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State-building in Afghanistan: a case showing the limits?

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Abstract

Since the 1990s, the concept of 'state-building' has become the means by which intervenors have attempted to tackle 'state failure/fragility'. The 'ideal' referred to when attempting to do this – both theoretically and in practice – has been that of the classic 'nation-state' as developed by Max Weber. To answer the question posed by the title above, the article first looks generally at the evolution of the current state-building paradigm and global governance discourse. Second, a background of historical attempts at state-building in Afghanistan is given. Third, an assessment is made of the international community's approach to Afghanistan since 2001. Finally, the appropriateness of replicating a Weberian state-building model onto more traditional societies such as Afghanistan – where modes of governance and authority are often informal, complex, and characterized by historical and charismatic sources of legitimacy – is addressed. Until now, such contexts have barely been acknowledged, still less understood, by intervenors. Today, however, some academics are beginning to outline an alternative response to state fragility, recognizing more traditional sources of legitimacy and a hybridity of political order.

By 2010, nine years after the events of 11 September 2001 (9/11), the Afghan state appears to be characterized by a centralization of power. The situation is similar to that faced by the Soviets in 1987, in that the state is fiscally unsustainable and the government is only able to function in cities.[1] Moreover, the state is run by a political elite whose objectives seem diametrically opposed to those of the

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international community – a dynamic similar to one identified in Somalia.[2] Like the Soviets halfway through their ten-year engagement in the 1980s, the international community, struggling to extricate itself from its nearly decade-long engagement in Afghanistan and faced with a steady deterioration in security since 2005–2006, is starting to focus on expensive militaristic 'stopgap' measures. These have been characterized by Kipping as 'somewhat similar to the 1980s'.[3] They are also a desperate attempt to shore up the state security apparatus, and include the establishment of militias whose loyalty is questionable.[4] For example, the Afghan National Auxiliary Police were deemed a 'quick fix effort'[5] to stabilize the south but were in reality led by their former militia commanders, often in pursuit of somewhat criminal agendas. In 2008 there followed the Afghan Public Protection Force, which US Special Forces, encouraged by the Sunni militia 'Sons of Iraq'[6] experience, hoped would replicate that development in Afghanistan. But, like other irregular security forces, this too was criticized as potentially fuelling ethnic problems owing to the arming of communities in conflict with others. There was also the issue of a further weakening of the state's claim to a monopoly on the use of force.[7] In 2009 further initiatives to set up militias were taken, including the Ministry of the Interior's Civil Defence Initiative.

With the ongoing justification for the war being to 'dismantle, disrupt and defeat' the Al Qaeda terror network, efforts to strengthen and sustain the Afghan government have been a secondary priority ranking far behind military operations.[8] Relatively late in the day, much of the rhetoric now relates to the issue of 'ungoverned space' and 'governance'. Nine years into the war, however, there remains huge uncertainty in that regard. The Center for American Progress states that:

> building legitimate, responsive and self-sustaining Afghan government institutions is essential if the United States and its NATO International Security

1 Martin Kipping, *Two Interventions: Comparing Soviet and US-led State-building in Afghanistan*, The Afghanistan Analysts Network (AAN), Thematic Report, January 2010, available at: http://aan-afghanistan.com/uploads/AAN_Two_Interventions.pdf (last visited 8 February 2011).

2 In Somalia, continued instability ensures the government an ongoing revenue stream and allows it to maintain a façade of 'importance', as discussed in Ken Menkhaus, 'Governance without government in Somalia: spoilers, state building, and the politics of coping', in *International Security*, Vol. 31, No. 3, pp. 74–106.

3 M. Kipping, above note 1, p. 13.

4 *Ibid.*

5 Robert M. Perito, *Afghanistan's Police: The Weak Link in Security Sector Reform*, United States Institute of Peace (USIP), Special Report No. 227, August 2009, p. 9, available at: http://www.usip.org/files/afghanistan_police.pdf (last visited 8 February 2011).

6 Fred W. Baker III, 'Petraeus parallels Iraq, Afghanistan strategies', in *American Forces Press Service*, 28 April 2009, available at: http://www.defense.gov/news/newsarticle.aspx?id=54107 (last visited 8 February 2011).

7 Waheedullah Mohammad, 'Can Afghanistan's new "Guardian" militia restore security in the provinces?', in *Terrorism Monitor*, Vol. 7, No. 20, p. 5.

8 Colin Cookman and Caroline Wadhams, *Governance in Afghanistan: Looking Ahead to What We Leave Behind*, Center for American Progress, May 2010, p. 1, available at: http://www.americanprogress.org/issues/2010/05/pdf/afghangovernance.pdf (last visited 8 February 2011).

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> Assistance Force allies are to withdraw their military forces from Afghanistan and keep them out over the long term without the country descending into civil war and regional proxy fighting. To accomplish this, Congress, the Obama administration, and the American public need a clearer understanding of the full dimensions of Afghan governance and the many international actors and programs whose activities affect the issue.[9]

The outlook is not good: some studies demonstrate a low success rate in externally led state-building projects over recent decades. For example, Doyle and Sambanis surveyed 121 processes of post-conflict peace-building from 1945 to 1999, and found that less than half had achieved an end to war and violence. More difficult goals, such as a basic level of political openness, were even more problematic. Significantly, the activities of external peace-keeping forces had negligible effect on the likelihood of success, although a sustainable peace was a little likelier in those countries with a UN-mandated intervention force.[10] Meanwhile, Paris compared eleven UN peace-building missions from 1989 to 1999. He found that only two had been successfully concluded (Namibia and Croatia), two had failed (Angola and Rwanda), and the remaining seven presented a mixed outcome.[11]

To assess whether Afghanistan constitutes 'a case showing the limits' to state-building it is first necessary to define the concepts of state-building aimed for, and also to determine the historical role of state-building in Afghanistan.

Concepts

Differing theoretical traditions of the 'state' and state 'functions'

Historically, philosophers ranging from Machiavelli to Thomas Hobbes, John Locke, Max Weber, John Stuart Mill, and John Dewey (among others) have held a variety of views about the state and its functions. However, the model that has emerged as the basis of today's world order is that of the 'nation-state' as espoused by Max Weber during the 1918 Bavarian Revolution and the First World War. He defined the state as a human community that claims a monopoly on the legitimate use of force within a given territory, and noted the intimate relationship between the state and violence.[12] Lockhart and Ghani (former World Bank employees who wrote much of the 2001 Bonn Agreement that prescribed the state-building project for Afghanistan) assert that Weber articulates a 'clear, functional view of the state,

9 *Ibid.*, pp. 1–2.

10 Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations*, Princeton University Press, Princeton and Oxford, 2006.

11 Roland Paris, *At War's End: Building Peace after Civil Conflict*, Cambridge University Press, Cambridge, 2004.

12 See e.g. Max Weber, *Economy and Society*, edited by Guenther Roth and Claus Wittich, Bedminster Press, New York, 1968.

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and describe its "basic functions" as the legislature, the police, the judiciary, and the various branches of civil and military administration'.[13] In such a model, however, state institutions are distinct from civil society, having their 'own interests, preferences and capacities'.[14]

Evolution of the state-building paradigm

State-building strategies

Over the past decade, the issue of state fragility – and state-building as a response to it – has become a major area of interest for the donor, peace-building, and security communities, marking a shift from the 1980s belief that the 'market' (the rhetorical term then was 'structural adjustment') could solve these problems.

Various interventions by the international community have taken place in Afghanistan, Bosnia, Liberia, Sierra Leone, Haiti, and Iraq, with 'state-building' perceived as the dominant 'solution' for places deemed to have 'failed'.[15] A variety of definitions exist, which encompass 'failure', 'weak', or 'fragile',[16] but there remains a vagueness and sometimes a blurring of distinctions between these.[17]

Boege *et al.* assert that the focus of the security and development environment is on the 'lack of willingness or capacity [of state institutions] to perform core state functions in the fields of security, representation and welfare'.[18] The authors recognize the existence of a consensus that different degrees of state fragility or different stages of state failure can be identified, that the phenomenon is increasing, and that the solution generally recommended is 'state-building'.[19] This encompasses: 'sustainably strengthening state institutions in addition to enhancing the capacities of state actors for control, regulation and implementation, particularly in the core fields of state-hood, namely internal security, basic social services, the rule of law and legitimacy of government'.[20]

13 Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, Oxford University Press, Oxford, 2008, pp. 116–117.

14 Achim Wennmann, *Grasping the Strengths of Fragile States: Aid Effectiveness between 'Top-down' and 'Bottom-up' Statebuilding*, Swiss Agency for Development and Cooperation (SDC) and the Centre on Conflict, Development and Peacebuilding (CCDP) at the Graduate Institute, Geneva, CCDP Working Paper No. 6, 2010, p. 16, available at: http://graduateinstitute.ch/webdav/site/ccdp/shared/6305/Working%20paper_6_BD.pdf (last visited 8 February 2011).

15 *Ibid.*, p. 2.

16 Tobias Debiel, and Axel Klein (eds), *Fragile Peace: State Failure, Violence and Development in Crisis Regions*, Zed Books, London, 2002.

17 See Tobias Debiel and Daniel Lambach, *Global Governance Meets Local Politics: On Western State-building and the Resilience of Hybrid Political Orders*, paper presented at the Global Conference of the International Peace Research Association (IPRA) 2010, Sydney, Australia, 6–10 July 2010.

18 Volker Boege, Anne Brown, Kevin Clements, and Anna Nolan, *On Hybrid Political Orders and Emerging States: State Formation in the Context of 'Fragility'*, Berghof Research Centre for Constructive Conflict Management, Berlin, 2008, p. 3.

19 *Ibid.*

20 *Ibid.*

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Bøås and Jennings[21] contend that 'fragile states are seen through the dominant lens of Western security interests' and that in this context they appear as little more than fertile breeding grounds for the export of terrorism or safe havens for terrorists.[22] As such they become a threat to 'the national security of the USA' and to 'international security'. Hence, 'rebuilding states' is seen as a challenge that US policy must take on. As such:

> The focus of state-building generally is very much on the security dimension, with building the capacity of security agencies (police, military, customs and border protection) as a priority field of external assistance. This becomes an avenue for security agencies to address development issues, to 'securitise' these issues and thus add to the legitimacy of the military and other security agencies which are expanding their areas of activity.[23]

In Afghanistan, the result since 2001 has not necessarily been an effective means of ensuring security in 'ungoverned space'.

The 1990s 'global governance' discourse

The current state-building paradigm emerged largely from the 'global governance' discourse of the mid-1990s, according to which rapid de-borderization, globalization, and turbulence formed the basis for a new concept. Rosenau referred to a 'bifurcation' in world politics, whereby the sphere of non-state actors gained relative influence 'acting according to its own goals, instruments, modes of cooperation and patterns of legitimacy'.[24] Based on these assumptions, global governance was defined as 'systems of rule at all levels of human activity – from the family to the international organization – in which the pursuit of goals through the exercise of control has transnational repercussions'.[25]

Concepts of 'global governance', including the 'right to protect' and the 'right to rebuild'

Debiel and Lambach describe how the global governance ideas were soon embodied within the prescriptive frameworks of the UN system (Commission on Global Governance, 1995), resulting in new debates on ideas of national sovereignty and ultimately the ideal of the 'responsibility to protect' formulated by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, which 'juxtaposed the view that state sovereignty was not only a right to prevent interference from outside with one that considered [the said responsibility] also to

21 Morton Bøås and Kathleen M. Jennings, 'Insecurity and development: the rhetoric of the "failed state" ', in *European Journal of Development Research*, Vol. 17, No. 3, p. 388.
22 V. Boege *et al.*, above note 18, p. 3.
23 *Ibid.*, p. 4.
24 James N. Rosenau, *The United Nations in a Turbulent World*, Lynne Rienner, Boulder, CO, 1992, p. 20.
25 James N. Rosenau, 'Governance in the twenty-first century', in *Global Governance*, 1995, No. 1, p. 13.

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be an obligation of the state towards its citizens'.[26] The authors suggested that the 'responsibility to protect' might shift from national to global level if gross human rights violations occurred and were not stopped.

An implication of this concept was that 'spaces in which the state is either not willing or able (or both) to secure the safety of its citizens, should and can be globally governed';[27] the corollary was that the concept of 'responsibility to rebuild' became an aspect of the ICISS report.[28] In other words, the international community gave itself the responsibility/right to tackle the problem of 'ungoverned space'. But, ten years on in Afghanistan, it has yet to achieve success in this domain.

Wennmann, referring to the security, donor and development 'communities', adds: 'Despite different institutional perspectives, the debate over fragile states has reflected an implicit consensus in these communities that a strong and functioning state is the instrument to solve the challenges of poverty, armed violence, and sustainable developmen'.[29] As such, the Weberian/Westphalian nation-state model came to be perceived as a solution to state failure, and the interventions of the late 1990s were characterized by a top-down, centralized focus with emphasis on controlling the use of force. Usual tasks included providing infrastructure, training civil servants, and initiating organizational reforms.[30] However, although the approaches produced quick results, 'the role that informal actors and institutions, culture and identity play'[31] was downplayed. Meanwhile 'the political dimensions of seemingly apolitical reforms were grossly underestimated'.[32]

Historical overview of the state in Afghanistan

Rule of the monarchy

Before 1747, when Ahmad Shah Durrani established a confederacy at Kandahar under the unifying name of Afghanistan (the 'Land of the Afghan'), Afghanistan was known as '*Sarzameen-e-Bay*', the lawless land. Autocratic rule continued under Durrani, who managed to unify the tribes. At the end of the nineteenth century, unification was more pronounced under the forceful 'Iron Amir', Abdur Rahman Khan, who used a mix of force and guile to cement the tribes together. The first Afghan constitution was enacted in 1923 under King Habibullah.

Divisions between modernizers and traditionalists (a tension that continues to exist in Afghanistan) became more evident in the summer of 1928, when

26 T. Debiel and D. Lambach, above note 17, p. 2.
27 *Ibid.*
28 *Ibid.*
29 A. Wennmann, above note 14, p. 2.
30 Ulrich Schneckener, *Fragile Staatlichkeit: 'States at Risk' zwischen Stabilitat und Scheitern*, Nomos, Baden-Baden, 2006.
31 T. Debiel and D. Lambach, above note 17, p. 3.
32 *Ibid.*

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Habibullah's son, King Amanullah – looking towards what Kemal Attaturk was doing in Turkey – tried to introduce modernizing reforms. These included the establishment of a Western-style constitutional monarchy and the abolition of the veil. However, the *Loya Jirga* – which itself is a version of direct democracy similar to the traditional *Landesgemeinde* or cantonal assembly of the older Swiss cantons – rejected most of the proposals. An insurrection followed, begun by Shinwari tribesmen who burnt down the king's palace (and the British Consulate) in Jalalabad. This led to Amanullah's eventual exile, opening the way for General Nadir Shah, who had defeated the bandit forces, to occupy Kabul.[33]

Nadir Shah became king in 1930, after his legitimization by a *Loya Jirga*. His 1931 constitution was essentially a promulgation of an 'autocratic monarchy allied to religious conservatism'[34] in an attempt to consolidate power by appeasing the mullahs who had brought about the downfall of his predecessor. Accordingly, the first article of the new constitution officially decreed that the religious law of the Hanafi school of Sunni Islam was to be the basis of law in Afghanistan. Nadir Shah's reign ended with his assassination in 1933 by a high-school student in Kabul.[35]

His son, Mohammad Zahir Shah (1933–1973) succeeded him and his rule lasted for forty, relatively peaceful, years. In 1964, the third Afghan Constitution created a constitutional monarchy with a legislature. Although *Sharia* (Islamic law) was referred to, the basis of law became that of a secular legal system because the constitution introduced an independent judiciary. Most power, however, remained with the king.[36] In 1965, elections were held and resulted in a lower house of parliament, the *Wolesi Jirga*, which was broadly representative and included anti-royalists. The king had allowed the establishment of the People's Democratic Party of Afghanistan (PDPA), which had two wings, Khalq and Parcham, comprising rural Pashtuns and left-leaning urbanites (who were often *dari* speakers) respectively.

The Soviet era

Soviet influence had continued to gain traction throughout the 1970s and, in December 1979, resulted in the invasion and occupation of Afghanistan. An interim constitution followed in 1980, even as various resistance groups began to organize themselves from their base in Peshawar. They ranged from traditionalist groups interested in restoring the former king to minority Shi'a groups and the more fundamentalist Islamist groups of strongmen such as Gulbuddin Hekmatyar and Abdur Rab Sayyaf. The aim of most of these groups was not democratic rule but a redefinition of Islam in Afghan society.

33 Angelo Rasanayagam, *Afghanistan: A Modern History*, IB Tauris, London, 2004.
34 *Ibid*, p. 23.
35 *Ibid.*
36 *Ibid.*

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The Mujahideen and Taliban era

The West provided aid and ordinance to the resistance groups and, by the time the Soviets were defeated in 1989, Afghanistan faced a new crisis: the economy was now based on drugs, the country was flooded with weapons, and Afghan civil society had been decimated. This situation enabled the Taliban, since they set about restoring order, to gain the support of the populace in much of the country. Though seen as 'occupiers' in the cities of Kabul, Mazar, and Herat, they thus easily gained control over most of Afghanistan and – despite UN sanctions – refused to give up Osama bin Laden and believed that they could win the remaining territory in the north-east still occupied by the Northern Alliance.

Attempts to broaden loyalty from traditional structures to a concept of 'nationhood'

As early as 1973, the US anthropologist Louis Dupree identified a tension within Afghan society between those desiring to promote the concept of 'nation-state' and those who preferred a more traditional society based on 'kinship'. Dupree defined the 'nation-state' as: 'in the western sense, more a set of attitudes, a reciprocal, functioning set of rights and obligations between the government and the governed – with emphasis on the individual rather than the group'.[37] In contrast, he wrote that 'tribalism' occurs 'in non-literate societies … when kinship replaces government and guarantees men and women born into a specific unit a functioning set of social, economic and political rights and obligations'.[38]

This tension still exists in Afghanistan today and encompasses differences between rural and urban traditions, between youth and older people, between modernizers and traditionalists, between diaspora Afghans and those who remain within Afghanistan. Interestingly, Dupree identified diaspora Afghans as those pushing for the nation-state ideal.

Shahrani repeats Dupree somewhat when he says that previous attempts at political reform in Afghanistan during the twentieth century had not enjoyed success in broadening loyalty from clan-based or tribal networks to a concept of nationhood.[39] Although he adds that much of the difficulty has been historically related to limited literacy and problems in communication and transport networks, a lack of revenue also curtailed the state's attempt to legitimize power, so that successive leaders had to play one group off against another (with political and financial incentives). His view is that, over time, the central power was forced to turn more and more to regional leaders for financial and military assistance, thereby enabling tribal and traditional structures of authority to become entrenched. Some commentators argue that this phenomenon has succeeded only

37 Louis Dupree, *Afghanistan*, 1980 edition, Rama Press, New Delhi, 1980, p. 659.
38 *Ibid.*
39 M. Nazif Shahrani, 'Afghanistan: state and society in retrospect', in Ewan W. Anderson and Nancy Hatch Dupree (eds), *The Cultural Basis of Afghan Nationalism*, Pinter Publishers, London, 1990, pp. 41–49.

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in accelerating the tendency of religious and ethnic pluralism to develop into social fragmentation.[40] Others would contend that this has always been so in Afghanistan, and is echoed today because Hamid Karzai's ability to hold onto power is largely determined by patronage (in this case, the spoils of foreign aid and lucrative sinecures, i.e. 'police chief' positions).

During the nineteenth and early twentieth centuries, the British were Afghanistan's main source of revenue during nation-building exercises. From the 1950s, both the USA and the USSR provided support, and in the 1980s the USSR provided massive financial investment while occupying Afghanistan. Latterly, there have been contributions (during the Mujahideen era) from the US and other Western nations, and since 9/11 the West has been providing most of the revenue to shore up the state.

The post-9/11 intervention

The post-9/11 intervention comprised three elements: military, political, and security sector reform.

The military response: Operation Enduring Freedom and NATO

The military effort in Afghanistan has been under the remit of both Operation Enduring Freedom (OEF) and – since it moved beyond Kabul in 2003 – the UN-mandated International Security Assistance Force (ISAF) under NATO command.

The attacks of 11 September 2001 led to the unprecedented invoking by NATO of Article 5 of the North Atlantic Treaty, according to which an armed attack on one member state is deemed an attack on all. NATO thus committed itself – for the first time – to an operation beyond its immediate borders. Though there was political will by NATO to contribute troops, US General Tommy Franks, then leading Operation Enduring Freedom, made clear that he wanted exclusive control over the theatre of operations beyond Kabul.[41] As such, ISAF was confined to Kabul. On 11 August 2003, NATO assumed leadership of the ISAF operation, ending the six-month national rotations.

A key part of the OEF strategy – the use of Northern Alliance militiamen as ground forces to oust the Taliban – was perceived as a means of averting the need for the US to commit ground troops in significant numbers. Instead, the strategy was to support a disparate group of mostly Tajik warlords based in the north and east with over one billion US dollars' worth of cash and

40 Barnett Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, Yale University Press, New Haven and London, 1995.

41 Lucy Morgan Edwards and Shambhu Simkhada, *Defence, Diplomacy and Development (3Ds): A New Approach to International Relations?*, report commissioned by and written for the Swiss Agency for International Development and Cooperation (SDC), 2008.

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weapons.[42] The fact that the Northern Alliance had been involved in an ongoing civil war with the mostly Pashtun Taliban was overlooked, even though other Afghans criticized their use as inevitably leading to a lopsided political settlement. This development was accelerated when the US bombed Taliban front lines in October 2001, as the Northern Alliance were thereby enabled to take Kabul, and with it the key 'power' ministries of Defence, Interior, and Foreign Affairs.

The Bonn Framework 2001–2005

The political response was mapped out by the international community, the UN, and certain Afghan groups in December 2001 in Bonn. Afghan representatives from different exile groups – but crucially not the Taliban, and with few significant Pashtun tribal leaders present – signed the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions.

The Bonn Agreement was intended to 'initiate a state-building process'.[43] It envisaged the initial establishment of an Interim Authority followed by an Emergency *Loya Jirga*, to be held in 2002, at which a Transitional Administration would be established and legitimized until presidential and parliamentary elections elected a government in 2004.[44]

Under the Interim Administration a constitutional drafting committee was set up to prepare for a Constitutional *Loya Jirga*. The Constitution was intended to establish Afghanistan as a state with executive, legislative, and judicial branches of government. A Judicial Commission was to rebuild the justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions. A Supreme Court was also to be established.

Security Sector Reform (SSR)

Alongside the Bonn process and Operation Enduring Freedom, G8 donor countries decided on a 'lead nation' approach to SSR in 2002. The Security Sector was divided into five pillars: Germany would lead on police reform, the US on military reform, Italy on judicial reform, the UK on counter-narcotics, and Japan on the disarmament, demobilization, and reintegration (DDR) of former combatants.[45] That approach marked the beginning of what would become the main plank of the West's perceived 'exit strategy' from Afghanistan, namely by building up Afghan security forces.

42 Gary C. Schroen, *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan*, Ballantine Books, New York, 2004.
43 Joint Electoral Management Body Secretariat (JEMBS) background document, 2005.
44 *Ibid.*
45 Cyrus Hodes and Mark Sedra, *The Search for Security in Post-Taliban Afghanistan*, International Institute for Strategic Studies (IISS), London, August 2007.

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Outcomes of the approach adopted

The military response

Although the Taliban regime was soon toppled, the movement was not so easily destroyed but merely retreated to remote parts of Afghanistan and safe havens in Pakistan, from where it has – since 2004 – mounted an increasingly successful insurgency campaign.

Afghanistan was a 'quickly won' war, but a failed peace. The US decision to use the Northern Alliance as a proxy to rout the Taliban was widely criticized because:

> The more this [i.e. payoffs by the Coalition] … happened in the name of hunting down their prized catch, Osama bin Laden, the more the Americans undermined the interim administration and destroyed hopes of building a viable central administration for Afghanistan.[46]

Moreover, the return of strongmen (often after several years of exile abroad) to the fiefdoms that they had occupied prior to the arrival of the Taliban enabled commanders 'to use the money and arms they received to invest in drug production and engage in land grabs, predation, political intimidation, and ethnic cleansing – a major source of insecurity for Afghans'.[47]

This set the stage for anarchy in the provinces and led to a feeling by many Afghans of alienation from the state, which was not perceived to be serving their interests. By 2005 insecurity had spread beyond the Pashtun belt and the south to many areas of the north and east, enabling the Taliban to make their presence increasingly felt.

The Bonn Process

The feeling that many significant Pashtun leaders (as well as the Taliban, of course) had been sidelined from the meeting in Bonn and the political settlement that followed amplified the feeling (for Pashtuns) of alienation from the central government.

The last-minute participation of fifty unelected governors (in reality 'warlord strongmen') in the 2002 Emergency *Loya Jirga* was dubbed the 'big tent' approach by the presiding US Ambassador, Zalmay Khalilzad. Meanwhile, the UN chief, Lakhdar-i-Brahimi, told journalists that it had been necessary in order for 'peace' to be able to take precedence over 'justice'. Others disagreed with the approach, believing that this was only a temporary solution akin to 'renting peace',

46 John Kampfner, *Blair's Wars*, Free Press, London, 2003, p. 146.

47 Barnett R. Rubin, *Afghanistan's Uncertain Transition from Turmoil to Normalcy*, Council Special Report No. 12, Council on Foreign Relations Press, March 2006, pp. 5–6.

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which would soon give way to anarchy.[48] As Debiel and Lambach assert, such an approach to state-building was characterized by a top-down focus promising quick results but downplaying the role of informal actors and grossly underestimating 'the political dimensions of seemingly apolitical reform'.[49]

The ability of the warlords to shape the outcome of the 2002 Emergency *Loya Jirga* has had a long-term deleterious effect on the state-building process, not simply because it enabled them to claim the political legitimization of the international community (whereby, instead of being called to account for their often dubious history of alleged rights abuses, they were now sharing out ministerial positions with the approval of international diplomats). It also enabled strongmen to influence key appointments both regionally and at central government level[50] and to affect the composition and outcome of the constitutional drafting committee and ultimately, therefore, the Constitution. The corollary is an extreme form of centralized government that protects the interests of an elite group of strongmen with whom Karzai maintains allegiances. It has also put a brake on judicial reform[51] and hampered the reform of security institutions both locally and centrally.[52]

Despite the enthusiasm by the international community for the completion of presidential and parliamentary elections in swift succession (arguably driven by US/UK domestic politics whose imperative was to demonstrate the 'success' of democracy in Afghanistan), law, order, and security have continued to break down in the countryside. Narco-trafficking and corruption are now known to reach the highest levels of the Afghan government, as shown by the recent corruption scandal at the Kabul Bank, the interference in the Anti-Corruption Commission by President Karzai himself, and the fact that the Afghan Deputy President, Zia Massoud, was alleged to have been found in Dubai with US$ 52 million on his person.[53]

Security Sector Reform

In 2005, one of the 'flagship' programmes of SSR – that aiming to disarm, demobilize, and reintegrate (DDR) tens of thousands of combatants and called the Afghan New Beginnings Programme (ANBP) – was trumpeted a success by the

48 The author was present at the Emergency *Loya Jirga* in June 2002 and has written about what happened in her forthcoming book, *The Afghan Solution: The Untold Story of Abdul Haq, the CIA and how Western Hubris Lost Afghanistan*, to be published in 2011.

49 T. Debiel and D. Lambach, above note 17, p. 3.

50 Sarah Lister, *Understanding State-building and Local Government in Afghanistan*, Crisis States Research Centre, LSE, Working Paper No. 14, London, 2007, available at: http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/phase2papers.aspx (last visited 8 February 2011).

51 C. Hodes and M. Sedra, above note 45.

52 S. Lister, above note 50.

53 Various articles published by the *New York Times*, including that on the Kabul Bank by Dexter Filkins, and leaked cables published by WikiLeaks in November 2010.

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international community.[54] Though its prospective target was originally 140,000 combatants, the numbers were reduced first to 40,000, then to 10,000.[55] Crucially, ANBP also only tackled the demobilization of so-called 'official' Afghan army units, that is, those militias of the Northern Alliance leader Mohammad Fahim, who, in late 2001, had taken over the army units left by departing Taliban.[56] As such, ANBP did nothing to tackle the more serious problem of the 'unofficial' militias belonging to the strongmen controlling the countryside. These were known as 'illegal armed groups' and there were estimated to be some 1,800 such groups throughout the country in 2005.[57] Although a Disbandment of Illegal Armed Groups (DIAG) programme was mooted by the UN in 2005, in reality neither NATO nor the Coalition had the political will to undertake such a programme because the militias had links with the strongmen, who – since 2001 – had been allied with the Coalition. Indeed, many of these strongmen were now in government or, in 2005, about to be elected as members of parliament.[58] There has also been widespread criticism of the ethnic imbalance of the Afghan National Army, which remains largely Tajik and dominated by Northern Alliance generals.[59]

Meanwhile reform of the justice sector has been very weak. Besides lagging behind schedule, it has been hampered by some of the leaders, who themselves have known fundamentalist leanings and extremely chequered histories. For example, Abdur Rashid Sayyaf is thought to have had undue backroom influence, including the appointment in 2002 of Mullah Shahrani as Chief Justice (who promptly reintroduced the hated religious police). Overall then, the decision by the West to sponsor strongmen who many believe ought instead to have been indicted for their previous rights abuses[60] has had extremely negative consequences for the post-9/11 state-building project in Afghanistan.

In her assessment of state-building at the local level in Afghanistan, Sarah Lister concludes:

> Disarmament, the reform of the police, and the judicial sector and close attention to the quality of senior appointments are all measures that would have contributed to shifting 'the rules of the game' in Afghanistan from informal patronage based systems, and towards a more depersonalized, formalized and rationalized exercise of power through the state. Instead their neglect at a

54 S. Lister, above note 50.
55 *Ibid.*, p. 13.
56 *Ibid.*
57 C. Hodes and M. Sedra, above note 45.
58 Author's experience of meetings between the international community and Afghan government on DIAG in Kabul, 2005. See also Andrew Wilder, *A House Divided? Analysing the 2005 Afghan Elections*, Afghan Research and Evaluation Unit (AREU), 2005, available at: http://www.areu.org.af/index.php?option=com_docman&Itemid=&task=doc_download&gid=254 (last visited 7 January 2011).
59 'Afghanistan's troubled National Army: fixing the unfixable', in *The Economist*, 19 August 2010, pp. 39–40.
60 Patricia Gossman, *Casting Shadows: War Crimes and Crimes against Humanity: 1978–2001*, Afghan Justice Project, 2005, available at: http://www.afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf (last visited 8 February 2011).

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critical period has enabled local powerholders to continue to use the state as a means to exercise power, resisting or co-opting attempts to create new structures and impose bureaucratic rules.[61]

Constraints on the West's ability to conduct a successful post-9/11 state-building exercise in Afghanistan

A historical perspective of state-building

Boege *et al.* remind us that, although processes of state formation in the Western world were undertaken over a period of centuries and often involved much violence, since the era of decolonization Western state forms have been 'delivered' relatively fast to many parts of the Global South. This 'delivery' has tended to be guided by 'the replication of European political models'.[62] At the time of independence, these newly formed 'states' therefore:

> lacked roots in the recipient societies, particularly where there was no unitary form of rule pre-existing colonial government. The global delivery of Weberian systems was not accompanied by the development of the economic, political, social and cultural structures and capacities that had provided the basis and framework for an efficiently functioning political order in the course of the evolution of the state in European history. … An identity as 'citizens' and the 'idea of the state' does not meet with much cultural resonance within these societies, as people are relatively disconnected from the state, neither expecting much from state institutions nor willing to fulfill obligations towards the state (and often with little knowledge about what they can rightfully expect from state bodies, and what the state can rightfully expect from them).[63]

Hence interveners have often failed to understand what really constitutes 'political order' in regions of fragility. This is also reflected in the experience of recent attempts to transpose the 'ideal' of the European nation-state to the South. To understand true 'political order' in such regions, therefore, Boege *et al.* recommend moving beyond the narrow 'state-centric' discourse to understand the importance of 'legitimacy' and hybrid political order.[64]

Just as Dupree noted in 1973, Kevin Clements in 2009 recognized the essential elements of indigenous or tribal society whereby:

> Most of the customary sources of legitimacy are based on norms of trust and reciprocity. The core constitutive values that lie at the heart of traditional legitimacy are the values that enable kin groups, tribes and communities to

61 S. Lister, above note 50, pp. 15–16.
62 V. Boege *et al.*, above note 18, p. 6.
63 *Ibid.*
64 *Ibid.*, pp. 6–13.

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> exist, satisfy basic human needs and survive through time. Traditional legitimacy rests on complex patterns of power, responsibility and obligation, which enable social groups to exist and co-exist.[65]

The link between 'legitimacy' and 'capacity'

A reason for the West's failure in assisting former colonial states since independence lies in an underestimation of the inextricable link between capacity and legitimacy. Since independence, many such states have had difficulty in establishing their legitimacy and effectiveness.[66] Clements says that the same problem exists with fragile states, and defines legitimacy as 'a complex set of beliefs, values and institutions (endogenous and exogenous) about the social compact governing state–society relations'.[67] He asserts that legitimacy:

> helps generate social and political trust and predictability; public acceptance of dominant power relations and an awareness of reciprocated rights and responsibilities. If these are not present the possibility of state systems being able to act effectively, or claim legitimacy, is very slight indeed.[68]

Clements cites as a possible explanation for the underestimation of the link between capacity and legitimacy the fact that concepts of legitimacy most often invoked by donors are 'almost exclusively seen in Western enlightenment terms and as some variant of the Weberian ideal type of rational-legal legitimacy'.[69] Consequently, such analyses focus solely on 'process and performance' legitimacy or that of institutional sources of 'rational-legal types of legitimacy (e.g. security of the state, rule of law, provision of public goods etc.)'. Very little attention is paid to traditional community and social institutions, nor to the 'interactions' between the 'two different sources of legitimacy, namely those located within the state realm and those located within the social and community realms'.[70]

Clements stresses that 'rational-legal legitimacy … as found in western OECD states is only one type of legitimacy in fragile states'. Donors, he says, 'will have to engage with other types of legitimacy if they want to help build effective, resilient and legitimate states in fragile situations'.[71]

65 Kevin P. Clements, 'Note on building effective, legitimate and resilient state institutions', Headline Seminar on Deteriorating Governance, presented at the World Bank, Washington DC, April 2009, p. 4, available at: http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1224016350914/5474500-1257529177557/Notes_Clements_Institution_Building_HS_Apr8_09.pdf (last visited 25 January 2011).

66 Paul Collier analyses these factors in *The Bottom Billion*, Oxford University Press, Oxford, 2008.

67 K. P. Clements, above note 65, p. 1.

68 *Ibid.*

69 *Ibid.*, p. 2.

70 *Ibid.*, p. 3.

71 *Ibid.* Clements indicates that the argument in his paper is based on the three 'ideal types of legitimacy' as espoused by Max Weber, i.e. 'legitimacy based on (1) Rational grounds – "resting on a belief in the "legality" of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (legal authority). (2) Traditional grounds – resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under

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The failure by intervenors to distinguish 'limited access' from 'open access' orders

North *et al.* suggest that different dynamics within states (as regards political and economic opportunities) can be characterized as either 'limited access orders' or 'open access orders'.[72] In the latter, governments structure access to political and economic opportunities competitively via markets, merit, and elections. In the former, access to political and economic opportunities is limited to elites who are apparently dissuaded from fighting one another because they are better off 'participating in a patrimonial network than by challenging the authorities violently'.[73]

The mistake of the international community (in Afghanistan) has been a failure to distinguish between 'limited' and 'open access' orders. This, according to North *et al.*, has led to a failure of development policies:

> because they try to transplant elements of the open access order – such as competition, markets, and democracy – directly into limited access orders. These reforms threaten the rent-creation that holds the society together and in many cases challenge the very logic on which the society is organized. Not surprisingly, the elite and many non-elite resist, sabotage, or subvert such reforms in limited access societies that are not ready for them.[74]

In other words, Afghanistan continues to embody a system based more on kinship and patronage, such as a tribal people relate to, than on a rational-legal system, which is found in a Weberian state. The problem is that intervenors have proceeded to intervene on the basis that a rational-legal type of political order system can exist in a tribal society that has hitherto functioned on the basis of patronage and 'traditional' authority.

Sometimes there is an assumption by intervenors/donors 'that there is some natural trajectory whereby local "traditional" sources of legitimacy evolve in the direction of a rational-legal political order'.[75] There is also the danger of relying

them (traditional authority); or finally (3) Charismatic grounds – resting on devotion to the specific and exceptional sanctity, heroism and exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority)" '. *Ibid.*, p. 3, note 5, quoting M. Weber, above note 12, p. 46. Clements explains how Weber has thus 'firmly linked the question of legitimacy to specific modes of production, particular types of decision-making and law-making processes and wider theories of social change' (*ibid.*).

72 Douglass C. North, John Joseph Wallis, Steven B. Webb, and Barry R. Weingast, 'Limited access orders in the developing world: a new approach to the problem of development', The World Bank, Policy Research Working Paper No. 4359, Washington DC, 2007, available at: http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2007/09/19/000158349_20070919115851/Rendered/PDF/WPS4359.pdf (last visited 8 February 2011).

73 A. Wennmann, above note 14, p. 26.

74 D. C. North *et al.* above note 72, p. 5.

75 Organisation for Economic Co-operation and Development (OECD), *The State's Legitimacy in Fragile Situations: Unpacking Complexity*, Conflict and Fragility Series, OECD, Paris, 2010, p. 54.

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on 'local "champions" of a rational-legal approach to reform' in advancing a Western state model, whereas engaging with a wider range of stakeholders might be more realistic.[76]

Since 2001 the West has engaged in Afghanistan mostly with a 'patrimonial network' limited to the elites of the Northern Alliance strongmen (with Karzai as the Pashtun figurehead). However, this key elite has failed to build a relationship with a broader constituency – particularly the majority Pashtun population – by providing protection, welfare, jobs, and justice systems. The Taliban has therefore filled the vacuum, providing jobs and justice, especially in the south, where the Pashtun majority have felt alienated.

The above encapsulates the problem described by Dr Ken Menkhaus, whereby the objectives of the international community – in building a strong state – can often be at odds with that of the local governing elite, whom the international community is essentially 'propping up' (in the fragile states concerned).[77] For this elite, continuing instability equates to continued funding (in the case of Afghanistan, for so-called 'Taliban reconciliation schemes', building up the Afghan National Army, aid money, and so forth).

The weakness of global actors in local situations

Much of the problem for intervenors (or 'global actors') is that, despite often having advantages in terms of resources, they still find themselves outmanoeuvred by local counterparts. Often this has to do with the fact that policy is decided far away in the intervenors' capital city, and by the time it reaches the personnel representing them in base camp (or 'the bush') that policy bears little resemblance to realities on the ground: 'The personnel in the metropolitan headquarters or in the base camp do not possess knowledge of local power structures and as a result perceive the space of the intervention as being void of any power structures'.[78]

Kipping has compared the 1980s intervention in Afghanistan by the USSR with that of the present day. He concludes that – like the USSR then – the West is now further 'militarizing' its intervention in response to a failure that is characterized by an inability to project the state beyond major urban centres into rural areas.[79]

76 *Ibid.*
77 K. Menkhaus, above note 2.
78 Klaus Schlichte and Alex Veit, *Coupled Arenas: Why State-building is so Difficult*, Junior Research Group 'Micropolitics for Armed Groups', Humboldt University, Berlin, Working Papers Micropolitics No. 3, 2007, p. 26.
79 M. Kipping, above note 1.

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The link between a 'legitimacy deficit' and deteriorating governance

A major problem with externally imposed state-building projects is a failure to understand the local context and hence what constitutes legitimacy locally. Accordingly:

> Unless there is a close connection to deep sources of individual and collective (kin, clan, community) identities and belonging; externally imposed or supported systems will never generate that 'taken for granted' trust and legitimacy that exists between state and people in the West.[80]

The result is a breakdown in relationships and – in fragile societies – deteriorating governance. The salient indicators of deteriorating governance include abuse of power, declining security, corruption, exclusion, and failure to serve the public. Clements has identified further indicators of deteriorating governance as including:

a) polarization between endogenous customary/traditional institutions and actors and exogenous imposed/introduced institutions/actors with regard to the reach and significance of the state;
b) reliance by political leaders on external sources of legitimacy (aid, development organizations, neighbouring states, etc.) rather than indigenous sources of legitimacy;
c) disagreement (along customary/non-customary lines) about accepted rules for decision-making, e.g. when community actors rather than state actors deliver welfare and education services more effectively than the state, or when customary leaders invoke traditional beliefs to invoke concepts of public/community good versus state predation;
d) when external actors withdraw their legitimization of states or regimes;
e) when religious leaders stand in opposition to states and mobilize the faithful to oppose the state;
f) when there is open competition over which 'legal system' should take precedence, e.g. in relation to endogenous/exogenous settlement of 'land disputes';
g) when state power is challenged and lacks the legitimacy to govern by peaceful means;
h) when taxes are low or non-existent and states rely on 'unearned income' such as oil, diamonds, aid, logging, customs duties.[81]

Many of the above characteristics (or indicators) of deteriorating governance are currently found in Afghanistan.

Some academics, referring to Somalia, argue in favour of a 'third way' of 'ordered anarchy' beyond the centre. Their view is that external actors should focus

80 K. P. Clements, above note 65, p. 3.
81 *Ibid.*, pp. 4–5.

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only on basic functions – for example, minimum security and protection of trade routes – while aid should be sent directly to the regions on the basis of institutionalized relations with warlords and of central government acting as mediator.[82] However, such an approach possibly overlooks the complexity of patterns of legitimacy at the local level. For, in Afghanistan, warlords are often not necessarily historically legitimate – particularly in the south and east – even though external proxies have changed power patterns over the past decades, endowing such strongmen with 'force'.

There is a challenge for intervenors in understanding what constitutes traditional/customary legitimacy in fragile situations, because these elements are in constant flux and must be continuously reinterpreted to suit local conditions: 'sources of traditional legitimacy matter a lot in fragile situations and external actors have to work with their advocates to the widest possible extent in order to promote progressive state formation, stable peace and development'.[83] Given this difficulty, the design of intervention strategies 'capable of generating higher levels of political legitimacy in such circumstances' can be extremely challenging. Additionally there is often confusion about differing types of legitimacy, including which types reside with the state as legislative, executive, and judicial institutions, which lie with governments or regimes, and which lie with communities and social institutions. A particular problem is knowing the internal dynamics of these various arenas. Hence, more research is needed.

Clements focuses on the interaction between state and non-state actors who enjoy 'grounded legitimacy', that is, the interaction that is rooted in 'frameworks of customary tradition and values, from which people derive their social meaning'.[84] One could even call this 'customary governance'. This, he says, would surprise Weber today because, although the introduction of Western values changed 'popular understandings of culture and custom', it did not manage to destroy most of the central 'integrative elements'. As such,

> people living in societies that have strong indigenous cultures have a choice of utilizing customary provisions and/or relying on state provisions. If the state is unwilling or unable to provide any meaningful security or other public goods, there is a strong willingness to resort to customary sources.[85]

The Taliban have – since 2001 – recognized this and filled the vacuum left by the international community and the Karzai government with a parallel

82 Marina Ottaway and Anatol Lieven, *Rebuilding Afghanistan: Fantasy versus Reality*, Carnegie Endowment for International Peace, Policy Brief No. 12, 2002, available at: http://carnegieendowment.org/publications/index.cfm?fa=view&id=883 (last visited 8 February 2011).

83 K. P. Clements, above note 65, p. 3.

84 *Ibid.*, p. 4.

85 *Ibid.*

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administration system in many provinces, including shadow governors and justice systems.[86]

Ways forward

The need to reconceptualize thinking and accept alternative (or 'customary') governance mechanisms

Over recent decades the discourse on state fragility and the state-building policies allied to it have tended towards a replication of the Western-style Weberian/Westphalian state, despite the fact that this form of statehood barely exists outside the world of the Organisation for Economic Co-operation and Development (OECD). In recognition of this problem some thinkers are advocating reflection on the concept of a 'post-modern nation-state' order.

In Afghanistan, for example, intervenors would need to take greater account of traditional legitimacy:

> It is clear however, that legitimacy needs much more systemic attention in its own right and should be placed at the heart of the discourse on state effectiveness. States can only govern authoritatively and with minimal coercion if their citizens/peoples accord them legitimacy.[87]

The corollary of traditional legitimacy is the need to recognize and work with 'hybridized governance mechanisms', also sometimes referred to as 'customary governance' or 'mediated states'. For example, in writing about Somalia, Menkhaus says:

> The government relies on partnership (or at least co-existence) with a diverse range of local intermediaries and rival sources of authority to provide core functions of public security, justice, and conflict management … Mediated states are intrinsically messy, contradictory, illiberal,and [involve] constantly re-negotiated deals – not ideal choices for governments but often the best of bad options for weak states.[88]

The concept of 'hybrid political order' is gaining traction, with advocates saying that this opens up new options for conflict prevention and development, as well as for new types of state-building. It also offers an alternative interpretation of governance in fragile states, case examples of the limitations of externally led state-building, and ultimately a reinterpretation of whether 'state fragility'

86 Ken Guest, RAM Seeger, and Lucy Morgan Edwards, 'The tribal path: commanding the prime battle space: a more hopeful strategy for Afghanistan', in *Small Wars Journal*, March 2010, available at: http://www.the-beacon.info/images/Tribal%20path%20May%2027.pdf (last visited 11 January 2011).

87 K. P. Clements, above note 65, p. 1.

88 K. Menkhaus, above note 2, pp. 74–106.

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and 'patronage' systems (as opposed to rational-legal systems) are such a bad thing.[89]

The idea of understanding and working with a 'hybrid political order' is discussed further in the following sections, in particular its potential as a means of improving 'state effectiveness'.

The need to understand the 'context' of 'customary governance' in fragile states in order to improve state effectiveness

Donors and intervenors need to understand better the 'context' of fragile societies/states before engaging with them. A first step is to recognize that such places often exhibit features whereby:

> diverse and competing claims to power and logics of order co-exist, overlap and intertwine, namely the logic of the 'formal' state, of traditional 'informal' societal order, and of globalisation and associated social fragmentation … In such an environment, the 'state' does not have a privileged position as the political framework that provides security, welfare and representation; it has to share authority, legitimacy and capacity with other structures.[90]

When such customary arrangements work well (be they economic, social, or political), they can be an effective means of delivering consensus, security, representation, and welfare to people. In many of the more remote regions of Afghanistan, for example, these customary governance arrangements are the only source of such benefits.

Because such arrangements (or customary governance) can play a positive role in expanding the reach, power, and effectiveness of the state, it makes sense for intervenors not to dismiss them as 'too complex' to work with, or as remnants of an outmoded system of governance to be ignored. Unfortunately, this has tended to be the case in Afghanistan since 2001. Thus elements of these customary 'systems' have sometimes stood in opposition to the post-9/11 state-building project, while the Taliban – who have understood their relevance – have made more use of them, ultimately to their strategic advantage.[91]

Bridging formal and informal institutions

In other words, rather than simply being ordered along the Weberian model, we need to recognize the hybridity of political order that often exists in fragile societies and post-colonial states. Wennmann, in advocating a bottom-up approach to state-building, says that 'hybrid political orders', 'mediated states', and 'pockets of

89 V. Boege *et al.*, above note 18.
90 *Ibid.*, p. 10.
91 K. Guest, RAM Seeger and L. Morgan Edwards, above note 86.

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authority' in fragile states should be leveraged by development assistance agencies because:

> They are forms of authority that often go unrecognised but show that something can work in fragile states, and that they follow a particular political or economic logic or order that, alas, does not always coincide with Western perceptions of the way a state or society should work. There may be much to gain for development policy from reaching out to these existing governance arrangements and recognising them as a policy opportunity. Rather than building parallel state structures that marginalise functioning structures already delivering protection, welfare and justice to local populations, donors should explore the implications of integrating them into a long-term transition process. The starting-point for statebuilding should, therefore, revolve around what *is* there rather than what *should be* or *is not* there; hence emphasising the need for assessments of strengths rather than weaknesses.[92]

There is also a need to see the legitimacy accorded to traditional authorities and charismatic leaders as a resource underpinning contributions to governance and law and order at local level, and 'as a potential resource to be drawn upon by the state system through greater interaction and engagement with local communities and their leaders'.[93] There is a need for intervenors to use 'bridging institutions' in order to open up use of this potential resource for purposes of state formation. In Afghanistan, the Tribal Liaison Office has tried to propose ways in which informal and formal systems of governance and justice can be bridged so that the concepts (and benefits) of statehood can be leveraged by local actors (and vice versa).[94] This work has only lately begun to be appreciated by donors (and intervenors).

The OECD[95] makes useful recommendations for external actors on how to improve the way they intervene, and in particular on the need not to intervene without a very comprehensive actor/issue analysis. Clements, who is also one of the key OECD working group contributors, adds that there is a need to understand that:

> The main problem is not the fragility of state institutions as such, but the lack of constructive linkages between the institutions of the state and society … Focusing on states alone often results in the external legitimization of internal legitimacy.[96]

92 A. Wennmann, above note 14, p. 27, emphasis in original.
93 See K. P. Clements, above note 65, p. 5.
94 Masood Karokhail and Susanne Schmeidl, 'Integration of traditional structures into the state-building process: lessons from the Tribal Liaison Office in Loya Paktia', in Heinrich Böll Foundation (ed.), *Issue 1: Afghanistan*, Publication Series on Promoting Democracy in Fragile States under Conditions of State Fragility, Berlin, 2006, pp. 59–78, available at: http://www.tlo-afghanistan.org/sites/default/files/About-TLO/Boell-Afghanistan-en-Integration-of-Traditional-Structures-into-the-State-building-Process.pdf (last visited 10 January 2011).
95 OECD, above note 75.
96 K. P. Clements, above note 65, p. 5.

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Intervenors must also understand how traditional governance and charismatic movements assert themselves (for example, in the face of social and economic change) and how customary institutions interact with state institutions (and other social agencies) to generate or hinder positive change that includes and reaps benefits for marginalized societal groups.

Multilateral development agencies, too, must change their attitude to face-to-face relations and value them as much as they have previously valued bureaucratic forms of organization. Alongside this they must change their attitude to 'time-frames' because '[d]eveloping knowledge and understanding of the local everyday life of the people on the ground requires a long-term presence. Trust, built on personal relationships, might be more important than bureaucratic accountability procedures'.[97] There is a need to take into account

> traditional forms of accountability that reach beyond conventional donor understandings of accountability. Notions of moral obligation and interpersonal accountability in the context of kin and other customary relations can be drawn upon; they are not merely sources of clientelism and corruption (which is the conventional donor perspective), but they can also be sources of social welfare and security.[98]

Suggestions for further research

The OECD has recognized these issues and is trying to push donors to do the same. Its International Network on Conflict and Fragility (INCAF) has a remit to improve understanding of state-building processes. A recent report by this group explains why the promotion of 'rational-legal' political institutions as a means of strengthening state capacity and legitimacy in fragile environments has largely failed. The report makes a variety of recommendations, including the importance of understanding 'country context' rather than 'the promotion of a particular donor-led agenda' as a starting point for intervenors.[99]

However, the OECD report sometimes fails to distinguish between legitimate sources of local governance and governance 'imposed' by strongmen who have asserted themselves as a result of external patronage over the past three decades and – since 2001 – through the international community's failure to exclude known rights abusers from political office. In this sense, the international community has been complicit in allowing a crisis of impunity to develop in Afghanistan that will be hard to reverse, given the increasingly 'globalized' relationships (such as mafia linked with illegal activities) and sources of income enjoyed by the strongmen.[100]

97 *Ibid.*, p. 6.
98 *Ibid.*, p. 7.
99 OECD, above note 75.
100 Alex de Waal, 'Dollarised', in *London Review of Books*, Vol. 32, No. 12, 24 June 2010.

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Further research would be useful to clarify, for example, how traditional systems of integrity, transparency, and accountability work; how hybrid political orders function at various levels (e.g. province, district); how legitimacy at this level is generated; and where the limits of traditional and charismatic legitimacy lie with respect to youth, urbanization, shadow economies, and organized crime. It would also be useful to find out whether traditional legitimacy can meet the aspirations of young people; how communities arrive at consensus over who is a legitimate or charismatic leader; and how they ensure that such leaders play a positive role in development, governance, community problem-solving, disputes, and so forth. Furthermore, there is the question of how electoral processes impact on the legitimacy of leaders and how such processes relate to the legitimacy of such charismatic and traditional leaders.[101]

The overall conclusion of the OECD report is that intervenors must focus on 'legitimacy' instead of on capacity development and institution-building – as they have done in Afghanistan since 2001. Its individual conclusions reflect ways of limiting the 'indicators of deteriorating governance' identified earlier:

> Legitimacy matters because it transforms power into authority, allowing rule by non-coercive means. In fragile situations, a lack of legitimacy undermines constructive engagement between state and society, which weakens state capacity and thus contributes to fragility. Multiple sources of legitimacy often compete and conflict. Conflicts between external sources of legitimacy and internal sources contribute to fragility. Large variations in perceptions of legitimacy between different areas and among different communities confront governments (and donors) with different judgements about when to negotiate with and accommodate competing, non-state actors and when to ignore or attempt to suppress them. Conflicts between pre-existing customary practice, and 'introduced' laws and institutions can also undermine the legitimacy of public institutions. Challenges from leaders with authority that derives from charismatic legitimacy pose a threat to those whose authority is based on both rational-legal and 'traditional' sources of legitimacy.
>
> All of this contributes to fragility because it impedes constructive relations between state and society, and leaves the state unable to impose the ultimate rules of the game, and to provide a shared social and cultural framework within which people think and act.[102]

Ultimately the OECD recommends that: 'Donors working in fragile situations need to invest far more effort in gaining a detailed, empirical understanding of local sources of legitimacy – of both state and non-state actors and institutions – and in monitoring the impact of their own interventions'.[103]

101 K. P. Clements, above note 65.
102 OECD, above note 75, p. 59.
103 *Ibid.*

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Conclusion

Since 2001, the Afghan example has taught intervenors the limits of the Weberian state model in stabilizing a fragile, tribal society that never had a strong centre. Even within that context, however, Western intervenors failed to address salient issues that have ultimately affected the legitimacy (as seen by Afghans) of their state. These included what many Afghans perceived to be the unjust political settlement in Bonn, the failure of the 'peace versus justice' strategy (and the concomitant inclusion within the government of an 'elite' cadre of strongmen whom many Afghans associated with rights abuses), a failure to deliver services and justice locally, and a military strategy that has appeared to operate in complete detachment from the political situation.

There has also been widespread resistance by intervenors to the need for a longer-term perspective and for a greater attempt to understand and to work with the Afghan context. One example thereof is continued (and sometimes deliberate) conflation of the term 'warlord' with 'tribal' or 'tribal legitimacy' and general dismissal of the idea of engaging with tribal contexts as 'too complex'. There may be political reasons for this – for example, the desire for 'quick-fix' solutions to demonstrate 'success' to the domestic electoral audience of the intervening state.

Yet, as the work by several authors and the OECD shows, there is clearly a need for intervenors (whether military, development, or donors) to reconfigure their objectives for – and their approach to – state-building in fragile contexts such as Afghanistan. A longer time-frame and greater understanding of complex local contexts will be needed. Only then might it be possible to say whether Afghanistan is indeed 'a case showing the limits' or not. For, as Chesterman *et al.* say:

> States cannot be made to work from the outside. International assistance may be necessary but it is never sufficient to establish institutions that are legitimate and sustainable … international action should be seen first and foremost as facilitating local processes, providing resources and creating the space for local actors to start a conversation that will define and consolidate their polity by mediating their vision of a good life into responsive, robust and resilient institutions.[104]

104 Simon Chesterman, Michael Ignatieff, and Ramesh Thakur (eds), *Making States Work: State Failure and the Crisis of Governance*, United Nations University Press, Tokyo, p. 384.

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