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Recrafting the national imaginary and the new “vanguardism”

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An opportunity exists to assess the limitations in building long-term peace in post-conflict states, particularly given the extent to which negotiated settlements incorporate demands for democratic mechanisms. By assessing how post-conflict governments construct new majorities through policy tools as well as assessing how they are constrained by the structural realities of negotiated settlements, we gain some purchase on the reasons why some post-conflict state projects succeed while others fail. This has potentially transformative implications for our understanding of how social contracts, and their attendant issues of consent, dissent, and legitimacy, operate in the modern world and the ways they impact such critical discussions as democratic transition, post-conflict reconciliation, and nation-building. We use the case of post-apartheid South Africa to analyse how post-conflict states are limited in terms of forging social contracts among citizens and between citizens and governments. Of specific interest is the way that post-conflict social contracting compels nation-builders to eschew the uncertainties of viable electoral democracy in favour of dominant party regimes or electoral authoritarianism. We suggest that this tension is less a result of pecuniary interest on the part of nation-builders and more a consequence of the imperfections of the modern social contracting process.

Keywords: post-conflict states; social contracts; dominant parties; South Africa; African National Congress

Introduction

Scholars assessing the negotiated ends of conflicts have focused intently upon questions of power-sharing, autonomy, and intervention by international actors.¹ These accounts, while yielding an array of empirical assessments, have limitations. As Downes notes, negotiated settlements are not only rare, they are also fraught with opportunities for participants to mistrust the intentions of other groups, thereby imperiling future peace.² Paris argues that the propensity to focus on procedural democracy and economic liberalization as the best tools for ameliorating conflict tends to secure, at best, a brittle peace in the short-term at the expense of robust long-term democratic institutionalization.³ In particular, post-conflict

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democracy-building encounters the inconsistencies between democratic political life (which requires some degree of mutual trust) and extant realities of collective fears of state exploitation.

In this article we make two broad claims. First, we argue that conflict settlements, while necessary for ending violence, are not effective mechanisms for establishing social contracts that can allow democratic rule to prosper over the long-term. These negotiations merely yield an opportunity for groups to engage in the construction of mutual expectations of collective government, a process that takes many years and is unlikely to be secured in the negotiation process. Instead, we argue that modern states, particularly those in the post-colonial world, are often compelled to seek out a second-best strategy when trying to devise such contracts. This strategy requires the skillful deployment of public policies that can quickly secure legitimacy among a majority of a population partly by delineating precisely who in the new polity is able to make claims on the state and who cannot. This strategy is “second-best” in the sense that the new social contract is less about the mutual construction of legitimacy by new governments and members of a population granting their consent, but rather consists of the construction of a new national imaginary that legitimizes a dominant community who can make moral claims about the right to rule.

Second, we suggest that the tendency to one-party rule/competitive authoritarianism observed in many post-conflict states is only partly about securing access to the rents of legitimate government dominance. While there is no doubt that the perquisites of power can yield economic outcomes preferable for political elites, the real benefit of state control is measured in terms of survival of minority communities, regimes, and parties in power. Previously excluded communities can only secure survival through domination of the state. Economic rents are merely a positive externality, albeit a very fruitful one. Following Horowitz we suggest that control of the state becomes an integral part of the calculus of emergent political elites owing to the felt need to limit the opportunities available to competing nation-builders to undermine the new post-conflict nation project.⁴ The process of social contracting becomes, in effect, an act of advancing one set of narratives of state ownership over others. Once such a narrative is established and the group advancing the “winning” narrative can credibly claim to rule in the name of the new social order competing narratives are characterized as an existential threat to the state (which they may be), rather than a mode of democratic dissent. Through this process of capturing the narrative of the new state project, the “winners” of the past conflict undermine the nature of democratic competition and raise the stakes inherent in every election, making it not so much a choice among competing policy platforms as a referendum on the success of the newly formed state.

Our argument will proceed as follows. First, we will discuss how, in the aftermath of conflict, democratic reforms are constrained by the tendency of dominant parties to capture the narrative of the new social order. We suggest that this is a consequence of the ways the international system prevents the “correct” negotiation of social contracts. Second, we will show how this propensity for one set of elites to

capture the democratic project, while often pursued in the name of establishing unity, has the potential to reduce the available means of political discourse for dissenting communities. Finally, we will explore the implications of this in terms of how post-conflict democracies emerge and develop. Taken together, our account suggests that there exist incompatibilities between the long-term goals of inclusive and democratic nation-building on the part of political elites and short-term incentives that compel emergent elites to corner the market on political authority in order to preserve the project in light of democratic competition.

We will use post-apartheid South Africa as our case study because of the country's legacies of colonial domination and apartheid. The negotiated emergence of an inclusive democracy provides an interesting case of precisely how new regimes, emerging from a former system characterized by brutal histories, can try to recast new social orders in a more inclusive way. This is particularly evident in the South African case given the role of the African National Congress (ANC)-led government in implementing policies aimed at renegotiating social contracts with an eye towards (understandably) delegitimizing the past. At the same time, these noble efforts have occurred in such a way as to limit the capacities of citizens to make individual judgements about the legitimacy of the new social order. Specifically, we argue that the incompatibilities of contemporary understandings of internal and external sovereignty on the one hand and the requisites of building social contracts on the other have led to a situation where the post-apartheid state is only conceivable in the context of ANC dominance. The ANC, despite its laudable commitment to building an inclusive political order, has captured the narrative of the post-apartheid state in a way that characterizes competing parties and social movements as reactionary organizations that are inconsistent with the new South African project, a project that is increasingly inseparable from the political fortunes of the ANC.

Social contracts in the post-conflict world and the new “vanguardism”

There has been something of a mini-resurgence of attention to social contracting in the post-colonial world in recent years by scholars analysing such disparate areas as health policy,⁵ food security,⁶ and economic development.⁷ These approaches tend to make two errors. First, they problematically assume that social contracts are an inevitable result of the state merely “getting out of the way” and allowing civil society to go about the business of ordering human affairs. Second, and more alarmingly, they assume that social contracting mechanisms in the contemporary world are comparable to the mechanisms that allowed European nation states to emerge. As Nussbaum argues, the fatal flaw of contemporary contractarian accounts is the image of “. . . people choosing to depart from the state of nature only when they have found principles by which to live a co-operative life together”.⁸

Social contracts, as theorized by thinkers from Hobbes through Nussbaum, are based on a two-fold system of consent.⁹ The first-order contract, what Locke calls the contract of each with all, forms the basis of society. Through their consent, each

person agrees to live in common society with every other person. This contract forms the basis of the second-order contract, which is forged between the society created by the first contract and the centralized bureaucratic apparatus of government. These two contracts, the contract forming society and the contract forming government, are the basis of legitimate governance. To invoke the “consent of the governed” in evaluations of political legitimacy, from a social contract point of view, is to see the very aspect of living in society as consent-based and a product of mutual agreement. By living in society that is governed by central authority, the parties to the contract reap the benefits of third-party dispute adjudication and protection of private property.

Later developments of the social contract tradition have questioned the bases from which contracts are derived.¹⁰ Still others have rejected formerly central parts of the contractarian thesis, while still laying claim to the idea of a two-step process through which contracts are forged.¹¹ The voluntary association in society, whether synthetic or natural, is central to the later contract with government.

Unfortunately the processes necessary to develop viable social contracts both among citizens and between citizens and their governments are complicated in post-conflict states for several reasons. First, many post-conflict states are constructs of colonialism and not of collective decisions by citizens to live in political community. Indeed, it may be the case that the higher rates of internal conflict we observe in the post-colonial world¹² are a product of the overall lack of first-order contracts among citizens who may share some poorly enforced legal status as members of a common state, but lack the sense of shared fate needed to build imagined communities.

Second, because the international system is disinclined to allow secession, except in very rare circumstances, post-conflict states are afforded few options to reconstitute themselves in such a way as to better reflect the inherent tensions that may limit the construction of social contracts.¹³ People are, for good or ill, essentially stuck with the state they have and the fellow citizens who lie within its borders. To be sure, this situation characterizes advanced industrial democracies and other “mature” nation states as well. The key difference, however, is that these states emerged in their current form after many centuries of conflict, both internal and external, where borders changed, new states rose and fell, and citizens developed common cultures based on vernacular languages, religion, and common notions of historical fate.¹⁴ Moreover, as bellicose theorists of the state note, sovereigns were compelled to treat with at least some of their subjects in order to acquire the revenues needed for self-defence.¹⁵ Of critical significance, these mature nation states developed the norms and customs that underlie their social contracts in an era where the international system could scarcely guarantee their existence.

Taken together, in the absence of viable first-order social contracts among citizens, the leaders of post-conflict states are compelled to craft second-order agreements with citizens with no real guarantee that individual citizens will provide consent. Legacies of recent conflict, where memories of violence are fresh in the

memories of those charged with participating in a new social contract, make the incorporation of disparate communities into a broad social body a unique challenge in post-conflict states. Given such uncertainty, it is unsurprising that many post-conflict governments are accused of serving narrow sectarian interests. Simply put, these strategies are the only ones that provide even a rudimentary probability of navigating the collective action problems inherent in building social order.

There are clear qualitative differences between “advanced” democracies (Iceland, the United Kingdom, Japan) and “developing” democracies (South Africa, Indonesia, Bolivia) in terms of the content of contentious politics. Contentious issues in the former states are generally not viewed as usurping the foundations of the state itself (that is, environmental movements). We assume this to be a result of the historic legacies of advanced democracies characterized by the assimilation, often forced, of peripheral groups into dominant national projects. Also important is the fact that social contracts, as we broadly understand them, were developed in such a way as to more effectively link citizen identities and the national project in modern advanced democracies. Generally speaking, and building on Robert Jackson and Carl Rosberg’s focus on the distinction between juridical and empirical statehood, we suggest that this is largely not the case in most post-colonial polities that emerged after World War II.¹⁶ Contentious issues in these states are viewed as generally non-negotiable, zero-sum, and directly related to the distribution of exclusive and scarce resources. These resources can be symbolic (who belongs), pecuniary (who is enriched), and political (whose opinions matter). The distribution of these resources potentially usurps the hegemonic foundations of state legitimacy.

In developing democracies there is a clear record of political parties trying to capture the narrative of legitimacy in the name of autochthonous privilege.¹⁷ These parties often emerge in the immediate period preceding independence and serve as key actors in struggles against prior regimes of colonial administrations. Upon achieving independence or political transition parties of this sort reframe themselves as a “vanguard” with the capture of the narrative of the struggle for political transition. The party makes its story inseparable from the story of the new nation’s birth.¹⁸ This is not to say that the party in question and its members were not integral to the process of political change, but rather that there exist incentives to downplay the contributions of others. The contributions of others to the independence movement present a threat to the living narrative of the revolutionary struggle. Consequently, these contributions must either be expunged from the collective memory or absorbed into the vanguard party’s broader story. By characterizing itself as the group that shepherded the newly independent state out of the colonial/authoritarian period and into its newly sovereign status the vanguard party has a powerful advantage over competitors. It can always claim that it is the party of independence and freedom, regardless of its policy platform. Competing parties are characterized as interlopers, reactionaries, or enemies of the general will.

The rhetorical deligitimization of democratic opposition runs counter to liberal tropes of democratic competition, but it bears emphasizing that the types of

collective action dilemmas affecting post-conflict democracy-building projects cannot easily carry the weight of wide-scale social conflicts about the hegemonic discourses of the new state. Where hegemony is not present, it must be constructed. Anything less makes social order, the very thing the modern state system desires, impossible. Unfortunately, as Jai Kwan Jung notes, peace settlements that require the use of electoral democracy and power-sharing as part of the peace-building process are likely to compel formerly warring parties to look at their own mobilized communities as their only viable constituency, making democratic consolidation difficult to achieve over the long run.¹⁹ The paradox is that while inclusively democratic state-builders may want a social order built on open-order institutions and norms, they are compelled to capture the new state's narrative and rhetorically limit political participation by groups affiliated with the previous regime. In the face of this, they are forced to design social contracts that immediately privilege their own status as the dominant majority with an eye to perpetuating that status indefinitely. Put simply, they legitimize themselves by delegitimizing everyone else.

South Africa

This tale occurs in many places. Broadly conceived, it explains the emergence of the dominant Congress Party in India throughout much of the twentieth century, efforts by Mexico's PRI (*Partido Revolucionario Institucional* or Institutional Revolutionary Party) to retain power for decades in the face of credible claims by opponents that the party had abandoned its revolutionary foundations, the justifications employed by supporters of Zimbabwe's ZANU-PF (Zimbabwe African National Union-Patriotic Front) to terrorize political opponents and minorities, and emergent political discourses in Iraq where the very boundaries of broad-based Iraqi nationhood are forming. The outcome of this story varies, however. In some cases, such as India, the participatory model introduced by the dominant party has arguably led to the inculcation of democratic norms that have made Indian democracy healthy and vibrant.²⁰ Conversely, the Zimbabwean case tragically demonstrates the potentials for state-sponsored terrorism carried out in the name of preserving the democratic character of the revolutionary movement.

South Africa's democratic transition is reflective of the tendency for post-conflict states to emerge with decidedly democratic ambitions while being limited by the general absence of first and second-order contracting mechanisms. The negotiated end of conflict is not necessarily the same as social contract negotiation and is certainly not sufficient to generate the legitimacy needed to compel effective governance. Rather, terms of peace agreements are often inconsistent with the long-term expectations of negotiating parties. In the face of the limitations set forth by such negotiations, political leaders committed to democratic governance are compelled to build legitimacy through *ex post* social contracts within the frameworks established by such negotiations. In South Africa, these negotiations were principally carried out under two plenary sessions of the Convention

for a Democratic South Africa (CODESA) in 1991–1992, although a number of other negotiations served to refine the expectations of a transition to majority rule.²¹ As Glaser notes, these negotiations yielded a set of expectations that laid the groundwork for the 1994 elections. Significantly:

The price which the ANC had to agree in exchange for a settlement approximating to liberal-democratic majority rule included constraints on bureaucratic reform, a pro-market economic policy reorientation and interim power-sharing arrangements. The 1992 turning point was decisive for enabling the black majority's representatives to win real governmental power, but did not place in their hands the instruments of fundamental social change.²²

These negotiations may have been necessary to advance the process of democratic reform in South Africa, but they failed to generate the types of first and second-order agreements among citizens and between citizens and the state that underlie effective social contracts. Confronted with this dilemma, South Africa's post-apartheid governments have been limited in terms of compelling "fundamental social change". Yet, decades of internal conflict and multi-pronged resistance both to the formal structures of apartheid and the ideologies of racial superiority demand that the state fundamentally renegotiate its relationship with citizens.

In the wake of the transition to democracy ANC elites willingly conferred legitimacy to opposition parties, as evidenced by the party's 1997 "Strategy and Tactics" document ratified at its annual congress, although as the following makes clear the party already viewed itself as the only organization with a legitimate claim on political authority based on its role as revolutionary vanguard.

It is always tempting for revolutionary organisations in political office to characterise all opposition to their programmes as acts of counter-revolution. In general terms, an opposition that pays allegiance to the constitution and the country's laws and seeks to modify the programmes of transformation or even to express a retrogressive school of thought shared by a given constituency, is a legitimate actor in the contradictory process of change. Indeed, such forces should be treated as legitimate expressions of the country's social contradictions.²³

The establishment of the post-apartheid state required not merely the rebuilding of government legitimacy, but, more importantly, the wholesale delegitimation of the past. While this is certainly understandable in light of the apartheid regime's violations of human rights, it bears noting that the process of delegitimation has included actors and institutions whose participation in the apartheid regime was either minimal, or who actually fought against the National Party government.²⁴ Indeed, it is an increasingly common observation²⁵ that the ANC has proceeded to establish its dominance not merely through its well-organized political apparatus, but also through its capture of the narrative of the new South Africa and linking this narrative to the story of the party. Ironically, this has yielded a democratic polity in which to vote against the ANC is characterized as a vote against the new South Africa and its professedly inclusive ideology. Consistent with theories

of framing,²⁶ ANC elites try to create a framework that shapes the thoughts and guides the actions of the public in such a way as to re-understand opposition as suspect. Again, however, we emphasize that this process must be understood not in terms of any nefarious intent on the part of the ANC as a nation-builder, but rather in terms of the institutional incentives generated by competing pressures facing social contractors. The 2007 ANC Strategy and Tactics document, written during the height of internal fractionalization among ANC elites, reflect these centrifugal tendencies and underscore the propensity to frame political opposition in terms of “clandestine” subversion.

The ANC must continue to exercise maximum vigilance against forces which seek to subvert social transformation. Indeed, there are continuing attempts by forces connected to the old apartheid order and international reaction to undermine the state and to disorganise, weaken and destroy the liberation movement through clandestine means, including all kinds of manipulation within and outside its ranks. In addition, marginalisation and destitution inherited from apartheid and the kind of greed represented by organised crime do create fertile ground for lumpen elements whose actions can have counter-revolutionary implications.²⁷

In our preceding discussion we noted how the international system largely removes the threat of territorial loss through invasion. Consequently, the incentives for sovereigns to build viable long-term contracts are contingent upon either the goodwill of elites, or upon the existence of far-sighted leaders who recognize the benefits associated with a stable and legitimate polity. This suggests that the development of legitimate governments in post-conflict states is not only related to the rational-legal foundations we associate with formal institutions but also to leaders who can appeal to broad arrays of a population as opposed to communal segments. In South Africa, Nelson Mandela is frequently cited as having satisfied this role during the transition.²⁸ The dilemma is that leaders of the calibre of Mandela are rare and there are few assurances that their successors will adhere to their inclusive ideologies. While such leaders can set a precedent that outlines the expectations of legitimate government this is insufficient to develop social contracts that incorporate opposition groups into the broader fabric of legitimate governance.

Our preceding discussion suggests that the growth of the ANC as a dominant party and its *ex post* crafting of social contracts in South Africa is not necessarily the product of rent-seeking political elites. Indeed, this is the second broad hypothesis; in the absence of *ex ante* opportunities to craft first and second-order social contracts, dominant parties are more likely to develop such contracts through the narratives of their own participation in the struggle against the previous regime. In such a context constituent members of the dominant majority may truly believe that their organization is the only one committed to developing an inclusive social order. Sustained political dominance is not merely a question of gaining access to patronage, although it is true patronage can be used to sustain majorities. More importantly, new majorities possess few other lenses through which to

evaluate broad notions of consent aside from their own histories. Consequently, competing parties are not perceived as actors making legitimate claims, but rather as organizations that intend to destroy current institutions in favour of a new exclusionary order. While continued access to patronage benefits is certainly a significant incentive to delegitimize opposition groups, we argue that newly dominant parties in post-conflict states are also vested in a long-term state and nation-building enterprise that, to their mind, cannot be imperiled by the threat of opposition victory.²⁹

As a consequence of these dilemmas, we suggest that newly dominant majorities are compelled to re-craft social contracts through policy tools. The inculcation of civic values through educational institutions is perhaps the best way to develop these ideas over the medium to long-term, but post-conflict states require more immediate solutions to the legitimacy dilemma. We briefly examine South Africa's use of truth and reconciliation procedures and the implementation of ethnic redistributive policies as a means to develop social contracts *ex post*. Each of these initiatives are multifaceted projects that were conducted by the South African state in an effort to re-negotiate the relationship between government, the body politic, and individual citizens, through the recording of previously suppressed history in the case of the Truth and Reconciliation Commission, or through the top-down process of redressing privileged asymmetries in the case of redistribution policy. By creating new spaces for social cohesion that look both to the past and to the future, these programmes are explicitly addressing the need for first-order contract-style social unity. Perhaps more importantly, it begs the question of which comes first; national narratives that underlie commonly held policy priorities or policy implementation that creates national communities from the "ether" of disassociated and diverse identity groups. Our general conclusion is that, despite efforts to privilege the former strategy, most post-conflict states are compelled by the short-term requisites of governing to pursue the second method.

Truth and reconciliation

Consistent with other scholarly accounts,³⁰ our contention is that the Truth and Reconciliation Commission (TRC) process serves as a way of building a new post-apartheid social contract based on a common collective memory of the nation's past. This collective memory understandably profanes the past but does so in a way that makes any negative reference to the ANC a rejection of the new social order. Building on this idea, we develop some of the core implications of the TRC process and its outcomes in terms of the limitations faced by post-conflict states to build social contracts. Consistent with our theoretical lens, we suggest that the TRC generates competing incentives. Over the long term, the TRC is a highly effective and laudable mechanism to establish a collective set of principles that define the South African collective experience and history. Over the near term, however, the nation-building impacts of TRCs are limited by the potentially

justifiable tendency of many black citizens to disassociate “truth” and “forgiveness”, and for the dominant ANC to attach its narrative to the process of TRC.³¹

The 1995 legislation that enacted the South African Truth and Reconciliation Commission established three core objectives; (1) to establish a complete picture of the human rights violations that occurred in the apartheid era, (2) to make those findings known to the general public, and (3) to reconstruct South African society. These charges, although daunting, were impressively met in the context of the TRC. Like all truth commissions, the South African TRC was a project of re-writing “official” history to acknowledge and validate prior suffering.³²

The narrative that emerged from the TRC was meant to create a kind of solidarity between citizens by giving people a public space in which to tell the truth, and consequently reconcile among and within themselves.³³ This space, then, was framed as the basis of a first-order contract. The TRC, as a kind of consent-building technology, was meant to provide a space in which they could meaningfully ask for or grant forgiveness in the spirit of reconciliation. This lustrative process, in the words of Ivor Chipkin, was meant “to provide a principle of commonality that would ground South Africans, despite their differences of culture, religion, language and race, as a *people*”,³⁴ or, in the terms of the contractarians, as a body politic or first-order contract.

Truth commissions, by their very nature, employ a hybridized form of liberal and Christian notions of justice, which leads them to emphasize the acts of forgiveness and repentance, without ever requiring these expressions from individual testimonies. The frame of the TRC was to promote the first-order contract, to get both victims and perpetrators to agree to the same history, and to move beyond it. There were several high-profile cases, however, in which either victims or perpetrators withheld their forgiveness or did not seek repentance, like the family of Steve Biko, who opposed the TRC process, saying that revealing the details of Biko’s death brought them no solace or sense of justice.³⁵ On the other side, former President P.W. Botha defied a subpoena from the commission, labelling it a “circus”.³⁶

These anecdotal cases highlight a dilemma most forcefully characterized by Gibson, who notes that efforts to devise a common collective memory are hobbled because semi-official narratives “. . .are often the subject of bitter political debate, and even if ‘collective’, may be accepted by virtue of coercion and elite hegemony rather than by individual choice”.³⁷ This speaks to the foundational dilemma underlying the establishment of the first-order contract – the comprehensive doctrines that underlie conceptions of truth and justice are themselves contestable terms for many community members. Indeed, Ferree’s research highlights the degree to which these rhetorical terrains are keenly contested by candidates for public office in modern South Africa, particularly in terms of how opposition parties attempt to label themselves and recruit candidates to reflect the racial, but not necessarily ideological, makeup of the broader society.³⁸

By and large, however, the TRC was a success in creating the basis of a new South African collective memory central to any notion of a post-apartheid social

contract.³⁹ The commission successfully revealed a huge number of cases of atrocities to the general public, as told by the people most directly affected. By putting the names and faces of people who had directly suffered from the actions of the previous regime on television and in the newspapers, and by acknowledging their stories, they became part of the collective memory. While the apologies of perpetrators and the forgiveness of victims were not required, it was frequently offered. The most thorough research on the TRC and its impacts among the political attitudes of South Africans has tended to suggest that the TRC process has yielded a number of mixed, and often surprising, results.⁴⁰ Specifically, among many blacks the acceptance of truths unearthed by the TRC process is largely disconnected from a propensity to reconcile with different ethnic communities. In contrast, whites, and to a lesser extent South Africans of Asian or Coloured origin, who accept the narrative of South Africa's past have tended to be more amenable to racial reconciliation. Beyond this, and closely related to the notion of collective memory, the TRC functionally stripped away the ability of any individual South African to claim ignorance of the atrocities of the past. This forced acknowledgement coupled any nostalgia for the past with the actions of a regime that committed heinous acts of violence. The TRC slayed the mythologies of Bantustans and separate development, and appropriately replaced them with images of systematic violence and permeating racism. By denying the covering lie of benevolence of the apartheid state, the TRC uncoupled myths from reality.

The TRC process was integral in attaching the narrative of the new South Africa to the story of the ANC, despite much of the ANC elite's reluctance to see the document formally published. This process of historicizing atrocities asserts a narrative of the past, whether or not the actual testimony conforms to it,⁴¹ which profanes what has come before and sanctifies the present and future. By putting the atrocities of the prior regime into a historical trajectory of events, the ANC government made a clear break with the past and simultaneously established a new basis for legitimacy predicated on ostensible transparency while also attaching the narrative of the new South Africa to the ANC's own efforts to lustrate the past.⁴² In so doing, the ANC inherently hobbled those opposition parties. This is somewhat ironic given the ANC's initial reluctance to accept tenets of the TRC report, particularly those that implicated the ANC for its own actions during the liberation struggle.⁴³ One can debate whether the delegitimization of other parties by the ANC was by conscious design or merely a consequence of electoral incentive. To our mind, the answer is largely irrelevant. What is significant is that to not be a part of the ANC in the new South Africa is to be part of a profane past in the eyes of many ANC leaders. This applies not merely to parties traditionally affiliated with white South Africans, but also to parties who derive much of their electoral support from black South African citizens as well, as evidenced by the ongoing fractures within the ANC that led to the rise of a competing party, the Congress of the People (COPE), in the lead-up to the ANC National Elective Conference in 2007.⁴⁴

Black economic empowerment

Consistent with recent literatures stressing the distributional implications of political change,⁴⁵ the negotiated end of the apartheid regime was only possible to the extent those who had the most to lose, in this case the white political and economic elite, could be credibly assured that any new social order would protect their welfare. In part, this included commitments to an overlarge governing coalition that would include members of the National Party (NP) and the Inkatha Freedom Party (IFP) in a new government dominated by the ANC. More important, however, was the ANC's commitment to allowing white owners of capital to retain their economic dominance in exchange for the implementation of redistributive programmes and majority rule.⁴⁶ By the mid 1990s the ANC was ruling South Africa alone, the IFP having dissolved its membership in the National Unity government in 2004 and the NP abandoning its role in the government in 1996. The retention of economic power by whites persists to this day, however, and remains an important element of contemporary political debate in South Africa.⁴⁷ Not surprisingly, it also constitutes the nexus of political conflict concerning the nature of the South African social contract.

At root is the recognition that the political empowerment of black South Africans is largely symbolic in light of the persistent poverty that grips the country. Moreover, there is the equally important recognition by virtually all South African politicians that endemic poverty creates short-term incentives for voters to prefer populists as opposed to the more market oriented technocrats who have tended to dominate intra-ANC discourses for much of the post-apartheid era. In this regard, some type of ethnically based redistribution is felt by most South Africans, including many white capitalists, to be a central tenet of any long-term growth strategy. Black empowerment policies have existed in varying forms since the 1990s, but have become increasingly controversial since 2003 with the implementation of laws delineating a code of good practices for South African firms. Prior to the introduction of Broad Based Black Economic Empowerment (BBBEE) in 2003, empowerment practices were perceived as benefitting only a small minority of politically connected black elites. Consequently, new programmes would focus less on the transfer of capital and wealth to already enriched black firms, and more on the development of a sustainable black entrepreneurial and management class. These policies include not only legislation intended to remove discriminatory hiring and promotion practices, but also incorporate programmes intended to enhance the skill-sets of traditionally underrepresented communities and to provide access to capital for small entrepreneurs. The overall intent is to increase access to the "commanding heights" of the South African economy for non-white citizens.

The implementation of BBBEE and the rhetorics that accompany it can be viewed in several ways. Clearly, long-term stability in the new South Africa is contingent upon providing the historically oppressed black majority with the appropriate tools to partake of new opportunities. In the face of such baldly racialized

economic distinctions, there is no doubt that any truly just South African society must find ways to ameliorate the high levels of unemployment, poverty, and human misery that persist.⁴⁸ This perspective underlies former President Mbeki's characterization of BBBEE as a central cog in improving the long-term social welfare of all South Africans, regardless of race. According to this view, economic empowerment satisfies two important dimensions of post-conflict social contracting. First, it addresses the foundational question of whether democracy can retain legitimacy in light of massive income inequalities that keep the politically empowered majority economically marginalized. Second, and perhaps just as importantly, this perspective sees empowerment as a policy mechanism capable of crafting a broader South African identity that, over the long term, is increasingly detached from racial identity.

Another view, seemingly inherent in the discourses surrounding the introduction of black economic empowerment, recognizes the pluralist character of intra-ANC politics and South African politics more generally. Owing to the limited public support of economic development programmes in place since the mid 1990s the more populist wing of the ANC, specifically the powerful trade unionists and communists, was able to renegotiate a social contract that enhanced the redistributive powers of the central government in the name of "indigenization".⁴⁹ In truth, both of these dynamics help to explain the rise of BBBEE. In terms of our argument, however, two issues prominent in the literature surrounding South Africa's redistributive programmes are significant. First, consistent with the nation-building logics of BBBEE, over the long term we suggest that the implementation of black empowerment represents an important policy tool capable of helping to build legitimacy through *ex post* crafting of social contracts. Second, over the short term and consistent with our argument thus far, the use of BBBEE is attached to the notion of continued ANC dominance in the name of nation-building.

Iheduru has argued that BBBEE is best viewed, over the long term, as a policy mechanism intended to more tightly cohere with a broader South African national identity.⁵⁰ According to this logic, persistent income inequalities are likely to only reinforce inter-ethnic conflict between a rich white minority and a politically powerful, yet economically marginalized black minority. In this regard, BBBEE helps to increase the legitimacy of capitalism among black South Africans whose experiences during the apartheid era did little to generate trust in market-based economic systems.

In the short term, however, there remain questions about whether BBBEE can remove the nepotistic incentives generated by prior redistributive programmes. While there has been a significant growth of a black middle class, many of the key beneficiaries of early empowerment deals have tended to be a small segment of ANC elites. Clearly, this new elite has a vested interest in the retention of capitalist institutions. While many ANC leaders will publicly lament the swapping of a white economic elite for a small black elite there is little evidence that

party leaders are intent upon changing the underlying mechanisms that reward politically connected ANC heavyweights.

Taken together, BBBEE represents a second-best solution to solving two mutually inconsistent policy goals; the retention of incentives for productive economic investment and the requisites of increasing legitimacy in the post-apartheid government in light of immense poverty and a racially stratified economic system. Indeed, for as much as BBBEE is a frequent target of scorn by many white South Africans, one of the clearest beneficiaries of the programme is the white economic elite who, through the selective enrichment of prominent ANC figures, have effectively co-opted the very politicians and bureaucrats who could credibly threaten to wholly expropriate their wealth. In this regard, the short-term incentives inherent in black empowerment policies undermine the otherwise laudable programmatic goals that could potentially yield a more inclusive and economically just South Africa over the long-term. That said, the rhetorics used to justify the broadening of black economic empowerment have necessarily compelled a reassessment of the initial bargain underlying the transition to majority rule. While intra-ANC disputes culminating in the ascendancy of Jacob Zuma are often characterized as purely political conflicts, there is no doubt that much of the contention surrounding the competitions for party supremacy was fuelled by popular discontent with the uneven rates of majority empowerment.

Discussion and conclusions

In recent years, scholars working at the intersection of post-conflict state building and democratization have increasingly focused on two ostensibly disparate trends: the tendency towards semi-authoritarianism in the developing world and the distressing rise of neo-autochthonous movements that justify one group's dominance of the political sphere.⁵¹ Consistent with recent empirical accounts,⁵² our article argues such tendencies result from incentives to incorporate peace settlements quickly at the expense of a long-term contracting mechanism that fully legitimates all parties to the pre-settlement conflict. Given the legacies of violent conflicts in many parts of the world, it is scarcely a condemnable offense to greatly mistrust groups that are affiliated with prior mistreatment. That said, such incentives establish an intractable distance between the trappings of procedural democracy on the one hand and the inculcation of fully inclusive open democratic orders on the other.

Both the TRC process and BBBEE policies reflect the foundational tensions between long-term nation-building and short-term identity politics in post-conflict states. Over the long term, both institutions ideally serve to craft a broadly inclusive South Africa. Over the short term, however, both institutions are more likely to be deployed as a tool that delineates who "owns" the post-apartheid state. In the absence of mutually accepted focal points around which to establish legitimate social contracts, political elites are compelled to use public policy as a mechanism of delineating precisely which citizens can claim the mantle of full state membership and which citizens are proscribed from making full moral claims rooted in the

future national project. In the most extreme examples, such a paradox can yield highly exclusionary post-conflict governments in which “victor’s justice”⁵³ allows newly dominant communities to wield political authority from a position of moral superiority. In the face of such an outcome, Hayner advocates the idea of negotiated settlements that can, ideally, prevent such exclusionary practices. That said, as the South African case suggests, the initial settlement does little more than establish the means by which current conflicts can be brought to a close. Long-term social stability rests on a more nuanced, and more difficult to achieve, set of agreements between sovereigns and subjects. Our argument is that the negotiated settlement of a conflict is not an equilibrium outcome. It merely sets a framework within which future institutions and legitimacy can potentially be forged.

Our characterization of contemporary South African politics has generally been less-than-charitable. Hence, we feel it is incumbent to stress our initial claim that post-conflict social contract construction in the modern world occurs under less-than-ideal circumstances. In this regard, the South African social contract that is emerging has taken place under extraordinary pressures, both in terms of the immense structural economic differences between groups and in terms of the very low time horizons of most South Africans whose very real economic and political aspirations are unlikely to wait several decades to achieve fruition. More than this, however, we reiterate that the nature of social contracting in the post-World War II environment has generally eliminated the need for governments to wholly account for the preferences of citizens, except insofar as those citizens possess the ability to overthrow sitting political leaders. This implies that we should expect to see higher levels of intra-state conflict as opposed to inter-state conflict in the modern world. Indeed, this is precisely what we do observe.⁵⁴

Taken together, this should compel us to reaffirm the standard trope that characterizes South Africa’s transition to democracy as nothing short of miraculous. While the short-term incentives for malfeasance and exclusionary nation-building have no doubt manifested in anti-democratic behaviours and a tendency for the multiparty rhetorics of post-apartheid South Africa to be replaced by one-party dominance, what is more remarkable is that the multiparty model is still hailed by most South African citizens despite the continued dominance of the ANC.⁵⁵ While we are sceptical of claims suggesting that democracy in South Africa is healthy and robust, we also suggest that new democracies in *any* post-conflict society are likely to flail in the face of unrelenting pressures to compel diverse societies to forge overarching imagined communities within existing state borders. Most post-colonial states are confronted with the unenviable paradox that occurs when identity repertoires and the myths underlying them are subject to constant change but the state borders that contain these diverse repertoires are deemed sacrosanct and permanent. As both Varshney and Hale note, such identities carry with them signals about status and hierarchy, making virtually any policy decision a referendum on comparative group position in light of uncertainties encountered in the social world.⁵⁶

Hence, social contracts as we have traditionally understood them are rendered somewhat more convoluted. Efforts to build such contracts occur in a “second-best” fashion, particularly when mechanisms of formal democracy can pose potential conflicts among highly variegated electorates. This second-best solution suggests that, under particular structural conditions, post-conflict social contracts can be constructed in such a way as to increase the prospects for stable, although not necessarily ideal, social orders. In the modern era, where states do not need their citizens as much as citizens need their states, this carries several powerful implications. First, it suggests that we might want to accept the slow progress of democratic reforms, provided they are characterized by some degree of tolerance and can provide for the opportunity of effective governance. We suggest that this is why some post-conflict polities develop characteristics of hybrid regimes. Indeed, a recent analysis of democratization trends in sub-Saharan Africa confirms the propensity for semi-authoritarianism or one-party systems to emerge in lieu of declining numbers of military interventions into politics, often based on a “politics of belonging”.⁵⁷

Second, in the face of conflict settlements, most groups do not get the things they really want. This is not only to be expected but perhaps encouraged. The use of public policy as a means to build social contracts in the face of inequitable negotiated settlements can potentially allow for groups to devise mutually tolerable, if not mutually acceptable, mechanisms to address grievances. In the case of South Africa, BBBEE serves this purpose by “capturing” key ANC elites in such a way as to make wide-scale radical redistribution unlikely. While such policies are unpalatable to most white citizens, they are in all likelihood the key policy that ties the hands of ANC elites in the face of immense public pressure to expropriate wealth in the name of populism or indigenization, potentially generating the type of economic collapses observed in Zimbabwe and Uganda.

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Notes

1. Byman, *Keeping the Peace*; Sisk, *Power Sharing and International Mediation in Ethnic Conflicts*.
2. Downes, “The Problem with Negotiated Settlements to Ethnic Civil Wars,” 231.
3. Paris, *At War’s End*, 5–8.
4. Horowitz, *Ethnic Groups in Conflict*, 196–201.
5. Bloom, Standing, and Lloyd, “Markets, Information Asymmetry and Health Care.”
6. Giovannucci and Ponte, “Standards as a New Form of Social Contract,” 299.
7. Cragg, “Human Rights and Business Ethics.”
8. Nussbaum, “Beyond the Social Contract,” 5.
9. Hobbes, *Leviathan*; Nussbaum, *Frontiers of Justice*.
10. Rawls, *A Theory of Justice*; Sandel, *Liberalism and the Limits of Justice*.
11. Pateman, *Participation and Democratic Theory*.

12. Fearon and Laitin, "Ethnicity, Insurgency and Civil War"; Roeder, *Where Nations Come From*.
13. Following Fearon, "Separatist Wars, Partition and World Order," we do not suggest that secession and partition be employed as a mechanism of conflict management. We DO suggest that the disinclination to allow partition is connected to the general collective action problem inherent in social contract negotiation.
14. For more on this see Gellner, *Nations and Nationalism*; Hobsbawm, *Nations and Nationalism since 1780*; Weber, *Peasants into Frenchmen*.
15. Bates, *Prosperity and Violence*; Levi, *Of Rule and Revenue*; North, *Structure and Change in Economic History*; Tilly, *Coercion and Capital*.
16. Jackson, "Quasi States, Dual Regimes, and Neoclassical Theory"; Jackson and Rosberg, "Why Africa's Weak States Persist."
17. See especially Cueppen and Geschiere, "Autochthony: Local or Global?"
18. Examples include ZANU-PF in Zimbabwe, PRI in Mexico, Congress Party in India, UMNO in Malaysia, and the ANC in South Africa.
19. Jung, "Power-Sharing and Democracy Promotion in Civil War Peace Building."
20. Ganguly, "Introduction," xix–xxii.
21. Glaser, *Politics and Society in South Africa*; and Thompson, *A History of South Africa*.
22. Glaser, *Politics and Society in South Africa*, 214.
23. The document can be accessed at <http://www.anc.org.za/show.php?id=2424>.
24. Ferree, *Framing the Race in South Africa*, 193–203.
25. Giliomee, Myburgh, and Schlemmer, "Dominant Party Rule, Opposition Parties and Minorities in South Africa," 171.
26. Benford and Snow, "Framing Processes and Social Movements"; Diani, "Linking Mobilization Frames and Political Opportunities."
27. The document can be accessed at <http://www.anc.org.za/show.php?id=2535> and must also be viewed in light of the imminent split of the Coalition of the People (COPE) wing of the ANC.
28. Lodge, *Mandela: A Critical Life*.
29. See Gibson, "The Legacy of Apartheid," 781–4, who notes that among the damaging legacies of apartheid is the propensity for the black majority to be generally disinclined to support multiparty elections and to express higher rates of political intolerance. Consistent with the frame presented thus far, we suggest that this may reflect the felt need to compel adherence to new social contracts through exclusionary practices as opposed to some genuinely felt opposition to democratic practice.
30. Gibson, "The Legacy of Apartheid"; Hayner, *Unspeakable Truths*.
31. Gibson, "Does Truth Lead to Reconciliation?," 207–8.
32. Dimitrijevic, "Justice Beyond Blame"; Posel and Simpson, *Commissioning the Past*.
33. Biggar, *Burying the Past*.
34. Chipkin, *Do South Africans Exist?*
35. Norval, "The (Im)possibility of Reconciliation," 263.
36. Doxtader, "Making Rhetorical History in a Time of Transition," 250.
37. Gibson, *Overcoming Apartheid*, 70.
38. Ferree, *Framing the Race in South Africa*, 142–55.
39. Gibson, "Does Truth Lead to Reconciliation," 215.
40. Gibson, *Overcoming Apartheid*; Gibson and Gouws, "Social Identities and Political Intolerance."
41. Ratele, Mpolweni-Zantsi, and Krog, "Ndabethwa lilitye."
42. Giliomee, Myburgh, and Schlemmer, "Dominant Party Rule, Opposition Parties and Minorities in South Africa," 171.
43. Following Cherry, "'Just War' and 'Just Means,'" 20–1, it is also important to note that the ANC cooperated more fully with the TRC than other organizations.

44. Ferree, *Framing the Race in South Africa*, 212–21.
45. Acemoglu and Robinson, *Economic Origins of Dictatorship and Democracy*; Boix, *Democracy and Redistribution*.
46. Glaser, *Politics and Society in South Africa*, 214.
47. Butler, *Contemporary South Africa*, 114, suggests that black ownership of the economy lies “between 2 and 10 percent, with the former the more realistic measurement.” In addition, despite the impressive growth of a black middle class, upper management positions tend to be dominated by whites. Lodge, *Politics in South Africa*, 30, noted that as of 2002, only 353 out of 3406 corporate directors were black.
48. Southall, “The ANC and Black Capitalism in South Africa.”
49. Iheduru, “Black Economic Power and Nation-Building in Post-Apartheid South Africa.”
50. Iheduru, “Social Concertation, Labour Unions and the Creation of a Black Bourgeoisie in South Africa.”
51. Ceuppens and Gaschiere, “Autochthony: Local or Global?”; Geschiere and Jackson, “Autochthony and the Crisis of Citizenship”; Marshall-Fratani, “The War of ‘Who is Who.’”
52. Jung, “Power Sharing and Democracy Promotion in Post Civil War Peace Building”; Paris, *At War’s End*.
53. Hayner, *Unspeakable Truths*.
54. Gleditsch et al., “Armed Conflict 1946–2001.”
55. Lane and Svante, “South Africa: Explaining Democratic Stability.”
56. Varshney, “Nationalism, Ethnic Conflict, and Rationality”; Hale, “Explaining Ethnicity.”
57. Lynch and Crawford, “Democratization in Africa 1990–2010,” 285–90.

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