

# University of Minnesota Law School

Legal Studies Research Paper Series  
Research Paper No. 16-02

## **The Relationship of Political Settlement Analysis to Peacebuilding from a Feminist Perspective**

**Fionnuala Ní Aoláin**



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**Title:** The Relationship of Political Settlement Analysis to Peacebuilding from a Feminist Perspective

**Abstract:** In the policy literature addressing bi-lateral state engagement with fragile, conflicted or weakened states the language of ‘political settlement’ appears increasingly ubiquitous. But much of the emerging literature is gender blind and there is little by way of comprehensive scholarly or policy literature available to elucidate the gender dimensions of political settlement. There are relevant and overlapping literatures, namely the gender and peace agreement literature, feminist analysis of political participation and political process by women, and a broad conflict management literature that to a lesser or greater degree includes references to women. However, in all of these sites *gender* as a category of analysis tends to be inflated with the category of ‘woman’, and there is consistent analytical slide to co-mingle the two in ways that side-step rigorous analytical distinction between the roles, experience and benefits women and men experience through process of political negotiation and accommodation. This article explores both how the conceptual definition of ‘political settlement’ functions to include or exclude women both formally and informally and how emergent ‘political settlement’ theory and practice can both build out from peace agreement analysis and avoid some of its gendered pitfalls. I ask how political settlement analysis works (or not) in practice to address women’s needs, demands and challenges. Specifically, how has the concept and practice of political settlement emerged and settled? What insights from law, political science and international relations can usefully be applied to the framework of political settlement as applied to peacemaking to advantage and advance women’s interests?

## The Relationship of Political Settlement Analysis to Peacebuilding from a Feminist Perspective\*

The concept of political settlements has entered the lexicon of peace-making, political stabilization and active bi-lateral engagement with fragile and conflict affected states. Despite its increased pervasiveness in the vocabulary favored by policy-makers, it has only lightly surfaced in scholarly literatures.<sup>1</sup> As the language and framework of political settlement becomes normalized in the discourses by states and institutions bilaterally and multilaterally managing and addressing conflict it behooves us to have a better grasp of its meanings and purchase. Pragmatically, when language and conceptual frames shift so too do political and economic priorities. Thus, attention to political settlement is important to those engaged in peacebuilding and conflict transition not least because new policy priorities deeply affect the messages that key actors and institutions internalize and expect in conflict ending and conflict transition sequencing.

As the traction of political settlement increases, the term has broadly been assumed gender blind and there is little by way of comprehensive analysis available to elucidate the gendered nature and form of political settlement. There are relevant and overlapping literatures, namely the gender and peace agreement literature,<sup>2</sup> feminist analysis of political participation and political process by women,<sup>3</sup> a very recent body of gender and statebuilding literature,<sup>4</sup> and a broad conflict management literature that to a lesser or greater degree includes references to women. However, critical conceptual work is required to understand how the definition of ‘political settlement’ functions to include or exclude women both formally and informally.

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\* Fionnuala Ní Aoláin, Professor of Law Transitional Justice Institute Ulster University, and Robina Chair in Law, Public Policy and Society, University of Minnesota. This article was completed with support from the DfID supported Political Settlements project <http://www.politicalsettlements.org>. My thanks to Professor Christine Bell at Edinburgh University and the gender research team at TJI for inputs to this paper including Dr. Catherine O’Rourke, Dr. Aisling Swaine, Professor Monica McWilliams, and Eilish Rooney. Thanks also to the research assistance of Anne Dutton to enable completion of the work.

<sup>1</sup> The term is used by OECD, a number of agencies operating in the humanitarian crisis and development fields, and by the United Kingdom’s Department of International Development (DFID). See Christine Bell, ‘What We Talk About When We Talk About Political Settlements’ (working paper, Political Settlements Research Programme, School of Law, University of Edinburgh, 2015).

<sup>2</sup> Fionnuala Ní Aoláin, Naomi Cahn, and Dina Haynes, *On the Frontlines: Gender, War and the Post-Conflict Process* (Oxford: Oxford University Press, 2011); Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000).

<sup>3</sup> Aili Tripp and others, *African Women’s Movements: Transforming Political Landscapes* (Cambridge: Cambridge University Press, 2009).

<sup>4</sup> OECD, *Gender and Statebuilding in Fragile and Conflict Affected States* (OECD Publishing, 2013).

A stable meaning for ‘political settlement’ remains a work in progress, though the contours of core and penumbra are emerging. For example, the United Kingdom’s Department for International Development (DFID) definition of political settlement is a broad one, namely ‘...the expression of a common understanding, usually forged between elites, about how power is organised and exercised’,<sup>5</sup> and thus the analysis of inclusion and the relevant sites of inquiry is a descriptively broad one. Political settlements have some additional generalizable features. These include the notion that political settlement is a state-society agreement,<sup>6</sup> and that political settlements operate as a two-level game namely not only as a set of interactions and relationships between differently placed elites but reproducing similar dynamics between elites and their followers.<sup>7</sup> One very clear distinction drawn by commentators is that political settlements differ from peace agreements and elite pacts primarily because they are ongoing processes and not one-off events, a contention that is challenged by the sustained analysis of cyclical, sustained, negotiated and re-negotiated peace processes (as opposed to peace agreements).<sup>8</sup> At the heart of a loose consensus on the meaning of political settlement is the idea that ending protracted violence in conflict-affected societies mandates engaging and co-opting elite actors with varied alignments of interest based inducements and incentives.

In theory there is a sufficiently comprehensive notion that both the ‘power’ to be organized and the ‘elites’ to do the work in political settlement are expansively open. For example, commentators have posited that one cannot determine how inclusive or exclusionary a political settlement is ‘[s]imply by looking at the extent of the participation in the bargaining process, or at appointments in the offices of the state’, but rather the openness of settlement can only be gauged by engaging in a broader analysis of ‘the distribution of rights and entitlements across groups and classes in society on which the settlement is based’.<sup>9</sup> Moreover there is an underlying assumption in the literature that

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<sup>5</sup> Department for International Development, *Building Peaceful States and Societies* (DFID Publishing, 2010), 22.

<sup>6</sup> Verena Fritz and Alina Rocha Menocal, *Understanding State-Building from a Political Economy Perspective: An Analytical and Conceptual Paper on Processes, Embedded Tensions and Lessons for International Engagement* (London: Overseas Development Institute, 2007).

<sup>7</sup> Edward Laws, *Political Settlements, Elite Pacts, and Governments of National Unity: A Conceptual Study* (Developmental Leadership Program, 2012), 9.

<sup>8</sup> *Ibid.*, 21. However, peace process analysis would dispute the characterization of peace processes as one-off events, and equally stress the long-term process based nature of the peace agreement context. Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (New York: Oxford University Press, 2008).

<sup>9</sup> Jonathan Di John and James Putzel, *Political Settlements Issues Paper* (Governance and Social Development Resource Centre, 2009), 5.

political settlements are adaptable processes, responsive to social needs and social demands.<sup>10</sup> Despite this optimism on the malleability of power and the capacity to ‘move the deckchairs’ with ease, feminist analysis reveals the many gendered dimensions in the existing organization of power relationships in society and the definition of elites in most societal contexts are masculine in form and in representation. Feminist analysis consistently underscores the intractability of exercise of patriarchal power and the narrowness of the entry points for women to claim a re-ordering of social norms and institutions whose practices dis-advantage them on the basis of gender. Moreover, the emphasis on the role of elites assumes a top-down (distinctly not bottom-up) approach and the concept clearly inherits the gender hierarchies and biases embedded in all social arrangements and institutions organized in a hierarchical manner (with the obvious historical and/or colonial baggage that accompanies such ordering).

Thus, the presumption that ‘political settlement’ operates as a category that includes and embraces women’s needs must be critically interrogated from the outset. We need to better understand how and to what degree the emerging practices of political settlement come with well-established gender norms, what precisely these norms involve, and how such embedded ways of doing things could be modified or corrected to take greater account of the needs of women in negotiations from conflict or repression involving both state and non-state actors. This is particularly important as the degree of overlap between political settlement framing and peacebuilding narrows. Given that much policy and scholarly work has been invested in mainstreaming women in the negotiation, mediation and implementation of peace processes, there is a certain paradox when the concepts, framing and tools change and/or donors and institutional actors decide to adopt a different vocabulary to capture and frame change processes and in the course of this women somehow metaphorically and practically fall out.

In tracking the relationship between political settlement and peacebuilding this article will start by giving a brief overview of the concept and emerging practices of political settlement, highlighting points of interface with the established fields of peacebuilding and/or peace processes. I trace its roots and development, tracking how an ethnography of the field reveals the masculinity of its roots and the infused patriarchy of its practices.

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<sup>10</sup> Alan Whaites, ‘States in Development: Understanding State-Building’ (working paper, Department for International Development, London, 2008), 7.

Part two draws on theoretical feminist institutionalism to demonstrate the institutional practices that limit the scope of women's engagement in the schema of political settlement and peacemaking as currently conceived. I conclude that these formal and informal institutional barriers define the universe of women's engagements in the peace and security domain and that the shift to new discourses requires an investment by scholars, practitioners, and advocates to expose, agitate and affirm the exclusions and limitations in this new terrain. Part three seeks to identify a way forward and a tentative re-visioning of this emerging field.

1. The roots of political settlement – where we are and where we came from?

The emerging literature on political settlement includes multiple country studies (for example, Cambodia, India, South Africa, the Solomon Islands, Belgium, Venezuela and a number of other historical cases).<sup>11</sup> For the purposes of this analysis, I am particularly concentrated on political settlement in sites of conflict and/or in sites emerging from political repression. A political settlement in these places is quintessentially an agreement reached by process of political engagement, negotiation, mediation and barter between parties who have previously been in dispute. To understand political settlement and its contemporary usage, we are aware that the disputes concerned are intensely rooted in sectarian, ethnic, ideological, resource-defined, territorial and cultural difference. Those differences have frequently culminated in a politics propped up and enabled by violence. The violence is often long-term, cyclical, highly disparate in its forms and invariably destructive of civilian lives, civilian infrastructure and the civility that enables diverse humanity to thrive in political community. Specific forms of gender-based violence and situated gendered harms follow from these conflict typologies for women.<sup>12</sup> During conflict women directly experience various impacts, many related to sexual violence, including unwanted pregnancies, sexually transmitted diseases, and community stigma. Given the strictures of community and socially-determined family roles the impact of economic devastation, forced displacement, health deterioration and loss of education fall in highly gender stratified ways on women and girls. There is increasing recognition that gendered harms are insufficiently captured by the narrow rubric of sexual harm and

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<sup>11</sup> See Laws, *Political Settlements, Elite Pacts, and Governments of National Unity*; Bell, *What We Talk About When We Talk About Political Settlements*.

<sup>12</sup> Aisling Swaine, 'Beyond Strategic Rape and Between the Public and Private: Violence Against Women in Armed Conflict', *Human Rights Quarterly* 37, no. 3 (2015).

that gender-relevant conflict effects encompass a range of economic, social and political dimensions including limited employment, maternal harms, dire health outcome, short-, medium- and long-term loss of schooling and training, forced migration, restricted mobility and a plethora of cultural impairments occasioned by conflict.

Political settlements capture the idea that to transcend these profound barriers of violence, othering, and dysfunction the solution is to forge ‘a common understanding, usually between political elites, that their best interests are served through acquiescence to a framework of administering political power’.<sup>13</sup> But the preference for political settlement does not really explain how different types of political settlement emerge or the actors, institutions, resources and practices that shape them. Moreover, we have a limited understanding of how political settlement can be improved by internally-driven initiatives, including the impact of gender inclusive processes and rule of law institutions. And, of course, political settlements do not emerge in a vacuum. In particular, international elites play a critical role in shaping the kind of political settlement that emerges based on the form, layering and continuity of intervention that is directed towards a society in conflict.

The concentrated value placed in political settlement discourse on elite engagement has some very obvious constraints for gender analysis.<sup>14</sup> It goes without saying that understanding the role of elites should not foreclose the complexity of contending elites, inter-elite bargaining and, in particular, the shifting and sometime tenuous status of elites in ever-combustible conflict sites. But in reflecting further on the centrality of elite engagement in political settlement processes one ultimately contends with the insider/outsider dynamics that are manifest when advantage accrues consistently to system insiders, those with accumulated military prowess, and the in-built historical advantages of racial, wealth and property benefits in existing status quo orders.<sup>15</sup> The overlap of concentrations of power with a gender order is indisputable and has gone hand in hand with the exclusion of women from exercising political, economic and social power in a broad range of societal contexts. However, gender exclusion is not our only challenge. Equally concerning is the selective inclusion of elite women whose claims to

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<sup>13</sup> Di John and Putzel, *Political Settlements*, 4.

<sup>14</sup> Ibid. The authors identify the work of Mushtaq Khan as the most theoretically robust work emerging from the field of historical political economy.

<sup>15</sup> For a powerful decolonial analysis of these dynamics in transitional settings see Pascha Bueno-Hansen, ‘Engendering Transitional Justice: Reflections on the Case of Peru’, *Journal of Peacebuilding* 5, no. 3 (2010).

presence may rest on their indisputable relationship to an elite powerful man (or men in clan-based systems) which may disguise the unrestrained entrenchment of a masculine world view with the veneer of female legitimacy. The presence of even a small number of (uncompromised) women in the negotiation, mediation and barter space underscores a singular problem identified by British feminist sociologist Carol Smart ‘of challenging a form of power without accepting its own terms of reference and hence losing the battle before it has begun’.<sup>16</sup>

The emphasis on strategies to engage and maintain the ‘buy-in’ of elites is a dominant theme of the political settlement literature.<sup>17</sup> And while peacebuilding literature does not overtly place the same kind of sustained emphasis on elite buy-in, peace process practice is deeply influenced by the imperative of maintaining the goodwill of elite actors, particularly the military participants in conflict. This idea also has substantive crossover with the literatures that emerged in the early 1970s onwards addressing transitional compacts in authoritarian and repressive settings. It emerged early in the formative work of political theorists O’Donnell and Schmitter, and has been followed through by Diamond and Linz among others.<sup>18</sup> Core to this component of the political settlement literature is the importance of ‘elite pacts’, the value placed on the ‘skills, values, strategies and choices’ of elites, and the positive disposition of elites which help make a consolidated democracy work.<sup>19</sup> Little, if any, attention has been paid to the masculinities of these elite actors, the exclusionary politics which produces them and the implication for gender relations of the ‘buck’ stopping with elite, generally militarized men. My prior work has reflected on the gender-based co-operation between seemingly oppositional elite men whose patriarchal instincts are generally well aligned,<sup>20</sup> and the resulting political alignments that protect masculine benefits and ill-serve women’s interests. Paying closer attention to seemingly liberal but de facto retrograde gendered pacts producing political settlements that ill-serve women in the spheres of reproductive

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<sup>16</sup> Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), 5.

<sup>17</sup> John Higley and Richard Gunther, eds., *Elites and Democratic Consolidation in Latin America and Southern Europe* (Cambridge: Cambridge University Press, 1992); Guillermo O’Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986).

<sup>18</sup> O’Donnell and Schmidt, *Transitions from Authoritarian Rule*, 65–72; Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, eds., *Democracy in Developing Countries: Latin America* (Boulder, CO: Lynne Rienner Publishers, 1989); Tom Ginsburg, ed., *Comparative Constitutional Design* (Cambridge: Cambridge University Press, 2012).

<sup>19</sup> Diamond, Linz, and Lipset, *Democracy in Developing Countries*, 14.

<sup>20</sup> Fionnuala Ní Aoláin, ‘Women, Security, and the Patriarchy of Internationalized Transitional Justice’, *Human Rights Quarterly* 31, no. 4 (2009).



rights, the regulation of violence, access to economic goods on equal terms and the advancement of both substantive and procedural equality for women are markers of our route to gender benchmarking political settlements.

Given the consequences of concentrating elite power and negotiation in political settlement processes it would seem that close attention to patronage and clientelist politics are also necessary to fully understand the limits on women's political effectiveness and the state's accountability. We increasingly understand that women are side-lined in formal political negotiation processes (whether 'one-off', stop-start or continuous political adaptations) that are defined by constant bartering over conflict ending. Moreover, there are some self-evident obstacles that follow from supporting and prioritizing embedded relationships that are culturally, socially and historically male. In Goetz and Jenkins' gender-focused study of these insider and insidious politics they underscore the necessity of unpacking the gender impact of clientelist and patronage-based politics as direct barriers to enabling women's meaningful engagement with and influence upon negotiation processes. In particular, they address the effect on women's capacity to translate representation in politics and policy-making into tangible outcomes for women.<sup>21</sup>

Moreover, in revealing the centrality of clientelist relationships to the production and maintenance of elite stratification in conflicted societies, we also have to pay close attention to the public / private divide that has historically concentrated women's social and political capital (such as it is) to the private, unregulated sphere of family and clan, and women's exclusion from the public sphere where relationships are ordered and power is exercised. Barriers that exclude or limit women's access to the public sphere, holding them to the 'sticky floor and glass ceiling', mean that in real terms women's capacity to develop clientelist and patronage relationship, instrumentally necessary to the exercise of power, will be functionally sealed off.<sup>22</sup>

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<sup>21</sup> Anne-Marie Goetz and Robert Jenkins, *Reinventing Accountability: Making Democracy Work for Human Development* (New York: Palgrave, 2005). These explorations of clientalism also illuminate some of the binary thinking that infuses governance feminism, a body of work which assumes that the mere presence of elite women in elite setting transforms those settings into women-friendly spaces with consistently positive governance and regulatory outcomes for women. Janet Halley and others, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism', *Harvard Journal of Law and Gender* 29, no. 2 (2006).

<sup>22</sup> Susan Boyd, *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997).

## 2. Feminist Insight: Institutionalism and Feminist Method

How have political settlements worked in practice address women's needs, demands and challenges? What women and what kinds of interests are included in political settlement processes? What kinds of barriers exist both to inclusion and to influence on the determination of 'substantive' content for negotiation? To illuminate these questions my analysis in this section is focused on the available tools that have defined feminist engagement in peace and security as well as institutional analysis. Above all, I employ what Cynthia Enloe describes as a 'feminist curiosity' about the ways in which outcomes and institutional preferences serve the dynamic and shifting power-relationships of elite male actors (and their followers) but rarely operate in service to the needs and dynamic interests of women.<sup>23</sup>

One obvious point of my approach is that I am explicitly concentrated on the benefits reaped by women (or not) from political settlement and peace processes. While gender analysis broadly defined, including surfacing the gendered nature of male privilege (and vulnerability) in sites of political settlement, is highlighted in this analysis,<sup>24</sup> I use gender as an operative tool to plot how gender operates to illuminate the exclusion, discrimination and inequality experienced by women. This is not because I am *per se* uninterested in the specific injuries, exclusions and harms experienced by men in conflict and post-conflict negotiation. Rather, my attention is primarily directed to surfacing how gender operates to shape women's lives and their access (or lack thereof) to the political processes that shape and determine their life experiences.<sup>25</sup> My caveat is that increasingly *gender* is understood as a category of analysis that tends to be conflated with the category of 'woman', and there is consistent analytical slide to co-mingle the two in ways that side-step rigorous analytical distinctions between the roles, experience and benefits women and men experience through process of political negotiation and accommodation.<sup>26</sup>

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<sup>23</sup> Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley and Los Angeles: University of California Press, 2014), 241.

<sup>24</sup> Drawing on Naomi Cahn and Fionnuala Ní Aoláin, 'Gender, Masculinities and Transition in Conflicted Societies', *New England Law Review* 44, no. 1 (2010). See also Brandon Hamber, 'Masculinity and Transitional Justice: An Exploratory Essay', *International Journal of Transitional Justice* 1, no. 3 (2007).

<sup>25</sup> For illustration of a similar approach to gender justice under international law see Louise Chappell, *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy* (New York: Oxford University Press, forthcoming 2016).

<sup>26</sup> Key commentators have argued that a gender focus rather than a woman focus had become counter-productive as it had allowed discussion to shift from 'a focus on women, to women and men, and finally back to men.' Sally Baden and Anne Marie Goetz, 'Who Needs [Sex] When You Can Have [Gender]? Conflicting Discourses on Gender at Beijing', in *Feminist Visions of Development: Gender Analysis and Policy*,

How have women tried to affect both the formal and informal ‘rules of the game’ as to influence how power is held and exercised? How and where do women ‘fit’ within an analysis of elite bargaining? What strategies have women used to try to impact political settlements to be more inclusive? What has been their experience of how gains in formal settlement terms, such as peace agreements and constitutions, or inclusion in institutions, such as police, courts, and other institutional settings, have played out and what does this tell us about the ‘wider process of bargaining between elites’? These are all critical questions that are usefully engaged by deploying feminist institutional analysis to political settlement processes.

In tandem with feminist institutional analysis I take seriously the idea that the ‘social stuff’ of political process and the institutions with which they interface matter for women.<sup>27</sup> The ‘social stuff’ includes the performative entry points to closed bargaining spaces, the social capital necessary for identification with the salient markers of elite identities, networking capacity, as well as access to and free movement within institutional power arenas. Here, the insights from Chappell and Waylen’s feminist analysis of political institutions, which engages the very challenging task of looking *within* institutions for ‘formal and informal practices’, codified rules and unwritten expectations, is an important aspect of thinking about when, how, why and with what outcomes women engage in institutional processes.<sup>28</sup> In this vein, political settlement operates as a set of institutions engaging institutional constraints enabling or limiting passage ways to entry and foreclosing capacity to effectively exercise power or limit power.

Close attention is also necessary to the wide access gap that exists for women between formal and informal institutional power.<sup>29</sup> In a widely used definition coined by Helmke and Levitsky, informal institutions are understood as ‘socially shared rules, usually

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eds. Cecile Jackson and Ruth Pearson (New York: Routledge, 1998), 21.

<sup>27</sup> Here I draw conceptually on ‘new institutionalism’ which describes a body of work sharing the view that institutions are important for shaping political outcomes. This work addresses sociological, economic and historical variants. Institutions are conceived of as organizations made up of a set of norms that function as actors in their own right, such as a parliament, court or executive. The work of feminist scholars such as Louise Chappell have been particularly valuable. See Louise Chappell, ‘Comparative Gender and Institutions: Directions for Research’, *Perspectives on Politics* 8, no. 1 (2010): 183.

<sup>28</sup> Louise Chappell and Georgina Waylen, ‘Gender and the Hidden Life of Institutions’, *Public Administration* 91, no. 3 (2013).

<sup>29</sup> An ongoing study on political settlement in Somaliland from a gender perspective aims at bridging this formal / informal gap. Michael Walls. ‘Political Settlement in Somaliland: A Gendered Perspective’. Abstract. (forthcoming, University College London).

unwritten, that are created, communicated, and enforced outside officially sanctioned channels'.<sup>30</sup> Attention to gender also reveals what Goetz terms 'gender capture', which follows from men's historical and modern dominance of power positions within organizational structures.<sup>31</sup> This capture underscores the point that even when women gain formal access to elite spaces through gender mainstreaming or open appointment processes, their capacity to change the institutional rules of the game (or 'how the deals get done and who makes them') may be limited.

(a) Feminist Method - Intersectionality

Drawing on core feminist method usefully advances an investigation of political settlement as a form of public legal and political power operating within well-defined gender tropes. In this vein, an additional tool that helpfully intersects with a feminist 'take' on political settlement is the conceptual framework of intersectionality. Intersectionality was pioneered as an analytical tool to scrutinize how the most marginalized women's experience of harm, in the workplace and the home, was occluded within the institutions responsible for legal remedy and protection. In the context of conflicted and fragile states, an intersectional analysis enables exposure of how, despite the systematic harms and exclusions experienced by women, negotiation, mediation and barter processes consistently fail to address or remedy their needs. Since its beginnings, the framework has achieved an extraordinary status poised, 'at the cutting edge of feminist theorizing'.<sup>32</sup>

Intersectionality also provides a highly subtle tool to more fully assesses the gendered politics of political representation, and the ways in which women are both present (and not) in the elite settings which are central to the process of political settlement and even when present have less traction than their physical presence in the negotiation space

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<sup>30</sup> Gretchen Kelmke and Steven Levitsky, 'Informal Institutions and Comparative Politics: A Research Agenda', *Perspectives on Politics* 2, no. 4 (2004): 727.

<sup>31</sup> Anne Marie Goetz, 'Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates, and New Directions for Research', in *Gender Justice, Citizenship and Development*, ed. Maitrayee Mukhopadhyay and Naysharan Singh (New Delhi: Zubaan, 2007), 16.

<sup>32</sup> See Eilish Rooney, 'Intersectionality: A Feminist Theory for Transitional Justice?', (paper presented at the 6th General Conference of the European Consortium for Political Research, Reykjavík, Iceland, August 25 – 27, 2011) quoting Kathy Davis, 'Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful', *Feminist Theory* 9, no. 1 (2008): 69.

might suggest.<sup>33</sup> Given the paucity of representation for women in political settlement arenas intersectionality analysis forces us to ask whom does the ‘woman’ who is present represent? Despite substantial regulatory attempts to ensure the greater presence of women in peace negotiation processes, results and success have been paltry. Yet the participation of women remains an important cornerstone of the Women, Peace and Security agenda, and illustrative of a politics of representation that has come to be a shorthand for inclusivity for women.

Political settlement discourses by contrast have no such gender inclusion mantra. Rather, the language and emphasis on inclusivity has remained buried in the landfill of moving out from narrowly-defined elite spaces to broader societal (read also civil society) engagement in political settlement processes. Of course, there is invariably a danger that a fast move on gender inclusivity will happen by simply ‘adding women and stirring’ in the political settlement literature and practice. We should not be under any illusions that mere presence of some women in negotiation spaces constitutes a radical break with the core of political settlement practice which remains definitively fixed on elite (male) actors. Moreover, simply including elite women gets us little of the intersectionality of conflict experience. Shallow representation is likely to particularly exclude the experiences of sustained communal and familial harm and violation that define violent communal hostilities over protracted periods for many women in most sites of armed conflict.

One powerful contribution of feminist theorizing in the peace and security arena in recent years has been a sustained emphasis on the power, resilience and agency of female actors in conflict.<sup>34</sup> This theorizing is highly relevant to what moves might be considered to engaging women in political settlement theory and practice. This shift to acknowledge and affirm agency has been a deliberate one. It comes in parallel to increased public recognition of the costs that follow from conflict for women, and a highly politicized emphasis on protecting women from sexual violence in armed conflict settings.<sup>35</sup> There is no doubt that the protective move in peace and security discourses has had important

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<sup>33</sup> Fionnuala Ní Aoláin and Eilish Rooney, ‘Underenforcement and Intersectionality: Gendered Aspects of Transition for Women’, *International Journal of Transitional Justice* 1, no. 3 (2007).

<sup>34</sup> Laura Sjoberg and Caron Gentry, *Mothers, Monsters, Whores: Women’s Violence in Global Politics* (London: Zed Books, 2007).

<sup>35</sup> The most high-profile dimensions of this protective move is captured by the series of UN Security Council Resolutions addressing conflict-related sexual violence beginning with Resolution 1325.

symbolic and practical benefits for women.<sup>36</sup> However, when the only gendered move in the peace and security arena is to protective politics, the broader imperatives of inclusion, participation and action become muted thereby ceding political settlement power to male actors. Agency analysis deepens our understanding of the intersectional roles women play during conflict as victims, participants, by-standers, and combatants thereby complicating the picture of female engagement in and experience of sustained conflict and fragility in state settings. With a more nuanced understanding of the complexity of roles that women play in conflict, we are better placed to speculate about how women can and will be engaged in political settlement processes.

Agency analysis also interacts with intersectional approaches to female participation and is essential to assess the ways in which the women who are present in negotiations function and what their leeway to engage on particular issues may be. To date, participation analysis tends to be hogtied to the notion that ordinary women (and even those extraordinary women who make it through to negotiation space) can shift polarity or overpower embedded patriarchy if only given access. Extensive empirical data is limited but anecdotal evidence suggests the very limited spaces that open for women in focused negotiated settings as well as in longer span political accommodation processes is highly constrained.<sup>37</sup> Women are hampered in seen and unseen ways by both formal and informal institutional practices as well as the capacity of patriarchal assumptions and values to pervade seemingly brand new negotiation settings.

#### (b) Law, Violence and Political Settlement

It is useful to underscore that political settlement and peace processes do not function independently from and are dependent on/relational to legal process. In particular, criminal accountability has played an extensive part in the toolbox offered to and assumed for fragile and conflict-afflicted states.<sup>38</sup> The call for accountability often foregrounds or accompanies the political process, and political settlement in conflicted states often maintains a co-dependency on permutations of amnesty, prosecution, rule of

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<sup>36</sup> Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade', *Melbourne Journal of International Law* 10, no. 1 (2009).

<sup>37</sup> Kathleen Staudt, 'Gender Politics in Bureaucracies: Theoretical Issues in Comparative Perspective', in *Women, International Development, and Politics: The Bureaucratic Mire*, ed. Kathleen Staudt (Philadelphia: Temple University Press, 1997), 4.

<sup>38</sup> Fari Medjoub, ed., *Building Peace in Post-Conflict Situations* (London: British Institute of International and Comparative Law, 2012).

law stabilization and truth recovery. The gender dimensions of the relationship between peace agreements and criminal accountability have been well-documented,<sup>39</sup> in particular the myriad of ways in which women fall out of accounting schemes, or even if formally included fail to be accommodated in ways that will enable their participation or fulsomely reveal the harms they have been subject to. Self-evidently, political settlements in fragile and conflict-affected states manifest the same kinds of co-dependency with legality and legal process. The riff on that reliance is the incompatibilities that follow from high-dependency on elite participation and legitimization and the targeting of elite actors for rule of law transgressions.

However, as feminist scholar Pascha Bueno-Hansen has pointed out there are other less visible challenges to the invocation of law in complex conflict sites, particularly where contemporary conflict overlays a post-colonial past.<sup>40</sup> The emphasis on post-colonial pasts triggers our attention to the ways in which entrenchment of elite privilege has been gained, and where (and by whom) the costs have been borne. A slew of recent feminist analysis opens up new vistas here, naming privilege and hierarchy in ways that expose how those who are disenfranchised and excluded find themselves in these categories.<sup>41</sup> In this emerging body of feminist work, with high relevance to both political settlement and peace process analysis, there is a demand to interrogate the past in deeper and longer ways and a mandate to entrenching political settlement in a reckoning with the benefits of political privilege accrued by nefarious and exploitative prior regimes.

In political settlement occurring in post-colonial sites, given that legal mechanisms are deeply embedded in political process, Bueno-Hansen asks the very simple but very radical question: ‘what informs the subject’s ambivalence towards engaging in the formal justice system?’<sup>42</sup> Drawing on the experience of political transition in Peru and its legal

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<sup>39</sup> Ní Aoláin, Cahn, and Haynes, *On the Frontlines*.

<sup>40</sup> Pasha Bueno-Hansen, *Feminist and Human Rights Struggles in Peru: Decolonizing Transitional Justice* (Champaign, IL: University of Illinois Press, 2015).

<sup>41</sup> Khanyesela Moyo, ‘Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies’, *International Journal of Transitional Justice* 9, no. 1 (2015); Sarah Maddison, and Laura J, Shepherd ‘Peacebuilding and the Postcolonial Politics of Transitional Justice’, *Peacebuilding* 2, no. 3 (2013); Fionnuala Ní Aoláin, ‘Southern Voices in Transitional Justice: A Critical Reflection on Human Rights and Transition’, in *Law’s Ethical, Global and Theoretical Contexts: Essays in Honour of William Twining*, ed. Upendra Baxi, Christopher McCrudden, and Abdul Paliwala (Cambridge: Cambridge University Press, forthcoming 2016).

<sup>42</sup> Pasha Bueno-Hansen, ‘Finding Each Other’s Hearts: Intercultural Relations and the Drive to Prosecute Sexual Violence During Internal Armed Conflict in Perú’, *International Feminist Journal of Politics* 12, nos. 3-4 (2010): 320.

roots, Poole illuminates in parallel that there is an important pivot on the doubts that linger about any institutional engagements, namely that while great pains are taken to assure victims that the law is universal and impartial ‘peasants, like many other Peruvians - negotiate their daily lives as a series of calculations involving individuals and spaces that everyone knows exist “outside the law”’.<sup>43</sup> The lack of social and institutional trust that infects the experience of individuals and communities (with an unavoidable, specifically gendered hue) and creates extraordinary barriers of trust to engaging marginalized women in any form of inclusive political process. It may also explain why women and other marginalized groups will make strategic choices to engage and operate across both formal and informal settings, cautiously optimizing the limited spheres of maneuver they have in both.

These dually important virtues of trust and security are also implicated by the relationship of violence to political settlement. While much of the literature on political settlement addresses public institutions, public processes of political engagement and the political mechanisms that engage numerous actors in divided polities violence is a luminal part of the overall analysis. Evidently, armed communal violence engaging armed political actors figures prominently as a precursor to the discussion of political settlement in many contexts. Such violence is often understood to function as the driver for settlement and ending hostilities, and is often the incentive for actors to remain at the table and for mediator states and international institutions to be present. However, as I have addressed at length elsewhere, violence and security are highly gendered concepts.<sup>44</sup> Gender-based exclusions from security discourses and practices are not unusual or unique. The absence of a gender dimension in the establishment, revision and operation of new legal and political institutions in post-conflict societies has been generally acknowledged.<sup>45</sup> In assessing the relevance of political settlement to women, the relationship between gendered security and settlement is critical.

Some settlement sites offer more testy and challenging ground for this mutual interrogation than others. For example, Cockburn and Zarkov have argued ‘[t]hat the

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<sup>43</sup> Deborah Poole, ‘Between Threat and Guarantee: Justice and Community in the Margins of the Peruvian State’, in *Anthropology in the Margins of the State*, ed. Veena Das and Deborah Poole (Santa Fe, NM: School of American Research Press, 2004), 61.

<sup>44</sup> Ní Aoláin, Cahn, and Haynes, *On the Frontlines*.

<sup>45</sup> Christine Bell, Colm Campbell, and Fionnuala Ní Aoláin, ‘Justice Discourses in Transition,’ *Social and Legal Studies* 13, no. 3 (2004).



post-conflict environment, like conflict, is vividly about male power systems, struggles and identity formation'.<sup>46</sup> Moreover, there may be an enormous flux in that male post-conflict fraternity, both on an individual and communal level. Men who were in power are losing power, other men are taking their place, and, as is often the case when a conflict stalemate arises, internationals (generally culturally- and politically-differentiated other males) are coming into a society to fill a vacuum. As Handrahan has noted, this "international fraternity" — the community of decisionmakers and experts who arrive after a conflict on a mission of "good will" — holds the upper hand, morally, economically and politically'.<sup>47</sup> However, while the international presence is lauded for rescuing such societies from the worst of their own excesses, what is little appreciated is that such men also bring with them varying aspects of gender norms and patriarchal behavior that transpose into the vacuum they fill, including modalities of sexual violation.<sup>48</sup> Moreover, despite an array of cultural differences between locals and internationals, what is frequently overlooked are the fundamentally similar patriarchal views that internal and external elites share, which operate in tandem to exclude, silence, or nullify women's needs from the political settlement space. As Zarkov and Cockburn's edited collection explores, the loosening of rigid gender roles from the social flux that conflict inevitably creates is not necessarily sealed off at a conflict's end or the prospect of political settlement by national male leadership, but rather this role is taken up by the male international development community, 'whose own sense of patriarchy-as-normal is quite intact'.<sup>49</sup> Thus, the role of local and international elites in setting the framework for settlement and the relationship of security (or lack thereof) is an important dimension framing how women experience political settlement in real-time. We should also take notice of the prescient reality that post-conflict sites enable local (previously oppositional) elites to come together and that a consolidation point is perversely the oppression of women. This point has been cogently illustrated by the regressive politics of reproductive rights in political settlement processes in societies as diverse as Chile, Northern Ireland and Poland. Paradoxically, the process of consolidating and uniting

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<sup>46</sup> Lori Handrahan, 'Conflict, Gender, Ethnicity and Post-Conflict Reconstruction,' *Security Dialogue* 35, no. 4 (2004): 433, citing to Cynthia Cockburn and Dubravka Zarkov, eds., *The Postwar Moment: Militarities, Masculinities and International Peacekeeping* (London: Lawrence and Wishart, 2002).

<sup>47</sup> Handrahan, 'Conflict, Gender, Ethnicity and Post-Conflict Reconstruction', 433.

<sup>48</sup> See Lesley Abdela, 'Kosovo: Missed Opportunities, Lessons for the Future', *Development in Practice* 13, nos. 2-3 (2003): 208. Abdela, the former Deputy Director for Democratisation for the OSCE Mission in Kosovo, details the consistent lack of integration of women and gender related issues into the planning of the Interim Arrangements for Kosovo. See also 'Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004', *Human Rights Watch* 18, no. 4 (2006).

<sup>49</sup> Handrahan, 'Conflict, Gender, Ethnicity and Post-Conflict Reconstruction', 436.

elites has emboldened conservative forces in many fragile and post-conflict states, reinvigorating their moral and social claims and creating new platforms and legitimate claim spaces to press such positions as bargaining chips in wider political settlement bargaining.

3. How Might Peacemaking and Political Settlement function to include women's needs and interests?

Identifying the flaws of peacemaking and political settlement mechanisms only gets us a little bit down the road to re-imagining different ways to produce tolerable settlements that do not merely end violence but address the causalities that produce the violence in the first place.<sup>50</sup> The more salient question is how to create processes that move societies past structural chauvinism, unpredictable yet sustained violence, the perpetuation of sharp inequalities and the loss of civic trust. Furthermore political settlement constitutes, in an echo of Mushtaq Khan's early pre-occupations, a primary vehicle to improve economic capacity and human well-being. Transformative political settlement may not only be a better politics in the narrow sense of the term but, provide the foundations from which economic growth, economic inclusion and sustainable development are fully integrated in and enabled by women's equality and autonomy.

One challenge – given the acceptance that women have been excluded from elite-driven processes – is how to address the conceptual and methodological challenges that create sites of resistance to the inclusion of women in political settlement processes.<sup>51</sup> These process are in part the product of the 'liberal peace'. To venture to include women means working up against the logic of modernity to make sense of experiences, communities, and ways of doing and experiences which are significantly outside the scope of what can be imagined and understood in the prevailing order. They are also in part the product of messy 'hybrid political orders' which follow from the clash of the liberal peace and local resistance to it through informal spaces and processes. In particular the anchors of the liberal peace, individualism, linear temporality, and binary logic, 'devalue other ways of knowing, including relational logic based on collectivity'.<sup>52</sup>

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<sup>50</sup> This avoids what Edward Laws has termed 'unresponsive' settlements. See Laws, *Political Settlements, Elite Pacts, and Governments of National Unity*, 27.

<sup>51</sup> Bueno-Hansen, 'Engendering Transitional Justice'.

<sup>52</sup> Idid., 62.

The ambiguity about harnessing women's interest to political settlement / and peace agreement processes is underpinned by a deep discomfort with rectifying race, class and gender inequalities.<sup>53</sup>

The goal then is a transformative project, one that will not be fulfilled by tinkering with inclusionary rules, more consistently setting aside a couple of random seats at negotiation tables, or appointing more connected and acceptable women to sit on the new (or revitalized) institutional bodies that advance the enforcement dimensions of political settlement. I underscore that the move to transformative politics is partly enabled by the ferocity of violence that prompts the move to settlement politics in the first place. Thus, our departure point is an understanding that a saturation point for violence is interwoven with the endogenous and exogenous pressures to negotiate.

Oddly, some of the core tenants of peace agreements function directly relational to the violence of conflict. Specifically, the imperative to end violence prioritizes the inclusion of military actors. Sequentially, the desire to keep them in bargaining space, often means a set of compromises are made that limit the broader and long-term transformative aspects of the peace deal. Those compromises often work least well for women, who are generally unlikely to be in the military camp and whose inclusion or exclusion from bargaining processes is generally not viewed as central to delivering or maintaining the deal. More recent policy based claims to include women, particularly through the Women Peace and Security mandate are based on arguments of fairness, representativeness, and more recently that a 'better' deal may emerge.<sup>54</sup> The challenge here is self-evidently that the essentialism necessary to undergird that claim presumes that the woman who is present is inherently gender-attuned in her ambition and representation. The data reveal this presumption to be inherently flawed. Nonetheless, the argument for inclusion ought not to be based on a higher standard of quality representation for women that we demand of the men. Such a position would be self-defeating and inherently unsound. Minimally, women should be proportionally present in the critical spaces of negotiation, mediation and barter around conflict ending

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<sup>53</sup> Ratna Kapur, *Erotic Justice: Law and the New Politics of Post-Colonialism* (London: Glasshouse Press, 2005), 17.

<sup>54</sup> Dina Haynes, Naomi Cahn, and Fionnuala Ní Aoláin, 'Women in the Post Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality', *Santa Clara Journal of International Law* 11, no. 1 (2012).

sequences, the substance of the deal itself, and in all the micro spaces of negotiation that follow security sector reform, from economic development to constitution writing,

One clear takeaway is to view thresholds of violence as necessary scaffolding and sometimes straightjacket to both political settlement and peacemaking processes. Succeeding recognition of the prompts provided by collective violence is the much harder task of disaggregating the power secreted by violence (or its threat) at the peace table. No easy solution can be offered here but a more caustic recognition of the violence-power entanglement and the downstream consequences of maintaining rather than undermining violently sourced power through the process of deal-making ought to provide sufficient incentive to mediators. If nothing else, the prospect of groundhog day negotiations could encourage producing procedural and substantive institutions and mechanisms that create a fissure between military might and the maintenance of choked political power. It ought to be obvious that if the political settlement merely retains entrenched violence by other means, without offering any bridge in divided societies to the meaningful exercise of civic trust, the advancement of multicultural co-existence, and the mutuality of interests across identities we have not moved very far.

Here, a number of safeguards are proposed. First is a deceptively simple proposition that the table itself must be bigger and deeper to accord representation to a wider array of actors. This is not a new silver bullet. Feminist peace scholars and other critics of the liberal peace have consistently argued for diversity and inclusion in peace processes. It is a claim that has equal resonance in political settlement discourses. Inclusion is a not a new word for political settlement and the term has been used as a way to explain the stability and legitimacy of some states in the configuration of long-lasting and broadly functional political systems.<sup>55</sup> But the emphasis on inclusively for feminist scholars clearly means something different than stability and durability of political settlement within the terms of current policy debates. Stability and durability can simply mean that the men with guns continue to run the show and that the ‘trains run on time.’ In a transformed polity stability is inherently connected to gender security and the durability of the settlement is pegged to deep support from diverse political, social and economic communities and particularly marked by the support of the most vulnerable and

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<sup>55</sup> Catherine Barnes, *Renegotiating the Political Settlement in War-to-Peace Transitions* (London: Conciliation Resources, 2009), 3-4.

marginalized in society. This upends the traditional markers of elite satisfaction with the status quo as the basis for comfort in the security of the deal.

Second, a key practice is gendered agency, and the goal that political settlement processes enable and promote agency for women. This is all good in theory but we have to be very careful of the process by which it is achieved. Specifically 'giving women voice presumes that these women were/are mute'.<sup>56</sup> By this I infer that the failure to give sufficient voice to women in existing processes should not be taken to confirm that female activism and engagement is absent in the daily doing of politics in the conflicted site. One vast problem is that once one has established who the women are and affirmed their formal marginality, how in fact does one 'bring them in'? In transforming political settlement there is peripheral awareness from the outset that women's engagement exists and is present at multiple levels in deeply conflicted societies, but that harnessing it on its own terms is a necessity to providing sustenance and long-term viability to inclusively-based political process. Connected is the more existential methodological question of whether women are really 'outside' or how the external gaze understands 'outsider' and 'insider', particularly in highly communal societies. As Schutte has asserted 'unless exceptional measures are taken to promote a good dialogue' it is extremely difficult to have a nonhierarchical dialogue.<sup>57</sup> Schutte refers to this as 'incommensurability' based on an analysis located in relations between dominant and subaltern people across borders.<sup>58</sup> This nonhierarchical dialogue is one of the most transformative pieces on the chess table, but it is profoundly difficult to move effectively. Not least it requires a commitment to relationship building, mutual trust, keeping promises and ultimately being prepared to take time to do the work. The dynamics of political settlement has invariably functioned on a time axis that gives little credence to this slow coalition and relationship building exercise, and its inclusion would fundamentally re-order and slow down how we do the business of negotiation. As the Feminist of Color Collective notes in its reflection on bargaining across political borders and colonial pasts, 'political solidarity depends on a

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<sup>56</sup> Marnia Lazreg, 'Development: Feminist Theory's Cul-de-Sac', in *Feminist Post-Development Thought: Rethinking Modernity, Post-Colonialism and Representation*, ed. Kriemild Saunders (London: Zed Books, 2002), 125.

<sup>57</sup> Ofelia Schutte, 'Cultural Alterity: Cross-Cultural Communication and Feminist Theory in North-South Contexts', *Hypatia* 13, no. 2 (1998): 56.

<sup>58</sup> *Ibid.*

careful negotiation of difference'.<sup>59</sup> That difference is not only visible in how the talking is done, but in the time it takes to do it.

## Conclusion

How does one distinguish between the continuation of the status quo through other means and transformation in political settlement? What kind of markers might be engaged to engage structural and deep-seated change for women? What examples do we have of change processes wrought through political settlement that are good and successful examples of transformation – or a level of impact in that direction for women? What theory of change supports transformation for women and how do we avoid bureaucratic and technocratic theories of change that merely reproduce the status quo for women in society? The limited existing literature identifies the following factors as essential to addressing women's role within political settlements:

[E]lite support for a gender equity agenda; [the] ability of the women's movement to contain oppositional elite or non elite groups; transnational discourse and actors creating space for the gender equity agenda; presence of male allies and 'femocrats' within the state apparatus; and policy coalitions exerting pressure on the state.<sup>60</sup>

Beyond those concrete suggestions, this article has suggested that some further work needs to be done. Specifically, an essential move mandates 'critical friendship' with and moderate distance from elites. Without some recalibration and interrogation of the gendered construction of elite positioning to account for historical race and gender edifices of privilege the likelihood of fundamental changes to political settlement practices is low. This move is not merely valuable for cosmetic purposes but progresses from a recognition that the legitimacy of settlement processes embedded without primary integration of women in process and outcome is low. This analysis has also demonstrated that when one hooks the critical tools of feminist analysis into political settlement practice the legitimacy quota of this analytical tool further diminishes. Such forensic review leaves little scope for comfort to those who advance political settlement as the intellectual and policy panacea for the multiple ills of violent, fragile and

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<sup>59</sup> The Santa Cruz Feminist of Color Collective, 'Building on "The Edge of Each Other's Battles": A Feminist of Color Multidimensional Lens', *Hypatia* 29, no. 1 (2014): 30.

<sup>60</sup> Sohela Nazneen and Simeen Mahmud. 'Gendered Politics of Securing Inclusive Development'. Abstract. (working paper, Effective States and Inclusive Development Research Centre, The University of Manchester, 2012), 3.

exclusionary societies. Rather, it should prompt some essential rethinking, with a view to harnessing the transformative potential of gender directed review to generating better political outcomes for fragile and conflict-affected states.

There is also clearly a need to frame the existing political opportunity structure for women in the specific place, culture and history and contextualize the opportunities for women's engagement in that particular setting. So, probing political settlement requires not only a broad engagement with key macro politics, but must remain attuned to the specific experiences and exclusion women experience in local political settings. Contextual analysis attuned to cultural and social conditions is critical. Beyond the formal institutional entry points for women, some accounting for the expansive influence of informal relations on women's capacity to engage in and be influential in political processes is essential to linking the public and private domains. The importance of informal relationships is linked to another central plank to a new approach, namely the relationship between public and private ordering for women, and the extent to which insecurity and under-enforcement in the private realm has a barrier effect for women's entry into the public arena.

In conclusion, the fundamental question is whether political settlement analysis can have its parameters expanded and incorporate (gender) ideology, (gender) discourses, bottom-up strategies used in negotiations by non-elite actors and informal interactions.<sup>61</sup> Its ability to do so may well inform and enable its ambition to provide transformative capacity to tenuous political spaces and the women and men who inhabit them.

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<sup>61</sup> Adapted from Nazneen and Mahmud, 'Gendered Politics of Securing Inclusive Development'.