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12

MIGHT STILL DISTORTS RIGHT: PERILS OF THE RULE OF LAW PROJECT

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These days, when intervening governments, separately or in coalition, take over a country and reshape its governance, they say that their goal is the establishment of the rule of law. In this project, they are helped by cadres of civil servants, lawyers, academics, think-tankers and members of NGOs, often under UN sponsorship, who constitute an international network of planners and implementers seeking to advance a goal that they, too, characterize as the rule of law.

Perhaps the choices actually made in the projects so described do not track the weight of evidence as to what would advance the rule of law and its underlying values. Still, clarifying that moral and political goal will help to assess those choices and proposals to improve that practice. In light of an appropriate construal, one can pose the following questions, among many others. As a general rule, would more frequent institution of criminal trials to punish those who violated human rights in the order or disorder that has been supplanted advance the values that make the rule of law important? Would substantial strengthening of the Rule of Law Network (i.e., the international network of planners and implementers who regard the establishment of the rule of law as their goal) advance those values? Would those values be advanced if broadly anti-imperialist sentiments opposed to great power intervention were weakened, so that there was

more frequent intervention to spread the rule of law by the Rule of Law Imposers (i.e., the governments who exercise or sponsor military force to change foreign governance and say that their post-conflict goals include the rule of law)? Would citizens of Imposers advance the values underlying the rule of law by supporting a general precept of great perseverance in shaping governance post-intervention? After offering a construal of the rule of law and the values behind it, I will argue that the right response to these proposals to strengthen impositions in the name of the rule of law is “Probably not.” Because of, not despite, the importance of the rule of law, the rule of law project should be anxiously scrutinized and cautiously contained.

1. THE RULE OF LAW AND ITS VALUE

One familiar construal of the rule of law might be called “justice as regularity”—as John Rawls does in recommending it.¹ People are to be governed by imposing general, publicly proclaimed rules, precise enough that they can be reasonably sure of what is proscribed. These rules are to be reliably applied by judges who show no bias and strive for reasoned interpretations making the system of rules as a whole as coherent as possible and giving weight to precedent. Prosecutors and police are to act in ways that serve the same purpose of reliable, impartial enforcement. Rules that people cannot take into account in making choices, above all, *ex post facto* prohibitions, are to be avoided. Those who obey these rules are in the clear so far as political coercion is concerned: *nullum crimen sine lege*. The public authority established by law effectively monopolizes permission to use force and grants it under strict, law-governed supervision.

In their richly-informed, thoughtful inquiry into the rule of law after military interventions, *Can Might Make Rights?*, Jane Stromseth, David Wippman and Rosa Brooks label

this conception of the rule of law “formal” and “minimalist,” noting that a regime meeting this test could impose laws that are unjust in fundamental ways and suggesting that partisans of more substantive accounts “insist that injustice is incompatible with true rule of law.”² But if this is the whole critique of the regularity account, minimalism should triumph. The alternative would be to make “the rule of law” mean the same as “just governance,” losing a means of characterizing one specific feature of just governance.

A better strategy (consistent with the main thrust of Stromseth et al.’s discussion) is to note that the rule of law, in the narrow sense of regularity, is important because of a moral value of autonomy which can be traduced, not just by irregularity but by regular laws of certain kinds with certain origins. Rather than expressing a pedantic obsession with generality, precision and clarity, the rule of law in the narrow sense is morally important because it is necessary for people to be able peacefully to go about their business, forming constructive life-goals with which they intelligently identify, and devoting their energies and attention to these projects with reasonable assurance that their choices will have point and value. Under the rule of law as regularity, Leviathan will not unpredictably intervene to deprive their choices of point and value, but rather will protect them from private intrusion. Deprived of the impartiality of the rule of law in the narrow sense, people will have to live lives of anxious deference to those who call the shots or invest important resources, energy and attention in defense against their incursions.

Still, what is necessary for adequate protection may not be sufficient. Those profoundly important values of autonomy can also be violated through the regular rule of sufficiently bad laws. People deprived of means to peacefully, enjoyably pursue a life-plan with which they can identify because of legal religious persecution, people who must devote themselves to deference or self-defense in the face of domination by racially discriminatory laws, and people doomed to

devote their energies to mere survival because the laws take insufficient account of the needs of the poor suffer the same deprivation of autonomy as those subjected to the depredations of a tyrant's arbitrariness or a judge's corruption. So it would be unreasonable to support the rule of law in the narrow sense without supporting protection against these forms of discrimination and neglect.

Similarly, if the basic mechanisms of legislation have no tendency to promote the common good, one can be routinely victimized by the passage of laws tailored to others' interests, as serious an intrusion on secure pursuit of one's life-plan as a bill of attainder or a corrupt legal judgment. So support for the rule of law in the narrow sense ought to be accompanied by support for legislative arrangements tending to promote the common good. This arrangement might, in principle, involve the decrees of a high-minded monarch or aristocracy. But in modern circumstances, democracy is a better bet.

In sum, the interests making the rule of law important make basic civil liberties, political concern for urgent needs and basic constitutional arrangements tending to promote the common good important as well. So one might include these features of governance under the rubric "the rule of law." In contrast, even more ambitious political goals will rely, for their justification, on other moral interests, on further, controversial construals of values of autonomy, or both. By refusing further expansion, one keeps "the rule of law" useful as a label of one specific feature of just governance. In assessing Rule of Law Imposers, this modesty has a further, moral and pragmatic advantage. More ambitious measures to shape a foreign country's governance raise the question of whether these measures are properly imposed from outside or properly left to the people who will live with them. When the Imposers declare that their favored resolution of these further issues—for example, of the role of religion in the state or the role of the state in the

economy—is part of an effort to establish the rule of law, they short-circuit the needed discussion, by associating their measure with arrangements whose effective establishment serves fundamental interests in individual autonomy that are not properly overridden by respect for local collective autonomy. This is such a tempting maneuver that Imposers will inevitably help themselves to it. All the more reason to uphold a narrower usage, encouraging scrutiny of whether they make proper use of their power.

In addition to permitting an alternative, somewhat more ambitious construal, attention to the interests that make the rule of law as regularity important is a basis for principled assessment of what strengthens and weakens the rule of law as a whole. In unfavorable circumstances, all aspects of the rule of law as regularity, much less the somewhat more ambitious alternative, cannot be fully realized. The set of measures that do the most to strengthen the rule of law is the set that best serves the interests that make the rule of law important.

Suppose, for example, that a reduction in uniform application of the law, involving non-prosecution of human rights abusers in the deposed regime, would increase a government's capacity to keep the peace. The proposal to trade the defect for the gain should not be treated lightly. Tyrants love to abuse such justifications. Still, the rule of law is actual rule by laws, not just a matter of their content and adjudication. The less effective a government is in maintaining an effective monopoly of permission to use force and protecting people against illegal intrusion, the weaker the rule of law, all else being equal. If efforts to punish human rights abuses by leading figures in the deposed regime would keep defiant militias in the field, encourage threatened local elites to maintain their access to means of violent defense and intimidation, keep a vast supply of small arms in circulation and insure that policing is a fearsome and corrupt

occupation, it weakens the rule of law. Any other assessment ignores the interest in effective individual autonomy that makes the rule of law important.

Finally, reflection on the underlying interest in autonomy is required by a vital question of transition: whether conduct weakening the rule of law for a while honors the values underlying the rule of law because it strengthens the rule of law later. Consider Iraq. In the decade before the invasion that overthrew Saddam Hussein, there was a dictatorial mockery of the rule of law. It featured brutal, utterly partial, sometimes arbitrary, attacks, with no recourse to due process, to maintain the power of Saddam and his clique. The attacks directly targeted relatively few but created a political life in which profoundly dangerous resistance was the only alternative to deference. Otherwise, there was order, with a low level of civil crime. The sequel to the invasion showed that such mockery is not the abyss, so far as the values underlying the rule of law are concerned. Within four years, the disorder of invasion, insurgency, counter-insurgency, sectarian violence and crime produced over half a million deaths in excess of those to be expected from the death rate before the invasion, including hundreds of thousands of violent deaths.³ In a survey in March, 2008, 24% of respondents said that they had personally seen or experienced a murder of a family member or relative since the invasion, 12% a murder of a friend or colleague, while the corresponding reports of kidnappings were, respectively, 11% and 7%.⁴ When the conflagration died down, justice as regularity, civil liberties and democracy, though imperfectly established, were much more effective than before the invasion.

Do the very great values that make the rule of law important entail approval or condemnation of the whole process? The proper valuing of the rule of law depends on the denial that the lives of people innocently going about their business are to be intruded on for use as means to advance other's ends. So the ultimate improvement does not, in itself, justify the

process. Given the valuing of autonomy that invests the rule of law with its importance, the right assessment of the whole process of dangerous intrusion depends on the judgment of those put at risk. In March 2008, five years after the invasion that overthrew Saddam Hussein, a poll asked Iraqis whether the invasion would turn out to be in the best interests of Iraq in the long run. The “No”’s outnumbered the “Yes”’s by two to one.⁵ Asked to judge the rightness or wrongness of the invasion in late February 2009, 56% of a large representative sample of Iraqis judged it to have been wrong, indicating condemnation by about two thirds of those living outside of the northern Kurdish protectorate that had been shielded from Saddam before the invasion.⁶ Evidently, the whole process of overthrowing and supplanting Saddam ought to be condemned to honor very great values underlying the rule of law.

2. CRIME AND PUNISHMENT

Now, we can meaningfully ask whether the values of autonomy that make the rule of law important, even in the narrow construal, are generally advanced by punishing perpetrators of serious violations of human rights, when the Rule of Law Imposers shape governance. Such reliable punishment is part of the rule of law, even in the narrow sense (to which I will adhere from now on, for reasons of clarity. Adopting the broader conception would not affect my conclusions.) Such punishment should certainly be pursued by a government when effective, enduring authority in conditions of basic civil order is secure. The value of the lives and liberties of the victims will be honored. The government’s evenhanded respect for its citizens’ autonomy will be affirmed. Those who might prey on others despite the basic order may be dissuaded.

However, that security is very different from the situation of governments seeking to establish their authority after military intervention. Virtually by definition, a supplanted failed

state has been the scene of a vicious competition in organized violence on the part of entrenched armed groups taking advantage of regional, ethnic, sectarian or social differences. A triumphant secessionist insurgency whose victory depended on outside intervention will confront clients, beneficiaries and co-ethnics of the old regime in conditions of animosity drawing on an abundant reservoir of arms. A dictatorship whose overthrow requires outside intervention will have made ingenious use of local splits, relied on the support of some significant local groups or elites, and created a client network of people used to violent authority who now have much to fear and much to lose. The violent intrusion of the outside power will inspire some nationalist or sectarian outrage, threatening a spiral of armed resistance, violent suppression, and further outrage and resistance.

Efforts to establish the rule of law after military intervention are few and are works-in-progress. These efforts have not produced self-sustaining regimes of basic justice. So there is not much success to learn from.⁷ Still, those assessing the proper role of trials for past human rights violations post-intervention can learn from the extensive experience of countries that have made the transition from grave injustice to basic justice on their own.

These countries have sometimes subjected human rights abusers of the old regime to trial and punishment, but sometimes they have not. There is little reason to believe that the interests that make the rule of law important would have been served by resort to the stricter regularity of trial and punishment across the board. In South Africa, the African National Congress on coming to power might have resorted to trials, rather than a truth and reconciliation process. Would the consequent flight of people and capital and severe alienation of the Afrikaner minority, well-entrenched in the countryside, military and police, have been part of a rule of law project that better served the interests of people in the Black majority in peacefully pursuing life-goals with

which they identified? In Brazil, there was no punishment for human rights abuses during or after the process in which the military gradually instituted civilian rule culminating in direct elections in a period of 1800% inflation accompanied by massive human rights abuses by police and by plantation-owners who had been at the core of the social base for military rule. Would it have helped consolidate the new framework for autonomous self-advancement if the civilian regime had turned around and put people in the old military regime and their leading supporters on trial?

The leaders of new regimes supplanting tyranny who have not taken the path of trial and punishment of human rights abusers had local knowledge and the access to local affiliations and loyalties needed to establish an enduring regime. Quite apart from moral commitments, they also had powerful personal incentives to use their political resources to achieve the enduring stability on which their compatriots' enjoyment of autonomy depended. The basic success of their own life-projects and even their personal survival were at risk if the civic project failed. That people with these capabilities and interests made their choice is, in itself, evidence that their choice advanced the autonomy-respecting order that gives the rule of law its moral importance.

Granted, in the most intensively studied cases, transitions from repression to basic justice in Latin America, trials were correlated with subsequent reductions in human rights abuses such as torture, summary execution, disappearance and political imprisonment, over the next ten years.⁸ But would the interests underlying the rule of law in non-prosecuting countries have been best served by following the lead of prosecuting countries? Inevitably, the search for answers through statistical analyses must rely on measures of relevant local social factors that are poor proxies for local knowledge. Using such measures, Hunjoon Kim and Kathryn Sikkink, the leading partisan of a "justice cascade" based on the expansion of prosecutions, have investigated

the average independent effect of criminal prosecutions on the reduction of human rights abuses through regressions on a large data base of transitional countries. On this basis, truth commissions appear to be substantially more effective than trials in reducing subsequent incidence of such abuses, in general and in civil conflict situations.⁹

No doubt, a local government's support for impunity can reflect a desire to maintain power that also leads to too much tolerance of corruption and arbitrariness. Still, craven interests in self-preservation of powerful people can advance the legitimate interests that give point to the rule of law. In saving himself, Karzai can help the vast majority of people outside of the Pashtun countryside to evade the terrible choice between continual civil war and submission to a political order that they hate, imposed by the Taliban. Indeed, when the local post-intervention leadership is overly responsive to special interests, this is in itself a reason not to press for trials, which are apt to be the sort of victors' justice that rightly infuriates those who identify with the losing side. Pashtuns will not forget the atrocities of Rashid Dostum, a leading figure in the 2001 invasion whose forces massacred many captured Taliban (3,000 or more on a plausible estimate), often by tossing them into the cargo containers that litter the sides of Afghan highways, machine gunning the containers and leaving those contained to suffocate and bleed to death.¹⁰ Shoring up an essential component of his support, Karzai ended his 2009 presidential campaign by barnstorming the Uzbek north with Dostum. Those who press for trials for human rights abuses in Afghanistan do Afghans no favors if they do not take account of the likely outcome, the punishment of criminals whose support Karzai no longer needs or could never expect, while Dostum enjoys comfortable self-chosen exile.

There is no reason to believe that a general increase in resort to criminal prosecutions for human rights abuse in supplanted regimes would advance the interests underlying the rule of

law. To the contrary, it might well endanger the values that make justice as regularity an important goal.

3. STRENGTHENING THE NETWORK?

The possibility that non-prosecution of human rights abusers might sometimes strengthen the rule of law, even in the narrow sense of justice as regularity, is one example of a larger distinction, between justice as regularity and legal uniformity. The rule of law in the narrow sense is sometimes characterized as a formal goal, in contrast to more ambitious alternatives. This suggests that its presence can be read off of laws and judicial proceedings: if a country has a single corpus of general, precise laws that apply to all and judgments are rendered through impartial findings, justice as regularity is sustained. But a corpus meeting these requirements of uniformity administered by incorruptible impartial judges might utterly fail to rule.¹¹ Both the need for effective protection of individual autonomy and the possibility that jurisdictional differences (for example, between states in the United States) are benign are reasons to distinguish justice as regularity from legal uniformity. The practical importance of this distinction helps to support a negative answer to the next question: should the Rule of Law Network be significantly strengthened?

Participants in this Network help the governments supported by external powers to plan and implement legal processes and institutions that may ultimately be self-sustaining, pursuing these tasks with humane commitment and, often, remarkable courage. Typically, they are lawyers, or hold law degrees, or are civil servants in the bureaucracies of multinational organizations or the Rule of Law Imposers, or have long experience in NGO's dependent on these external sources of support or on foundations in developed countries. While deeply

concerned with outreach, those who are citizens of the post-intervention country are typically members of educated urban elites. These are the right resources, in current circumstances, for clear, constructive advice and effective coordination in the daunting task of transforming national institutions degraded by dictatorship, civil disorder or domination overthrown by secessionist insurrection. But, inevitably, they dispose practitioners to favor legal uniformity.

This inclination is strengthened by the post-intervention division of labor. Ultimately, the local branch of the Network is a servant of the intervening power. This subordination tends to associate planning for the rule of law with establishment of national authority on modern models of basic legal uniformity, the most desirable final outcome for the Imposers. The mission of the local branch of the Network does not and should not emphasize the use of departures from this model to promote stability. Assessment and implementation of these tactics is best left to politicians and proconsuls—who will, in any case, jealously keep these prerogatives to themselves.

The Rule of Law Network already has substantial resources to advise, plan and implement governance, in ways that ultimately depend on acceptance and empowerment by the Rule of Law Imposers and affiliated local governments. Should their independent role be substantially augmented—say, by giving them a much larger share of foreign aid or more vigorous support by Imposers in case of conflict with the new regime? The previous assessment of regular criminal prosecution for human rights abuses suggests, “Probably not.” In the post-intervention division of labor, the supplanting political leadership and the local branch of the Rule of Law Network tend to respond differently to the benefits and dangers of legal uniformity. Since the dangers can be serious and local political leaders are distinctly responsive to them, the current balance seems about right.

The treatment of pre-intervention human rights abusers is far from the only area in which the interests that make the rule of law important can conflict with the legal uniformity toward which the Rule of Law Network is inclined. The sites of actual or likely intervention are, nearly all, developing countries with sharp divides between the rich and the poor, cities and the countryside and, often, different regions. If what has worked is an indicator of what will work, then strong pressure to comply with a comprehensive, precise and general national legal code, impartially judicially applied, will sometimes hurt, not help, in liberating people from bonds of abject poverty. The great event in development, the liberation of hundreds of millions from abject poverty in China, was accomplished with utterly obscure property rights, government initiatives that were relatively unrestrained by law and often unpublicized, and wide variations in permitted practices and subsidized practices from region to region. While certainly a recipe for abuse and corruption, this irregularity was also a basis for fluent sequencing of entry of sectors into world markets, adjustment to foreign investors' preferences and balancing of current needs with long-term development goals. South Korea, Japan and Indonesia have also combined rapid growth with a combination of crony capitalism and unrestrained policy-making by a ruling clique or entrenched bureaucracy.

Would efforts to impose greater legal uniformity post-intervention enhance or inhibit escapes from destitution when all effects are taken into account? The right answers are likely to depend on variations in local circumstances to which the Rule of Law Network is insensitive. Applying an influential World Bank index of quality of governance in which legal uniformity plays a substantial role, M. G. Quibria found that in Asia, from 1999 through 2003, developing countries that were below the global average rating for countries with their per capita income had growth performance far superior to developing countries above their respective income-based

governance expectation.¹² This hardly suggests that kleptocracy in oil-cursed African countries (admittedly, unthreatened by great power military intervention) is benign.

Other open questions about legal uniformity are internal to ordinary citizens' experiences of the legal process in developing countries. Among the poor majority in most developing countries, peacefully getting ahead typically involves self-advancement in an informal economy in which commercial laws are ignored and the legal prerogatives of established firms and agencies are frequently violated (for example, by tapping into electric power lines). Enforcement of a uniform legal code would often impose crippling financial costs of compliance, litigation and legal defense and burdens of inferiority in knowledge, contacts, and cultural or linguistic skills as the poor are forced to defend their interests in bureaucracies and courts.

In developing countries, economic, cultural and regional differences have often given rise to a great multiplicity of systems of law and adjudication – for example, the combination of a national legal corpus and judiciary familiar from developed countries with village justice with diverse local norms and practices, the judgment of clergy relying on a variety of traditions of interpretation, adjudication by tribal elders, and adjudication by large landowners. The regulation by the national legal corpus that the Rule of Law Network tends to favor may be distrusted by the vast majority for excellent reasons, reflecting disadvantages that the Network is ill-equipped to overcome.¹³

Heightened efforts to impose a legally uniform order, post-intervention, would probably help Imposers subject the economy to the discipline of the world market and keep future local governments out of the commanding heights of the economy. But, like the Washington Consensus in general, these efforts probably will not advance, on the whole, people's interest in peacefully pursuing worthwhile goals with which they identify. Certainly, the equation of the

rule of law with virtue on the one hand, legal uniformity on the other, would obscure, not illuminate, urgent choices for the poor majority in countries that might be targets of intervention.

Granted, the local branch of the Rule of Law Network can be an independent source of initiatives that are neglected or opposed by local national political leaderships who are not guided by the judgment of the citizenry as a whole. The reasonably well-informed verdict of the vast majority of the citizenry should have great independent weight, normally decisive, in steering their governance. This lends considerable importance to a report cited six times in *Can Might Make Right?*,¹⁴ as well as in Stromseth's contribution to this volume, as indicating broad popular support for punishment of past human rights abuses. In Afghanistan, the site of the most vigorous and dangerous rule of law project now, the Afghanistan Independent Human Rights Commission has reported that 76% of respondents in a national survey said that "bringing war criminals to justice in the near future would" "increase the stability of the peace and bring stability to Afghanistan."¹⁵ In focus groups conducted at the same time, 41% mentioned security as their most serious concern, 10% an end to disappearances and 10% disarmament (as opposed to only 4% who mentioned the rule of law, far behind "electric power," the first concern of 14%).¹⁶

This finding about Afghan views seems crucial evidence of a demand for increased prosecution, promoting uniformity to advance security, in sharp contrast to the Karzai regime's practice. It is presented as such by the Commission. In fact, the survey is important for a very different reason. At the site of the most vigorous and deadly current rule of law project, it establishes a diverse array of views, sophisticated, flexible and ruefully informed, among those whose lives will be deeply affected by the project, an array providing strong evidence that efforts

to shape their governance should not be regimented by the legal uniformity to which the Rule of Law Network are inclined.

The AIHRC virtually all have backgrounds such as I have described. The Commission was established under the Bonn Accord, was appointed by Karzai, but has displayed incisive independence in reporting harms to civilians by Afghan and US/NATO forces. By 2003, they had taken a firm stand in favor of systematic punishment for those who had violated human rights, especially through war crimes. The survey was conducted in 2004, before the resurgence of the Taliban.

Asked whether they had “confidence in Afghanistan’s legal system to be able to bring about accountability for human rights abuses,” 58% said, “No.”¹⁷ It is by no means clear that respondents took enhanced stability to be the likely outcome of increased prosecutions by their actual government as opposed to the government they wished they had. On the role of prosecutions and punishment in post-conflict justice, the respondents often strayed from the stringent uniformity of punishment for crimes duly ascertained. Asked “What does justice mean to you?” 40% chose “Criminal justice,” but 26% chose either “Reconciliation” (15%), “Compensation (6%), or “Publication of truth” (5%), and 26% chose “All of the above.” Asked “Would you support amnesties or pardons for anyone who confessed their crimes before an institution created for transitional justice?” 39% answered “Yes,” a proportion rising to “two thirds of the northeastern region of the country.”¹⁸ Without support from the northeastern region, the Kabul government would collapse. For example, 56% of the officers of the Afghan Army are Tajiks, the ethnic group based in the northeast.¹⁹ Would respondents who took account of these opinions about amnesties and the accompanying political realities generally have taken punishment of war crimes to be the sort of justice that contributes to security? The answer is not

explicit in the reports of the focus groups, but this response would be surprising among people so open-minded and resourceful concerning the appalling abuses that they had suffered and so desperate for security. Read carefully, the survey is evidence of the caution and flexibility with which Afghans approach questions of justice which the Rule of Law Network tends to associate with the punishment due for appalling crimes when justice as regularity is fully realized.²⁰

4. MORE MIGHT MAKES MORE RIGHT?

The topics so far have been something of a side-show. Where the Rule of Law Network is active after military intervention, what it does and whether its advice actually shapes governance is basically determined by the Rule of Law Imposers. So the central questions concern their conduct.

Would it advance the interests underlying the rule of law if current sentiments of opposition to intrusion, broadly anti-imperialist in tenor, were weakened and the Imposers were encouraged to intervene more often? Some think that this shift would be the right response to terrible problems, since millions suffer gravely from the absence of the rule of law, and self-sustaining rule of law is very hard to achieve. Current repugnance at great power takeovers of unruly countries is, in their view, a barrier to needed remedies. For example, Paul Collier proposes, in a widely-read book, that beneficent military intervention would be a vital source of benefit in the poorest countries, lamenting the tendency of events in Iraq to deprive this stance of deserved popularity.²¹ Niall Ferguson has argued that the establishment of “strong institutional foundations of law and order” should be a goal of the *de facto* American empire, in a project that is dangerously inhibited by current reluctance to frankly embrace imperial ambitions: “[t]he

proper role of an imperial America is to establish these institutions where they are lacking, if necessary, . . . by military force.”²²

In judging these proposals to revive alleged virtues of empire to promote the rule of law, it is important to distinguish among different departures from the rule of law that are to be remedied. It is also important to assess interventionist proposals in light of an accurate appraisal of the underlying tendencies of the Imposers, with emphasis on the most important Imposer, the United States.

One category of plight is now epitomized by Rwanda. Widespread, ongoing large-scale massacres ought to be forcibly stopped, unless there are strong reasons to believe that intervention will lead to greater carnage. The importance of speed and effectiveness favors rescue by strong powers. There is no question, here, as to whether the intended beneficiaries will welcome rescue despite its costs. The rarity of this atrocious cause for intervention and its special offense to the conscience of humanity make it less likely than other kinds of intervention to inspire militarization, heightened tensions and instability due to the fears of rival powers. While this humane service of rescue has been performed effectively by regional powers (for example, India in East Pakistan, Vietnam in Cambodia), greater willingness to intervene by great powers, including the United States, would be a humane resource, as well.

However, in these cases, assertions of sovereignty are already held in contempt. There is no major obstacle of anti-imperialist repugnance to be overcome. To the contrary, the obstacle seems to be the preference of great powers to husband their military resources for more advantageous goals. Certainly, in the crucial U.N. Security Council deliberations over Rwanda, namely, the non-public ones, whose records were subsequently leaked by Secretariat staff, there is no indication whatever of concern for the violation of Rwandan sovereignty. The permanent

members were simply concerned that they would have to invest large resources in a successful rescue. Despite the pleas for reinforcements on the part of U.N. personnel in Rwanda as genocide by machetes took shape and then engulfed half a million victims, “not once was there any debate at all about what these people [the remaining peacekeepers and medical workers] were managing to achieve to alleviate the suffering, nor any discussion about how reinforcements might help them.”²³

The mayhem of failed states, in which no one is in charge and armed bands inflict murderous disorder, has important similarities to the abyss of widespread massacre: the disorder is very deadly and worries about sovereignty are dramatically reduced, sometimes eliminated, by the absence of effective sovereignty. Still, there are reasons for concern about military intervention by the United States to reverse these lethal failures of the rule of law. When the United States moves in, protection of its forces by awesome firepower takes its own toll. Charles Maynes, when he was editor of *Foreign Policy*, reported, “CIA officials privately concede that the U.S. military may have killed from 7,000 to 10,000 Somalis during its engagement [in a brief attempt to end state failure in Somalia]. America lost only 34 soldiers.”²⁴ In the primary site of state failure, Africa, more frequent U.S. take-over of failed states will challenge China in a growing competition for resource-rich allies, stimulating militarization and increasing prospects of conflict in the long run. Interventions by peacekeeping forces of the U.N. or of African governments, coalitions and organizations can avoid these dangers, and, in the latter case, mobilize some useful local knowledge. A general embrace of more frequent great power intervention seems an insufficiently discriminating prescription for failed states.

In contrast to rescue from widespread, ongoing massacres and state failure, military rescue from stable dictatorship does violate widely recognized norms of sovereignty. If more

intervention to improve such governance ought to be promoted, the sole super-power would properly take the lead. Security Council sponsorship is not remotely realistic, powerful armed forces are needed, and a general license encouraging invasion of dictatorial countries by any would-be improver of governance would be a dangerous recipe for war. Would greater openness to this imperial turn promote or undermine the values of individual autonomy that make the rule of law important?

I have already argued that the answer depends on whether the Imposer only invades to overthrow when there is a well-warranted expectation that the victims of tyranny, on the whole, give their informed consent to the deadly operation, despite its perils. The bases of support that an entrenched tyranny relies on, the divisions it exploits, and the nationalist outrage that great power intervention creates are normally sources of grave danger. Iraq is the bloody exemplar of the possibility that people may take the removal of a hated dictator not to be worth its costs in disastrous intrusions on their individual autonomy. No warrant for confidence in their informed consent was established before the invasion. In light of the sequel, warrant will be even harder to achieve.

Seeking greater openness, nonetheless, to U.S. invasion to replace dictatorship by the rule of law, someone might insist that the lack of due restraint by legitimate fears of Iraqis, in the invasion and in its sequel, was an anomaly, or in any case, a defect that people supporting more intrusion can expect to be repaired. But encouragement of interventions based on this hope would be a bad bet, staking the lives of those who already have much to bear. Choices made by U.S. Presidents of both parties and diverse strategic temperaments provide strong reasons for concern that American uses of military force to change the political trajectories of developing

countries will be shaped by U.S. interests in geopolitical power without significant restraint by prospects of destruction.

The many indicative episodes include these, just within the two current major sites of U.S. military intervention²⁵: the provision of U.S. aid to opponents of a new pro-Soviet regime in Kabul “in order to draw the Russians into the Afghan trap” as Zbigniew Brezinzski later boasted,²⁶ a trap in which over a million, mostly civilians died, in conflict fueled by massive U.S. aid to Islamicist insurgents; continued funneling of arms and subsidies to favored warlords after the Soviet withdrawal, to restrict the influence of Iran, as the warlords subjected the country to a reign of lawless terror in which, for example, 25,000 people, mostly civilians, died in factional fighting over control of Kabul in 1994;²⁷ U.S. efforts to prevent a decisive victory of either side in the Iraq-Iran War, including the sharing of “deliberately distorted or inaccurate intelligence data . . . to prevent either Iraq or Iran from prevailing,”²⁸ prolonging the agony of the longest conventional war of the century, in which half a million died; the use of precision-guided weapons in the first Gulf War to destroy the power stations on which refrigeration, water supply and sewage treatment depend, in attacks intended to strike “against ‘all those things that allow a nation to sustain itself.’, . . . to let people know, ‘Get rid of this guy and we’ll be more than happy to assist in rebuilding’”²⁹; the combination of U.S. initiatives in and soon after the first Gulf War, including sanctions blocking reconstruction, that produced over 150,000 Iraqi deaths within a year after the start of military operations, the vast majority of whom were not soldiers killed in combat³⁰; vigorous defense of the sanctions by the Clinton administration, blocking imports needed to restore sanitation and health care in Iraq in a public health crisis that ultimately lead to 100,000 or more excess deaths among Iraqi children under five.³¹

In general, as one moves from circumstances in which broadly anti-imperialist sentiment presents no barrier to intervention to cases in which the barrier is now high, encouragement of more frequent intervention becomes more and more likely to undermine the values that make the rule of law important. Conserving its resources for the pursuit of geopolitical interests and zealously protecting abusive client-regimes, an American empire that is less inhibited by anti-imperial sentiment would threaten, not sustain, those values.

5. IS PERSEVERANCE A VIRTUE?

Support for greater endurance in imposing the rule of law after intervention—the last position that I will examine—can accompany doubts about the wisdom and humanity of more frequent intervention above the abyss of widespread massacre. The stakes are especially high in those countries in which the Imposer's perseverance requires widespread killing and maiming of insurgents in forceful imposition that also causes much death and destruction among non-combatants, both as collateral damage in the Imposers' attacks and in consequence of insurgent violence due to the Imposers' persistence. At critical junctures in these foci of the question of perseverance, the Imposer makes a choice among options including these: to leave soon, promoting a national settlement among competing local forces that may afford a reasonable level of security but is unlikely to provide a reasonably close approximation of legal uniformity and the rule of law, or to stay and continue to shape the local polity with an aspiration to that higher goal. There is no reason for confidence that the momentous turn onto the latter path will advance the interests underlying the rule of law, any more than it did when the United States took up Kipling's advice to persevere after triumphant intervention in the Philippines and "Take up the

White Man's burden—In patience to abide, to veil the threat of terror and check the show of pride.”³²

Support for American perseverance after intervention is, inevitably, support for American efforts to impose a version of the rule of law that advances American power, in a steadfast initiative in which the reduction of carnage is not the first priority. In Iraq, the overthrow of Saddam might soon have been followed by elections. This was the expectation of the first head of the occupation, the hapless Jay Garner, who was fired after a month.³³ This might have spared Iraqis agonies of disorder, giving rise to a viable compromise between remnants of the Baathist regime and Shiite parties. But the likely revival of a defiant OPEC power would hardly have served American interests. The dissolution of the Iraqi army and the extensive purge of Baath party members from government positions gave major impetus to Sunni insurgency, which soon consumed much of Iraq as counter-insurgency by occupation forces further inflamed anti-American fury. However, the same measures also broke the power of well-organized groups that might have led a reversion to anti-American nationalism in a successor regime. The high point of armed opposition to the American presence, the combination, in 2004, of a Sunni insurgent center in Falluja and a Shiite uprising in Najaf, was a moment of hope for most Iraqis concerned to avoid sectarian conflict. In a Coalition Provisional Authority poll including the Kurdish north, 64% had said that “recent events in Fallujah and the acts of Moqtada al-Sadr [the leader of the Najaf uprising] made Iraq more unified” (as opposed to 14% “more divided.”) Small wonder, since opposition to Coalition forces as occupiers was already the great unifying stance, the position of 92%.³⁴ But the cementing of a national settlement among anti-American forces was not fit for the agenda of the Imposer.

Repeatedly, even at the height of sectarian violence and during the subsequent Surge, the majority of Iraqis have said in polls that American withdrawal, not perseverance, would promote reconciliation and security.³⁵ Perhaps they have been wrong. But it is hardly clear that a less enduring commitment to implement the American agenda would have done worse than the actual outcome of forceful American endurance, hundreds of thousands of excess deaths. In any case, confidence that forceful perseverance in the American rule of law project was worthy of the informed consent of Iraqis has a future cost. Such unwarranted confidence illegitimately reduces anxieties that ought to stand in the way of future interventions. Support for perseverance based on speculations about what the United States could do if geopolitical interests were put to one side is even worse. It sacrifices vulnerable people on an altar of wishful thinking.

Currently a question of endurance in a rule of law project is the leading question of war in the world: in Afghanistan, should the U.S. persevere in the project of destroying or marginalizing the Taliban in its base in the Pashtun countryside while endeavoring to severely reduce the Karzai government's reliance on ties of corruption and cronyism to warlords and other arbitrary local authorities in the rest of the country? This project would generate great violence for a long time. For years, a Kabul government's influence in most of the country will require tainted ties to local power-brokers.³⁶ The Taliban have deep roots that will not be cut without long-lasting widespread violence. Returning from a trip in August 2009, Gilles Dorronsoro, now at the Carnegie Endowment, a deep investigator of Afghanistan for over twenty years, reported that "there is no state structure" and "no practical way to separate the insurgency and the population" in the Pashtun countryside³⁷—the site of the "dominant influence in 11 of Afghanistan's 34 provinces" that the Chairman of the Joint Chiefs of Staff ascribed to the Taliban in December.³⁸ The Taliban are often strongly supported by local clergy, who exercise

leadership in village courts that impose draconian justice based on a rigid interpretation of sharia law which has broad acceptance in this region, in the communal adjudication that most Afghans strongly favor as more trustworthy and more effective than state courts. As the Senior U.S. Civilian Representative in Zabul Province noted in his letter of resignation in September 2009, the forays meant to defeat this movement are a powerful source of recruitment: “The Pashtun insurgency . . . is fed by what is perceived by the Pashtun people as a continued and sustained assault, going back centuries, on Pashtun land, culture and religion by external and internal enemies.”³⁹

At the President’s announced decision point, in June 2011, the United States could, in principle, reverse its military surge, deescalating to a small residual force to help defend the North and the cities, on the basis of widespread anti-Taliban sentiment there, and to launch anti-terrorist strikes. Meanwhile the United States could encourage an Afghan compromise which would probably include Taliban domination of the Pashtun countryside. Or, the United States could persevere, battling the Taliban as long as it takes to marginalize them, or, in any case, until a reasonably non-corrupt Kabul government, providing security by impartially enforcing laws, has earned the confidence of the whole country.

There is no good reason to suppose that the majority of Afghans, much less the Pashtuns at the center of the firestorm, support the second path, of patient, abiding violent imposition.⁴⁰ However, nothing less would establish anything like the non-oppressive and uniform rule of law in Afghanistan. Perhaps this turn would be justified by considerations that are labelled “regional stability” in foreign-policy-making circles in the United States, “reasons of U.S. power” outside of those circles.⁴¹ Perhaps, after thirty years of war, the prospects of peace in Afghanistan are so grim on all scenarios that persistent killing, maiming and intrusion by the United States will not

make matters worse. But perhaps the path of perseverance would give rise to carnage that is morally unjustified by foreseeable gains. Scrutiny of these hypotheses, on which many Afghan lives depend, is discouraged by the unself-critical commitment to achieving legal uniformity and the self-sustaining rule of law that the Rule of Law Network tends to promote. Withdrawal when those goals have not been remotely achieved, rather than perseverance, might honor and promote the values that make the rule of law important.

6. PERILOUS GLOBAL INITIATIVES

Toward the end of the twentieth century, at the high tide of structural adjustment, development in most poor countries was steered according to directions toward market-based prosperity largely devised in the United States. The great global initiative enhanced profitable opportunities for the United States and other developed countries, but produced widespread disruption in developing countries and seems to have typically reduced their growth.⁴² Deeper skepticism about the global fit of a single set of directions and the global beneficence of American interests and deeper appreciation of local knowledge might have reduced the damage while preserving what was right in the Washington Consensus. As the luster of structural adjustment has faded, the allure of the rule of law project has grown. Imposition of its directions for governance also promises urgent relief from terrible suffering, while posing the same perils of bold global initiatives backed by the global elite. Once (really, many times) bitten, twice shy. The cause of the rule of law, like the cause of market-based prosperity, is best advanced anxiously, with deep suspicion of the perils of externally imposed liberation.

NOTES

¹ See *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 235.

² Jane Stromseth, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions* (New York: Cambridge University Press, 2006) 71.

³ See Gilbert Burnham, Riyadh Lafta, Shannon Doocy and Les Roberts, “Mortality after the 2003 invasion of Iraq,” *The Lancet* 368 (2006): 1421-8 (mid-point estimate of 654,965 excess deaths in the forty months after the invasion, 601,027 of them violent); Amir Alkhuzai et al., “Violence-related Mortality in Iraq from 2002 to 2006,” *New England Journal of Medicine* 358 (2008): 484-93 (entailing about 400,000 excess deaths in the same period, with an estimate of 151,000 violent deaths, after attempted compensation for the omission of 10% of the initial sample because of inadequate local security); Opinion Research Business, “New analysis 'confirms' 1 million+ Iraq casualties,” www.opinion.co.uk, January 28, 2008 (based on a poll shortly after the fourth and most violent post-invasion year, asking Iraqis how many members of their household had died as a result of violence in the conflict since 2003, yielding an estimate of about a million such deaths).

⁴ Opinion Research Business, “Iraqis Confident in Security but Concerned with Economy,” www.opinion.co.uk, March 14, 2008, Table 20.

⁵ Opinion Research Business, “Iraqis Confident in Security,” Table 48. 46% responded, “No,” 23% “Yes,” 19% “Impossible to tell,” 11 % “Don't know,” and 2% did not answer.

⁶ ABC News, “Dramatic Advances Sweep Iraq, Boosting Support for Democracy,” abcnews.go.com/PollingUnit, 20, and “Iraq Poll: Methodology,” March 16, 2009, 2. Overwhelming majorities approving the invasion have, from the start, been an exceptional feature of the Kurdish north.

⁷ Here, as elsewhere, I follow the usual distinction between military intervention and defense against foreign aggression. In any case, the good political outcomes of the occupations of Germany and Japan hold few lessons here. The shaping of enduring terms of governance in those two countries relied on well-established, recently interrupted traditions and well-positioned elites, as Tom Ginsburg notes in this volume and has cogently documented in the case of Japan. See Zachary Elkins, Tom Ginsburg and James Melton, “Baghdad, Tokyo, Kabul . . . : Constitution Making in Occupied States,” *William and Mary Law Review* 49 (2007): 1139-76. No one attached to the values underlying the rule of law would want to clear the ground for its construction through the devastation that destroyed German and Japanese commitments to the deposed order and produced widespread receptivity to the imposition of a new one, devastation including a death toll of about 6 million (about 8% of the total population) in Germany, nearly 2.7 million (nearly 4% of the population) in Japan.

⁸ See Kathryn Sikkink and Carrie Booth Walling, “The Impact of Human Rights Trials in Latin America,” *Journal of Peace Research* 44 (2007): 427-45.

⁹ See Hunjoon Kim and Kathryn Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,” *International Studies Quarterly* 54 (2010, forthcoming), Tables 1 through 4.

¹⁰ See Rafaele Rivais, “Ce documentaire qui accuse les vainqueurs de crimes de guerre en Afghanistan,” *Le Monde*, June 13, 2002; Carlotta Gall, “Witnesses Say Many Taliban Died in Custody,” *New York Times*, December 11, 2001; Carlotta Gall with Mark Landler, “Prison Packed with Taliban Raises Concern,” *New York Times*, January 5, 2002.

¹¹ Even Joseph Raz, in his incisive defense of a version of the justice-as-regularity interpretation, at one point says that his conception of the rule of law is “formal.” But in fact, he is only

characterizing the second of the two phenomena that he has just identified with the rule of law: “(1) that people should be ruled by the law and obey it, and (2) that the law should be such that people will be able to be guided by it.” In the wake of military intervention, the first aspect cannot be taken for granted. See Raz, “The Rule of Law and Its Virtue,” in his *The Authority of Law* (Oxford: Oxford University Press, 2009), 213f.

¹² See M.G. Quibria, “Does Governance Matter? Yes, No or Maybe: Some Evidence from Developing Asia,” *Kyklos* 59 (2006): 99-114. The average inferior-governance advantage in the rate of growth varied, from year to year, from 2.4% to 6.8%.

¹³ For example, local processes of adjudication, independent of the state, are distinctly preferred in Afghanistan. See Center for Policy and Human Development and U. N. Development Program, *Afghanistan Human Development Report 2007* (Kabul: University of Kabul, 2007), 96; Sanayee Development Organization, *Linking Formal and Informal Conflict Resolution Mechanisms in Afghanistan* (Kabul: Friedrich Ebert Stiftung, 2008), library.fes.de/pdf-files/bueros/kabul/05655.pdf.

¹⁴ See 252, 258, 259, 260, 304.

¹⁵ Afghanistan Independent Human Rights Commission, *A Call for Justice*, www.aihrc.org.af (2005), 17, 70.

¹⁶ *Ibid.*, 16.

¹⁷ *Ibid.*, 22, 70.

¹⁸ *Ibid.*, 21, 70.

¹⁹ See Antonio Giustozzi, *Koran, Kalashnikov and Laptop* (New York: Columbia University Press, 2008), 187.

²⁰ It should be noted that the survey was not, and was not presented as, reasonably rigorous social science. Random sampling was pursued by having “researchers . . . walk around and select participants who they thought would meet the criteria of random selection,” *A Call for Justice*, 55. No breakdown by education, employment, income, ethnicity or urban-rural residence is supplied. The provincial survey chart shows significant overrepresentation of non-Pashtun provinces in the center of the country. *Ibid.*, 72.

²¹ See Paul Collier, *The Bottom Billion* (Oxford: Oxford University Press, 2007), chapter 8.

²² Niall Ferguson, *Colossus* (New York: Penguin, 2004), 301, presenting a passage from his earlier book, *The Cash Nexus* (London: Penguin, 2001).

²³ Linda Melvern, “The Security Council: Behind the scenes,” *International Affairs* 77 (2001): 110. See, in addition, Nicholas Wheeler, *Saving Strangers* (Oxford: Oxford University Press, 2000), 241.

²⁴ Charles W. Maynes, “Relearning Intervention,” *Foreign Policy* 98 (1995): 98.

²⁵ For a much fuller account of relevant episodes, see Richard W. Miller, *Globalizing Justice* (Oxford: Oxford University Press, 2010), 166-90.

²⁶ In an interview appearing in in *Le Nouvel Observateur*, January 15-21, 1998, 76, but not in the shorter edition sent to the United States. For the whole interview, see “How Jimmy Carter and I Started the Mujahideen,” *Counterpunch*, October 8, 2001, www.counterpunch.org/brzezinski/html. John Cooley presents some excerpts in *Unholy Wars* (London: Pluto, 2000), 19f.

²⁷ See Human Rights Watch, “Military Assistance to the Afghan Opposition,” October, 2001, www.hrw.org/background/asia/afghan-bck1005.htm, 4.

²⁸ Stephen Engelberg, “Iran and Iraq Got 'Doctored' Data, U.S. Officials Say,” *New York Times*, January 12, 1987, A1.

²⁹ Descriptions of the objective by a senior airforce officer “who played a central role in the air campaign but declined to be named” and an unnamed “Air Force planner,” reported in Barton Gellman, “Allied Air War Struck Broadly in Iraq,” *Washington Post*, June 23, 1991, A1. Gellman attributes similar characterizations of this goal of “long-term leverage,” in less pithy formulations, to Colonel John A. Warden III, deputy director of strategy, doctrine and plans for the Air Force.

³⁰ 158,00 Iraqi deaths, of whom 40,000 were soldiers killed in combat and 32,000 were children, was the estimate of the most extensive U.S. assessment of the human costs of the war to Iraqis, by a demographer at the U.S Census Bureau, Beth Osbourne Daponte, who was forced out after a leak of her report. See Thomas Ginsberg, “War's Toll: 158,000 Iraqis and a researcher's position,” *Philadelphia Inquirer*, January 5, 2003, A05. The toll includes those who lost their lives after President Bush's repeated appeals to “the Iraqi military and the Iraqi people to take matters into their own hands—to force Saddam Hussein the dictator to step aside.” When the call produced a popular uprising rather than the desired military coup, the United States abandoned tens of thousands of rebellious Iraqis to a bloodbath for fear that they were too sympathetic to Iran or apt to provoke Turkey through excessive Kurdish independence. In the south, Iraqi helicopters organized the carnage with American aircraft flying above them, as U.S. troops stopped rebels from taking abandoned arms and ammunition. See Andrew Cockburn and Patrick Cockburn, *Out of the Ashes* (New York: HarperCollins, 1999), 23, 38, 39; Nora Boustany, “Violence Reported Spreading in Iraq; Army Units Clash,” *Washington Post*, March 6, 1991,

A26; Nora Boustany, "U.S. Troops Witness Iraqi Attack on Town in Horror, Frustration,"

Washington Post, March 31, 1991, A20.

³¹ In a widely-cited analysis, "Morbidity and Mortality among Iraqi Children from 1990 through 1998," www.casi.org.uk, 1999, Richard Garfield defends 227,000 as the most likely estimate for those years, reviewing studies proposing higher estimates such as "Iraq – Under-Five Mortality" (1999), www.unicef.org/reseval/pdfs/irqu5est/pdf (500,000 excess deaths, assuming that pre-war trends would have resumed without the sanctions) and Mohamed Ali, John Blacker and Gareth Jones, "Annual Mortality Rates and Excess Deaths of Children under Five in Iraq, 1991-98," *Population Studies* 57 (2003): 217-26 (estimating 400,000 excess deaths, assuming pre-war under-five mortality rates would have otherwise stayed the same). In an analysis of records leaked by appalled U.N. staff of the deliberations of the committee controlling Iraqi imports, Joy Gordon found that the United States had exercised its veto to block "most purchases of materials necessary to generate electricity For example, Iraq was allowed to purchase a sewage-treatment plant but was blocked from buying the generator necessary to run it. . . . In September 2001, nearly one third of water and sanitation contracts were on hold In early 2001, the United States had placed holds on \$280 million in medical supplies, including vaccines to treat infant hepatitis, tetanus and diphtheria, as well as incubators and cardiac equipment." See "Cool War," *Harper's Magazine*, November 2002, 4, 2, 8.

³² Rudyard Kipling, "The White Man's Burden: The United States and the Philippine Islands," *McClure's Magazine* (1899).

³³ See BBC News, Newsnight interview, "General Jay Garner," newsvote.bbc.co.uk, March 22, 2004.

³⁴ 86% said that Coalition forces should leave soon, either immediately (41%) or after a permanent government was elected (45%). 55% said that immediate departure would make them “feel more safe” (32% “less safe”). Coalition Provisional Authority, “Public Opinion in Iraq” (June 15, 2004), wid.ap.org/documents/iraq/cpa_files, slides 28, 35, 36, 37.

³⁵ See, e.g., Sean Rayment, “Secret MoD poll: Iraqis support attacks on British troops,” *Daily Telegraph*, October 23, 2005; Oxford Research Institute, “National Survey of Iraq November 2005,” www.oxfordresearch.com, 24f.; Program on International Policy Attitudes, University of Maryland, “What the Iraqi Public Wants” (from data collected January 2-5, 2006) and “The Iraq Public on the US Presence and the Future of Iraq” (September 1-4, 2006), www.worldpublicopinion.org; ABC, BBC, ARD, NHK, “Iraq Five Years Later,” ABC.news.com/pollingunit, March 17, 2008, Question 23, with tabulations of responses from February 20, 2008, August 24, 2007, and March 5, 2007.

³⁶ See, e.g., Giustozzi, *Koran, Kalashnikov and Laptop*, 167-71; Gilles Dorronsoro, *The Taliban's Winning Strategy in Afghanistan* (Washington: Carnegie Endowment for International Peace, 2009), 18.

³⁷ “Afghanization” (Washington: Carnegie Endowment for International Peace, 2009), 2.

³⁸ U.S. Senate Armed Services Committee, “Hearing to Receive Testimony on Afghanistan,” December 2, 2009, 13.

³⁹ Matthew Hoh, “Letter of Resignation,” 2, attachment to Karen DeYoung, “U.S. Official Resigns over Afghan War,” *Washington Post*, October 27, 2009.

⁴⁰ In the ABC/BBC poll of January 2009, before Obama's additions to U.S. forces and in the midst of Taliban successes, many more supported decrease (44%) than increase (18%) of U.S. and NATO forces, and 51% supported withdrawal within four years. Like all Afghan polls, this

was strongly biased toward the better off, the urban, and the better educated. For example, 6% of respondents were unemployed, in a country in which the government puts unemployment at 33% of the labor force; 37% were farmers or farm laborers, in contrast to the government's estimate of 56% employed in the agricultural sector; half of the respondents were literate in a country in which one quarter of adults are literate. See ABC News/BBC/ARD Poll, "Support for U.S. Efforts Plummets Amid Afghanistan's Ongoing Strife," February 9, 2009, www.cmi.no/pdf/?file=/afghanistan/doc/1083a1Afghanistan2009.pdf, 24, 36, 38, 39; CPHD and UNDP, *Afghanistan Human Development Report 2007*, 23 (adult literacy rate of 23.5%); Giustozzi, *Koran, Kalashnikov and Laptop*, 36 (unemployment, agricultural sector).

⁴¹ The day after President Obama announced the Afghan surge, Secretary of Defense Gates explained that "failure in Afghanistan" ("a Taliban takeover of much, if not most of the country . . . Taliban-ruled areas once again sanctuary for al Qaeda") was unacceptable because of the "narrative" it would strengthen: "what makes the border area between Afghanistan and Pakistan uniquely different . . . is that this part represents the historic place where native and foreign Muslims defeated one superpower For them to be seen to defeat the sole remaining superpower in the same place would have severe consequences for the United States and for the world" (Senate Armed Services Committee, "Hearing on Afghanistan," 6f.)

⁴² See Adam Przeworski and James Raymond Vreeland, "The Effect of IMF Programs on Economic Growth," *Journal of Development Economics* 62 (2000), 297 (estimating a reduction in growth rate of 1.53% on average); Axel Dreher, "IMF and Economic Growth," *World Development* 34 (2006), 779 (estimating that the reduction would be 1.5% under full compliance).