Concepts of Legitimacy: Congruence and Divergence in the Afghan Conflict

Wolfgang Minatti[a]* and Isabelle Duyvesteyn[b]

[a]Institute for History, Leiden University, Leiden, The Netherlands; [b]Institute for History, Leiden University, Leiden, The Netherlands

*wolfgang.minatti@gmail.com

Wolfgang Minatti was a Master student at the Institute for History at Leiden University in the Netherlands. He is currently a PhD candidate at the European University Institute in Florence

Isabelle Duyvesteyn is Professor of International Studies at the Institute for History at Leiden University in the Netherlands

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Revisiting the US-led counterinsurgency campaign in Afghanistan, this article examines to what extent the understandings of legitimacy of both the Taliban insurgents and the US counterinsurgents showed congruence with a pre-existing understanding of legitimacy in Afghanistan. Moving beyond the dominant approaches of social contract theory and material considerations of legitimacy, a threefold model of legitimacy is used to assess the prevailing notions of legitimacy. The article argues that the concepts of legitimacy of the Taliban and the US counterinsurgents significantly diverged from historically developed notions and local understandings of what it means to exercise legitimate rule. The United States largely overlooked traditional norms and justifications of central governance, instead focusing on a Western-centric conception of legitimacy that emphasised constitutionalism and service provision. The article demonstrates the need for counterinsurgents to be more aware of and adapt to local norms. Moreover, it points towards some relevant norms in the case of Afghanistan.

Keywords: legitimacy; legitimation; social contract; insurgency; counterinsurgency; Afghanistan; Taliban;

Introduction

In 1996, only months before the Taliban's takeover of central governance, their leader Mullah Omar stepped onto the roof of a mosque in the Afghan city of Kandahar, dressed in a cloak allegedly worn by Prophet Mohammed, which he had removed from its near-by shrine. He proclaimed himself 'Commander of the Faithful', a title which drew on Afghan history and custom, placing him in the tradition of Prophet Mohammed and Afghanistan's founding father, Ahmed Khan Durrani, who was the last person to claim that title (Kamel 2015, p. 77). Omar sought to legitimise the Taliban's ascent to power and their governance over Afghanistan (Armajani 2011, p. 202). More than ten years later, the United States decided to implement a counterinsurgency strategy to stabilise the

country and legitimise the newly instated central government. However, the instruments chosen to do so – top-down state-building based primarily on security provision in combination with the establishment of security forces and kinetic missions – differed from the Taliban's approach as security and democratisation were put before tradition and custom (Egnell 2010).

This juxtaposition illustrates the difference in the US and the Taliban's notions of legitimacy during the Afghan conflict. More specifically, following Eckstein (1992, p. 188), who has argued that 'a government will tend to be stable if its authority pattern is congruent with the other authority patterns of the society of which it is a part', it raises the question: to what extent did the Afghan understanding of the central government's legitimacy show congruence with that of the US counterinsurgents and the Taliban insurgents during the Afghan conflict from 2009 to 2014? This timeframe is chosen to cover the period of the Taliban's resurgence and the United States' doctrinal approach to counterinsurgency until the end of major combat operations and the drawdown of most counterinsurgency forces.

The article adopts a comprehensive framework of legitimacy to analyse how legitimacy was understood by the different actors of the Afghan conflict. It argues that both the Taliban insurgents and the United States showed only limited congruence with the historically established understandings of legitimacy in Afghanistan. However, due to their employment of local norms and habits, the Taliban's notion of legitimacy achieved greater resonance than the US counterinsurgents'.

The relevance of this research is threefold. First, it illustrates the importance of an analytical framework of legitimacy that goes beyond social contract theory, to grasp how local norms influence the legitimation of power. Contrary to the currently dominant approach in the literature (Schlichte and Schneckener 2015; Kasfir 2015; Duyvesteyn

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2017), we demonstrate that for a thorough understanding of legitimation processes, both material and immaterial sources of legitimacy have to be considered. Second, by illustrating the diverging notions of legitimacy, the case of the US counterinsurgency in Afghanistan contributes to explaining the difficulties of the United States in establishing stable governance and the relative success of the Taliban insurgency. Third, it serves as a reminder to future statebuilding or counterinsurgency campaigns to not only be aware of, but also adapt to, local patterns of legitimacy. Where intervention forces are either unwilling or unable to credibly adapt to some norms, intervention should be reconsidered.

This article will proceed in four steps. First, the literature on legitimacy in the context of civil wars and insurgencies is discussed. Second, we debate the concept of legitimacy and introduce the theoretical model by David Beetham (1991b) which we will use to analyse legitimacy. Beetham proposes a threefold model of legitimacy consisting of legality, justifiability and consent. Third, based on Beetham's theory, we will unpack and discuss the understanding of the central government's legitimacy, which has historically developed in Afghanistan, and compare it to those of the US counterinsurgents and the Taliban. For each element of legitimacy, similarities and differences will be examined. Last, we draw conclusions and provide suggestions for further research.

Legitimacy in Civil Wars

The failure of the United States in the Afghan counterinsurgency campaign to defeat the Taliban and establish a functioning central state has provoked ample discussion. Some scholars have argued that the counterinsurgency did not go far enough and more intervention would have been necessary to achieve a stable, democratic Afghanistan (Felbab-Brown 2013; Jones 2010). Conversely, others have advocated for less

intervention, warning against the disruptive impact of foreign intervention and the neglect of local practices (Suhrke 2011; Gopal 2014).

A third group has pointed towards the theoretical flaws inherent in US counterinsurgency doctrine and thought, inviting a rethinking of intervention practices (Greene 2017; Ucko 2013; Egnell 2010; Fitzsimmons 2008; Gventer *et al.* 2015; Gawthorpe 2017). Scholars have argued that the statebuilding and counterinsurgency efforts were essentially unidirectional, with the intervention forces considering Afghan people merely as 'recipients of democracy rather than the driving force behind it' (Tadjbakhsh and Schoiswohl 2008, p. 253). Hence, traditional norms and voices were ignored in favour of Western expectations (Stewart and Knaus 2012; Coburn 2011). Considering the other side of the coin, scholars have also centred on the Taliban insurgents and scrutinised their governance (Giustozzi 2019; Johnson 2013; Farrell and Giustozzi 2013), which narratives they utilised in their communication (Johnson 2017), what services they provided (Jackson 2018) and how these influenced the people's opinion about the Taliban (Jackson and Weigand 2018; Weigand 2017).

Within this debate, the concept of legitimacy has received increasing attention (Gawthorpe 2017; Egnell 2010; Nachbar 2012; Weigand 2017). Scholars have commonly acknowledged that establishing legitimacy, the 'moral obligation' to comply with a power relationship (Hurd 1999, p. 387), is a key element for the success of any actor. However, the notions of what constitutes legitimacy and how it can be achieved have to date been underdeveloped at best.

First, the debate has predominantly adopted a utilitarian understanding of legitimacy, considering it mainly a function of social contract theory, democratisation or good governance (Rothstein 2009; Levi *et al.* 2009). Second, legitimation is commonly understood as 'a unidirectional causal relationship' where government action alone

determinates whether it is believed to be legitimate by a population (Schoon 2017, p. 738). More recently, scholarship on rebel governance has challenged these assumptions. Defining rebel governance broadly as 'organizing civilians for a public purpose' (Kasfir 2015, p. 21), this research focuses on the relations between violent non-state actors and the population they control, scrutinising both ideas and practices of governing of various rebel groups around the world (Arjona *et al.* 2015; Mampilly 2011; Weinstein 2007; Reno 1999).

Some scholars have indeed found evidence for the positive effects of the practice of social contract and service provision on rebels' legitimacy (Förster 2015; Grynkewich 2008; Flanigan 2008). However, others have challenged the unidirectional view of legitimacy implicit in the concept of the social contract, emphasising instead the relational character of legitimacy, where every legitimation process is understood as an interdependent bargain between ruler and ruled (Malthaner 2015; Podder 2017; Schoon 2017; Worrall 2017; Bruijn and Both 2017). Again others have highlighted the importance of ideology within rebel governance and the role of ideational elements of legitimacy next to utilitarian considerations (Mampilly 2015; Schlichte and Schneckener 2015; Suykens 2015; Kalyvas 2015). Last, scholars have argued that most utilitarian explanations of legitimacy are derived from a historically distinct, state-related, European context, making it questionable to what extent these lessons apply to modern civil wars, non-European settings and non-state actors (Duyvesteyn 2017, p. 679; Lake 2010, pp. 270–273).

The US Field Manual (FM) 3-24 on counterinsurgency, which was devised in 2006 and guided the efforts of the US counterinsurgents in Afghanistan, claims that 'legitimacy is the main objective' of any counterinsurgency campaign (US Army 2006, p. 1-21). It follows the above-mentioned utilitarian and unidirectional approach, arguing

that legitimacy can be constructed by social engineering (Gawthorpe 2017, p. 841; Cromartie 2012, p. 105). However, it is unknown to what extent, or whether at all, it is possible to change the preferences and beliefs of a population by the provision of services, given that the literature has shown that the top-down imposition of norms hardly works (Scott 1998).

Instead, we need to adopt a more comprehensive lens that goes beyond utilitarianism. This enables us to look at legitimacy as a relational concept and to acknowledge the difficulty of changing local preferences, especially within a limited time frame. The question for every intervener then becomes whether its understanding of legitimacy is compatible with local norms. We seek to answer this question by unpacking the historically developed notion of legitimacy in Afghanistan and juxtaposing it with the understanding of legitimacy of the US counterinsurgents and the Taliban.

The Concept of Legitimacy

The question of what makes power relations rightful can be traced back through the centuries in philosophical debates about legitimacy to Hobbes, Locke or Rousseau, if not earlier (Beetham 1991b, p. 8). In contrast to this normative approach to legitimacy, which tries to establish a universal, rationally defendable notion of rightfulness, empirical research is considerably more recent and was founded by Max Weber. It asks the question: under what circumstances do certain people consider a power relationship to be rightful (Barker 1990, p. 11). Weber roots this acknowledgement of rightfulness in people's beliefs, arguing that power is legitimate if people believe it to be rightful (Weber 1978). He distinguishes between three ideal-type foundations of legitimate authority: the traditional foundation where authority is legitimised by the people's belief in the sanctity of long-existing norms; the legal-rational foundation where authority is legitimised by the

believed 'legality' of norms; and the charismatic foundation where authority is legitimised by the belief in the extraordinary qualities of an individual (Weber 2002, p. 124; Matheson 1987, p. 207). Furthermore, each type of authority creates a distinct exercising of authority and a different kind of compliance (Weber 2002, p. 122).

While Weber's approach has been widely accepted in subsequent scholarship on legitimacy, it has equally been subjected to criticism. One of the most salient criticisms comes from David Beetham (1991b, p. 8) who argues that Weber's conceptualisation of legitimacy insufficiently grasps the complex concept. For one, Weber's foundations of legitimacy are far from exhaustive, inadequately representing all possible forms of legitimate governance. Moreover, the differentiation between the legal-rational and traditional foundation seems fabricated as in both cases, legitimacy essentially relies on rules which differ only in their juridical practice. All three foundations are, additionally, reductionist as they limit the concept of legitimacy to a single layer, equating legitimacy solely with *Legitimitätsglaube*, the belief in legitimacy (Weber 2002, p. 122). This, however, fails to explain why certain rules or qualities are believed to be legitimate (Beetham 1991a, p. 40) and what role the population plays their validation (Barker 1990, p. 54; Beetham 1991a, p. 41).

Hence, Beetham (1991b) proposes a conceptualisation of legitimacy, which goes beyond simple belief and comprises three elements: legality, justifiability and consent. *Legality* means power has to rest on certain established rules, in terms of both its acquisition and its exercise. 'These rules may be unwritten, as informal conventions, or they may be formalized in legal codes or judgements' (Beetham 1991b, p. 16). This legality creates a frame of reference and conveys respect for rules which is a 'condition for any social order or settled expectations' (Beetham 1991b, p. 69).

Justifiability indicates that these rules have to be justifiable in terms of the beliefs of the ruled (Beetham 1991b, p. 17). This criterion splits into two elements (Beetham 1991b, p. 70). First, the *source* from which a rule is derived has to be seen as authoritative. Such a source might be external to the power relationship such as divine will, the laws of science, or internal, either appealing to a society's past (tradition) or rooting the source of power in its present (popular sovereignty). Second, the rules have to be considered to serve the population's *general interest*.

Consent means that the power relationship has to be confirmed by the subordinates through public actions. Such actions 'are important because they *confer* legitimacy on the powerful, not because they provide evidence about people's beliefs' (Beetham 1991b, p. 91). In other words, whenever people engage in public actions that demonstrate consent to their rule, it does legitimise the powerful, regardless of their subjective reasons for it. According to Beetham, all three elements have to be present for any power relation to be legitimate. However, it is worth noting that legitimacy is not a dichotomous concept but rather a matter of degree, thus deficiencies in one of these elements do not necessarily strip a power of all legitimacy but might only impair it (Beetham 1991b, p. 20).

In this article, we adopt Beetham's threefold model of legitimacy as it allows us to look beyond a utilitarian understanding. We test the theory against the evidence from the case of the legitimation of central governance during the conflict in Afghanistan. The Afghan population's historically grounded notion of a central government's legitimacy will be contrasted with the understanding of both the US counterinsurgents and the Taliban, unpacking each regarding Beetham's three elements of legitimacy. Thus, the analysis proceeds in three steps and assess legality, justifiability and consent in

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analytically separate categories. This comparison allows us to determine the extent to which the different notions of legitimacy showed congruence and divergence.

Such an analysis requires a certain degree of generalisation. First, the assessed notions of legitimacy are hardly as homogeneous as they appear in this analysis. Societies are usually made up of a myriad of 'micro-societies with their own histories, norms and expectations' (Gawthorpe 2017, p. 843), not least Afghanistan's fragmented and tribal society where identities and societal norms vary starkly between its various ethnicities, clans and communities (Rubin 2002; Giustozzi 2009). For example, the Pashtun tribes' social code, the Pashtunwali, differs markedly in some norms from that of other Afghan ethnicities. Furthermore, norms differ both geographically between rural and urban areas and depending on the level of governance. However, for this analysis, we try to distil an aggregated and generalised version of the Afghan population's historically grounded notion of the central government's legitimacy. Equally, the counterinsurgency forces comprised numerous states and operations, which all pursued different approaches towards counterinsurgency. We specifically focus on the United States for the analysis, given its leading role in the counterinsurgency campaign (Egnell 2013, p. 9). On the insurgent side, the Taliban were the largest and most influential group, which is why we centre on them (Giustozzi 2017, p. 13).

Second, notions of legitimacy change over time and are naturally dynamic. We do not attempt to sketch unalterable elements of the Afghan population but rather try to capture a snapshot of a historically grounded notion of legitimacy that prevailed in large parts of Afghanistan at the time of analysis but had been subject to change before and will undoubtedly keep changing in the future.

Hence, while we acknowledge that each actor's notion of legitimacy is inherently local, diverse and time-contingent, we try to distil ideal types in order to make the concept

of legitimacy analytically comparable and to advance our argument. The analysis will work with these generalised ideal types and only point toward time and space contingencies where significant changes occurred.

Legitimacy in the Afghan Conflict

Afghanistan is commonly seen as the antithesis to an effective state. It is a 'persistent cliché', as Roy (2004, p. 173) asserts, that Afghanistan 'is by nature an unruly country, which regularly reverts to anarchy, civil war and tribal feuds'. While arguably true from an imperialist viewpoint, these notions ignore the fact that Afghanistan had a relatively stable central government from 1880 until the communist revolution in 1978 with the notable exception of the overthrow of King Amanullah Khan in 1929 (Roy 2004, p. 173). Hence, a specific notion of state legitimacy certainly developed throughout the past century in Afghanistan. In their counterinsurgency campaign, the US and its allies tried to establish a new central government in Afghanistan, challenged both by the Taliban's idea of an Afghan state and, even more importantly, by the historically grounded ideas of the Afghan people. The following analysis will contrast these different notions of legitimacy and look for congruence and differences between them.

Legality

This section compares the different conceptions of legality, the norms that form the basis for the legitimacy claims of the actors. We aim to determine the extent to which the US counterinsurgents' and Taliban's notions of legality overlap with pre-existing notions in Afghanistan.

Local pre-existing notions of legitimacy. When examining historically established rules of power in Afghanistan, we can usefully draw on Eddy (2009, p. 6) who identifies three

legal grounds for legitimacy in Afghanistan. These are custom, Islamic law and positive law, which can also be seen to have developed in this chronological sequence.

For much of Afghanistan's history, power was considered a 'dynastic privilege' with the Afghan population largely detached from questions of legality (Barfield 2010, p. 5). One customary rule of power was hereditary rule as the country experienced dynastic rule throughout its history, from various Turko-Mongolian dynasties to the foundation of the Pashtun Durrani dynasty in 1747. A second customary norm emerged out of frequent elite rivalry: continuous military victory against competing actors would ensure the legality of the powerful (Roy 1990, p. 20). As Barfield (2010, p. 72) notes, all that 'rulers and their successors needed to achieve was the restoration of public order, and perhaps put down a rebellion or two'.

The rules of power changed with the First Anglo-Afghan War (1839-1842) when the British were driven out of the country by a popular uprising, proving the power of the population. Consequently, Afghan rulers sought to rest their claims on more than hereditary rule and military prowess and started to ground their power on the population's norms (Barfield 2010, p. 133). Hence, rulers increasingly invoked Islam and its legal tradition. 'One of the first actions that any new Muslim ruler took was to have the *khutba*, the Friday Islamic sermon at the main mosque, read in his name' (Barfield 2010, p. 73). Especially with the emergence of the modern state in 1880, Islamic law became a common rule of power for the Afghan state (Barfield 2010, p. 158).

In the wake of the third Anglo-Afghan war in 1919, Afghanistan gained independence from British oversight and King Amanullah Khan imposed the country's first constitution, grounding state power in positive law for the first time. Since then, Afghanistan revised its constitution several times but, as Nixon and Ponzio (2007, p. 27) note, experience with constitutional governance 'did not extend much beyond urban

centres' and played a minor role for large parts of the Afghan population. After the overthrow of the Taliban in 2001, the country's last constitution before its decades-long civil war served as a basis for the current constitution which was enacted in 2004 (Rubin 2004, p. 5). However, a 2004 survey found that a majority of rural Afghans had not heard of the new constitutional process and that some had no knowledge of any constitution (FIC 2004). Hence, at the time of the resurgence of the Taliban, positive law had its roots in Afghan understandings of state legality albeit without the pedigree and spread of custom and Islamic law.

United States. In contrast to the diverse historically established conceptions of legality in Afghanistan, the US counterinsurgents saw legality exclusively in terms of positive law. The original US counterinsurgency manual FM 3-24 states that the 'presence of the rule of law is a major factor in assuring voluntary acceptance of a government's authority and therefore its legitimacy' (US Army 2006, p. 1-22). Indeed, the only acceptable end-state in a counterinsurgency campaign is a state government which has 'respect for preexisting and impersonal legal rules' (US Army 2006, p. 1-22). As such, the US counterinsurgents campaign based the central government's legitimacy on positive law in the form of Afghanistan's 2004 constitution. This viewpoint was for example adopted by General McChrystal, then commander of the counterinsurgency forces, who emphasised at the outset of the counterinsurgency campaign that operations should be 'in accordance with international and national law' (McChrystal 2009).

Notably, as Egnell (2010, p. 292) asserts, 'counter-insurgency shares the fundamental problem of external state-building […] as inherently normative activities.' As we further argue below, this normative ambition translated into a Western-biased view of legitimacy. The US counterinsurgents considered power as legitimate when based on the Weberian rational-legal foundation, where power is acquired and exercised according

to formally spelt-out laws and procedures (Egnell 2010, p. 286; Weber 1978). While they did emphasise the importance of local norms and tradition in several governance projects on a local and regional level (Goodhand and Hakimi 2014), on a national level they remained true to the legal, Western-inspired democratisation process initiated after the 2001 invasion (Eikenberry 2013, p. 67).[1]

Taliban. The Taliban movement emerged out of Islamic Schools on the Afghan-Pakistani border where they had been taught a fundamentalist version of Sunni Islam called Deobandi (Maley 2001, p. 14). When they took over Afghanistan in 1996 and established the 'Islamic Emirate of Afghanistan' (Jones 2010, p. 82), its leadership consisted almost exclusively of Islamic students, becoming the 'the first government run by clerics' in Afghanistan (Barfield 2010, p. 263). Although the Taliban went through fundamental ideological changes when regrouping as an insurgency in the years following their displacement, the insurgents remained largely faithful to their interpretation of Islam (Giustozzi 2008).

The importance of Islamic law in the Taliban's rules of power is not only visible in the name of their shadow state, but also in their communication. For example, in his 2009 Eid message, Mullah Omar stated that the Islamic Emirate of Afghanistan 'considers [the] establishment of an independent Islamic regime as a conducive

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[1]This tendency towards a Western-biased view of legitimacy markedly decreased in the revised 2014 edition of FM 3-24, published after the cessation of the counterinsurgency campaign in Afghanistan and never implemented there. Instead of limiting itself to rational-legal rules, it adopts a more ideational standpoint, arguing that '[w]ho a population accepts as legitimate is dependent on the norms and values within that particular population' (US Army 2014, p. 1-9).

mechanism for sustainability of religious and worldly interests of the country' (Rashid 2011). Another speech accredited to Mullah Omar read that the Taliban 'believe in reaching [an] understanding with the Afghans regarding an Afghan-inclusive government based on Islamic principles' (Ruttig 2013). Omar equally emphasised the Taliban's commitment to sharia law, promising that they would 'implement Shar'iah rules in the light of the injunctions of the sacred religion of Islam' (Johnson 2017, p. 27). As such, we see that the Taliban grounded their power in Islamic law (Armajani 2011, pp. 198–199; Nojumi 2002, p. 152).

Analysis. The notions of legality of the US counterinsurgents, as well as of the Taliban, had historically been established in Afghan society to varying degrees. Regarding custom, it can be argued that the initial victory of the intervention forces against the Taliban in 2001 might have unintentionally corresponded with the Afghan customary rule of military victory, contributing to the counterinsurgents' legitimacy and forfeiting the Taliban's. However, as the Taliban resurged from 2006 onwards, the deteriorating security situation and the US counterinsurgents' inability to defeat the Taliban created a vicious cycle that not only undermined the United States' legality in this regard but also strengthened the Taliban's.

Regarding Islamic law, with more than ninety-nine per cent of Afghans considering themselves Muslims, the Taliban's Islamic rules of power certainly struck a chord with the population, most importantly in Afghanistan's rural parts (Johnson 2017, p. 27). Regarding positive law, the United States' reliance on constitutionalism also 'resonated with Afghanistan's political history' (Suhrke 2008, p. 633), especially in urban areas, but it was clearly not as widely shared as were customary or Islamic rules. After all, throughout the twentieth century constitutional law was hardly ever fully implemented. While the 1964 constitution, for example, envisioned a centralised

organisation of the state, 'power was in fact anything but centralized, pointing to a disjunction between legal and ground-level realities' (Rubin 2004, p. 8). Certainly, the United States recognised the need to adhere to local norms on the outset of the counterinsurgency campaign in order to 'advance security, opportunity and justice – not just in Kabul, but from the bottom up in the provinces' (The White House 2009). However, while such programmes played out in the context of local and regional governance, they only marginally influenced the United States' notion of legality of central governance. Hence, the concepts of legality which the United States invoked were not as deeply entrenched within Afghan society as those of the Taliban. Moreover, neither of them focused on custom although this legal ground would have arguably found most resonance among the Afghan population in the context of a largely absentee state.

Justifiability

This section focusses on justifiability, the arguments used to justify power, and compares historical Afghan beliefs about justifiable central governance to how the United States and Taliban tried to justify it. We consider, first, the authoritative source the different notions of justifiability invoke and, second, the general interest they declare to represent.

Local pre-existing notions of legitimacy. Several authoritative sources of rules of power can be discerned throughout Afghan history. The most important external source was, as previously touched upon, Islam. The religion had a pervasive function in Afghanistan, penetrating almost all aspects of social life (Roy 1990, p. 30). More importantly, 'Islam completed culturally the need for national unification of the numerous Afghan ethno-tribal populations' (Nojumi 2002, p. 3). Hence, 'the wiser Afghan rulers recognized this fact by showing appropriate respect for Islam', because 'the tenets of the Islamic faith [...] have always had a stronger hold over the population than any secular ideologies

expounded by the state' (Maley 1987, p. 711). Where rulers ignored Islam, most notably the communist party in 1978, they regularly faced broad resistance. Next to this external authoritative source, Afghan state power was commonly grounded in the internal source of tradition. We see such traits in the general tendency to convey power to those who promised the continuation of the Afghan way of life, respected its various communities, and refrained from social and economic changes (Barfield 2010, p. 173).

When examining the general interest the Afghan state's legitimacy was historically grounded in, it is useful to draw on Roy (2004) who finds three criteria which the Afghan state had to fulfil to be seen as legitimate. First, the state had to act independently from foreign powers. This anti-colonialist view was rooted in a form of Afghan nationalism, 'defined by pride in a country that was never colonized and a people that repeatedly has driven out foreign invaders', which emerged whenever the country was faced with external threats (Suhrke 2010, p. 243; Nojumi 2002, p. 2). This notion surfaced following the first Anglo-Afghan War when Afghan rulers started to portray themselves 'as the necessary preservers of the nation's independence and Islamic religious identity against potential aggression' (Barfield 2004, p. 276).

Second, the state had to appear as a broker between different tribes and clans while keeping away from the communities' way of life (Roy 2004, p. 173). Indeed, any stable central government refrained from imposing social or economic change on the Afghan people to avoid interference with local habits (Barfield 2010, p. 173). Whenever it did anyway, like the moderniser Amanullah in 1929 or the communists in 1978, it met resistance.

Third, the state had to channel funding, not least international aid which poured into Afghanistan from the early nineteenth century onwards, to provide services to the Afghan population (Roy 2004, p. 173). Since for many Afghan people 'their own

informal institutions better maintained long-term local order than any distant government could', government action always remained minimal, focussing on tax collection, conscription and the provision of internal and external security (Barfield and Nojumi 2010, p. 42). Nevertheless, upholding this minimum was vital.

Roy (2004, p. 173) argues that these three elements of general interest of Afghanistan's central governance can be relatively abstracted from the local level because, paradoxically, 'real' politics usually unfolded at the local level. As such, requirements of central governance became a common denominator, which met the basic needs of the various communities while refraining from interfering too much with any of them. Consequently, Barfield (2010, p. 342) observes that any successful 'ruler will need to convince the Afghans that he will not be beholden to foreigners, even as he convinces these very same foreigners to fund his state and military'. All this, one could add, while keeping a delicate balance between too little and too much interference with local communities' ways of life.

United States. As previously touched upon, the original FM 3-24 stated that legitimacy is primarily a function of the rule of law which stems from 'a constitution and […] laws adopted through a credible, democratic process' (US Army 2006, p. 1-22). A government is considered legitimate by a population if it 'derives its power from the governed' (US Army 2006, p. 1-21). Thus, the US counterinsurgents followed a liberal-democratic tradition, grounding its rules of power in an internal authoritative source, namely popular sovereignty. This premise not only finds overlap with the counterinsurgents' overarching strategy of population-centric counterinsurgency but was also reiterated by General McChrystal who stated that '[s]uccess requires a stronger Afghan government that is seen by the Afghan people as working in their interests' (McChrystal 2009).

When looking at the general interest the United States was seeking to promote, the key element was good governance. While FM 3-24 acknowledges that cultural backgrounds result in different notions of legitimacy, it identifies 'effective governance', the provision of services and security, as a universal antidote to any grievances the population might hold (Fitzsimmons 2008, p. 342). This is explained by a simplistic view of human motivations where grievances are seen to solely stem from material wants (Cromartie 2012, p. 104). As Lake (2010, pp. 275–276) observes about counterinsurgency doctrine, '[l]egitimacy […] is expected to follow from the ability of an actor - be it the insurgents or the state - to provide essential public services, especially security'. This attitude has its roots in modernization theory which sees history as a determined series of socio-economic stages with liberal democracy as its end-stage and assumes a natural longing among all people toward that end (Jahn 2007, p. 95; Fitzsimmons 2008). Indeed, as Egnell (2013, p. 11) argues, liberal and democratic values are seen as 'inherently useful' and Western sets of beliefs and values taken for granted. By presenting itself as a technical and value-neutral handbook on operational conduct, such underlying assumptions are easily overlooked but in fact, FM 3-24 is 'profoundly political and ideological' (Gventer *et al.* 2015, p. 362).[2]

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[2] The 2014 revised FM 3-24 is much less prescriptive than its predecessor and adopts a vaguer, open-ended notion of legitimacy, weakening the link between service provision and legitimacy although failing to offer tangible alternatives. It holds that '[i]t is not enough for the host-nation government to be simply seen as effective and credible. The governmental structure must be justifiable to the population and that justification must be based on the population's norms and values' (US Army 2014, p. 1-9).

Hence, the provision of services constituted a centrepiece of US counterinsurgency practice and was primarily organised via the Provincial Reconstruction Teams (PRTs) which were designed to expand central governance into the rural regions of the country. Individual PRTs were run by one or more member states of the International Security Assistance Force (ISAF), combining military and civic operations to enable the provision of services in a secure environment (Fishstein and Wilder 2011, p. 22).

Taliban. The Taliban grounded their rules of power in the authoritative source of Islam and the divine will of God. This was well illustrated in bestowing the Taliban's initial leader Mullah Omar the title 'Commander of the Faithful', making compliance with his leadership 'religiously obligatory' (Barfield 2010, p. 261). It is worth pointing out, however, that the Taliban's Islamist interpretation differed to some degree from traditional Afghan interpretations. Before the 2001 invasion, their ideology had been identified as an idiosyncratic mix of Deobandi Islam and local Afghan customs (Barfield 2010, p. 261). Although many rules were based rather on Afghan and especially Pashtun tradition than Islam, other aspects of their Islamist interpretation deviated in some fundamental social practices from traditional Afghan lifestyle, for example the prohibition of women in the public sphere or the banning of music (Johnson 2011, p. 256). After the beginning of the insurgency, the Taliban 'downplayed their earlier demands for strict adherence to Salafist Islam and implied that if given power again they would not be as intolerant of other sects' (Barfield 2010, p. 262). For example, while Mullah Omar called for 'a real Islamic regime' in his 2010 Eid message, he also emphasised that the Taliban would not be a 'monopolizing power' but that '[a]ll ethnicities will have participation' (Rashid 2011). However, as Jackson (2018, p. 20) notes, such

announcements were only rarely followed through and the Taliban's rigid ideology was still widely implemented.

Regarding general interest, the Taliban insurgency based their legitimacy on two core elements. First, the Taliban portrayed themselves as local and nationalist Afghan resistance fighters against foreign rule. '[T]he themes of resistance and independence are noticeable in nearly every form of Taliban propaganda', many of the Taliban's communiqués portraying the Afghan people as being victimised and defiled by the foreign invaders who co-opted the incumbent government to which the Taliban refer solely as 'puppet regime' (Johnson 2017, p. 30). As Berdal and Suhrke (2018, p. 72) note in their study on the Norwegian PRT, 'legitimacy was gained by fighting against what was seen a foreign occupation force'. Moreover, Taliban rhetoric often drew parallels between the British, the Soviet Union and the United States along with calls to repeat past victories by defeating the United States just like the previous great powers who had invaded the country (Kamel 2015, p. 75). To ensure the credibility of their claim as indigenous fighters against foreign occupiers, the Taliban, for example, withdrew foreign fighters from the front lines in Afghanistan from 2006, who they had started to recruit to reinforce their numbers in the preceding years (Farrell and Giustozzi 2013, p. 857). Also, their initial flirtation with the global Jihad movement was ceased not to alienate domestic Afghan audiences (Ruttig 2012, pp. 123–124).

Second, the Taliban emphasised their ability to provide necessary services for Afghan communities, both security and justice. The mobile sharia courts that were roaming around Taliban controlled territory were identified as a crucial element of Taliban shadow governance early on (Rubin 2007, p. 60; Giustozzi 2012). Given the inert and oftentimes corrupt state courts, the Taliban's swift and efficient sharia courts were 'easily one of the most popular and respected elements of the Taliban insurgency by local

communities' (Johnson 2017, p. 186). Notably, the Taliban's service provision expanded beyond dispute settlement in controlled territories and included, for example, the maintenance of schools and clinics (Jackson 2018).

Analysis. When looking for congruence between Afghanistan's historically grounded justifiability and the counterparts of the United States and the Taliban, several similarities as well as discrepancies are discernible. First, regarding the authoritative source, the US counterinsurgents did invoke neither Islam nor Afghan tradition as authoritative sources but instead the liberal conception of popular sovereignty. However, given the fragmentation of Afghan society and the dominance of tribal over national loyalties, it is doubtful to what extent such a unified people existed in the first place (Rubin 2002). As such, it failed to find common ground with pre-existing beliefs of the authoritative source, especially in the rural parts of the country. Conversely, the Taliban justified their power in terms of Islam, which clearly resonated with Afghan people. While their specific interpretation of Islam might not have been very popular among many Afghans and arguably just as foreign to Afghanistan as a liberal mindset, on an underlying level, claiming Islam to be a source of authority struck a chord in many parts of the Afghan population.

Second, regarding general interest, the United States' justification of service provision overlapped with local Afghan beliefs. However, its actual implementation undermined this overlap. The quality and efficiency of the PRTs suffered from inadequate funding and human power. Consequently, as Berdal and Suhrke (2018, p. 67) show for the Norwegian PRT, many PRTs could do little more than monitor development efforts and occasionally conduct attacks against the Taliban. This impaired both the creation of a secure environment and effective service provision. Although established to expand the central government's reach, the PRTs often carried the flag of a particular foreign state

(Egnell 2010, p. 296), and were consequently criticised for becoming parallel governance structures of the intervention forces (Fishstein and Wilder 2011, p. 23).

Furthermore, by choosing the PRT approach, the US counterinsurgents violated other criteria of Afghan notions of general interest. First, the expansion of central governance by ISAF in the form of PRTs repeatedly interfered with local communities (Barfield and Nojumi 2010). As Petrík (2015, p. 171) notes, many PRT projects were considered to run contrary to local needs and many communities experienced revenge strikes from the Taliban when engaging with PRT services. Second, the 2009 surge of counterinsurgency forces all over the country made them increasingly visible and the longer the foreign forces were stationed in Afghanistan, the more they were perceived as an occupation force (Eikenberry 2013, p. 68). This undermined Afghanistan's historically grounded general interest that expects the state to act independently from foreign powers.

This gave rise to feelings of xenophobia and anti-colonialism among Afghans, which the Taliban were able to capitalise on since their portrayal as a local force fighting against foreign occupiers resonated with local beliefs. The Taliban tried to credibly appear as indigenous fighters by cancelling some of their connections with foreign actors and heavily employing nationalistic and unifying rhetoric (Farrell and Giustozzi 2013, p. 857). However, it is worth emphasising that their Deobandi interpretation of Islam was also widely seen as foreign, undermining the Taliban's justification of power.

Regarding service provision, the Taliban utilised their cultural knowledge and weakness of the central governance to achieve a certain overlap with Afghan notions of general interest. However, their way of providing services simultaneously infringed on the Afghan criterion of non-interference with local communities. Especially the high level of coercion the Taliban employed to ensure compliance, the harsh judgements of the

sharia courts and the strict regulations regarding social life stood in stark contrast to the traditional role of Afghan governments (Johnson 2011, p. 256).

To summarise, both the United States and the Taliban showed some overlap in their notions of justifiability with local notions but simultaneously undermined them with other traits of their justifiability. Nevertheless, the United States' notion of justifiability showed even less congruence with Afghan justifiability than the Taliban, given how deeply entrenched both Islam and anti-colonialism were in Afghanistan.

Consent

This section analyses which forms of consent, the acts that confer legitimacy, have been prevalent among the Afghan population. These will be compared to the concepts of consent offered by both the US counterinsurgents and the Taliban.

Local pre-existing notions of legitimacy. Especially in the rural regions of Afghanistan, consent with the powerful was commonly a matter of group processes rather than individual determination as 'tribal and ethnic groups take primacy over the individual' (Barfield 2010, p. 19). Nojumi (2002, p. 7) identifies three groups which were important actors in national politics. First, communal chieftains, in consultation with their local *jirgas*, elder councils, conferred legitimacy on a central government. Second, the endorsement of religious leaders was equally important. Third, in urban areas a middle class developed at the beginning of the twentieth century whose political movements conferred legitimacy to the state. These groups convened in the *loya jirga*, a traditional, semi-democratic institution of a nation-wide council of elders, which was repeatedly called upon to confirm a new ruler throughout Afghan history and hence, conferred legitimacy to rulers since the early days of the Afghan state (Nojumi 2002, p. 28).

A second form of consent was introduced to Afghanistan in 1931 when an electoral system was first established (Coburn and Larson 2013, xi). However, it was repeatedly dislodged and reinstated and only in the decade following the 1964 constitution were two relatively free elections held. Even then, the elected parliament only had limited power and almost no legislation was adopted (Suhrke 2008, p. 632).

United States. According to FM 3-24, one of six indicators for legitimacy is the 'level of popular participation in or support for political processes' and another is the '[s]election of leaders […] in a manner considered just and fair' (US Army 2006, p. 1-21). As Greene (2017, p. 570) argues, US counterinsurgents understood democratic governance via free elections as the essential form of consent. For example, in his 2009 assessment of US strategy, General McChrystal implied that successful elections would significantly improve the Afghan government's standing in the eyes of the population (McChrystal 2009).

Moreover, FM 3-24 assumes that 'good government will in itself build up legitimacy' (Cromartie 2012, p. 104), seeing effective governance and the provision of services as the centrepiece of the United States' efforts. As such, the utilisation of provided services by a population was understood as a form of consent and expected to confer legitimacy to the state.

Taliban. The Taliban relied on a large degree of coercion to guarantee compliance (Jackson 2018, p. 25). As such, most acts of compliance and the usage of Taliban services were based on fear and lack of alternatives rather than conviction of the Taliban's cause. Nevertheless, it has been noted that Afghans repeatedly chose to settle their dispute with Taliban courts rather than state courts due to their perceived swiftness and effectiveness (Weigand 2017, p. 375). The Taliban encouraged this in their rhetoric on the corruption

and inefficiency of the incumbent government's justice system, portraying themselves as an honest and Islamic alternative (Johnson 2017, p. 26). Also, the payment of taxes, which the Taliban imposed in controlled territories, can be seen as a form of quasi-voluntary consent (Jackson 2018, p. 23; Levi 1989).

Analysis. We see that the US counterinsurgents had greater overlap with pre-existing notions of consent than the Taliban. Although relatively free parliamentary elections existed in Afghanistan only for roughly a decade, this period is often regarded as a 'golden period' thanks to its relative peacefulness (Suhrke 2008, p. 633). Thus, the United States' emphasis on elections certainly fell on fertile ground among large parts of the population, becoming visible in the immense turnout of over 70 per cent in the first post-Taliban election in 2004 (Suhrke 2008, p. 637). However, at the time of the implementation of counterinsurgency strategy, elections either lacked real competition or were highly fraudulent, especially the 2009 presidential election which resulted in widespread discontent with the electoral system. Moreover, 'many Afghans […] did not understand elections as imputing their government with the legitimacy that leads men and women to risk their lives to defend.' (Greene 2017, p. 570).

Notably, the United Stated had also re-instated the tradition of the *loya jirga* to decide on an interim government in 2002 and adopt a new constitution in 2004. While this body seemingly corresponded with Afghan notions of consent, it failed to give traditional actors a possibility to participate as it 'was composed of warlords and political elites chosen by the USA not elected through free elections as is the tradition of Loya Jirgas' (Qazi 2010, pp. 493–494). As such, the counterinsurgents degraded the *loya jirga* to a rubber-stamp rather than utilising the tradition's democratic potential (Schmeidl 2016). At the time of analysis, the highly centralised constitution had undermined

traditional voices as almost every government official was centrally appointed (Rubin 2018).

Last, the state historically did not provide many services for Afghans and their utilisation played a minor role in showing consent with state power (Barfield and Nojumi 2010, p. 42). While the role of service provision was clearly prioritised by the United States and its system of PRTs, it is not at all clear whether Afghan people attached the same importance to it. Moreover, it is worth noting that this implicitly assumes the ability of a third party to create legitimacy for another power relation. However, as Berdal (2009, p. 98) argues, there are 'two kinds of legitimacy in post-conflict settings', as a third-party counterinsurgency not only strives to establish the incumbent government's legitimacy but has also legitimacy of its own. It is questionable whether it is possible for a third party intervention force to 'transfer' legitimacy to an incumbent government, casting doubt on the assumption that the utilisation of services provided by the coalition forces through the PRTs actually legitimised the Afghan central government (Duyvesteyn 2017, p. 677).

The Taliban's notion of consent showed little overlap with Afghan people. While civilian elder councils were sometimes established on a provincial level, such institutions served more as a link between the Taliban and the population than as an actual decision-making body (Jackson 2018, p. 26). The usage of the Taliban's dispute settlement systems and the paying of taxes arguably conferred a certain legitimacy on the insurgents. However, these actions of consent were not only largely coerced but service provision was historically also not an important way of consent.

Hence, both the United States' and the Taliban's notion of consent showed little congruence with Afghanistan's historically grounded notions although the US counterinsurgents achieved a somewhat greater resonance.

Concepts of Legitimacy: Congruence and Divergence

In this article, we have criticised the dominant approach in the current literature on rebel legitimacy and called for a perspective on legitimacy that goes beyond social contract theory and material considerations. To that end, we have adopted Beetham's (1991b)

Table 1: Notions of the central government's legitimacy

	Legality	*Justifiability*		*Consent*
		Source of authority	*General interest*	
Afghan pre-existing notions of legitimacy	Customs Islamic law Positive law	Islam Tradition	Independence from foreigners No local interference Service and security provision	Loya jirga Elections
United States	Positive law	Popular sovereignty / Democracy	Service and security provision	Elections Using services
Taliban	Islamic law	Islam	Independence from foreigners Service and security provision	Using services

model of legitimacy consisting of the three elements legality, justifiability and consent. This framework has allowed us to examine to what extent the notions of legitimacy of both the US counterinsurgents and the Taliban in Afghanistan showed congruence with its historically grounded notions during the implementation of the US counterinsurgency strategy from 2009 to 2014.

We have shown that both warring parties in the Afghan conflict struggled to find common ground with local norms and beliefs. The US counterinsurgents did largely overlook traditional rules, justifications and modes of consent, and imposed a Western-centric conception of state legitimacy on the country. However, Western ideals of

statehood and legitimacy were hardly suited for a country with distinct historical experiences. Although the 2014 revised FM 3-24 certainly shows that the US experiences in Afghanistan initiated a rethinking process in which this bias was implicitly addressed, it was never implemented in Afghanistan. Moreover, it remains questionable whether a foreign force, regardless of its actions, would be able to overcome the strong Afghan norm of independence from foreigners. Nevertheless, it is worth noting that there were certain overlaps. Constitutionalism was a common trait of both understandings of legitimacy, while arguably a weak one in Afghanistan. Service provision featured equally in both conceptions. However, not only did the counterinsurgents' inefficiency in its implementation undermine this common feature, it also ignored the limited expectations that Afghans had from the central state in this regard. Therefore, paradoxically, the counterinsurgents focused on delivery where the population had least expectation, reinforcing the material aspects of the social contract rather than immaterial characteristics.

Furthermore, it has become apparent that although it was a domestic Afghan insurgency, the Taliban's notion of legitimacy did not overlap with historically grounded notions in every regard. While they certainly showed more congruence with local Afghan beliefs and norms than their adversary, their extreme ideology as well as the intrusive, coercive nature of their governance was at odds with historical Afghan notions.

Future research should build on the ideas presented here. They form a first attempt at a more detailed unpacking of the different approaches to the process of legitimation of power. We propose as further avenues for investigation, first a more profound questioning of the universality of the social contract approach, so dominant in Western conceptions of legitimacy and so central to its counterinsurgency efforts. We should explore how

notions of legitimacy develop and change over time while paying attention to its diverse and local character.

Second, we would invite further testing and possible refinement of the threefold analytical framework, which should also be applied to other insurgencies and statebuilding efforts. This would further our understanding of the relational processes of legitimation in conflict environments and shed more light on the variety and diversity of norms that make up legitimate government in different contexts.

To conclude, we have argued that the only chance a third-party counterinsurgency campaign might have to create legitimacy for an incumbent government is by adapting to local norms and values. We pointed towards some of the relevant norms in the case of Afghanistan. While legitimacy might very well be the 'main objective' of any counterinsurgency campaign, a one-sided and biased conception certainly will not help much in achieving it.

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