups in such a way as to prevent any one group from dominating state-controlled economic resources. Means of achieving this include designing preferential policies or rules that call for the distribution of economic resources among rival groups (Weiner

1983), assigning ownership of a natural resource to a region within the postwar state, and giving responsibility for state-controlled resources to a group representative by appointing her to a commensurate position in the government (Hartzell 2016).

Are particular dimensions of power sharing likely to play a more significant role than others in the development of the rule of law? While we test for this possibility, our view is that the different dimensions of power sharing are mutually reinforcing and that post-civil war countries are most likely to promote the rule of law when war-ending settlements include multiple forms of power sharing. The logic behind this claim is twofold. First, because insecurity can be experienced along multiple dimensions in postconflict societies, designing various means of addressing these forms of insecurity can help to make actors feel more secure. Not all forms of power sharing will be appropriate in every postconflict context. However, by agreeing to multiple types of power sharing, groups know that, should one type of power sharing fail, other measures can help check the power of their rivals (Hartzell and Hoddie 2007, 37).⁵ For example, while military power sharing is one means that can be used to enhance a sense of security among rivals, should this form of power sharing be absent or its implementation prove incomplete, other forms can bolster adversaries' feelings of security. These might take forms such as empowering groups to govern their homeland or ensuring they exercise greater control over the exploitation of natural resources. In this sense, all aspects of power sharing have the potential to provide assurances to groups that will enhance their security. Second, the more power-sharing institutions a settlement calls for, the more constrained governments should be in their ability to use state power to advance their own ends and/or harm others.

Power Sharing and Promotion of the Rule of Law

How do power-sharing structures help to advance the rule of law? More specifically, how does power sharing promote judicial independence, the concept we identify as central to our understanding of the rule of law? We identify two means via which power sharing can increase judges' willingness to adjudicate cases without unwarranted consideration of the positions of other government actors (Melton and Ginsburg 2014). First, power-sharing measures can help to enhance the security of actors who constitute part of the apparatus of the state. Arrangements that call for sharing or dividing the political, military, territorial, and economic powers of the state among civil war rivals ensure that no single group representative will be in a position to control the reins of state power. Such arrangements also reassure political actors that those levers of authority cannot be used to threaten their very existence or to impose some other unacceptable cost (Hartzell and Hoddie 2007). By providing a measure of security, power-sharing measures create an environment in which rivals have less need to worry that the power of the state may be used by others to exploit their safety or other vital interests. Power sharing thus helps contribute to the emergence of a situation in postwar states in which elites, realizing that “the benefit of regulations on the behavior of others outweighs the cost of regulations on their own behavior” (Durant and Weintraub 2014, 527), become more willing to observe the rule of law.

⁵ Territorial power sharing, for example, will only be appropriate in contexts in which groups are geographically segregated.

We expect the security-enhancing effects of power sharing to have a positive effect on judicial autonomy. Judges' willingness to exercise judicial independence should increase to the extent that they believe they function within a more secure political environment. This follows even if a judge herself is not a member of a minority group that has gained greater protections by being included in the apparatus of the state. As long as judges believe that power-sharing measures make it more difficult for institutional actors to use the power of the state to target others, they should have more freedom to issue rulings without having to consider how others might perceive those rulings and what that might imply for their well-being. Additionally, judges are likely to observe that the security provided by a power-sharing arrangement has the effect of increasing other institutional actors' willingness to abide by the rule of law. This should have the effect of persuading judges to decide cases on the basis of the law, as they have increased confidence that their rulings are unlikely to be overturned or challenged.

A second means by which power-sharing measures help build the rule of law in postwar societies is by providing a means of checking and balancing government power, a factor that is central in establishing the rule of law (Helmke and Rosenbluth 2009; Melton and Ginsburg 2014). Although the types of checks and balances inherent in power sharing may appear rudimentary, especially when compared to those that exist in mature democracies, power-sharing institutions help restrain politically dominant actors by dividing state power among different groups. This is particularly likely to be true of the executive, the actor that typically exercises the most influence over the judicial branch in states emerging from civil war. By dividing or fragmenting government to some meaningful extent, power sharing makes it more likely that the "law is unavailable as an instrument of control by any particular actor" (Helmke and Rosenbluth 2009, 348). As a result, judges, aware of the institutional constraints that power sharing imposes on other government actors, will have more autonomy to decide cases in light of the law.

Power sharing and the rule of law operationalized in terms of de facto judicial independence are distinctive concepts. The types of power-sharing measures the representatives of warring parties agree to should not be conflated with the kinds of formal rules and practices that typically allow judges to exercise judicial independence. Civil war rivals do not agree to adopt power-sharing measures for the purpose of establishing the rule of law. Nevertheless, some level of judicial autonomy is likely to arise as an unintended effect of such agreements. Judges who know that a framework of rules exists that places limits on the use of state power and who benefit from the sense of security that those rules provide should be more willing and able to assert some degree of judicial independence. We now turn to our tests of the relationship we posit between power sharing and de facto judicial independence.

Research Design

We employ a time-series-cross-section data set. The data set covers the time period 1948–2006. Our analysis includes only those years in which a country remains at peace following the end of a civil war. If a country returns to violence, we do not include the years of conflict. A state "returns" to the analysis if it establishes peace again, with our study taking into account the new circumstances that define the postwar state. We analyze civil wars that end via military victory, negotiated settlement, and negotiated truce, since

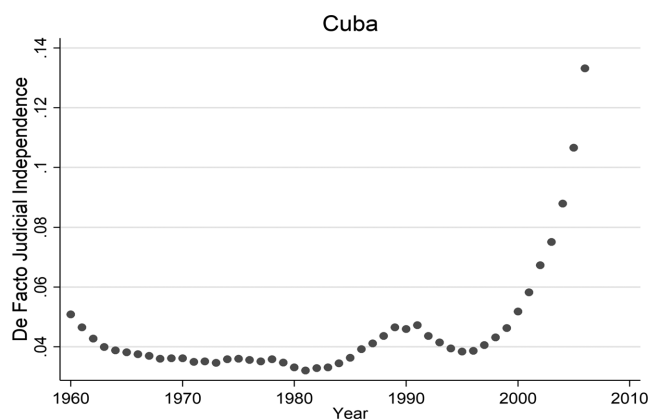


Figure 1. Changes in Cuba's de facto judicial independence, 1985–2006

settlements associated with all three forms of war termination can potentially call for the creation of power-sharing measures.⁶

Dependent Variable

We employ Linzer and Staton's measure of de facto judicial independence (2015) as our dependent variable. Linzer and Staton develop the measure by extracting common information from eight extant indicators that measure judicial independence either directly or indirectly for different groups of countries and time periods.⁷ The indicator is continuous but bounded between the values of 0 and 1. Values closer to 1 reflect higher rates of de facto judicial independence while a value of 0 indicates a complete lack of independence.

In order to illustrate how this measure performs in practice, we provide figures reflecting the levels of de facto judicial independence in two countries that experienced civil war. Cuba serves as our example of a country in which civil war ended with a military victory for one side, and provisions for power sharing among rivals are absent. As Figure 1 illustrates, this post-civil war state remains at the low end of Linzer and Staton's judicial independence scale from the 1959 revolution through the mid-1990s. Linzer and Staton suggest that the modest improvement in scores apparent after the turn of the century reflects the change of leadership from Fidel Castro to his less-controlling brother, Raul (Linzer and Staton 2015, 240). Yet, even with these improvements, Cuba's scores in terms of judicial independence remain comparable to other poorly performing countries such as Iran and Myanmar (Linzer and Staton 2015, 237–38).

Nicaragua lies at the other extreme. That country's civil war concluded on the basis of a series of negotiated accords signed in 1989 and 1990, some of which provided for various forms of power sharing. Following the agreements, as shown in Figure 2, Nicaragua experienced a marked improvement in its performance over a period of nearly ten years in terms of de facto judicial independence. While the country did not join the ranks of established democratic states with levels of de facto judicial independence near the upper boundary of "1," such as the United States and Finland, the autonomy

⁶ Data on the distribution of the different types of power sharing across the three forms of war termination appear in the online appendix.

⁷ Table 3 in the online appendix describes the operationalization of variables and provides a list of the sources that Linzer and Staton (2015) use to construct their indicator of judicial independence.

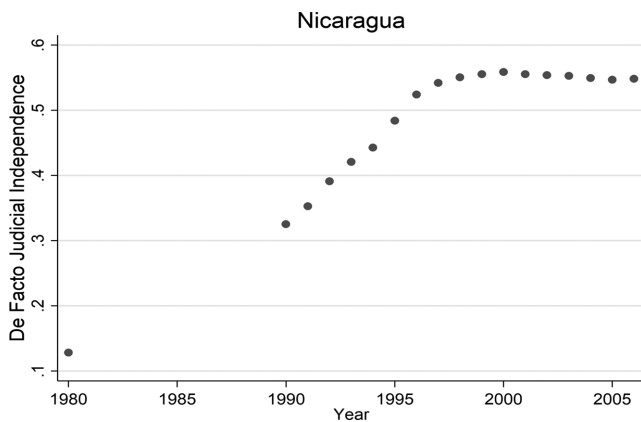


Figure 2. Changes in Nicaragua's de facto judicial independence, 1990–2006

of Nicaragua's judiciary clearly grew in the years following the power-sharing settlement that ended its civil war.

Key Explanatory Variables

Power sharing, our central explanatory variable, has four distinct dimensions: political, military, territorial, and economic. We operationalize power sharing using different approaches. In initial analyses, we employ an aggregate measure of power sharing with values ranging from 0 to 4. A value of 0 reflects the absence of any power-sharing dimensions adopted following civil war; a score of 4 indicates a case of war termination in which all four of the potential dimensions of power sharing are included as part of the settlement. In other tests we disaggregate the power-sharing measure into its individual dimensions (political, military, territorial, and economic) in order to assess the extent to which any particular form of power sharing affects judicial independence.

Control Variables

While we are most interested in the effect power sharing has on judicial independence in the aftermath of civil war, we recognize that it is not the only factor that shapes judicial autonomy. In order to account for these other factors, we include control variables that we classify into three categories.

The first group of indicators includes conditions, beyond power sharing itself, that are associated with the recently concluded civil war. Measures within this category are *conflict duration* and *time since last settlement*. We anticipate that wars of extended duration will encourage war-weary actors to support enduring solutions to conflicts that have proven challenging to resolve. The effect of this should be to provide judges with more latitude to exercise their own judgment as the executive and other actors hesitate to act in a manner that could lead to the collapse of the settlement. We include a measure of *time since last settlement* to account for the likelihood that, with the passage of time, judges gain confidence in their ability to issue rulings without incurring a negative reaction by other political actors, thus resulting in increasingly higher levels of judicial independence.

Our second category of indicators consists of conditions associated with the economic and political contexts in which the postwar state finds itself. The variables that we include here are *democracy*, *GDP per capita*, whether or not a state has

had earlier experience with *British colonialism*, and the *size of the country's population*. We anticipate that democracies will have a positive effect on judicial independence as such systems call for constitutional limits on the scope and use of governmental powers. Wealthier countries, as reflected in higher rates of *gross domestic product (GDP) per capita*, typically have less intense political competition (Lijphart 1977) and should have sufficient resources to fund and protect an independent court system. The final variable we include indicates whether or not a state has experience with *British colonialism*. We anticipate that exposure to the British common law system, with its tradition of respect for judicial independence, will produce postwar states that are better positioned to build the rule of law (Mitchell, Ring, and Spellman 2013).

While each of the variables described within this category thus far is hypothesized to enhance a country's respect for rule of law, we anticipate that *population size* will have a negative influence on our outcome of interest. We base this expectation on previous research that finds that large populations heighten the competition for a state's scarce resources and are thus associated with a stronger potential for instability (Keith 1999; Hafner-Burton and Tsutsui 2005; Carey, Gibney, and Poe 2010; Cole and Ramirez 2013). We anticipate that judges will be more likely to find their autonomy usurped in cases where large populations lead governments to worry about maintaining control over their citizens.

The third category of variables we include in our analysis is associated with the form and degree of international influence on the state emerging from civil war. These indicators include whether or not a *mediator* sought to help resolve a civil war, the presence or absence of *peacekeepers* following the civil war, and the volume of *official development assistance per capita* directed at the postwar state. We include these variables given the prevailing view that the greater the involvement and assistance provided by international actors, the more likely it is that a postwar country will develop higher levels of de facto judicial independence.

Also included in this category of variables is an indicator that reflects whether the year under analysis is *1999 or later*. We incorporate this variable based on the common understanding that it was during this period that the international community began to place a priority on promoting the rule of law in post-civil war states. We consider this variable, along with *official development assistance per capita* and *peacekeepers*, to be proxies for internationally led rule-of-law reform efforts.

A final variable we include within this group of indicators is a measure of the average *regional level of judicial independence* for each postwar state. We use this variable in order to control for the possibility that states based in regions in which de facto judicial independence is well established feel pressure to meet those standards.

We provide summary statistics for all variables included in our analysis as well as a table that includes details regarding the operationalization of the variables and original data source(s).⁸

Model Specification

We employ a generalized least squares estimator (GLS). This extension of the ordinary least squares method allows us to account for dependencies that exist between prior and current levels of judicial independence. To test for serial

⁸Summary statistics appear in Table 1 of the online appendix. Table 3 in the online appendix describes the operationalization of variables and identifies the original data source(s).

Table 1. The influence of aggregate power sharing on de facto judicial independence, 1948–2006

Variable	Model 1	Model 2	Model 3	Model 4	Model 5
Aggregate power sharing	0.019*** (0.002)	0.019*** (0.003)	0.021*** (0.003)	0.009* (0.004)	0.018** (0.006)
War duration	0.005*** (0.001)	0.002 (0.002)	0.005*** (0.002)	0.01*** (0.002)	0.001 (0.002)
Time since last settlement	0.001* (0.0001)	0.001* (0.0001)	0.002** (0.001)	0.001 (0.0001)	0.002*** (0.0001)
Democracy	0.094*** (0.006)	0.084*** (0.006)	0.118*** (0.009)	0.098*** (0.008)	0.029*** (0.006)
GDP per capita	0.04*** (0.005)	0.036*** (0.005)	0.046*** (0.005)	0.008 (0.006)	0.013** (0.004)
British colonialism	0.114*** (0.018)	0.118*** (0.018)	0.105*** (0.018)	0.044* (0.021)	-0.006 (0.024)
Population size	-0.001 (0.003)	0.0004 (0.003)	0.006* (0.003)	-0.023*** (0.005)	0.012** (0.004)
Mediation	0.012 (0.007)	-0.012 (0.008)	-0.012 (0.011)	-0.008 (0.012)	0.175*** (0.019)
Peacekeepers	-0.012 (0.007)	-0.019** (0.007)	0.014 (0.01)	-0.006 (0.008)	-0.144*** (0.017)
ODA per capita	-0.015 (0.009)	-0.01 (0.009)	-0.008 (0.013)	-0.003 (0.009)	-0.002 (0.005)
1999 or later	0.002 (0.002)	0.003 (0.003)	0.0001 (0.003)	0.0001 (0.003)	0.002 (0.002)
Regional rule of law	0.503*** (0.022)	0.505*** (0.029)	0.483*** (0.024)	0.351*** (0.042)	0.257*** (0.053)
Nongovernmental orgs.				0.054*** (0.007)	
Prewar rule of law					0.81*** (0.046)
Negotiated settlement		-0.015 (0.008)			
Military victory		-0.06*** (0.01)			
Constant	-0.196** (0.076)	-0.159* (0.077)	-0.402** (0.102)	0.093 (0.091)	-0.351*** (0.082)
N	1,124	1,124	543	749	656
AR1	0.91	0.92	0.82	0.92	0.97
Wald Chi2	2357.21	1608.62	3321.79	796	860.12
p-value	<0.001	<0.001	<0.001	<0.001	<0.001

Note: (1) Standard errors appear in parentheses. (2) Statistical significance levels: * $p \leq 0.05$, ** $p \leq 0.01$, *** $p \leq 0.001$. (3) Generalized least squares regression.

correlation, we apply the Wooldridge test (2002, 282–83).⁹ We reject the null hypothesis of no serial correlation in the residuals ($p = 0.0001$), thus confirming the need to include an autoregressive term in the model. We employ an autoregressive model of order 1 (AR (1)) that expresses the current observation as a linear function of previous observations (Box and Jenkins 1970). The autocorrelation term is relatively high (0.91 for all countries), indicating that the previous year's measure of de facto judicial independence has a considerable effect on the current measure.

Heteroskedasticity is also an issue of concern. The likelihood ratio test rejects the null hypothesis of no difference between the nested models at $p < 0.001$, indicating that a model correcting for heteroskedasticity is a better fit for our data.¹⁰

Results

The results of our initial test appear in Model 1 of Table 1. We test the effect that our aggregate measure of power sharing (the number of different types of power sharing that appear in a civil war settlement) has on the level of de facto judicial independence in post-civil war states. Our expectation is that countries that adopt a range of power-sharing provisions should have higher rates of de facto judicial independence in the years following the end of the war than those states that adopt no or few types of power sharing.

In this initial test we find that the coefficient associated with the *aggregate power-sharing* indicator is positively signed and statistically significant at the $p < 0.001$ level. This suggests that the total number of dimensions of power sharing adopted in the aftermath of civil war plays a meaningful role in enhancing a state's respect for judicial independence. A one-unit increase in the number of power-sharing dimensions specified at civil war's end results in an increase in the mean level of de facto judicial independence of 0.019.

⁹The results of the Wooldridge test appear in the online appendix.

¹⁰The results of the likelihood ratio test and a figure plotting fitted values versus residuals (Figure 1) appear in the online appendix. We address the issue of heteroskedasticity by employing the "panels (heteroskedastic)" command option available in Stata.

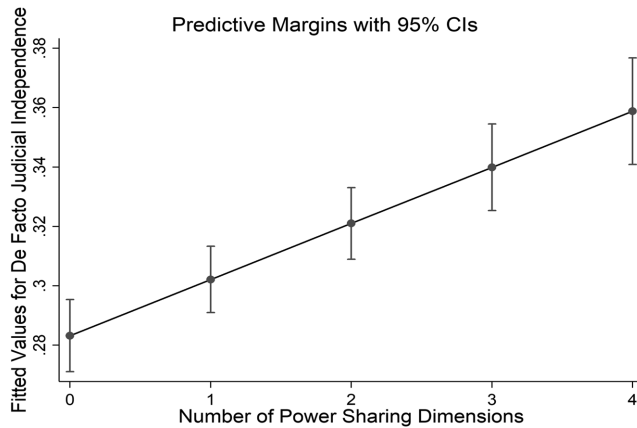


Figure 3. The effects of aggregate power sharing on de facto judicial independence, fitted values plot

The control variables associated with the recently concluded civil war have a significant influence on the level of judicial independence within a state. The coefficients associated with the indicators for conflict duration and *time since last settlement* are, as anticipated, positive. In terms of the category of indicators associated with the economic and political context of the post-civil war state, we find that *previous level of democracy*, *GDP per capita*, and experience with *British colonialism* are in the expected direction and influential. The variable for *population size*, while having the anticipated negative coefficient, fails to achieve statistical significance.

The results concerning the factors reflective of international influences on the post-civil war state indicate that these items, taken as a whole, do not play a role in shaping levels of judicial independence. In this analysis, the variables representative of *mediation*, *peacekeepers*, *official development assistance per capita*, and the years *1999 or later* all fail to achieve significance. The only factor we include in this category that proves influential is the measure of *regional judicial independence*. This suggests that the “neighborhood” in which a state finds itself influences its willingness to respect judicial independence.

The fact that many of the variables associated with international assistance to post-civil war states do not achieve statistical significance appears to reinforce the perspective that the global community has had limited success in its efforts to promote the rule of law. Yet, an alternative perspective is equally plausible. It may be the case that international assistance is most generous to those states that confront the greatest challenges in their transitions from conflict to peace; this is a claim advanced by Fortna (2004a, 2004b), who finds that peacekeepers tend to be sent to the conflicts that are the most intractable. If this proves to be the case, the findings for the variables associated with international assistance may be an artifact of a selection effect and may thus not accurately reflect the relationship between these indicators and the promotion of the rule of law. Although we are aware of this possibility, given that our theoretical focus is not on the role of the international community in helping to build the rule of law, we limit our test concerning potential selection effects (discussed below) to the relationship between power sharing and our dependent variable.

In order to consider the substantive effects of power sharing on de facto judicial independence, we generate a fitted values plot (Figure 3). Holding all control variables at their mean (for continuous variables) or modal value (for

dichotomous indicators), this graph demonstrates that each additional dimension of power sharing adopted by a post-civil war state increases the average level of de facto judicial independence by a small increment.

Figure 3 indicates that, holding all other factors constant, a movement in the number of power-sharing dimensions from 0 to 4 increases the mean level of de facto judicial independence from 0.283 to 0.359, an improvement of 0.076. To evaluate the substantive meaning of this change, we estimate the effect size in terms of the units of standard deviations. In our sample, the standard deviation of de facto judicial independence is 0.21. The change from 0 to 4 power-sharing dimensions thus is equivalent to the mean change of 0.38 standard deviations (calculated as $0.019 \times 4 / 0.21$).¹¹ Based on Cohen’s (1988) definition of effect size (Cohen’s *d*), this is an effect that is small to medium in magnitude. In those cases in which there are only two dimensions of power sharing specified at war’s end, however, the effect is small according to Cohen’s definition ($0.019 \times 2 / 0.21 = 0.18$).¹²

Including a high degree of power sharing in a settlement (i.e., a settlement that calls for three or four of the different forms of power sharing) does not, in and of itself, serve to elevate the average level of de facto judicial independence to a score coterminous with high-functioning rule of law. The positive effect that power sharing has on the average level of de facto judicial independence is not meaningless however, especially when one considers that it is one of the only variables that has a significant impact in Model 1 that is susceptible to policy manipulation.

Robustness and Endogeneity Tests

One objection that may be raised regarding our initial findings is that the analysis omits indicators reflecting the means by which civil wars come to an end: military victory, negotiated settlement, or negotiated truce. Our focus on post-civil war power sharing stands in contrast to research that emphasizes the means by which a civil war has ended and what that implies for the future governance of the state. Toft (2010), for example, argues that countries in which a rebel group achieves military victory are more likely to experience long-term stability, democratic achievement, and prosperity. In contrast, Gurses and Mason (2008) conclude that negotiated agreements serve as the most assured path to future democratization. We focus on power sharing based on the view that it provides more information regarding how the postwar state will be governed. An emphasis on power sharing makes it feasible to identify cases that may share the same form of civil war termination but experience very different outcomes in terms of how communities within the postwar state relate to one another. Anomalous cases under this approach, such as negotiated settlements that feature little or no power sharing, are not grouped together with those peace agreements that include a number of provisions for sharing authority. Similarly, instances of military victory in which the leaders of the postwar state opt for power sharing are not treated as comparable to the majority of such cases in which no power sharing is in evidence.

In order to address concerns regarding the omission of potentially significant variables, Model 2 replicates the original analysis with the addition of two new dichotomous

¹¹ The value of 0.019 is based on the coefficient for the power-sharing variable in Model 1.

¹² Cohen (1988) employs 0.2 as the threshold for identifying a small effect size, whereas 0.5 is the threshold for a medium effect size.

indicators that identify those conflicts concluded either by (1) *negotiated settlement* or (2) *military victory*.¹³ We assume that power-sharing arrangements will have qualitatively similar effects on judicial independence across these two forms of war termination. Our reasoning is that the ability of judges to exercise judicial independence at the end of a civil war is likely to be limited whether a civil war ends in a military victory or via a negotiated settlement. In each instance, the executive is likely to wield considerable power, with influence extending to the judicial branch of the state. In light of this, power-sharing measures, whether agreed to following a military victory or a negotiated conclusion to a civil war, should help to balance or check executive power, thus providing judges with greater autonomy following civil wars that end by either of these means. Judges are also likely to find power-sharing measures that are designed following a military victory reassuring from a security perspective. While this is particularly true for judges from a minority group or on the losing side of the conflict, even judges who are members of the group that emerges victorious are likely to feel more secure following an offer of power sharing. In both instances, judges should see power sharing as a form of restraint or means of constraining at least some of the types of violence that are characteristic of post-conflict environments, including those that end in military victory.

The results for Model 2 again point to a role for power sharing in shaping the level of de facto judicial independence in post-civil war states. The *aggregate power-sharing* variable remains positive and statistically significant, with a coefficient value that replicates the findings for the original model. For the two new variables, the results prove statistically significant only for *military victory*. The negative coefficient for this variable suggests that conflicts ended through a victory for one side are less likely to promote de facto judicial independence relative to those resolved by negotiated truces. This finding makes intuitive sense as conflicts terminated by military victory offer the greatest capacity for the conflict's victors to influence or control the judiciary.

In terms of the control variables included in the model, two differences are apparent in comparison to the original analysis. First, the coefficient for the *war duration* indicator remains positive but is no longer statistically significant. Second, the *peacekeeping* variable retains its negative coefficient but now proves a significant predictor of post-civil war judicial autonomy. As noted earlier, we are reluctant to attribute much meaning to the results regarding peacekeepers, as they may be attributable to selection effects.

Model 3 restricts the years under consideration to the decade following the conclusion of the civil war. The logic for including this analysis is that it limits the influence of those cases in which the civil war ended relatively early in our dataset and are thus represented in the analysis for decades. As a result of this restriction, the number of cases drops from 1,124 to 543.

For this analysis, we again employ an autoregressive term in the model and control for heteroskedasticity. The results are similar to those that appear in Model 1. The *aggregate power-sharing* indicator remains statistically significant and positive. The same control variables prove statistically

significant and are consistent in terms of the direction of the coefficients. The sole exception is the measure of *population size*, which in this analysis proves statistically significant and positive.

Models 4 and 5 provide further tests of the robustness of our results. Model 4 includes a logged measure of the total number of *nongovernmental organizations* (NGOs) within a state. Our expectation is that a larger number of NGOs reflects the vibrancy of civil society and the capacity of societal groups to check the power of a state seeking to accumulate power and influence. Model 5 includes a measure based on the average level of rule of law in each country for three years prior to the outbreak of civil war. We include this measure in order to account for the possibility that a country's previous performance in terms of respect for rule of law has an influence on the state's respect for judicial autonomy following the end of the war.¹⁴

These models again include the necessary controls for both autocorrelation and heteroskedasticity. The new variables included in these two tests each prove significant and positive, offering support for the view that both the presence of NGOs and a previous respect for rule of law have a beneficial influence on a country's level of judicial independence once the civil war has concluded. For both tests we also find that the results concerning the relationship between *aggregate power sharing* and judicial independence remain positive and significant.

For the model in which we include a logged measure of NGO presence within the postwar state, two changes are apparent in terms of control variables. First, the variable that represents *time since the last settlement* is no longer significant. Second, the logged measure of *GDP per capita* also lacks significance. For the model in which we incorporate the measure of *prewar rule of law*, there are three notable changes. The indicator representing *British colonialism* no longer proves significant, while the *mediation* measure has a positive sign and attains significance. The *peacekeeping* indicator in this version of the test is negative and significant.

These changes in the results regarding control variables are not surprising given the widely varying number of cases that are under consideration in these versions of the analyses. The fact that our key explanatory variable remains significant despite these changes in the model specification enhances our confidence in the robustness of our result.

As a further consideration of the robustness of our results, we test our original model using an alternative approach—linear regression with panel corrected standard errors. While both our original generalized least squares model and this model address the issue of heteroskedasticity, the linear regression model uses a different procedure, a Prais-Winsten estimation, to correct for autocorrelation. Our use of this model produces little substantive difference. The *aggregate power-sharing* variable remains statistically significant and in the anticipated direction. The same control variables are also significant.¹⁵

Finally, we examine whether extensive power sharing might be endogenous to the rule of law.¹⁶ Two potential sources of endogeneity bias include reverse causality and

¹⁴ Because there are large numbers of missing values for the relevant measures, we opt to include these only as robustness tests.

¹⁵ The results of this model appear in Table 2 of the online appendix.

¹⁶ By extensive power sharing we mean war-ending agreements that include three or four of the four different types of power sharing. We introduce this concept because the test of endogeneity that we employ requires a dichotomous indicator for power sharing for the selection stage of the model. As we note in the

¹³ Negotiated truces serve as the omitted reference category. One complication that comes with performing this analysis is that there is evidence of multicollinearity between the war outcome variables and the power-sharing indicators. Despite this concern, we present these results given the common practice of employing war outcome variables in studies of post-civil war states.

selection bias. If reverse causality is at work, civil war states with stronger rule-of-law systems somehow may be driven to adopt extensive power sharing as part of their civil war settlements. On the face of it, such a relationship seems unlikely. Weak rule of law is one of the factors that has been identified as contributing to the onset of civil war (Fearon 2010). If relatively strong rule of law and meaningful constraints on powerful actors existed, civil war adversaries would not feel driven to devise means of limiting rivals' power as a condition for ending the fighting. A more likely source of endogeneity bias where our analysis is concerned is selection or, more specifically, self-selection by actors in some civil war cases into settlements that include power-sharing measures. If the same factor that motivates groups to agree to adopt power sharing also has an effect on groups' willingness to establish a rule-of-law system, an endogeneity problem might exist.

To address concerns about potential endogeneity, we employ a two stage least squares model in order to determine whether or not extensive power sharing can be treated as an exogenous regressor. We employ *linguistic fractionalization* as an instrumental variable for extensive power sharing.¹⁷ The results of our test indicate that we fail to reject the null hypothesis that extensive power sharing can be treated as an exogenous variable.¹⁸ The evidence does not suggest that our findings are the result of a selection process.

Disaggregating Measures of Power Sharing

In Table 2 we alter our original model by replacing the variable for the aggregate level of power sharing with four dichotomous indicators. These variables indicate whether or not a postwar state has employed a particular dimension of power sharing: political, military, territorial, or economic. This allows us to analyze whether any individual form of power sharing shapes de facto judicial independence, either positively or negatively. As with our tests that focused on aggregate power sharing, we include corrections for autocorrelation and heteroskedasticity.

In the initial test, Model 6 of Table 2, we find that all four forms of power sharing have a statistically significant effect on the levels of judicial independence in post-civil war states. The indicators for *political*, *territorial*, and *economic power sharing* are positively signed. Based on the Cohen's d statistic, the effect size of these variables, ordered from smallest to greatest is the following: *territorial power sharing* (0.09), *political power sharing* (0.11), and *economic power sharing* (0.33). The fact that each of these values is lower than the Cohen's d estimate for the *aggregate power-sharing* variable (0.38) supports our argument that the influence of power sharing on de facto judicial autonomy is greatest when multiple forms of power sharing are present.

In contrast, we find that military power sharing has a negative coefficient; the Cohen's d estimate for effect size

Table 2. The influence of individual dimensions of power sharing on de facto judicial independence, 1948–2006

<i>Variable</i>	<i>Model 6</i>	<i>Model 7</i>	<i>Model 8</i>
Political power sharing	0.024*** (0.008)	0.02** (0.008)	0.023** (0.009)
Military power sharing	-0.025*** (0.007)	-0.032*** (0.008)	-0.012 (0.01)
Territorial power sharing	0.016* (0.008)	-0.001 (0.009)	-0.007 (0.01)
Economic power sharing	0.07*** (0.009)	0.076*** (0.009)	0.045*** (0.011)
War duration	0.004** (0.002)	0.0006 (0.002)	0.007*** (0.002)
Time since last settlement	0.001** (0.0001)	0.001* (0.0006)	0.001* (0.001)
Democracy	0.091*** (0.006)	0.075*** (0.006)	0.099*** (0.009)
GDP per capita	0.037*** (0.005)	0.03*** (0.005)	0.031*** (0.006)
British colonialism	0.1*** (0.018)	0.107*** (0.018)	0.107*** (0.021)
Population size	-0.004 (0.003)	0.001 (0.003)	0.005 (0.004)
Mediation	0.001 (0.008)	-0.019* (0.008)	0.0001 (0.01)
Peacekeepers	-0.001 (0.007)	-0.012 (0.007)	-0.005 (0.008)
ODA per capita	-0.016 (0.009)	-0.009 (0.008)	0.003 (0.012)
1999 or later	-0.001 (0.003)	0.001 (0.003)	-0.004 (0.003)
Regional rule of law	0.489*** (0.031)	0.511*** (0.034)	0.598*** (0.049)
Negotiated settlement		-0.02* (0.009)	
Military victory		-0.081*** (0.011)	
Constant	-0.097 (0.075)	-0.093 (0.078)	-0.351** (0.106)
N	1,124	1,124	543
AR1	0.9	0.92	0.88
Wald Chi2	1839.84	1649.48	1106.4
<i>p</i> -value	<0.001	<0.001	<0.001

Note. (1) Standard errors appear in parentheses. (2) Statistical significance levels: * $p \leq 0.05$, ** $p \leq 0.01$, *** $p \leq 0.001$. (3) Generalized least squares regression.

in this instance is 0.12, which, like *territorial power sharing* and *political power sharing*, is considered to be below the Cohen's d threshold of a "small effect" of 0.2. One possible explanation for this unanticipated, negative result for military power sharing is that it speaks to the influence that different types of security (i.e., physical security versus security defined in terms of continued access to power and resources) and the types of power-sharing measures that impact each type of security have on judicial independence. Joint control of the military by contending political actors may help to enhance their sense of physical security, but it appears that this form of power sharing is one that acts as a limit on the judiciary's independence. Although we cannot be sure why military power sharing has this effect on judicial autonomy, it is possible that judges may see a restructured and more inclusive military of the type produced by military power sharing as providing the executive with more, rather than less, power over the state's security forces. If judges see this as strengthening

online appendix, we code an agreement as having provided for extensive power sharing if it includes three or four of the types of power sharing.

¹⁷Ethnolinguistic heterogeneity has been used to instrument for distrust (see, for example, La Porta, Lopez-de-Silanes, Shleifer, et al. 1997). Our logic in employing it as an instrument for extensive power sharing is that civil war rivals that exhibit a marked lack of trust will be more likely to agree to measures to check one another's power.

¹⁸The results of our tests, which we generate using the *ivreg2* package, suggest that linguistic fractionalization is not significantly related to power sharing after controlling for other covariates. The low Chi-squared statistic from an endogeneity test further confirms this. See the online appendix for a summary of the tests.

the executive, rather than serving as a constraint, they may be more reluctant to exercise judicial autonomy.

The findings for the control variables in this particular test prove similar to those that appear in Model 1 of Table 1. Factors associated with the civil war, as well as the economic and political context of the post-civil war state, prove influential in shaping levels of judicial independence. International factors do not prove influential although, once again, the indicator reflecting the level of judicial independence within the region of the world in which the postwar state is located is significant and the coefficient positively signed.

Employing the approach we used for tests of the aggregate measure of power sharing, Model 7 of Table 2 controls for the form of war termination.¹⁹ In this instance, both the *political* and *economic power-sharing* variables are positively signed and prove statistically significant. Also in keeping with the initial analysis, the *military power-sharing* variable has a negative coefficient and is statistically significant. The sole divergence from the original finding is that the *territorial power-sharing* variable now has a negative coefficient but fails to achieve significance. In terms of the variables accounting for forms of war termination, both the indicators for *military victory* and *negotiated settlement* prove statistically significant and negatively signed.

As a final means of considering the relationship between power sharing and rule of law in post-civil war states, we focus on the individual dimensions of power sharing while limiting the analysis to the first ten years after the end of civil war. This test, Model 8 in Table 2, parallels that of Model 3.

Here we find some notable differences in comparison to the results seen in Model 6. Only two forms of power sharing now appear to have a statistically significant influence on the rule of law. Holding all other influences constant, *political power sharing* enhances the level of judicial independence, and *economic power sharing* again proves to be the most influential form of power sharing. While the coefficient for *military power sharing* remains negative, it is no longer statistically significant.

Liberia: Power Sharing and the Rule of Law

Our quantitative analyses suggest that the adoption of extensive power sharing has had a positive effect on the development of the rule of law following civil war. We further explore this relationship by examining the case of Liberia, which is well predicted by our statistical model.²⁰

Following years of civil war, the Accra Comprehensive Peace Agreement (CPA), signed in 2003, brought an end to the armed conflict in Liberia.²¹ Once considered one of the most prosperous countries in Africa, Liberia had become, after years of fighting, one of the poorest countries in the world. A team from the International Legal Assistance Consortium (ILAC) described the country's formal legal system in the following manner:

There is an almost unanimous distrust of Liberia's courts and a corresponding collapse of the rule of law.

¹⁹As we note in our discussion of Model 2 in Table 1, multicollinearity is apparent between the war outcome and power-sharing variables. We opt to present this analysis given the common practice of including war outcome indicators in quantitative studies of post-civil war states.

²⁰The standard deviation for our initial model's residuals was 0.18. In the case of Liberia it is very close to zero (0.05), demonstrating that the model predicted the values for Liberia particularly well.

²¹Several efforts previously were made to end the fighting in Liberia, with one, the 1996 Abuja Accord, producing a two-year period of peace following the election of the warlord Charles Taylor as president.

Liberia's Constitution provides for an Anglo-American legal system, but in reality, there is no effective separation of powers, a limited understanding of the principles of transparency and accountability, little knowledge of contemporary notions of human rights, limited access to legal advice and defense counsel, and unconscionable delays. Taylor's government withheld salaries from judges, prosecutors, court staff, police, and prison officers for 2.5 years. Judgment, freedom, and even life itself were often sold to the highest bidder (ILAC 2003, viii, cited in [Lubkemann, Isser, and Chapman 2011, 79]).

The CPA, agreed to by the three warring factions (the Government of Liberia [GOL], Liberians United for Reconciliation and Democracy [LURD], and the Movement for Democracy and Elections in Liberia [MODEL]), as well as the representatives of a number of political parties and civil society organizations, enumerated various steps in the peace process and provided for the creation of the National Transitional Government of Liberia (NTGL). The NTGL, whose mandate consisted of reestablishing functioning government authority and preparing for national elections to be held in 2005, consisted of an executive branch, led by Chairman Gyude Bryant, who was elected to the position at the Accra Conference that produced the CPA, and an interim parliament, the National Transitional Legislative Assembly (NTLA). Provisions of Liberia's 1984 constitution as well as various laws that were inconsistent with the CPA were suspended (Cook 2010). This allowed the National Transitional Government of Liberia (NTGL) to function with representatives of the executive and legislative branches selected exclusively from the parties to the conflict and civil society rather than through elections (Peace Accords Matrix 2017).

Political power-sharing measures were a central component of the CPA. The parties to the CPA were allocated positions within the executive and legislative branches, with leadership of twenty-one ministries in the executive branch distributed among the GOL, LURD, MODEL, political parties and civil society, and seats in the seventy-six-seat National Transitional Legislative Assembly distributed among the same groups as well as a representative from each of Liberia's fifteen counties. The existing judiciary was vacated upon the inauguration of the NTGL, with new members of the Supreme Court appointed by Chairman Bryant and confirmed by the NTGL (Pham 2004). The CPA also called for military power sharing in the form of the establishment of new armed forces to be constructed with regard given to the "national balance." Finally, economic power sharing was also employed, with positions as heads of public corporations distributed among parties to the settlement.

Historically speaking, one of the principal factors undermining the functioning of the rule of law in Liberia has been the executive branch's influence over the judiciary. Although the country's constitution provides for a system of checks and balances among the branches of government, in practice "Liberian presidents have wielded exceptional, sometimes extraconstitutional powers" (Cook 2010, 35). A history of repeated "executive interference in the judiciary and manipulation of the courts to serve political aims" damaged both the functioning and reputation of the formal judicial system (Lubkemann et al. 2011, 76).

The long-standing imbalance of power between the executive and the judiciary in Liberia suggests that a restructuring of this relationship should have been an important component of a postconflict rule-of-law reform program. As

evaluations of the international community's investment in rule-of-law programming in Liberia make clear, though, efforts to address executive-judiciary relations were not a focus of externally led reform efforts. [Sanmerholm \(2007\)](#), for example, observes that, although a special rule-of-law component was created within the United Nations Mission in Liberia (UNMIL), it "focused on high-profile areas such as ensuring women's rights, training judges in human rights sensitivity, and ensuring the rights of juvenile offenders," rather than being "concerned with how the emerging state in Liberia should be organized, or how the relationship between the state and citizens should best be regulated" (87). An evaluation conducted for the United States Agency for International Development of three years of rule-of-law programming concludes that the efforts appeared to "have had limited impact on citizens' access to fair, effective, and efficient justice," an outcome attributed to factors ranging from a lack of capacity in the country to the "lack of a focused rule-of-law strategy within [the] postconflict Liberian context" ([Henderson, Jakosa, and Gibson 2009](#), 2).

Although international rule-of-law reform programs failed to address the need to rebalance power between the executive and the judiciary in Liberia, the power-sharing measures included in the country's civil war settlement arguably went some way toward addressing this issue. During the two-year period the NTGL was in place, for example, Gyude Bryant exercised much less influence over the legislature and judiciary than had previous Liberian presidents. Limits on the Chairman's power stemmed from the fact that, rather than the executive, it was the parties to the CPA who filled the positions of ministers, heads of public corporations, and autonomous agencies. And, although the Chairman nominated the chairs and members of the commissions, his choices had to be approved by the NTLA ([Bertelsmann Transformation Index 2006](#)).

Following national elections in October and November 2005, Ellen Johnson Sirleaf took office as president of Liberia on January 16, 2006. President Sirleaf informally continued the practice of political power sharing by including former opposition members in her cabinet. The practice also extended to other branches of government, with Sirleaf nominating Kabineh Janneh, the former NTGL justice minister and leading member of the LURD rebel group, as a Supreme Court justice ([Cook 2010](#)). Although the executive's constitutional authority to appoint government officials at almost all levels continues to limit the development of a fully effective system of checks and balances in Liberia, the Political Constraints Index provides some evidence of growing restraints operating on politically dominant actors in Liberia. The measure identifies the degree of constraints on policy change using data on the number of independent veto points in the political system (executive, legislative, judicial, and subfederal branches of government) and the distribution of political preferences both within and across the branches ([Henisz 2000](#), 4). Scored on a scale of 0 to 1, higher scores reflect a higher number of constraints, which are assumed to promote stability. Liberia, which registered 0 on the Political Constraints Index from 1960 through 2005, scored 0.08672 for the years 2006–2011, rising to 0.121128 in 2012, and then to 0.678872 for the years 2013–2016, with the latter constituting a political constraint score on par with that of Chile.

What has this meant for the rule of law in Liberia? [Figure 4](#) illustrates the trajectory of the country's rule of law over a period of twenty-five years, beginning in 1985, four years before the civil war broke out, and ending in 2010, seven years after the end of the armed conflict. The figure,

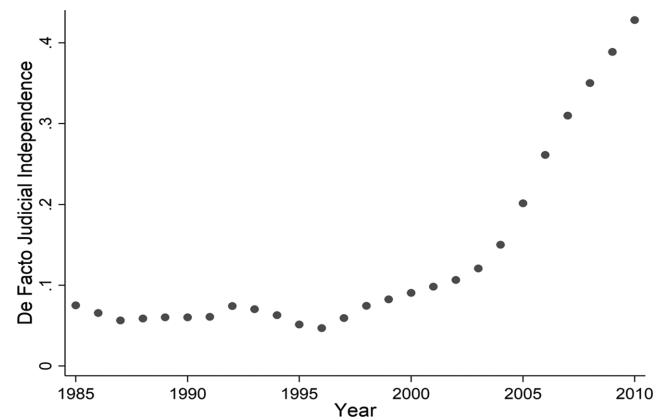


Figure 4. Changes in Liberia's de facto judicial independence, 1985–2010

which displays Linzer and Staton's measure of judicial independence for each of these years, shows minimal variation in the measure for the years 1985–2002, with a pronounced upward shift in the measure of de facto judicial independence beginning to take place in 2003. In 2010, Liberia registered a judicial independence score of 0.4282.²²

Much remains to be done to build a rule-of-law system in Liberia that is accessible to all, equitable in its treatment of all of the country's citizens, high performing, and legitimate. A recent assessment of Liberia's judiciary concludes that it still faces "serious shortcomings in terms of capacity and infrastructure," functions "under outdated laws and legal frameworks," lacks qualified personnel, insufficient funding, and that corruption remains endemic ([Bertelsmann Transformation Index 2016](#), 10). Despite these significant weaknesses, it is important to acknowledge that Liberia has made some progress in terms of strengthening the rule of law since the end of the civil war. The use of power-sharing measures, both formally as stipulated by the CPA and informally by the Sirleaf administration, appears to have helped secure a degree of independence for the judiciary.

Turning to the causal mechanisms, it is clear that power sharing acted as a restraint on presidential power. Although we did not find any statements by members of the Liberian judiciary attributing limits on the power of the executive to power sharing, the upward shift in Liberia's scores on the Political Constraints Index that began to take place during the NTGL, in conjunction with the rising score on the judicial independence index at the same time, indicates that some factor had begun to provide judges with more space within which to exercise their own political judgment. The only factor we have been able to identify as capable of providing a meaningful type of check or balance on the executive in the tumultuous period that followed the end of the war in Liberia is the power-sharing measures agreed to at the war's end.

Less clear is the impact that power sharing had on political actors' sense of security and, through that, on judicial independence in Liberia. We were not able to find any evidence that judges credited power sharing with providing them with an enhanced sense of security, nor that a greater sense of security provided them with more freedom to decide cases on the basis of the law. It does seem likely that Liberia's civil war adversaries would not have remained

²²Liberia's de facto judicial independence score in 2006, the last year included in our analysis, is 0.2614.

committed to the peace, much less acted with the restraint necessary for the enhancement of the rule of law, had they not been reassured that a rival would be unable to use the power of the state to threaten their lives and interests.²³ Power sharing provided Liberian opponents with enough of a sense of security to keep them committed to the NTGL and to allow for a peaceful transfer of power to Sirleaf's government. Although we were not able to discern what effect this may have had on the judiciary, it seems reasonable to assume that such an environment would have eased judges' worries about any potential repercussions that might have followed the growing exercise of judicial autonomy on their parts.

Discussion and Conclusion

Countries emerging from civil war face serious challenges in their efforts to put in place functioning rule-of-law systems. Obstacles confronting rule-of-law reform efforts include a paucity of resources, feelings of insecurity and a lack of trust among former antagonists, and the reluctance of rulers to accept constraints on their power. Seeking to help postconflict countries build the rule of law, the international community has sought to provide resources for the (re)construction of institutions associated with the judicial sector. Fewer efforts, however, have been expended on dealing with the latter two issues. Rather than helping to build rule-of-law institutions appropriate for an environment in which insecurity and a corresponding determination on the part of former armed rivals to control the levers of state power are prevalent, international actors have attempted to reproduce the types of rule-of-law structures that exist in the West. The result of these efforts has been, it is generally agreed, less than successful.

This study has sought to identify an alternative means by which postwar states may construct stronger rule-of-law systems. We posit that power-sharing institutions have the potential to play a helpful role in this process by allaying adversaries' feelings of insecurity and by providing a set of checks and balances that constrain political actors. Power-sharing institutions are more likely to accomplish this, we argue, in those instances in which rival groups create an array of these measures. The results of our empirical analysis provide support for this argument. All other things being equal, countries that adopt a range of power-sharing institutions have higher de facto judicial independence scores following the end of their respective civil wars than those countries that include no or few such measures.

With the mean rule-of-law score for countries with extensive power sharing in our sample at 0.376, it is clear that the adoption of these types of mechanisms has not produced high-functioning rule-of-law systems on par with those of consolidated democracies such as the United States and Japan, countries whose judicial independence scores in 2010 were 0.9859 and 0.9838, respectively. Nevertheless, our results suggest that civil war adversaries' decision to share power as part of a civil war settlement represents a shift in exogenous political conditions resulting in an increase in judicial independence in the years following the end of intrastate conflict. Whether the resulting growth in judicial independence is stable enough to build a stronger

and more liberally oriented rule of law, particularly once power-sharing arrangements expire, is a question that merits further investigation. Also worth exploring from a policy perspective is whether international rule-of-law programs designed to build on the degree of judicial independence secured by power sharing might have more success in generating positive rule-of-law impacts than those that have attempted to replicate Western rule-of-law systems.

Including a number of different types of power-sharing measures as part of civil war peace settlements does not guarantee the establishment of a high-functioning system of judicial independence and rule of law. Nonetheless, the fact that institutions designed to help stabilize the peace can have a positive impact on the rule of law in countries where rule by the gun recently prevailed should not be discounted as an achievement. Rivals in countries emerging from civil war have a unique set of concerns. Recognizing that reality and providing support for institutional changes that take these concerns into account can help to lay the foundations for a stronger rule-of-law system.

Supplementary Information

Supplementary information is available at the *International Studies Quarterly* data archive.

References

- BERTELSMANN TRANSFORMATION INDEX. 2006. "Liberia." Accessed February 26, 2016. https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2006/pdf/BTI_2006_Liberia.pdf.
- . 2016. "Liberia Country Report." Accessed February 26, 2016. https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Liberia.pdf.
- BOX, GEORGE, AND GWILYM JENKINS. 1970. *Time Series Analysis: Forecasting and Control*. San Francisco: Holden-Day.
- CAREY, SABINE C., MARK GIBNEY, AND STEVEN C. POE. 2010. *The Politics of Human Rights: The Quest for Dignity*. Cambridge: Cambridge University Press.
- CARTER, BECKY. 2013. "Evidence on Establishment of the 'Rule of Law' Through Deliberate Interventions (Domestic or International)." GS-DRC Helpdesk Research Report. Accessed on February 26, 2016. <http://www.gsdr.org/docs/open/hdq882.pdf>.
- COHEN, JACOB. 1988. *Statistical Power Analysis for the Social Sciences*. London: Routledge.
- COLE, WADE M., AND FRANCISCO O. RAMIREZ. 2013. "Conditional Decoupling: Assessing the Impact of National Human Rights Institutions, 1981 to 2004." *American Sociological Review* 78 (4): 702–25.
- COOK, NICOLAS. 2010. "Liberia's Post-War Development: Key Issues and US Assistance." Congressional Research Service, CRS Report for Congress, CRS7-5700. Accessed on October 11, 2017. <https://fas.org/sgp/crs/row/RL33185.pdf>.
- DEROUEN, KARL, JR., AND SHAUN GOLDFINCH. 2012. "What Makes a State Stable and Peaceful? Good Governance, Legitimacy, and Legal-Rationality Matter Even More for Low-Income Countries." *Civil Wars* 14 (4): 499–520.
- DURANT, T. CLARK, AND MICHAEL WEINTRAUB. 2014. "How to Make Democracy Self-Enforcing after Civil War: Enabling Credible Yet Adaptable Elite Pacts." *Conflict Management and Peace Science* 31 (5): 521–40.
- FEARON, JAMES D. 2010. "Governance and Civil War Onset." World Development Report 2011, Background Paper. Accessed October 27, 2017. https://openknowledge.worldbank.org/bitstream/handle/10986/9123/WDR2011_0002.pdf.
- FORTNA, VIRGINIA PAGE. 2004a. "Does Peacekeeping Keep Peace? International Intervention and the Duration of Peace after Civil War." *International Studies Quarterly* 48 (2): 269–92.
- . 2004b. "Interstate Peacekeeping: Causal Mechanisms and Empirical Effects." *World Politics* 56 (4): 481–519.
- GURSES, MEHMET, AND T. DAVID MASON. 2008. "Democracy Out of Anarchy: The Prospects for Post-Civil-War Democracy." *Social Science Quarterly* 89 (2): 315–36.

²³ The United Nations Mission in Liberia, the peacekeeping force established in September 2003 to monitor the CPA, played an important role in providing for security and stability in Liberia. What is not clear is whether, and if so to what extent, the security presence of UNMIL served to influence rival elites to refrain from using power in an instrumental fashion.

- HAFNER-BURTON, EMILIE M., AND KIYOTERU TSUTSUI. 2005. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology* 110 (5): 1373–411.
- HAGGARD, STEPHAN, AND LYDIA TIEDE. 2014. "The Rule of Law in Post-Conflict Settings: The Empirical Record." *International Studies Quarterly* 58 (2): 405–17.
- HARTZELL, CAROLINE A. 2016. "Negotiated Peace: Power Sharing in Peace Agreements." In *What Do We Know about Civil Wars?*, edited by T. David Mason and Sara McLaughlin Mitchell, 121–37. Lanham, MD: Rowman & Littlefield Publishers.
- HARTZELL, CAROLINE A., AND MATTHEW HODDIE. 2003. "Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management." *American Journal of Political Science* 47 (2): 318–32.
- . 2007. *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars*. University Park: Pennsylvania State University Press.
- HEGRE, HÅVARD, AND HÅVARD MOKLIEV NYGÅRD. 2014. "Governance and Conflict Relapse." *Journal of Conflict Resolution* 59 (6): 984–1016.
- HELMKE, GRETCHEN, AND FRANCES ROSENBLUTH. 2009. "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective." *Annual Review of Political Science* 12: 345–66.
- HENDERSON, KEITH, CHARLES JAKOSA, AND CHARLES GIBSON. 2009. "Evaluation of Rule of Law Programs in Liberia." Accessed on October 10, 2017. http://pdf.usaid.gov/pdf_docs/Pdaco233.pdf.
- HENISZ, WITOLD. 2000. "The Institutional Environment for Economic Growth." *Economics and Politics* 12 (1): 1–31.
- HURWITZ, AGNÈS. 2008. "Civil War and the Rule of Law: Toward Security, Development, and Human Rights." In *Civil War and the Rule of Law: Security, Development, Human Rights*, edited by Agnès Hurwitz and Reyko Huang, 1–20. Boulder: Lynne Rienner Publishers.
- KEITH, LINDA CAMP. 1999. "The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?" *Journal of Peace Research* 36 (1): 95–118.
- LA PORTA, RAFAEL, FLORENCIO LOPEZ-DE-SILANES, ANDREI SHLEIFER, AND ROBERT W. VISHNY. 1997. "Trust in Large Organizations." *American Economic Review* 87 (2): 333–38.
- LIJPHART, AREND. 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven, CT: Yale University Press.
- LINZER, DREW A., AND JEFFREY K. STATON. 2015. "A Global Measure of Judicial Independence, 1948–2012." *Journal of Law and Courts* 3 (2): 223–56.
- LUBKEMANN, STEPHEN, DEBORAH ISSER, AND PETER CHAPMANN. 2011. "Neither State Nor Custom – Just Naked Power: The Consequences of Ideals-Oriented Rule of Law Policy-Making in Liberia." *Journal of Legal Pluralism* 43 (63): 73–109.
- MANI, RAMA. 1998. "Conflict Resolution, Justice, and the Law: Rebuilding the Rule of Law in the Aftermath of Complex Political Emergencies." *International Peacekeeping* 5 (3): 1–25.
- . 2008. "Exploring the Rule of Law in Theory and Practice." In *Civil War and the Rule of Law: Security, Development, Human Rights*, edited by Agnès Hurwitz and Reyko Huang, 21–46. Boulder: Lynne Rienner Publishers.
- MARAVALL, JOSÉ MARÍA, AND ADAM PRZEWORSKI eds. 2003. *Democracy and the Rule of Law*. Cambridge: Cambridge University Press.
- MELTON, JAMES, AND TOM GINSBURG. 2014. "Does De Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence." *Journal of Law and Courts* 2 (2): 187–217.
- MITCHELL, SARA McLAUGHLIN, JONATHAN J. RING, AND MARY K. SPELLMAN. 2013. "Domestic Legal Traditions and States' Human Rights Practices." *Journal of Peace Research* 50 (2): 189–202.
- O'NEILL, WILLIAM G. 2008. "UN Peacekeeping Operations and Rule of Law Programs." In *Civil War and the Rule of Law: Security, Development, Human Rights*, edited by Agnès Hurwitz and Reyko Huang, 91–114. Boulder: Lynne Rienner Publishers.
- PEACE ACCORDS MATRIX. 2017. "Kroc Institute for International Peace Studies, University of Notre Dame." Accessed on October 16, 2017. <https://peaceaccords.nd.edu/accord/accra-peace-agreement>.
- PHAM, JOHN-PETER. 2004. *Liberia: Portrait of a Failed State*. New York: Reed Press.
- RIOS-FIGUEROA, JULIO, AND JEFFREY K. STATON. 2012. "An Evaluation of Cross-National Measures of Judicial Independence." *Journal of Law, Economics, & Organization* 30 (1): 104–37.
- SAMUELS, KIRSTI. 2006. "Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lesson Learnt." *Social Development Papers. Conflict Prevention and Reconstruction*, Paper no. 37. Accessed on February 25, 2016. http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf.
- SANNERHOLM, RICHARD. 2007. "Legal, Judicial, and Administrative Reforms in Post-Conflict Societies: Beyond the Rule of Law Template." *Journal of Conflict & Security Law* 12 (1): 65–94.
- SKAANING, SVEND-ERIK. 2010. "Measuring the Rule of Law." *Political Research Quarterly* 63 (2): 449–60.
- TAYDAS, ZEYNEP, DURSUN PEKSEN, AND PATRICK JAMES. 2010. "Why Do Civil Wars Occur? Understanding the Importance of Institutional Quality." *Civil Wars* 12 (3): 195–217.
- TOFT, MONICA DUFFY. 2010. "Ending Civil Wars: A Case for Rebel Victory?" *International Security* 34 (4): 7–36.
- UPHAM, FRANK. 2002. "Mythmaking in the Rule of Law Orthodoxy." Democracy and Rule of Law Project, Rule of Law Series no. 30. Accessed on February 23, 2016. <http://carnegieendowment.org/files/wp30.pdf>.
- VON HAYEK, FRIEDERICH. 1968. *Road to Serfdom*. London: Ark.
- WEINER, MYRON. 1983. "The Political Consequences of Preferential Policies: A Comparative Perspective." *Comparative Politics* 16 (1): 35–52.
- WOOLDRIDGE, J.M. 2002. *Econometric Analysis of Cross Section and Panel Data*. Cambridge, MA: MIT Press.