

Roving Judges from the Middle Ages to Modern Rebels: The Judicial Sinews of Political Rule

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Abstract

Courts have always seemed epiphenomenal in the scholarship on the state. The mundane process of conflict adjudication seems endogenous to powerful macrodynamics. In Tilly’s influential theory, for example, it is the pressures of war that trigger the incentives for rulers to secure control over territory and population. Conflict resolution is one of the public goods they will provide, together with protection and other public goods. In contract-based theories, it is the demands of economic actors that trigger the creation of systems of adjudication. In both views, there is nothing distinctive about this service. We argue, instead, that dispute adjudication is crucial for aspiring rulers to centralize authority and consolidate power. We build on various literatures from different disciplines to develop our theoretical argument, and rely on empirical evidence from two very different instances of consolidation of new rule to test it: European state building in the Middle Ages, and rebel and militia governance in contemporary Colombia. We employ a mixed-methods approach to test the central implication of our argument as well as its mechanisms. Using historical analysis of original evidence on state building in England, we show that judicial institutions enabled taxation and the control of local populations throughout the kingdom, rather than the other way around. Relying on statistical analysis of micro-level data on rebel and militia governance in Colombian villages and neighborhoods, we find support for our theorized mechanisms: adjudicating disputes helps rebels and militias to gain legitimacy and exert higher levels of social control. Our argument has implications for theories of the consolidation of political rule—such as state formation and rebel and criminal governance—as well as on policy debates about counterinsurgency, peacebuilding, and development.

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1 Introduction

Courts are central institutions of society, yet they have never played a major role in the scholarship on the state. The mundane process of conflict adjudication has seemed instead endogenous to powerful macrodynamics. In Tilly’s influential theory, for example, it is the pressures of war that triggered the incentives for rulers to secure control over territory and population. Conflict resolution is one of the public goods they will provide, together with protection, administration of land, distribution of goods, coinage protection, and more. In contract-based theories, systems of adjudication are created in response to the demands of economic actors. In both views, there is nothing distinctive about this service. We argue, instead, that dispute adjudication is essential for aspiring rulers to centralize authority and consolidate power.

Our argument starts by recognizing that disputes are concomitant to human interaction, and that judicial institutions—understood broadly as clear rules for resolving disputes—are essential for enabling the social, political, and economic cooperation required for social order and prosperity. These two conditions—the widespread prevalence of disputes and society’s need for established means to resolve them—make judicial institutions a crucial tool for rulers to gain legitimacy, achieve high levels of social control and penetration, and be more able to keep competitors at bay. The more effective the judicial institutions, the more encompassing, and long-lasting.

We build on various literatures from different disciplines to develop our theoretical argument, and rely on a mixed-methods approach to test it. Our empirical evidence comes from two very different instances of consolidation of new rule: European state building in the Middle Ages, and rebel and militia governance in contemporary Colombia. Qualitative historical analysis of state formation in England supports the main implication of our argument, to wit, that judicial institutions play a primary role in the consolidation of political rule. Statistical analysis of micro-level data on rebel and militia governance in the Colombian civil war supports our theorized mechanisms: adjudicating disputes helps rebels and militias to gain legitimacy and exert higher levels of social control in villages and urban neighborhoods throughout the country.

First, the medieval record showcases the primacy of judicial institutions in effective state-building. Conventional theories focus either on military or economic factors, or a combination of the two. These are assumed to endogenously trigger demand for institutions, either from rulers or social actors. Yet a microanalysis of the processes involved in these dynamics shows that consolidation of judicial practices preceded both the military engagements and the commercial upswings that are considered to be causally prior. In fact, judicial practices alone provided the necessary incentives for regularization of the institution, as demand was constant and extended across social groups. Neither war nor commercial activity, certainly in the early period, were regular or extensive enough to generate polity-wide institutions.

The data from modern conflict zones sheds novel and unique light on these processes: by focusing on the practices of rebels and militias as they strive to control territories and populations, we show that they endeavor to take over dispute resolution, and that doing so strengthens their grip on the local population. In particular, we show that regardless its political agenda, when an armed group adjudicates dis-

putes in a locality it is more likely to establish its rules on economic, political, and social activities, and gain higher levels of obedience and support.

The insights that flow from our research impinge on both theoretical and practical concerns. The question of the origins of the state is an enduring one in social science. Theories of state formation shape our understanding of the emergence and consolidation of political order, whether in developing or developed states. For instance, efforts to explain the weakness that inflicts states in regions such as Africa, the Middle East, or Latin America have drawn from theories based on the European experience. Theories of state emergence also influence accounts of other phenomena that involve the emergence of new political rule, such as rebel and criminal governance. Furthermore, the literature on state building has also shaped theories of democratization: master variables explaining the former, such as war, economic change, and taxation have been marshaled to explain the latter as well. Policy debates about counterinsurgency, peacebuilding, and development—which often prescribe strengthening the state—also build on the dominant understanding of state formation. In all these accounts, however, courts and judicial practices are either entirely absent or treated as epiphenomenal, although of course a rich literature about the importance of courts has long explored the issue in comparative and American politics.

By establishing the causal role of judicial institutions in theories about the centralization of authority and power consolidation, this paper contributes to the various fields of study that deal directly or indirectly with the enduring question of how aspiring rulers come to power—from political rulers in stateless societies to rebel and criminal governance in the contemporary world, to the formation of modern states.

We proceed as follows. After a brief discussion of the literature, we present our theoretical argument. In section III, we turn to state building in pre-modern Europe. Section IV takes us to rebel and paramilitary governance in contemporary Colombia. Section V concludes.

2 Literature

[Please note: This is a preliminary literature review, covering the basics]

The literature on historical state formation is long and widely-known, as its central intuitions have permeated many adjoining fields. Three main approaches are advanced: (a) geo-political accounts based on the effects of war, (b) institutional accounts, which focus on the importance of estates and parliaments, and which are usually refinements of the geopolitical approach, and (c) economic explanations focusing on the effects of trade and capital. Examined in detail, most arguments combine elements of all approaches, but place emphasis on one type of mechanism. War-based theories assume that the pressures of war impelled rulers to build institutions in order to extract necessary resources, through a bargain with resource-holding social groups (Hintze, 1975; Tilly, 1975)(Bean 1973). Institutional accounts see this bargain and the military pressures that trigger it as mediated and determined by pre-existing institutions, especially parliaments, providing more nuanced explanations for a wider set of variation, including of regime type (Downing 1992; Ertman 1997)(Dincecco, Federico, & Vindigni, 2011; Gennaioli & Voth, 2011). Economic accounts focus on the rise of trade after the 11th century (Duby, 1974; Pounds,

1974): this is the prior condition that enables these bargains to occur in the first place (Bates & Lien, 1985; Moore, 1967; Spruyt, 1994). Yet all these accounts take the institutional infrastructure that articulates these dynamics for granted. In this paper, we show that variation at the level of judicial structures shapes the dynamics described above.

Although a growing literature on rebel governance aims to identify the conditions under which rebel groups rule civilian populations (Arjona, 2016; Kasfir, 2004; Mampilly, 2011; Metelits, 2010; Weinstein, 2007), there has been little discussion about *how* they consolidate their rule. The existing explanations focus on pre-war and wartime factors but not on the specific means armed groups rely on in order to centralize authority and consolidate power. Hence, existing accounts provide insights onto the conditions under which rebel groups seek to rule civilians, but say little about which strategies are likely to succeed or fail. We argue that groups that adjudicate disputes are more likely to gain high levels of social control over the population, penetrate deeply into local societies, and gain legitimacy, all of which strengthens their rule.

3 Theory: Judicial institutions and the consolidation of political rule

We posit that creating judicial institutions is a very effective means for consolidating political rule over a territory and its population. We use the term *political rule* to denote the wielding of power over a territory and population, whilst keeping competitors at bay. By judicial institutions, we mean the formal or informal rules that determine how breaches of rules, property rights, contracts, and disputes are handled ¹.

We build our argument on two ideas that have strong roots in the social sciences: that personal disputes are pervasive, widespread, and potentially costly, and that having established means to resolve them is necessary for enabling mutually beneficial interaction in the social, political, and economic realms. In many situations, individuals have incentives to renege on commitments, exploit and harm others, or simply expect that the costs of accidents or unforeseen losses are distributed in ways that are favorable to them. The possibility of any of these developments halts cooperation—the kind of non-zero-sum exchange that allows individuals to coexist peacefully and advance their social, political, and economic goals. By providing established means to solve disputes, judicial institutions make cooperation less uncertain and costly and, when conflict erupts, provides a framework for solving it. In short, judicial institutions are essential to enable cooperation and are therefore a pillar for social order (Benson, 1983; Bilz, 2007; Little, 1989; North, 1990; Sweet, 1999). These two conditions—the ubiquity of disputes and the primacy of judicial institutions for social cooperation—make adjudicating disputes an indispensable tool for aspiring rulers for three reasons.

First, as disputes are inescapable and universal, with often serious effects on society, the demand for third-party adjudication is constant and common across social groups. As Bilz (2007) insightfully notes in her discussion of why revenge is delegated to the state, rulers gain legitimacy when they appropriate the responsibility of

¹This is the definition proposed by Abel (1974) for "dispute resolution institutions"

adjudicating disputes. Consistent with this view, legal anthropological studies have concluded that different types of governing authorities—from colonial powers, to chiefs, to states—strive to maintain their legitimacy through courts (Shapiro, 1981). Insofar as legitimacy helps rulers centralize authority and retain power—a long-held argument in political theory (Hobbes, 2006; Machiavelli, 2006)—establishing judicial institutions is a critical strategy in rulers’ quest for power.

Second, institutionalizing dispute resolution allows rulers to consolidate social control: it helps them to monopolize the use of violence, allows them greater supervision of their subjects, provides them access to information and networks, and confers to them the power of deciding how both important or even trivial matters in people’s lives are resolved (Ellickson, 1991; Erdélyi, 2016; Migdal, 1988; Pound, 1942; Rothman, 1980). Moreover, given the ubiquity of disputes, dispute adjudication calls for a constant interaction between the ruler and its subjects. This regularity can be essential for the ruler to consolidate institutions and normalize power over civilians’ lives (Boucoyannis, 2017).

Finally, being the main authority in charge of resolving disputes allows rulers to weaken the powers of competitors. Because adjudication engenders legitimacy and increases social control, depriving competitors of the possibility of adjudicating disputes weakens their power. Control of jurisdiction was historically the classic non-violent way that rulers undermined the local power of their competitors—at least where they could. In England, jurisdictional immunities were minimal and this was a clear expression of the greater powers of the English crown, also reflected in the successful subjection of all social classes to uniform legal obligations (Bush, 1983). In Castile, to take a classic contrast, large domains were closed to royal authority, and local powerholders had a monopoly over adjudication, as well as taxation (Carrión 1975). Likewise, as we will show, rebel groups in different countries often devote great efforts to dismantle or weaken the formal or informal judicial institutions of competing local powers.

Our argument, though neglected in social science, finds echoes across disciplines, where scholars have come to the same conclusion regarding the preconditions of political rule. Studies in history and legal anthropology show that the creation of courts was crucial to the most ambitious projects of centralizing authority and expanding rule to new territories. Legal anthropologists have found that “courts have historically played a central role in colonial expansion” (Roberts & Palmer, 2005). Likewise, comparative studies of dispute adjudication have shown that “conquerors use courts as one of their many instruments for holding and controlling conquered territories” (Shapiro, 1981), and that rulers trying to penetrate peripheral areas “present themselves as judges of local disputes” (Roberts, 1983). Moreover, rulers often strive to control alternative forms of dispute resolution as they strive to consolidate power (Merry 1987:2069)—from kings in early modern Europe (Bossy, 1983), to the American state in nineteenth century St. Louis (McIntosh, 1990). What we add to this descriptive literature is a more rigorous analysis of these dynamics that allow us to identify clear causal processes at play and draw far-reaching implications for the study of political rule in different settings.

4 Research design

We rely on a mixed-methods approach to test different components of our theory (Seawright, 2016). Our central claim is that judicial institutions play a primary role in the consolidation of political rule, making it more effective, encompassing, and long-lasting. One of the central implications of our argument is that the creation of judicial institutions played a primary role in the emergence of the state. We test this hypothesis by relying on historical analysis of state formation in England. The core of our causal claim is the sequence of events: we provide original and secondary evidence to show that judicial institutions were created prior to the development of many other capacities of the state, including taxation. Historical analysis is best suited to test this hypothesis as it allows for specifying the temporal sequencing of the different developments that gave rise to the state.

Testing the causal mechanisms requires fine grained evidence on the behavior of subjects: the extent to which they obeyed the regulations established by the ruler, whether they supported its rule, and how deeply its authority penetrated into society. We turn therefore to detailed evidence on civilians' reactions to the rule of rebel and militia groups in the Colombian civil war, a case where left-wing and right-wing groups have controlled local territories and populations for decades. Both rebels and militias (or paramilitaries, as they are called in Colombia), exhibit great variation in whether they rule civilians at all, and in the scope of their rule when they do (Arjona, 2014). We use detailed original evidence on their ruling practices—including adjudication, taxation, and the provision of basic services—to show that adjudication is consistently associated with a broader scope of rule, higher levels of obedience, and higher support. In future versions of this paper, we will address potential endogeneity due to omitted variables (Note: we are still considering different options for this part of the analysis).

In what follows we first present our evidence on state making in England and then turn to rebel and paramilitary governance in contemporary Colombia.

5 Empirical evidence I: The Middle Ages

The medieval period offers compelling evidence on how judicial institutions shaped state authority. Further, as a period of origins, it gives us a privileged vantage point showing how dispute resolution mechanisms were causally prior to both the pressures of large-scale war-fighting that are assumed to have generated the state and to the commercial expansion of the thirteenth century that ushered in important social transformations. Justice as a preeminent concern of rulers has been a major topic in historical research, attested in the centrality of justice in theoretical treatments of rule from the ancient into the medieval period (Harding, 2002; Kantorowicz, 1957). However, such concerns are typically taken to be secondary in political science and the judicial role of rulers part of an ideological structure that is epiphenomenal. Accordingly, little attention has been given to this dimension of state-building, though it is routinely mentioned as one of the functions that aspiring rulers need to fulfill (Tilly, 1990).

Analyzing the process of state formation in its origins, however, demonstrates the critical role that judicial functions played in the constitution of central authority. It allows us to establish two contested points. First, we can discern the temporal

primacy of dispute resolution mechanisms over the other major factors typically adduced to explain state emergence: war and economic growth. By examining the historical record before the major phases of military and economic expansion, starting in the 12th century, we can identify the major efforts to consolidate a monopoly over the administration of justice. The more effective this effort was, the more robust the control over the population. The capacity to wage war or to sustain economic activity across a territory was a result of this infrastructural control: this emerges from the identification of the concrete mechanisms that enabled the increase in war-fighting capability and extension of trade.

However, temporal primacy cannot address the possibility that the prospect of war or the need for economic growth did not trigger the investment in judicial institutions, suggesting that without those exogenous pressures, the institutions would never have materialized, at least at the level and extent that we observe. This is a powerful objection, and given the ubiquity of war in the period examined here (the medieval one extending into the early modern period), it is hard to separate these processes entirely.

The approach adopted here aims to parse the mechanisms involved and to show that what allowed differential processes to unfold were the dynamics that flowed from concerns for justice. The key is that, contrary to many assumptions in the literature, it is the demand for justice that is constant and relentless in any social group. War-derived pressures, for instance the demand for taxes, are, in fact, far from constant historically. Especially before 1400, taxation was an occasional event, usually requested with royal promises to not raise claims again in the future (Harris 1975, Prestwich 1990). Commercial growth, on the other hand, was far too concentrated and limited in its origins to account for the polity-wide outcomes we observe in judicial infrastructure (Spruyt, 1994). Accordingly, an irregular and localized event cannot explain the creation of regular and polity-wide institutions. As will see, the regularity that is necessary for institutionalization does not come from the factors usually adduced by the literature: only justice is driven by bottom-up demand on a systematic basis and across social groups.

In what follows, we will first show that judicial consolidation was temporally primary to war and economic development in the process of state- and regime-building. As this requires process-tracing of concrete historical cases, only critical ones can be examined in the context of this article, England offering the best example, both due to the wealth of sources and its highly developed institutional form. We identify the historical points on which the literature has focused in order to explain the rise of the English state as a function of either war or trade and then examine closely the preceding period to show the extensive institution-building that occurred. By then looking at the mechanisms necessary in order to finance war, for instance, especially through taxation devices, we can assess the importance of such pre-existing judicial structures. Following this, we will show why judicial institutions are not endogenous to war pressures, but independent.

We first identify two key historical junctures where the pressures of war have been conventionally assumed in the literature to have had a formative effect on either the state or its regime type. These are the wars engaged in by King John, culminating in the loss of France and the issuing of Magna Carta in 1215 and the wars embarked upon at the end of the thirteenth century, which were followed by the Hundred Years' War (1337-1453) (J. O. Prestwich & Prestwich, 2004; M. Prestwich,

1981). These are assumed to have ushered major transformations in the institutional structure of the state, especially through their effects on representative institutions (Maddicott, 2010).

What we find is that both followed two periods of revolutionary judicial change, consolidating the Common Law. Neither of these aggressive military campaigns would have been possible if a judicial infrastructure had not been raised in advance. Conventional accounts typically miss this. The story of the Magna Carta is widely known and taken to exemplify the bargaining process between ruler and subjects that exchanges resources for political rights instead (Acemoglu, Johnson, & Robinson, 2005; Glaeser & Shleifer, 2002; van Zanden, 2008). Faced with a ruler in a position of weakness, according to this narrative, social actors were able to extract concessions and constraints on the ruler, thus laying the foundation for representative institutions.

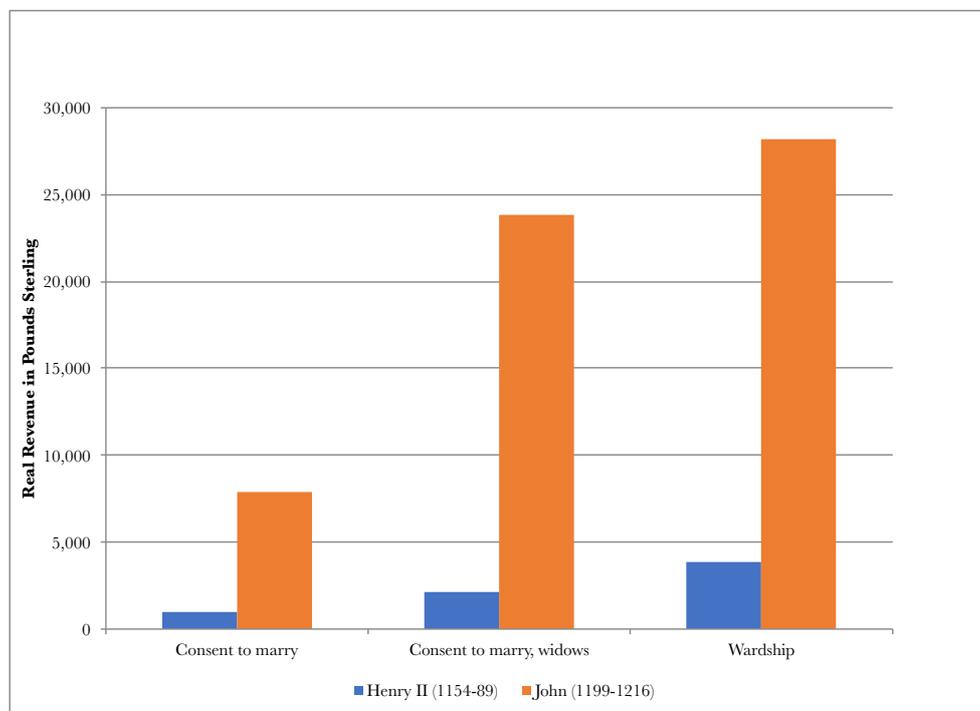
Yet what is not noted is that this moment of weakness followed a long period of unparalleled extraction and coercion on the part of the crown. The first decade of John's rule saw unprecedented levels of taxation compared to his predecessor: even controlling for inflation, revenue was up by at least a factor of 6 between 1199 and 1214 compared to before 1189 (Figure 1). Critically, however, the core revenue sustaining the crown at that time derived from fiscal obligations of the nobility to the crown that flowed from their status as landholders. These were relations that were negotiated and enforced through judicial institutions.

The extreme levels of extraction would never have been achieved without this pre-existing structure extending throughout the territory. It would be logistically impossible, given the complex micro-dynamics of revenue collection in the period, for such large sums to be obtained from across the population at such short notice. Tax-collection mobilized a large array of subjects throughout the administrative divisions, the counties and hundreds: from the sheriff, who had overall responsibility for enforcement, to the county officials who assessed and collected, and to the subjects, who served as sworn jurors and provided information on local wealth (Jewell, 1972; White, 1933). Without this information, collection would be severely hampered. But the jury system was institutionalized through the local court structure and the whole network of assessors and collectors was part of a broader system of organization that revolved around the county and hundred courts.

This elaborate system had been fully articulated under John's predecessor, Henry II (1154-1189), over what is known as a period "of supreme importance in the history of [English] law," (Pollock 1895): "it is the period when it first becomes possible to recognize the existence of an English "Common Law" (Brand, 2007). Even revisionist historians, who have questioned the Crown's sole role in spreading the Common Law, still believe that "The impetus provided by the reformers [under the reign of Henry II] combined to form the common law," (Hudson 1996; Milsom 1981; Van Caenegem 1988; Wormald 1999). What preceded John's remarkable tax raising forays, therefore, was one of the most important periods of legal institutional reform of English law, centered around the regularization of property rights to land.

Over the course of a few decades, Henry reconstituted older institutional practices and introduced new ones, by creating a network of courts that applied royal law, which thus came to be known as Common Law (Harding, 2002; Palmer, 1982). Itinerant justices were dispatched throughout the kingdom, subjecting populations throughout to a uniform legal practice that escaped the control of local lords on

Figure 1: English Royal Revenues from Feudal Dues under Henry II and John (1154-1189;1199-1216)



Sources: Waugh (1988) for amounts and Barratt (1999) for inflation, which increased prices by 75 percent in the intervening period.

a number of dimensions. This is how England developed the rather unique status, among European kingdoms of the time, of minimal jurisdictional immunities, namely territories that were outside the judicial reach of the Crown. Moreover, the English crown was distinct in imposing a uniform legal system on all social classes; no special privileges applied to the nobility (Bush, 1983). Such legal uniformity, already broadly achieved by the twelfth century, clearly preceded the major war expeditions that led to the Magna Carta and that scholars typically focus on when assessing the effects of war.

The same temporal precedence can be established with respect to the increasing waves of warfare that commenced in the late thirteenth century, after a long period of relative peace. As English kings fought increasingly aggressive wars to claim parts of the French continent after the 1290s, they relied on and strengthened an institutional structure that drew on the inheritance of the twelfth century reforms. Scholars typically focus on the remarkable tax extraction that accompanied the consolidation of Parliament in those decades (Bates & Lien, 1985; van Zanden, 2008). Indeed, as the 1290s saw the introduction of the systematic representation of the third estate in response to the fiscal needs of warfare, it is a classic example of the bargaining theory of representation (Levi, 1988; Bates, 1985; but c.f. Boucoyannis, 2015).

However, both these processes would have been impossible—especially with the level of effectiveness observed—without again a further extensive articulation of the judicial system. Courts provided the background machinery both for the assessment and the collection of taxes, as well as for the election and dispatch of representatives to the Parliament in London (Holdsworth, 1923). Subjects in the smallest administrative division were tied into a judicial system that integrated them with the center in multiple ways: through itinerary courts sent from London, through local courts that operated under royal supervision by the sheriff, and through a host of obligations that flowed from the tenancy of land, which was itself litigated in these royal courts (White, 1933).²

In short, courts were both temporally and causally prior. A larger, comparative study shows that this pattern is observable across cases (Boucoyannis, forthcoming); the more rulers were able to raise central judicial institutions, the greater their control over local populations and capacity to extract. In France, this effort also began in the late twelfth century (Baldwin, 1986; Harding, 2002), just before the confrontation with England began, adopting similar mechanisms of court integration and centralization. Yet, jurisdiction remained much more fragmented in France and this was reflected in the weaker central control, and thus the extractive capacity, both in men and in resources, was weaker as well. In other European cases, we observe the same priority to judicial functions performed by the ruler and a similar correlation between the rate of judicial centralization and the effectiveness of political rule (Boucoyannis, forthcoming).

Yet, the challenge to bellicist theories of state formation must also address the concern that such institutional build-up occurred because of the intent to engage in war and expand rule. This view retains war as the central motor of state-building, even if prospectively, whilst treating judicial processes as instrumental: without the pressures of war, in this logic, state consolidation would not occur. Although this

²Boucoyannis (2017) pursues the importance of land tenancy for institutional emergence in a separate paper.

would still leave dispute resolution as a key, yet neglected, factor, our argument here goes a step further.

It does so by highlighting the obviously necessary role of dispute resolution in providing the critical ingredient for institutional consolidation: regularity. Theories so far have tried to deduce permanent institutions from irregular events: war and taxation demands (Bonney, 1999; Dincecco et al., 2011; Hoffman & Norberg, 1994). But as abundant evidence from the historical record suggests, wars were treated as discrete events and taxation was strictly tied to the actual incidence of war (Harriss 1975, Prestwich 1990). So demand was irregular. Yet for an institution, which is by definition regular, to coagulate, demand must be constant, bottom-up, and widespread.

Systematic societal demand for institutions from all social groups derived only from the judicial complaints of subjects, which sprung from their daily interaction and revolved mostly around crime and land-over both of which the ruler claimed control. Taxation could not trigger the same demand, partly because it was irregularly raised, but also because subjects had the incentives to avoid it and free-ride.

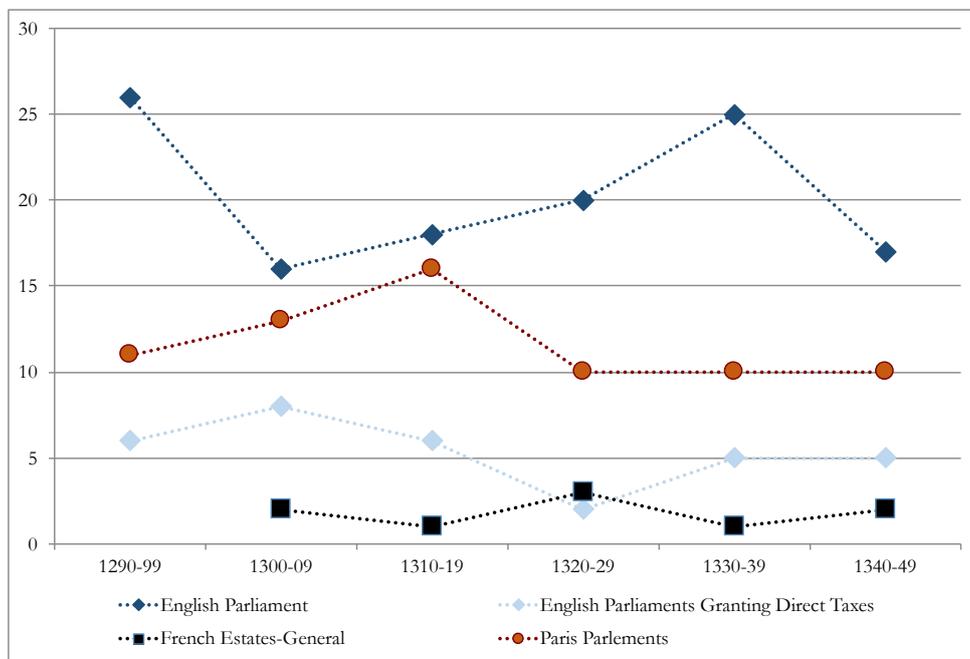
We can test for this disjuncture between incentives in a measurable way. Comparative records of parliamentary meetings show the frequency with which different functions, judicial or fiscal, were addressed. The key here is that parliaments originally also functioned as courts of law, a trait retained until very recently in the British House of Lords, which served as the supreme court of the land (Maddicott, 2010; McIlwain, 1910). In the medieval period, this was a fairly universal attribute of parliaments. In some, as in the French one, law remained the primary business of the institution, taxation being handled separately, by the Estates General. In fact, the distribution of functions provides with a natural experiment to observe the frequency of meetings as a function of meeting purpose, whether judicial or fiscal.³

In England, both taxation and the hearing of petitions and cases were processed through Parliament (Maddicott, 2010). But only some sessions handled taxation. We can isolate these and deduce the frequency of the institution if taxation had been the only reason for the calling of parliament (Figure 2). In France, as this division was institutionalized, we can simply compare the frequencies of meetings of the Paris Parlement, the equivalent French institution that handled only judicial affairs, and the Estates General, dealing with taxation. The pattern is striking: it is the judicial functions that provide regularity. If taxation meetings only are considered, the paucity of meetings is very similar in the two cases. Yet in England, Parliament became a permanent institution, whereas in France, the Estates General did not, whilst the court, the *Parlement*, thrived until the French Revolution, with considerable power (Shennan, 1968). Without the constant judicial demand, an institution was open to the adverse incentives pointed to above and would wither.

In other words, the critical ingredient for institutional outcomes was not war, but the effective central organization of judicial practices. If this did not precede war, institutional outcomes were sharply less structured. In France, the Estates General were suppressed after the fifteenth century, and similar patterns are observed in the other European cases that developed absolutist regimes. Without the regularity imposed by judicial demands, even if a representative institution formed in response to war needs, if it was not tied to some more regular bottom-up demand, it did not

³Boucoyannis (2017) explains why taxation of the nobility was positively and necessarily correlated with this layering of functions.

Figure 2: Comparison of Meeting Frequency of English Parliament, French Estates-General, and Paris Parlement Per Decade



Sources (Fryde 1996; Actes du Parlement de Paris 1863; Furgeot 1920; Soule 1968).

survive the cessation of war, at least in a form that effectively represented broad sections of the population.⁴

In short, in the early stages of state and regime formation, court structures were both temporally prior and exogenous to the pressures of war and commercial expansion that took place after 1200 and especially after 1300. Had there not been a state-provided framework that centralized dispute resolution, the critical infrastructure to extract resources and secure control over the population would have been lacking. In the historical evidence, this variation affected state capacity as well, as measured by tax extraction. England was able to extract between three to four times per capita the amounts in men and taxes than French kings could in the equivalent period (Strayer, 1970; Boucoyannis, forthcoming). The effects of judicial centralization thus affected all the fundamental aspects of state building.

6 Empirical evidence II: Contemporary rebels and militias

Rebel and militia groups fighting in civil wars often strive to rule local populations⁵. The growing literature on rebel governance argues that armed groups obtain several benefits from becoming de facto rulers, such as obtaining higher levels of civilian cooperation and territorial control (Arjona, 2016; Mampilly, 2011); having access to economic and military resources as well as political networks (Arjona, 2016); and putting into practice their ideology and obtaining support from diasporas (Mampilly, 2011). Several studies show that armed groups fighting civil wars around the globe often take on governance functions in at least some of the areas where they operate, making rebel governance a widespread phenomenon (Arjona, 2016; Arjona et al. 2015; Huang, 2016).

As we mentioned earlier, the literature on rebel governance focuses on the conditions under which armed groups govern civilians but says little about *how* they go about consolidating their rule. In this section, we show that adjudicating disputes is crucial for rebels and militias' rise to local power. As with other types of aspiring rulers, when these organizations establish their own judicial institutions they can more easily penetrate into the local society, expanding their influence over other domains of local life, and legitimizing their rule. Although the centrality of dispute adjudication has been largely overlooked in theories of rebel behavior, several studies show that rebels and militias around the globe often adjudicate disputes, from the Palestine rebellion in the 1930s Ghandour (2010), to the Maoists in the Nepalese civil war between 1996 and 2006 (Dubey, 2004), to the contemporary war in Syria (Sosnowski, 2015).

What is more, some of the evidence is unequivocal about the efforts that these groups put into becoming the adjudicators of disputes. The Taliban, for example, created mobile courts in order to offer “speedy justice” to civilians in rural areas

⁴Assemblies continued to meet even in absolutist regimes, for instance those of Spain or France. But they either represented one sector of society (towns in Spain) or only some regions (*pays d'état* in France).

⁵We use the term rebel group to denote irregular forces fighting against the status quo; we use the term militia to refer to irregular armed groups fighting in order to defend the status quo, either independently from or linked to state forces.

the group sought to control (Giustozzi, Franco, & Baczko, 2013). In Colombia, García Villegas (2008) has documented rebels' and paramilitaries' efforts to ban local judges from taking new cases in their strongholds, and their explicit preference for making adjudication their organization's prerogative.

We rely on original evidence on rebel and paramilitary governance in the Colombian civil war to test two of the mechanisms by which, according to our theory, adjudicating disputes facilitates the consolidation of political rule: increasing social control and gaining legitimacy. In what follows we describe the data collection process, introduce the data, and present the results.

6.1 Sampling

The data, which come from Arjona (2014, 2016), were collected in 75 communities throughout Colombia in 2010 and 2012. The sampling strategy was as follows. First, a random sample of 29 municipalities was selected where at least one non-state armed group had been present for no less than six continuous months in the past four decades, stratified by region to ensure geographical variation. These regions include 27 of the 33 departments of the country (the south-east of the country, which is located in the Amazonian region, was excluded because it is underpopulated and armed actors have only recently started to operate there). The sample is quite diverse in terms of geography, ethnicity, abundance of legal and illegal natural resources, and state presence ⁶.

In each selected municipality, a short survey using vignettes with a heterogeneous group of key informants was used to map out variation in rebel and paramilitary rule ⁷. One vignette portrayed the situation of a village where an armed group ruled comprehensively, and the other portrayed a village where an armed group, despite being present in the locality and having no competitor, did not rule on civilian matters. Localities were then stratified according to this measure and between two and four communities were randomly selected in each municipality. Additional details on the sampling strategy are provided in the online appendix. Map 1 shows the final sample of localities.

In each selected locality, around five local experts—that is, individuals who knew well the history of each community—were invited to participate in the project. These participants had varying political views and interests. In most cases, the group included a teacher, a local leader, a merchant, and an elderly person. They first participated in a memory workshop in which they created a billboard with a timeline of key events and answered questions about the history of local governance in the community. This component not only allowed for collecting valuable data but also for reducing recall bias. Participants then answered an individual survey on pre-war and wartime governance over time. The workshops lasted about three hours and the survey approximately one and a half. We use data collected with both the survey and workshop to measure different aspects of rebel and criminal governance in the sampled communities ⁸.

⁶ Descriptive statistics of these municipalities are presented in the online appendix (A1) *To be added

⁷The wording of these questions can be found in the online appendix (A1) *To be added.

⁸ Additional details on data collection are given in the online appendix. *To be added

Figure 3: Sampled localities

Map 1. Sampled localities



6.2 Data

The original data measure different aspects of wartime governance for each locality-armed group dyad, every year they interacted between 1970 and 2012. Since some aspects of governance do not vary over time or do so very slowly, we use the average for the entire time period when the locality lived under the presence of each armed group. Hence, the data measure the kind of rule that each armed group established in each locality where it operated. The unit of analysis is therefore the locality-armed group dyad. There are 113 observations on 75 localities and dozens of units of 5 guerrilla groups and 5 paramilitary groups.

We measure our main theoretical variable of interest, *adjudication*, with a proxy that indicates the percentage of years (out of the entire period of locality-armed group interaction) when the group adjudicated disputes about land borders or debts in the locality. Overall, armed groups adjudicated disputes throughout the time they were present in about 55% of the sampled localities.

In order to assess whether adjudicating disputes impacts the group's ability to exert higher levels of social control, we rely on indexes of the group's intervention in three realms of civilians' everyday life. Each index is the arithmetic sum of several indicators (Figure 4):

- *Economic* measures armed groups' regulation of fishing, hunting, and logging, and its influence on the assignment of state subsidies to individuals. We exclude the groups' involvement in the coca market and illegal mining, because these are activities for tax collection rather than the mere regulation of civilians' economic activity.
- *Political* measures whether the group "was in charge" or "run things" in the locality, and whether it intervened in elections by forbidding voting or banning candidates who wanted to run for office in local elections.
- *Private conduct* measures whether the group established rules to regulate domestic violence, personal appearance (like skirts for women and long hair and earrings for men), and sexual behavior (like forbidding homosexuality or regulating prostitution).
- The variable *scope of rule* relies on an index that aggregates these 9 measures and varies from 0 (when all items take the value "no") to 1 (when all items take the value "yes"). This index is a direct measure of armed group's penetration into society as it captures the extent to which the organization is able to impose its regulations on locals' economic, political, and social conduct. *Scope of rule* is the average of this index over time. Figure 5 shows that the scope of armed group's rule varies across locality-armed group dyads as well as both across and within guerrillas and paramilitaries.

Social control over a population entails not only establishing rules on individual conduct but also making subjects obey such rules. We use the variable *obedience*, which measures the percentage of years in which most people obeyed the rules established by the armed group, to test whether adjudicating disputes helps armed groups obtain greater social control. This variable comes from a survey question that asked whether most people used to follow the rules established by the armed

Figure 4: Armed Groups' Rule by Realm

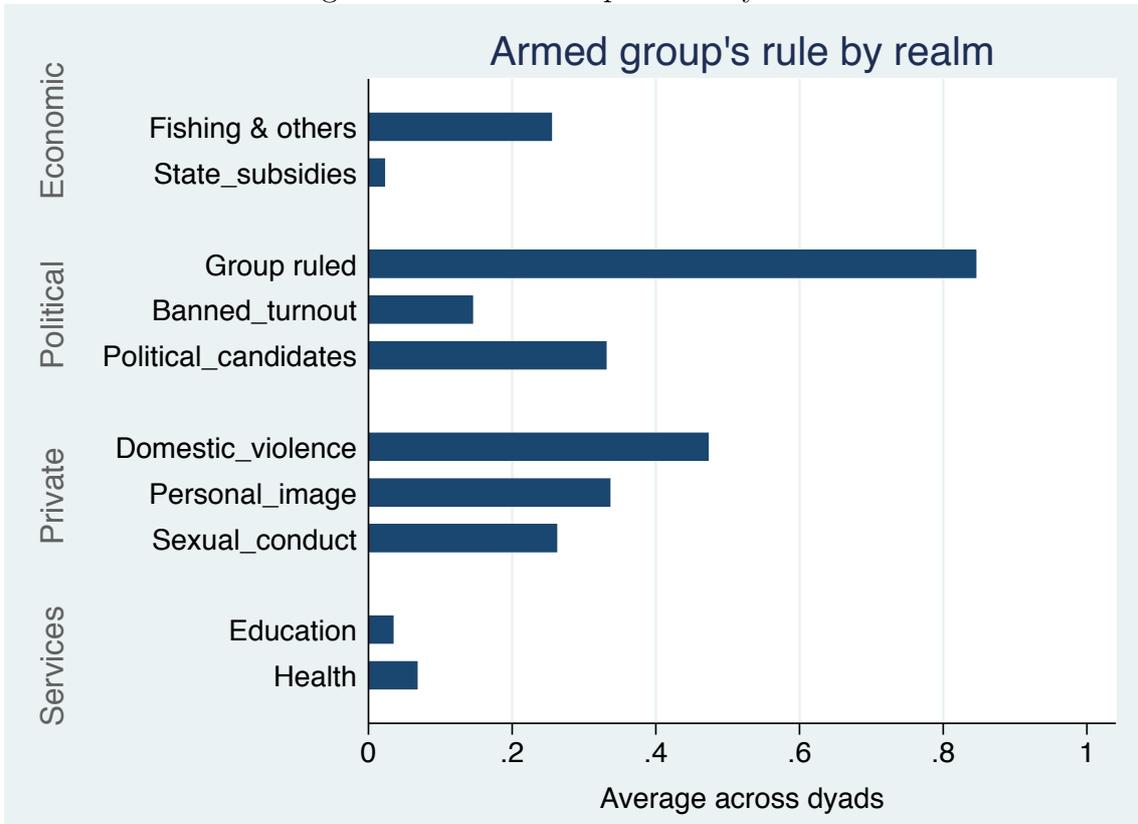


Figure 5: Scope of Armed Groups' Rule

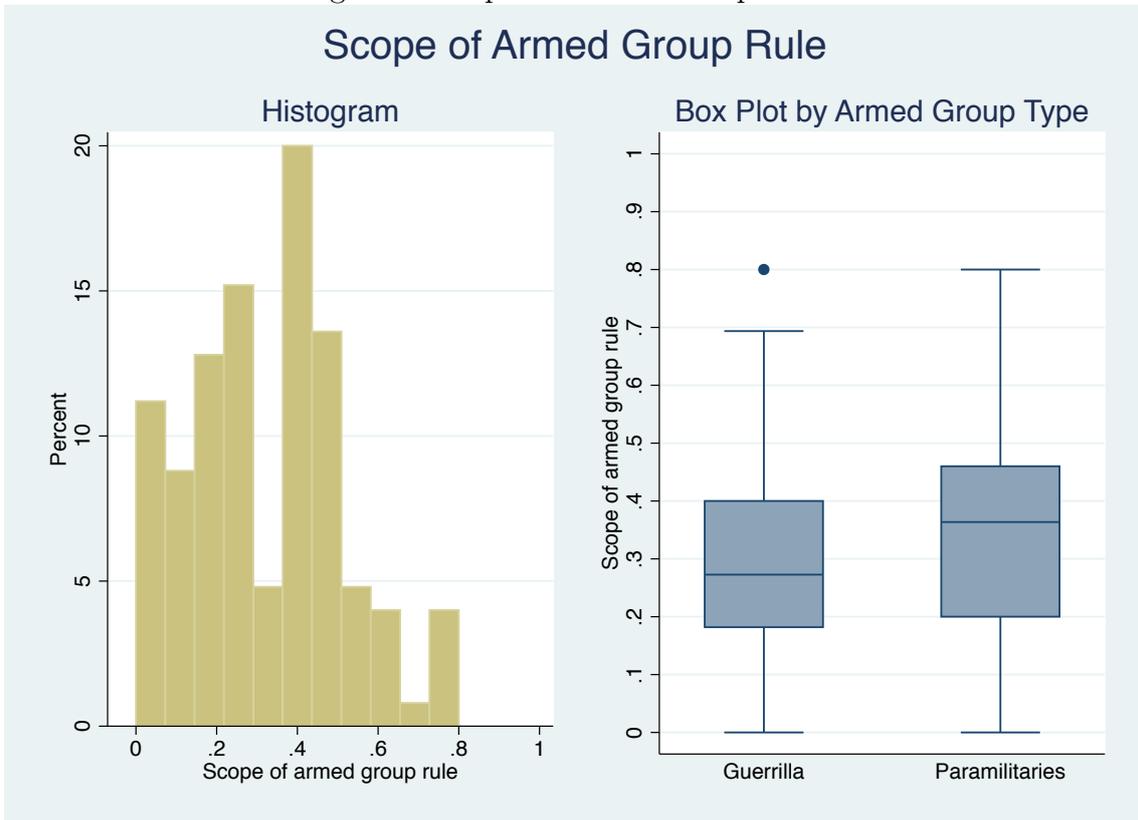
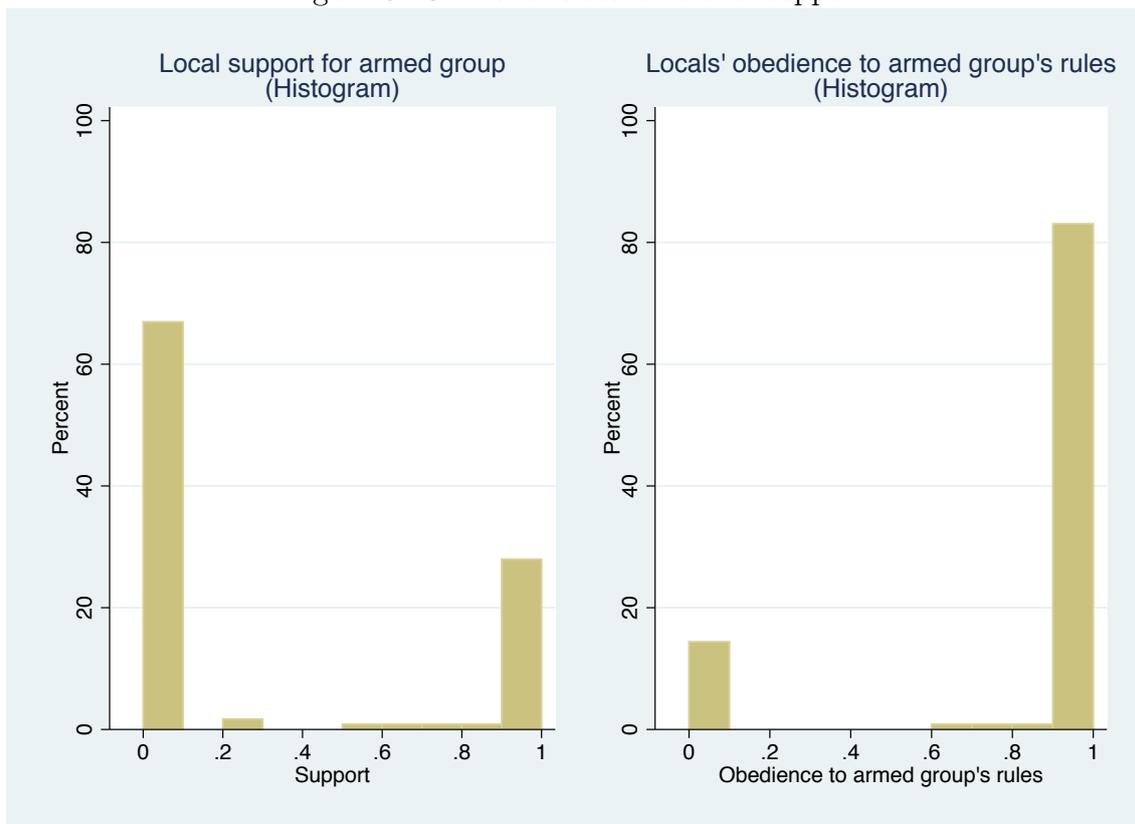


Figure 6: Civilians' obedience and support



group. As Figure 6 shows, most civilians used to follow the rules established by armed groups in more than 80% of all locality-armed group dyads.

In order to test whether adjudicating disputes helps armed groups obtain legitimacy, we use *support*, which measures the percentage of years when, according to survey respondents, most people in the locality used to support the group. This measure comes from a survey question that asked about support directly but always referring to a group that was not present in the area, which reduces the possibility that responses were induced by fear. Likewise, since survey respondents were not asked about their own support for the group but, rather, about the general situation of the locality, social desirability bias is reduced. As Figure 6 shows, there was indeed variation in the responses: most people used to support the armed group in about 25% of the cases, while they did not in about 75%.

It is possible that adjudication is capturing other essential governance functions that armed organizations often take on, and that those activities are the ones shaping social control and legitimacy. In order to account for this possibility, we control for two factors that have been traditionally associated with social control and legitimacy: taxation and service provision. The variable that measure *taxation* indicates the percentage of years when the group asked locals for economic contributions (either monetary or in kind). The variable *services* measures the percentage of years when the group provided (or intervened in the provision of) education or health services. Overall, armed groups taxed localities most of the time in 70% of the localities where they operated, and provides services in about 10% of them.

Finally, in the models we control for the type of armed actor—either guerrilla or paramilitary. About 43% of all dyads involve a paramilitary group while about

Figure 7: Models on Scope of Rule



57% involve a guerrilla group.

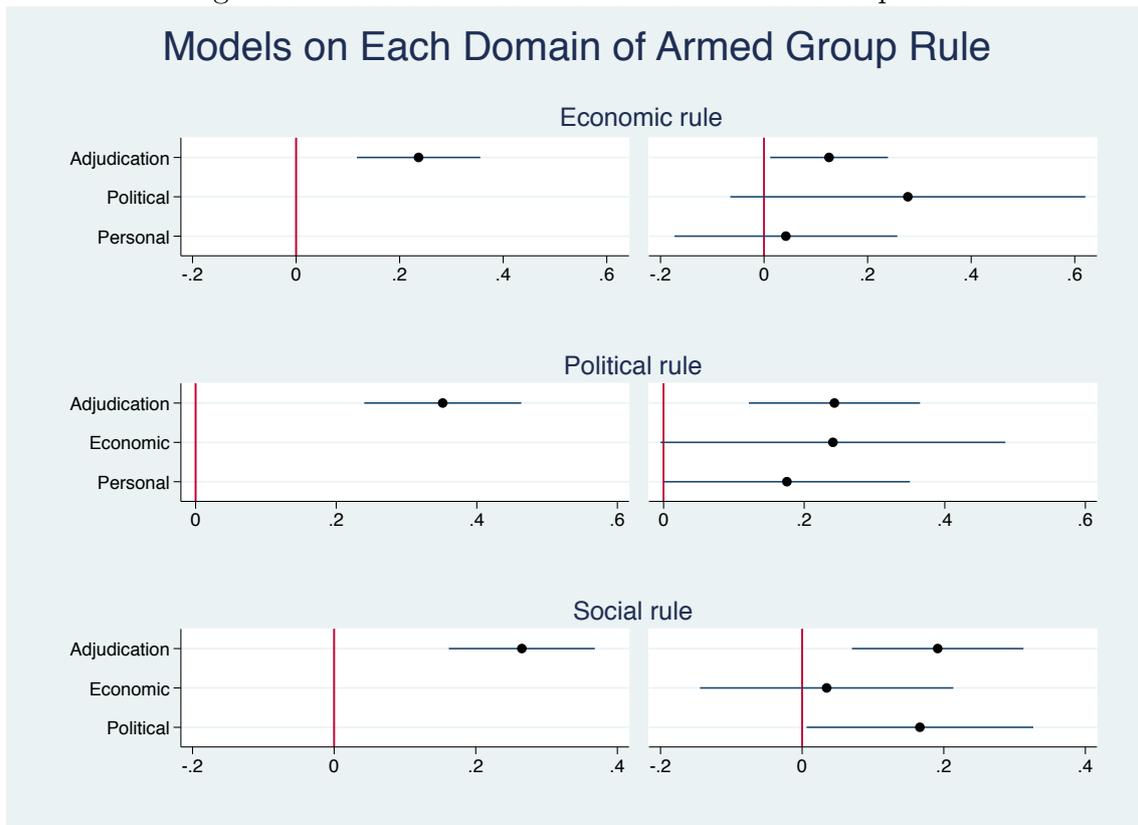
6.3 Statistical models

This section presents our preliminary results. We use linear models with clustered errors at the level of the municipality (*we are still considering different model specifications and potential approaches to better isolate the causal effect of dispute adjudication on social control and legitimacy). All models control for the type of armed group. In what follows, we present first the results of a model that includes only the explanatory variable of interest—adjudication—followed by a model that controls for taxation and service provision.

We start with the effect of armed group’s adjudication of disputes on their social control over the population. Our first outcome of interest is armed groups’ scope of rule. As Figure 7 shows, adjudication is associated with higher levels of intervention by the armed group in each of the three different realms of civilians’ life—economic, social, and political—whereas taxation and service provision are associated only with armed groups’ intervention on certain domains. Moreover, adjudication is strongly associated with higher levels of the overall index of scope of rule, even when controlling for taxation and service provision, whereas the last two are only weakly associated with such index.

In order to account for potential endogeneity due to an omitted variable that explains armed groups’ desire to rule and, therefore, their intervention in *any* domain of local life, we also estimate the models only on the localities in which the armed group rules at least minimally—that is, by maintaining public order. We measure

Figure 8: Models on Each Domain of Armed Group Rule

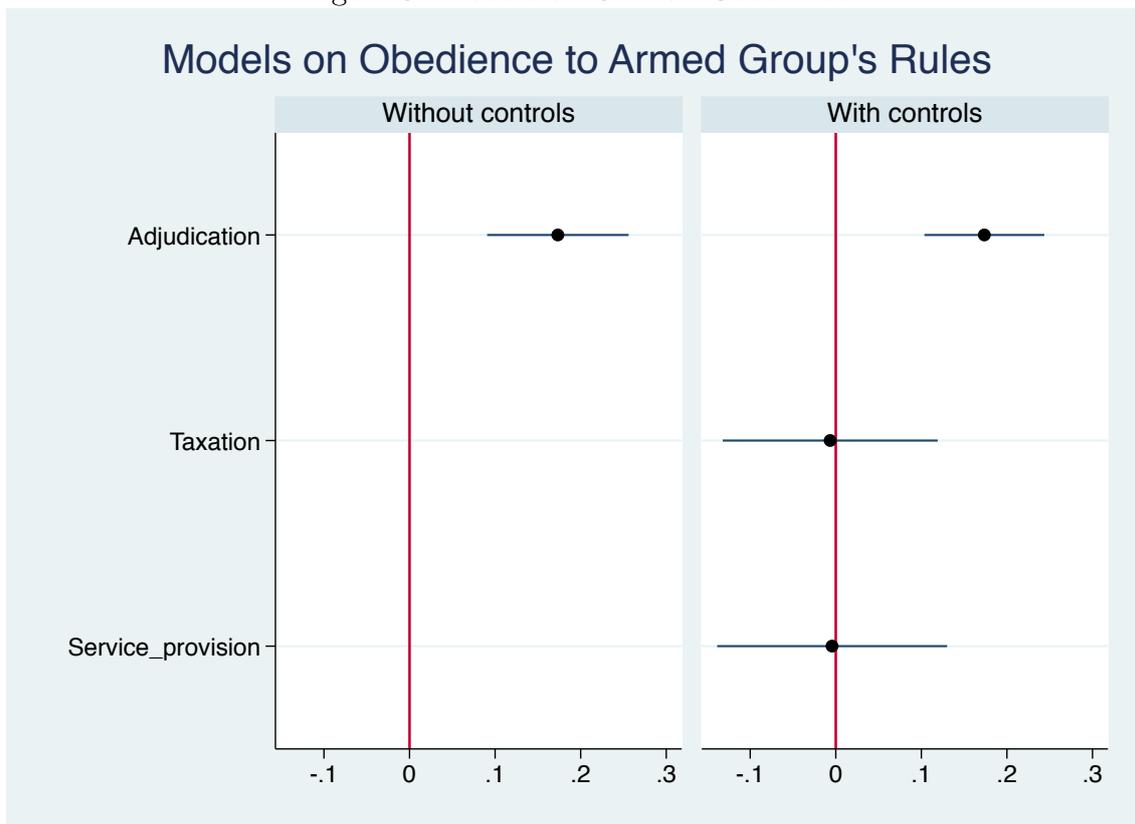


armed groups' involvement in the maintenance of public order with a variable that indicates whether the group used to regulate criminal behavior like robberies and rape. This reduces the sample size to 99 observations. Excluding localities where the armed group did not achieve even this minimal level of rule allows us to explore the effect of dispute adjudication conditional on the armed group taking on at least this primary governance function. The results do not change in any substantial way.

It might also be the case that adjudication is capturing some other component of governance that facilitates rule penetration. Even though the literature tends to emphasize the role of taxation and service provision, it might be that the regulation of economic, political or social activities is also important, and that adjudication is capturing that effect. To account for this possibility, we estimate separate models on each index of armed group rule—that is, on the variables that measure armed groups' intervention in the political, economic and social realms. For each index, we estimate a model that only includes adjudication and group type, and a model that also includes all the other indexes of rule. As Figure 8 shows, adjudication is strongly associated with economic, political, and social rule, even when controlling for group rule in other realms of local life. The results also show that none of the other domains of armed group rule is associated with rule in *all* the other domains.

We now turn to obedience: whether most locals used to obey the rules of conduct established by the armed group. As Figure 9 shows, adjudication is also associated with higher levels of obedience to the group's rules, while taxation and service provision are not. These results suggest that judicial institutions—either formal or informal—are much more effective in allowing rulers to control the behavior of their subjects than developing taxation structures and providing basic services.

Figure 9: Models on Civilian Obedience

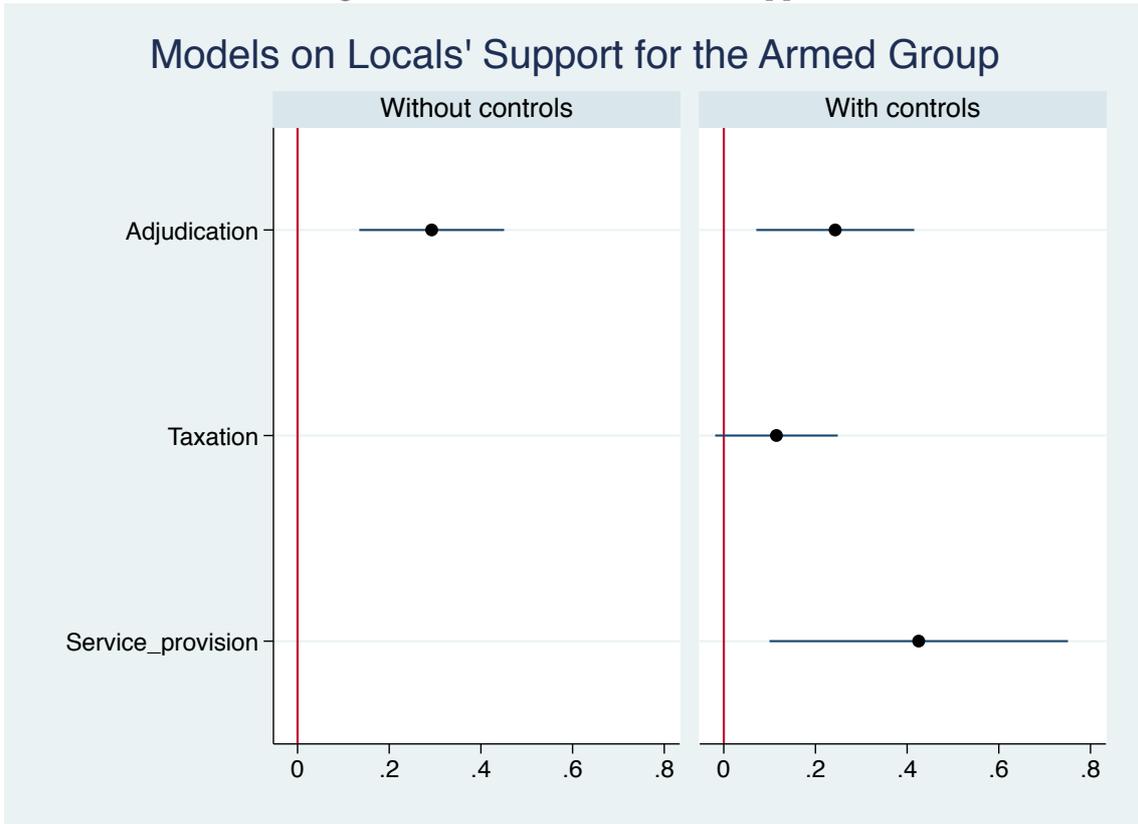


How about legitimacy? Figure 10 shows that both adjudication and service provision are associated with higher levels of local support for the armed group, while taxation is not. The results about service provision and taxation are quite intuitive: we expect subjects to dislike taxation and to welcome the provision of public goods. Our results suggest that adjudication plays a central role in engendering support.

Taken together, these results suggest that adjudicating disputes is a central tool for rebels and militias that aspire to rule local populations because they help these organizations extend their rule to multiple realms of civilians' lives; obtain higher levels of obedience; and render more support. Taxation, on the other hand, fails to be associated with any of the measures of social control and legitimacy. Service provision, on its part, seems to contribute to the consolidation of armed groups' rule only partially: it is associated with higher regulation of economic and political activities and with higher support; yet, it is not associated with higher levels of regulation of personal conduct, nor with obedience.

Overall, our results suggest that adjudication plays a central role in the consolidation of armed groups' rule by triggering different mechanisms: facilitating the group's penetration into society by expanding its rule to several domains of local life, increasing obedience to the group's rule, and rendering higher levels of support for the organization. We do not claim that other aspects of governance lack any causal effect on the consolidation of political rule. Rather, we argue that adjudication plays a primary role in this process and it needs to be accounted for in our theories of state building, state failure, and governance.

Figure 10: Models on Civilian Support



7 Conclusion

To be added.

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