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Statebuilding and Justice Reform: Post-Conflict Reconstruction in Afghanistan

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As the author clearly sets out, this book analyses the justice sector reform (JSR) in Afghanistan undertaken since the United States' military intervention in 2001 by focusing on the rule of foreign actors and their interaction with local stakeholders. In a nutshell, the author highlights that the justice development programmes such as the World Bank's Afghanistan Reconstruction Trust Fund (ARTF) Justice Project should be implemented with pooled multilateral aid monies with long-term targets which involves national authorities and relevant local stakeholders.¹

In particular, it is argued that the ARTF's funded National Justice Programme (NJP)² will benefit JSR by adopting a multilateral funding system to avoid wasted monies and improve clearer roles between international and domestic stakeholders and refocus donor intervention. Such a multilateral funding system may limit the negative impact of the externally driven political goals of single international donors and bilateral projects that often drive short-term and wasted financial aid on sub-contracting instead of focusing on justice development programmes to reduce traditional donors' technical and financial assistance. This novel solution to minimise wasted aid and numerous bilateral justice reform projects with clearer long-term projects are the main contributions made by the book.

The author's analytical framework of JSR is developed from the international community's statebuilding operations, namely the international transitional administrations in Bosnia, Kosovo, East Slavonia and East Timor from the mid to late 1990s.³ After examining these statebuilding case studies implemented during the 1990s, the author links the approaches and features observed in these cases with Afghanistan post-2001 JSR. In specific, the author claims that the 'light-footprint approach' of quasi-state administrations in Kosovo and East Timor was also adopted in Afghanistan.

In terms of the background approaches, the author presents two distinctive and competing statebuilding approaches. The author firstly focuses on dilemmas faced by statebuilders which drive a dichotomy of both external administrative and institutional models under 'neo-colonialism' and the '*dirigiste*' (top-down) approach. The 'consent-based approach' limits the reform of existing domestic institutions as a social contract signed when hostilities have immediately ceased. More specific, the introduction chapter rightly indicates that local societies have pre-existing rules that may be in a non-statutory legal context which determines the society's historical, cultural and even religious way of life. Hence, the bottom-up process with a society and law and judicial institutionalisation clash with the '*dirigiste*' JSR approach in statebuilding operations. The top-down

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1. The author discusses aspects of local ownership according to recent literature from Simon Chesterman: consult and include local population prior to implementation of policies; base policies on local culture; hold international actors accountable to state authorities and respect state sovereignty whilst controlled by internal structures.
 2. The NJP is funded by the ARTF and is supervised by the Supreme Court, Attorney General Office, Ministry of Justice and Ministry of Finance. These authorities involve local officials to define reform activities (such as the Afghanistan National Development Strategy) which are contracted to national and international organizations and institutions for support in a specialist board. The objectives of the NJP are to improve: the Afghan judicial system; transparency; capacity; training; infrastructure and equipment.
 3. In particular, the United Nations (UN) transitional administrations in Kosovo and East Timor via Security Council (SC) Resolutions 1244 and 1272 (1999) led to the mandated extraordinary powers of Special Representative of the Secretary-General over justice and law-making which limited the role of local stakeholders and national authorities.



approach has strength via economic factors from international donors which means that the host state becomes dependent on external economic and technical affluence in which the author is critical of. Clearly, the author prefers a bottom-up process.

The author is right to point out that Afghanistan is interesting for a main case study on JSR after 9/11 due to a huge international commitment based on the global war against terror. This has led to the prescription of Western legal and administrative models into an Islamic war-torn country undergoing 30 years of conflict and resistant to any outside political change. Hence, the liberal peace hits a multilateral peak in Afghanistan serving interests of the US. It is absolutely correct insofar that President George W. Bush's unilateral foreign policy on the war against terror re-shaped humanitarian aims to serve US national political goals which the international community shared. This was evident when the UN supported the US' collective self-defence against the Taliban rogue government under Chapter VII Articles 39, 42 and 51 of the UN Charter supported in SC Resolutions 1368 and 1373 (2001). However, the author may have explicitly referred to these resolutions to interest the intervention from an international lawyer's perspective rather than simply referring to the background of the intervention and Bush's global war against terror which was supported by the international community.

The author highlights that the intervention in Afghanistan was not a quick liberal peace winning the war and installing JSR of global victors' justice; rather, fighting continues which has hindered US credibility. This has led to many other foreign states and international agencies entering Afghanistan that have different interests. Statebuilders changed their approach due to increased insecurity which has led to more focus on national involvement and local councils as a political compromise. For instance, an interesting analysis of Islamic law and the evolution of Afghanistan's judicial and legal systems up until 2001 as well as the 2004 Afghan constitution and the recognition of the formal state justice system are provided. The author outlines the basics of Islamic law that is based on individual conscience which clashes with the Western rule of law. *Ulema* are the law-makers of legal authority of Islam rather than using concrete law sources and *ulema* resist the adoption of codified laws. *Ulema* powers and Islamic law vary in different Islamic societies but *ulema* have power and sharia may review constitutional laws for Islamic interpretation. The author concludes that a new criminal procedure code needs redrafting with aid support and *ulema* and tribal leaders' participation to get a broader consensus on both international human rights and the Afghan way of life.

Overall, this book clearly addresses the pitfalls of statebuilding and justice reform in Afghanistan insofar that the liberal peace and 9/11 interests dictated the process from a *dirigiste* approach which led to a focus on physical security and institutionalisation based on Western models. As a consequence, the justice sector has received less funding in comparison to the military and police sectors and numerous actors. In addition, contractors have been involved in bilateral justice projects which has hindered the concept of local ownership, wasted monies and failed to develop a clear national plan to statebuilding and justice reform. The book not only provides a good critique of statebuilding operations but also produces a novel strategy to improve the pooled financing, long-term and clearer projects and intertwines both traditional justice and local ownership over Afghan justice reform. This book is for students and policy-makers of Afghanistan interests and general students of international relations, statebuilding and post-war reconstruction and development.

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