**Two Logics of Non-Recurrence after Civil Conflict**

**Abstract**

This article examines the interactions of two under-theorised means to forestall recurrence of violence and human rights abuses after conflict with two very different, but by no means mutually incompatible, logics. The first of these is guarantees of non-recurrence (GNRs), a branch of transitional justice characterised by a deeply formalist, institutionalised logic. The second is political settlements characterised by a highly informal logic. This article explores the conceptual terrain between these two logics of non-recurrence. It demonstrates a mismatch between the faith of transitional justice policy-makers in the centrality of GNRs to non-recurrence, on the one hand, and the actual process of guarding against conflict resumption as it is shaped extra-institutionally by the informal practices that underpin settlements, on the other. Post-conflict states generally place greater faith in the informal logic of settlements than the institutionalist logic of GNRs. Arguing that the prospects for non-recurrence are not fully captured if we focus only on the legal and institutional attributes of the state, it shows that settlements evolve or disintegrate incrementally over time. This critically conditions when GNRs are essential and efficacious. Put another way, the fate of GNRs in *particular* institutions depends on how settlements *in general* maintain the peace. Transitional justice theorists should be open to the possibility that guarantees of non-repetition are the fruit, not the precondition, of social order.

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**1. Introduction: The Permanent Risk of Conflict Recurrence**

Between 1989 and 2020, nearly half of all conflict episodes recurred, and almost 20% have recurred three or more times.[[1]](#footnote-1) Intermittent cycles of war and peace are the norm in many countries. This is so notwithstanding the deployment of peacebuilding missions and billions of dollars in post-conflict development aid. Former antagonists may fear recurrence because perceived benefits of an earlier agreed peace accrue unevenly to one group, or because there are fears about the current intentions of the recently opposed side, or because socio-economic conditions that led to conflict remain entrenched. As examples as diverse as Timor-Leste, Afghanistan, Côte d’Ivoire, Mozambique, Liberia and South Sudan show us, transition from conflict is never a clean break from the past. There is no *a priori* reason to believe all factions or all citizens will automatically accept and comply with a peace settlement. The prime insecurity dilemma stems from the fact that the main parties to a domestic conflict cannot credibly ensure that their antagonists will honour the agreements they have committed to in contexts where there are no fully functional institutions to ensure enforcement prior to (and after) disarmament and demobilisation.[[2]](#footnote-2) This all the more so in post-conflict ecologies characterised by fragmented authority and where neither party decisively destroys the combat capacity of the other.[[3]](#footnote-3) A clean victory for one side or the other is the result that is most likely to produce stable peace.[[4]](#footnote-4) Even where this occurs, without some measure of tacit consent the costs of repressing the defeated group may prove prohibitively high.[[5]](#footnote-5) Violence and non-violence ‘often co-exist in tandem as part of the broader landscape of postconflict political order’[[6]](#footnote-6) and the threat of full-blown recurrence always looms. As the World Bank notes:

‘Once a country stumbles into civil war, its risk of further conflict soars. Conflict weakens the economy and leaves a legacy of atrocities. It also creates leaders and organizations that have invested in skills and equipment that are only useful for violence.’[[7]](#footnote-7)

Peace agreements, at most, offer a stable instability. Progress from this state is uncertain, partial and non-linear.

**1.1. *Reducing the Risk***

Domestic leaders and the international community introduce a number of measures to reduce this risk of recurrence. Peacekeepers can physically separate antagonists. Peace agreements attempt to deal with immediate security concerns, executive or regional power-sharing and more long-term structural issues (e.g. land, natural resources, antidiscrimination, welfare and the rights of groups like women or indigenous communities). New constitutions attempt to ensure that previously abrogated rights will be respectedby the state. Peacebuilding and statebuilding try to address institutional and other democratic governance weaknesses to insulate a polity against degeneration back into conflict. Many economic development activities are undertaken with a view to non-recurrence. Economic improvement and employment can have a major, if unmeasurable, effect on issues of violence and conflict.

Sadly, the record over the last 30 years shows that most of these reforms to spur broader societal transformations have at best been minimally or partially carried out. There is an unwillingness, therefore, to assume all of these initiatives are a sufficient guarantee that (relative) peace will endure. ‘Post-conflict’, as Doornbos argues, should not be taken literally as a description of what happens when guns go silent.[[8]](#footnote-8) The underlying conflicts, identity polarisation and inter-elite struggles that underpinned conflict are never truly dormant. Many of the factors that catalysed fighting remain intact. State capacity is often lowest after conflict as administrative structures are dismantled or criminalised, permitting prolonged opposition to governments. Conflict depresses economic growth, which in turn increases the risk of conflict recurrence.[[9]](#footnote-9) Renewed hostilities promise an alternative system of profit as armed groups endeavour to capture valuable and exportable resources.[[10]](#footnote-10) Environmental shocks and high ethnic fragmentation loom large. Social, emotional and ideological factors can also push resort to violence.[[11]](#footnote-11) The low level of social cohesion exacerbates this sense of domestic insecurity. Conflict can quickly engulf even those post-conflict states like Timor-Leste and Mali that at one point appeared relatively stable.

States in the developing world, and post-conflict ones particularly, are shaped by this constant risk of violence. The internal vulnerabilities of states are compounded by uncontrollable external environments, producing states described variously as ‘insecurity regimes’ where the rules of political and economic life do not exist or are consistently violated, producing intense competition.[[12]](#footnote-12) Where high levels of dissensus exist over the fundamental parameters of political life, violence ‘may thus not be the reflection of political crisis, but may be a core characteristic of the very functioning and reproduction of a political order.’[[13]](#footnote-13) Indeed, the latent capacity for violence may affect politics as much, if not more, than actual violence.[[14]](#footnote-14) In most states outside the OECD world where violence has largely been caged by institutions, the ‘primary concern’ is to reduce latent or patent violence.[[15]](#footnote-15) A ‘security first’ mentality tends to predominate.[[16]](#footnote-16) Fragile, low-capacity states are therefore pragmatic, focusing on that which secures a negative peace, as opposed to broader, more human-security based approaches that address welfare, services or livelihoods.[[17]](#footnote-17) As Ayoob argues, paradigms and policies that do not take these immense vulnerabilities as central or that do not make security their centrepiece will lack ‘sufficient power to explain Third World behaviour internally or externally.’[[18]](#footnote-18) Other vulnerabilities, be they ecological or economic, are seldom viewed as the *most* acute or proximate danger of conflict recurrence relative to the risk that elites pursue political goals through violence.

The strengths and weaknesses of initiatives to grapple with these difficulties like peacebuilding, power-sharing and statebuilding are well understood and will not be explored in this article, though they form an indispensable background to the discussion herein. This article examines the interactions of two further, less theorised and less understood means to forestall recurrence of violence with two very different, but by no means mutually incompatible, logics. The first of these is Guarantees of Non-Recurrence (or Guarantees of Non-Repetition[[19]](#footnote-19) – hereinafter GNRs), a branch of transitional justice (TJ) born of soft international law and international human rights law characterised by a deeply formalist, institutionalised logic. The second is political settlements characterised by a highly informal logic. Both of these approaches make proven security vulnerabilities their focus, but disagree on what the main vulnerabilities are. This in turn affects their dominant formalist and informalist logics.

**1.2. *Divergent logics in the shadow of violence***

GNRs are best understood as ‘institutional reforms aimed at preventing a recurrence of violations’[[20]](#footnote-20) or as ‘concrete interventions that oblige institutions of the state and jointly contribute to diminishing the likelihood of repeated violence.’[[21]](#footnote-21) Narrower than peace agreements, they are introduced in post-conflict states when there is a risk of repetition of *specific* forms of violence to target the institutions that perpetrated, facilitated, condoned or failed to prevent past abuses. GNRs have emerged as the fourth pillar of TJ after trials, truth commissions and reparations. They flow from a realisation that in the aftermath of conflict or authoritarianism, measures of criminal accountability, testimony or redress alone or *in toto* were critically limited without attending to institutional and other more permanent reforms that could (negatively) prevent recurrence and (positively) vindicate the norm-based trust in institutions that underpin meaningful reconciliation.[[22]](#footnote-22) In essence, GNRs attempt to make institutions that otherwise might use violence or repression to maintain systems of exclusion within society less abusive and more rational through legislation and other multi-disciplinary measures. They take three main (and somewhat overlapping) forms, namely security reforms, bureaucratic reorganisation and vetting. They are premised on the usual TJ faith in the efficacy of a unique transitional window of opportunity that permits transformation of old ideologies and structures that permitted earlier abuses.[[23]](#footnote-23)

Implicit in the notion of GNRs is the idea that where conflict occurs, it is exceptional and a problem to be solved through reform. However, as much of the preceding discussion has made clear, violence (or the threat thereof) is instead a permanent fact of socio-political life. The emphasis on institutional reform and faith in a transformational moment in GNR is conspicuous by its absence in the parallel process of informal political settlements. These can be understood as ‘a common, if hard fought-for, understanding, or a series of tacit and more explicit agreements, usually among elites, about the distribution of power and resources and the nature of the linkages between state and society’.[[24]](#footnote-24) While GNRs emphasise the need to constrain state actors, settlements stem from a post-Hobbesian acknowledgment that in the developing world the potential for violence is *prevalent* throughout society, as opposed to *concentrated* in the state or any of its institutions. The state and its institutions do not enjoy a monopoly of violence.[[25]](#footnote-25) Others have an tacitly accepted power to rebel, co-opt elements of the security services, hire mercenaries or catalyse economically costly protests. When conflict breaks out, it generally emerges from networks of elite factions and the most obvious route to peace is when arrangements can be agreed among them that sustainably reduce the level of violence. In this sense, the state is less a unitary actor than a ‘field of power, marked by a threat of violence’ that is ever-present, an arena for acute competition between elites and the group they represent or muster, all pursuing their own interests.[[26]](#footnote-26)

Formal institutions like the security services and civil service can be subject to settlement. However, unlike GNRs, the dominant logic in settlements places little emphasis on formal institutions because even if consolidated and reformed control of institutions can be achieved, the capacity for violence is dispersed far beyond them through an elite with links that stretch deep into society.[[27]](#footnote-27) Consequently, while GNRs are premised on eliminating the rights-abusing potential of state institutions, there is a general acceptance in settlement theory that violence, or the threat thereof, can be ‘intrinsic’ to a given settlement, used instrumentally by those inside and outside it to influence the process.[[28]](#footnote-28) The rules of the game that underpin political settlements are premised to a greater degree on back-stage, informal and extra-institutional interactions among elites. They may preserve the outward appearance of formal peacebuilding, but place greater faith on neopatrimonial and/or clientelist rents to reduce the likelihood of violence.

**1.3. *Outline of the argument***

This article is an effort to explore for the first time the relationship between GNRs and settlements. While settlements are considered the ‘primary factor’ in the success or otherwise of peacebuilding,[[29]](#footnote-29) they have largely been neglected within TJ notwithstanding the field’s early roots in elite pacts in democratisation.[[30]](#footnote-30) Furthermore, there is a near-universal consensus in the literature that notwithstanding its sudden prominence in TJ theory and practice, GNRs are ‘the least developed element of transitional justice.’[[31]](#footnote-31) Articles on GNRs are replete with references to their ‘understudied’ nature in conceptual and empirical terms[[32]](#footnote-32) and the ‘scant attention’ they get in theory and policy.[[33]](#footnote-33) In an attempt to redress some of this undertheorisation, this article attempts to ponder the conceptual terrain between the two logics of non-recurrence, one inherently formal and the other inherently informal. The article avoids a stark dualism between the two logics – both GNRs and settlements, after all, pull in the same direction by acknowledging known vulnerabilities and attempt to mitigate forcefully against them. Any difference in logic is not about goals, but about the method of reaching it. As Sections 2 and 3 argue, both approaches mark a departure from the whiggish logic of the liberal peace – GNRs do so by serving as a form of what Paris describes as institutionalisation before liberalisation,[[34]](#footnote-34) while settlements do so by consciously circumventing the competitiveness of market and democratic competition. Both logics are realist and take institutional limitations of the state to pursue rational policies with reasonable efficacy as their starting point. Consequently, they prioritise non-violence over the *do everything* ethos in contemporary peacebuilding and TJ of inclusive growth, gender equality, environmental sustainability and good governance that states seldom proved capable of achieving even before conflict.

The two logics are not in inherent opposition to each other, though both logics have obvious potential for tension. I do not argue that GNRs are distorted by a neopatrimonial preference for weak institutions, though this is a possibility depending on context – as Section 4 argues, GNRs do not spell an end to the ability to derive rents in the short or medium terms. Nor do I argue that settlement elites inevitably capture, instrumentalize or subvert institutional changes to maximize their economic, military, and political agendas, though this is also possible – GNRs seldom touch established patronage arrangements, and in this respect may prove relatively non-contentious. The purpose of this article is neither to show inevitable shortcomings of GNRs nor to advocate a major change in their structure. It does, however, show that the underlying ontology of GNRs can offer only a partial reading of the politics of non-recurrence. As such, sections 2 and 3 demonstrate the mismatch between the TJ faith in the centrality of GNRs to non-recurrence, on the one hand, and the actual process of guarding against conflict resumption as it is shaped extra-institutionally by the informal practices that underpin settlements, on the other. The second purpose is to show how settlements evolve or disintegrate incrementally, critically conditioning when and how GNRs are efficacious (explored in Section 4).

As McEvoy notes, we need to be more honest about the ambiguities and trade-offs inherent to the real world of TJ practice.[[35]](#footnote-35) Part of this honesty involves eschewing the comfort of liberal-legalist perspective that valorises improved visible formal institutions to the exclusion of invisible informal norms, discourse and cultural practices. Any political culture will manifest hidden but taken-for-granted self-understandings among the ruling coalition(s) that define appropriate behaviour – the prospects for non-recurrence are not fully captured if we focus only on the legal and institutional attributes of the state. Norms like GNR ‘never enter a normative vacuum but instead emerge in a highly normative space where they must compete with other norms and perceptions of interest.’[[36]](#footnote-36) Peace is as much, if not more, a matter of elite interest as it is of institutional reform. The fate of GNRs in *particular* institutions depends on how settlements *in general* maintain the peace. We cannot theorise the potential effect of formal change without comprehending their fit within broader informal modes of preventing conflict.[[37]](#footnote-37) As a first cut at examining the role of GNRs within a broader socio-political environment, the rest of this article therefore situates the normative institutionalist logic of GNRs within the evolving relational settlement politics at the heart of the developing world security solution, pushing beyond idealised models of change and broadening attention beyond technical solutions.

**2. The Institutional Logic of GNRs**

GNRs as a concept can be said to have crystallised in the UN Special Rapporteur for TJ’s dedicated report elaborating a framework for state policies on GNRs in 2015.[[38]](#footnote-38) However, the roots of the concept can be found in international law on state responsibility, international human rights law, UN soft law on non-impunity and reparations, as well as TJ’s own normative development. As regards the first of these, under the law of state responsibility as it evolved from early diplomatic practice to the seminal *La Grand* decision of the ICJ[[39]](#footnote-39) and on to Article 30(b) of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts,[[40]](#footnote-40) guarantees of non-recurrence are a possible (though not a necessary) part of a state’s obligation to address responsibility for an internationally wrongful act. Furthermore, GNRs have long been a feature of international human rights law. The UN Human Rights Committee explained in its General Comment 31 that the purposes of Article 2 ICCPR ‘would be defeated without an obligation … to take measures to prevent a recurrence of a violation of the Covenant [through] changes in the State Party’s laws or practices.’[[41]](#footnote-41) The relationship between reparation and prevention is a key feature of the jurisprudence of human rights bodies and courts, most notably the decisions of the Inter-American Court of Human Rights on reparations in which the Court has granted GNRs in both the individual and social dimensions. GNRs like the creation of DNA databases to help identify disappeared persons[[42]](#footnote-42) and maintenance of proper records about detainees have been recommended,[[43]](#footnote-43) as have legislative measures which ‘identify and attempt to remedy a structural wrong that the court has recognized in its examination of a case.’[[44]](#footnote-44)

The most comprehensive encapsulations of GNRs are found in two sets of UN soft law, the *Updated Set of Principles to Combat Impunity*[[45]](#footnote-45) (where the section on GNR had become one of two subsets under the right to reparation, and as such emerged as a distinct obligation) and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,[[46]](#footnote-46) which listed GNRs as the fifth form of reparation after restitution, compensation, rehabilitation and satisfaction. While these soft law instruments influenced, and were influenced by, concurrent developments in TJ, the field’s *nunca mas* (‘never again’) ethos has always emphasised a forward-looking determination to prevent past abuses from happening again that distinguished between repair of damage caused in the past from the prevention of their recurrence in the future.[[47]](#footnote-47) This impulse is most apparent in truth commission reports. In states as diverse as Sierra Leone, Peru, Guatemala, Thailand and Kenya these commissions have attempted to diagnose the underlying, structural causes of recent conflict. They have been known to make hundreds of recommendations in their final reports ‘regarding institutional, administrative, legislative and constitutional measures to reform the police, the army, intelligence services, the criminal justice system, the judiciary and public bodies, the exploitation of natural resources and more generally governance.’[[48]](#footnote-48)

**2.1. *The Formalist Scope of GNRs***

While no two post-conflict ecologies are the same, the influence of these legal developments have meant that GNRs as a form of transitional justice tend to be dominated by an admixture of three overlapping approaches, namely security sector reforms, bureaucratic reorganisation and vetting, to prevent future abuses. These foci make clear that GNRs are not maximalist, whole-of-state approaches to establish conditions of good governance or human rights. Instead, they are rooted in a response to specific prior insecurities and are ‘fixated on sectors most closely related to violence,[[49]](#footnote-49) such as military or security forces’ or the nexus of state security, governance and rule of law most responsible for restraining them.[[50]](#footnote-50) While GNRs as they evolved from state accountability principles and the case-law of human rights courts/institutions emphasised responses to individual acts (e.g. ripping down walls in police stations to reduce ill-treatment in Georgia),[[51]](#footnote-51) in the context of transitional justice, GNRs for specific abuses are inseparable from a somewhat broader response to background circumstances of civil conflict, systemic crime and/or authoritarian oppression. While GNRs are possible in relation to individual issues like gender-based violence[[52]](#footnote-52) or corporate land rights abuses,[[53]](#footnote-53) ‘system’ crimes like genocide, crimes against humanity and war requires both collective political will and a degree of organisation across planners and executants, and therefore demand systemic reform.[[54]](#footnote-54) The Special Rapporteur for TJ accepts that GNRs are not meant to address ‘isolated violations’, but should focus on systemic abuses perpetuated by state bodies or institutions.[[55]](#footnote-55) On this view, the purpose of GNRs could stretch as far as helping to prevent an entire conflict or regime from recurring.[[56]](#footnote-56)

Because militaries prosecute the war effort (and as such are the most likely source of human rights obligations) and because under authoritarian rule the security services assume a lynchpin role in regime survival by combating political opponents, GNRs have often resembled the broader and more highly developed field of policy and practice that is security sector reform (SSR). GNRs extract from this broad SSR menu those aspects most pertinent to preventing recurrence of a specific abuse or abuses and connect them to identified instances of victimhood. The Special Rapporteur’s report on GNRs, for example, specified establishing civilian control over security forces, (re)defining and/or clarifying the role of the military and the police, narrowing the jurisdiction of military justice, streamlining the security forces and eliminating military prerogatives.[[57]](#footnote-57) Human rights training, establishing and enforcing a codes of conduct and ethnic balancing have also served as GNRs vis-à-vis the military, police and intelligence services.[[58]](#footnote-58) Textbook examples include the Guatemalan *Commission for Historical Clarification* when itrecommended defined structures and limits for civil and military intelligence agencies, particularly restricting the latter to exclusively military affairs.[[59]](#footnote-59) Another would be Peru’s adoption of a law (initially recommended by its truth commission) obliging members of the military to disobey orders that contradict human rights standards.[[60]](#footnote-60)

While security sector reforms are the most imperative forms of GNR in the aftermath of conflict, the potential of vetting or lustration programmes (defined herein as ‘a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary’)[[61]](#footnote-61) has tended to play first fiddle in discussions about GNRs. Vetting made up half of the initial 1997 version of the aforementioned *Principles to Combat Impunity* and dominated the discussion of GNR in the UN Secretary-General’s seminal 2004 *Report on the rule of law and transitional justice in conflict and postconflict societies*.[[62]](#footnote-62) In essence, vetting requires an assessment of an individual’s adherence to relevant standards of human rights and professional conduct to determine suitability for continued public employment. Premised on the theory that bad institutional apples could perpetuate old patterns of abusive behaviour even in reformed bodies and therefore jeopardise the wider transition, vetting has most commonly concentrated on the military/security sectors and judiciary, though it can be extended to other entities like the civil service. Vetting laws in countries like the former Czechoslovakia, Chile, Poland and Iraq permitted the post-conflict or post-authoritarian state to impose certain conditions for holding particular positions and for dismissing public servants who do not meet the conditions stipulated.[[63]](#footnote-63) For example, judicial screening occurred in Bosnia to remove judges complicit in past abuses.[[64]](#footnote-64) El Salvador’s peace accords established an ad hoc commission that recommended the dismissal of most of the army’s high command as a threat to the new order.[[65]](#footnote-65) The original 1997 *Principles to Combat Impunity* emphasised that administrative measures of this ilk should be of a preventive, as opposed to punitive, character,[[66]](#footnote-66) as well as individualised and evidence-based so as to distinguish them from purges based on mere membership of a body or organisation. Best practice may import ‘targeted vetting,’ an approach stipulating tightly defined categories of officials, ranks or sectors of an institution. It is aimed at isolating and removing spoilers or protection networks most likely to sabotage peace or catalyse recurrence of abuses.[[67]](#footnote-67)

Of course, merely denying access to official positions or removing bad actors are insufficient to turn complicit sectors of the state into reliable guarantors of rights. More positive, forward-looking structural changes are necessary to ensure that institutional safeguards against past abuse patterns are not purely dependent on the virtue of particular individuals. Wide-ranging and merit-based recruitment, security of tenure, adequate remuneration conditions and transparent disciplinary processes are among the measures proposed to strengthen judicial independence.[[68]](#footnote-68) These have analogues in the security services. Vetting in this sense is merely a subset of broader institutional reforms with a longer-term, often incremental, impact. These can include legislative reforms (e.g. amending laws to reflect international human rights norms), codes of conduct, human rights and professionalisation of training,[[69]](#footnote-69) measures to provide legal certainty in land ownership and protection against forced evictions.[[70]](#footnote-70) Other examples include ratification of treaties concerning gross human rights violations and serious violations of international humanitarian law[[71]](#footnote-71) and constitutional reforms like those in Kenya and Sri Lanka limiting powers that has previously accrued to the office of President.[[72]](#footnote-72)

**2.2. *A realistic view of institutions***

What should be clear from the foregoing is that GNRs as understood by TJ practitioners and scholars (as always, the gaps between the two are porous) reflects an ethos of institutionalism, a faith that reformed institutions can mitigate against a return to conflict generally and/or specific iterations of violence. As Davidovic notes, GNRs are understood in this narrow institutional sense by transitional states, by donor supporters like the EU (equating GNR with institutional reform) and by the intellectual centre of praxis in the field, namely the International Center for Transitional Justice (again equating GNR with institutional reform).[[73]](#footnote-73)

It is symptomatic of a broader, modernising confidence within the discipline that states possess the potential ‘to free themselves from anything that oppresses them or keeps them from developing.’[[74]](#footnote-74) This faith is not blind, however. Almost every discussion of GNRs shows awareness of its limitations, with a consistent admission that the very idea of a *guarantee* of non-repetition ‘is something of a misnomer given that that non-recurrence can never be definitively guaranteed by any measure or set thereof.[[75]](#footnote-75) There is an acknowledged weakness in the empirical record of success in achieving significant transformation,[[76]](#footnote-76) and an explicit disavowal that prevention can be achieved via institutional re-engineering alone.[[77]](#footnote-77) GNRs are hostage to too many fortunes outside the control of their promoters and implementers like political will or administrative capacity. Post-conflict governments may lack capacity to fully comply with international legal standards;[[78]](#footnote-78) resource constraints may lead to non-implementation of recommendations/plans; no GNR can fully incorporate the underlying incompatibilities like ethnicity or regional discrimination that led to conflict;[[79]](#footnote-79) governments may prove unwilling, reluctant or actively thwarting participants in some instances;[[80]](#footnote-80)institutional reform is inherently difficult given that path dependencies make the cost of change high.[[81]](#footnote-81) GNRs have sometimes proven ‘difficult to conceptualise and implement’[[82]](#footnote-82) – a handy rule of thumb is that the more generic or trivial a GNR recommendation is, the less likely it is to be successfully implemented.[[83]](#footnote-83) In states like El Salvador and Guatemala, post-conflict GNRs ultimately ‘did not effectively dismantle the structures in security institutions that had allowed abuses to occur during the conflicts’,[[84]](#footnote-84) as was also the case in Chile.[[85]](#footnote-85) Even where violations stopped or were significantly reduced, there are inherent methodological challenges in assessing the extent to which GNR measures impacted states’ behaviour.[[86]](#footnote-86) As Duthie argues, ‘it is wise to be modest about assigning responsibility for outcomes and in general to avoid attributing them to any single process or cause’ when it comes to prevention.[[87]](#footnote-87)

This modesty brings us to the paradox of GNRs – they have the most ambitious title of all TJ mechanisms, but are (usually) the most realistic in remit. As the preceding focus on vetting, security sector reform, integrity and accountability capacities would suggest, GNRs target institutions connected to abuses, not the intersectional and structural circumstantial matrix surrounding those abuses. They address specific risks that flow from specific structures or systems, immediate causes in state structures as opposed to root causes. While some warn that GNRs might become overly ambitious or unduly complex,[[88]](#footnote-88) they tend to focus on the last links in the chain of causation, implying a tight connection between the violation and the proposed guarantee.[[89]](#footnote-89) As Mayer-Rieckh puts it

‘Preventing recurrence is not dealing with an abstract threat but is confronting specific acts that were committed in the past and may be committed again in the future, and that can be studied in terms of their causes, effects, agents, resources and structures used to make them happen.’[[90]](#footnote-90)

It is because of this focus on law, administration and behaviour of state officials that GNRs are generally understood as ‘narrow.’[[91]](#footnote-91) The main interests underlying GNRs are ‘practical’ in the sense that the subject matter of the guarantee ‘can be concretely acted upon’ and forms ‘a fit object of rational policymaking’ on a spectrum from the easily actionable to the more ambitious.[[92]](#footnote-92)

**2.3. *Advantages of the legal-institutionalist approach***

GNRs therefore emphasise the prosaic review of policy and legislation, harmonisation of practices, legislative adjustment, oversight, procedural safeguards and slow consolidation. In this sense, GNRs capture some of TJ’s historic legal-institutionalist impetus, but crucially without replicating three key criticisms of the field.

* The first criticism is the field’s misguided modernist or technicist faith that post-conflict societies can be understood and manipulated and that societies will respond ’rationally or at least predictably’ to a given project.[[93]](#footnote-93) GNRs mitigate this tendency insofar as they have a much more limited remit in reshaping national infrastructures and laws, as opposed to changing attitudes, relationships and ideologies that are the objective of other mechanisms. In this sense, GNRs are rationalist and technocratic like other TJ mechanisms, but do not share their utopian bent.[[94]](#footnote-94)
* The second, and related, criticism is that TJ lacks a theory of change that explains how its various projects (truth commissions, trials, reparations) actually lead to stipulated outcomes (reconciliation, peace, democratisation).[[95]](#footnote-95) However, theories of change are more clear with regard to GNRs than other mechanisms insofar as the former show a pronounced emphasis on feasibility in terms of resources, capacities and skills available to the government or implementing agency at hand, as well as timeframes.[[96]](#footnote-96) Progress may be unsteady, non-linear and not in fact guaranteed, but GNRs take place in the realm of ‘small calibrated actions, constant attention to shifting contexts, and slow steering towards desired outcomes’ that balance principle and pragmatism better than other TJ mechanisms.[[97]](#footnote-97)
* A third criticism generally levelled at TJ is that it insufficiently takes into account the weakly institutionalised nature of post-conflict states, thereby making technicist planning so misguided and theories of change so fanciful.[[98]](#footnote-98) However, the explicit reliance on systemic reform and capacity-building implicitly means that GNRs take the state’s institutional fallibility as a starting point, as opposed to an obstacle to be wished away. Perhaps reflecting its late emergence as a prime TJ mechanism when many of the latter’s promises proved illusory, what is deemed necessary and feasible in a GNR is explicitly tied to the specific institutional context.[[99]](#footnote-99) There is, nevertheless, a modest hope that greater oversight and accountability can improve public trust in the relevant institutions.[[100]](#footnote-100)

Some scholars have expressed frustration with this narrow remit.[[101]](#footnote-101) The Special Rapporteur argues GNRs should go beyond institutional engineering to incorporate support for civil society’s role in aggregating grassroots voices and cultural interventions in areas like education and the arts.[[102]](#footnote-102) Others, more ambitiously, argue GNRs should address economic root causes of renewed violence associated with exclusion through corrective and distributive measures given the general failure of peace agreements to do so in design or implementation. [[103]](#footnote-103) There is little doubt that economic deprivation and discrimination are key drivers of past violence and potential drivers of recurrence. Roht-Arriaza argues GNRs could facilitate some transformative goals, threading a line between the insufficiency of current measures and the ever-present risks of over-reach and overpromising that accompany most transformative agendas.[[104]](#footnote-104) She points to Chapter 10 of Colombia’s victims’ law that incorporates a wide range of preventative acts, like training for de-mining, education to combat violence against women and children and reintegration of child soldiers.[[105]](#footnote-105) While commendably expansive, this falls short of meaningfully addressing issues of poverty and land dispossession that underpin that particular conflict. The causes, effects, agents, resources and structures at play when we discuss poverty, racism and inequality are more amorphous than with institutional reform, as is their link to a specific past abuse. The potentially ‘decisive policy descriptions’ GNRs offer in the institutional realm[[106]](#footnote-106) may not flow naturally from a discussion of patterns of exclusion, marginalization and discrimination. Even those supportive of expanding GNRs accept that there is a risk that if conceived as widely as a state’s entire economic model, GNRs might become conflated with development.[[107]](#footnote-107)

It should be clear from the foregoing that GNRs have a deeply institutionalist logic insofar as it emphasises the organisations, rules and norms that govern behaviour. The acceptance that GNRs cannot in fact guarantee non-recurrence signals an awareness that these reformist projects are bound up in, and conditioned by, broader socio-political developments. It is to this that attention now turns.

**3. The Informal Logic of Settlements**

As their explicit reliance on systemic reform and capacity-building imply, GNRs are premised on the assumption that stability is best secured by legitimate institutional arrangements that prevent abuses by overweening institutions like the civil service, army or police. However, even if these institutions are reformed, there may still be no shared sense among antagonists that institutions can replicate the function they serve in the West in cabining politics within acceptable limits or ensuring stability through rules that channel collective action.[[108]](#footnote-108) Far from being overweening, institutions in the developing world have little constraining effect. In many artificially constructed post-colonial states, the use of the exchequer to strengthen personalistic rule enfeebled the state as an instrument for organising, exerting and reproducing administrative power. Even good faith reforms with some degree of political will tend to fail because they endanger the patronage systems through which weak states are maintained.[[109]](#footnote-109) There exist competing locations of authority that may be weaker than the state in coercive capacity but nevertheless enjoy greater political legitimacy in the eyes of many. This lack of legitimacy further reduces the power of institutions. Developing world institutions therefore operate not on the basis of the Weberian rationality of autonomous and all-powerful meritocratic bureaucracies. Even in peacetime, governments are generally ‘in varying degrees fragile, arbitrary, representative only of narrow interests and thus lack credibility; legal institutions are neither impartial nor influential; and politics tend to be unstable or deeply conflictual.’[[110]](#footnote-110) As a result, the design of formal state institutions, in the sense of rules or norms that govern behaviour, seldom determines economic or political outcomes.[[111]](#footnote-111) In situations, therefore, where institutional rules are contested and routinely violated, actors ‘may develop expectations of instability’, creating what Levitsky and Murillo call an ‘institutional instability trap’ whereby powerful actors neither rely on institutions nor invest in them.[[112]](#footnote-112) They may maintain faith in some institutions (for example, reformed security forces) but also rely to a greater degree on long-familiar ‘extrainstitutional’ options.[[113]](#footnote-113) It should be clear, therefore, that advocates for GNRs might over-emphasise their relative importance to short- and medium-term pacification because the literature’s implicit theory of change inadequately captures how little dependence is attached to formal institutions in political life.

Settlements are how states cope with the permanence of threat and this inability of institutions to regulate state and society. As befits a somewhat amorphous and intuitive concept, there are any number of non-contradictory definitions (Laws offers sixteen of them!),[[114]](#footnote-114) one of which has been employed already.[[115]](#footnote-115) The unifying element in all of them ‘is the idea of a tacit agreement among the most powerful members of a society about the conditions under which they are prepared to engage in some form of peaceful competition, rather than resort to violence.’[[116]](#footnote-116) Essentially, the concept serves as a shorthand for describing how power relations are co-ordinated and applied over a prolonged period of time where institutions have historically proven unreliable. A durable settlement ‘is the precondition for politics’ anywhere[[117]](#footnote-117) and the ‘bedrock’ of any resilience.[[118]](#footnote-118)

The concept of settlements developed from observations of political life by political economy and development specialists to render legible the politics of development outside the Global North, and especially those states subjected to protracted conflict or fragility.[[119]](#footnote-119) Embraced by bodies like DFID[[120]](#footnote-120) and the OECD,[[121]](#footnote-121) they can be seen as a departure from the naivety of liberal peacebuilding. Settlement theories draw on (or are influenced by) social contract theory, institutionalist analysis and sociological work positing the state as an arena of contestation among different groups in society. Emerging from a critique of the primacy placed by New Institutional Economics on formal institutions, settlement has become the ‘epicentre of political economy analysis’ in developing countries.[[122]](#footnote-122) The post-institutionalist turn represented by settlement analysis permits assessment of the underlying political arrangements prior to policy engagement that might or might not foster capacity and elite commitment, and is used to partially explain state endurance, industrialisation, growth and welfare.[[123]](#footnote-123) While settlements are justifiably criticised for blindspots in relation to inclusion (especially gender) and the role of ideas in political life,[[124]](#footnote-124) their greatest strength lies in explaining non-recurrence. Every polity that is ‘not in the midst of an all-out civil war is based on some kind of political settlement.’[[125]](#footnote-125) As Parks and Cole argue, where the settlement breaks down, its reconstruction will often prove the ‘primary factor’ in determining the success or otherwise of peacebuilding after war.[[126]](#footnote-126)

**3.1. *Distinguishing settlements from peace agreements***

In so positing, it is important to distinguish between settlements and peace agreements given the regrettable tendency to conflate the two.[[127]](#footnote-127) The former takes insecurity as the natural order of the social world and guards against it perpetually; the latter responds exceptionally when the settlement breaks down. Settlements are a *property* of society in the sense of a consistent ongoing course of political conduct; peace agreements are discrete, engineered *events*.[[128]](#footnote-128) Settlements are the product of many interactions; a peace agreement is usually a single pact. In essence, settlements constrain the open-ended and perpetual nature of state formation/negotiation in the developing world where resources, power and identity are contested and where violence represents a persistent risk.[[129]](#footnote-129) In many states, the contestation is such that it is unclear whether states are becoming more congruent or more fissiparous – the destiny of a state and the fate of a given equilibrium are indeterminate.[[130]](#footnote-130) If settlements represent successive equilibria that superintend this contestation, war represents the point where the equilibria became dysfunctional after economic shock, breakdown in patronage, external destabilisation. etc. Peace agreements after war attempt to resolve the most acute disputes, demilitarise politics and attempt to rebuild trust, but deep-rooted social patterns and behaviours do not change easily. In this sense peace agreement only serve as ‘rough markers’ distinguishing one settlement from another along a thread of continuity.[[131]](#footnote-131) They may attempt to refound the state through new institutions and include new actors or a new distribution of benefits, but the underlying patterns of state organisation endure through crisis and reorganisation.[[132]](#footnote-132) This is again a function of institutional weakness – new constitutions are often too ‘static’ for the extended learning process that is a settlement;[[133]](#footnote-133) the ‘forced trust’ of power-sharing is dependent on elite consensus that may stretch beyond the peace agreement;[[134]](#footnote-134) elections do more to broaden a settlement’s social foundations than foster liberal democracy; rule of law is traded for pragmatism.[[135]](#footnote-135) Settlement theory places more faith in the behaviour and inter-relations between elites to ground peace than economic development, civil society or norms of political constraint, to say nothing of GNRs.

**3.2. *An informal logic***

Settlements, insofar as they embody a sufficiently inclusive ‘elite consensus on the preferability and means of avoiding violence’, manifest an inherently informal logic that international actors have little influence over.[[136]](#footnote-136) They augment formal institutions like constitutions, power-sharing and elections readily observable to outside observers with less observable informal agreements to inculcate a credible commitment between contending elites that they will not fight each other. A settlement tends to be unarticulated and unwritten but nevertheless shared between a sufficiently small number of veto-players to ensure the relevant elites have enough information about each other’s intentions.[[137]](#footnote-137) Enduring settlements tend to filter from the national to the regional to the local, a ‘sedimentation or tacit acceptance’ that can be sold to the people as natural or right.[[138]](#footnote-138) They are dependent more on ‘a shared perception of its utility and fairness,’ long-standing conventions and routinised forms of behaviour than any institutional guarantee.[[139]](#footnote-139) There is an assumption that actors are rational, adopting a relationship of circumscribed partisanship (‘negotiations-cum-confrontations’) to tame politics.[[140]](#footnote-140) Elites adapt to the ever-present reality of personalisation, factionalisation and the instrumentalization of violence through neopatrimonial allocations of rents from resources and offices. As Barma notes, ‘the post-conflict reality … is that the political-economic incentives facing elites are such that it is easier and more profitable for them to distribute public rents and patronage goods to their clients in exchange for political support’ to ensure stability than rely on reform of institutions.[[141]](#footnote-141) Examples of such neopatrimonalism are legion. After renewed instability in the late 2000s, both the Solomon Island and Timor-Leste have regulated elite pacts through public spending systems to resolve political contests over the allocation of rents from resources.[[142]](#footnote-142) For over thirty years Uganda’s settlement has relied more on a ‘deeply personalised and multi-levelled set of bargains’ held in place by the Musaveni regime than formal institutions of rule of law and democracy.[[143]](#footnote-143) In post-conflict Nepal, top-down financing of local patronage networks has served to reduce violence in remote areas by constructing economic and political linkages between local, sub-national and national elites.[[144]](#footnote-144) Post-genocide Rwanda enjoys a settlement characterised by ‘a high degree of cohesion within the ruling coalition, strong control of political elites over lower-level factions, and little to no elite opposition’, thereby restraining tendencies towards ethnic division.[[145]](#footnote-145)

As Khan argues, these settlements can endure provided there is compatibility between the power enjoyed by those within the settlement and the distribution of benefits and power from particular institutional and resource configurations. [[146]](#footnote-146) Where power and benefits become imbalanced, violence may recur as factions fight to secure a share of wealth compatible with their de facto power.[[147]](#footnote-147) Settlements must respond dynamically, therefore, to the way economic, technological or demographic changes affect power and position over the *longue durée*. Consequently, political settlements analysis attends to power struggles over influence and resources between groups over years and generations rather than static institutional outcomes of conflict.[[148]](#footnote-148) Furthermore, the settlement does more to shape the state’s possibilities than formal institutions because (a) institutional autonomy is weakened by patrimonial concerns and (b) the emphasis on personalities and relationships serves to bypass institutions.[[149]](#footnote-149) It should be clear from this analysis that settlements are conservative processes, oriented more towards non-recurrence in the short-term than easing conflict by pursuing development, developing responsive governance or redressing horizontal inequalities. It is undeniable that settlements tend to be incompatible with many of the political and legal normative commitments to broader forms of inclusion that are typically argued to underpin sustainable peace, even if it is doubtful international actors enjoy much capacity to influence them.[[150]](#footnote-150) This exclusion is justified on the basis that ‘at a social level a relatively peaceful patrimonial structure usually produces less illfare than a warlord structure,’[[151]](#footnote-151) even if this smacks of damnation by faint praise. Consequently, if informality governs the process of settlement, it also defines its assessment. A political settlement can be said to have (for want of a better word) settled ‘when (a) the most powerful groups in society are not actively challenging political arrangements, and (b) there has been a significant reduction in anti-systemic violence and other forms of disruption.’[[152]](#footnote-152)

**4. The Co-existence of GNRs and Settlements**

Thus far this paper has made three arguments. Firstly, forestalling violence represents the most pressing dilemma in the fragile states of the developing world. This is all the more so in states that have recently endured civil conflict. Secondly, GNRs have emerged within TJ as a feasible, measured and institution-based means of preventing violence, adopting a formalist logic that nevertheless takes seriously the institutional weakness of fragile states. Thirdly, and notwithstanding the commendably realist approach taken by GNRs, they are unlikely to be viewed as existentially important given the pre-existing reliance on the deeply informal logic of settlements, a logic that also acknowledges institutional weakness. There is therefore a clear tension between the normative and formalist emphasis of GNRs and what non-recurrence is often about in practice, namely consolidating informal and neopatrimonialist commitments towards non-violence on the part of elites. None of these tensions are insurmountable, even if the risk of GNRs being compromised by informalist logics is real, as noted below. GNRs may or may not be embedded within settlements. There is no guarantee a given GNR in the army or police, regardless of how well it responds to past abuse, will affect the accepted rules of political life in a dominant coalition, influence the actors within in it or touch their main economic interests. As McAuliffe notes, ‘the perceived right to torture, maim or kill are resources antagonists are content to give up [after conflict], while land, opportunities and
natural resources are usually not.’[[153]](#footnote-153) Reformed or vetted institutions may prove little more than ‘islands of effectiveness’ within wider dysfunction.[[154]](#footnote-154)

At the same time, no settlement can exist without some formal institutional safeguards, and nothing about settlements inherently precludes non-patrimonialist ideas, norms or commitments.[[155]](#footnote-155) Much depends on the degree to which GNRs are donor projects that national leaders acquiesce to with greater or lesser enthusiasm, on the one hand, or an existential domestic concern bargained over keenly by elites, on the other. Differences of context and of form forbid all-encompassing assertions. It is clear, however, that GNRs affecting one or more institutions will inevitably co-exist with settlements that define the overall parameters of political life and development in society. Thus far, nothing in the literature on GNRs has acknowledged this reality or grappled with the possible consequences. Only by understanding their place within settlements can trade-offs, limitations and best-case scenarios be understood. A fuller reading of the logics of non-recurrence therefore permits greater consideration of the range of socio-political interests at play, the ways in which GNRs are embedded in processes of long-term development and the way this conditions reliance on them. Only by understanding the importance of GNRs relative to settlements when restraining recourse to violence can we transcend unduly normative or teleological accounts of non-recurrence we see in the typical TJ imaginary that assumes neat progression from authoritarianism to liberal democracy.

Three arguments are posited:

1. Formalist GNRs can only work where the surrounding settlement supports them in the short-term
2. The *relative causal importance* of GNRs in terms of non-recurrence in this short-term is minimal, but increases in the longer-term as the settlement evolves
3. GNRs only achieve *absolute causal* *importance* in terms of non-recurrence where the settlement fails

**4.1. *GNRs operate with support of settlement***

In section 1 and 3, we discussed the state as a domain within which wider social conflicts are articulated and prosecuted. While the literature on GNRs imagines the post-conflict ecology as one of liminality where novel critical perspectives on existing structures can emerge, institutions (and the reform or vetting thereof) are invariably shaped by this perpetual instability. Functional institutions cannot be willed into existence outside of this social conflict, and even if they could, they cannot alter the nature of underlying power structures. Even where codes of conduct and processes of accountability are introduced into historically weak institutions, informality can never be fully excluded. Scott argues that practices will always exist to circumvent technocratic or top-down reform, and to the extent that institutional reforms *do* work, it will often be due to overarching informal practices that modify top-down projects to prevailing social logics.[[156]](#footnote-156) Development scholars have long accepted that projects to build accountable institutions like we see in GNRs rise or fall ‘according to the degree to which these efforts are aligned with – or at least do not fundamentally threaten – the interests of powerful national and local actors who are in a position to thwart or co-opt those efforts.’[[157]](#footnote-157) In the military, to take the most pertinent example for the purposes of GNRs, key aspects of civil-military relations in transitional Latin America took place outside the chain of command, outside the law and beyond official procedures – ‘off script’ practices and informal ‘conferences’ were and are employed to resolve contentious issues.[[158]](#footnote-158) Similarly, reforms of public sector institutions ‘have often fallen prey to the countervailing incentives for the personalisation and politicisation of public office’ under patrimonialised settlements.[[159]](#footnote-159)

Instead of choosing pathological explanations that describe what has failed in terms of a GNR, the better approach is to contextualise shortcomings within a dispensation where practice is more improvisational than principled, and where socio-political cohesion is emphasised over the letter of even the most pressing institutional reform laws. Viewed this way, informal practices can be complementary to (or accommodating of) gradually strengthening formal institutions, even where they generate behaviour that flouts formal expectations.[[160]](#footnote-160) At least in the short-term, ‘the significance of institutions resides not in their capacity *per se*, but in the sort of interests they promote or marginalize, and in the sort of conflicts they give expression to, or structure out of politics.’[[161]](#footnote-161) Trade-offs may have to be made between stability, institutional integrity and inclusiveness in the short-to-medium term. Political and development theorists have long accepted that a reduction in an institution’s regulatory effectiveness might be a sacrifice worth making for political stability or social peace.[[162]](#footnote-162) It is plausible, therefore, to argue that we make the wrong causal assumptions about GNRs, at least in the short term. In fragile states, it is political stability that allows (reformed) institutions to function,[[163]](#footnote-163) and not the other way around. Patrimonial practices and informal conferences can serve as problem-solving mechanisms or pressure-release valves to give institutional reform time to bed in. This is a matter to which attention now turns.

**4.2. *Increasing causal importance of GNRs to non-recurrence over time***

Settlements are not immutable, and nor is the relevance of institutions within them or to them. Indeed, one of the advantages of focussing on settlements over peace agreements is that the former can and do evolve, expanding the temporal scope within which we can understand non-recurrence.[[164]](#footnote-164) Changes *do* occur when the shared understanding of how power is to be allocated or applied produces alterations of behaviour, interest or (most relevantly for the purposes of this paper) trust in or reliance on institutions. Any number of mutually compatible theories have been developed for how settlements give way to greater reliance on institutions, though considerations of space preclude a detailed recapitulation of them.[[165]](#footnote-165) Developmentalist accounts of neopatrimonialist settlements have also been developed where patronage and clientelism serve a modernising function insofar as they ease a gradual transition to institutionalisation.[[166]](#footnote-166)

To generalise, there is a plausible path where altered understandings emerge if the settlement generates an appreciable period of stability and fears of wholesale reversal to conflict can diminish. Early ‘winners’ from the settlement might support further reforms and/or ‘disarm resistors through a gradualist approach.’[[167]](#footnote-167) Parties can shift from zero-sum struggles for immediate domination towards a more co-operative or conciliating mentality.[[168]](#footnote-168) Any shift from reliance on informal practices to formal institutions in this context may seem to demand high levels of political courage,[[169]](#footnote-169) but the alternative is inherently suboptimal. As Centeno *et al* argue, ‘few states can survive over the long term by relying exclusively on fear or self-interest’ – many influential members of the settlement coalition may conclude they stand to benefit if ideas of legitimacy or the functionality of the emerging social order can take root.[[170]](#footnote-170) If this settlement coalition is long-lasting and/or ‘inclusive enough’ it can signal change sufficient to catalyse those investments of political and social capital in institutions that make them reliable sources of security.[[171]](#footnote-171) Further bargaining over time can increase reliance on, and functionality of, those institutions.[[172]](#footnote-172) Ostensibly marginal revisions, amendments or evolution of the settlement can further the trend of experimental and incremental reliance on institutional safeguards, but it will be distinctly non-linear:

‘Given the multiple, related layers that foster or constrain change, the process of change in governance is not the passage from one order (informal governance) to another. It may be better viewed as a rearrangement in patterns of multiple governance mechanisms, through which changes in one layer produce multiple effects that, in the end, may feed back.’[[173]](#footnote-173)

While the roots of GNRs in victim reparations and TJ’s *nunca mas* ethos imply they should have an immediate effect, reformed institutions only become existentially important in terms of non-recurrence of violence over time. In the short- to medium-term, GNRs’ greatest potential might be to reassure recalcitrant members of an established settlement that they can reduce some of their power because state institutions have guardrails against abuse. Beyond this, greater reliance on institutions and institutional safeguards over time is ‘one of the most common indicators that that significant changes are occurring in the political settlement’, often produced by informal negotiations that themselves serve as evidence of changed assessment of interest.[[174]](#footnote-174) GNRs find themselves imbricated in a slow, incremental pattern of mutual causation - settlements influence performance of GNRs, but over time GNRs can in turn help to consolidate and formalise political settlements. Simply put, the things that initiate peace (settlements) might be different to the things that sustain it (reformed institutions).

**4.3. *GNRs in the context of failed settlements***

Not all settlements follow this path of informality to reliance on institutional safeguards. Settlements more often prove socially corrosive than socially generative. Informal institutions enjoy what North describes as a ‘tenacious survival ability.’[[175]](#footnote-175) Far from complementing or accommodating formal institutions over time, informal practices can substitute for, or compete with, them.[[176]](#footnote-176) In states like Nepal, Uganda or Guatemala, a ruling coalition perpetuating its own privileges and buying off threats with no prospect of institutionalisation, development or the rule of law might seem to leaders a preferable equilibrium in itself to the uncertainty that attends formal institutions. Stability should not be confused with a durable settlement, much less a just one. While the previous section outlined a virtuous circle whereby a settlement gradually gives way to institutionalisation, this type of equilibrium instead can give way to persistent forms of insecurity. Settlements can crystallise general disorder insofar as they foster administrative inefficiency and disregard for formal rules.[[177]](#footnote-177) The instrumental use of violence as a strategy for renegotiating settlements can easily become uncontrollable.[[178]](#footnote-178) Further, while patronage can underpin the durability of some regimes (Senegal, Cambodia, Mozambique), where excessively exclusionary it (a) contributes to poor economic development, low human development, horizontal inequalities and state capture that can lead to conflict from the ground up or (b) catalyses winner-takes-all conflicts from the top down.[[179]](#footnote-179) Settlements can also break down due to their natural volatility in a world where even small shocks from resource prices, border spill-overs, climate and disease can destabilise a coalition.[[180]](#footnote-180) Examples of ostensibly effective but subsequently failed patrimonialist settlements are legion – Ethiopia’s lurch into civil conflict since 2020, East Timor’s collapse into violence in 2006 and Afghanistan’s slow collapse in the decade up to now being among the most pertinent examples.[[181]](#footnote-181)

This brings us to the irony of the institutionalist logic underpinning GNRs. While there are obvious intrinsic merits in vetted bureaucracies and more disciplined security forces which cannot be gainsaid, it is in these situations, where short-term and particularistic rewards of a (failed) settlement have not given way to the more diffuse, longer-term benefits of reliance on institutions, that GNRs are most important to non-recurrence. Where a settlement collapses completely into antagonistic incompatibilities, it is unlikely even the most thoroughgoing of reforms to state institutions can restrain recurrence of conflict. That guarantees of non-recurrence provide no actual guarantees is readily accepted even by advocates of GNRs, as was pointed out earlier. There is reason to hope, however, that reformed institutions can restrain the impetus towards violence or quell fears that previous patterns of state brutality will automatically recur. It is here, where settlements appear to have failed, that GNRs become most important. They remain, however, just one factor among many bolstering or undermining the prospects for conflict recurrence..

**5. Conclusion**

This article started from a single premise outlined in Section 1 – that the well-grounded fear of conflict recurrence is the predominant factor of political life in post-conflict states. The logics of recurrence are multiple, not singular, diverse as opposed to uniform, contradictory rather than consistent. Typical aspects of liberal peacebuilding – peace agreements, democracy and/or power-sharing, constitutionalisation and development - were insufficient to assuage the fear of recurrence. They are augmented by two phenomena that prioritise non-recurrence, namely GNRs as an exceptional response to conflict and settlements as a perpetual feature of political life.

GNRs and settlements acknowledge the conflictual character of state organisation and/or political relations. Both are premised on the notion that states that endure civil conflict usually manifest systematic institutional problems that catalysed the conflict and that make the post-war dispensation precarious. However, the logics of GNRs and settlements are distinctly different. As Section 2 argued, GNRs are pragmatic, targeted responses to the most egregious forms of violence and the most proximate source of instability channelled through the state’s institutions. While advocates of GNRs are conscious of the state’s weakness and are therefore circumspect in ambition in a way that few other elements of TJ are, their logic is that of an institutional meliorism that insists the future conflict can be averted through safeguards in those arms of the state most associated with regulating violence.

The examination of settlements in Section 3 revealed that they operate on the basis of a very different logic in which long-term, invariant fears are assuaged through conscious efforts to reshape relationships via negotiation, threat of violence and patronage. To the extent that they address specific, proven risks GNRs are inherently beneficial, but have hitherto unappreciated limitations in the ‘dynamic world of political will and action that is ordered les by institutions than by personal authorities and power; a world of stratagem and countermeasures, of action and reaction, but without the assured mediation and regulation of effective political institutions.’[[182]](#footnote-182) By their very nature GNRs cannot grapple comprehensively with the hidden, invisible dimensions or political power, and nor can they render the accommodations, patronage and give-and-take exchanges that maintain a long-term settlement redundant.

For reasons outlined in Section 3, post-conflict states will generally place greater faith in the informal logic of settlements than the institutionalist logic of GNRs. To argue that post-conflict elites emphasise socio-political cohesion over even the most obviously pressing institutional reform is not to argue the latter has no utility in the short-term or longer term. It is not a zero-sum game – both logics can and do co-exist. Current literature on GNRs has not acknowledged this co-existence, so it has not theorised how it can evolve. Section 4 traced a basic explanatory model of causation best described by Vom Hau as one from ‘conflict to [settlement] coalitions to state capacity’[[183]](#footnote-183) where GNRs ensure institutions are reformed, but this reform is not necessarily relied on where there exists an ‘institutional instability trap’ where powerful actors neither rely on institutions nor invest in them. GNRs may become more causally central to non-recurrence as time goes on, initially complementing and then replacing settlements as mutually exclusive worldviews gives way to more iterated forms of competition. Where this trajectory is not achieved, GNRs become more immediately relevant but, nomenclature notwithstanding, cannot *guarantee* non-recurrence. Nothing can. TJ theorists should be open to the possibility that GNRs are the fruit, not the precondition, of social order.

The question for current practice and research on the politics of GNRs, therefore, is to devise a coherent way of operationalising the core insights of settlement theory in ways that enable a clearer sense of when and how GNRs matter in preventing recurrence. A more complete reading of the politics of GNR demands recognition of heterodox paths forward unfamiliar from the formal logics of the OECD world. This requires greater consideration of where GNRs fit in terms of the existential fears of conflict antagonists, their evolving faith in institutions and the ways in which relevant actors are embedded in state-society relations.

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