

Peace in Post-Conflict Societies: Power Sharing and Transitional Justice as Complementary Mediators

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Introduction

Conflict management practitioners and mediators have always been confronted with the dilemma of what needs to be secured first in the aftermath of war to achieve a lasting peace. Thus, the evolving practice of conflict resolution has seen the emergence of two paradigms in mediated political agreements. On the one hand, measures of transitional justice (TJ) have been frequently included as provisions to address legacies of human rights atrocities.¹ On the other hand, most of these negotiated settlements define the implementation of power-sharing provisions to accommodate the warring parties.² Though these two paradigms have been considered by some as antithetical, power-sharing arrangements and TJ mechanisms have been included in different combinations in peace settlements. Power sharing is criticised as a conflict management tool because it can only produce a 'negative peace', and because it ultimately promotes ethnic fragmentation and political immobility. Similarly, TJ is criticised as a destabilising factor for democratic transitions, with its reconciliatory aim often questioned.

This article will argue that the main critiques put forward against power sharing can be mitigated with the complementary use

¹ Naomi Roht-Arriaza, 'Transitional Justice and Peace Agreements', International Council on Human Rights Policy Working Paper (2005), [online](#). (Here and subsequently, online resources were last accessed on 14 August 2018.); Leslie Vinjamuri & Aaron P. Boesenecker, *Accountability and Peace Agreements: Mapping trends from 1980 to 2006*, Report for the Centre for Humanitarian Dialogue (September 2007).

² Caroline A. Hartzell & Matthew Hoddie, 'The Art of Possible: Power Sharing and Post-Civil War Democracy', in *World Politics*, Vol. 67, No. 1 (2015), pp. 37-71; also, Stephan Wolff, 'Consociationalism: Power Sharing and Self-Governance', in Idem & Christalla Yakinthou (eds.), *Conflict Management in Divided Societies. Theories and Practices* (Routledge, 2014).

of TJ mechanisms, and that both paradigms are needed to promote sustainable peace. Part I will briefly assess the merits and limitations that have been ascribed to power sharing, focusing mainly on the provisions of political power sharing as a conflict management tool. It will also discuss the merits and limitations of TJ, focusing principally on truth and reconciliation mechanisms as a peace-building measure. It will then analyse how these two elements share positive and negative interactions in conflict resolution settings. If power sharing is necessary to reduce instability at an elite level and to promote a balance of power³, TJ, can foster the involvement of the civil society and of individuals to encourage societal learning beyond the elite level.⁴ Finally, Part II will use the case of the Liberian peace process to support the positive interaction between these two paradigms.

It goes beyond the purpose of this article to evaluate the effectiveness of power sharing institutions and TJ *per se*. Rather, this paper will highlight how the two paradigms, usually analysed as separate elements, influence each other. The explanation presented does not intend to advance claims of causation, but rather of correlation. What a peace agreement represents is a legal outline of a political project of peace and stability, but the latter cannot be achieved without a social collective endeavour.

PART I: SETTING THE STAGE

Concepts and Definitions

Firstly, I seek to define the conceptual framework of this analysis to clarify how conflict resolution and reconciliation represent complementary ends of both paradigms. This article will refer to peace in terms of a 'positive peace' considered as the non-violent coexistence of a society.⁵ The concept of positive peace is closely

³ Hartzell & Hoddie, 'The Art of Possible'.

⁴ Nevin T. Aiken, 'Rethinking Reconciliation in Divided Societies: A Social Learning Theory of Transitional Justice', in Susanne Buckley-Zistel et al. (eds.), *Transitional Justice Theories* (Routledge, 2014); Daniel Bar-Tal, 'From Intractable Conflict through Conflict Resolution to Reconciliation: Psychological Analysis', in *Political Psychology*, Vol. 21, No. 2 (Jun., 2000), pp. 351-365.

⁵ Johan Galtung, 'After Violence, Reconstruction, Reconciliation and Resolution', in Mohammed Abu-Nimer (ed.), *Reconciliation, Justice and Coexistence: Theory and*

related to the understanding of conflict resolution 'because it reflects the growing demands of populations for their rights and needs to be met, and for essential public services to be provided (...) to transcend the identity, religious, material, ideological and territorial differences'.⁶ Furthermore, this transformative nature of peace complements the understanding of reconciliation as 'a process of gradually (re)building broad social relationships over time between communities alienated by sustained and widespread violence'.⁷ Power sharing and TJ mechanisms, especially truth commissions, have been frequently implemented as tools to achieve reconciliation and peace. Therefore, within this analysis, TJ will be defined as 'the formal and informal procedures implemented by a group or institution of accepted legitimacy (...) for rendering justice'⁸ and as 'a society's attempts to come to terms with a legacy of large-scale past abuses'.⁹ Lastly, power sharing will be analysed in the context of peace agreements, as the institutional arrangements and formal provisions which aim to manage and guarantee the interests of parties to a conflict.¹⁰

Peace as Governance

After the end of the Cold War the international system saw a rise in the number of intrastate conflicts and a progressive use of negotiated

Practice (Lexington Books, 2001); See also John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace Press, 1998).

⁶ Oliver P. Richmond, *Peace: A Very Short Introduction* (Oxford University Press, 2014), p. 11.

⁷ David Bloomfield, 'On Good Terms: Clarifying Reconciliation', Berghof Report No. 14 (Berghof Research Centre for Constructive Conflict Management, 2006), p. 12; Also, Lederach, *Building Peace*.

⁸ Marek M. Kaminski, Monika Nalepa and Barry O'Neill, 'Normative and Strategic Aspects of Transitional Justice', in *The Journal of Conflict Resolution*, Vol. 50, No. 3 (June 2006), p. 295.

⁹ United Nations Security Council, *S/2004/616: The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies. Report of the Secretary-General* (UNSC, 2004), p. 4.

¹⁰ Caroline A. Hartzell & Matthew Hoddie, 'Power Sharing in Peace Settlements: Initiating the Transition from Civil War', in Philip G. Roeder and Donald Rothchild (eds.), *Sustainable Peace: Power and Democracy after Civil Wars*, Ithaca, NY: Cornell University Press, 2005), pp. 83ff.

settlements for the termination of hostilities.¹¹ In these contexts, power sharing has been identified as the most effective tool to manage multiple parties and so-called 'spoilers' in the aftermath of a conflict.¹² The paramount goal in negotiated settlements is to promote the termination of hostilities between parties in conflict.¹³ Power sharing provides the rules which define the relationships among groups, reducing information asymmetries and the risk that a single group will dominate 'all the levers of state power'.¹⁴ The possibility of achieving such aim evidences the underlying assumption that inter-elite accommodation can mitigate the centrifugal tendencies of societies fragmented along religious, ideological, linguistic or cultural lines, to promote good governance.¹⁵ Thus, as long as communities interact in joint consent, the core feature of political power sharing is the elite's role in accommodating political compromise¹⁶ and to ensure the 'participation of representatives of all significant groups in the

¹¹ The terms peace agreements and political or negotiated settlements will be used considering the latter as the bargaining of a social order 'based on political compromises between powerful groups in society that sets the context for institutional and other policies'. Mushtaq H. Khan, *Political Settlements and the Governance of Growth-enhancing Institutions* (School of Oriental and African Studies, University of London, 2010), p. 4.

¹² Stef Vandeginste & Chandra Lekha Sriram, 'Power Sharing and Transitional Justice: A Clash of Paradigms?', in *Global Governance*, Vol. 17, No. 4 (October/December 2011), pp. 489-505; Caroline A. Hartzell & Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Management', in *American Journal of Political Science*, Vol. 47, No. 2 (Apr., 2003), pp. 318-332; also, Wolff, 'Consociationalism'. It is beyond the scope of this analysis to explore in detail consociationalism as an institutional system itself. Furthermore, this article will not investigate concepts and theories like centripetalism and power dividing, though it recognizes their merits as conflict management tools.

¹³ Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice', *Global Society*, Vol. 21, No. 4 (2017), pp. 576-591; Wolff, 'Consociationalism'.

¹⁴ Hartzell & Hoddie, 'Power Sharing in Peace Settlements', p. 85.

¹⁵ Andrew Lijphart, 'The Wave of Power Sharing Democracy', in Andrew Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (Oxford University Press, 2002), pp. 37ff; Timothy Sisk, 'Peacebuilding as Democratization. Findings and Recommendations', in Anna K. Jarstad & Timothy Sisk (eds.), *From War to Democracy: Dilemmas in Peacebuilding* (Cambridge University Press, 2008), pp. 39ff; Wolff, 'Consociationalism'.

¹⁶ See the discussions in Andrew Lijphart, *Democracy in Plural Societies* (Yale University Press, 1977); also, John McGarry and Brendan O'Leary (eds.) *The Northern Ireland Conflict: Consociational Engagements* (Oxford University Press, 2004).

political decision making'.¹⁷

However, critiques have pointed out how power sharing crystallises identities and institutionalises ethnic cleavages, fostering ethnic outbidding and restricting incentives for moderate elite confrontation.¹⁸ As Roeder and Rothchild also clarify, power sharing still relates to ethnic divisions as the main unit of political analysis.¹⁹ In addition, such cross-ethnic alliances may be instrumental and operate pre-electoral coalitions, rather than promote actual cooperation.²⁰ A further criticism, argues that it hinders the protection of human rights by side-lining 'citizenship rights...in favour of group rights, with an emphasis of community and custom prevailing over the rights of individuals'.²¹ Nonetheless, power sharing measures are still considered the most effective provision in negotiated settlements.²² As Papagianni stresses, transitional power sharing holds a key instrumental value beyond merely assuring weaker parties in settlements, 'to secure the engagement of key political actors in the process'.²³

¹⁷ Lijphart, 'The Wave of Power Sharing Democracy', p. 41

¹⁸ Donald S. Rothchild & Philip G. Roeder, 'Power Sharing as an Impediment to Peace and Democracy', in Rothchild & Roeder, *Sustainable Peace*, pp. 29ff; Matthijs Bogaards, 'The Favourable Factors for Consociational Democracy: A Review', in *European Journal of Political Research*, Vol. 33, No. 4 (June 1998), pp. 475-496; Idem, 'The Uneasy Relationship between Empirical and Normative Types in Consociational Theory', in *Journal of Theoretical Politics*, Vol. 12, No. 4 (2000), pp. 395-423.

¹⁹ Rothchild & Roeder, 'Conclusion: Nation-State Stewardship and the Alternatives to Power Sharing', in Eidem, *Sustainable Peace*, pp. 319ff; Wolff, 'Consociationalism', p. 26

²⁰ Bassel F. Salloukh, 'The Limits of Electoral Engineering in Divided Societies: Elections in Postwar Lebanon', in *Canadian Journal of Political Science*, Vol. 39, No. 3 (Sep., 2006), pp. 635-655; Melani Cammett & Edmund Malesky, 'Power Sharing in Postconflict Societies: Implications for Peace and Governance', in *Journal of Conflict Resolution*, Vol. 56, No. 6 (2012), pp. 982-1016.

²¹ Yash Ghai & Jill Cottrell, 'A Tale of Three Constitutions: Ethnicity and Politics in Fiji', in Sujit Choudhry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford University Press, 2008), p. 314; Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"', in *The International Journal of Transitional Justice*, Vol. 3, No. 1 (March 2009), pp. 5-27.

²² Hartzell & Hoddie, 'Institutionalizing Peace'; Eidem, 'Power Sharing in Peace Settlements'.

²³ Katia Papagianni, 'Participation and State Legitimation', in Charles Call & Vanessa Hawkins Wyeth (eds.), *Building States to Build Peace* (Lynne Rienner Publishers, 2008), p. 63.

Furthermore, power sharing negotiated settlements consider provisions for territorial, military and economic power sharing.²⁴ Measures regarding territorial power sharing aim at decentralising the power by 'placing institutional limitations on unbridled central authority'.²⁵ Military power sharing, instead, considers the disarmament and reintegration of former combatants, the revision of security forces and the proportional representation within new armed forces by all groups.²⁶ Despite less frequently, economic power sharing terms have also been included in peace agreements. Such provisions may consider the redistribution of resources among groups or promote policies to target the specific needs of groups or regions.²⁷ By addressing these security concerns, power sharing advocates stress how former adversaries more likely remain committed to peace.²⁸ Indeed, recent studies have considered that a wider approach to power sharing has greater stabilising effects in peace agreements.²⁹ However, the paradigm still maintains some shortcomings in the long-term prospect of peace duration: '[c]ivil wars...can sometimes be brought to an end with consociational arrangements, but the desirability and durability of such agreements are often in doubt'.³⁰

Peace as Reconciliation

The evolution of peace-building and conflict management strategies has also led to a greater inclusion of TJ mechanisms in peace agreements.³¹ Accountability, the protection of human rights and the promotion of the rule of law have become interdependent elements

²⁴ Hartzell & Hoddie, *Power Sharing in Peace Settlements*; Cammet & Malesky, 'Power Sharing in Postconflict Societies'.

²⁵ David A. Lake and Donald Rothchild, 'Containing Fear: The Origins and Management of Ethnic Conflict', in *International Security*, Vol. 21, No. 2 (Fall, 1996), p. 62

²⁶ Hartzell & Hoddie, 'Power Sharing in Peace Settlements'.

²⁷ Ibid.

²⁸ Hartzell & Hoddie, 'Institutionalizing Peace'; Eidem, 'The Art of Possible'.

²⁹ Hartzell & Hoddie, 'Power Sharing in Peace Settlements'; Cammet & Malesky, 'Power Sharing in Postconflict Societies'.

³⁰ Donald L. Horowitz, 'Conciliatory Institutions and Constitutional Processes in Post-Conflict States', in *William and Mary Law Review*, Vol. 49 (2008), p. 1220.

³¹ Vinjamuri & Boesenecker, *Accountability and Peace Agreements*; Roht-Arriaza, 'Transitional Justice and Peace Agreements'.

necessary for a sustainable democratic system.³² Such perspective is shared by the UN in considering 'the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that the redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice'.³³ Therefore, in the current international debate, TJ has become more than an 'academic discussion' and has evolved as a growing policy area supported by donors, NGOs, the UN and regional organisations.³⁴ By practitioners and mediators TJ is considered a useful tool in promoting a process by which 'a society moves from a divided past to a shared future'³⁵ and which ultimately reduces the recurrence of conflict.³⁶

Furthermore, the 'fourth generation' of TJ, has evidenced how the expansion and inclusion of TJ has been positively correlated with processes of democratisation.³⁷ Yet, TJ represents a very critical and dynamic concept and field. The main critiques relate to the assumption, and evidence, that governments and elites may use trials, truth commissions, vetting and lustration policies to pursue narrow and particularistic aims.³⁸ Advocates of TJ are critiqued for their optimism rested in the expectation that good normative processes will translate in effective results.³⁹ Furthermore, TJ can be a costly method⁴⁰, which ultimately fails to achieve retributive justice.⁴¹

³² Sriram, 'Justice as Peace?'; Vandeginste & Sriram, 'Power Sharing and Transitional Justice'.

³³ United Nations Security Council, *S/2004/616: The Rule of Law*, p. 3.

³⁴ Sriram, 'Justice as Peace?'.

³⁵ David Bloomfield, 'Reconciliation: An Introduction', in Idem, Teresa Barnes & Luc Huyse (eds.), *Reconciliation After Violent Conflict: A Handbook* (IDEA, 2003), p. 12.

³⁶ Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter, *Transitional Justice in Balance. Comparing Processes and Weighing Efficacy* (United States Institute of Peace Press, 2010).

³⁷ Bell, 'Transitional Justice'; Sriram, 'Justice as Peace?'.

³⁸ Cyanne E. Loyle & Christian Davenport, 'Transitional Injustice: Subverting Justice in Transition and Postconflict Societies', *Journal of Human Rights*, Vol. 15, No. 1 (2015), pp. 126-149; David Mendeloff, 'Truth-Seeking, Truth-Telling and Postconflict Peacebuilding: Curb the Enthusiasm?', in *International Studies Review*, Vol. 6, No. 3 (Sep., 2004), pp. 355-380.

³⁹ Ibid.

⁴⁰ Olsen et al., *Transitional Justice in Balance*.

⁴¹ James Hughes, 'Reconstruction without Reconciliation: Is Northern Ireland a Model?', in Bill Kissane (ed.), *After Civil War: Division, Reconstruction, and*

However, if it is true that the politics of TJ represent a struggle for power and an expedient for regime consolidation in an institutional context, 'it also consists of people pondering how to resolve a complex problem, which has not only political, but also moral and legal implications'.⁴²

Conflict and violence lead to a destruction of societal networks, they foster polarisation between groups, and harden identities in divided societies which ultimately create intractable conflictual understandings between communities.⁴³ It is with no doubt difficult for divided societies to reconcile, and it is also true that achieving 'justice' in the aftermath of a conflict is demanding. Yet, the central point in understanding this approach is to consider TJ in terms of societal reconstruction. Therefore, pursuing 'justice' should distance itself from the purely legalistic domain of accountability.⁴⁴

If, as it has been recognised, post-conflict periods represent important transformative moments then it is crucial to promote a positive relational understanding of the root causes of violence.⁴⁵ It is important to examine, in some way acknowledge, and account for the violence that has been committed by groups or individuals.⁴⁶ Thus, TJ can encourage a social learning through instrumental, socio-emotional and distributive measures.⁴⁷ Therefore, a truth commission operating, through 'truth'-telling, fact-finding and

Reconciliation in Contemporary Europe (University of Pennsylvania Press, 2014), pp. 245ff.

⁴² Noel Calhoun, *Dilemmas of Justice in Eastern Europe's Democratic Transition* (Palgrave Macmillan, 2004), p.17

⁴³ Bar-Tal, 'From Intractable Conflict'; Nevin T. Aiken, 'Post-Conflict Peacebuilding and the Politics of Identity: Insights for Restoration and Reconciliation in Transitional Justice', in *Peace Research*, Vol. 40, No. 2 (2008), pp. 9-38; See also Aiken, 'Rethinking Reconciliation in Divided Societies'.

⁴⁴ Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', in *Journal of Law and Society*, Vol. 34, No. 4 (Dec., 2007), pp. 411-440; Kimberly Theidon, 'Justice in Transition: The Mircopolitics of Reconciliation in Post War Peru', in *Journal of Conflict Resolution*, Vol. 50, No. 3 (Jun., 2006), pp. 433-457,

⁴⁵ Aiken, 'Rethinking Reconciliation in Divided Societies'; Also, Ruti G. Teitel, *Transitional Justice*, Oxford University Press, 2000), ch. 7.

⁴⁶ Aiken, 'Rethinking Reconciliation in Divided Societies'; Martha Minow, 'The Hope for Healing: What can Truth Commissions Do?', in Robert I. Rotberg & Dennis Thompson (eds.), *Truth v. Justice. The Morality of Truth Commissions* (Princeton University Press, 2000), pp. 235ff.

⁴⁷ Aiken, 'Rethinking Reconciliation in Divided Societies'.

grassroots reconciliation practices can become a complementary element of the ongoing negotiation of identity which can transform hostile relationships and allow a less rigid account of past violence.⁴⁸ Indeed, it has been analysed that it is not the truth, but the moderating of the truth, which entails a 'mutual acknowledgment of complicity in past conflict that may be the essential ingredient in dismantling understandings of the Other as an essential evil'.⁴⁹ As Gibson has noted, 'accepting the viewpoint that both sides did terrible things is perhaps the first tentative step towards reconciliation'.⁵⁰ The intrinsic value of truth and reconciliation mechanisms, in the form of an official truth commission or as related grassroots practices, is not related to delivering the official truth, but about diminishing the denial about past events.⁵¹ Hence, the core message of TJ in post-conflict scenarios rests in the belief that there is a transformative possibility to learn from the past.⁵²

The Relationship between Power-Sharing and Transitional Justice

However, when both included in peace agreements, these two paradigms share a negative and a positive interaction, by which they may constrain each other in theory, but may also complement each other in practice. Each of the power sharing provisions aforementioned, may have an impact in terms of justice by allowing a discourse of impunity and therefore hinder reconciliation. On a political level, the implementation of a transitional power sharing government may see members of armed groups and members of the previous government implement amnesty or pardon legislations to

⁴⁸ James L. Gibson, 'The Contributions of Truth to Reconciliation: Lessons from South Africa', in *Journal of Conflict Resolution*, Vol. 50, No. 3 (Jun., 2006), pp. 409-432; Idem, 'Overcoming Apartheid: Can Truth Reconcile a Divided Nation?', *Politikon: South African Journal of Political Studies*, Vol. 34, No. 2, (Oct 2010), pp. 129-155; Bar-Tal, 'From Intractable Conflict'.

⁴⁹ Aiken, 'Rethinking Reconciliation in Divided Societies', p. 54; Gibson, 'The Contributions of Truth to Reconciliation'.

⁵⁰ Gibson, 'Overcoming Apartheid', p. 329

⁵¹ Minow, 'The Hope for Healing'.

⁵² Teitel, *Transitional Justice*, Ch. 7.

protect themselves from being accountable.⁵³ Scholars have discussed how often elite accommodation in theory translates into practical elite control.⁵⁴ For example, Levitt and other scholars have argued how sharing power between warlords and human rights violators, translates deals into meaningless 'scraps of paper'.⁵⁵ Furthermore, power sharing indirectly repurposes conflict cleavages in post-conflict governance. Therefore, warring parties will be incentivised to seek political support primarily from their own constituencies, which in turn, may reduce the general public's confidence in the newly established institutions.⁵⁶ In addition, though power sharing aims at reassuring the parties, it may also 'institutionalise fear' and insecurity through the need for hard guarantees, such as minority rights.⁵⁷ Hence, power sharing at a political level may limit the accounts to address the structural roots of the conflict.⁵⁸ Also, military power sharing, in terms of Security Sector Reform (SSR) and Disarmament, Demobilization and Reintegration (DDR) may have important impacts. DDR programs comprehend several measures to encourage former combatants to lay down their arms and either return to civilian life or enter reformed security forces after a vetting process. Usually, to comply, combatants are offered incentives, financially and resource-wise. This preferential form of 'retribution' may foster grievances among

⁵³ Vandeginste & Sriram, 'Power Sharing and Transitional Justice'; Anna K. Jarstad, 'Power Sharing: Former Enemies in Joint Government', in Jarstad & Sisk, *From War to Democracy*.

⁵⁴ Kris Brown & Fionnuala D. Ni Aolain, 'Good Fences Make Good Neighbours: Assessing the Role of Consociational Politics in Transitional Justice', *Political Settlements Research Programme*, Working Paper 3, 20 January 2016, [online](#); Andreas Mehler, 'Peace and Power Sharing in Africa: A not so Obvious Relationship', *African Affairs*, Vol. 108, No. 432 (Jul., 2009), pp. 453-473.

⁵⁵ Jeremy I. Levitt, 'Illegal Peace? An Inquiry into the Legality of Power-Sharing with Warlords and Rebels in Africa', in *Michigan Journal of International Law*, Michigan Journal of International Law, Vol. 27, No. 2 (2006), p. 577

⁵⁶ Jai Kwan Jung 'Power-sharing and Democracy Promotion in Post-Civil War Peacebuilding', in *Democratization*, Vol. 19, No. 3 (2012), p. 486; see also Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar Publishing, 2017).

⁵⁷ Timothy D. Sisk, 'Power-Sharing in Civil War: Puzzles of Peacemaking and Peacebuilding', in *Civil Wars*, Vol. 15, No. 1 (suppl.) (2013), p. 13; McAuliffe, *Transformative Transitional Justice*.

⁵⁸ *Ibid.*

other victims which do not have access to a reparation program.⁵⁹ Furthermore, parties involved will priorities the allocation and control of resources. Though economic power sharing proposes 'to correct injustices present prior to or evolving during the conflict'⁶⁰, what it achieves often resembles a sharing of resources, rather than their redistribution.⁶¹ Lastly, territorial control or relative autonomy from the central government 'can allow former fighting groups to resist transitional justice processes and may also appear to be a reward for groups that have been abusive in the past'.⁶² Thus, though these provisions have resulted in an increase of the durability of peace there are also drawbacks.⁶³ However, TJ can also have, to a lesser degree, destabilising effects for power sharing agreement. The provision for truth and reconciliation mechanisms and the call for prosecutions may hinder elite accommodation.⁶⁴ If parties to a power sharing agreement feel they will be held accountable, a negotiated settlement will be harder to achieve and some factions may not be willing to negotiate.⁶⁵ The importance of 'inclusiveness' has been sustained by various scholars and it has been analysed that the exclusion of one or more rebel groups increases the risk of violence by 84%, even after an agreement has been signed.⁶⁶ Another destabilising issue relates to the dissonant character of narratives between the 'politics of victimhood' of the grassroots and the elite's 'politics of victimhood' in the social and political arena.⁶⁷ Such a 'clash' may affect the legitimacy of the power sharing agreement. As

⁵⁹ Chandra Lekha Sriram & Johanna Herman, 'DDR and Transitional Justice: Bridging the Divide?', in *Conflict, Security & Development*, Vol. 9, No. 4 (2009), pp. 464, 465.

⁶⁰ Helga Malmin Binningsbø, 'Power sharing, Peace and Democracy: Any Obvious Relationships?', in *International Area Studies Review*, Vol. 16, No. 1 (2013), p. 97

⁶¹ McAuliffe, *Transformative Transitional Justice*, p. 147

⁶² Vandeginste & Sriram, 'Power Sharing and Transitional Justice', p. 497

⁶³ Ibid.; See also Mehler, 'Peace and Power Sharing in Africa'.

⁶⁴ Brown and Nì Aolain, 'Good Fences Make Good Neighbours'; Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', in *International Security*, Vol. 28, No. 3 (2003), pp. 5-44.

⁶⁵ Olsen et al., *Transitional Justice in Balance*, p. 111; Stephen John Stedman, 'Spoiler Problems in Peace Processes', in *International Security*, Vol. 22, No. 2 (1997), pp. 5-53.

⁶⁶ Desirée Nilsson, 'Partial Peace, Rebel Groups Inside and Outside Civil War Settlements', *Journal of Peace Research*, Vol. 45, No. 4 (Jul., 2008), p. 489; Hartzell & Hoddie, 'Power Sharing in Peace Settlements'.

⁶⁷ Mendeloff, 'Truth-Seeking, Truth-Telling and Postconflict Peacebuilding'; Brown & Nì Aolain, 'Good Fences Make Good Neighbours'.

Christine Bell points out, if there is a perceived weakness of the institutions, international rights organisations will more likely confront the government and hinder also its domestic legitimacy.⁶⁸

Nonetheless, these paradigms can also positively complement each other. In times of transition identities - especially in divided societies - represent a critical nexus of contestation. As power sharing may harden ethnic membership and institutionalise fear, TJ can help 'humanise' the accounts of conflict and transform the contestation of the past in a public discourse to reduce fear and mend societal fabric.⁶⁹ TJ may reduce the "ideological" tensions within and between ethnic groups, not by imposing the necessity of one narrative, but encourage a challengeable debate around discourses based on reciprocal respect.⁷⁰

Furthermore, ethnic identities are important reference groups in divided societies, and nationalistic forms of it can effectively be managed to reshape the past for political purposes. Thus, TJ can importantly maintain the pluralism of a contested past.⁷¹ Notably, the implementation of TJ may also benefit from the presence of power sharing provisions. Recent analyses have highlighted how a situation in which powers are balanced leads to the implementation of TJ mechanisms.⁷² Zhu evidences how 'truth commissions are only considered when all warring parties have some form of leverage, thus creating a need for compromise'.⁷³ In sum, both these paradigms reach out to each other and the successful implementation of these measures are small but important steps towards a more democratic and sustainable peace. To evidence this interaction in practice, the case of Liberia will be outlined in the next section.

⁶⁸ Christine Bell, 'Power-sharing and Human Rights Law', in *The International Journal of Human Rights*, Vol. 17, No. 2 (2013), pp. 204-237

⁶⁹ Paige Arthur (ed.) *Identities in Transition: Challenges for Transitional Justice in Divided Societies* Cambridge University Press, 2010); Aiken, 'Rethinking Reconciliation in Divided Societies'.

⁷⁰ Kris Brown & Fionnuala Ní Aoláin, 'Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change', in *International Journal of Transitional Justice*, Vol. 9, No. 1 (March 2015), pp. 127-149; Aiken, 'Rethinking Reconciliation in Divided Societies'.

⁷¹ Brown & Ní Aolain, 'Good Fences Make Good Neighbours'; Minow, 'The Hope for Healing'. This is not to say that ethno-nationalism is dangerous, but to underline that the promotion of diversity and individual rights are important elements of a democratic system.

⁷² Ming M. Zhu, 'Power and Cooperation: Understanding the Road Towards a Truth Commission', in *Buffalo Human Rights Law Review*, Vol. 15 (2009), pp. 1-27.

⁷³ *Ibid.*, p. 4; Olsen et al., *Transitional Justice in Balance*, p. 55.

PART II: LIBERIA'S 'PEACE PROCESS'

Power-Sharing and Balance

The development of Liberia's peace negotiations faced a highly unstable arena and the weight of previous failures.⁷⁴ Only in 2003, after 14 years of fighting, about 250,000 victims and consistent pressure by international actors, Charles Taylor, the rebel leaders of LURD and MODEL factions, and the representatives of the civil society agreed to attend the peace talks in Accra, Ghana.⁷⁵ After more than two months of tense negotiations, on August 18th 2003, the Comprehensive Peace Agreement (CPA) was finally signed. Central provisions the CPA called for the establishment of a National Transitional Government of Liberia (NTGL) and for the creation of a National Transitional Legislative Assembly (NTLA).⁷⁶ The positions of chairman and vice-chairman of the NTGL were reserved to individuals from political parties and civil society organisations, candidates from 'military parties' were excluded. Therefore, members of the Government of Liberia (GOL), the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) could not be assigned these positions. However, the 21 ministries were evenly divided between the representatives of GOL, LURD, MODEL and seven seats given to the Political Parties and the Civil Society. The NTLA was also organised as a power sharing and inclusive body. The former warring parties were each given 12 seats and 18 were allocated among members of the political parties, seven for the civil society and one was reserved for each of Liberia's 15 counties.⁷⁷ Though the

⁷⁴ Desirée Nilsson & Mimmi Söderberg Kovacs, 'Breaking the Cycle of Violence? Promises and Pitfalls of the Liberian Peace Process', *Civil Wars*, Vol. 7, No. 4 (2005), pp. 396-414.

⁷⁵ Desirée Nilsson, *Crafting a Secure Peace: Evaluating Liberia's Comprehensive Peace Agreement 2003*, Report for the Department of Peace and Conflict Research, Uppsala University (Uppsala University, 2009); Priscilla Hayner, *Negotiating Peace in Liberia: Preserving Possibility for Justice*, Report for the Centre for Humanitarian Dialogue (2007).

⁷⁶ Nilsson, *Crafting a Secure Peace*; Also, *Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* (Accra: Ghana, 2003).

⁷⁷ Nilsson & Kovacs, 'Breaking the Cycle of Violence?'; Nilsson, *Crafting a Secure Peace*.

seats and the ministries were evenly shared, some commentators have observed how former rebels ended up prevailing in both the NTGL and the NTLA.⁷⁸ Other important provisions to be implemented by the transitional government were the establishment of a Truth and Reconciliation Commission (TRC), the amendment of the Constitution and the implementation of an electoral reform. The latter was of primary importance, as the power sharing government's main task was to ensure that the country could hold free and fair elections no later than October 2005.⁷⁹ The National Elections Commission (NEC) and the NTLA were responsible for the formulation and implementation of these reforms. The NEC tried to promote party structure development, coalition forming and transparency by recognising only party leaders that had been elected at party conventions and by promoting the participation of female candidates.⁸⁰ Importantly, in 2005 Liberia held successful free and fair elections, which resembled more "African peacetime polls" than post-conflict elections.⁸¹ Two factors probably aided such results. First, the CPA denied for any senior member of the NTGL to run as a candidate. Secondly and furthermore, the inclusiveness of the CPA and the NTGL with no threat of war crimes tribunal reassured the rebel leaders and 'presented them with opportunities to join the elite and take a slice of the pie without even the need for political participation in the election'.⁸²

An important aspect of the CPA was the attention it reserved to SSR. With regards to power sharing in the security sector, the parties involved requested the United Nations to deploy a peacekeeping force, UNMIL, to assist the implementation of the CPA.⁸³ Furthermore, a program of Disarmament, Demobilization,

⁷⁸ Levitt, 'Illegal Peace?'; Andreas Mehler, *Not Always in the People's Interest: Power-Sharing Arrangements in African Peace Agreements*, Working paper No. 83 (German Institute of Global and Area Studies, 2008).

⁷⁹ Nilsson, *Crafting a Secure Peace*; CPA, 'Comprehensive Peace Agreement'

⁸⁰ Nilsson, *Crafting a Secure Peace*.

⁸¹ David Harris, 'Liberia 2005: An Unusual African Post-conflict Election', *Journal of Modern African Studies*, Vol. 44, No. 3 (2006), pp. 275-395; also see Appendix further below.

⁸² Nilsson, *Crafting a Secure Peace*; Harris, 'Liberia 2005', p. 394; see also Mehler, *Not Always in the People's Interest*.

⁸³ Though it is not the focus of this article, it is important to state that the UNMIL forces have played an important role in providing security among the warring parties and with regards to the Liberian population. See Nilsson & Kovacs, 'Breaking the Cycle of Violence?'

Rehabilitation and Reintegration (DDRR) of former combatants was to be supervised by the UNMIL and coordinated with local institutions.⁸⁴ Such a process included the vetting of personnel, as well as the restructuring of the army and the police.⁸⁵ The DDRR program ensured the disarmament and demobilisation of combatants. Importantly, serious efforts were made to involve women in the process.⁸⁶ To tackle this issue of child soldiers, UNICEF was included in the planning of the DDRR program and children were disarmed and demobilised.⁸⁷ Yet, the implementation of the DDRR program was difficult and although a consistent number ex-combatants participated in the rehabilitation and reintegration phase, a shortage of funding delayed the process.⁸⁸ Overall, the program *per se* can be considered a success. About 94% of ex-combatants, in a UNDP survey indicated that they had been accepted by their communities.⁸⁹ This perception, is also acknowledged by a survey based investigation in which the 85% of the respondents agreed nation-wide that combatants shared the same rights as everyone else and 66% of the respondents agreed that combatants should be allowed among town leaders.⁹⁰

The empirical evidence above showcases how the provisions for elite accommodation and military power sharing managed to balance instability and insecurities. Though the transparency of the NTLA was questioned several times and the presence of certain elements fostered a discourse of impunity, since the end of the conflict many practitioners have nonetheless admitted that the power sharing provisions were very important elements for the sustainability of peace, especially in reassuring the weaker parties.⁹¹

⁸⁴ Nilsson, *Crafting a Secure Peace; Comprehensive Peace Agreement*, Article VI.

⁸⁵ *Ibid.*, Article VII (2)(a).

⁸⁶ Thomas Jaye, *Transitional Justice and DDR: The Case of Liberia*, Research Brief for the International Centre for Transitional Justice (June 2009).

⁸⁷ *Ibid.*

⁸⁸ Nilsson, *Crafting a Secure Peace; Jaye, Transitional Justice and DDR.*

⁸⁹ *Ibid.*

⁹⁰ Patrick Vinck, Phuong Pham & Tino Kreutzer, *Talking Peace: A Population-Based Survey on Attitudes about Security, Dispute Resolution and Post-Conflict Reconstruction in Liberia* (Human Rights Centre, University of California, Berkeley, 2011), p. 39.

⁹¹ Håvard Strand & Scott Gates, *CSCW Policy Brief: Lessons Learned from Power Sharing in Africa* (Centre for the Study of Civil War, PRIC, 2008); Nilsson, *Crafting a Secure Peace*; Donald Rothchild, 'Reassuring Weaker Parties after Civil War: The Benefits and Costs of Executive Power-sharing Systems in Africa', in *Ethnopolitics*, Vol. 4, No. 3 (2005), pp. 247-267.

Importantly, the NTLG fulfilled its most demanding task as democratic elections were held without episodes of violence. Indeed, the strong participation of women representatives and the civil society during the peace talks and as part of the NTLA and NTLG has been deemed very significant.⁹² Thus, the degree of inclusiveness that matured during the peace talks and translated in the CPA proved crucial.

Contestation and Debate

As noted earlier, the warring factions exercised considerable power in setting the terms and conditions of the peace agreement and critics often have labelled the CPA as an 'illegal peace' between warlords.⁹³ Yet, the relative balance of power between the warring parties saw the main factions demanding for political positions and representation rather than *de facto* power.⁹⁴ Amnesties were not supported by all parties. Some rebel leaders insisted for the need of retributive justice in light of the massacres that had been perpetrated and the economic crimes. Moreover, a 'blanket amnesty' would not have been accepted by the Liberians. Pressure on the parties was operated by leaders of civil society and women representatives attending the negotiations. Yet, some considered that a TRC would be like an amnesty provision and delay prosecutions.⁹⁵ Nonetheless, the TRC appeared to be the best compromise to 'provide a forum' in which victims and perpetrators would share experiences 'to get a clear picture of the past and facilitate genuine reconciliation'.⁹⁶

The TRC was mandated to investigate the human rights and international law violations and economic crimes committed between 1979 and 2003.⁹⁷ It was also asked to explain the patterns of violence and identify perpetrators.⁹⁸ The Commission's operations were troubled throughout much of its mandate due to financial

⁹² Nilsson, *Crafting a Secure Peace*; Hayner, *Negotiating Peace in Liberia*; see also Appendix, below.

⁹³ Levitt, 'Illegal Peace?'

⁹⁴ Hayner, *Negotiating Peace in Liberia*.

⁹⁵ *Ibid.*; Levitt, 'Illegal Peace?'

⁹⁶ *Comprehensive Peace Agreement*, Article XIII(1).

⁹⁷ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge, 2011).

⁹⁸ Onur Bakiner, *Truth Commissions: Memory, Power and Legitimacy* (University of Pennsylvania Press, 2015).

problems, internal tensions and its controversial public hearings.⁹⁹ Some individuals who were known perpetrators of abuses during the war denied any wrongdoing, but there were also exceptions, as the case of General Butt Naked which affirmed in a public hearing that he had killed 20,000 people.¹⁰⁰ Nonetheless, the TRC concluded its mandate in 2009 and published its 'politically explosive' report.¹⁰¹ It collected 20,560 statements, the stories of 93,322 victims and reported 163,615 violations.¹⁰² The TRC's recommendations ranged from measures of accountability, to a reparations program and amnesty provisions, as well as suggestions for legal and institutional reforms. It identified 36 individuals that were responsible for war crimes and crimes against humanity, but that would not be prosecuted as they had spoken truthfully and expressed sincere remorse.¹⁰³ A non-exhaustive list of individuals was identified as financiers or supporters of the warring parties and the Commission recommended them to be subject to public sanction and barred for a 30-year period from public office. Among these, President Ellen Johnson Sirleaf and prominent political figures and members of the elected Government.¹⁰⁴ The report called for the creation of a war tribunal to prosecute grave human rights and international humanitarian law violations. It also suggested the implementation of the Palava Hut grassroots reconciliation and conflict management mechanism.¹⁰⁵

The TRC's controversial report shares both limits and merits. The main shortcomings that practitioners have evidenced in relation to the report are generally of quasi-technical nature regarding data and drafting and policy inconsistencies.¹⁰⁶ Furthermore, the suggestion for prosecutions was controversial. Human rights organisations evidenced how the report seemed to attempt to divide

⁹⁹ Hayner, *Unspeakable Truths*; See also: Perry, J and Sayndee, TD. (2015) *African Truth Commissions and Transitional Justice*, Lexington Books: London, UK

¹⁰⁰ Hayner, *Unspeakable Truths*

¹⁰¹ Ibid., p. 68

¹⁰² Ibid., p. 67

¹⁰³ Paul James-Allen, Aaron Weah & Lizzie Goodfriend, *Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia*, Report for the International Center for Transitional Justice (ICTJ, May 2010); Bakiner, *Truth Commissions*.

¹⁰⁴ Hayner, *Unspeakable Truths*; Bakiner, *Truth Commissions*.

¹⁰⁵ Ibid.

¹⁰⁶ James-Allen et al., *Beyond the Truth and Reconciliation Commission*; Hayner, *Unspeakable Truths*.

Liberians, yet 'naming the names' ensured that the justice arena became a public arena.¹⁰⁷ Former warlords were severely concerned by the content of the report and considered to retake up arms as an extreme option.¹⁰⁸ Importantly, the President made mild, but supportive remarks in relation to the recommendations.¹⁰⁹ Notably, the report has gathered historical information about Liberia's socio-economic, cultural and political past, partly addressing the roots of the conflict. Furthermore, it collected the experience of women, children and took into consideration the voice of the Liberian diaspora.¹¹⁰ The report also focused on the relevance and pervasive nature of economic crimes and their role in creating inequalities and grievances. Notably, it has promoted renewed social activism and has involved the society.¹¹¹ The Liberian public welcomed enthusiastically the Commission's findings, the list of perpetrators had 'engendered a certain degree of intimacy', carried in wallets, hung alongside calendars, in taxi cabs, it became a permanent feature.¹¹² From the 'space' created by the TRC in the domestic dialogue the Independent National Commission on Human Rights was established, the TJ Working Group announced the Post-TRC Transitional Justice Initiative and a victim's advocacy group was created to pressure the government.¹¹³ Though, the naming of President Johnson Sirleaf has delayed the full implementation of the report, in 2010, the President requested the Ministry of Justice and the Law Reform Commission to review the recommendations with legal implication and lay out the options to implement the recommendations without legal bindings.¹¹⁴ Furthermore, some of the TRC's recommendations seem to have been implemented as part of more general institutional and social reforms and progress in

¹⁰⁷ Johnny Steinberg, 'Briefing: Liberia's Experiment with Transitional Justice', in *Africa Affairs*, Vol. 109, No. 434 (Jan., 2010), pp. 135-144; Aaron Weah, 'Hopes and Uncertainties: Liberia's Journey to End Impunity', in *The International Journal of Transitional Justice*, Vol. 6, No. 2 (July 2012), pp. 331-343; Bakiner, *Truth Commissions*.

¹⁰⁸ Hayner, *Unspeakable Truths*

¹⁰⁹ Ibid.; Bakiner, *Truth Commissions*.

¹¹⁰ Ibid.

¹¹¹ Hayner, *Unspeakable Truths*; Weah, 'Hopes and Uncertainties'.

¹¹² Ibid.; also, Gabriel Twose & Caitlin O. Mahoney 'The Trouble with Truth-Telling: Preliminary Reflections on Truth and Justice in Post-war Liberia', in *Peace and Conflict Studies*, Vol. 22, No. 2 (2015), pp. 84-112.

¹¹³ Bakiner, *Truth Commissions*.

¹¹⁴ Hayner, *Unspeakable Truths*; Bakiner, *Truth Commissions*.

judicial accountability, education and women's participation in society are evident.¹¹⁵

Moreover, in a recent survey Liberians are still convinced that the TRC had been a helpful mechanism, the main reservations of the respondents relate to the implementation of the report.¹¹⁶ Nonetheless, the TRC appeared to be the best compromise between the provision of amnesties versus prosecutions. This 'compromise' should not be deemed a lesser form of justice. The need for accountability is still imperative, for the worst perpetrators, but it must also be considered that the Liberian judicial system at that time was not institutionally and operatively ready to hold trials and still has prominent deficiencies today.¹¹⁷ Furthermore, trials are a costly option and in the Liberian post-conflict situation the lack of funds was a recurring issue.¹¹⁸ Furthermore, a war tribunal would have most probably been perceived as a "witch-hunt" endangering the minimal stability that had been reached.¹¹⁹ In sum, it appears that the TJ mechanisms implemented have allowed Liberia's fragile peace maintain a certain stability by partially influencing the political elites to address the voices of the Liberian civil society and by restarting the national debate.¹²⁰

Conclusion

In conclusion, this analysis has engaged in evidencing the empirical interplay between power sharing provisions and TJ measures. In order to delineate the theoretical framework, the article has briefly described the notions of power sharing and TJ. Thereafter, it has shown how these two paradigms, jointly included in peace agreements negatively and positively affect each other. On one side,

¹¹⁵ Freedom House, *Freedom in the World: Highlights from Freedom House's Annual Report on Political Rights and Civil Liberties*, Annual Report (2016); See also Appendix.

¹¹⁶ Twose & Mahoney, 'The Trouble with Truth-Telling'.

¹¹⁷ Hayner, *Negotiating Peace in Liberia*; Human Rights Watch, *World Report 2010*, Annual Report (2010).

¹¹⁸ Olsen et al., *Transitional Justice in Balance*, p. 66.

¹¹⁹ Hayner, *Negotiating Peace in Liberia*; Nilsson, *Crafting a Secure Peace*.

¹²⁰ Twose & Mahoney, 'The Trouble with Truth-Telling'; Weah, 'Hopes and Uncertainties'; Research and Learning Group of the BBC World Service Trust and Search for Common Ground, *Healing a Divided Society: A Survey of Knowledge and Attitudes toward Transitional Justice in Liberia* (2008).

it has been supported how power sharing represents a necessary mechanism to accommodate elites, but may hinder accountability and reconciliation. Conversely, TJ may represent a destabilising factor in reconciling the elites, but engage communities and mend societal fabric. Ultimately, the theoretical framework analysed has been applied to the case study of Liberia to evidence the seemingly contrasting necessity of both mechanisms. Through this combination of analytical and empirical evidence, this article has argued that both paradigms share important elements in constructing the prospects for a sustainable peace. Nonetheless, the analysis acknowledges that there are other factors which can account for the promotion and the maintenance of peace in the dynamics of post-conflict societies and that achieving peace is no linear process. So, it should be considered that accomplishing a 'sustainable peace' may be the dynamic contestation of what peace, reconciliation and justice are by the elites, the civil society and single individuals. Reality often enough diverges from these ideal-typical conceptualisations and imperfection is both the treasure and crux of humanity. With this perspective, Liberia demonstrates that even a fragile peace can represent a new shared hope for a democratic country.

Appendix

Table 1

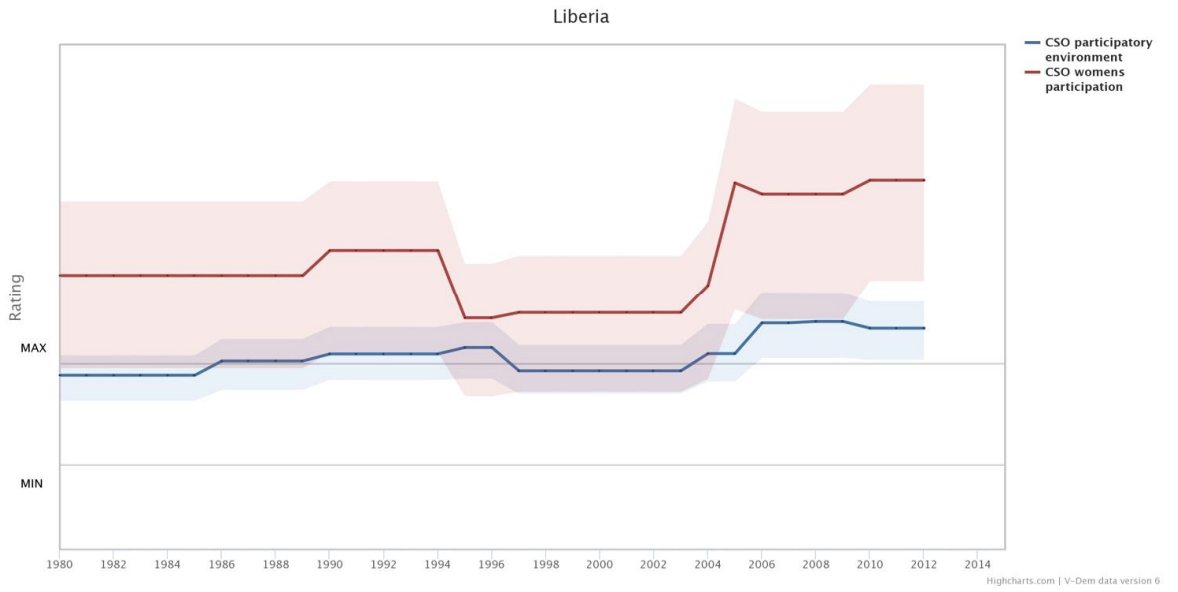


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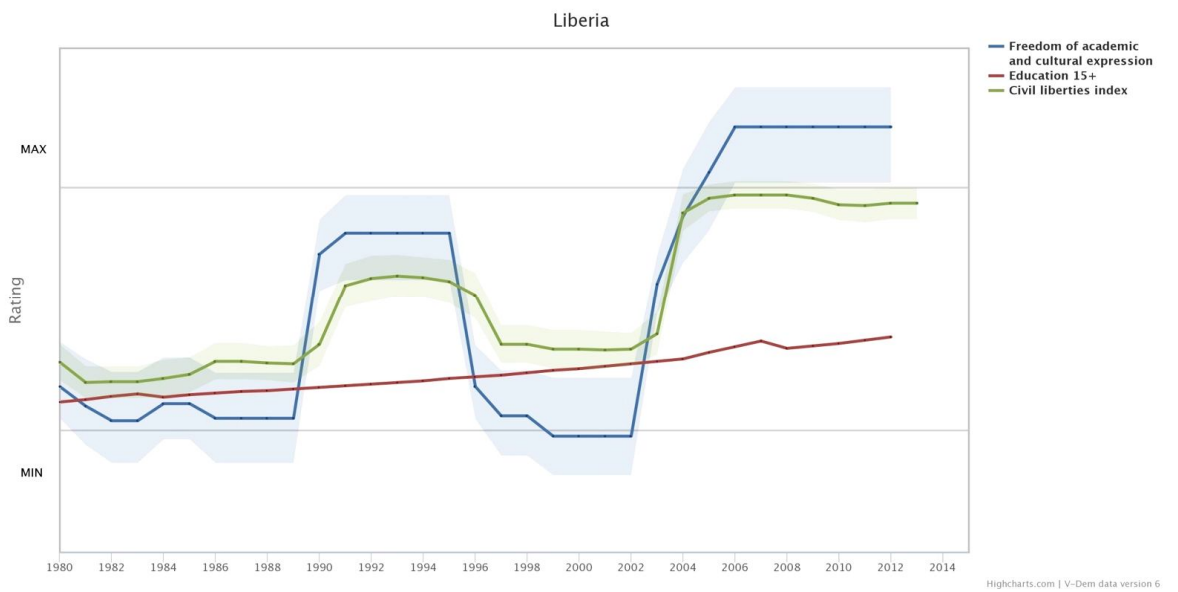


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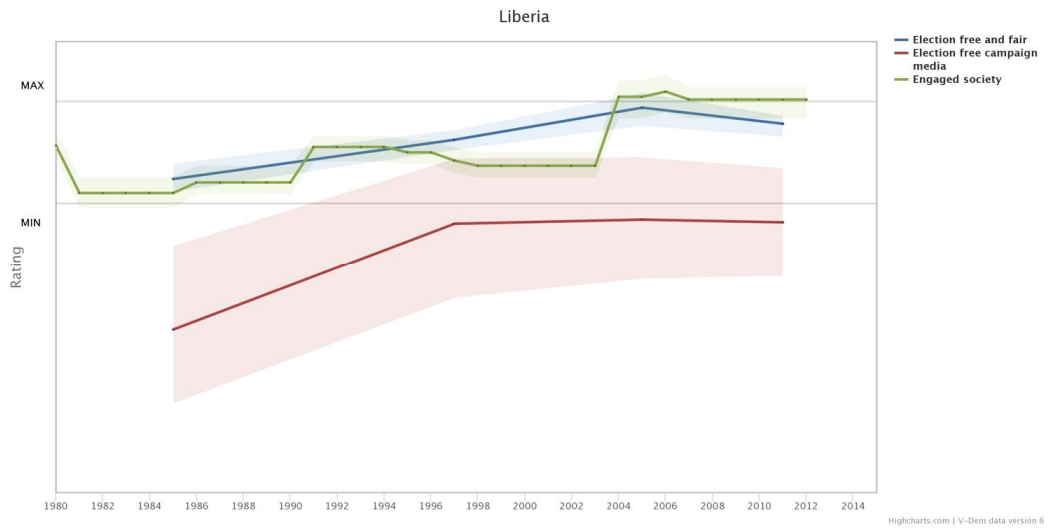


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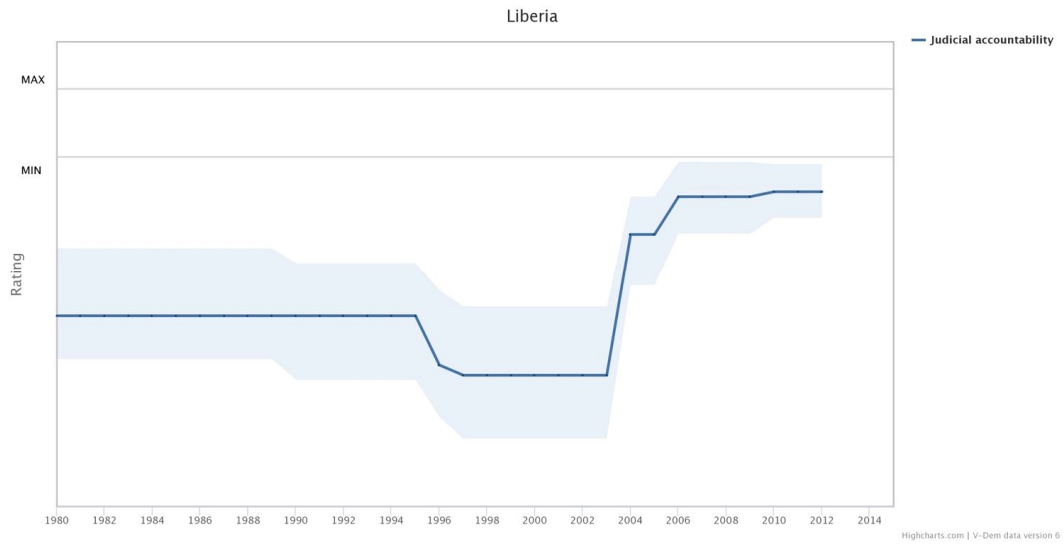


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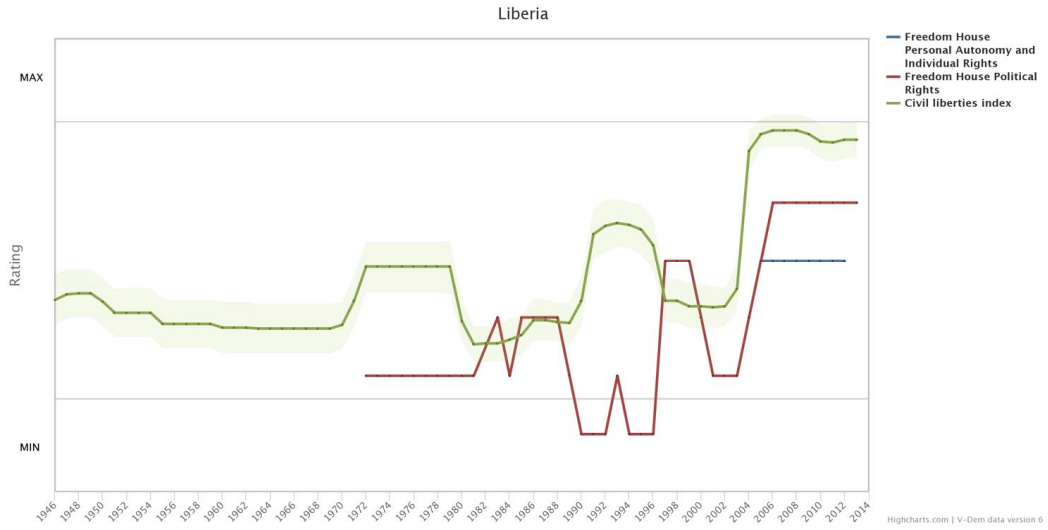


Table 6

