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Navigating Inclusion in Transitions from Conflict: The Formalised Political Unsettlement

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Abstract

The project of ensuring that political settlements are inclusive is key to the attempts of negotiating transitions from conflict over the last 25 years. Examining such transitions, we point to the emergence of the 'formalised political unsettlement' as a persistent outcome. The formalised political unsettlement translates the disagreement at the heart of the conflict into a set of political and legal institutions for continuing negotiation. As the conditions of its emergence will not change and the formalised political unsettlement may be here to stay, we point to the opportunities for navigating between elite inclusion and broader societal inclusion that it offers.

Keywords

political settlements, conflict resolution, peacebuilding, peace agreements, inclusion

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Navigating Inclusion in Transitions from Conflict:

The Formalised Political *Unsettlement*

Christine Bell, Jan Pospisil (University of Edinburgh Law School)

For a quarter of a century now, exclusion has been understood as one of the main driver of conflict and fragility within states, and inclusion as its main 'cure' (see e.g. Wimmer et al, 2009). Twenty-five years of experimentation with supporting and even requiring negotiated transitions from exclusive to inclusive government has seen structured peace processes in around 103 jurisdictions characterised by instability and violent conflict (Bell, 2008). These countries include the vast majority of those which are routinely listed in the available rankings and compilations of so-called 'failed' and 'fragile' states.

Re-working exclusive political settlements towards more inclusive elite pacts has been central to peace processes which have been attempted in many fragile and conflict-affected states. We suggest that a closer examination of this practice has much to offer to political settlement analysis. Our purpose is to inform current debates as to how political settlements and peace settlements can become more inclusive over time, and in particular to understand how tensions between inclusion of new political elites as part of any political settlement affects broader forms of social inclusion.

The main contribution of this article is twofold. Its first contribution is to suggest that these processes often produce not a stable political settlement, but 'formalised political *unsettlement*'. In a preliminary outline of this idea, we attempt to capture and outline the key elements of the formalised political *unsettlement* distinguishing it from both a political settlement, and a situation of general political *unsettlement*. Its second contribution is to suggest that the formalised political *unsettlement* is often understood to prioritise elite inclusion over broader forms of societal inclusion, but that if it is here to stay we should perhaps engage with its realistic possibilities for transformation. We suggest that when viewed from this light, the formalised political *unsettlement* contains opportunities for inclusion which could be better understood and embraced, due to its fluid institutional arrangements, its high degree of internationalisation, and the way in which it places contestation of the state at the heart of the political order.

Political settlements analysis and inclusion

Aid organisations increasingly assert the importance of understanding political settlements if aid interventions are to be effective. The term political settlement is used by the OECD (2011), by Western aid organisations such as DFID (Whaites, 2008; Evans, 2012) and Australian Aid (AusAID, 2011), and by non-governmental organisations such as Christian Aid (Gutierrez, 2011) and is viewed with increasing interest by the World Bank. Understanding the political settlement in a country is understood to be important to understanding how development interventions may be received in ways that limit their supposed purpose and effectiveness.

As a concept, however, the term ‘political settlement’ can be criticised for lacking in clarity; for failing to do any real intellectual analytical work; and for being difficult to translate into practical strategies for change (see e.g. Green, 2014; Moore, 2012). In addition, the concept is currently charged with two main ‘blind spots’. First, political settlement analysis is charged with failing to address the complexity of the relationship between elite inclusion and broader social inclusion, notably that of women (O’Rourke, 2016), or recognise the importance of broader forms of inclusion to good development outcomes (Rocha Menocal, 2015; cf. Parks and Cole, 2010: 2). Second, political settlement analysis is charged with neglecting the role that ‘ideas’ play with relation to conflict and conflict resolution whether the ‘ideas’ of identity politics (Rocha Menocal, 2015: 14-15), or of appeals to norms (O’Rourke, 2016). Perhaps as a result of these deficits, political settlement analysis has had little traction in academic literature: it has remained isolated in development discourse and arguably as a sub-field within political economy, largely ignored by other overlapping fields concerned with protracted social conflict, with little wider traction even in the political science or economic disciplines in which it could be said to be located.

Despite this, the term political settlement remains intuitively attractive and has a ‘holy grail’ quality (Dressel and Dinnen, 2014: 6), because it points to fact that ‘development is political’ (Unsworth, 2009). Invoking the importance of the ‘political settlement’ emphasises the importance of understanding the dynamics of local political bargaining in relationship to both formal and informal institutions (Khan, 2010: 22), and points to the need to be politically ‘smarter’ with regard to how local power structures that have capacity to undo development interventions (Khan, 1995: 86; cf. de Coning, 2016). In a broader age of disillusionment with international intervention (Bell, 2015a), a concept with some explanatory power for why development interventions do not achieve their aims, has purchase. Development actors who have expended vast energies and sums of money attempting to reconstruct governance structures find the promise that understanding political settlements will help one do one’s work better deeply attractive. The term political settlements itself chimes with what can often feel like a missing piece in development analysis –answers for how to deal with the complexity and perverse outcomes that characterise engagement with local political realities.

However, how exactly political settlement analysis should reconfigure development interventions remains elusive. Are development actors armed with political settlement analysis merely to work ‘better’ within the strictures of unjust and exclusionary political settlements with respect to discrete development interventions? Or should they direct their attention at fundamentally re-shaping the political settlement towards greater inclusion that might better create the conditions for development? Both choices have difficulties.

The former approach seems under-ambitious: as van de Walle puts it (2016: 170), it seems to resign the political settlements thesis to ‘little more than the banal claim that economic outcomes are largely determined by the interplay of social forces.’ Working within the political settlement seems to leave development interveners ‘fiddling at the edges’ by constructing interventions that better appeal to the self-interest of political elites, as the

increasingly popular ‘working with the grain’ metaphor suggests (Levy, 2014). However, more fundamental political change focused on greater social inclusion and a social contract appears crucial to long-term sustainable development outcomes. Moreover, working to at best ‘nudge’ political settlements towards better performance can also prove impossible in cases of cataclysmic state failure and violence, where it is unclear that a ‘settlement’ in any meaningful sense is in place. Working ‘better’ with existing power structures can also be incompatible with the political and legal normative commitments of western development actors to broader forms of inclusion such as through democratic participation, or of women (Bell, 2015a), and is therefore unattractive as an option even if effectiveness could be assured (cf. Hagmann and Reyntjens, 2016).

In contrast, self-conscious attempts to ‘refashion’ the political settlement to be more inclusive and more concerned with ‘the public good’ seem overly ambitious: can and should external actors re-shape political settlements that are the domestic business of how power is held and exercised? It is unclear that external interveners have authority, will or capacity to shape political settlements (cf. Chandler, 2015). Even if they did, political settlements may have to ‘evolve’ rather than be internationally ‘made’ (see e.g. Khan, 2013: 276).

Our article takes at its starting point that these questions can be informed by examining a quarter of a century of experimentation in re-fashioning political settlements in fragile and conflict-affected states through supporting processes of structured transition. Since 1990, over 103 jurisdictions and conflicts have seen over 1,300 negotiated negotiations many of which have reached a substantive or framework agreement stage; over the last 35 years, around 77% of conflicts ended using a peace agreement (Fisas, 2016: 9). These processes have focused centrally on supporting a move from a conflict-ridden exclusive political order to a more inclusive peaceful one, with the focus on forms of ‘elite’ inclusion of the main contenders for power. In this article, we consider the ways in which this form of inclusion is achieved and the implications for broader questions of societal inclusion. Our focus is on fragile and conflict-affected states which have undergone forms of peace process or, put another way: formalised processes of re-configuring the political settlement to be more inclusive of the main contenders of power, and therefore more stable. We suggest that the political order that has resulted should be understood as that of the ‘*formalised political unsettlement*’.

Drawing on and adapting Walker’s foundational analysis of the ‘constitutional unsettlement’ in the UK context (Walker, 2014), the first sections of our article outline what we mean by the formalised political unsettlement. We address why it has come about, what its key elements are, and how it contrasts with both political settlement and political unsettlement. In the second part of the article we move from descriptive to diagnostic – suggesting the consequences of the formalised political unsettlement for different forms of social inclusion.

The formalised political unsettlement is difficult to love: those concerned to see a stable and inclusive political settlement will find it unsatisfactory because it brings neither closure in a stable state formation and it trades some forms of inclusion against others in ways that must continue to be navigated. We agree that it has many drawbacks. However, we suggest

that because it is here to stay it is worth considering whether it has any positive attributes in terms of inclusion. Surprisingly perhaps, we suggest that it has such attributes.

Political Settlement: what is it?

Before setting out what the formalised political settlement entails, it is useful to consider the two states it can be logically contrasted with: the political settlement, and political unsettlement. To the uninitiated a political settlement indicates some sort of working political order which tracks on without chronic violence or unpredictable upheaval: in its most 'lay' meaning the term political settlement connotes relative stability characterised by political and social order. Political settlement literature, broadly understood, has been useful in suggesting that the concept of political settlement does not require or imply a 'good' political order, such as that of the liberal democratic state, but includes a broader range of political arrangements many of which may be normatively unattractive. In other words, political settlements are characterised not by a particular institutional configuration or commitment to a set of values, but by a balance of power which has as stable relationship the institutional configuration that it has given rise to (Khan, 2010: 59-60). The literature has also been useful to pointing out that the political settlement will be dynamic and involve on-going processes of mutation and evolution – political settlement as characterising as much a 'process of political bargaining' as a state (Laws, 2012: 6-7). The political settlement will typically involve both the formal political and legal institutions of the state (or sub-state entity) and the informal and more invisible ways in which power is held, exercised and transferred. The formal and the informal will interact in subtle ways (North, 1990: 36-45).

Despite these glosses, as the term 'settlement' implies, a political settlement would seem to connote an accepted way of doing business. We suggest that Di John and Putzel's working definition of a political settlement (2009: 4) comes close to marrying the academic use of the term with a common sense view of its meaning. They define a political settlement as 'the forging of a common understanding usually between elites that their best interests or beliefs are served through acquiescence to a framework for administering political power.'

A feature of political settlements is therefore that there is some sort of framework in place which has some purchase on how elites exercise power at least in part through recognisable political and legal institutions which have come capacity for continuity of operation. Western democratic states clearly have political settlements underpinning them. However, so have the less democratic arrangements: Colombia, for example, which for many decades prior to the current phases of conflict, saw formal and informal political arrangements involved elite acquiescence in a framework of power that allowed for mutual restraint and power-rotation; or the Arab spring countries which for many decades prior to the recent uprisings had a clear political order in place albeit in no small part through repression, until it did not; or South Africa which during many decades of apartheid, involved a political

settlement. These were all highly exclusive political settlements, but political settlements all the same.

Political unsettlement

In contrast, many of these countries unwound into what we suggest is best understood as periods of political unsettlement. Political settlement literature, we suggest, has come slightly undone in how it understands the relationship between political settlement and political disorder. The OECD, for example, suggests that ‘generally speaking, every political regime that is not in the middle of all-out civil war over its basic parameters is based on some kind of settlement’ (OECD, 2011: 9). However, where violence disrupts the state’s capacity to do business in its usual way, we suggest that these situations are better understood as periods where social and political order is determined by ‘political unsettlement’ rather than any political settlement.

Where the state’s political settlement becomes disrupted by chronic violence and instability in ways that force it to change its behaviour and modify its institutions in response, it becomes fundamentally unsettled. While political bargaining continues throughout it continues, as Clausewitz (2008: 28) put it, with the admixture of ‘other means’. Of course, periods of unsettlement will be characterised by political interaction and highly strategic political choices by key actors, but this is rather different than a political settlement. This bargaining is characterised by use of violence in defending and challenging the political settlement, rather than operation of an agreed framework for the exercise of power, and hence political unsettlement is determinative of political outcomes as much or more than the prior political settlement.

In practice of course, the line between political settlement and political unsettlement involves a spectrum and a matter of degree with possibilities of overlap, rather than a disjunctive either/or. Even during periods of profound unsettlement some form of residual political order may pertain at least in parts of the country. Long-term conflicts can see new uneasy forms of unstable political order continue indefinitely in what might be viewed as a continued political settlement, as examples like Colombia during conflict illustrate. Often these have only a limited geographical purchase – a political settlement can pertain in some parts of a country, while political instability and unsettlement takes place in another part (see for example Northern Ireland, periods of conflict in Colombia, Sri Lanka, India and Pakistan).

Nonetheless, a key distinction between political unsettlement and a political settlement is that during political unsettlement while forms of political order may continue within the formal and informal institutions, political bargaining will also be undertaken through extraordinary use of violence and extraordinary state responses to it. A key distinction between a political settlement and political unsettlement is that the latter involves high levels of organised violence and rapid mutation and even override of the political and legal institutions of the country in response. As a political settlement unravels into unsettlement,

a part of the state's response is often to use the state's institutions and laws to attempt to shore up the status quo settlement in ways that re-shape it, for example offering elements of reform, or conversely by robust forms of emergency legislation and repression. These amendments of the institutional and legal structure of the state often have consequential 'knock-on' implications such as further reform of political and legal institutions and even a new political settlement, but also new patterns of violence. Political unsettlement is therefore characterised not just by political instability but by institutional instability, flux or even override. Indeed, the state structures may paradoxically find a measure of resilience through extraordinary mutation. Within these processes, no political position, no alliance, no interest is set in stone, creating permanent political unsettlement, something that Alex de Waal (2015: 17) describes in terms of a 'joke' about Sudanese politics: 'it changes from week to week but if you come back after ten years it is exactly the same'.

When the state is one whose development outcomes and modes of governance are determined not by its putative political order, but by violent conflict which causes the modes of governance to mutate, then we suggest the situation is best understood as one of political unsettlement.

Literature often understood to underpin political settlement analysis such as that of North et al (2013: 1-23) acknowledges political unsettlement, viewing it as the process whereby political settlements are re-worked from less to more inclusive forms (cf also Khan's concept of 'the political settlement in crisis', Khan, 2010: 59-60). Rooted in historical analysis of state formation, this literature suggests that political settlements evolve over time rather than are made, and that periodic outbursts of political violence characterise exclusive political settlements and forces them to open up to forms of incremental elite inclusion (cf. also Elgin-Cossart et al, 2012: 8). This analysis suggests that violence and political unsettlement triggers a process of either gradual reform or even fundamental state transformation of a very limited political settlement, which over time can produce some new increasingly inclusive political settlement as new contenders for power are accommodated in the political order. This understanding of the reasons for, and outcomes of, political unsettlement view it as having a beginning and an end. This end may not track smoothly, to use North et al's terms, from a violent-prone 'limited access order' to an 'open access order' (2012). Rather many intermediate stages of a more inclusive limited access order which will then need to be further revised by further periods of political instability or 'unsettlement'. However, subsequent periods of political unsettlement will also have a beginning and an end.

Beyond Political settlement and unsettlement

Understanding two options of political settlement and political unsettlement as symbiotic processes of statebuilding which track and switch between each other increasingly does not resonate with the contemporary context in which political settlements are made – three

features of the contemporary statebuilding context make it distinct from the context in which the open access orders of Western states were forged.

In the contemporary world, political unsettlement is often evident as a chronic and long-term condition for fragile and conflict-affected states (hence this terminology). Political unsettlement is characterised by large-scale violence that is unbounded by the state's borders but has implications for regional and even global instability. As a result, political unsettlement has become not just a matter for the domestic state to deal with, but the subject of a wide range of different types of political, legal, military and economic intervention, underwritten by international legal imperatives (see Bell, 2008: 259-84). Unlike when Western states evolved their political settlements, the UN Charter is now in place, and understands intra-state conflict to be a matter of international as well as domestic concern when it threatens wider peace (see Chapters VI and VII), and a range of international legal norms constrain state formation and state-building processes.

Second, violence within states is often understood not just to have public functions, but to intertwine public functions of state formation with private functions such as greed (Collier and Hoeffler, 2004), other forms of personal gain or patriarchy (See Ní Aoláin and McWilliams, 2016), or as a general pattern of state elites in their 'politics of survival' against local 'strongmen' (Migdal, 2001: 71-84).

Third, contemporary processes of achieving a new political settlement are rarely approached as a matter of slow evolution: they are often compressed into high-speed timelines. Where conflict threatens international peace, international actors often refuse to leave violence to sanguinely 'play out' towards some new revised balance of power and political settlement (despite some arguments that they should, see Luttwak, 1999). Rather, ending violence is often understood as an immediate international imperative, to be best achieved through internationally negotiated transitions in the form of 'big bang' mediation projects that attempt to accommodate competing battlefield demands in a new constitutional reform of the state. In stark contrast to the slow evolution of political settlements that took place over hundreds of years in Western states, in conflict-affected states a new holistic political settlement can be attempted in periods of a few years or even months. Where these cannot be achieved and violence threatens powerful external state interests, forms of military intervention can attempt to force a political settlement revision completely endogenously, as in Afghanistan, Iraq, Libya and Syria.

These conditions have produced internationalised peace mediation processes which aim to reach some sort of rudimentary political settlement understood as an agreed common framework for power in which elites agree to acquiesce. These rudimentary settlement terms trigger a post-conflict, or perhaps better 'post peace settlement' reconfiguration of the state's political and legal institutions as a project of statebuilding in which development actors, peacebuilders and military actors are all often involved (Hagmann, 2016). Reaching agreement by its nature involves coupling commitments to end violence with the promise of new structures based on compromise and inclusion of all those involved in fighting in the new dispensation. The institutional techniques of accommodation are surprisingly similar

across regions and very different conflict types (Bell, 2008). At the level of political institutions, power-sharing institutions and complicated territorial devolution of power – separately or together – attempt to bring all the contenders of power who have been using violence into a common framework of governance (Mac Ginty, 2010). However, these ‘deals’ typically also involve an element of compromise between deals focused on inclusion of erstwhile opponents in new power-sharing structures, with legally normative conceptions of democracy and human rights. Often international actors will also be involved as on-going brokers of agreement, and the need to comply with international legal norms and curry favour with international interveners will see the legal institutions of democracy incorporated into the agreement: free and fair elections, human rights frameworks and institutions, and commitments to equality (notably gender equality).

The common elements of peace-making reflect some common dynamics of intra-state conflict: the availability of compromise as often the only realistic vehicle for ending violence; the reality that both domestic and international interveners are stakeholders in what are local-global political settlement processes; and the existence of constraining international legal norms. We suggest that these dynamics propel peace process outcomes which often address the political unsettlement, but rather than producing a new political settlement, produce a phenomenon which we term the ‘formalised political unsettlement’. We suggest that the current global market place means that ‘formalised political unsettlement’ is increasingly compelled as often the only outcome that can be achieved (Carothers and Samet-Marram, 2015).

The characteristics of the formalised political unsettlement

The formalised political unsettlement is so termed because of its key characteristics which we outline here. We seek to distinguish the formalised political unsettlement from either political settlement or political unsettlement as discussed above. While the exact ingredients are different in each case we suggest that formalised political unsettlement has the following common characteristics: (1) it creates a state with political and legal institutions that ‘contain’ as much as resolve the conflict, by establishing group membership and enabling continuing processes of negotiating as much as substantive shared values; (2) it is presented as a temporary and exceptional state configuration to be quickly replaced by a ‘proper’ political settlement, but that the dynamics that produce it mean that it is often indefinite and long-lasting; (3) it is a global-local, genuinely ‘glocal’, configuration with multi-polar sources of authority and legitimacy to a much greater extent than the settled political settlement; (4) it creates a state that has domestic institutions which have fluid and transnational dimensions that give the formalised unsettlement the character of enduring transformation – a permanent ‘unsettledness’. We elaborate each of these characteristics in turn.

First, the formalised political unsettlement manages and contains rather than resolves the conflict, translating it into new political and legal institutions. While settled states revolve around a core commitment to political community, in an agreed territory, between people

that agree on some common values, all of these things are missing in states experiencing political unsettlement. Failure to agree on the basic parameters and legitimacy of a polity is a defining characteristic of political unsettlement. The peace settlement emerges as an agreement by political-military power holders to disagree, but to disagree more peacefully than before. The institutions of the peace settlement operate as a holding device or 'agreement to disagree' by creating a set of political and legal institutions which incorporate not just opposing violent actors, but opposed corporatist or particularistic claims to power. Rather than reflecting agreement to a new political settlement, they reflect – at best – agreement to continue to work out disagreement through a set of temporary and contingent set of institutions rather than through outright violence. However, the peace settlements that result often also respond to international normative and blueprinting pressures, which require commitments to elections and to human rights frameworks characteristic of liberal political institutionalisation which become overlaid on complex power-splitting arrangements. So the peace settlement can be understood to create a zone of middle ground between opposing parties to the conflict, but also a zone of middle ground between the parties' (opposed) corporatist visions of the state and the more universalist vision of the state of international normative actors. All of these actors will use the space of the peace settlement to continue to pursue and negotiate their preferred vision for the state's structures. We suggest that the institutions of the peace settlement, and its underlying dynamics result not in political settlement – as in an agreed state with an agreed set of institutions which can continue to develop and evolve – but a formalised political unsettlement, where institutions are fashioned around fundamental disagreement as to the nature of the state. Whether and how the formalised political unsettlement 'resolves', disintegrates or sustains as a space of unsettlement will depend on the balance of power between these parties. The formalised political unsettlement therefore has no pre-determined normative outcome as a more steady liberal state.

This aspect of the formalised political settlement can be exemplified by the Bosnian example, where the ethno-political divisions of the war became constitutionally enshrined by the means of a peace agreement because constitutional assurances were a necessary part of obtaining a ceasefire. This led to a 'restructuring of power relations' along power-sharing lines that has been criticised as translating the war into political institutions, rather than resolving it (cf. Kaldor, 2016: 153). The agreement in a sense incorporated a tension between a unitary state based on individual and group equality and ethno-politically defined mini-states based on exclusivity. It was clear that this tension would remain central to institutional development. The agreement incorporated rather than resolved the opposing war objectives of the ethno-political contenders for power and of the key international intervenors. Suggestions that the constitutional elements of the deal could have been delayed or separated from the ceasefire (ibid) are unrealistic – getting agreement to a ceasefire required a constitutional deal to be put in place, as the many years of failed agreements and ceasefires illustrate. However, the peace agreement more invisibly included the idea that the territorial and ethnic divisions would be undone over time by robust human rights protections and a right to return, which would gradually build an inclusive shared central state at the expense

of divided entities organised around separation and exclusion. It did so, however, having given the politico-military agendas of division and exclusion a lot of power, by providing for the ethnically defined sub-state entities.

Rather than resolve the conflict, the state make-up and institutions incorporated it, establishing a formalised political unsettlement which requires on-going 'negotiation' between a corporate exercise of power between competing ethno-political groups and a more normative concept of a Bosnian state based on broader social inclusion on the basis of individual human rights and equality. These arrangements have continued to require the involvement of a range of international actors to sustain, all of whom exert pressure for the more normative conception of the state to prevail. The Western liberal democratic signatories of the agreements, the EU, the Council of Europe and even the European Court of Human Rights, continue to 'negotiate' with Bosnian elites over the nature of the state, for example, through finding the Bosnian constitution to violate the European Convention on Human Rights (see *Sejdić and Finci v. Bosnia and Herzegovina* [27996/06 and 34836/06], 22 December 2009, European Court of Human Rights; see further McCrudden and O'Leary, 2013).

Negotiating inclusion in these circumstances involves understanding the forms of inclusion that were on offer in the 1995 Dayton Peace Agreement and the uneasy relationship between inclusion of the ethno-national elites at the heart of the conflict, and broader forms of inclusion. The agreement's main goal of accommodating the three main ethno-political blocks at the heart of the conflict in the state's new structures, was always likely to present structural and political obstacles to the agreement's broader commitments to human rights and equality that underpinned broader less ethno-national oriented forms of inclusion. Yet, over time the incapacity of either internal actors or international intervenors to find a way to move away from the central compromise of the Dayton Peace Agreement is down to the simple fact of 'there is no alternative'. Unravelling the three-way group accommodation and agreement to disagree at the heart of Dayton, risks unravelling the central state structures and with it the only institutions capable of pursuing equality and inclusion across powerful sub-state interests and identities. While remaining paralysed by the group accommodation at their heart, the central state structures are resilient to 'settlement' in some new configuration because they remain the only viable alternative to separation. The case illustrates both the 'unsettled' aspect of the 'formalised political unsettlement' the agreement institutes because it creates a situation whereby resolution of the tensions of the unsettled state structures remains impossible.

Bosnia and the Dayton Peace Agreement therefore also illustrate our second asserted feature of formalised political unsettlement: the dynamic whereby the temporary becomes permanent and resistant to reconfiguration. The formalised political unsettlement, while often presented as being temporary in nature, in practice establishes configurations which are perpetual and long-lasting and characterised by extraordinary institutional flux and change, as the Bosnian example illustrates. While international intervenors often view the formalised political unsettlement as a way-stage en route to political settlement in the form

of an open access order, the parties to the conflict often seek to use them to revert to their contrasting preferred default visions of the state as limited access order. The ensuring *détente* between these quite different visions of the desired political settlement outcome often creates the formalised political unsettlement as in practice indefinite if not permanent. An incremental revision or a fundamental transformation into some more normal or liberal democratic political settlement in practice often appears increasingly unavailable as an option, rather than increasingly available. Despite this, such settlements are fairly successful in ending violent conflict – they often fail to revert into the whole-scale violence of the past and therefore bring an end to outright political unsettlement.

In practice, formalised political unsettlement creates a post-agreement landscape characterised by ongoing radical and extraordinary institutional reform as a ‘way of life’. This reform includes the need for further peace deals or international mediation to secure institutional development, and forms of constitutional crisis and resolution which spin out in unpredictable ‘chain-reactions’. The formalised political unsettlement operates as a space of enduring reform and change. Within it, pragmatic approaches to elite inclusion interact in complex ways with more normative arguments for social inclusion and create situations of constant institutional flux. Formalised political unsettlement is not a ‘bump in the road’ on a peace process road to liberal peace, but it becomes the new normal – hence the term ‘formalised’ political unsettlement. As Tilly (1985) reminds us, the development of liberal statehood was a lengthy, highly violent process taking centuries, which not necessarily led to a full political settlement in all cases (as the unsettled aspects of states like the UK, Spain, or Belgium, to name just three, demonstrate). Given the diverse identity and political claims in contemporary conflict situations and the complex functions of violence, any idea of crafting a single, working, participative and inclusionary political settlement remains a chimera. Assuming that stable political settlement is on offer can repeat the common mistake of development policy of trying to reproduce ideal types of society and people in the tropes, a bad habit that can be traced back to colonial policy (Escobar, 1995: 43).

The third characteristic of the formalised political unsettlement is its ‘glocalised’ hybrid political order (Boege et al, 2009) in which internal and external, international, national, and local actors all mutually negotiate not just the terms of any emergent political settlement, but their mutual legitimacy to define and shape this political settlement. Often politics is transacted in what would be considered ‘extra-ordinary’ legal and political institutions often involving amalgams of local and international actors, and extra-national constitutional, legal and political processes of change that again stand in contrast to the institutions and modes of change that characterise political settlement. Examples abound, such as the internationalised judiciary of Bosnia Herzegovina, and the Office of the High Representative which included legislative functions form; or the regional observatories on genocide planned in Burundi’s Arusha Accords, or indeed new forms of fully blown international transitional administration in Kosovo, Iraq and Afghanistan. International actors are involved all through post-conflict terrains, as funders, international experts in institutional reform, formal adjudicators on issues such as human rights, managers of key public services, and on-going mediators of revisions to the peace agreement through new structured negotiations.

Again literature often characterises this hybridity as temporary and dysfunctional, and something which must give way to normal functional domestic institutions. However, international-domestic hybridity itself is a function of the lack of consent at the heart of the state, and speaks to the different forms of authority and legitimacy which must underwrite and sustain ends to conflict. As Mac Ginty and Richmond (2015: 233) note 'hybridity offers insights into the conditions for legitimacy in context as well as the mediation of power; hybrid forms of peace are connected to both emancipation as well as to the defence of existing customs and power structures'. Both appeals to local power structures based on elite deals and to international norms that would open these beyond pure corporate self-interest have a legitimacy and push each other to articulate the basis for their authority in a form of 'legitimacy game' (for this notion see Van Rooy, 2004). In this game, again in contrast to the political settlement, what might give the state legitimacy is understood to be up for grabs, and itself to be negotiated rather than assumed. Moreover, this hybridity tends to continue indefinitely as a new 'way of life': for example even in the Western democratic setting of Northern Ireland, within the jurisdiction of the UK, a state so strong that is one of the permanent five members of the UN Security Council, structured externally negotiated agreements and sub-agreements and reform processes characterise the post-agreement landscape almost twenty years after the peace agreement was signed (see e.g. the 2014 Stormont House Agreement, and the 2015 'A Fresh Start' Stormont Agreement and Implementation Plan).

Fourth, the formalised political unsettlement creates spaces which are hybrid between delivering substance and process in the form of a peculiar political and legal institutionalisation. The settlements described above were fudges between law, politics and society, with process being as significant as outcome. In one sense, political and legal institutions are constituted as pure vehicles for continuing the process of talking and negotiating over the terms of a political settlement with little 'real' agreement over what the parameters and possibilities of any such settlement might be. The new structures of the peace settlement often operate to shift the conflict from the arena of violent battlefield, to the arena of the new political and legal institutions of the formalised political unsettlement. Yet, this also offers some embryonic substantive vision of the new 'state': the institutionalisation of 'unsettlement' itself becomes a new form of political settlement because fixed political frameworks are not plausible in conflict-affected states. However, the formalised unsettlement can also be understood as a new conceptualisation of the state as capable of keeping its ultimate configuration of inclusion open and capable of being contested in an ongoing way (hence the terms 'unsettlement'). The Darfur negotiations, continuing now for over a decade, are a particularly striking example. Two key agreements – the 2006 Abuja Agreement and the 2011 Doha Agreement – provide a formal framework of institutionalisation, around which informal bargaining, deal brokering, and alliance forming takes place. This all is happening within two parallel processes of formal institutions, the Sudanese state structures, and the hybrid African Union/United Nations peacekeeping mission UNAMID, in a state in which political positions, alliances, and interests all continually shift-shape.

Negotiating inclusion in the space of the formalised political unsettlement

The formalised political unsettlement can appear deeply unattractive to those who seek a more certain closure of the conflict in a more normal political settlement. It gives neither of the conflict parties the state they want – paradoxically this is why it is agreed on. To normative international interveners it is also unsatisfactory because it does not offer the closure, stability and accepted ways of doing business of the traditional liberal democratic state. In contrast to the liberal democratic political settlements, the formalised political unsettlement appears inherently unstable both politically and institutionally. It appears to promote forms of elite inclusion and even reinforce competing identities at the expense of other forms of social inclusion and other identities. Substantively it often appears to also trade off political pragmatism against the rule of law, and often to require ongoing forms of extraordinary political and legal change that undermine the idea of stable institutionalisation. Nonetheless, we suggest that the ‘formalised political unsettlement’ is increasingly implicitly recognised and grappled as a phenomenon by a series of quite different statebuilding discourses happening across peacebuilding, development, international legal and constitutional fields of study.

Given the inevitability of the formalised political unsettlement, rather than add to critiques of it that point out its deficiencies as a mechanism for achieving stable inclusive political settlement, we consider whether it might have some positive attributes. What are the ‘positives’ of the formalised political unsettlement for projects of inclusion, if any? If we have to live with the formalised political unsettlement, what potential does it hold for continuing to negotiate inclusion that might be worth considering and building on? How might we better understand and navigate struggles for inclusion within its structures?

If one moves beyond simple calls for formalised political unsettlement to simply be replaced with some sort of ‘more normal’ political settlement, surprising possibilities and strategies for broader social inclusion present. We point to three main opportunities for inclusion of the formalised political unsettlement that derive directly from its peculiar institutional formalisation and apparent deficits, although we also treat these with caution.

First, the formalised political unsettlement offers institutional possibilities for addressing deep identity and political divisions that have resulted in group claims which traditional liberal democratic structures have found difficult to address. The formalised political unsettlement usefully acknowledges that while individuals have rights as individuals, it is often through their identity as members of groups that exclusion and discrimination occur, reinforcing identity-based challenges to the state. The formalised political unsettlement signals and therefore reinforces that notions of ‘democratisation’ or ‘good governance’ as inadequate to sorting out situations of fundamental and violent disagreement between groups over what the demos, polis and territory of the state should be.

The compromised institutions of formalised political unsettlement are premised on the notion that any stable future depends on inclusion of those groups with incentive and

capacity to destabilise the state. It thus responds to the failure of liberal democratic structures to adequately respond to minority claims for inclusion: the formalised political unsettlement is predicated on a project of group inclusion that traditional liberal democracy has found elusive. Given that political settlement discourse is itself a response to the failures of liberal democratic institutionalist approach in violently divided societies it is worth considering the ways in which the formalised political unsettlement remedies some of the failures of liberal democracy with regards to group identities and cleavages. Once group inclusion is understood as important to democratic project models of formalised political unsettlement, that achieve an element of compromise between group and individual models of democracy can be considered; as O'Leary (2005) notes, more liberal versions of consociationalism can constitute a form of 'principled realism' – realistic because they recognise competing group identities, and principled because they create a framework that is consistent with liberal democracy's commitment to elections and human rights. Rather than bemoan the compromise it is worth considering how to better reconcile the tensions between the different types of inclusion and equality that these arrangements offer.

Second, because the formalised political unsettlement is characterised by political and institutional fluidity it can offer opportunities and tools for re-working and revising the political settlement that enable groups that have lost out to the central deal even at the moment of the peace agreement, to push for greater inclusion over time. As described above, the political unsettlement is characterised by perpetual reform and institutional fluidity, with concerted participation by local and international actors. It therefore offers the possibility of a continual re-working of the concept of inclusion, where traditional political settlement often attempts 'closure'. So, for example, post-agreement, transitional charters or interim constitutions often set in train processes of on-going constitutional reform, which in being unsettling leave open the possibility of new forms of inclusion. For example, even when not included in peace agreements, quotas for women are often subsequently included in new legislatures because they are easier to secure in moments of transition and particularly ones which have already validated the concept of participation on the basis of group membership rather than just as individuals (Bell, 2015b). Because the formalised political unsettlement creates the state's institutions as vehicles for on-going negotiation over the purpose and nature of the state, it can enable women and minorities who have lost out at the moment of the peace agreement deal, to continue to have avenues from which to pursue fundamental change involving increased inclusion. The formalised political unsettlement may even have some advantages for women and minorities over political settlement contexts which require extraordinary consensus to change the terms of the settlement that can never be reached by them (see failed attempts to change US equal protection clause). Unlike with political settlements, the formalised political settlement contains a complex mix of national and transnational tools and reform processes through which to pursue on-going redefinition of the state's terms for inclusion, that are more difficult to access from the confines of the liberal democratic state (cf. Tully, 1995; O'Rourke, 2013).

Third, multi-polar reference points of the formalised political unsettlement can prove useful in enabling international and domestic visions of an inclusive future to hold each other in check. The formalised political unsettlement is generated from the interaction both of local elites with each other and with international actors to whom other social groupings can then appeal when they do not like the shape of the elite deal (see O'Rourke, 2013). While the political settlement has traditionally been unipolar and territorially bounded in nature – a settlement that exists at the level of the domestic state to govern the domestic population – the formalised political unsettlement has a range of internal and external progenitors. Its multipolar reference points and sources of alternative legitimacies tend to give international law and organisations a heightened domestic role in ways that enable new claims for inclusion. The formalised political unsettlement also 'domesticises' international actors in ways that also see calls for their own roles and accountability mechanisms to be revised with a reference to how they deal with inclusion (Bertram, 1995). Rather than having a domestic political settlement that is 'intervened on' by international actors, the formalised political unsettlement often creates a political space in which both domestic and international actors both assert legitimacy to act. Internal and internationalised political and legal orders must negotiate their respective legitimacy with each other with regard to processes of state formation and agendas for inclusion. The formalised political unsettlement must articulate its legitimacy with respect to both its appeal to be a framework in which opponents will acquiesce to end war, but also one which complies with international norms which promote equality and human rights.

Finally, the formalised political unsettlement seems to hold out new possibilities for resolving the symbolic exclusions of a unitary statehood 'owned' by one part of the population in situations of ethnic, racial or religious diversity. Political settlements often adopt an all-or-nothing approach to what Walker (2014) has called 'threshold' questions of 'which state' that permeate self-determination disputes rooted in identity claims as wrapped up with claims of inequality and exclusion. If the state is viewed as having a unitary connection with a unitary concept of the political community it serves, there are likely to be winners and losers where the polity in practice is deeply divided. In contrast, the formalised political unsettlement constructs the state as linked to diverse concepts of statehood in ways that promote inclusion of groups previously excluded. So the question of 'which state' should prevail, which fuels identity-based self-determination claims, can be transcended by understanding the question as not requiring black and white all-or-nothing answers, but as involving matters of degree. So in Northern Ireland the formalised political unsettlement of the Belfast or Good Friday Agreement has attempted to construct a state in which Protestant Unionists can understand themselves to have stabilised Northern Ireland within the Union (with the UK) by ending violence and agreeing to include the Nationalist minority in power-sharing devolved political institutions; Catholic Irish Nationalists, at the same time, can understand themselves to in some sense be in a rolling United Ireland given effect to by the post-state island-wide North-South mechanisms of the agreement; and 'others' can understand the agreement to have created a political structure which is based primarily on equality that has legal and institutional protections which go well beyond the 'two main

communities' and create a 'bi-national' or even 'post-national' state configuration that may even help re-shape identity-based claims.

The formalised political unsettlement leaves all these visions of the future remain open and contingent. In a deep sense, the formalised political unsettlement constructs the state as plurinational. In so doing, it breaks the link of the state to a unitary and singular expression of political and cultural identity, by creating a forms of institutionalisation that can sit more easily with competing identity claims because they incorporate and translate these claims into an uneasy and unsettled into institutional formation through which to continue to negotiate their mutual accommodation.

Conclusion

Of course, this vision of the positive attributes of the formalised political unsettlement appear almost naively optimistic, and we accept that. The formalised political unsettlement is perhaps best known for creating an unsatisfactory 'no-war-no-peace' phenomenon, in which women and minorities find themselves excluded from a new inter-elite deal which sustains precariously and problematically if at all. None of its opportunities for inclusion are easy. However, if we are to move beyond analysis of the formalised political settlement to prognosis, we suggest that it might be more productive for international intervenors to understand the terrain of the formalised political unsettlement and the opportunities and challenges it holds for different forms of inclusion, than to constantly regret its imperfections.

In summary, we have suggested an important distinction between situations involving political settlement, and situations involving political unsettlement. We argue that in the contemporary world, the response to political unsettlement has resulted not in new political settlements, but in what we have termed new 'formalised political settlements'. Formalised political unsettlement is often the only available alternative to an absence of political settlement because a transformed settlement with settled institutional arrangements is not possible. Influenced by the work of Neil Walker (2014), we suggest that formalised political unsettlement is now propelled as a response to the global-local condition. In other words, we suggest that the current global condition combined with local conflict resolution imperatives produces the formalised political unsettlement as increasingly the only possible outcome for conflicted states. The formalised political unsettlement of post-conflict states is founded on the attempt to reconcile the different forms of elite inclusion viewed necessary to sustaining and legitimising the state, coupled with international pressures to compromise with a more normative vision of the state based on rights and equality. It has emerged therefore both as a result of incorporating competing local visions of the state, and also as the product of local-global statebuilding tensions.

Rather than bemoan the limitations and imperfections of the formalised political unsettlement – and it has many – we suggest it should be engaged with as a new temporary-permanent form of state institutionalisation that is here to stay whether we like it or not. Such an approach attempts to move beyond noting that elite inclusion and

broader societal inclusion may be at odds, towards seeking to understand the ways in which different actors use claims to inclusion to shape the institutionalisation of the formalised political unsettlement, and to what effect.

We therefore suggest that the space of the formalised political unsettlement needs to be better understood, and that many of the deficits and dilemmas of political settlement presented in this volume can be better addressed by understanding the opportunities and challenges for inclusion which the formalised political unsettlement presents.

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