

STATE-BUILDING II: ISSUES OF DESIGN AND IMPLEMENTATION

STATE-BUILDING AND THE POLITICAL TRANSITION AFTER CONFLICT

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State-building after conflict must ensure a successful political transition, which requires both the cessation of the conflict and the establishment of a democratic state. These are important, and at times contradictory, aims. As we learned in Liberia and Haiti the first time around, conflict cessation without modification of the political environment, even where state-building is undertaken through a technical focus on elections, institution or capacity building, seems doomed to failure. As Amos Sawyer, former president of Liberia, recently commented, “The state we produced turned out to be a criminal state, legitimized by elections.”¹

To be sustainable, state-building after conflict must assist in transforming the society from one that resorts to violence to one that resorts to political means to resolve conflict. Participatory democratic governance structures are assumed to best ensure long-term domestic peace, and thus state-building must assist the state to develop new governance structures and political rules of the game that are consistent with a democratic state. These governance structures must also address or overcome the grievances that led to war in the first place to minimize the chances of a return to conflict. Unsurprisingly, designing processes and governance frameworks that achieve these aims is a matter of considerable challenge.

REPRESENTATIVENESS AND PARTICIPATION IN THE TRANSITIONAL PROCESSES

Increasingly, it is agreed that the greater the inclusivity and participation in the process leading to the agreement and the political process, the greater the legitimacy and sustainability of the state-building. For instance, the dramatic difference between the outcome of the “pacted”² transitions in Latin America, which largely resulted in weak democracies in the longer term, and the experience in Spain, which resulted in a consolidated stable democracy, is considered to turn on the inclusivity and representativeness of the participants in the process.³

In fact, a consensus may be crystallizing around a multistep process that adopts increasingly participatory and inclusive processes. The South African process is often held up as a model for this approach. It adopted a staged transition process with increasingly participatory steps. Under Mr. Brahimi’s guidance in Afghanistan, the Bonn agreement similarly set out a staged process that was increasingly participatory and inclusive, thus incrementally improving the resulting legitimacy of the new government.

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¹ Interview with Amos Sawyer, former president of Liberia, in New York, N.Y. (Mar. 28, 2005).

² A political pact is defined as “an explicit, but not always publicly explicated or justified, agreement among a select set of actors which seek to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it.” GUILLERMO O’DONNELL & PHILIPPE C. SCHMITTER, *TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES* 37 (1986).

³ Omar Encarnacio, *Do Political Pacts Freeze Democracy? Spanish and South American Lessons*, 28 W. EUR. POL. 182 (2005).

Nonetheless, these lessons have not been incorporated in the design of new state-building missions, as the mission in Haiti (II) illustrates, and require difficult balancing of the need to achieve cessation of conflict with the need to create a legitimate democratic state. The advantage of a staged process is that a transition can be made from early agreements, which focus more on what is required for immediate cessation of the conflict, to later more representative and participatory discussions of what sort of state the people want and how it should be governed.

UNDERTAKING GOVERNANCE REFORM THROUGH CONSTITUTIONAL DRAFTING

Constitutions adopted in postconflict environments tend to be both constitutive and transformative. They are the foundation of the new democratic state but are also aspirational in that their provisions do not reflect the current reality. They also play a conflict-resolution role. However, before considering the impact of common governance options, it is important to acknowledge the inherent limitations of constitutional engineering.

Any attempt to change basic system rules in society through constitutional or institutional reform faces considerable challenges, particularly path-dependency, political transaction costs, and inertia. There is an emerging consensus that formal institutions will only be effective where they do not conflict with informal ones.⁴ Ian Spears rightly points out that there has been little success in the attempts to change political systems based on patrimonial relationships.⁵

Therefore, expectations must be realistic. It would be wrong to expect constitutional reform to overcome long entrenched informal and institutional practices unless there is substantial domestic support for the changes. Nevertheless, the design of new rules can, when accompanied by appropriate incentives, set a new agenda, change the rules of the game, and begin a process of reform.

ADDRESSING DIVISION AND ENSURING MODERATION

One of the primary governance choices in postconflict environments is how to address division and ensure moderation. Consociational power-sharing and integrative governance models are the two main alternatives to the pure majoritarian democratic model which is considered unsuited to postconflict and highly divided societies. Consociational power-sharing involves power sharing between cooperative but autonomous groups,⁶ whereas integrative governance aims to transcend group differences by encouraging groups to cooperate around common political goals.⁷ The debate over which approach is more appropriate remains unresolved.

Power sharing and governments of national unity have played important roles in assuring the peace, particularly in periods of transition. In South Africa, the government of national

⁴ MICHAEL BRATTON & NICOLAS VAN DE WALLE, *DEMOCRATIC EXPERIMENTS IN AFRICA: REGIME TRANSITIONS IN COMPARATIVE PERSPECTIVE* (1997); J. Bayo Adekanye, *Power-Sharing in Multi-Ethnic Political Systems*, 29 SECURITY DIALOGUE 25 (1998).

⁵ Ian Spears, *Africa: The Limits of Power-Sharing*, 13 J. DEMOCRACY 123, 130 (2002).

⁶ Ulrich Schneckener, *Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation*, INIIS-ARBEITSPAPEIR NR 19/2000, INSTITUT FÜR INTERKULTURELLE UND INTERNATIONALE STUDIEN, UNIVERSITÄT BREMEN 4 (2002).

⁷ I adopt terminology from Robin Luckham et al., *Democratic Institutions and Democratic Politics*, in CAN DEMOCRACY BE DESIGNED?: THE POLITICS OF INSTITUTIONAL CHOICE IN CONFLICT-TORN SOCIETIES 14, 45 (Sunil Bastian & Robin Luckham eds., 2003).

unity relied upon during the transition played an important role in ensuring a peaceful transition. However, the more difficult question is whether power-sharing structures should be adopted in the longer term as a form of institutional protection of different groups.

This issue again reveals difficult contradictions. On the one hand, a study by Caroline Hartzell and Matthew Hoddie shows that likelihood of return to civil war following the signing of a peace agreement was decreased by 53% for each category of power sharing included in the agreement.⁸ On the other hand, such agreements may have the perverse effect of entrenching the ethnic and divisive positions that have fuelled the conflict, ultimately resulting in a return to conflict (as they did in Northern Ireland or Lebanon).⁹

Another key choice is that of the electoral system. In the postconflict context, elections themselves are highly divisive and can easily undermine the chance of building a sustainable democracy. One of the major debates in this field has been whether a proportional representational model (PR) (where the proportion of votes a party receives is reflected in the number of seats it holds in parliament) or a variation on a majoritarian model such as the alternative vote model (AV) (where electors rank the parties in order of preference and votes are allocated through these preferences until a winner emerges) is best able to ensure the required moderation and representativeness.

The consociational PR model has been criticized for not truly requiring compromise by parties on divisive issues, as it does not require candidate parties and coalitions to attract votes across group lines. However, vote pooling has also had unexpected damaging consequences in some instances where it ended up redistributing preferences to extreme parties when moderate parties were eliminated in early rounds, as it did recently in Fiji.

WEAK CHECKS-AND-BALANCES INSTITUTIONS AFTER CONFLICT

In postconflict environments the executive has consistently proved itself very dominant. This has tended to be exacerbated by the institutional weakness of the parliament and the courts, which in established democracies play a key role in overseeing and balancing the executive. In East Timor, an extreme example, most parliamentarians have no experience in drafting legislation and do not read the language in which the laws are written. Thus the parliament is largely bypassed by the government.

Hence traditional approaches to checks and balances may be ineffective in such environments. More innovative governance planning may be required to take into account the weakness of such institutions (and particularly the parliament and the courts) when designing a governance framework or electoral model in a postconflict environment. However, this has so far not been attempted.

CONCLUSION

The design of a governance framework is a difficult task. In a postconflict environment, which tends to be highly polarized, a governance framework that is robust enough to deal with conflict and contestation and that favors moderation is required. However, there is a

⁸ Caroline Hartzell & Matthew Hoddie, *Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management*, 47 AM. J. POL. SCI. 318, 327 (2003).

⁹ Donald Rothchild, *Settlement Terms and Postagreement Stability*, in ENDING CIVIL WARS: THE IMPLEMENTATION OF PEACE AGREEMENTS 117, 118 (Stephen John Stedman et al. eds., 2002).

substantial knowledge gap surrounding the impact of different governance choices in postconflict environments. Key questions of what governance framework and electoral model best prevents a return to conflict or the consolidation of democracy remain unresolved.

This is partly due to the fact that such governance structures involve a complex interaction between various institutions and processes and a particular historical and cultural environment which renders their design somewhat speculative. It is also the result of the highly polarized nature of the debate over consociationalism and the lack of systematic studies of the impact of governance choices in postconflict cases.

Moreover, even if the requisite knowledge and expertise of how best to design such frameworks for particular conflict environments were available, the influence on substantive choices is limited. The drafting of a constitution is a sovereign process, and in the end, *at most*, international actors can advise on appropriate options.

This leads to the final point, which is the importance of process. Insistence on a participatory and inclusive process does not undermine the sovereignty of the state. It is an inherent value in democratic theory. The key value of a participatory process in these circumstances will be that it can be used to create consensus, tie in potential spoilers, and most important, it can be hoped that inclusion of representatives of a broader cross section of the population will generally result in less divisive and more balanced outcomes that will be more suitable to the long-term stability of the state.