

# Social covenants and social contracts in transitions

By Seth Kaplan

## ■ Executive summary

Structurally fragile states are plagued by deeply entrenched sociopolitical and institutional problems. They harbour uniquely formidable obstacles to stability, development and democracy. Too often, international efforts to aid transitions in these places fail because they emphasise the importance of the *vertical* state–society relationship and social contract while completely ignoring the factors shaping the *horizontal* dynamics within society that determine how the state–society relationship evolves and whether or not such a contract can even be fashioned. A better approach would address these challenges directly, by developing a “social covenant” that brings together various ethnic, religious, clan and ideological groups to create a more inclusive and sustainable political process and social contract. As South Africa’s transition shows, a society that has reached agreement on its fundamental principles and values (e.g. who is a citizen and what makes for a legitimate government) through a social covenant is much better equipped to forge a sustainable social contract than one divided by stark fault lines, especially when institutions are weak and unable to enforce rules and commitments. Although domestic actors have the predominant role in any transition, the international community can play a pivotal role in supporting the negotiation process and shaping the transition framework and in both monitoring commitments and ensuring that they are kept.

All transitions are not created equal. Some soar while others sink. What divides the ones that work from the ones that fail? Perhaps surprisingly, it has less to do with formal institutions and politics than with the dynamics *inside* societies that drive what occurs on the overt political level. To grasp this is the beginning of wisdom about transitions and how to help them fly rather than flop.

The headline-making difficulties of the “Arab Spring” countries as they strive to transition to a more inclusive and democratic style of government repeat a familiar pattern. A large number of states – including Afghanistan, Nepal, Sri Lanka, the Democratic Republic of the Congo, Nigeria, Egypt, Iraq and Libya – have entered transitions with high hopes and then struggled. More often than not, the international community has found that its frameworks and tools have been inadequate even to explain, let alone solve, the problems that hold these countries back.

Perhaps as many as 100 countries have transitioned to new political orders over the last few decades. Some of these have been among the world’s 60 or so structurally fragile states,<sup>1</sup> which are plagued by deeply entrenched sociopolitical and institutional problems. These fragile states are unlike other states. They function according to a different set of sociopolitical dynamics from more cohesive and institutionalised countries, and harbour uniquely formidable obstacles to stability, development and democracy. They are far more likely than other countries to have difficulties when changing political regimes.

Because of these problems, those who seek to aid transitions must let the differences among citizens of fragile states take centre stage. Too often, international efforts are beset by tunnel vision. They focus tightly on a narrow view of governance, ignoring the critical factors that truly determine success in these places. A 2012 OECD (Office for Economic Co-operation and Development) report on fragile

1 I use the term “structurally fragile” to refer to a set of countries whose political geography systemically disadvantages them (see below for more detail). This grouping has much overlap with what are known as “fragile and conflict-affected states”, but is not the same; not all conflicts are caused by structural fragility and not all stable states are structurally stable.

states (Letouzé and Catheu), for instance, emphasised the importance of the *vertical* state–society relationship 15 times and the social contract 13 times through its 108 pages, but completely ignored the factors shaping the *horizontal* dynamics within society that determine how the state–society relationship evolves and whether such a contract can even be fashioned.

As transitions in Tunisia and Egypt hang in the balance or flounder, states from Libya to Burma enter crucial periods, and places such as Afghanistan and Iraq continue to struggle, there is a critical need for a broader framework that better targets the problems fragile states face during transitions. This report will examine how fragile states differ from other countries before proposing a new approach to address their challenges.

## Why fragile states differ

Can a state navigate transitions and other challenges? It can if its people can cooperate with one another and if its institutions (formal and informal) can channel this cooperation to meet needs. These two factors shape how a government interacts with its citizens; how officials, politicians, military officers and businesspeople behave; how well different groups within society cooperate; and how effective foreign efforts to upgrade governance will be. In short, they determine to what degree a society is able to nurture a locally driven, productive system of governance – a prerequisite for any attempt to develop or democratise. Together with the set of policies adopted by the government, they determine a country's capacity to advance.

Fragile states fall short in both areas. Their populations have little capacity to cooperate in pursuit of public goods. Put differently, they suffer from political-identity fragmentation due to ethnic, religious, clan or ideological divisions within society. When combined with weak (or dysfunctional) institutions, political-identity fragmentation works in a vicious circle that severely undermines the legitimacy of the state, leading to political orders that are highly unstable and hard to reform. A strong national identity is crucial to the creation of state legitimacy, because a legitimate political order is usually built around a cohesive group and uses institutions which reflect that group's historical evolution. A cohesive national identity depends on many factors. History can matter more than ethnic or religious diversity, as India's and Indonesia's cohesion attest. In both of these cases, enough of a common history and culture, a long enough period of colonialism, a strong enough set of common institutions, and good leadership at critical points accustomed their peoples to an overarching national identity. Nation-states, usually created through a long process over hundreds of years (involving brutal wars, savage power politics, ethnic cleansing, forced assimilation and considerable greed and egotism as well as the building

of highways and schools), have the strongest social cohesion.

Countries with strong social cohesion are based on what Benedict Anderson (1983) would call an "imagined community" able to differentiate between compatriots and outsiders.<sup>2</sup> The affirmative power of a common national identity and group allegiance channels itself into country development, yielding states that are more stable, better governed, more development oriented and better able to deal with crises, because common challenges trigger cooperation. When South Korea faced a financial meltdown in the aftermath of the 1997 Asian financial crisis, its citizens largely eschewed bickering, seeking to make personal sacrifices to the nation. Individuals queued for hours to donate their valuables – including gold, wedding rings, jewellery and medals – in a gesture of support for their beleaguered economy (BBC News, 1998). It is difficult to imagine the citizens of Lebanon – or any other country sporting stark political-identity fractures – responding similarly. Although the Lebanese national anthem proclaims "all of us for the nation", a 2009 *New York Times* article quoted a Beirut sign undressing this empty platitude: "All of us for which nation?" (Worth, 2009). Countries must continuously attend to the ties that bind their people together or risk seeing cleavages form as a result of events or processes that weaken their unifying identities and national social cohesion.

Where social cohesion is lacking, political fragmentation and weak governing bodies feed upon each other in a vicious cycle. This brings about low levels of social cohesion, trust, sense of citizenship and state legitimacy, while creating incentives (and informal institutions) that encourage leaders and officials to act in ways that undermine formal institutions and state–society relations. This leads to greater conflict, poorer governance, poorer development outcomes and greater instability. Divisions of this nature also make it hard to form apolitical state bodies capable of distributing public services and applying the law evenly. As William Easterly has written, diversity only dampens economic growth in the absence of effective institutions (2000: 12).

## Fragile states in transition

Transitions test states more than any other type of challenge. Changes of political regime create power vacuums and unleash powerful collective emotions. Competing political identities surge in importance just as the formal structures of government are least able to manage them.

These pressures throw into stark relief the differences between fragile and resilient states. Resilient states are able to fall back on strong social bonds, trust and informal institutions that promote cooperation despite differences of opinion; fragile states, by definition, lack such resources.

<sup>2</sup> I refer here to horizontal, not vertical, social cohesion. The former, which I consider more important, looks at how strong the "social glue" is that ties people. The latter, which is often emphasised in the development field, looks at levels of inequity. For more information, see <<http://www.fragilestates.org/2012/03/12/horizontal-versus-vertical-social-cohesion-why-the-differences-matter/>>. The phrase "imagined communities" is typically used to identify nation-states, which make up the great majority of highly cohesive countries.

As a result, the forces unleashed by a transition bring together a society in a resilient state while pushing apart a society in a fragile state. Resilient states can work even when their governments fall. Leaders come together to settle disputes in ways that build trust, strengthen ties and lead to the establishment of a new and widely accepted political order. In fragile states, the reverse is often true. During transitions, leaders compete in ways that undermine trust, weaken bonds and yield an unstable political order with low legitimacy. The power vacuum in a resilient state is quickly filled. In fragile ones, crisis acts as a centrifuge, splitting society into its component parts.

Contrast Somalia's and Somaliland's experiences since the collapse of the Siad Barre regime in 1991. Somaliland has become one of the world's most surprising success stories since declaring independence from Somalia in 1991. It has thrived because it is mainly based on one clan that has its own traditional system of institutions which everyone follows, and the system works to produce outcomes beneficial to the society and country. This combination has enabled it to offer a secure environment for businesses – encouraging trade and investment – and to resolve internal disputes (over such things as power and money) in the absence of strong formal state institutions.

Somalia, by contrast, has been an abysmal failure as a state because the country's clans constantly compete for resources, frustrating every attempt to establish a national government. It has very limited cohesion – despite a common language and ethnicity – and no institutions robust enough to funnel activity towards productive outcomes. International assistance has not helped; despite at least 15 peace initiatives and more than \$8 billion of aid spent on efforts to create a strong state since 1991, the country still lacks anything remotely like a robust central government (Gettleman, 2008). (Somaliland has done well despite, or perhaps because of, a dearth of assistance from the international community. It is ineligible for many types of aid because it remains unrecognised as an independent state.)

## Social covenants

As these examples indicate, in fragile states, *horizontal* society–society dynamics are closely linked to *vertical* state–society relationships, and often have an important impact on how these relationships evolve. Thus, they have an immense impact on whether a social contract can be fashioned and what its nature will be if it eventually is. In such places, developing a “social covenant” that brings together various ethnic, religious, clan and ideological groups is essential to creating a more inclusive and sustainable political process and social contract.<sup>3</sup>

In social covenants, the major groups within a society come together and agree on a new framework and vision for cooperation.<sup>4</sup> They can play an important role in binding

society together in ways that encourage cooperation, strengthen governance and promote state building. Forged from negotiations between different groups (and thus more akin to a society–society compact than a state–society compact), social covenants build a common identity, common values, a common narrative that defines the origins and make-up of political society, and a common sense of purpose for the state that people live in. In essence, they are less about state building than society building (which yields a unified political community), fashioned with the understanding that a cohesive society is a prerequisite for a successful state.

Although both social covenants and social contracts are important, they serve different purposes. As Jonathan Sacks explains (2007: 110):

Social contract creates a state; social covenant creates a society. Social contract is about power and how it is to be handled within a political framework. Social covenant is about how people live together despite their differences. Social contract is about government. Social covenant is about coexistence. Social contract is about laws and their enforcement. Social covenant is about the values we share. Social contract is about the use of potentially coercive force. Social covenant is about moral commitments, the values we share and the ideals that inspire us to work together for the sake of the common good.

Social covenants have long played a crucial role in nation building. For instance, they played an important role in the development of England, Scotland, the Netherlands and Switzerland in the sixteenth and seventeenth centuries, helping to establish some of the world's first nation-states. These peoples, as Daniel Elazar has written, “not only conceived of civil society in covenantal terms, but actually wrote national covenants to which loyal members of the body politic subscribed” (Elazar, 1995). When the Scots sought to resist Charles I's interference in the Church of Scotland in the 1630s and 1640s, large numbers of Scottish noblemen, gentry, clergy and burgesses signed the Scottish National Covenant to assert their independence (the “Covenanter movement”).

In the United States, social covenants played a prominent role in the establishment of early communities (such as the Puritans), individual colonies (especially in the north) and eventually the whole country. The Declaration of Independence, the U.S.'s founding document, is, in essence, a covenant developing a new relationship between a set of people sharing common values (the constitution, which followed 11 years later, is the social contract).

Social covenants are crucial to building legitimate political orders in fragile states because such countries are

<sup>3</sup> Daniel Elazar pioneered contemporary work on the use of social covenants in political thought. See <<http://www.jcpa.org/dje/index-cov.htm>>.

<sup>4</sup> The idea of social covenants comes from Jewish and Christian theology. The Bible often uses the concept, and it was once the regular subject of theological treatises, even though it involves politics more than religion; see Elazar (1995).

generally colonial fabrications imposed on local populations and viewed as artificial impositions. Thus, they lack a common national identity and have populations with stark differences in loyalties, values and priorities. As Michael Hudson explains in his classic study of the “legitimacy shortage” in Arab politics (1977: 389–90):

a legitimate political order ... has to be [based on] some consensus about national identity, some agreement about the boundaries of the political community, and some collective understanding of national priorities. If the population within given political boundaries is so deeply divided within itself on ethnic or class [or, for that matter, religious or clan] lines, or if the demands of a larger supranational community are compelling to some [significant] portion of it, then it is extremely difficult to develop a legitimate order.

In the 60 or so fragile states that face this dilemma, the establishment of a widely accepted and widely obeyed social contract is very hard to achieve if the most important groups within society do not come together to reach a consensus on how they will cooperate and what common vision will shape the nature of the state they share.

Thinking in terms of covenants does not take for granted that an actual agreement is reached, any more than thinking in terms of a social contract does. However, in societies riven by divisions and lacking any organisation – such as the state – that can be relied upon to play umpire among competing groups, some form of agreement – even if implicit – among major identity and ideological groups is crucial to ending conflict and dividing up power in a way that ensures a degree of common understanding of what the national identity is and how the state ought to work. Without a working agreement or its informal equivalent, the chase after power and resources is likely to be viewed as a zero-sum game between competitors, not compatriots – with predictably dire effects.

## Combining social covenants and social contracts

Social covenants and social contracts complement and reinforce each other. Building a nation goes hand in hand with building a state. A commitment to developing an inclusive, unified polity goes hand in hand with developing a robust rule of law and an equitable framework for determining how power will be distributed. Building social cohesion and a common identity go hand in hand with developing accountable, democratic government.

A covenantal society that has reached agreement on its fundamental principles and values (e.g. who is a citizen and what makes for a legitimate government) is much better equipped to forge a sustainable social contract than one divided by stark fault lines, especially when institutions are weak and unable to enforce rules and commitments. This is particularly so when covenants can strengthen and

enforce commitments by building upon widely accepted traditions and beliefs, such as was the case for Protestant groups who used the concept in Europe and North America in the sixteenth to the eighteenth century. Given this, working with a set of principles and values that are widely shared across social divisions – and can be based on, for example, religion or a common cultural outlook – is essential if stark fault lines are to be overcome.

Social covenants and contracts combined offer a broader and more comprehensive approach than focusing on either elite bargains or the quest for inclusive enough politics and processes. Covenants accomplish more than an elite bargain, binding both leaders and groups together under a stronger, more public agreement, and taking into account minority rights, historical grievances and differing perceptions about the role of religion in public life. If necessary, an elite bargain can be subsumed within a covenant. Social covenants and contracts together address a much broader set of issues than a focus on process and politics alone, as they help to build a unified political society, creating greater trust between groups, greater legitimacy for the resulting processes and greater state capacity (due to greater support for state actions) as a result. These, in turn, contribute to efforts aimed at improving the quality of governance. The two agreements also provide a mechanism to directly address the sectarian fault lines, horizontal inequities (economical, political and cultural inequities between identity groups) and discrimination in public-services delivery that plague fragile states in a way that elite bargains and processes, and politics generally, cannot.

## The South African success story: how did they do it?

Perhaps the best recent example of how the approach that we might call “a covenant plus a contract” can work in practice is the experience of South Africa. Despite being riven by decades of conflict and the long, sad history of apartheid, the country managed one of the most successful transitions in recent times, providing a template for how difficult transitions can be carried out in other deeply splintered societies.

The 1991–1992 Convention for a Democratic South Africa (CODESA) brought together most of the major actors in an attempt to broker an agreement. Although this failed, it nurtured the relationships and set the stage for the 1992 Record of Understanding between the most important representatives of whites (the National Party or NP) and blacks (the African National Congress or ANC). This dealt with a constitutional assembly, an interim government, political prisoners, dangerous weapons and mass action, and restarted the negotiation process after the failure of CODESA. These two leading parties – the NP and the ANC – then worked together to reach bilateral consensus on the issues before taking them to the other parties, which by this time (April 1993) were all engaged in the political

negotiations (white right-wing parties and some leading black parties had stayed out of CODESA). Finally, with international assistance (led by the former U.S. Secretary of State Henry Kissinger and the British former Foreign Secretary Lord Carrington) to overcome some brinkmanship towards the end (led by the mainly Zulu Inkatha Freedom Party), an agreement amongst the major societal groups was completed.

This final agreement – the social covenant – forced everyone to make concessions. The ANC got what it wanted – the transfer of power – in return for various protections for groups who feared what was sure to be a long period of one-party dominance after the transfer. The NP was promised a role in government for five years as part of the ruling coalition after the first post-transition election, held in 1994. The nature of the capitalist economy and the role of private property in it were maintained, ensuring that white assets would not be seized, as was widely feared. Decentralisation gave Inkatha, whites and other groups greater access to power at the provincial level. The Zulu monarchy was given special status. The Truth and Reconciliation Commission was established to deal with politically motivated crimes committed during the apartheid era in a way that would promote reconciliation and limit prosecutions. The constitution – the formal social contract that would guide the relationship between state and society – was drawn up by the parliament elected in 1994 in the first non-racial elections (but had to include a collection of “constitutional principles” that were agreed upon during the pre-transition negotiations), and was promulgated in 1996.

With Nelson Mandela, leader of the ANC, playing a crucial role before, during and after the process,<sup>5</sup> the country achieved remarkable reconciliation between groups that had been in conflict for decades, and established a new national identity that brought people together in a way previously not thought possible. This identity, based on a highly tolerant, highly inclusive vision of South Africa as a multicultural “rainbow nation”, has been ritually celebrated at sports events (such as the 1995 Rugby World Cup), arts and cultural events (such as the 1997 South African Music Awards) and other fora across the country (Baines, 1998).

In Tunisia, something akin to a social covenant was constructed years before the Arab Spring. The four major opposition political parties came together in 2003 to reach a consensus on the fundamental principles of how the country would be governed if they came to power. In the “Call from Tunis”, they agreed on such things as the role of elections, religion, Muslim-Arab values and women in society. Starting in 2005, these and smaller parties met to reaffirm their commitment to these principles while working to reach a consensus on the details of how they would be implemented. These agreements – as well as the

relationships built while forging them – have allowed Islamic and secular leaders to overcome their mutual fears and distrust, and laid the groundwork for the relatively successful (if still highly imperfect and incomplete) transition that the country has experienced since 2011. Although negotiations over the constitution – the social contract – remain fraught, eventual agreement is still likely because the social covenant seems solid (Stepan, 2012).

In contrast, Egypt has done remarkably little to develop a unified political society, build trust between its major factions or create a consensus about what the country’s identity and fundamental guiding principles ought to be, despite starting with a relatively cohesive and institutionalised state. Its post-transition governments have all acted exclusively, seeking to steamroll opponents rather than co-opt them. The result is much more conflict than necessary, and a process that is deemed illegitimate by many, even though a majority of the population voted for the country’s first elected president and now supports the military regime that toppled him. The rest of the region – including Libya, Yemen, Bahrain and Iraq – all suffer from similar problems to those of Egypt.

One of the biggest challenges involved in forging social covenants and contracts is determining whom to include and whom to exclude from the process. The “winners” from any transition are generally reluctant to work with members (or partners) of the former regime, minority groups that played no prominent role in the changeover, former extremists who want to join the process and so on. Nonetheless, they should overcome their reluctance. In places such as Iraq and Libya, the shunning of members of the previous regime has weakened the capacity of the state; the shunning of members of the former dominant ethnic or tribal group has hardened social divisions and produced violence.

The more inclusive the new regime is, the more likely it is to be stable, sustainable and successful. Some spoilers, however, will act in ways that make them too hard or too dangerous to work with, and will need to be excluded or confronted, sometimes with a show of force. Violent radicals, exclusionary democrats, secessionists and members of the former regime who refuse to accept the disposition of the new one will have to be contained or mollified; otherwise, the transition may suffer severe consequences. In Tunisia, a reluctance to take proper security measures against a radical Islamist movement came back to haunt the first government elected after the transition, when members of that movement attacked police officers, soldiers and the U.S. embassy in Tunis, and assassinated two opposition politicians. Unfortunately, it may be difficult at times to discern which groups and individuals should be brought in and which groups should be excluded from the process.

5 People such as F. W. de Klerk, Cyril Ramaphosa, Roelf Meyer and Joe Slovo also played crucial roles during the negotiations.



## The international role

Although domestic actors have the predominant role in any transition, the international community can make a substantial contribution in a few areas.

However, first it needs to create transition strategies that work in fragile states. This requires a much stronger focus on the society–society relationships that have so much influence on how countries evolve and their prospects for developing successful social contracts. The social covenant can play a crucial role here, and should be integrated into efforts to help countries whose divisions mean that they lack a cohesive political society.

Intervention in its various forms can be pivotal in supporting the negotiation process and shaping the transition framework. More often than not, forging social covenants and contracts will require long discussions that gradually build up trust, bring in an ever greater number of parties, find creative solutions and compromises, and design new ways of governing and changing power. Outside mediators can play a crucial role. Foreign aid can play a crucial role in overcoming short-term financial shortfalls, encouraging “buy-in” even on the part of would-be spoilers and helping an economy to reform. Technical assistance can help reform institutions. Providing a wide range of information about the experiences and methods of other countries and how they dealt with similar challenges can be of particular help as local actors seek solutions that fit their own contexts.

After agreements have been reached, international actors can also prove pivotal in both monitoring commitments and ensuring that they are kept. When trust between parties is low and local institutions are weak or missing, there is nothing like having an honest referee. In this capacity, international actors can enforce standards and agreements by both rewarding good performance and threatening sanctions on specific players for a lack of performance, ask the World Bank or International Monetary Fund to monitor economic reforms and even deploy troops as a security guarantee. International actors can also play a direct role in helping to ensure that funds are spent reasonably well (as they do in Liberia) or that the rule of law gains traction (as they do to some extent in Guatemala).<sup>6</sup>

Transitions are a difficult challenge for any country. In fragile states, they can easily degenerate into conflict, authoritarianism or permanent instability, with dire consequences for economies and livelihoods. Forging a social covenant early in the process, joining together major social groups, is crucial to ensuring that an inclusive and legitimate political process will take root and become widely accepted. Even if not developed into full written agreements, these can play a decisive role in transforming the social relationships that must underpin any attempt at state building. ■

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<sup>6</sup> This section borrows from World Bank (2012: 188–191).

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