

The Failure of State Building in Afghanistan, Review of
The Rule of Law in Afghanistan: Missing in Action

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Summary

For ten years, the United States and coalition forces have been struggling to build a functioning state in Afghanistan. The author reviews *The Rule of Law in Afghanistan*, a compilation of articles by scholars on the efforts to establish the rule of law in that war-torn country. The picture that the scholars paint is a bleak one, and undermines the claims of several of the contributors that the situation could have turned out differently with more of a commitment to legality on the part of the international community.

It has been just over eleven years since the United States and coalition forces invaded Afghanistan. As much as anything else, the new compilation *The Rule of Law in Afghanistan: Missing in Action*, serves as an inventory of how well the nation building effort is going. Among the authors are activists who have participated in the effort to build a well-functioning Afghan state under the auspices of the US, UN, and various NGOs. The picture they paint can only be described as depressing.

For example, a UN study shows that Afghans spent \$2.5 billion on bribes in 2009, which we are told is the equivalent to 23 percent of national GDP. Even this number is less incredible than several statistics on drug cultivation and trade. Throughout the last few years, Afghanistan is estimated to have produced more opium than necessary to meet the entire global demand.

One could be hopeful if the international community knew of serious reformers on the ground that it could rely on, but this appears not to be the case. The Afghan government looks bad even when we compare it to the main alternative: the Taliban. While the popular perception in the West is that the drug trade funds the insurgency, Hafvenstein reports that in the south of the country, government officials are widely perceived as making more money off the trade than the Taliban is. Almost all relevant actors, from the local police to the highest national government officials, are implicated. Not only that, but the courts of the Taliban are perceived by many Afghans to be fairer than those of the government. Peters even tells

us of Taliban attempts to punish corrupt officials working for them. Taliban judges and sub-commanders have been fired, while the government has not prosecuted a single major official for corruption. Kilcullen opines that the Afghan government is “losing because it’s being outgoverned rather than outfought.”

The contributors suggest ways that the international community could improve the situation, but their arguments are unconvincing. For example, in the conclusion, editor Whit Mason argues that the authors of the book converge on the point that the rule of law and security are essential for legitimizing the state in the eyes of the population. Part of establishing the rule of law is ensuring that no individual is above it; corrupt officials and warlords must be brought to account. Similarly, a few of the contributors complain of the law passed by the Afghan parliament that granted amnesty to past human rights abusers.

Yet it is far from self-evident that directly taking on the warlords would lead to peace and security. Of course, everyone would agree that as an abstract proposition no one should be above the law. But attempts to combat the drug trade have led to the drug dealers with ties to the state simply using their connections to go after their rivals. Why would a serious attempt to go after past human rights abusers not end up the same way, especially when we are told that every one of Afghanistan’s major political and ethnic groups has been implicated in atrocities over the last three decades? Selective enforcement in such a state of affairs is all but inevitable, and the Afghan government has not even been able to establish functioning courts to deal with much less complicated issues.

Further, even if it were possible to do so in a fair and just way, we are not even told the mechanism by which going after warlords and corrupt officials leads to the state being legitimized in the eyes of the population. Such a point only seems axiomatic when we look at the situation with the biases of our culture. Take the fact that the Afghan government has not prosecuted a single governor or minister for corruption despite international pressure to do so and put it next to the fact that they have prosecuted a handful of individuals for blasphemy despite pressure from donors to comply with internationally accepted human rights norms. The officials prosecuting individuals for converting to Christianity or criticizing the Prophet are likely responding to the demands of their constituents. Even if the government officials are simply acting out of conviction, one has no reason to believe that the Afghan people are any more liberal on these issues than the elites

who run the government are. Perhaps what makes a state legitimate in the eyes of Westerners is not what makes a state legitimate in the eyes of Afghans.

Astri Suhrke's article is the best contribution to the collection, mainly because it shows an awareness of the different tradeoffs that the international community faces in Afghanistan. On one hand, the US and UN would like to fight corruption. But fighting corruption means more intrusive measures on the part of the international community, which means that the state becomes much less of an Afghan enterprise and thus delegitimized in the eyes of the population. To take another example, several contributors call for the international community to make more resources available to the Afghan mission, but external aid already makes up about 70 percent of the state budget. The more that the state receives its funding from the international community, however, the less it needs to rely on its constituents for revenue and the fewer incentives it has to provide good government. This is similar to what happens in many poorer states with a great deal of natural resources, where a rentier class develops and maintains itself without providing services to the population.

Not a single contributor believes that things are going well in Afghanistan. Even those who do think that the situation could potentially improve do not believe that things can turn around without an increase in resources and commitment. As the United States is in the process of winding down what has already been the longest war in its history, this is highly unlikely. While the international community has failed in building a functioning democracy that respects human rights, the contributors to *The Rule of Law in Afghanistan* who argue that the mission, with better policy decisions, could have turned out differently have very little to support their case.