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Article

No 'end of the peace process': Federalism and ethnic violence in Nepal

Julia Strasheim

Abstract

How does the reform of territorial state structures shape prospects for peace after war? Existing research on the institutional causes of peace often focuses on how institutional designs, as the outcomes of reform processes, reduce post-war violence and promote peace. The literature does less frequently address how the politics that characterise reform processes affect the legitimacy of institutions and whether or not violent protest ultimately takes place: this risks omitting key explanations of how institutional reforms contribute to peace and the mechanisms by which this occurs. By examining the case of Nepal, where clashes between protesters and security forces over constitutional provisions for federalism have killed more than 60 people since August 2015, this study shows that three factors of the territorial reform process contributed to the onset of post-war ethnic violence. These included: (1) elite control of decision-making; (2) tight deadlines that promoted backtracking on previous commitments; and (3) the embedding of single territorial reforms in a 'concert' of institutional reforms that, as a whole, sparked fear of discrimination among ethnic minorities.

Introduction

How does the reform of territorial state structures shape prospects for peace after war? This question has been central to previous scholarship on the institutional causes of post-war peace and is of great interest to practitioners promoting peace in war-torn societies. The literature on post-war territorial arrangements, such as federalism or territorial autonomy, has yet produced inconclusive results. While some authors argue that institutions that increase territorial autonomy promote peace by mitigating fears of

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political exploitation (Lake and Rothchild, 2005), others find that territorial deals lower the chances for peace by increasing risks of separatism (Brancati, 2006). In this article, I argue that part of the explanation for these inconsistent findings is that research analysing post-war territorial institutions often suffers from an insufficient conceptual approach to the relationship between such institutions and peace. Most notably, the scholarship tends to focus on how territorial institutional designs, as the *outcomes* of reform processes, help promote peace after war (Cederman et al., 2015; Hartzell et al., 2001). The literature does not to the same extent address how the *politics* characterising reform processes affect the legitimacy of institutional outcomes and, ultimately, whether or not violent protest against these institutions takes place.

This article addresses this limitation and analyses how rather than institutional designs alone, (1) the *dominance of elite actors* in decision-making; (2) the effect of *tight deadlines* on these actors' decision-making quality; and (3) the *embedding* of single territorial reforms into a 'concert' of institutional reforms that, as a whole, sparks fears of marginalisation, are factors that can exacerbate tensions and spark violence.

To this end, the article takes on the case of Nepal, which has thus far received only limited attention in the academic debate on post-war federalism. Nepal's peace process is often regarded as a relative success, as the Communist Party of Nepal (Maoist), or CPN (M), successfully demobilised and transformed into a political party. In the postwar period, however, politics have repeatedly taken a violent turn. Most recently, on 20 September 2015, a protracted constitution-making process ended when 507 of 598 Constituent Assembly members approved a new constitution. The document is meant to consolidate Nepal's transformation from a centralised Hindu kingdom to a federal and secular republic. Many observers celebrated it as a 'progressive milestone'[1] and the 'end of the peace process' with the Maoists (Bhattarai, 2015b). But weeks before the constitution was promulgated, protests erupted in Nepal's southern Tarai plains. This region is home to various identity groups, including those who self-identify as Madhesis. Who constitutes as 'Madhesi' has been described as ambiguous by scholars (Miklian, 2008) and is challenged by some communities in Nepal (Pandey, 2017). I here refer to Madhesis as people living largely, but not exclusively, in the Tarai, 'whose mother tongues [… include] Hindi, Urdu, Maithili, Bhojpuri, Bengali, and dialects of these' (Kantha, 2011: 157) and who 'maintain close linguistic, cultural, [and] ethnic ties' with people across the Indian border (Jha, 2014: 166). According to the 2001 census, this internally heterogeneous group makes up 33% of Nepal's population, although the total population of the Tarai comprises almost 50% of Nepal's population (Kantha, 2011).

Madhesis are one of several identity groups in Nepal who have long exhibited substantial anger against political elites in Kathmandu for the latter's failure to alleviate widespread political and economic discrimination against minorities (cf. Gellner, 2007).[2] They hold that particularly the federalist reforms foreseen in the new constitution will result in their further marginalisation. Madhesi activists thus staged protests against the proposed reforms and erected a blockade of the Nepal–India border. By January 2016, almost 60 people had died in clashes between security forces and activists. As the government mobilised the army for the first time since the end of the war with the Maoists, observers feared that the events were only the beginning of an ethnic war in the Tarai (International Crisis Group, 2016). While this fear has not materialised to date, tensions

are still high and violence has not stopped. Notably, the Tarai saw several violent clashes and multiple deaths in the lead up to Nepal's long-awaited local elections in May and June 2017. Protesters cited the government's refusal to amend the constitution according to their demands before the polls. Due to these protests, local elections have been postponed in one Tarai province until September 2017.

To what extent did the politics of Nepal's territorial reform process contribute to the violence in the Tarai? By analysing this question, the article makes important contributions to several research agendas. With its conceptual focus on the politics, rather than the outcomes, of territorial reform processes, my analysis adds to theory-building in the research on institutions and peace. With a focus on Nepal's peace process, I empirically advance a debate that has been dominated by statistical research and case studies on Africa. Moreover, the article contributes to the research on Nepalese politics, as previous analyses have tended to focus on the socio-economic, rather than institutional, determinants of violence or peace in Nepal (e.g. Murshed and Gates, 2005).

I also present novel empirical data on post-war politics in Nepal. My analysis is informed by two rounds of fieldwork carried out in September and October 2015 as well as in April and May 2017. Thus, my fieldwork took place in the immediate aftermath of the promulgation of the constitution in 2015 as well as during the first round of local elections in 2017. In sum, I conducted 55 semi-structured interviews with political party and government representatives, Maoist ex-combatants and commanders, current and former police officers and army generals, civil society leaders, Madhesi activists, journalists, and members of the international community. Some interviewees whom I met in 2015 I interviewed again in 2017, in order to confirm previous statements or ask for updated accounts on the peace process. I conducted most interviews on the condition of anonymity and in Lalitpur or Kathmandu. Some interviews were carried out with the aid of an interpreter; this concerned those with Maoist combatants, commanders, as well as police or army officers. Interviews were arranged with the help of the local non-governmental organisation (NGO) Nepal Peacebuilding Initiative, as well as through specific targeting and snowball sampling.

Relying on interviews as a primary source of data clearly entails challenges. Most notably, the information received in interviews can be biased or selective. Therefore, I asked the same questions to people from all political orientations in order to check facts across the political spectrum. However, my 2015 sample of interviewees includes more Maoist ex-combatants, commanders, and politicians, than representatives from other parties, as the latter were engaged in coalition talks at the time. This problem did no longer exist in 2017. An additional check on the 'Maoist bias' of the 2015 sample is that because the Maoist movement experienced several splits in the post-war period, many Maoist interviewees spoke very critically of their previous comrades. Beyond interviews, I draw on existing scholarship, policy reports, newspaper articles, as well as social media postings, particularly by Madhesi activists.

The remainder of this article is divided into four sections. In Section 2, I summarise existing research on the relationship between (territorial) institutional reforms and post-war peace. Drawing from arguments in the wider peace and conflict research agenda, I then shift the analytical focus from the *outcome* to the *politics* of reform processes, and present an argument about the relationship between institutional reform and peace that

focuses on *elite dominance, tight deadlines*, and the *embedding of reforms*. I then briefly outline Nepal's war and post-war periods. Section 4 examines the evidence to determine support for my argument. In my conclusion, I suggest avenues for future research.

Institutional reform and post-war peace

As 'institutional reform' I understand a process aimed at designing formal elements of a political system to promote non-violent conflict management between identity groups (Reilly, 2001). A growing number of studies today regard such reform as being of utmost importance for promoting peace after war (Ansorg and Kurtenbach, 2017; Paris and Sisk, 2009). The idea is that if war occurs because identity groups seek to violently address their political or economic exclusion, then reforming institutions so that politics are more inclusive should have a pacifying effect. The literature analyses a variety of institutional reforms, but awards particular focus to the role of political and territorial power-sharing (Hartzell and Hoddie, 2003).

The 'institutional outcomes' argument

The dominant perspective in previous scholarship is that power-sharing institutions are an important determinant to explain post-war peace. The political power-sharing model as described by Hartzell and Hoddie (2003) relates to Lijphart's concept of consociationalist democracy (Lijphart, 2007) and captures the notion of an executive and/or legislative body jointly controlled by the warring parties or ethnic groups of a conflict. This arrangement is expected to reduce grievances resulting from political exclusion or solve credible commitment problems (Walter, 2002). Empirically, the relationship between power-sharing and peace has often been assessed in statistical analyses that support the suggested theoretical argument, but that focus almost exclusively on how power-sharing reduces risks of recurring war, rather than on how it curbs other types of violence (e.g. Cammett and Malesky, 2012; Jarstad and Nilsson, 2008).

The statistical debate is complemented by a substantial body of case studies, primarily on Africa, that are more critical of how joint rule reduces the risk of war (e.g. Simons et al., 2013). Tull and Mehler (2005), for instance, find that power-sharing promoted renewed war in the Democratic Republic of the Congo, as it rewarded the use of violence with a seat in office. The pacifying effect of power-sharing is also questioned by integrationist approaches to institutional reform that suggest designing institutions so that they do not build on, but *reduce* the salience of group cleavages (Reilly, 2001). Studies also point out that while power-sharing is a meaningful driver of peace as it eases conflicting parties' uncertainties over political survival, it is profoundly undemocratic. This is because institutional guarantees for a seat in office entrench existing group cleavages and contradict the uncertain nature of democracy (Roeder and Rothchild, 2005).

Scholars define the territorial power-sharing model as institutional arrangements that increase the autonomy of identity groups over specific territorial units, such as through federalism (Zanker et al., 2015). In theory, proponents of territorial power-sharing argue that it increases the chances for peace by mitigating fears of political or economic exploitation among marginalised groups, by decreasing the chances of separatist conflict, as

well as by providing for a system of checks and balances (Bermeo, 2004; Lake and Rothchild, 2005). Territorial power-sharing is also said to reduce the security dilemma of warring parties, as it provides rebel groups with a 'zone of influence' outside the control of the central government (Zanker et al., 2015: 73). Empirically, there seems to be even more profound correlative, statistical evidence for the peace-conduciveness of territorial power-sharing in the aftermath of war than for political arrangements (Jarstad and Nilsson, 2008). Case studies further conclude that there are often no viable alternatives to territorial deals (Bieber and Keil, 2009).

Other authors however point out that territorial power-sharing arrangements can also create parallel structures of authority within a state and mobilise identity groups to engage in separatism and secessionism (Brancati, 2006). At worst, it can create a 'paradox of federalism' that reinforces, rather than mitigates, inter-ethnic tensions (Erk and Anderson, 2009: 191). Given this, several studies find that the effects of territorial power-sharing are conditional on the wider institutional nature of a state, and that territorial power-sharing is most successful when it is combined with political power-sharing arrangements at the level of the central government (Cederman et al., 2015; Wolff, 2009).

The 'politics of reform' argument

Against this background, and drawing on the wider peace and conflict research agenda, I here suggest that post-war peace is a result of the *politics* of institutional reforms, rather than of institutional designs alone. In this regard, I do not limit my understanding of post-war peace to a narrow definition of the absence of re-emerging intrastate war. War termination is often followed by new forms of violence that must not necessarily follow previous incompatibilities or be perpetrated by actors who fit into war-time cleavages (Westendorf, 2015). I thus look at the extent to which violent organised or spontaneous protests, riots and strikes erupted in response to institutional reforms; as well as at how violent behaviour by the government against unrest unfolded.

I hold that by concentrating on institutional designs as the determinants of post-war violence, previous research has often overlooked other factors of a territorial reform process that affect its legitimacy and thus also violent protest: In the worst case, this concentration risks omitting key variables or mechanisms that show how territorial reforms reduce violence and add to peace. In my analysis, I look at three factors in the politics of territorial reform: (1) the dominance of *elite actors*; (2) the effect of *tight deadlines* on these actors' decision-making quality; and (3) the risks posed by *embedding territorial reforms* into a wider 'concert' of institutional reforms that, as a whole, sparks fears of marginalisation. I present these factors here as independent elements, but discuss in my concluding remarks how they may be internally linked.

The component of *elite actors* highlights the political and social players involved in the institutional reform process. Institutional designs clearly do not appear at random, but are the result of extensive negotiation processes between domestic and international actors. Following scholarship on civil society engagement in peace processes, it is reasonable to expect that how inclusive these negotiations are and what configurations of actors are granted decision-making authority in these negotiations affects the legitimacy of institutional designs. This means that elite-controlled processes result in lower levels

of institutional legitimacy, while more inclusive reform processes that do not only pro-
tect the interests of elites result in more legitimate institutional designs (cf. Zanker,
2014). This is, for instance, reform processes that include non-elite players, such as civil
society representatives or political parties without a history of insurgency, increase per-
ceptions of representation and recognition among the broader population and hence
lower risks of violence motivated by public grievances over institutional designs. The
idea that inclusive reform processes shape institutional legitimacy has featured more
prominently in qualitative contributions to the academic debate. However, as Svensson
(2014) points out, the debate has overall given scant attention to the inclusion of actors
other than the warring parties or their international custodians.

The component of *tight deadlines* refers to the issues of time and timing in peace
processes. In many peace processes, deadlines are promoted by international mediators
or domestic parties in order to accelerate deadlocked negotiations, create exit strategies
for international peace operations, sequence peace processes, or favour pragmatism in
institutional reform processes after war (Pinfari, 2012). However, strict deadlines can
also be unconducive to implementing complex institutional reform processes. For
instance, sticking to tight deadlines and unrealistic schedules in the confusing realities of
a peace process can prevent antagonistic actors from reaching 'common visions' of how
they should move forward (Van Eck, 2007: 118). It can also place new elites inexperi-
enced in governing at the national level under considerable stress and time pressure.
These conditions can reduce institutional legitimacy if they limit decision-makers' abil-
ity to consult with all relevant actors on the specifics of reforms. Hasty decisions taken
to meet deadlines may also decrease the transparency of the reform process, resulting in
lower levels of trust toward its results.

The component of *embedding institutional reforms* refers to the manner by which
actors implement their decisions in the aftermath of war. Negotiating and implementing a
specific institutional reform (such as federalism) is a process that does not take place in a
vacuum, but is conditioned by the underlying contextual conditions of a post-war society
as well as by the numerous other reforms taking place at the same time. Basedau (2017:
23) refers to this joint effect of reforms as the 'concert of institutions.' Hence, the way
decision-makers embed single institutional reforms in broader reform processes should
shape the legitimacy of institutional outcomes. This means that institutional reforms
embedded in reform processes that as a whole alleviate fears of marginalisation should
curb post-war violence, and vice versa. A prominent example of the interaction between
reforms is the link between power-sharing and disarmament, demobilisation, and reinte-
gration (DDR) processes. While DDR can raise fears of vulnerability for warring parties,
this can be alleviated by offering party representatives positions in power-sharing.
Previous research has so far granted little attention to such interactions (Basedau, 2017).

War and post-war violence in Nepal

The Nepalese state and its institutions have long exhibited profound discrimination
against minority groups. From 1846 to 1951, the rule of hereditary prime ministers within
the Rana family created a deeply unequal political system that systematically benefited
high-caste Hindu men from the central hill region, while reliably discriminating other

ethnic, linguistic, social, or religious groups (Hachhethu, 2007). The subsequent authoritarian *panchayat* system further enshrined such discrimination between 1960 and 1990, as it preserved Nepali and Hinduism as the state language and religion (Sijapati, 2013). In 1990, the First People's Movement (*Jana Andolan I*) helped bring about a transition to democracy, but the traditional elite of high-caste Hindus from the hills still dominated the political system (Lawoti, 2010).

Between 1996 and 2006, the Maoist insurgency capitalised on the minority grievances resulting from this long-standing political and economic discrimination. The insurgency began to attract Madhesis into its ranks particularly from 2000 onwards, when the rebels promised to create an autonomous Madhesh province in a future federal state (Kantha, 2011). In 2001, Nepal's King Birendra was killed in a massacre at the royal palace and his brother Gyanendra became king. Unlike Birendra, Gyanendra was not reluctant to mobilise the army against the Maoists, which escalated the intensity of the war. In 2005, Gyanendra dismissed the elected government and restored all political power in the royal palace. This step united the Maoists, the mainstream political parties, and civil society in protests against the king (Whelpton, 2013). The ensuing *Jana Andolan II* paved the way for a peace deal between the Maoists and the political parties in 2006. In 2008, the Maoists won the first elections of the post-war period, and the elected Constituent Assembly moved on to abolish the monarchy and declare Nepal a republic.

Although the Maoists gave up their arms, peace has remained fragile as Nepal has witnessed several eruptions of post-war violence over the past decade. In 2007, an interim constitution negotiated by representatives of the Maoists and political parties – all 'blind to the fact that it was six hill Brahmin – and a couple of Chhetri – men […] making all the decisions' (Jha, 2014: 165) – failed to address long-lasting Madhesi demands for an autonomous Madhesh. Student protests erupted in the Tarai and escalated into violence after a Madhesi protestor was shot by Maoist cadres. This *Madhesi Andolan* killed over 30 people. It was followed by negotiations culminating in an eight-point agreement in February 2008 (Sijapati, 2013). In this document, the interim coalition government formally accepted the call for an autonomous Madhesh.

But in the following years, the series of coalition governments negotiated primarily between the Maoists, the Nepali Congress (NC) and the Communist Party of Nepal (United Marxist Leninist) or UML, failed to provide the political stability necessary to uphold the promise of constitutional provisions for federalism. The Maoists remained the only major party at least rhetorically committed to an identity-based federalist structure as demanded by Madhesis. NC and UML leaders held that such a system would create 'ethnic ghettoes' (International Crisis Group, 2016: 11) and lead to a 'breakup' of Nepal.[3] The parties' inability to settle on a constitution resulted in the dissolution of the first Constituent Assembly and elections for a second one in 2013. The Maoists – now the Unified CPN (M) after merging with another party – lost a large share of votes, having failed to deliver on their promises to significant parts of the populace.[4] But writing the constitution was again deadlocked over the question of federalism. Only the urgency to rebuild after the 2015 earthquakes helped speed up this process. As reflected in the September 2015 constitution, the Maoists entered into a compromise and accepted geography-based federalism as promoted by the NC and the UML. The constitution was endorsed by 537 of the 598 Constituent Assembly members. Of the 61 members who boycotted the vote, 58 belonged to Madhesi parties (INSEC, 2015).

Madhesi activists had already begun to mobilise resistance against the constitution in August 2015, arguing that its provisions for federalism increased rather than alleviated their discrimination. By January 2016, almost 60 individuals had died in clashes between security forces and activists. In February 2016, the parliament approved a constitutional amendment that reacted to some of the demands, but many Madhesis saw the changes as insufficient. Presently, these tensions remain unsolved and repeatedly result in deadly protests, most recently in the lead up to local elections in May and June 2017. For instance, three Madhesi protestors were killed and 16 injured in March 2017 when security forces opened fire during an election-related protest by the Joint Democratic Madhesi Front (Amnesty International, 2017). Many observers regard the Madhesi conflict as the most pressing security challenge in Nepal for the years to come.[5]

The politics of institutional reform in Nepal

With regard to the 2015 constitution, Madhesis (and other groups) have particularly challenged four provisions. First, they believe that a system of geography-based federalism (detailed in Article 56.3) will result in their further marginalisation, as the delineation of federal units (along geographical markers, such as rivers) means they do not constitute a majority in any of the units. Second, they reason that the constitution's citizenship law (Article 11) hurts the rights of women and Madhesis. Third, they argue that the constitution introduces an electoral law (Article 84.1) that drops previous legislation on proportional representation and leaves Madhesis under-represented in the federal parliament.[6] Fourth, they ask for population-based electoral constituencies, instead of constituencies based on geography and population as enshrined in Article 84.1. While these demands relate to the *outcomes* of the constitution-making process, the violence that ensued cannot be understood based on these outcomes alone.

The dominance of elite actors

First and foremost, the violence in the Tarai is also the result of the protestors' perception that the constitutional and institutional reform processes were squarely dominated by elite politicians in Kathmandu and meant to serve their interests, while marginalised groups were not invited to partake in decision-making. This is a contested claim, as Nepal's constitutional process has in the past been hailed as 'exemplary' (INSEC, 2015) for its thorough public consultations that invited civil society representatives to voice opinions in constitutional committees.[7] The question, however, is how inclusive this process really was, as civil society organisations tend to be dominated by high-caste, Nepali-speaking Hindu men from the hills – the same elite that dominates the political scene (Sijapati, 2013). In 1999, for instance, this group held '90 per cent of top positions in prominent Nepali NGOs' (Braithwaite, 2015: 15). For Madhesis, the inclusion of civil society did thus not, on its own, make for a participatory reform process. Similar concerns were voiced with regard to public consultations on constitutional provisions, to which Madhesis were at times denied entry on the premise that these meetings 'were open only to party cadres' (International Crisis Group, 2016: 13).

As a result, and in a repetition of the negotiations on the 2007 interim constitution, voices from the Tarai were grossly under-represented in deciding on institutional reforms. This

under-representation directly affected individuals' decisions to protest. Not only did Madhesi activists resent the actual federalist design, they were also 'equally critical of the manner in which the constitution was finalised' and that a 'narrow coterie of senior party leaders reached compromises […] behind closed doors' (Ghale, 2015). What chiefly angered them was that the leaders of the four largest parties in parliament –NC, UML, Maoists, and the Madhesi People's Rights Forum (MPRF) – signed a 16-point agreement on 8 June 2015 to resolve any remaining contested constitutional issues. A Madhesi was thus a signatory, but this did not increase the deal's legitimacy, as MPRF chairman Bijay Kumar Gachhadar was not perceived as an 'advocate of the Madhesi cause' (International Crisis Group, 2016: 7) but as an opportunist who had betrayed the Madhesis (The Voice of Madhesh, 2015).

In Article 3 of this 16-point agreement, the political leaders vaguely agreed that a commission would finalise the demarcation of federal units following the promulgation of the constitution. However, 10 days later the Supreme Court ruled that this demarcation would have to be undertaken by the Constituent Assembly. On 5 August 2015, the four major parties thus issued a map of the proposed federal state boundaries. This map was again drawn without consulting Madhesis, and it immediately sparked protest across the Tarai. As Shah (2015) argued, the violence 'can be attributed to a […] demarcation of federal states without consultation with all stakeholders. […] If the ruling political parties […] are unwilling to listen to the legitimate demands, what options do Madhesis […] have]?' Observers argue that *any* reform proposal issued solely by elites in Kathmandu could have sparked new protest (Strasheim and Bogati, 2016). One NC member stated: 'We should not have decided constitutional matters without taking Madhesis into confidence. We could have passed almost any document if we had not alienated them' (in: International Crisis Group, 2016: 7).

A particularly salient issue in the long-running conflict between the traditionally ruling elites and the Madhesi community has been the racially charged rhetoric Madhesis often encounter in the public debate. They have long been exposed to racial slurs and to being framed as Indians or illegal migrants (Jha, 2014). This aspect has resurfaced with regard to the 2015 constitution and the federal reforms.[8] Sha (2015) lists exclusionary language and attitudes among hill elites that portray Madhesis as second-class citizens with questionable loyalties to India as one of the reasons for the escalating violence. An example of the heated tone the debate took is provided by Neupane (2016) who holds that Madhesis are seen as 'traitors' in Kathmandu and asks protestors whether or not their violence would 'make […them] more Nepali?' As a reaction, Gupta (2015) reasons that Neupane's claims 'align with racist voices in Kathmandu' and realign 'the notion that Kathmandu is an insulated, unconcerned city, distasteful of ethnic uprisings.'

The adherence to tight deadlines

In addition to elite control, tight deadlines affected the legitimacy of institutional reforms in Nepal by pressuring actors into making hasty decisions, which resulted in backtracking on previous commitments without considering their political implications.

Madhesi leaders and activists in the Tarai perceived the constitution-making and territorial reform process as rushed, which heightened fears that the opinions of those other than the traditional elites would be disregarded. After political elites signed the 16-point agreement in June 2015, they referred to what would follow as a 'fast track' process, in

order 'to indicate that they adopted the shortest possible process to promulgate the constitution' (Democracy Resource Center Nepal, 2015). Explanations for this rushed decision-making include the stress that elites were under following the earthquakes, as well as the fact that they had missed many previous deadlines for signing the constitution and did not want to be blamed for another failure to meet this obligation. But Madhesis who had not been invited to join the discussions felt 'steamrollered' by the acceleration of reforms (International Crisis Group, 2016: 7). The above-mentioned public consultation mechanisms also turned irrelevant as the consultations were shortened to last 'a mere two days' (Ghale, 2015). Members of the Constituent Assembly argued that they 'were not given enough time to read the draft' and that discussions of the draft were at times completely eliminated before a vote took place (International Crisis Group, 2016: 17).

The broader historical context shows why the issue of tight deadlines became particularly relevant in Nepal. The relationship between Madhesis and the state has historically been difficult – one Madhesi interviewee, for instance, said that the state had 'colonialized' the Tarai and Madhesi felt 'captured' by Kathmandu.[9] But it was the Maoist–Madhesi relationship that has chiefly angered many activists from 2015 onwards. The constitutional deadline forced the Maoists, who had long been the only party committed to federalism, into a political compromise that backtracked on their past commitments to Madhesis. Also, the Maoist–Madhesi relationship is complex, and specifically upper-caste Madhesis have historically supported the NC and not the Maoists (Jha, 2014). But their relationship further eroded in the 2007 *Madhesi Andolan* and following the 2015 constitution, when Madhesis felt particularly abandoned and cheated by the Maoists (Sharma, 2016). They perceive the Maoists break with the eight-point agreement of 2007 as a major betrayal, after having fought alongside the party during the war and having helped it get elected in 2008. As one Madhesi civil society leader argues, during 'the process of constitution making, the Maoist party slowly […] left the agenda of the marginalised groups. […] [Thus,] the fault [for the protests] mostly lies with the Maoist party, not the government, the NC or UML.'[10] Also Sha (2015) writes, that the 'Madhesis are in revolt again [… and are] demanding that the agreed principles and previous agreements signed with them be implemented […] The feeling of betrayal is strong among the Madhesis […and added] to their apprehension over the brute "majoritarian" tendency shown by a few leaders.'

Embedding institutional reforms

In Nepal, the demarcation of federal provinces was embedded in a number of simultaneous institutional reforms – listed above – which, in 'concert' enhanced fear among Madhesis that they were being pushed even further to the margins.

Notably, the reforms tackling Nepal's federal structure coincided with a revision of the citizenship law. Historically, citizenship in Nepal has been based on patrilineal kinship and allowed fathers to transfer citizenship to their children. The 2006 Citizenship Act changed this to father *or* mother, which is the formulation adopted in the new constitution as well. However, experts argue that this clause is overridden by other articles that discriminate against women and Madhesi women in particular.[11] For instance, Article 11.7 stipulates that children of a Nepalese father and a foreign mother are entitled to citizenship by descent, but children of a Nepalese mother and a foreign

father can only obtain naturalised citizenship. This is seen as highly discriminatory against Madhesis, who frequently inter-marry with families on the other side of the Nepal–India border (Democracy Resource Center Nepal, 2015). It also is especially relevant again in a historical context. Discriminatory citizenship laws (that, for instance, required applicants to speak Nepali) have long made it difficult for Madhesis to obtain citizenship and with it the right to buy land, vote, or run for office (Jha, 2014). Protestors argued that the proposed reforms added up to increase their discrimination, reasoning: 'A constitution that shames me as a woman, a citizen, [and] a Madhesi […] is stained [… with] the blood of my fellow citizens' (in Bhattarai, 2015a). The citizenship law is also seen as a catalyst for violence due to its political implications, as naturalised citizens may not hold constitutional positions such as president or prime minister (International Crisis Group, 2016).

Federalist reforms also overlapped with laws on the proportional representation (PR) of minorities in parliament, which added to the perception that Madhesis would not only be in the minority in all federal units, but would also be under-represented in the centre. This underscores the research arguing that territorial institutional arrangements in post-war states are most helpful when combined in a 'concert' of measures to safeguard representation at the centre (Cederman et al., 2015; Wolff, 2009).

In Nepal, post-war elections have been held under a mixed electoral system that combines PR provisions with seats distributed through first-past-the-post mechanisms. Particularly the Maoists pushed in 2007 to strengthen the PR element in the electoral law as they regarded such provisions as a gain for marginalised groups, and as they expected to do better under the PR system. Therefore, the ratio of seats distributed through PR and first-past-the-post in the interim constitution was approximately 60 to 40. This ratio was reversed in the 2015 constitution to reflect the demands of the NC and UML.[12] Article 84.2 of the constitution also requires quotas for representation only in the *preparation* of electoral lists and not – as before – in the *distribution* of seats. Marginalised groups, including Madhesis, feared that this served the interest of elites to disregard principles of inclusion and nominate hill people when selecting candidates (Ghale, 2015).

While the electoral law was amended in January 2016, these changes were again adopted by the largest political parties without consultation with Madhesis, meaning the reforms directly lost all 'the legitimacy they would have had as the outcome of a political negotiation' (International Crisis Group, 2016, i). The amendment itself generated further, but largely peaceful, protest. It also highlighted the different perceptions in the Tarai and among political elites of what constitutes legitimate institutional design: the amendment stipulates that 'economically backward' members of hill-origin upper-caste groups are also eligible for quotas. In the Tarai, this is effectively perceived as rendering *any* provisions that combat inequality between historically advantaged and disadvantaged groups irrelevant. Activists reason that the poverty of hill-origin high-caste citizens is not linked to their identity, and should thus rather 'be addressed under poverty alleviation measures aimed at the general population' (Amnesty International, 2015: 5).

Alternative explanations

While this article has focused on grievances stemming from the institutional reform process in explaining post-war violence in Nepal, several other and related factors play a

role in the violent escalation of Madhesi protests. Most of these factors concern the opportunity structure of the Madhesi minority. Above all, the post-war state in Nepal is very weak, especially in the Tarai. Security forces are, for instance, often centrally recruited or trained, and often fail to implement quotas aimed at increasing the representation of minorities. They thus tend to have little sense of sudden changes in local politics and the public mood.[13] This state weakness is reinforced by a large degree of political instability at the centre, where a series of 24 unstable coalition governments has assumed power since the transition to democracy in 1990. This instability directly affects institutional reforms, as coalitions do not have a full legislative period to negotiate and implement policies, but several months.[14] What also adds to the Madhesis opportunity structure is that Madhesis live by and large geographically concentrated and have strong local networks already in place, having mobilised for their political demands in the past.

From a regional perspective, perhaps the most important alternative explanation for the escalation of protests in 2015 was the role assumed by the Indian government and how it enabled the Madhesis' opportunity structure. Many Nepalis are wary of the political intensions of India as a regional hegemon (Miklian, 2008). These feelings were amplified after the 2015 earthquakes, as Nepalis complained about insensitive Indian media coverage of earthquake victims. When Madhesi activists erected a border blockade to back their anti-constitutional protests, Nepal's government accused its Indian counterpart of imposing, financing, and morally supporting the blockade. The historically discriminative attitude towards Madhesis that portrays them as loyal to India played into this narrative. India's government denies its involvement, but observers witnessed, for instance, motorbikes with Indian number plates among the protesters.[15] Now that India has shifted to supporting the electoral process in Nepal and has urged Madhesi parties to participate in the 2017 local elections, it will likely become more difficult for Madhesis to successfully organise their protests (Baral, 2017).

Conclusion

This article has investigated how the politics of federalist reform in Nepal are linked to the violent escalation of minority grievances since 2015, focusing on the protests staged by the Madhesi minority. I have argued that it is both theoretically and empirically fruitful to study not only institutional designs as determinants of post-war violence, but additionally to take into account how these designs come into being. Analysing post-war Nepal – a case thus far underrepresented in the academic debate on institutions, federalism, and peace – I have validated that rather than disagreement about the federalist design in the 2015 constitution alone, several other factors added to the recent violence between Madhesi protesters and security forces. These factors include, first, the dominance of the traditional ruling elites in decision-making – that is, high-caste, Hindu men from the hills – at the expense of an inclusion of the marginalised communities. A second factor contributing to the escalation of violence was that elites followed tight deadlines that promoted backtracking on previous commitments made to Madhesis. A third factor that I could observe in Nepal was that elites embedded federal reforms into a broader institutional reform process that, as a whole, sparked fears of discrimination among Madhesis. These factors – as well as alternative explanations discussed above – helped

transform Nepal's new constitution from an 'end of the peace process' with the Maoist rebels into a catalyst for new ethnic violence.

The article has demonstrated that academic research needs to strive for a deeper conceptual and empirical understanding of the politics of post-war territorial reforms if its goal is to inform practitioners engaged in promoting peace after war. However, as a single case study, this article comes with inherent limitations that plague any small-n research designs concerning the generalisation of findings. Thus, my findings also call for future research on the topic. Above all, more comparative studies on the politics of institutional reform will help tease out the features of institutional reform that account for violence across specific cultural contexts. Furthermore, I have only superficially touched upon the linkages between the features of reform processes, such as how the acceleration of reform processes due to tight deadlines increased elite control of the process. It is also plausible to imagine other linkages between the components of my analytical framework. For instance, previous research has found tight deadlines to have a negative effect on sustainable peace as peace processes grow increasingly complex (Pinfari, 2012). Thus, they may shape how embedding single institutional reforms in broader and complex reform processes affect the legitimacy of institutional outcomes. Important theoretical and empirical insights may be gained from a deeper analysis of such linkages.

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Notes

1. Cf. interviewee A, development worker, 23 September 2015; interviewee B, former Inspector General of the Police, 26 April 2017; and interviewee C, women's rights activist, 4 May 2017.
2. In Nepal, the political system has traditionally been dominated by high-caste, Nepali-speaking Hindu men from the central hill region. Other ethnic, religious, linguistic, social, and regional groups have fundamentally less access to power and wealth. In addition to the Madhesis, the traditionally marginalised groups particularly include: women; the Dalit 'untouchables' of the Hindu caste system; the Tharu ethnic group indigenous to the south-western Tarai; and Janajatis (an umbrella term used for indigenous people). Several of these groups have also voiced anger over the 2015 constitution. Here, I focus on the Madhesi protests, as these have been the most prominent and enduring in post-war Nepal.
3. Interviewee D, Nepali Congress Central Committee member, 19 October 2015.
4. Interviewee E, civil society leader, 9 October 2015.
5. Interviewee F, former Deputy Inspector General of the Armed Police Force, 25 April 2017; interviewee G, Human Rights lawyer, 12 May 2015; and interviewee H, Major General in the Nepal Army, 15 May 2017.

6.   This provision was amended in January 2016 to appease the protestors.
7.   Interviewee I, civil society leader, 25 September 2015.
8.   Interviewee J, diplomat, 22 September 2015; and interviewee K, Madhesi lawyer, 5 May 2017.
9.   Interviewee L, retired Madhesi police officer, 15 May 2017.
10. Interviewee M, Madhesi civil society leader, 28 September 2015.
11. Interviewee C; interviewee E; and interviewee K.
12. Interviewee E; and interviewee N, Nepali Congress Central Committee member, 12 October 2015.
13. Interviewee K; interviewee L; and interviewee O, researcher, 5 May 2017.
14. Interviewee P, security analyst, 24 April 2017.
15. Interviewee Q, development worker, 22 September 2015.

References

Amnesty International (2015) *Open Letter to the New Prime Minister of Nepal: Amend Regressive Aspects of the Constitution*. Available at: https://www.amnesty.org/download/Documents/ASA3128022015ENGLISH.pdf (accessed 20 December 2017).

Amnesty International (2017) Nepal: Investigation urgently needed after security forces shoot protesters dead. Available at: https://www.amnesty.org/en/latest/news/2017/03/nepal-investigation-urgently-needed-after-security-forces-shoot-protesters-dead/ (accessed 30 August 2017).

Ansorg N and Kurtenbach S (2017) Introduction: Institutional reforms and peace building. In: Ansorg N and Kurtenbach S (eds) *Institutional Reforms and Peacebuilding: Change, Path-Dependency and Societal Divisions in Post-War Communities*. New York: Routledge, pp.1–18.

Baral B (2017) Caught between two phases of local elections, Nepal must act fast. *The Wire*. Available at: https://thewire.in/143693/nepal-local-elections/ (accessed 31 August 2017).

Basedau M (2017) Does the success of institutional reform depend on the depth of divisions? A pilot study on 34 African countries. In: Ansorg N and Kurtenbach S (eds) *Institutional Reforms and Peacebuilding. Change, Path-Dependency and Societal Divisions in Post-War Communities*. London: Routledge, pp.21–54.

Bermeo N (2004) Conclusion: The merits of federalism. In: Amoretti UM and Bermeo N (eds) *Federalism and Territorial Cleavages*. Baltimore, MD: Johns Hopkins University Press, pp.457–482.

Bhattarai B (2015a) Violence-wracked Nepal looks to new era. *Financial Times*. Available at: https://www.ft.com/content/e8b5cd7c-5de1-11e5-9846-de406ccb37f2 (accessed 4 October 2016).

Bhattarai KD (2015b) The evolution of Nepal's constitution. *The Kathmandu Post*, 20 September. Available at: http://kathmandupost.ekantipur.com/news/2015-09-20/constitution-special-the-evolution-of-nepals-constitution.html (accessed 20 December 2017).

Bieber F and Keil S (2009) Power-sharing revisited: Lessons learned in the Balkans? *Review of Central and East European Law* 34(4): 337–360.

Braithwaite J (2015) *Gender, class, resilient power: Nepal lessons in transformation*. RegNet Research Paper No. 92, Canberra, ACT, Australia.

Brancati D (2006) Decentralization: Fueling the fire or dampening the flames of ethnic conflict and secessionism? *International Organization* 60(3): 651–685.

Cammett M and Malesky E (2012) Power sharing in postconflict societies: Implications for peace and governance. *Journal of Conflict Resolution* 56(6): 982–1016.

Cederman L-E, Hug S, Schädel A, et al. (2015) Territorial autonomy in the shadow of conflict: Too little, too late? *American Political Science Review* 109(2): 354–370.

Democracy Resource Center Nepal (2015) *Nepal's Contested Constitution and Recommendations for Moving Forward*. Kathmandu, Nepal: DRCN Policy Brief.

Erk J and Anderson L (2009) The paradox of federalism: Does self-rule accommodate or exacerbate ethnic divisions? *Regional & Federal Studies* 19(2): 191–202.

Gellner DN (2007) Caste, ethnicity and inequality in Nepal. *Economic and Political Weekly* 42(20): 1823–1828.

Ghale S (2015) Why Nepal's Janajatis feel betrayed by the new constitution. *The Wire*. Available at: http://thewire.in/14112/why-nepals-janajatis-feel-betrayed-by-the-new-constitution/ (accessed 20 September 2016).

Gupta B (2015) Public reactions to articles 'Letter to Madhesi Youth' and 'Don't talk, just listen'. *Madhesi Youth: Voice of Young Nepalis*. Available at: http://www.madhesiyouth.com/opinion/public-reactions-articles-letter-madhesi-youth-dont-talk-just-listen/ (accessed 29 September 2016).

Hachhethu K (2007) *Madhesi Nationalism and Restructuring the Nepali State*. Kirtipur: Centre for Nepal and Asian Studies, Tribhuvan University.

Hartzell C and Hoddie M (2003) Institutionalizing peace: Power sharing and post-civil war conflict management. *American Journal of Political Science* 47(2): 318–332.

Hartzell C, Hoddie M and Rothchild D (2001) Stabilizing the peace after civil war: An investigation of some key variables. *International Organization* 55(1): 183–208.

INSEC (2015) Unilateral Coercive Blockade Imposed by India on Nepal. Informal Service Sector Centre (INSEC). Available at: http://www.inseconline.org/pics/1446549391.pdf

International Crisis Group (2016) *Nepal's Divisive New Constitution: An Existential Crisis*. Kathmandu: Nepal; Brussels: International Crisis Group.

Jarstad AK and Nilsson D (2008) From words to deeds: The implementation of power-sharing pacts in peace accords. *Conflict Management and Peace Science* 25(3): 206–223.

Jha P (2014) *Battles of the New Republic: A Contemporary History of Nepal*. London: Hurst & Company.

Kantha PK (2011) Maoist–Madhesi dynamics and Nepal's peace process. In: Lawoti M and Pahari AK (eds) *The Maoist Insurgency in Nepal: Revolution in the Twenty-first Century*. New York: Routledge, pp.156–172.

Lake DA and Rothchild D (2005) Territorial decentralization and civil war settlements. In: Roeder PG and Rothchild D (eds) *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca, NY: Cornell University Press, pp.109–132.

Lawoti M (2010) Evolution and growth of the Maoist insurgency in Nepal. In: Lawoti M and Pahari AK (eds) *The Maoist Insurgency in Nepal. Revolution in the Twenty-first Century*. New York: Routledge, pp.3–30.

Lijphart A (2007) *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice*. New York: Routledge.

Miklian J (2008) *Nepal's Terai: Constructing an Ethnic Conflict* (South Asia Briefing Paper No. 1.). Oslo: International Peace Research Institute Oslo (PRIO).

Murshed SM and Gates S (2005) Spatial–horizontal inequality and the Maoist insurgency in Nepal. *Review of Development Economics* 9(1): 121–134.

Neupane S (2016) Letter to Madheshi youth. *Republica*. Available at: http://admin.myrepublica.com/opinion/story/28260/letter-to-madheshi-youth.html (accessed 29 September 2016).

Pandey K (2017) Politicising ethnicity: Tharu contestation of Madheshi identity in Nepal's Tarai. *The South Asianist* 5(1): 304–322.

Paris R and Sisk TD (eds) (2009) *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*. London: Routledge.

Pinfari M (2012) *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes*. London: Routledge.

Reilly B (2001) *Democracy in Divided Societies: Electoral Engineering for Conflict Management*. Cambridge: Cambridge University Press.

Roeder PG and Rothchild D (2005) Power sharing as an impediment to peace and democracy. In: Roeder PG and Rothchild D (eds) *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca, NY: Cornell University Press, pp.29–50.

Sha SP (2015) Why the Madhesi people revolted in Nepal. *Madhesi Youth*. Available at: http://www.madhesiyouth.com/opinion/why-the-madhesi-people-revolted-in-nepal/ (accessed 4 October 2016).

Shah P (2015) The federal map that Madhesis and Tharus want. *Madhesi Youth*. Available at: http://www.madhesiyouth.com/political/federalism-for-madhesis-and-tharus/ (accessed 4 October 2016).

Sharma G (2016) Nepal constitution talks fail to end protests. *Reuters*. Available at: http://www.reuters.com/article/nepal-constitution-idUSKCN0UX1FO (accessed 4 October 2016).

Sijapati B (2013) In pursuit of recognition: Regionalism, Madhesi identity and the Madhes Andolan. In: Lawoti M and Hangen SI (eds) *Nationalism and Ethnic Conflict in Nepal: Identities and Mobilization after 1990*. New York: Routledge, pp.145–172.

Simons C, Zanker F, Mehler A, et al. (2013) Power-sharing in Africa's war zones: How important is the local level? *The Journal of Modern African Studies* 51(4): 681–706.

Strasheim J and Bogati S (2016) *Nepal's Quest for Federalism: A Driver of New Violence* (GIGA Focus Asien 1). Hamburg: GIGA German Institute of Global and Area Studies.

Svensson I (2014) Conflict resolution in civil wars. In: DeRouen K and Newman E (eds) *Routledge Handbook of Civil Wars*. New York: Routledge, pp.363–375.

The Voice of Madhesh (2015) Gachhadar discloses why he betrayed Madheshi parties. Available at: http://madheshvani.com/en/details/4079/madhesh-update (accessed 29 September 2016).

Tull DM and Mehler A (2005) The hidden costs of power-sharing: Reproducing insurgent violence in Africa. *African Affairs* 104(416): 375–398.

Van Eck J (2007) Burundi: An ongoing search for durable peace. *African Security Review* 16(1): 113–120.

Walter BF (2002) *Committing to Peace: The Successful Settlement of Civil Wars*. Princeton, NJ: Princeton University Press.

Westendorf J-K (2015) *Why Peace Processes Fail: Negotiating Insecurity After Civil War*. Boulder, CO; London: Lynne Rienner Publishers.

Whelpton J (2013) Political violence in Nepal from unification to Janandolan I. In: Lecomte-Tilouine M (ed.) *Revolution in Nepal: An Anthropological and Historical Approach to the People's War*. Oxford: Oxford University Press, pp.27–74.

Wolff S (2009) Complex power-sharing and the centrality of territorial self-governance in contemporary conflict settlements. *Ethnopolitics* 8(1): 27–45.

Zanker F (2014) Legitimate representation: Civil society actors in peace negotiations revisited. *International Negotiation* 19(1): 62–88.

Zanker F, Simons C and Mehler A (2015) Power, peace, and space in Africa: Revisiting territorial power sharing. *African Affairs* 114(454): 72–91.

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