



No Shortcut to Stability

Justice, Politics and Insurgency in Afghanistan

Stephen Carter and Kate Clark

December 2010



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Chatham House
10 St James's Square
London SW1Y 4LE
T: +44 (0) 20 7957 5700
F: + 44 (0) 20 7957 5710
www.chathamhouse.org.uk

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About the Authors

Stephen Carter is an independent consultant and policy analyst based in Kabul and London. He has formerly worked as a radio and print journalist in Afghanistan, India and Russia, and as a political officer with the European Union. He is an advisor to UK parliamentarians on Afghan issues, and has also worked extensively within the UK parliament on conflict issues in central Africa. He has written reports and articles on both areas for international organizations, parliamentarians, newspapers and journals including the *RUSI Journal* and *Public Policy Research*.

Kate Clark was the BBC Kabul correspondent from 1999 to 2002. She was the only Western journalist based in Afghanistan before 2001 and was a member of the BBC teams which won the Royal Television Society and Sony Radio awards for their coverage of the 9/11 attacks and the fall of the Taliban. She worked as a London-based reporter for the BBC until 2005 and then as a freelance journalist and has returned repeatedly to Afghanistan to make radio and television documentaries on the insurgency, corruption, militias and the opium economy. She is now based in Kabul and is the senior analyst at the independent research organization the Afghanistan Analysts Network.

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Acronyms

AGE	Anti-Government Elements (e.g. Taliban, Hizb-e-Islami, Salafists)
ANA	Afghan National Army
ANAP	Afghan National Auxiliary Police (no longer in existence)
ANP	Afghan National Police
AREU	Afghanistan Research and Evaluation Unit (an independent, Kabul-based research institute)
CIMIC	Civil and Military Cooperation (within the Canadian military)
COIN	Counter-Insurgency
DDR	Disarmament, Demobilisation and Reintegration (a programme designed to stand down pre-2001 militias)
ISAF	The NATO-led International Stabilization and Assistance Force
ISI	Inter-Services Intelligence (the Pakistani intelligence agency)
MCTF	Major Crimes Task Force
MoI	Ministry of the Interior
NDS	National Directorate of Security (the Afghan intelligence agency)
OSI	Open Society Institute
UNAMA	United Nations Assistance Mission to Afghanistan
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner of Human Rights

Executive Summary

The Afghan government and its international partners have generally treated justice as a secondary concern, marginal to 'real' politics. Yet it is fundamental to stability in Afghanistan. Indeed, lack of justice (broadly defined) is the key common element which underlies much of the weakness of the Afghan state, as well as the most important political drivers of the conflict – bad and weak governance, political exclusion, abuses by the powerful, and corruption.

The sense of injustice has a visceral motivating power which easily takes on a political dimension – especially in Afghanistan, where justice historically has been tied to state legitimacy and where there is ample precedent for armed resistance in the face of perceived wrongs. Afghans commonly talk of people joining the Taliban because they are *naraz* (dissatisfied) or *majbur* (obliged or forced), which broadly relate to political marginalization and abuses by those in power. The description of one Taliban supporter in Wardak is typical:

Imagine: a district police chief was assigned by Kabul – and the police under him were robbers. They plundered and looted and raided people's houses ... People became angry and, to take revenge, they stood against him and his group. The Taliban used this opportunity ... Our district is all Taliban now. The people support them.¹

Other factors – money, drugs, foreign interference – clearly drive the insurgency as well, but case studies of Helmand, Kandahar and Badghis provinces illustrate the central role of justice issues. They are also implicated in the increasing spread of the insurgency outside its southern, Pashtun base.

The same lack of justice has an impact on a wider level, weakening the capacity of the state to provide security and services, and its ability to mediate rather than encourage conflict. Corruption and the arbitrary distribution of power make the state more than ever a prize to be fought over for illegal gain rather than the functioning core of national politics and government. Political marginalization has pushed many into supporting the Taliban, while corruption has reached a point where parts of the state have been co-opted by criminal interests.

The Taliban have exploited the justice deficit on the part of the current administration and its foreign backers to the full – a clear indicator of the strategic importance of the issue in their eyes. In doing so they have played on the deep desire of Afghans for security and rule of law, as well as nostalgia in some quarters for the 'harsh, but just' period of Taliban rule – a nostalgia which exists despite that regime's many abuses. As in 1994, justice features heavily in the insurgents' campaign, both in propaganda condemning the Karzai administration and the foreign occupation as corrupt and oppressive, and as the first (and virtually the only) service to populations under their control.

The importance of justice has been widely acknowledged by senior policy-makers, not least in the international military. But in practice the recurring pattern since 2001 has been to prioritize short-term expediency over justice and the long-term demands of state-building, with a continued reluctance to press these issues when they demand serious political capital or threaten to involve real political friction. This approach goes back to Washington's initial decision in 2001 to finance and arm factional militias

¹ Interview with a Taliban supporter in Wardak, July 2009, for BBC report (Clark). Other interviewees from the same district, including one Taliban fighter and two senior NGO workers, told similar narratives. All said that Taliban commanders had been rejected in 2002 when they first reappeared in the area and tried to mobilize. 'The people were not very supportive,' said one interviewee. 'They did not count on the Taliban's re-emergence as a solution to their problems. But as they saw the government becoming more and more inefficient and indifferent, people started tending towards the Taliban.'

with often extremely poor human rights records in order to defeat the Taliban, allowing them to seize territory, control of the security forces, and the capital itself in a *de facto* regime change. The US, UN and Hamid Karzai all espoused 'Big Tent' politics in the belief that the men of violence were less dangerous inside rather than outside the new polity: the many atrocities committed from 1978 to 2001, as well as post-2001 abuses, were effectively ignored. Since then the promised transition towards greater rule of law has largely failed to materialize. Transitional justice has been effectively neutralized. Civilians who welcomed deployments of the NATO-led International Stabilization and Assistance Force (ISAF) in the hope they would limit the power of the militias have watched as the foreigners have routinely allied themselves with strongmen at various levels, and consolidated their power through lucrative contracts for security and logistics: the foreigners are understandably seen as complicit in the crimes of their allies. The short-term approach may have immediate attractions, but it has undermined any COIN (counter-insurgency) strategy based on building up effective, legitimate and accountable government, and neutered international protest about corrupt or predatory actions.

Efforts directly aimed at reforming the justice institutions are telling. They have been more focused on fighting the insurgency than on justice as such: the judiciary has been neglected until recently and the police have been built up as a paramilitary force rather than a tool to support rule of law. After nine years, both sectors are weak and corrupt to the point of often being actual sources of crime. As in many other areas, the Afghan government and international donors have preferred technical support which side-steps the political aspects of the problem – those that concern accountability and the way power is distributed, used and abused. But rule of law and justice are fundamentally political issues, and it is questionable how much progress can be made without addressing this.

Since early 2009, there has been a new emphasis on justice and governance, largely in response to the alarming rise of the insurgency. The cost of predatory politics has become high enough to cause a reaction – but it is not clear how far the underlying attitude of expediency as *realpolitik* has changed, or if there is a gut understanding of a link between the immediate crisis and the wider lack of justice in Afghanistan since 2001. Efforts have been made by NATO to reduce civilian casualties and resentment over detentions, and to increase scrutiny of contracts; but the US military has also re-emphasized the importance of going after the 'primary threat' of the Taliban over fighting corruption. International efforts to address governance in Kandahar ahead of an offensive there have come to little, despite NATO officers' own assertions that military operations would have little point if nothing was done to improve the abusive administration driving much of the insurgency. Given these declarations, that fact that NATO lacks either the will or the means to make progress raises doubts about its overall chance of success.

Meanwhile the Afghan government has taken policy decisions which actively undermine the rule of law and accountability, and the international response has usually been ineffective. These include presidential pardons of well-connected drug smugglers, rapists and Taliban commanders, moves to neuter key anti-corruption bodies, and the watering down of electoral monitoring months after polls marred by large-scale fraud. President Karzai appears to accept that injustice at the hands of the government has driven many to fight, but not, it seems, the extent of his own responsibility as head of state.

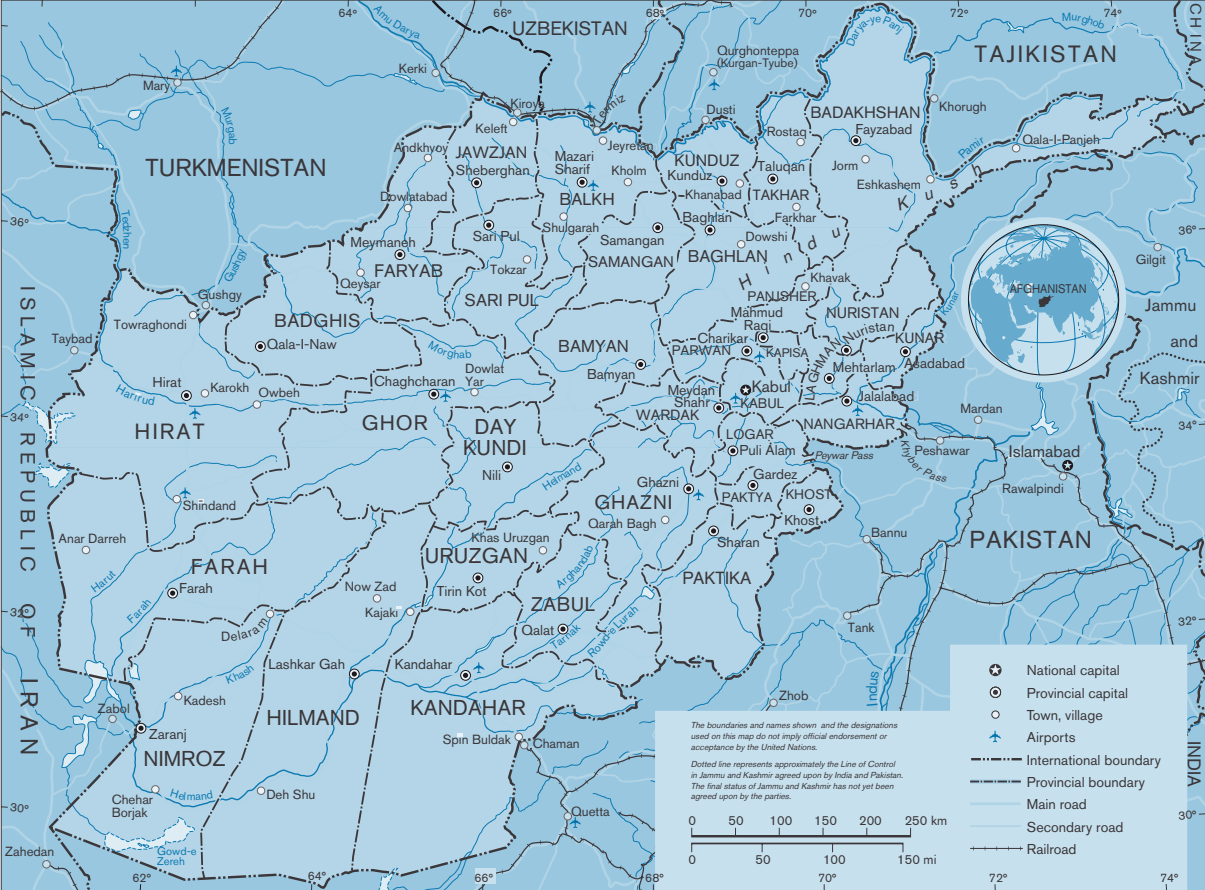
Justice, governance and human rights are not just a matter of idealism: they are a matter of entirely self-interested realism and strategic calculation, of importance even if one disregards any moral considerations. The lack of a clear strategy to address these issues is almost equivalent to the lack of a strategy for the internal political aspects of the insurgency, arguably the single most important aspect of the conflict. The point is not that Afghanistan needs to become like Sweden, as the hackneyed phrase goes: but there must be a serious question mark over any vision for the future that requires a minimally stable Afghan state if justice and governance issues are not adequately addressed. This lesson has supposedly been learnt at great cost on multiple occasions since 2001, but that has never translated into sustained action. Of course, these issues often involve entrenched interests and genuine costs: while these challenges are frequently exaggerated, both Afghans and internationals cite the fear of political backlash and potential instability. But the point is that justice has never been a first-order strategic priority, even one constrained by the need to avoid a crisis. There is an increasingly common argument that Afghan policy has failed because it

has been a hubristic and unrealistic attempt at nation-building, but the truth is closer to the opposite. The irony is that it is supposed *realpolitik* which has proved to be an unaffordable indulgence, at the expense of ordinary Afghans who have suffered the consequences of both injustice and insecurity.

As the Afghan government and its international partners gear up for possible talks with the Taliban, there are again moves to bring men of violence into the state in a deal devoid of accountability for either side of the conflict. The expectation of stability without justice is already implicit in widely touted policy scenarios which stress limited counter-terrorism over any effort at state-building. In Afghanistan's insurgency-friendly environment, and with a government that has less capacity than the Najibullah regime of the early 1990s, these paths involve some highly risky assumptions. There is a strong argument that durable stability, of the sort that will not require a choice in a few years between renewed intervention and a descent into chaos, in the end requires a minimum degree of justice and legitimacy. One could advance different strategies to achieve this – some of which might include the departure of foreign troops. But there should be clarity about the overall strategic aim, and the real balance of risk presented by the different options.

The challenge is that it is precisely now, when the pressure is growing, that it is most important to have a long-term perspective, to recognize that there is no shortcut to stability. That requires making justice an issue of core interests, one that will command not just lip-service but serious political capital when it comes into conflict with other priorities. This is the single overarching recommendation of this report, for both Afghans and foreigners: that the strategic weight given to justice should be much greater across the board. What this means in practice will vary from case to case, though a key element is the need to send a coherent political signal. Substantive change will inevitably involve a degree of political heat (indeed that will be a sign of an effective impact), and will demand compromise, diplomacy and tactical intelligence rather than simply the promotion of abstract principles; it can only be one part of a strategy to build long-term stability. But the impact of justice and rule of law is real: arguably it is the key battleground of the insurgency. It is difficult to see a durable peace without addressing these issues in a way that is equally hard-edged.

Map of Afghanistan



1 Introduction

This report seeks to investigate the relationship between issues of justice (including governance and respect for human rights) and stability in Afghanistan, especially, although not exclusively, in relation to the rise of violent insurgency. It is based on approximately 40 interviews, carried out between December 2009 and August 2010. The authors spoke to a wide range of Afghan and international interlocutors and conducted an extensive review of existing documentary sources.

Except where specified, any policy points in the text are intended equally for the international authorities and for the Afghan government, which of course has the first responsibility for policy on justice issues. When discussing the armed opposition, the authors refer solely to the Taliban, who make up the bulk of insurgent forces, although they are far from a monolithic movement. However, most of our analysis could also refer to other smaller groups, such as Hizb-e Islami.

The rest of this report is divided into nine chapters. Chapter 2 considers the context for injustice as a mobilizing force, especially in Afghanistan, and its link to the legitimacy of the Afghan state. Chapter 3 looks in detail at how injustice feeds instability in Afghanistan: both as cause for grievance, alienation and armed revolt, and through its impact on the ability of the political system to manage rather than promote conflict. Chapter 4 looks at how these dynamics play out in three provincial case studies of the insurgency – Kandahar, Helmand, and Badghis. Chapter 5 details how the Taliban have exploited the issue of justice, both as a means of legitimizing themselves and as a mobilizing cause against the Karzai government and its foreign backers. Chapter 6 considers how Afghans and international actors have approached justice in practice and documents the overall weaknesses of the reform effort, particularly the reluctance to confront the political aspect of injustice. Chapter 7 looks specifically at efforts to reform the two key justice-related sectors: the judiciary and the police. Chapter 8 considers policy for the future, as peace talks bring justice once more onto the agenda. The Conclusion highlights the gap between the rhetoric and this reality.

2 Justice and Rule of Law in the Afghan Context

Justice and rule of law are closely related but distinct concepts. Justice is both a fundamental philosophical principle and an emotional sense, closely related to the idea of fairness. Rule of law concerns the presence of rules, redress and enforcement, whether through formal or informal structures – it is about the strength of the system and the lack of arbitrariness. Rule of law is necessary for justice, but is not enough in itself to produce it. In apartheid South Africa, for example, a strong state successfully imposed unjust laws for many years. Justice as it is considered in this report is about both the existence of fair rules and their application.²

Justice in this wider sense is not just about the judicial system. It is key to the checks and balances that are fundamental to any legitimate and accountable political system, and encompasses not just the lack of corruption but good governance, political marginalization, humiliating actions committed by foreign forces, and other issues, which can be questions of justice even where technically no crime has been committed.

Justice is intrinsically linked to power and powerlessness, and this makes it a fundamentally political issue. Injustice normally involves abuse of power: deliberate harm, exclusion, discrimination, determined neglect. There can be few clearer symbols of who wields control, of who (literally) makes the rules: deliberate injustice on the part of those in authority is an act of political violence. It carries a powerful psychological charge – the visceral reaction to unfairness, humiliation or loss of dignity. The mobilizing power of these emotions is considerable and well-documented in different contexts, and has a particular link to violent resistance. One could expect this dynamic to be especially strong in Afghanistan, where concepts of honour and revenge are powerful: violence is one valid reaction to injustice.³ In Pashtun terms, protecting *Namus* (sanctity of wealth, property and female relations) is essential to preserve honour – *Ezzat*. ‘People without *Ezzat* either have to leave the family and village or have to fight to regain his or her honor. To die for *Ezzat* is better than to live without *Ezzat* because it will be *Paighour* (ridicule) for his family or children as well as future generations.’⁴ It is not difficult to see how a house search (for example) might be seen as a breach of *Namus*.

These are ancient concepts, but the understanding of what constitutes justice has adapted to a modern context. A major survey by the Afghan Independent Human Rights Commission (AIHRC), for example, found that:

*Afghans believe justice to be a general medium through which to improve specific aspects of their life. Justice for many also meant the upholding of basic human rights, including the freedom of expression, the freedom to participate in elections and the elimination of discrimination on the basis of race, language and gender. Many also associated justice with the promotion of economic equality.*⁵

That finding highlights the close link between justice and human rights. Human rights in Afghanistan are seen by some observers as high-minded concepts, assumed to be of little interest to Afghans, but as an

2 See S. Kuovo, *State-building and Rule of Law: Lessons from Afghanistan*, NDC Forum Papers series (Rome: NATO Defence College, 2009), p. 9. As Kuovo notes, some of the concepts around justice and rule of law are contested.

3 S. Miakhel, *Understanding Afghanistan: the Importance of Tribal Culture and Structure in Security and Governance* (Washington, DC: US Institute of Peace, 2009), p. 3.

4 Ibid.

5 AIHRC, *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan* (Kabul: Afghanistan Independent Human Rights Commission, 2005), p.14.

act of injustice their violation is of entirely practical relevance. Justice is not some disembodied ideal but an immediate concern, involving concrete questions: Will my land be stolen? Will my family be killed in an airstrike or by the local warlord? Will my tribe be excluded from power and lose access to resources as a result? Human rights matter because in principle they provide a rough framework for ensuring justice in society and politics – if rights can be upheld, justice can too.

Justice has a particular link to legitimacy in Afghanistan. Historically, the state has been minimalist, in terms of what Afghans wanted or expected from it. However, the ‘legitimacy of a state and its ruler depended on the degree of justice the ruler delivered, as defined by Islam.’⁶ Afghans’ expectations of what a state should do have changed during the twentieth century, but it still seems broadly true that the minimum expected from rulers is that they should be Muslim and they should provide security and justice. Because of the historical tying of justice both to religion and to the legitimacy of rulers, it makes for a potent mix when Afghans believe the state (or its foreign backers) to be a source of injustice.

On a more global level, many observers have identified poor governance and a weak state as important causal factors in insecurity across a variety of cases, ranging from Georgia to Mozambique to the Balkans. As Seth Jones notes, ‘a growing body of literature suggests that weak and ineffective governance is critical to the onset of insurgencies’ – and that improved governance is critical to the ending of civil wars.⁷ Jones especially stresses enforcement of laws as a key aspect of governance, and highlights the damaging political effects of corruption and the reliance of international forces on warlords who undermine the rule of law.⁸ ‘The collapse of governance in Afghanistan’, he argues, ‘was a precondition for the onset of the insurgency’.⁹

6 K. Clark, H. Malikyar and B. Rubin, ‘Provincial Reconstruction Teams in Afghanistan: Can They Help Rebuild the National State?’ (New York: Center on International Cooperation, New York University, 2005, unpublished).

7 S. Jones, ‘The Rise of Afghanistan’s Insurgency’, *International Security* 32(4) (Spring 2008): 15. The study referenced by Jones which looks at the role of governance in ending civil conflict is Michael Doyle and Nicholas Sambanis, *Making War and Building Peace* (Princeton, NJ: Princeton University Press, 2006). It reviewed 151 cases covering 54 years.

8 Jones also cites a key 2006 assessment by the Afghan intelligence agency, the National Directorate of Security, which concluded: ‘The first requirement of countering Taleban at the village level requires good governance, honest and competent leaders leading the institutions.’ Jones, ‘The Rise of Afghanistan’s Insurgency’, p. 33.

9 *Ibid.*, p.17.

3 Injustice and the Drivers of Instability

Injustice and weak rule of law have an evident and powerful impact on stability in Afghanistan. Abuses ranging from land seizure to political marginalization are immediate causes of grievance that have alienated ordinary Afghans from the government, and pushed many to join or support the insurgency. On a wider level the same lack of justice has weakened the capacity of the state and the ability of the political system to mediate rather than encourage conflict: corruption and the arbitrary distribution of power make the state more than ever a prize to be fought over for illegal gain rather than the functioning core of national politics and governance. Indeed, injustice is arguably the key common element underlying the internal political drivers of the insurgency. This chapter will largely focus on that link to conflict, but the effect is felt across the body politic. Gross injustice on behalf of the state can of course go hand in hand with political *stability*, as shown by many long-lived dictatorships across the world. In Afghanistan, where the state is weak and rebellion relatively easy, this has not proved to be the case.

Sources of grievance

Lack of justice is a key driver of the disillusionment felt by many Afghans across the country. The majority of respondents to the AIHRC survey, for example, viewed the post-2001 political system as entrenching impunity for past and current violations and rewarding perpetrators, and the result for many was an evident alienation from the government:

Many Afghans whom we consulted perceive the different conflict periods [from 1979 to the present] as a single lengthy and unabated conflict, where power changed hands but where the people were subjected to ongoing brutal and systematic human rights violations. Even now, in the period after the Bonn Agreement and with the war officially at an end, these violations have not ceased. The post-war period has not brought the security and tranquillity for which people yearn. Many persons who committed gross human rights violations remain in power today. This has provoked a profound disappointment in Afghans, together with an almost total breakdown of trust in authority and public institutions.¹⁰

At the same time the respondents showed ‘a rich understanding of and strong desire for justice’. There is, as civil society organizations have long argued, a clear popular mandate for reform, which would include some sort of tackling of past crimes and current abuses of power.¹¹ Other surveys similarly show issues of justice and rule of law as a key source of dissatisfaction.¹²

This disillusionment can lead directly to armed opposition. There is relatively little detailed research on individual motivations to join the insurgency, but grievances related to injustice are repeatedly mentioned in interviews and the literature. Sarah Ladbury’s in-depth 2009 investigation of the drivers of radicalization in Afghanistan for the UK’s Department for International Development (DFID), for

10 AIHRC, *A Call for Justice*, p. 17.

11 *Ibid.*, p. 41.

12 See for example, the Asia Foundation’s *Afghanistan in 2009* survey (p. 18): of those who thought the country was going in the wrong direction, 56% cited reasons related to governance and rule of law (although of course security and justice often have a strong overlap, in that the insecurity many Afghans most fear is criminal lawlessness rather than insurrection). The respondents cited bad government (29%) and corruption (17%) among the reasons, second only to insecurity (42%). Administrative corruption was in 6th place, cited by a further 10%. It must be stressed that polling data in Afghanistan come with serious statistical health warnings given the conditions in which they are gathered, but the results echo earlier polls which similarly identified governance issues as a major source of concern.

example, found strong evidence for issues related to injustice fuelling support for, and participation in, the insurgency.¹³ Her study interviewed ordinary civilians and some Taliban and Hizb-e Islami combatants in three provinces, testing eight hypotheses for radicalization through extensive interviews. It found ‘strong support’ for two of them:

- That ‘the failure of the state to provide security and justice, and people’s experience of predatory and oppressive security sector institutions (including the police), are influential drivers towards extremism’;
- That ‘perception of the government as corrupt and partisan means people look elsewhere for a more moral form of governance’.¹⁴

Government corruption and partisanship at provincial and district level ‘was consistently cited as a major reason for supporting the Taliban and Hizb-e-Islami in all field study areas ... the government’s record on corruption was deemed so extraordinarily unjust that “the people even prefer bad Taliban when the alternative is government”’.¹⁵

These findings closely match those from other studies. Ledwidge, for example, argues that ‘complex insurgencies are powered by injustice’,¹⁶ and Andrew Wilder’s work based on around 500 interviews from six areas across the country also found that:

one of the main reasons given by the Afghans we interviewed for the growing insurgency was their corrupt and unjust government. As one tribal elder in the southeastern province of Paktia put it, the very real ‘lack of clinics, schools, and roads are not the problem. The main problem is we don’t have a good government ... There’s a growing distance between the people and the government, and this is the main cause of the deteriorating security situation.’¹⁷

The causes of alienation naturally vary from person to person, but the common theme is the unjust and unaccountable use of power. Martine van Bijlert particularly highlights the Afghan concepts of *naraz* (dissatisfied) and *majbur* (obliged or forced), which respectively broadly relate to political marginalization and abuses by those in power.¹⁸ Afghans generally apply *naraz* to local leaders who join the Taliban because they were not treated in accordance with their standing – for example by their exclusion from government posts and decision-making. *Majbur* is used in relation to those who were pushed towards armed opposition after coming into conflict with local authorities or international forces. The term can be used to cover a wide range of abusive behaviour, from imprisonment to theft of property. *Majbur* is closely tied to the idea of *zaalem* (cruel or a cruel person), a term applied to predatory and violent strongmen of whatever affiliation. *Majbur* and *naraz* were regularly invoked in van Bijlert’s contacts, something which she sees as illustrating the view that many fighters would return, ‘provided that the main push factors of predation and humiliation were removed.’¹⁹

One graduate in his twenties from Wardak, a supporter of the Taliban, provides a sense of the forces involved:

13 The study included interviews with 192 people from three conflict-affected provinces: Wardak, Kandahar and Kabul. The authors note the limitations of the sample size and geographic spread, but their findings were also supported by a review of the available literature and expert input. S. Ladbury and Cooperation for Peace and Unity (Afghanistan) (CPAU), *Testing Hypotheses on Radicalisation in Afghanistan: Why Do Men Join the Taliban and Hizb-i Islami?* (Kabul: Department for International Development, 2009).

14 Ibid., p. 7.

15 Ibid., p. 18.

16 F. Ledwidge, ‘Justice and Counter Insurgency in Afghanistan: A Missing Link’, *RUSI Journal* 154(1)(February 2009): 6–9.

17 A. Wilder and G. Stuart, ‘Money Can’t Buy American Love’, *Foreign Policy*, 1 December 2009 (accessed via www.foreignpolicy.com/articles/2009/12/01/money_cant_buy_america_love?page=full).

18 M. van Bijlert, ‘Unruly Commanders and Violent Power Struggles’, in A. Giustozzi (ed.), *Decoding the New Taliban: Insights from the Afghan Field* (New York/Chichester: Columbia University Press/Hurst, 2009), p. 160.

19 Ibid., p. 161.

After 2001, in our province, people were very optimistic that peace and stability would come and a proper government that would care about the people. In the first one or two years, they were waiting, but it didn't happen. Instead, there is a corrupt and inefficient government which is indifferent to the people and it gained momentum. Optimism was slowly replaced by disappointment – specifically in our district. Imagine: a district police chief was assigned by Kabul – and the police under him were robbers. They plundered and looted and raided people's houses. So what happens next? When people saw those things that were done by the police chief, they became angry and, to take revenge, they stood against him and his group. The Taleban used this opportunity, grabbed it, they saw a community angered by the government and they attacked the district headquarters. Our district is all Taleban now. The people support them.²⁰

That example is an effective illustration of how gradual disenchantment and resentment can prepare the way for a specific local catalyst to have an effect. Ladbury's respondents also cited many similar grievances, ranging from nepotism to the pocketing of provincial or district development funds to government personnel extorting payments with the protection of their own armed militia. Michael Semple, a former deputy to the European Union Special Representative who has interviewed well over two hundred Taliban since 2001, says the following types of 'arbitrary behaviour, constituting failure of the justice system' were mentioned as having contributed to their decision to join the insurgency: arbitrary arrest and detention by the Afghan authorities, arbitrary arrest and handover to international military forces, destruction or seizure of house and property, and torture and summary execution (by Afghan security forces).²¹ Another long-term observer of the Taliban, Thomas Ruttig, notes that in some areas, 'many if not most insurgents are motivated by their rejection of and exclusion by corrupt local government – some analysts call those "anti-corruption Taleban". This is particularly true in most provinces of the South.'²²

Another example directly illustrates the *majbur* effect. It concerns a Nurzai elder from Uruzgan. A former *jihadi* commander, he was no natural friend of the Taliban, having been arrested by them when they were in power. One of his relatives (who asked that neither be named), described how, after the Taliban fell from power, this elder was targeted by local Popalzai strongman Jan Mohammad, as a potentially influential figure from a rival tribe. Jan Mohammad (at that time the provincial governor) ensured that the Nurzai poppy fields were eradicated far more than those of Popalzai and induced US Special Forces to arrest the man on false pretences and keep him in Bagram, where he was allegedly mistreated. After his release he returned home, but fearing re-arrest he fled to Pakistan, where he eventually joined the Taliban – with about six members of his family. Even at this stage he was largely motivated by the lack of any other source of income. But, according to his relative, he 'did not accept the *zaalem* from Jan Mohammad, the illegal order. "Why is my tribe's land eradicated, but not yours?" From this one problem around 200 or 300 people are against the government. Some of them joined the AGE (anti-government elements) – some of them did not but are against the government.'²³ This story neatly showcases the complexity and overlapping nature of motivations for the insurgency, with the mix here of tribal, political, personal and financial drivers. But it is also a clear illustration of just how far abusive actions can go in pushing even reluctant recruits to join the Taliban.

Grievances over poppy fields such as occurred in Uruzgan are common enough to be worth highlighting. While many farmers acknowledge its un-Islamic nature, they are often highly dependent on the crop, and its destruction can be devastating. But the sharpest sense of injustice comes from selective eradication by local power-holders (often involved in poppy production themselves) in order to consolidate their own market share or protect tribal interests at the expense of weaker, marginalized tribes or individuals. More than 80% of the 50 Talibs surveyed by Graeme Smith in Kandahar were involved in poppy production, and half said they had been the target of eradication efforts; an unusually high proportion given that only 8% of the crop

20 See note 1.

21 M. Semple, Personal communication with authors by email, February 2010.

22 T. Ruttig, *The Other Side: Dimensions of the Afghan Insurgency: Causes, Actors and Approaches to Talks*, Afghanistan Analysts Network, 2009, p. 6. Cf A. Gopal, *The Battle for Afghanistan: Militancy and Conflict in Kandahar*, Counterterrorism Strategy Initiative Policy Paper (Washington, DC: New American Foundation, November 2010), accessed via http://www.newamerica.net/publications/policy/the_battle_for_afghanistan.

23 Author's interview, Kabul, March 2010.

was eradicated across the province as a whole.²⁴ Key government administrators in the south have also been accused of seizing processed opium for their own gain – a singularly destructive act given that it is often the main form of savings for rural Afghan families. In the Helmand insurgency, there are documented cases where the local population have invited Taliban into their areas to protect them from such predatory raids.²⁵

A number of other areas of grievance are worth particular attention, particularly those related most closely to the foreign presence. The affront of having non-Muslim forces on Afghan soil is much cited by insurgents in person and in their propaganda (and is a significant concern for ordinary Afghans).²⁶ It is an issue which of course involves a strong element of religious and most of all nationalist feeling²⁷ – but it is interesting how much a sense of victimhood and injustice remains an underlying feature. The sentiment is defensive, a reaction to perceived outside aggression: as one Kandahari put it, George W. Bush ‘is a great injustice and he is a big terrorist, because he attacked our country and he surrounded the whole world’.²⁸

However, while Ladbury’s research concluded that the mere fact of foreign troops being present in Afghanistan is problematic, this is balanced by the fact that her respondents also said they wanted them to withdraw with care and only after a negotiated settlement (a view which seems relatively common among Afghans generally).²⁹ She concluded that the *behaviour* of the foreign forces (and their Afghan allies) is more relevant than their presence *per se* in driving alienation. Actions that are perceived as unjust, abusive and humiliating cause a visceral reaction, even among those who do not support the insurgency. Civilian casualties (particularly from aerial bombing), insensitive house searches, and arbitrary arrests all have the capacity to engender a particular sense of powerlessness and anger.

Graeme Smith reports that ‘it is clear that civilian casualties inspire the insurgents’. One Achakzai Talib told him: ‘The non-Muslims are unjust and have killed our people and children by bombing them, and that is why I started *jihad* against them.’³⁰ The NATO leadership has acknowledged the problem, changing its policy in 2009 to reduce the number of airstrikes. According to ISAF head General David Petraeus, ‘the perception caused by civilian casualties is one of the most dangerous things we face in Afghanistan, particularly with the Afghan people ... We’ve got to recognize that that is a way to lose their faith and lose their support, and that would be strategically decisive against us.’³¹ The result has been a 64% decrease in civilian casualties from international and pro-Afghan government forces for January–July 2010, compared with the same period in 2009.³²

Arbitrary detention, especially by foreign forces, also causes widespread anger. The commander responsible for the US detention programme stated bluntly that the perception of *farangis* [foreigners] arbitrarily and often incorrectly detaining Afghans had been ‘a key element’ (among others) fuelling the insurgency.³³ Others have also found that key support for the Taliban has come from communities with prisoners in Guantánamo,³⁴ which, together with Bagram, features prominently as a source of grievance in Taliban propaganda. However, illegal detention by government authorities (and powerful individuals with private prisons) is also a major problem, especially as it is often accompanied by torture.³⁵

24 G. Smith, ‘What Kandahar’s Taliban Say’, in Giustozzi (ed.), *Decoding the New Taliban*, pp. 191–210, at p. 200.

25 Semple, email, February 2010. Cf interviews by Clark, Kandahar, Kabul, January 2006.

26 Semple, email, February 2010. Cf International Crisis Group, *Taliban Propaganda: Winning the War of Words?*, Asia Report No.158, 2008, www.crisis-group.org/en/regions/asia/south-asia/afghanistan/158-Taliban-propaganda-winning-the-war-of-words.aspx.

27 The Taliban interviewed for Ladbury et al., *Testing Hypotheses on Radicalisation in Afghanistan* gave religion as their primary motivation. But Ladbury says that ‘Religious messages ... did have resonance for the majority. However, our assessment is that this is primarily because they were couched in two more pragmatic grievances: the corruption of the state and the occupation by foreign forces’ (p. 4).

28 Smith, ‘What Kandahar’s Taliban Say’, p. 208.

29 Ladbury et al., *Testing Hypotheses on Radicalisation in Afghanistan*, pp. 24–25.

30 Smith, ‘What Kandahar’s Taliban Say’, p. 199.

31 Associated Press, ‘General: War In Afghanistan Is “Winnable”’, 2 June 2009, accessed via www.npr.org/templates/story/story.php?storyId=104833084.

32 UNAMA, Human Rights, Kabul, *Afghanistan: Mid Year Report on Protection of Civilians in Armed Conflict, 2010*, August 2010, accessed via http://www.ohchr.org/Documents/Countries/UNAMA_Protection_Civilians_2010.pdf.

33 Authors’ interview, Kabul, February 2010.

34 T. Ruttig, *Tribal and Islamist: Afghanistan’s Taleban Between their Pashtun Base and their Supra-Tribal Ideology* (thematic report) (Kabul: Afghan Analysts Network, forthcoming).

35 See AIHRC, *Causes of Torture in Law Enforcement Institutions* (Kabul: Afghanistan Independent Human Rights Commission, 2009); Human Rights Watch, *Afghanistan: Investigate Death in Custody*, 2009, via www.hrw.org/en/news/2009/12/21/afghanistan-investigate-death-custody; UNAMA, *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2009* (Kabul: UN, 2009), p.12; United States Bureau of Democracy, Human Rights and Labour, *2009 Human Rights Report: Afghanistan* (2009), www.state.gov/g/drl/rls/hrrpt/2009/sca/136084.htm.

International commanders now recognize how important this issue is: although detainees are still not given their full rights as either criminal suspects or prisoners of war, the old days of Afghans routinely disappearing into secret detention systems seem to be over (although there are allegations of one secret prison still remaining).³⁶ Significant steps have been taken since September 2009 by the American military³⁷ to try to reduce Afghan anger by increasing transparency, improving cultural sensitivity and putting in place systems for checking and more quickly releasing those detainees not thought to be a threat – broadly speaking, increasing the rule of law and attempting to reduce perceptions of injustice. Human rights groups have, with some caveats, welcomed the new system.³⁸ One senior US military officer said that, ‘militarily, there is a view that this will help us in the long run ... Detention operations have been very vulnerable to enemy propaganda. We need to detoxify the image [so that] it’s human and it makes sense to people.’³⁹

President Karzai in turn set up a security prisoner review commission in June 2010.⁴⁰ It was cautiously welcomed by human rights defenders who hoped it might free the many innocent people detained as suspected Taliban. However, they were also concerned about the justice system’s propensity to free those with money or influence and the president’s own record of quietly releasing Taliban and other prisoners.⁴¹ While the commission’s public criteria for determining who gets released properly focus on prisoners who cannot be brought to trial for lack of evidence, the decision-making process itself has been opaque, and neither names nor consistent numbers of those being freed (now believed to be several hundred) have been released, making it impossible to judge who is actually getting out. Suspicions that connections to the presidential palace are crucial have been denied by the Minister of Justice.⁴²

House searches (particularly at night) remain common, apparently as part of a strong emphasis on Special Forces operations under the current ISAF command. Ladbury reports that ‘it is difficult to convey the strength of feeling about the way they are conducted.’⁴³ A recent Open Society Institute report concluded:

*Such experiences create (or add to the already) negative perceptions of international forces, sometimes pushing individuals toward outright support for insurgents. As one interviewee suggested, if someone is handcuffed in front of women, he would see no other way left, but to head towards the mountains [to fight with the insurgents]. Each night raid that takes place reinforces these perceptions and gives fresh fodder to insurgent propaganda.*⁴⁴

Again, the sense of injustice is important here: the complaints are largely expressed in terms of illegal abuses, the lack of accountability, and humiliating procedures contravening accepted norms of honour

36 A. Prasow, *The Bagram Detainee Review Boards: Better, But Still Falling Short*, Human Rights Watch, 2010, accessed via <http://www.hrw.org/en/news/2010/06/02/bagram-detainee-review-boards-better-still-falling-short>. More details on the secret detention site can be found in Open Society Foundations Confinement Conditions at a U.S. Screening Facility on Bagram Air Base (October 2010), accessed via http://www.soros.org/initiatives/mena/articles_publications/publications/confinement-conditions-20101014.

37 Other countries hand over prisoners to the Afghan authorities.

38 For details and assessment of Taliban detention and release policies by ISAF, US non-ISAF forces and government, see K. Clark, *Releasing the Prisoners 1: Letting the Guilty Go Free?* (11 June 2010) and *Releasing the Prisoners 2: Protecting the Innocent?* (13 June 2010). Available at Afghanistan Analysts Network, accessed via <http://aan-afghanistan.com/index.asp?id=823> and <http://aan-afghanistan.com/index.asp?id=825>.

39 Author’s interview, Kabul, February 2010. One human rights activist who went to assess the new system also described many elders arguing that releasing the detainee into their care would be just and would improve the community’s view of the foreign forces and calm ‘the people’s’ anger. (Interview, Kabul March 2010).

40 See Clark, *Releasing the Prisoners 1* and *Releasing the Prisoners 2*.

41 See Clark, *Releasing the Prisoners 1*, and K. Clark, *Hundreds of Taleban Released Last Year*, Afghanistan Analysts Network, 24 June 2010, accessed at <http://aan-afghanistan.com/index.asp?id=847>; see also Clark, *Releasing the Prisoners 2*.

42 For details, see Clark, *Releasing the Prisoners after the Jirga*, Afghanistan Analysts Network, 15 June 2010, accessed from <http://aan-afghanistan.com/index.asp?id=828>. The Minister of Justice, Habibullah Ghalib, told one author on 1 August 2010 in Kabul that 912 cases were being investigated and that several hundred had been released (his figures were contradictory depending on which list he referred to). He could not give any names. He insisted all releases were above board and there was no political interference. However, two other sources in the government have alleged that influence at the presidential palace is the key to getting prisoners released (author interviews August 2010, Kabul).

43 Ladbury et al., *Testing Hypotheses on Radicalisation in Afghanistan*, p. 25.

44 OSI and The Liaison Office (2010), *Strangers at the Door: Night Raids by International Forces Lose Hearts and Minds of Afghans Kabul*, Open Society Institute/Tribal Liaison Office, Kabul, p. 8.

and privacy.⁴⁵ The issue is not strict legality, but a perception of powerlessness and the arbitrary abuse of power.⁴⁶ As Ladbury concluded, what ‘links both the issue of air strikes and house searches is the feeling that the occupation has no legal limit and that Coalition forces are unaccountable to anyone.’⁴⁷

Justice, state-building and political stability

As well as being a source of direct grievance, the impact of injustice can also be looked at on a more systemic level, as a factor undermining the building of an effective and stable state and political system. In Afghanistan the distribution of power takes place to a large extent not according to generally accepted principles, underpinned by some idea of rule of law (however informal and traditional), but by other means – particularly access to money, tribal and patronage networks, the means of force, and outside support. The system is not totalitarian, but the fact that access to power is based to such an extent on controlling the means of coercion and state structures can easily disenfranchise those outside that circle. The effect is particularly dangerous given the high stakes for the losers, unprotected by rule of law in an environment where power is needed for protection from abuses and access to resources – and it is made worse by an easily exacerbated ‘zero-sum’ mentality of inter-ethnic and inter-tribal competition. There are few of the checks and balances of a more law-based structure and limited development of the watchdog functions such as free courts or media that could dare to challenge the powerful and corrupt. The logical response in the Afghan context is to seek access to the same currency of influence – especially the means of violence – and the protection and strength of alternative networks of allies. Where the government is a source of abuse, this frequently means joining the insurgency.

This dynamic is a major recurring theme. Most notably, many have come in hindsight to view the total marginalization of the Taliban since 2001 as having pushed many commanders, who had fully expected to be reconciled and to at least be allowed to live in peace, into taking up arms against the government. Relatively few of the old Taliban responded positively to Mullah Omar’s early recruitment drives,⁴⁸ but later their numbers rose. For many, staying at home became impossible after being harassed or arrested by their newly empowered, US-allied, tribal or factional enemies, or after threats of deportation to Guantánamo by Afghan government and Western forces.⁴⁹

Now, as noted by the former commander of ISAF General Stanley McChrystal, the Taliban ‘consistently support weaker, disenfranchised, or threatened tribes or groups.’⁵⁰ This appears to be a factor in the growth of the insurgency in different provinces, especially Kandahar (see case study below). The formal political system could be a means to address the issue, but its weakness in this respect was evident in both the 2009 and 2010 elections, characterized by widespread fraud, and in the continued marginalization of parliament. Elections and parliaments do not necessarily reduce conflict on their own (indeed, they can cause it), but reducing perceptions that the system is arbitrary and unjust (however that is done) is important if it is to mitigate rather than exaggerate conflict.

Corruption and state effectiveness

Weak rule of law weakens the state in other ways, undermining its capacity to function and provide services because of corruption, diversion of resources and distortion of priorities. It also undermines the effectiveness of aid (not least through corruption among contractors and aid agencies). There are good examples of the damage these abuses can cause (the August 2010 run on the poorly regulated Kabul Bank, which has threatened to undermine the entire Afghan economy, would be one). Conversely, however, there is little evidence that either service delivery or development on its own is enough to reduce insurgency, despite continuing American hopes that aid might ‘win hearts and minds.’ Indeed, there is

45 Ibid., pp. 5–10.

46 On this, see for example OHCHR, *Arbitrary Detention in Afghanistan: A Call for Action* (Kabul: UNAMA, 2009).

47 Ladbury et al., *Testing Hypotheses on Radicalisation in Afghanistan*, p. 25.

48 A. Giustozzi, *Koran, Kalashnikov and Laptop: The Neo-Taliban Insurgency* (New York: Columbia University Press, 2008), pp. 37–8.

49 Interviews with authors; cf Ruttig, ‘Tribal’ and Islamist.

50 ISAF, *COMISAF Initial Assessment (Unclassified) searchable document*, International Security Assistance Force, 2009, accessed via <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/21/AR2009092100110.html>.

evidence that aid can actually *fuel* insecurity, largely as a result of weak rule of law, inadequate efforts to prevent abuses, and perceptions of unfairness. Andrew Wilder and Gordon Stuart have documented how the huge sums involved exacerbate corruption and how aid can end up as a resource to be appropriated and a tool for consolidating the power of particular groups:

*The most destabilizing aspect of aid ... is its role in fuelling corruption. And here, Western donor governments have been slow to acknowledge their contribution to this problem. ... Spending too much too quickly with too little oversight in insecure environments is a recipe for fuelling corruption, delegitimizing the Afghan government, and undermining the credibility of international actors.*⁵¹

While service provision in general is not a significant source of legitimacy, the provision of justice seems something of an exception – a highly contested area consistently cited by Afghans as a key concern and a central feature of Taliban propaganda and efforts to appropriate legitimacy (see below). In practical terms, the weakness of justice provision makes it more likely that local conflicts will fail to be controlled and will instead cause instability and possibly feed into the insurgency.⁵² Much of the weakness of the security services (especially the police) is also directly attributable to corruption.⁵³ Semple, for example, notes: ‘Ordinary mortals may expect to rot in prison if they get into serious trouble ... but once serving as active Taleban, men expect to be bailed out illegally in case of arrest. This means that the justice system has little deterrent effect.’⁵⁴ One author found evidence of police smuggling arms sold in northern Afghanistan by former Northern Alliance commanders to the Taliban – not the only case of apparent collusion.⁵⁵ More generally, the lack of any sort of government presence (especially in relation to security) is frequently cited as a factor in the rise of instability, creating a vacuum which the Taliban are able to fill.

Building a corrupt state

Corruption also extends to a higher level, to a co-option of the state that is undermining state-building and exacerbating the slide into instability. Research published by the World Bank and the United Nations Office on Drugs and Crime (UNODC) in 2006 argues that Afghanistan’s criminal underworld could not operate without the support of the political ‘upper world’. This was especially visible in appointments. A certain amount of politics will always be involved in the appointments process,⁵⁶ but the subversion they identified was altogether more poisonous: according to the report, the Ministry of the Interior (MoI) was appointing Chiefs of Police ‘to both protect and promote criminal interests.’⁵⁷ The result was described as a ‘complex pyramid of protection and patronage, effectively providing state protection to criminal trafficking activities’ and involved powerful political players who had stepped back from direct involvement in the trade but continued to benefit financially.⁵⁸ In 2007, Wilder reported that:

51 In this article, Wilder and his co-author Stuart go on to say: ‘the obvious, effective, and quickest way to reduce corruption [is to] reduce funding, especially in the most insecure areas, to levels more in line with what Afghanistan can absorb. Future benchmarks for success, as well as incentive structures for both military and civilian institutions, should be changed from the number of projects implemented and amounts of money spent to ensuring accountability and the quality and impact of programs.’ Wilder and Stuart, ‘Money Can’t Buy American Love’.

52 On this issue see J. Dempsey and N. Coburn, *Traditional Dispute Resolution and Stability in Afghanistan* (Washington, DC: United States Institute for Peace, 2010), accessed via <http://www.usip.org/files/resources/PB%2010%20Traditional%20Dispute%20Resolution%20and%20Stability%20in%20Afghanistan.pdf>.

53 See International Crisis Group, *Reforming Afghanistan’s Police*, Asia Report No. 138, 2007. ‘Institutional capacity is being eroded by corruption with money-making taking priority over merit in the appointment process.’

54 M. Semple, email, February 2010.

55 Clark, BBC Report, *Newsnight*, July 2008 Author interviews with an elder from Kandahar also provided evidence of police collusion with the Taliban.

56 See M. van Bijlert, *Between Discipline and Discretion: Policies Surrounding Senior Subnational Appointments*, AREU Briefing Paper (Kabul: Afghan Research and Evaluation Unit, May 2009).

57 M. Shaw, ‘Drug Trafficking and the Development of Organized Crime in Post-Taliban Afghanistan’, Chapter 7 in D. Buddenberg and William A. Byrd (eds), *Afghanistan’s Drug Industry: Structure, Functioning, Dynamics, and Implications for Counter-Narcotics Policy* (Washington, DC: UNODC and World Bank, 2006), pp. 189–200.

58 Ibid.

This 'grand corruption' is extremely damaging to state-building efforts because it involves the capture of parts of the state apparatus. There are numerous accounts of senior MoI officials accepting large bribes in exchange for appointing certain individuals into strategic and lucrative positions, often as police chiefs in districts and provinces involved in drug production or trafficking.⁵⁹

Experts interviewed for this report thought the problem to be still deeply ingrained, affecting not only police appointments but also provincial and district governorships. The need to recoup the money 'invested' in obtaining a post means corruption and abuses of power are virtually inevitable:

There is a vertically-integrated corruption syndicate [which] affects so much of the government ... This is not like a standard patronage system, where money flows down in exchange for loyalty; rather, officials on the periphery move money upwards, in exchange for licence [to commit crimes].⁶⁰

The various civil war factions continue to influence and compete within this environment, along with other networks whose key players may be apparently reformist or technocrat; those accused of major corruption include leading public figures and politicians of all backgrounds. An international adviser familiar with the MoI admitted: 'Often you get local fiefdoms. There may be rivalry, for example in Kunduz between the chief of police, the governor and the National Directorate of Security (NDS), the Afghan intelligence agency. In other places, it is one big mafia and everyone needs to be amenable to the politicians, as in Kandahar.'⁶¹ Some diplomats argue that a single corrupt pro-government strongman is better than having a weak government trying to combat both the Taliban and multiple uncontrolled mafia networks. It is a point most often made in discussions about the role of Ahmad Wali Karzai – but it seems difficult to reconcile with the reality of the massive increase in violence in places such as Kandahar. In Helmand as well the competition between rival narcotics networks with stakes in the government and the Taliban (and some allegedly with stakes in both) is a major underlying feature of the conflict, with all sides benefiting from the generation of instability.

Impacts of injustice beyond the insurgency

As recent high-level decisions illustrate, policy-makers' interest in justice (such as it is) is above all related to its impact on the insurgency, rather than its wider effects on state and society.⁶² But it is debatable how useful the distinction is. The underlying impunity is the same: the state which cannot stop power-brokers stealing land in Kabul will not stop them stealing land in Kandahar.⁶³ Moreover, while it may be less visible to policy-makers, the effects of injustice outlined above have clear implications for stability beyond their most obvious links with the insurgency, insidiously weakening the state in ways that are only exposed when it faces a challenge. As one deputy minister noted: 'We had such hopes in 2001 and 2002; we believed the Americans when they said we were going to have human rights and democracy. Now the people are hopeless. And government is very difficult without the support of the people. Look what happened in 2006 when Kabul was captured by rioters.'⁶⁴ It is difficult to separate the impact of injustice on the insurgency from its impact on society and politics as a whole: in this sense justice is indivisible.

That implies the benefits of supporting universal principles of justice. As Sari Kuovo of the International Center for Transitional Justice points out: 'Civil and political rights actually provide an excellent framework for what is needed to ensure that governments don't become criminal and predatory.'⁶⁵

59 A. Wilder, *Cops or Robbers? The Struggle to Reform the Afghan National Police* (Kabul: Afghanistan Research and Evaluation Unit, 2007), p. 5.

60 Interview with senior ISAF officer, Kabul, February 2010.

61 Author's interview, Kabul, January 2010.

62 M. Mazzetti and R. Nordland, 'U.S. debates Karzai's place in fighting corruption', *New York Times*, 14 September 2010, accessed via www.nytimes.com/2010/09/15/world/asia/15corruption.html?_r=2&ref=world.

63 For details on land grabs, see Kandahar case study. For details on issues related to security companies, see for example C. Forsberg, *Politics and Power in Kandahar* (Washington, DC: Institute for the Study of War, 2010), p. 32.

64 Author's interview, Kabul, December 2009.

65 Semple, email, February 2010.

Protecting the underlying principles of political representation, checks and balances on political power and the security forces, an independent judiciary and parliament, a vigorous civil society and a free media can be precisely what prevents the security impacts that the most *realpolitik*-minded diplomat would consider harmful. Human rights, by extension, should be seen as a matter of strategic self-interest, rather than merely a matter of morality.

But it seems clear that it was a narrower concern about the link between injustice and the rising insurgency that finally focused official attention on the area. One result is that justice is often only of real interest to policy-makers in the south. One diplomat who is looking at reconciliation with the Taliban gave this revealing response when asked in January 2010 about whether justice and stability were linked *outside* insurgent areas:

*Under the COIN [counter-insurgency] doctrine, the government just has to be better than the alternative. Yes, service provision in places like Badakhshan, Panjshir and Bamiyan is low. But COIN-wise, you don't have to provide a huge service in those areas to get support – because the population will never side with the Taleban.*⁶⁶

The complacency of such thinking has become ever clearer in the past year. The Taliban have found new footholds across the north, including in Uzbek, Turkmen and Tajik areas: the insurgency has ceased to be purely a southern or a Pashtun phenomenon.⁶⁷ There are reports of nascent Taliban activities even in parts of Takhar province which were centres of Northern Alliance resistance to Emirate rule, including even Khojaghar, where the Taliban burned villages and summarily executed several dozen men in early 2001.⁶⁸

Clearly, the right conditions and environment need to be in place if supporting or joining the insurgency is to be an available and reasonable choice. This involves a complex interplay of many factors – including a person's previous factional allegiance, past allegiance to the Taliban, ethnicity, tribe and sub-tribe, location, history, income and educational background. A sense of the Taliban as a Pashtun movement, and memories of the cruelties of their previous rule in the north, help explain why the insurgency has thus far been a more available and attractive option in the south, even though abusive and ineffective government is present across Afghanistan. But the places where support for the insurgency is beyond the pale are shrinking, and the Taliban have taken advantage of the weakness and corruption within the government and unhappiness with foreign backers to expand their influence.

Again, there are other factors: the Taliban have first and foremost created bridgeheads in communities which are more likely to be sympathetic (mainly *naqileen* Pashtuns).⁶⁹ Radicalized youth of different ethnicities returning from madrassas in Pakistan, conservative clergy and foreign militants (notably the Islamic Movement of Uzbekistan) are reported to be key instigators of revolt beyond the Pashtuns. The Taliban are channelling the discontent of former Northern Alliance commanders who felt left out of the post-2001 political set-up and can get cash, weapons and opportunities for loot if they and their men join the Emirate. But as Giustozzi and Reuter describe it, 'the relative success of the Taleban in the north has been amplified by ... the perception of government weakness and lack of direction as well as the loss of credibility

66 Author's interview, Kabul, January 2010

67 Information for this section is taken from interviews with two Afghan researchers in the north who preferred to stay anonymous; also A. Giustozzi and C. Reuter, *The Northern Front: The Afghan Insurgency Spreading beyond the Pashtuns*, Afghanistan Analysts Network, 24 June 2010, accessed via <http://aan-afghanistan.com/index.asp?id=851>; and personal communication with Reuter based on information from his and Giustozzi's forthcoming, longer report on the north and the Taliban (also from the Afghanistan Analysts Network).

68 The United Nations Mapping Report (of War Crimes and Human Rights Abuses) (unpublished). This 296-page report into the crimes of the Afghan civil war 1978–2001 was commissioned by the UN, but never published because it was deemed too politically sensitive. Reference to the press conference which was supposed to launch it in Kabul on 29 January 2005 can be found at <http://www.rferl.org/content/article/1057155.html>.

69 *Naqileen* are members of migrant communities who moved or were moved by previous governments, often for political and demographic reasons. Pashtuns were settled in the north and centre of Afghanistan to serve as communities loyal to the monarchy.

of ISAF and the general international effort in Afghanistan.⁷⁰ The issue is not only support for the Taliban, but lack of support for the state. The level of alienation of citizen from state has implications for stability and the robustness of the state itself in ways which only become apparent when it comes under pressure. Semple, for example, points out that the Taliban's advance on the north in the late 1990s was made possible not just by the military weakness of their opponents, but by a political and moral collapse:

Despite the deep suspicion of the Taliban – against whom the population had rebelled – people were unprepared to take risks to defend the discredited tanzem (factional) warlord system. Eventually the northern forces faced defections, desertions and a collapse of will and local Pashtun forces, sensing the imminent end, switched sides and the fate was sealed. Although such a situation does not yet prevail, the parallel is significant for future scenarios, particularly when considering how Afghanistan will cope with security after the draw-down of international military forces. In such circumstances, injustice and poor governance could again undermine the resolution of state functionaries and populace to defend a system in the face of resolute assault.⁷¹

Insurgency without injustice: other drivers of conflict

There are of course other drivers. Economic motives are significant, particularly within the lower ranks of the Taliban, but also among the more mercenary or criminal commanders. Ideological and religious fervour drives a minority, albeit an influential and dangerous one. Narcotics would most likely be a major source of conflict and instability even if the insurgency were over: an inherently illegal resource of such massive value would be the subject of violent competition even if the state itself were clean (which is an increasing challenge, given the poisonous gravitational pull of so much dirty money). Of course, outside spoilers providing funds, weapons, safe havens and motivation are seen by many Afghans as the obvious reason for the continued rise of the insurgency. The role of Afghanistan's neighbours, particularly Pakistan but also Iran, is rightly cited as a major issue. However, the specific link between justice and rule of law issues and the legitimacy and strength of the state makes them especially critical for any long-term prospect of stability. An insurgency with foreign support but without the real support of Afghans would be a very different order of threat: one can imagine a foreign-backed insurgency contained by a generally acceptable government, but it is harder to envisage an end to internal conflict while the government is abusive, even if there were no outside interference.

What is more, lack of justice is both a symptom of and a cause for the general weakness of the state, and indeed the breakdown of social constraints, which provides an enabling environment for many of the other factors driving the violence. As Semple writes in an obituary for one of the ten members of a medical team executed in Badakhshan by unknown gunmen on 5 August 2010:

Afghanistan lurches towards a new variation on the theme of the civil conflict of the nineties. Conflict entrepreneurs adopt the mantle of government or opposition, to prey upon the civilian population or economic activity. Whether driven by zealotry or profit, fighters can engage in the ultimate anti-social activity of massacring health workers, free from the restraint of social norms or fear of the law.⁷²

70 Giustozzi and Reuter, *The Northern Front*, pp. 2 and 6. They also detail occasional alleged state complicity in the insurgency; for example, what they call 'very supportive tolerance' for insurgents in Baghlan, including orders from the Ministry of the Interior for police always to surrender to the Taliban during the 2009 presidential elections and accusations that President Karzai personally intervened to get US forces to release a Hizb-e Islami commander who was caught with explosives, suicide vests and weapons – and went on to become an active Taliban shadow district governor.

71 Semple, email, February 2010.

72 M. Semple, 'Killing of aid workers part of unravelling of Afghan society', *The Irish Times*, 9 August 2010, accessed via <http://www.irishtimes.com/newspaper/world/2010/0809/1224276416553.html>.

4 Provincial Case Studies

The causal link between injustice, bad governance and individual decisions to join the insurgency is clear from the actual experience of the Taliban's resurgence in key provinces. As one analyst has noted, 'when you investigate the story of how insurgency started in specific areas, grievances arising from arbitrary and oppressive actions of the national and local authorities feature in many of the local narratives.'⁷³

Kandahar

Kandahar, home of the insurgency, is a key case study for the impact of unjust and abusive government on instability. Abdul Raziq, the border police commander at Spin Boldak, is a frequently cited example. He has risen from obscurity to power in the post-2001 period as an effective fighter in operations against the Taliban and a close ally of both the Americans and the Karzais. He is also widely accused of involvement in running private prisons, conducting extrajudicial executions, and drug-smuggling,⁷⁴ and is reportedly engaged in a bitter blood feud with rivals from the Nurzai tribe, not least as a result of his alleged involvement in the killing of 16 Nurzai tribesmen in March 2006.⁷⁵ An Achakzai Pashtun, he is the nephew of Mansour Raziq, the original commander hanged from a tank-barrel by the Taliban when the movement began as a reaction against predatory *mujahedin* leaders in 1994; the potential for a dangerous symbolism is evident.

Raziq's actions have a political impact. For example, in a close parallel to events in Badghis (see case study below), Taliban began penetrating Panjwai district in the summer of 2006. When the district governor called in Raziq to help, the largely Nurzai inhabitants rose up and joined forces with the insurgents. Matthieu Aikins reports that Raziq and his men responded to the resistance with brutality. If one Nurzai former *mujahedin* commander is to be believed: 'They were killing women and children ... After that, everyone was with the Taleban.'⁷⁶ Nader Nadery, of the Afghan Independent Human Rights Commission (AIHRC), also links Taliban recruitment to Raziq:

He enjoys rule by his own law, whatever he wants – to kill people or arrest them, he has his own, illegal, personal detention facility. We have interviewed at least three people who were illegally detained in his prison. Eye-witnesses in Kandahar told the Commission that a guy had stolen something small and he shot him in the head in front of everyone. He is charging people illegal taxes. He causes a lot of injustices, he is a source of injustice and certainly he helps people, if not to support the Taleban, at least not to care.⁷⁷

Nadery makes the point that in Spin Boldak, the community had initially stood against the Taliban, but slowly that changed. 'That happened after Raziq was appointed. People came to us and said, "These kinds of acts were committed by local commanders in the past and he's doing them again today."' Since 2006 the Commission had continued to receive complaints about Raziq, but the government had never taken any action. 'He is more powerful than the district governor – because he is supported from Kabul,

73 M. Semple, email, 2010.

74 M. Aikins, 'The master of Spin Boldak: undercover with Afghanistan's drug-trafficking border police', *Harper's Magazine*, December 2009, accessed via www.harpers.org/archive/2009/12/0082754.

75 R. Synovitz, 'Afghanistan: Reports Claim "War On Terror" Used To Hide Blood-Feud Killings', 31 March 2006, accessed via www.globalsecurity.org/military/library/news/2006/03/mil-060331-rferl01.h. Cf Semple, email, February 2010.

76 Aikins, 'The master of Spin Boldak'.

77 Author's interview, Kabul, January 2010.

by the Palace. He should have been removed, but he hasn't been.' Indeed, Raziq goes from strength to strength. In autumn 2010, NATO used him to help 'clear' neighbourhoods around Kandahar,⁷⁸ evidently still finding him too useful to drop, but feeling they now have to justify their relationship. He is a 'pragmatic solution ... Afghan good-enough,' argued one senior officer, while another called him a 'Robin Hood figure ... who picks favourites, for sure, but he's smart enough not to make too many enemies [*sic*] which isn't something you can say about every power broker in Afghanistan.'⁷⁹

Raziq is only part of the problem in Kandahar, where political power, abusive behaviour and corruption have gone hand in hand. Ladbury's respondents presented the province as a 'state within a state, where religious and tribal leaders had been sidelined and power ... centralised'. She said government corruption and partisanship was mentioned in all three provinces studied, but 'the list of government crimes was longest in Kandahar'.

*The general perception was that the province was controlled by Ahmed Wali Karzai [AWK], the President's younger brother, who used it as his personal fiefdom. According to respondents he controlled narcotics trafficking and was guilty of major extortion, land grabbing and control of the defunct justice system. 'Karzai's brother has grabbed thousands of hectares of government land and built different townships on it and sold them to warlords and drug dealers and this creates hatred in peoples' hearts against the government'. ... As a Durrani Pashtun AWK was seen as having consistently marginalised Ghilzai Pashtuns. ... This accounts for why some respondents maintained that the Taleban would not have got a foothold had it not been for AWK. Faced with such injustice people fastened on to the Taleban as the only alternative power centre they knew.'*⁸⁰

Ahmad Wali has consistently denied links to narcotics or criminal activities, and President Karzai has frequently argued that no firm evidence has ever been presented to back up the claims against his brother.⁸¹ Nevertheless, the widespread belief that Ahmad Wali is abusing his influential position appears enough to stoke the insurgency. Accusations of land-grabbing, like those raised by Ladbury's respondents, are among the more easy to substantiate. One case concerns land on the Hijran Karez watershed in Daman district, the title deed of which was registered as belonging to the local village. According to an internal ISAF report:

*The expropriation took place with the assistance of armed men loyal to AWK, both in and out of police uniform, directing tractors. AWK began selling the land. ... The villagers protested, brought their grievance to Pres. Karzai. ... Pres. K. [*sic*] sent an envoy down to inspect the land and review the title documents...he announced his ruling in favour of the villagers. The ruling is written out on a long piece of paper, a copy of which was provided to the Canadian CIMIC [Civil and Military Cooperation] team at KPRT [Kandahar Provincial Reconstruction Team] on 1 Jan 2009...AWK has publicly refused to acknowledge this ruling.'*⁸²

The case later took another turn, with the accusation that in January 2009 police in Arghandab District offered locals parcels of Hijran Karez land at about a tenth of market value in return for support for Karzai in the 2009 presidential election. The victims of the land-grab were largely Alokozais, a minority in Daman District, but very important province-wide. In Khakrez District, for example, the ISAF report

78 J. Partlow and K. Brulliard, 'U.S. operations in Kandahar push out Taliban', *Washington Post*, 25 October 2010, accessed via http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505658_2.html?sid=ST2010102606575. For an excellent discussion of the issue, see http://www.snappingturtle.net/flit/archives/2010_11_02.html#006798.

79 Quotes from senior officers in R Chandrasekaran, 'Afghan colonel vital to U.S. despite graft allegations', *Washington Post*, 3 October 2010, accessed via <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/03/AR2010100304094.html>.

80 Ladbury et al., *Drivers of Radicalisation*, p. 18.

81 For claims and defence, see D. Filkins, M. Mazzetti and J. Risen, 'Brother of Afghan leader said to be paid by C.I.A.', *New York Times*, 27 October 2009, accessed via www.nytimes.com/2009/10/28/world/asia/28intel.html. Cf J. Kerry, 'Chairman Kerry Statement on Brother of Afghan President Karzai', accessed via kerry.senate.gov/cfm/record.cfm?id=319430.

82 Internal ISAF document from 2009, *Hijran Karzez Factsheet* (viewed by authors).

noted that ‘due to perceived injustices perpetrated against them ... Alokozais ... have voted with their feet and joined the insurgency. This is a tribe that was fiercely loyal to the Karzai government in the past, but has become increasingly embittered due to this type of treatment.’⁸³ The case also graphically illustrates how political sensitivities lead international players to inaction even when presented with such an unequivocal assessment: when the issue was brought to the Canadian provincial reconstruction team (PRT) they reportedly said it was a ‘highly charged issue politically’ and that it was doubtful whether Canadian officials would pursue it.

Ahmad Wali was one of three major political figures to emerge from the downfall of the Taliban in 2001; the others were two *jihadi* leaders, Gul Agha Shirzoi (a Barakzai) and Mullah Naqibullah (an Alokozai).⁸⁴ The struggle between the three men and their followers finally left the President’s brother on top, ‘able to control informally local power structures, having “exiled” rivals to other provinces and replaced them with powerless individuals or with family friends.’⁸⁵ This was no legitimate extension of central power, but rather a one-sided marginalization which left important groups alienated and, at the least, unwilling to stand against the Taliban: Antonio Giustozzi dates the first appearance of Taliban in the mainly Alokozai-populated Arghandab district from their and Mullah Naqibullah’s loss of control of the police.⁸⁶ Carl Forsberg details the packing of government posts which accompanied the process, first by Gul Agha Shirzoi and then by Ahmad Wali⁸⁷ and the growth of various state and private security services that were essentially militias.⁸⁸ The overall result has been both widespread alienation and the undermining of the ability of the government to provide security:

Many of the local powerbrokers who are excluded from Wali Karzai’s network see the Taliban insurgency as the only viable means of political opposition.⁸⁹ ... Sidelined by both the DDR process and Ahmed Wali Karzai in his quest for power, a large portion of Kandahar’s tribal leadership had tenuous loyalty to and little stake in the government. Key commanders and militia units became privatized and focused their attention on winning contracts, rather than being integrated into the ANP or ANA [Afghan National Police and Army]. The Kandahar provincial government and Ahmed Wali Karzai would not be able to stage a vigorous resistance when the Taleban returned to Kandahar.⁹⁰

Graeme Smith, who surveyed Taliban fighters in Kandahar, similarly finds evidence of tribal dynamics leading to marginalization and armed opposition to the government, and quotes a 2008 US intelligence report: ‘Karzai uses the instruments of official power to support his own Popalzai tribe and selected allies with the Zirak Durrani confederacy. The Taliban have exploited the resulting anger among the other Pashtun tribes, many of whom find themselves on the wrong side of disputes over money, land, opium or water.’⁹¹

The link between lack of justice and the rise of the insurgency is perhaps most directly highlighted in Anand Gopal’s recent study of Kandahar’s Taliban.⁹² As he notes, after 2001 there was little stomach for a jihad among the defeated former Taliban, but abuses and a campaign of arrests encouraged by US special

83 Ibid.

84 Gul Agha Shirzoi had been forced out by the Taliban takeover of Kandahar in 1994, but returned to become the governor of the province in 2001 with American military support. Mullah Naqibullah’s alliance and subsequent abandonment of the Taleban were also crucial to power shifts in Kandahar in 1994 and 2001.

85 Giostozzi, *Koran, Kalashnikov and Laptop*, p. 20.

86 Ibid., pp. 61–2. Cf discussion of tribal dynamics of the insurgency in Smith, ‘What Kandahar’s Taliban Say’, pp. 198–9.

87 Forsberg says that, although Ahmad Wali Karzai ‘had advocated against the Barakzai monopoly on provincial offices before coming to power, after 2005, he flooded Kandahar’s civil administration with the appointment of his Popalzai allies. By October 2006, eight of seventeen district chiefs in Kandahar were Popalzai.’ Carl Forsberg, *The Taliban’s Campaign for Kandahar*, Afghanistan Report 3 (Washington, DC: Institute for the Study of War, December 2009), p. 20, http://www.understandingwar.org/files/The_Talibans_Campaign_For_Kandahar.pdf.

88 Ibid., p. 19. ‘The money provided by the widespread use of local militias for protective services has given many armed Kandaharis a greater incentive to protect the sources of their funding, and in some cases, to compete violently with one another for contracts, rather than to protect the population or defeat the Taliban.’

89 Forsberg, *Politics and Power in Kandahar*, p. 7.

90 Ibid., p. 27.

91 Smith, ‘What Kandahar’s Taliban Say’, p. 197.

92 Gopal, *The Battle for Afghanistan* (see note 22 above).

forces drove many prominent Talibs from their homes and into exile in Pakistan, where they prepared for war. He counts eleven commanders in Kandahar who joined the fight only after harassment, torture and arbitrary detention in secret prisons from both Afghan and American forces.⁹³ And as he writes:

*Once the Taliban leadership decided to stand against the Afghan government and its foreign backers, they were able to take advantage of growing disillusionment in the countryside. In particular, the dominance of one particular set of tribes caused members of other, marginalized tribes to look to the insurgency as a source of protection and access to resources. The weakness of the judiciary and police forced many to turn to the Taliban's provision of law and order, while widespread torture and abuse at the hands of pro-government strongmen eroded government support. At the same time, the heavy-handed tactics of U.S. forces turned many against the foreign presence.*⁹⁴

Helmand

An elderly man, interviewed in Helmand just before British troops deployed there in 2006, described how the Taliban had become popular in his province:

*In Helmand, there is not a single good human being in the police service. When the Taliban took power here, the big commanders ran away to Pakistan. Then, when the Taliban fell, they came back. They collected their soldiers together. They have lots of guns. Under the Taliban, there was no crime or killing – security was good. If someone wanted to travel, it was safe. Not like now. Lots of people in Helmand really want the Taliban to come back and it's not because they're religious, it's because there are so many problems nowadays.*⁹⁵

His account matches those of others who say that the Taliban initially had very little support from the population, but that abuses by figures in the provincial government changed that. According to Tom Coghlan, there is an 'extremely consistent' consensus that 2001–05 saw a disastrous loss of faith in the government and its Western backers. One tribal leader told him:

*There was huge hope for the government. People waited for three or four years, but nothing happened. Instead, the cruel leaders were redeployed and supported by the government. They brought back the jihadi leaders. We thought King Zahir Shah would return and the people would be educated and prosperous.*⁹⁶

Coghlan also quotes a Taliban commander as saying: 'Generally, [Helmand NDS chief of the time] Dad Mohammad Khan and those others were offensive to everyone. The main cause of making the Taliban problem was those gunmen.'⁹⁷

Like much of the south, Helmand was taken over in 2001 by anti-Taliban *jihadi* commanders who had good links to the new Afghan leader Hamid Karzai and to the US military. Sher Mohammad Akhundzada became provincial governor, Abdul Rahman Jan became police chief and Dad Mohammad Khan (Amir Dado) chief of the NDS. Allegations against these men and lesser officials were legion. The human rights officer at the European Union told one author that they had documented illegal arrests, torture and other abuses carried out by government officials and police in the province.⁹⁸ A defence lawyer said false arrests and torture were the biggest problems; after any Taliban attack, he said, the police always wanted to present the American military with a suspect. He gave as an example one of his clients, a poor man,

93 Ibid., p. 9.

94 Ibid., p. 3.

95 Interview by K. Clark for BBC, *File on 4*, broadcast 28 February 2006.

96 T. Coghlan, 'The Taliban in Helmand: An Oral History', in Giustozzi (ed.), *Decoding the New Taliban*, pp. 149–54; cf Giustozzi, *Koran, Kalashnikov and Laptop*, p. 60.

97 Ibid., p. 152.

98 Interview, Kabul, January 2006 for BBC, *File on 4*, broadcast 28 February 2006.

who was arrested and hung by his feet for ten hours, beaten and given electric shocks, allegedly by a man who is now an MP.⁹⁹ Tribal enmity aggravated many of these injustices:¹⁰⁰ Alizai circles around Governor Akhundzada marginalized and 'taxed' Achakzai communities, and officials have been accused of selectively eradicating poppy crops and punishing smugglers belonging to tribal rivals, and of packing state offices and security forces with their tribal supporters.¹⁰¹ 'Karzai's cronies were antagonising many communities,' writes Giustozzi. 'People were driven into the arms of the Taliban. The insurgents did not have to do much, except approach the victims of the pro-Karzai strongmen and promise them protection and support.'¹⁰²

There are of course other dynamics at work. The conflict in Helmand is to a large extent a drugs turf war (an important factor since the 1980s), with figures on both the government and Taliban sides protecting their interests. Of course, this is to some extent a justice issue as well. As noted above, given the amount of money at stake there would surely be much violence even if the state were entirely clean, but the mix of a drugs war and a state which has no effective justice system and is often corrupt (or actually infiltrated by drug smugglers) is hugely damaging. For Coghlan, it is 'hard to overstate the importance of the opium industry as a driver for rampant corruption, instability, and violent competition within Helmand Province and the south as a whole'.¹⁰³

In terms of political will to act on governance issues in Helmand, the reaction of the government and international actors has been decidedly mixed. Elders in Helmand said they had tried to persuade the president to remove the officials accused of abuses, but found they enjoyed unwavering support from the presidential palace and the American military (a common story elsewhere as well).¹⁰⁴ Officials from UNAMA (the UN Assistance Mission to Afghanistan) interviewed in 2006 said that they had been pushing for fresh provincial appointments for four years.¹⁰⁵ Even when nine tonnes of opium were found in the office of Governor Akhundzada, he had enough protection not to be prosecuted, although he was, finally, removed from office.¹⁰⁶ However, significant action was taken in 2006: along with other sackings of provincial officials accused of drug-smuggling or abuses, the 'cleaning up' of the provincial administration came as a precondition by the British for troop deployment in 2006 (as with the Dutch in Uruzgan). But the clean-up only went so far: Akhundzada's brother was made deputy governor and he himself was made a senator. He continues to be supported by the president (who by all accounts would like to reinstall him as governor).¹⁰⁷ As seems to be the pattern with other similar cases, much of his power base remains. Akhundzada has continued to maintain that his sacking was unfair and counter-productive to provincial security.¹⁰⁸ Meanwhile, any hope that a different provincial administration might win support back to Kabul seems to have been lost in the ferocity of fighting since 2006. Coghlan describes the population as now equally despairing of NATO, the government and the Taliban.¹⁰⁹

99 Ibid.

100 See Coghlan, 'The Taliban in Helmand', which brings together different assessments from local officials, Taliban and analysts.

101 According to Semple, one such case was Mamuk, an Ishaqzai tribal figure and leading commander of Girishk, who initially worked for Helmand Governor Akhundzada as a drug-smuggler, but later went over to the Taliban after the Governor advised Coalition forces to arrest him. 'Here the issue was selective impunity.' Email, February 2010.

102 Giustozzi, *Koran, Kalashnikov and Laptop*, p. 60.

103 Coghlan, 'The Taliban in Helmand', pp. 122–5.

104 Author's interviews, Kandahar and Kabul, 2006.

105 UNAMA officials told one author they believed the provincial administration in Helmand to be among the worst in the country, describing the provincial police chief as 'heavily involved in criminal activities, extortion, opium-smuggling and is a completely illiterate man ... he has abused his power' and the governor as 'a drug-trafficker from a prestigious commander family ... [he is] supported by Hamed Karzai and Ahmad Wali Karzai.' (Clark, January 2006 for BBC *File on 4*).

106 James Risen reported that Drug Enforcement Agency officials who seized the drugs were prevented from taking action because of the governor's good international contacts. J. Risen, 'Poppy fields are now a front line in Afghan war', *New York Times*, 16 May 2007.

107 D. Nelson, 'Hamed Karzai blames Britain for Taliban resurgence', *The Sunday Times*, 7 September 2008, accessed via www.timesonline.co.uk/tol/news/world/asia/article4692252.ece.

108 Elizabeth Rubin reported that Akhundzada told her in 2009: 'If people think I was a smuggler, O.K ... But at least I spent the money on government and soldiers! Now the money goes to the Taliban and kills British and Americans and Afghan soldiers.' E. Rubin, 'Karzai in his labyrinth', *New York Times*, 9 August 2009, accessed via <http://www.nytimes.com/2009/08/09/magazine/09Karzai-t.html?pagewanted=5>. Akhundzada has also accused the Taliban and the Pakistani intelligence agency, the ISI, of using false accusations of repression as pretexts to fight the government. He contends that Helmand would still be calm had he been allowed to stay on in power, as only his men were solidly anti-Taliban enough to take on the rebels. Coghlan has some sympathy with this stance ('The Taliban in Helmand', p. 52).

109 Coghlan also discusses Taliban popularity in 'The Taliban in Helmand', pp. 139–42, 148–50.

Badghis

Badghis was the first northern province to be taken by the Taliban in the 1990s, and more recently the movement's attempts to re-establish its presence have been helped by the predatory behaviour of Kabul-allied strongmen as well as the government's apparent indifference.

Antonio Giustozzi has described how the initial dispatch of Taliban agents in 2007 in an attempt to remobilize their pre-2001 networks was followed by raids on Pashtun areas of Ghormach and Bala Murghab districts by the local border police 'as a preventative measure'. But this force was poorly disciplined, dominated by Tajiks, and affiliated to Herati strongman Ismail Khan. They duly indulged in a wave of looting and violations of local women:¹¹⁰ locals still dramatically describe young Pashtun women jumping into the Murghab river to drown rather than submit to the attentions of the intruders.¹¹¹ Giustozzi sees the Taliban seizing the opportunity:

The ensuing tribal revolt was intercepted by Taleban agents, who offered help and found it much easier to argue that it was necessary to fight against an impious state. Local police forces turned out to be unable to cope with the scale of the revolt; the deployment of police units from Takhar only made the situation worse as they too indulged in abusive behaviour.¹¹²

Even the one community in Bala Murghab which actively opposed the Taleban, the Dawdi, 'refused any cooperation with a state seen as utterly corrupt and ineffective'.¹¹³

It is significant that there was ample warning of the alienation in Badghis. Other forces affiliated to Ismail Khan had already committed what were reported as large-scale human rights abuses, including rapes, in Badghis in 2003 during a conflict with the forces of General Dostum.¹¹⁴ 'The Afghanistan Independent Human Rights Commission and UNAMA launched two investigations,' writes Mònica Bernabé, 'but the Afghan Government never took any action against the perpetrators. Therefore, the Taliban were able to take advantage of a population poor, fed up and completely alienated from the government.'¹¹⁵ The problem has been compounded by a perception among Pashtuns that the provincial administration was dominated by Tajiks, and that they had been marginalized politically.¹¹⁶ After the provincial council elections of 2009, badly affected by fraud and insecurity, not a single Pashtun member was left on the provincial council. After the 2010 parliamentary elections, none of the province's MPs are Pashtun either: this in a province in which they make up between 30 and 40% of the population.¹¹⁷

However, it is also notable that the Taliban have faced governance problems themselves. More recent reports and interviews describe the setting in of popular disillusionment with the movement. In a scenario reminiscent of Ghazni, Helmand and elsewhere, the Taliban in Badghis are accused in their turn of preying on the population, threatening and stealing from them under the pretext of getting 'religious taxes'.¹¹⁸ The demand for justice cuts both ways.

110 A. Giustozzi, 'The Taliban's Marches: Herat, Badghis, Farah, and Ghor', in Giustozzi (ed.), *Decoding the New Taliban*, p. 222.

111 Author's interviews in Bala Murghab, October 2010.

112 Ibid.

113 Ibid., p. 223.

114 M. Bernabé, 'New troops too late for Badghis?', Afghan Analysts' Network, 2010, retrieved from aan-afghanistan.com/index.asp?id=697.

115 Ibid.

116 Internal UNAMA briefing, January 2010.

117 Author's interviews with UN Head of Office, Qala-e-Naw, October 2010.

118 Interviews with author, Kabul, May 2010, cf Bernabé, 'New troops too late for Badghis?.'

5 Justice and Policy: The Taliban

One of the clearest indicators of the strategic importance of justice is the use the insurgents make of it. Justice is central to the self-image of the Taliban, and to their efforts to win the battle for popular support and gather legitimacy. It features heavily both as a rallying cry in propaganda condemning the Karzai administration and the foreign occupation, and as a service to populations which come under its control. For the Taliban, justice is a critical issue, and one which they continue to exploit successfully despite the reality of their own *zaalem* abuses before and after 2001.

The Taliban's founding narrative is about the reaction to injustice: the story of a group of *ulema* who confronted warring, debauched and predatory commanders, imposing order and eliminating crime through the implementation of *Shari'a* law, with a grateful populace voluntarily coming over to their side as a result.¹¹⁹ The reality of the Taliban's rise in the mid-1990s is of course much more complex, in that it also involved Pakistani support, opportunist commanders, bloody fighting and violent oppression. Nevertheless, for the first time since 1978 a government actually controlled the whole of its territory (as opposed to just the cities) and was able to impose rule of law. Nostalgic memories of Taliban rule as 'harsh, but just' are referred to widely in the literature and frequently encountered on the streets as well as in Taliban propaganda. 'From the point of view of security, the Taliban were good,' one baker in Kabul said in early 2006. 'Really, apart from *'amr bil ma'aruf*,¹²⁰ the Taliban were fine. Nowadays, the bribery is absolutely terrible and, as for security, you can't reach home if you have money on you.'¹²¹ In research with a wide range of people in Khost in 2004, interviewees said the Taliban government had enjoyed a far better reach and effectiveness than the current regime or the international forces.¹²² Several interviewees also said religion and justice had given the Taliban legitimacy. 'They ruled by *Shari'a* law,' said a medical student. Another man, a poet, said that one execution could save hundreds of lives, and 'even though cutting off a man's hand seemed cruel, it was a potent deterrent to thieves.'¹²³

It is of course a rosy view of Taliban justice. Judge Mohammad Qassim Haleemi, who has sat on the post-2001 Supreme Court and was also a senior civil servant in the Taliban Ministry of Foreign Affairs, recalls that many people complained about judges during the Emirate period. 'The government was good, but the judges were not very strong. There was no judicial system. For example, military courts executed people without properly weighing up the evidence.'¹²⁴ The religious police were particularly notorious for their arbitrary arrests and beatings. The freedoms of many Afghans, especially women and girls, were deeply curtailed. However, there was order and a sort of rule of law. Taliban fighters and officials did not

119 One typical account is by the former Taliban ambassador to Pakistan, Abdul Salaam Zaef, who says that he and other founding members swore to stand by their leader, Mullah Omar, and fight against corruption and criminals: 'The *shari'a* would be our guiding law and would be implemented by us. We would prosecute vice and foster virtue and we would stop those who were bleeding the land.' A.S. Zaef, in A. Strick van Linschoten and F. Kuehn (eds), *My Life with the Taliban* (Chichester/New York: Hurst/Columbia University Press, 2010), p. 65.

120 *Amr bil maruf wa nahi an al-mankar* – the Taliban religious police who 'enjoined good and forbade evil.' They ensured edicts on collective prayer, dress codes, bans on music etc. were enforced.

121 Another typical view came from an elderly resident of west Kabul: 'These days, the officials suck your blood. Even governors take bribes just for doing something legal. The Taliban beat women and there were restrictions, but at least there was no bribery.' He did not actually want the Taliban back; praise for the Emirate appeared to be a way of expressing his deep disgust with the current administration. From interviews with K. Clark in Dewan Bege and Pul-e Surkh, Kabul, for Channel 4 News, January 2006.

122 One man, a government worker, recalled how just four Taliban in a pick-up truck had come to arrest a murderer in a village that the current security forces would not dare enter. Interviews, Khost, April 2004. See K. Clark et al., 'Provincial Reconstruction Teams in Afghanistan'.

123 Ibid.

124 Interview, Kabul, January 2010.

generally seize property, whether private or public, nor did they set up check-posts to rob travellers.¹²⁵ The abuses of the Emirate were not the crimes associated with lawlessness and a weak and contested state, nor with a corrupt state. They were deliberate and organized, the actions of a regime able to order atrocities: the massacring of civilians, the burning of homes, mosques, gardens and whole villages.¹²⁶ These atrocities almost always targeted populations who were non-Pashtun and who were associated with ‘recalcitrant’ opposition forces. Afghans living in these areas have memories of a cruel and unjust rule: it is no coincidence that regions such as the Hazarajat remain virtually free of Taliban. But in the Pashtun heartland where the insurgency is strongest today, the Taliban regime generally used non-violent methods to deal with dissent, even threats of revolt.¹²⁷ There the experience of the Emirate was very different, and the memory of that period is apparently still strong.

Justice provision and the battle for legitimacy

Current efforts by the Taliban to provide justice tap into the same deep desire for security and rule of law that helped attract the country to their rule in the mid-1990s. The strong historical roots of the link between justice and legitimacy have already been discussed, but in places such as Helmand, where Frank Ledwidge served as justice adviser to the UK PRT, this is very much a contemporary issue: ‘Successful insurgents place [justice] at or near the top of their objectives,’ he writes. ‘Courts are a measure of the power and reach and, to some extent, integrity of government ... an unenforced or dishonest judgement is testament to the impotence, and far more importantly in the long run, illegitimacy of government.’¹²⁸

The Taliban may not now be able to bring security in the military sense, as they could do in the 1990s, because their presence generally attracts Afghan and international forces. But in areas that come under any measure of Taliban control today, the movement continues to prioritize setting up alternatives to the state’s judicial system – practically the only quasi-state service they provide.¹²⁹ ‘Often the first demand placed on elders when the Taliban start having influence in an area is to take over dispute resolution,’ according to Tariq Osman.¹³⁰ Frazer Hirst, who worked with the British PRT in Helmand to strengthen the informal justice sector, described permanent Taliban courts or roaming judges as being prevalent in all Taliban-controlled or -influenced areas in the province. ‘Through their control of the justice systems, the Taleban gain a level of control, influence and support which tends to undermine the links between communities and government.’¹³¹

Hirst found a mixed reaction to these courts: locals praised their accessibility and effectiveness, but also reported intimidation and miscarriages of justice. However, Osman reported that people in Wardak and Logar are largely happy with the courts there,¹³² and Ledwidge also noted that in Helmand, the Taliban courts are ‘the only effective and trusted tribunals of justice. Above all, unlike the state courts, their decisions are not dependent on the ability to pay bribes and will be enforced.’¹³³ Judge Haleemi believes that if Taliban courts are better, it is because the judges have *tanfiz* – the authority to ensure verdicts are carried out:

125 There were always exceptions. There was some looting in the takeover of Kabul in 1996: an international aid worker reported Taliban stealing her possessions, but only *borrowing* her car to transport the stolen goods after she told them she needed it to get to work the following day (interview, Clark 2004). In 2000, there was a spate of thefts by police from ethnic Hazara households in West Kabul (Clark, BBC reports, May 2000); Hazaras leaving Kabul in 2001 after the 9/11 attacks also reported being fleeced at check-posts as they left the city (Clark interview with UN staff member).

126 For a full account, see Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity, 1978–2001 – Documentation and Analysis of Major Patterns of Abuse in the War in Afghanistan* (AJP, 2005), www.afghanistanjusticeproject.org/warcrimesandcrimesaagainsthumanity19782001. Cases of women and girls taken from the battlefield are from interviews with Clark in 2005 and 2006.

127 For example, restive Pashtun tribes threatening revolt in Khost in 1999 over taxes and their demand for the return of the former king, Zahir Shah, were mollified by the Taliban, who sent a high-level delegation to talk to the elders and probably to distribute money. Clark reports for the BBC, December 1999, plus interviews in 2002 and 2004.

128 F. Ledwidge, ‘Justice and Counter-Insurgency in Afghanistan: A Missing Link’, *RUSI Journal*, 154(1)(February 2009): 6–9.

129 Setting up courts seems to be what the Taliban have always done. There are accounts of this from as early as 1981, when *mujahedin* commanders who later became Taliban gained control of areas of Kandahar. See M. Semple, ‘Intimidating, Assassinating, and Leading: Two Early Mujahidin Commanders Reflect on Building Resistance Fronts’, in J. Calabrese (ed.), *Afghanistan 1979–2009, Collected Essays* (Washington, DC: Middle East Institute, 2009). Again, when Kandahar fell in 1994, one of the Taliban’s founding members, Abdul-Salaam Zaeef, says the Taliban began to ‘re-establish their judicial system throughout the south, opening courts for judges to hear ongoing disputes’. Zaeef, in *My Life with the Taliban*.

130 T. Osman, ‘The Resurgence of the Taliban in Kabul, Logar and Wardak’, in Giustozzi (ed.), *Decoding the New Taliban*, pp. 43–56.

131 F. Hirst, *Support to the Informal Justice Sector in Helmand*, Internal DFID report, 2009, p. 3.

132 Osman, *The Resurgence of the Taliban*.

133 Ledwidge, *Justice and Counter-Insurgency*, p. 7.

*They have the power to do. We don't have the power to do; we only have the power just to say. If I was a Taliban judge in Paktia, I would be commander and judge and executioner and I'd be a very good judge. If that Taliban judge from Paktia was here in Kabul, he would not have the power to do anything either.*¹³⁴

Conflating security, judicial and executive roles in one institution carries its own risks,¹³⁵ but Haleemi's estimate that 10–15% of men sentenced to jail in his court manage to 'escape' on their way to prison indicates the difficulty of being an effective judge in the current state system.

Again, the Taliban's actual record on justice and rule of law in places where they have regained power is decidedly mixed. Elements of the movement are themselves involved in the drug industry, kidnapping and other crimes, and the Independent Human Rights Commission lists numerous abuses: threats, beheadings, mutilations and indiscriminate attacks which frequently harm civilians.¹³⁶ Reuter and Younus detail how support in Ghazni turned to opposition because of abuses and arbitrary punishments carried out by local Taliban commanders.¹³⁷ The Taliban seem aware of the potential damage caused by this sort of behaviour, and have published a code of conduct, updated in May 2010, in an attempt to rein in abuses against civilians;¹³⁸ in some regions, abusive commanders have been removed or disciplined.¹³⁹ As Giustozzi points out, 'the greatest weakness of the Taleban mirrors the weaknesses of the Afghan state: once they gain the upper hand, they have big difficulties in enforcing their kind of governance'.¹⁴⁰

Despite all this, the Taliban may still be able to hold on to their reputation as better practitioners of justice than the state. Ladbury found that her respondents (who included 'ordinary people,' as well as some Taliban and Hizb-e Islami combatants) tended to differentiate between 'good' or 'proper' (pious, non-corrupt) Taliban and 'bad', 'foreign' or 'American' (criminal) Taliban: the latter were blamed for abuses, while the former were considered the 'real' Taliban.¹⁴¹ The result of all this is clear. Whether or not it is deserved, justice is the one thing the Taliban are credited with doing well, as Ladbury found:

*The general perception was that the Taleban had indeed captured the justice market and were perceived to be reasonably efficient and fair – at least when compared to the formal system which was neither. There was no mention of unreasonable or unjust punishments. When women respondents in Qandahar mentioned the Taleban and justice it was to endorse the general message: that ordinary people support the Taleban because they provided justice in contrast to the formal justice system and the courts.*¹⁴²

Propaganda

This stress on justice is reflected in the Taliban's own propaganda, where they again cast themselves as pious Muslims and patriots who bring *Shari'ah* law. Joanna Nathan, who has researched Taliban propaganda extensively,¹⁴³ says that justice is the most recurrent motif:

134 Author's interview, Kabul, January 2010.

135 The only institution currently combining court, security forces and detention facilities is the Afghan intelligence service, the NDS. It has been accused of making arbitrary arrests, torture and holding unfair trials. See Human Rights Watch, *Afghanistan: Investigate Death in Custody*, 21 December 2009, retrieved from www.hrw.org/en/news/2009/12/21/afghanistan-investigate-death-custody. See also UNAMA, *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2009* (Kabul: UN, 2009), p. 12, and interviews with authors.

136 Afghanistan Independent Human Rights Commission, *Insurgent Abuses Against Afghan Civilians* (Kabul: AIHRC, 2008).

137 C. Reuter and B. Younus, 'The Return of the Taliban in Andar District, Ghazni', in Giustozzi (ed.), *Decoding the New Taliban*, pp. 115–16.

138 Rules in the Code of Conduct (*De Mujahedino lepara Layha*) include trying to avoid civilian casualties and damage to civilian property, bans on kidnapping for ransom and the filming of executions, bans on summary executions and the cutting off people's ears, noses and lips and a ban on forced tax collection (K. Clark, Afghanistan Analysts Network: forthcoming paper to be accessed at <http://aan-afghanistan.com/index.asp?id=848>).

139 Ruttig, 'Tribal' and Islamist.

140 Giustozzi (ed.), *Decoding the New Taliban*.

141 The use of the term 'American' to label criminally-minded Taliban stems from the widespread belief that Washington is in some way controlling parts of the movement to create instability in Afghanistan.

142 Ladbury et al., *Testing Hypotheses on Radicalisation in Afghanistan*, p. 24.

143 See J. Nathan, *Taliban Propaganda: Winning the War of Words?*, Asia Report No. 158 (International Crisis Group, 2008), www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/158-Taliban-propaganda-winning-the-war-of-words.aspx; also J. Nathan, 'Reading the Taliban', in Giustozzi (ed.), *Decoding the New Taliban*, pp. 23–42.

*...Justice is very central to how they try to depict themselves and how they depict the current regime.
... Justice is what people are longing for – therefore they use it. It's the highest priority in terms of how they portray themselves – the Emirate had justice and the government today doesn't.¹⁴⁴*

Guantánamo Bay, civilian casualties and corruption are all prominent topics, and Taliban videos (both those made 'professionally' and amateur footage passed from mobile phone to mobile phone) frequently feature supposed executions of criminals, spies and the morally degenerate. According to the Taliban, Afghanistan under their control was sovereign, secure, and without corruption; under the current administration, it is controlled by foreigners and war criminals, only the rich and powerful have rights, and there is insecurity and debauchery. Many of these messages, says Nathan, are 'overwrought and exaggerated, but grounded in deep-seated feeling over the current absence of the rule of law'. Precisely what effect this propaganda has on the population is hard to say, but it is such a key part of current Taliban activity that it is clear they view it as central to the fight.

6 Justice and Policy: Government and International Actors

If justice is a key concern for the Taliban, its place within the priorities of the government and its international allies is more ambiguous. Much public stress has been placed on the importance of governance and rule of law, particularly recently. In June 2010 President Karzai spoke of Taliban ‘who have been forced to leave their homes and take up a weapon due to cruelty, misbehaviour or other wrongdoings of the Afghan government and the foreigners.’¹⁴⁵ McChrystal similarly talked of two threats, of which the first is the existence of organized and determined insurgent groups:

*The second threat, of a very different kind, is the crisis of popular confidence that springs from the weakness of GIROA [Government of the Islamic Republic of Afghanistan] institutions, the unpunished abuse of power by corrupt officials and power-brokers, a widespread sense of political disenfranchisement, and a longstanding lack of economic opportunity. ISAF errors have further compounded the problem. These factors generate recruits for the insurgent groups, elevate local conflicts and power-broker disputes to a national level, degrade the people’s security and quality-of-life, and undermine international will.*¹⁴⁶

However, while there has been a certain degree of political and material investment in justice, a review of post-2001 policy in fact shows a consistent subordination of these concerns to shorter-term imperatives, and in particular a reluctance to confront the political aspects of the problem. President Karzai spoke as if none of the abuses he mentioned had happened on his watch: yet many of the most repressive and venal officials whose actions have fuelled the insurgency are close allies of both the president and the Americans. He has shown little sign of initiating the sort of action which would stop such abuses taking place in the future. On the international side the stress has similarly been on technical support, rather than the less visible reform which is the real substance of institution- and nation-building – a process largely concerned with promoting rule of law and the legitimacy of power. Confronting politically powerful figures is not easy, for either Afghan or foreign leaders, but even within the inevitable constraints, justice has never been a genuine strategic priority – something that is seen as part of *realpolitik* rather than an optional extra.

Politics and expediency

The dominance of expediency over justice was largely entrenched before the fall of the Taliban, with the decision in late 2001 to arm, fund and support Afghan factions and commanders with often appalling human rights records.¹⁴⁷ Across the country, commanders who two months earlier had either been in exile or fighting a losing battle against the Taliban remobilized militias, captured heavy weapons and seized control of districts, provinces, government positions (including the main power ministries) and the capital itself.¹⁴⁸ The normal painstaking post-conflict process of forming a unified army and police was

145 President Hamid Karzai’s opening speech to the National Consultative Peace Jirga, Kabul, 2 June 2010. For full discussion of the jirga, which brought together 1,500 Afghans to discuss how to make a deal with the Taliban, see K. Clark, forthcoming paper from the Afghanistan Analysts Network.

146 ISAF, *COMISAF Initial Assessment*.

147 See, for example, Human Rights Watch, *Afghanistan: Poor Rights Record of Opposition Commanders*, press release, 6 October 2001, retrieved from www.hrw.org/en/news/2001/10/05/afghanistan-poor-rights-record-opposition-commanders.

148 The political dominance of Shura-e Nizar, to which Washington had given the green light to capture Kabul in November 2001, was symbolized by the arrests early in 2002 of ordinary rural Pashtuns coming into the Afghan capital, on the basis that they were Taliban. The Shura-e Nizar dominated police and the NDS also moved to arrest members of their rival party, Hizb-e Islami, at about the same time.

bypassed. This was the state as booty:¹⁴⁹ a *de facto* regime change, much of which was later legitimized, and which put an immediate obstacle in the way of reform. Lakhdar Brahimi, former UN Special Representative and one of the architects of the Bonn process, has come to believe that:

*We are now paying the price for what we did wrong from day one ... The popular base of the interim administration put together in Bonn under President Karzai was far too narrow. We all vowed to work hard to widen that base once we returned to Kabul. Unfortunately, very little was done. On the contrary, the Northern Alliance, which had been thoroughly defeated by the Taliban and had been literally resuscitated from certain death by the US, was actively engaged in consolidating its grip over the country.*¹⁵⁰

'Big Tent' politics was designed to keep former or current men of violence at the heart of the new polity in the belief that Afghanistan's stability depended on not upsetting them. It had the effect of consolidating the power of commanders and their networks and sidelining and weakening alternative political forces and figures (sometimes deliberately so), even those who had emerged with quasi-democratic mandates, for example at the 2002 Emergency Loya Jirga.¹⁵¹ The allocation of posts by these strongmen to reward their followers laid the foundation for the current unchecked dominance of patronage in the appointments system, which is now greater than during the Taliban, communist, or pre-1979 regimes.¹⁵² Lip service only was paid to justice: the many crimes and atrocities of the long war were effectively ignored,¹⁵³ as were the major abuses of the post-Bonn era, many committed by newly empowered commanders.¹⁵⁴ As Lakhdar Brahimi put it (in reference to the deaths of hundreds of Taliban prisoners of war), accountability had to take 'second place to peace and stability'.¹⁵⁵ Hamid Karzai likewise soon came to the conclusion that peace was a necessity and justice for war crimes a 'luxury' that Afghanistan could not afford at that time.¹⁵⁶

The initial preference for immediate political expediency over longer-term concerns set a precedent. As the UN Deputy High Commissioner for Human Rights, Kyung-wha Kang, noted in March 2010, 'efforts to develop accountable governance and the rule of law in Afghanistan continue to be thwarted by the impunity enjoyed by abusive power holders'.¹⁵⁷ Transitional justice is an especially clear example. It has almost entirely fallen by the wayside: an amnesty law quietly enacted in 2008 and published a year later¹⁵⁸ set a formal seal on eight years of inactivity. Kang warned that the law 'risks further entrenching the cycle of impunity and injustice, undermining prospects for genuine reconciliation and, by extension, peace and stabilization efforts'. It seems indicative of the low priority of rule of law that such a controversial (and

149 The concept that control of the state constitutes war booty belonging to the victor remains embedded in much of Afghan politics, see Clark et al, 'Provincial Reconstruction Teams in Afghanistan'.

150 Lakhdar Brahimi's assessment of Northern Alliance pre-9/11 weakness is exaggerated, but it was certainly facing, at best, a long and bloody defensive struggle against the Taliban. L. Brahimi, 'State Building in Crisis and Post-Conflict Countries', Vienna, 7th Global Forum on Reinventing Government Building Trust in Government, 2007.

151 At the Emergency Loya Jirga, the US Ambassador Zalmay Khalilzad, the UN Envoy Lakhdar Brahimi and the Afghan leader Hamid Karzai chose to negotiate with (largely unelected) militia leaders and ignore the mass of popularly chosen delegates. Many commanders who had assumed that the positions they had seized in 2001 would be short-term only were surprised and delighted to be left in power (Clark interviews for BBC reports, 2002).

152 For a discussion of appointment issues, see van Bijlert, *Between Discipline and Discretion*.

153 The best published account of the war and the crimes committed is *Casting Shadows* (Afghanistan Justice Project, 2005).

154 These included the rapes and murders of Pashtuns in communities in the north by all of the three major factions of the Northern Alliance. See Human Rights Watch, *Anti-Pashtun Violence in Northern Afghanistan News Release*, 2002, accessed via www.hrw.org/en/news/2002/03/02/anti-pashtun-violence-widespread-afghanistan. HRW also documented 'chronic insecurity ... due to policies and depredations of local government actors ... [including] violent criminal offenses – armed robbery, extortion, and kidnappings – committed by army troops, police, and intelligence agents', and it warned, 'if allowed to continue with impunity, these abuses will make it impossible for Afghans to create a modern, democratic state'. HRW, *Killing you is a very easy thing for us: Human Rights Abuses in Southeast Afghanistan*, Vol. 15, No. 5 (c), 2003, www.hrw.org/en/reports/2003/07/28/killing-you-very-easy-thing-us.

155 Brahimi was comparing the situation in Afghanistan with Chile and South Africa; see Transcript of the Press Conference, 2002. Accessed via <http://www.un.org/apps/news/printfocusnews.asp?nid=212>.

156 BBC, 'Karzai sets out Afghanistan vision', 2002, accessed via news.bbc.co.uk/2/hi/south_asia/2044337.stm.

157 OHCHR/UNAMA, 'UN human rights report says conflict, new laws jeopardize Afghans' hard-won gains', press release, Kabul, 25 March 2010. Full text of the High Commissioner's statement can be found at: www.ohchr.org/EN/Countries/AsiaRegion/Pages/HRReports.

158 The 'Law on National Reconciliation, Public Amnesty and National Stability' was drafted by parliament in 2005 in what looked like an attempt by some MPs with a well-founded fear of war crimes tribunals. The president probably signed it into law in December 2008 and the text was released quietly a year later. It gives amnesty for anyone who committed crimes during the war before December 2001 and those currently fighting the government. See K. Clark, 'Peace Jirga goes to Washington: whose opinions count on reconciling Taliban?', blog for Afghanistan Analysts Network, 2010, accessed via www.aan-afghanistan.com/index.asp?id=747. cf B. R. Rubin, 'Transitional Justice and Human Rights in Afghanistan', *International Affairs* 79(3)(2003): 567–81, at p. 577, on the place of immunity in the discussions at Bonn in December 2001.

possibly illegal) measure should have been enacted with little protest.

Wider efforts to ensure political inclusion and accountability have also fallen short. The 2009 presidential elections, for example, saw large-scale cheating in much of the country, but UNAMA and the main international players reacted only after taking a relatively hands-off approach to clear warning signs before the poll. Remarkably, the 2010 elections saw a virtually identical repeat of this pattern, with declarations about the importance of learning the lessons of 2009 fading rapidly after the start of the year. The impact of the 2009 cheating on public perception in countries contributing troops to ISAF was so negative that it started to put the political viability of the entire international presence in question, a danger that had apparently not been fully appreciated beforehand. Support for the war dropped in the US from 53% in April 2009 to 39% in mid-September; in a mid-November poll only 26% of Americans saw Karzai as a reliable partner. In the UK support dropped from 41% in July 2009 to 21% in November, when more than half of respondents of one poll agreed that the 'levels of corruption involved in the recent presidential election show the war in Afghanistan is not worth fighting for'.¹⁵⁹

A relatively relaxed attitude has also been taken to the creeping marginalization of the other mechanisms of accountability, especially the parliament. This was graphically illustrated in the international response to the virtually unanimous rejection of the 2010 electoral law by MPs (see below), and by the routine practice of allowing ministers who had been rejected by MPs to serve for extended periods regardless. Meanwhile the international partners have tended to ignore local conflict or abuses as being, in Donald Rumsfeld's phrase, 'green on green' – i.e. between Afghans, and therefore irrelevant as long as they do not involve the Taliban or target international forces or the Afghan government.¹⁶⁰

There has been something of a shift since 2008, at least at the level of rhetoric. Justice and governance are more prominent in policy discussions, both in public and behind the scenes. This was visible in the military offensive launched in February 2010 in the Marja area of Helmand: better governance, rather than any military objective, was presented as being the key strategic goal of the exercise. The much larger operation in Kandahar launched in mid-2010 has also been portrayed in the same light. The architects of the effort to reintegrate lower-level anti-government combatants back into society (led by the Afghan government and ISAF's Force Reintegration Cell) talk about the importance of issues of justice and political grievance.¹⁶¹ Changes have been made to rules of engagement and detention arrangements and ISAF is now reviewing how it awards international contracts.

But many observers are highly sceptical about the degree of substantive change in policy. Sari Kuovo of the International Centre for Transitional Justice is one:

*When Afghan politics, for both Afghan and international actors, are run by short term political, economical or security interests, without watchdogs and functioning institutions, predatory politics will prevail – yet this approach has been seen as realpolitik. Suddenly, the cost of predatory politics has become too high, so political and military leaders (especially at the international side) start using new code words such as 'governance', 'rule of law' and 'justice'. However, what is behind these words? Not much.*¹⁶²

The credibility of the 'government in a box' strategy in Marja, which was supposed to bring in effective local government in the wake of military victory, was called into question after the new district governor was reported to have a criminal background (though he denied the allegation); overall the operation has yet to be a success, leading the former commander of ISAF to describe the town at one stage as a 'bleeding ulcer'.¹⁶³ Government policy on reintegration, which ISAF has actively supported,

159 S. Carter, 'Tipping Point for Afghanistan?', *Public Policy Research*, September–November 2009; also author's observations from election observation work in 2005.

160 See E. Rubin, 'Karzai in his labyrinth'; also US Department of Defence, 'DoD News Briefing – Secretary Rumsfeld and Gen. Myers', US Department of Defence, 2002, accessed via <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2803>.

161 See K. Clark, *How to spend a three quarters of a billion dollars* (July 2010), accessed via <http://aan-afghanistan.com/index.asp?id=911>.

162 Email communication with the authors, April 2010.

163 Author's interviews, March 2010. See also D. Nissenbaum, 'McChrystal Calls Marjah a Bleeding Ulcer', *McClatchy Newspapers*, accessed via <http://www.mcclatchydc.com/2010/05/24/94740/mcchrystal-calls-marjah-a-bleeding.html>.

emphasizes a vast (and potentially corruption-prone) spending programme to try to persuade fighters and their communities with promises of jobs and training, rather than any political issues. Meanwhile the continued international preoccupation with avoiding short-term political friction over pursuing other concerns was visible in the run-up to the 2010 parliamentary election. Despite the massive shortcomings of the 2009 polls, MPs who had rejected the president's move to change the electoral law which would (as they saw it) weaken monitoring mechanisms said they received no support from diplomats whose main preoccupation appeared to be to avoid rocking the boat – rather than supporting the legislature which was supposedly such a symbol of positive change in Afghanistan. Most indications before the election were that there would be a repeat of the previous year's serious and widespread fraud. Many diplomats expected the same, but when questioned often literally shrugged their shoulders: the elections were Afghan-owned, even if they were foreign-funded, so there was little they could do.¹⁶⁴ Finally, perhaps the most revealing indication of how justice is viewed is anonymous briefings which suggest the US military has now concluded that fighting corruption should be moderated in order to avoid undermining the fight against the 'primary threat' of the Taliban.¹⁶⁵ This was just over a month after General Petraeus had stated corruption was 'an enemy. It is counter to our strategy. And it is readily apparent to me ... there is a new sense of urgency.'¹⁶⁶

The gap between rhetoric and reality is especially noticeable in policy towards Kandahar. Again, the widespread evidence of the link between poor and abusive government and the insurgency is accepted at a senior level. According to NATO's senior civilian representative in Afghanistan, Mark Sedwill, the main problem is not the Taliban, it is the city's oligarch gangsters: 'I'm not sure whether I'm watching *Godfather Part 2* or *Godfather Part 3* ... It's very difficult to untangle, but what's really fuelling the insurgency is groups being disenfranchised, feeling oppressed by the institutions of state and criminal syndicates.'¹⁶⁷ Senior NATO officers have acknowledged that any attempt to bring security to Kandahar is likely to fail unless this essentially political problem is addressed; in private, they are explicit about what they see as the dangerous role of Ahmad Wali Karzai.¹⁶⁸ But although in spring 2010 some pressure to act was exerted on President Karzai, it was rebuffed.¹⁶⁹ The reaction from ISAF was to back off: the same anonymous officials now believe that 'there are areas where you need strong leadership, and some of those leaders are not entirely pure'.¹⁷⁰ One could debate whether that foreign pressure was legitimate or not, but at present an operation billed as being entirely focused on governance, and which is inevitably costing many Afghan and foreign lives, is proceeding without any sign of real change in the behaviour of a local leadership seen by most analysts (including many Kandaharis and the international military) as the major source of the problem. It is questionable whether the low-level, technical improvements in governance that the Americans have pursued instead – largely focused on service delivery – will compensate.

The incoherence of policy in Kandahar is symptomatic of the particular underlying tension between the professed strategy of supporting state-building and the reality of international relations with power-brokers in Afghanistan. Having relied on them in 2001, by default Washington has tended to stay loyal to the Afghans it knew, especially in the years immediately after the fall of the Taliban. Civilians who welcomed ISAF deployments in the hope that they would limit the power of the militias have watched as Afghanistan's international partners have routinely allied themselves with strongmen with highly dubious records and helped consolidate their power. These relations provide enormous political and financial benefits to particular individuals and commercial entities. The CIA's tie with Ahmad Wali Karzai and its

164 Interviews with diplomats from different missions in July and August 2010, Kabul.

165 G. Jaffe, 'U.S. to temper stance on Afghan corruption', *Washington Post*, 3 September 2010, accessed via <http://www.afghanistannewscenter.com>.

166 J. Partlow, 'Petraeus takes on Afghan corruption: boosts effort as bribery pervades', *Washington Post*, 30 July 2010, accessed at www.boston.com/news/world/.../petraeus_takes_on_afghan_corruption.

167 J. Cavendish, 'In Afghan war, official corruption is a bigger threat than the Taliban', *Christian Science Monitor*, 12 April 2010, retrieved from www.csmonitor.com/World/2010/0412/In-Afghanistan-war-government-corruption-bigger-threat-than-Taliban. Sedwell's reference is to the *Godfather* trilogy of films directed by Francis Ford Coppola (1972, 1974, 1990).

168 Authors' interviews, February 2010.

169 Authors' interview with ISAF official, May 2010.

170 Jaffe, 'U.S. to temper stance on Afghan corruption'.

use of the Kandahar Strike Force is the obvious example,¹⁷¹ but there are many others.¹⁷² Even when there is no political support, contracts for security, logistical support and facilities can provide huge amounts of cash. As Forsberg notes:

*Obtaining private security contracts [from international actors] became extremely desirable for militia commanders in Kandahar, who could secure enormous compensation and in some cases legitimize their militias. The politics of contract patronage has undermined security ... by generating armed militias operating outside formal Afghan structures which are committed to protecting their own profits and the political interests of their commander.*¹⁷³

Working with those who control the means of violence at different levels (whether through militias, private security companies or influence over the police), regardless of background, may make sense from a short-term perspective of force protection and political expediency, but it undermines any counter-insurgency strategy that calls for legitimate and accountable government to be built up. It leaves Afghans unprotected and disillusioned:¹⁷⁴ they understandably perceive international partners as complicit when their allies commit crimes or abuse the population.¹⁷⁵ Above all, it sends an unmistakable political signal that neutralizes any international complaints about corrupt or predatory actions: actions speak louder than words. Western countries cannot blame their partners if they respond accordingly.

President Karzai for his part has repeatedly promised to take a firm line on corruption and other abuses, but effective action has been limited. The strongest illustration of this is the fact that many of the most repressive and venal officials remain close to both the president and the Americans; elders coming to Kabul to lobby for such men to be dismissed have found it impossible to get the president's ear. There are other examples. At the Kabul Conference in July 2010, Karzai told representatives of more than 70 countries that 'anti-crime and anti-corruption institutions, such as the Major Crimes Task Force (MCTF) and anti-corruption prosecutors and judges [would] have the legal basis and resources required to act swiftly and decisively.'¹⁷⁶ Diplomats have laid great store by the setting up of this sort of specialized unit, segregated from the corrupt milieu of general Afghan law enforcement and given regular vetting, good salaries and mentoring by foreign police officers. But such units also expose the limits of increasing technical capacity in the absence of political will and genuine buy-in by the Afghan government. In the summer of 2010, the MCTF and other units started making arrests, including of two police generals accused of major corruption; at the end of July, the MCTF arrested Zia Salehi, the administrator of the National Security Council. Yet Salehi was freed after a few hours on the direct orders of the president, who complained that the foreigners were infringing Afghan sovereignty and human rights and were themselves the main source of corruption in the country. The president has since set up a commission to conduct a case-by-case review of the investigations currently being undertaken by the special investigative units, a direct intervention of the executive in policing and judicial affairs that is generally seen as intended to curb their power

171 See Forsberg, *Politics and Power in Kandahar*, p. 27.

172 An especially striking example is the support given to Aref Nurzai, the head of the Directorate for the Security of Highways and Government Facilities, to set up *arbakai* tribal militias to help secure the 2009 elections. Several sources report that this amounted to between \$30m and \$61m, apparently from US funds, despite the fact that he is widely alleged to be among the most prominent drug dealers in the country.

173 *Ibid.*, p. 27.

174 Examples of communities feeling that ISAF merely allies itself with the main commanders of the area for force protection reasons are legion (authors' interviews, Badakhshan, Kandahar, Kabul, etc.). In Paktia, the first PRT established in 2002 refused to get involved in 'green on green' abuses after locals complained that the province's security officials who had been appointed by the then Defence Minister, General Fahim, were 'the main source of insecurity in the province'. UNAMA officials remembered the PRT as 'useless' and President Karzai also ignored pleas for action. However, when a new PRT commander recognized the need for action, together with popular pressure and high-level pressure from UNAMA and the US embassy, Karzai was eventually persuaded to sack the officials (interviews, Paktia, Kabul, 2004).

175 It also means there are influential Afghans with a financial interest in maintaining instability. As Wilder points out, 'Donors often (if unwittingly) bankroll unsavoury elements both within and outside the government'. ISAF money is paid out to local warlords, private security companies (who almost always have links to senior government figures) and, indirectly, Taliban to provide security, or as Wilder says, 'at least not to create insecurity ... for road convoys and donor-funded construction projects'. Wilder and Stuart, 'Money Can't Buy American Love'.

176 During Hamid Karzai's opening speech to the Kabul Conference in July 2010, he also promised that 'appointed and elected officials are now required by law to disclose their assets. I have instructed the amendment of the criminal law to increase the penalties for failure to disclose assets. We will simplify those processes of government where our people are enduring corruption and abuse. The High Office of Oversight for Government Accountability will be strengthened. All obstacles within the government to the speedy prosecution of offenders will be removed. With your support, we will ensure that our other anti-crime and anti-corruption.'

and independence. His prompt action to stop proceedings into the heart of what investigators suspect was a web of corruption has led many to question his commitment to reform.¹⁷⁷ The case brought a sharp reaction from the United States, reportedly involving strong words from President Obama himself, although it is not yet clear whether the MCTF and other units will be able to continue their work.¹⁷⁸

177 R. Chandrasekaran, 'Karzai seeks to limit role of U.S. corruption investigators', *Washington Post*, 9 September 2010, accessed via <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090805935.html?hpid=topnews>.

178 Authors' interviews, July and August 2010. Cf K. DeYoung and J. Partlow, 'Congress growing more wary about corruption in Afghanistan, Sen. Kerry says', *Washington Post*, 15 August 2010, accessed via <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/14/AR2010081402721.html?hpid=topnews>; D. Riechman, 'Karzai seeks oversight of anti-corruption unit', Associated Press, 4 August 2010; M. Magnier and A. Yaqubi, 'Prosecutor investigating Afghan corruption wasn't fired, official says', *Los Angeles Times*, 30 August 2010, accessed via <http://www.latimes.com/news/nationworld/world/la-fg-afghanistan-prosecutor-20100830,0,4102401.story>; also H. Yusuf, 'CIA paying numerous Afghan officials', *Christian Science Monitor*, 27 August 2010, accessed via <http://www.csmonitor.com/World/terrorism-security/2010/0827/CIA-paying-numerous-Afghan-officials-report-says>.

7 Reform of the Justice Sector

Afghan and international efforts to rebuild build the actual institutions of the police and judicial sector have of course been a key test of the overall approach to justice and state-building. Again, the political aspect of reform is particularly important, and it is there that engagement has been weakest.

Police

Police reform began from a very low base.¹⁷⁹ ‘The police belonged to the warlords’ was the comment of one former deputy minister of the interior. ‘Each warlord had a unit and just the uniform belonged to the police.’¹⁸⁰ The aim was ‘to prevent the rule of law, to prevent justice, including transitional justice and to get power – to use the police to control the people’. With the Afghan National Army (ANA), the problems of an institution made up of ‘militias in uniform’ were recognized, and concerted attempts were made to mix ethnicities and political backgrounds and break up the cliques of former comrades. Although problems of ethnic imbalance, corruption and nepotism have emerged within the ANA,¹⁸¹ they are on a much smaller scale than in the Afghan National Police (ANP), where no such attempt to break up the underlying factional structure of the force was made. The initial German-led effort provided high-quality training for a limited number of senior and middle-ranking officers, but failed to either reform the institutional context into which they were being inserted or to improve the quality of the mass of ordinary police.¹⁸²

After 2004, the US radically increased its involvement; in 2008 alone it invested \$1 billion. (The EU also weighed in with a police reform mission from 2007, although with much less urgency: two and a half years into its mission it has only 274 of its 400 mandated international staff.¹⁸³) However, while it brought a massive increase in resourcing, the driving force behind the American effort has been providing security rather than rule of law. The lead agency has been a military body (the Combined Security Transition Command – Afghanistan, CSTC-A), and successive waves of expenditure and attention have concentrated largely on getting boots on the ground. The approach was most graphically illustrated by the establishment of the Afghan National Auxiliary Police (ANAP), which provided weapons and salaries to thousands of barely trained and poorly vetted foot-soldiers, and was widely considered a disastrous failure, with as many as 10% of the recruits thought to be Taliban infiltrators. That has not stopped the US supporting the creation of a variety of other militia-like forces since.¹⁸⁴ As Mathieu Lefevre noted in his study of local defence projects, although the ANAP was shut down in 2008, ‘no effort was made to learn

179 Wilder described the problems: ‘The daunting challenge confronting police reformers in the spring of 2002 was to create an effective civilian police force from an untrained force manned primarily by factional commanders and their militias, who had little or no equipment or infrastructure, who were unpaid or under-paid, and who operated within the corrupt and factionalised institutional structure of the Ministry of Interior.’ Wilder, *Cops or Robbers?*, p. 11.

180 He named numerous governors, police chiefs and army chiefs who ‘owned’ their police forces, including Abdur Rahman in Helmand, Jan Mohammad in Uruzgan, Ustad Atta in Balkh, Basir Salangi, Amanullah Guzar and Baba Jan in Kabul, and Hazrat Ali in Nangahar. Interview, Kabul, January 2010.

181 For a discussion of emerging shortcomings in the ANA, see A. Giustozzi, ‘The Afghan National Army: Unwarranted Hope?’, *RUSI Journal* 154(6) (December 2009): 36–42.

182 Andrew Wilder described the problems: ‘The daunting challenge confronting police reformers in the spring of 2002 was to create an effective civilian police force from an untrained force manned primarily by factional commanders and their militias, who had little or no equipment or infrastructure, who were unpaid or under-paid, and who operated within the corrupt and factionalised institutional structure of the Ministry of Interior.’ Wilder, *Cops or Robbers?*, p. 21.

183 EUPOL, *EU Police Mission in Afghanistan*, EUPOL Afghanistan, 2010, accessed via www.eupol-afg.eu/pdf/factsheet0110.pdf.

184 See Wilder, *Cops or Robbers?*, for a fuller discussion of the ANAP. As to subsequent programmes to form militias, they have been at least marginally better thought out, but they are still controversial, and there is evidence that the American military continues to arm militias on the basis of their anti-Taliban credentials outside any formal structure. One example is the Afghan Public Protection *arbakai* militia.

from this experience before new, similar projects were initiated¹⁸⁵ – a depressingly familiar pattern in other areas as well. In theory some key lessons have been taken on board in the latest initiative announced by General Petraeus, the so-called village police forces, but there are already complaints from Afghans who fear such ‘local defence initiatives’ will become militias by another name.¹⁸⁶

The military dominance of the reform effort has been likened by one former deputy minister of the interior to ‘a plumber starting to do carpentry’. ‘What the Americans wanted was *pishmerg* [cannon fodder], to protect NATO and the ANA – who were treated like real sons, while the police were used like step-sons.’¹⁸⁷ Police constables were given only two weeks’ training, later increased to eight weeks. Five years on, this approach continues to dominate.¹⁸⁸ According to Tonita Murray, senior advisor to the Interior Minister, the curriculum is, ‘almost all about counter-insurgency, survival skills, combat training. What is missing is training on the rule of law, policing techniques, community policing. The curriculum has been modified to a certain extent, but lots of basic police functions are relegated to evening work.’¹⁸⁹ This approach looks set to continue, with plans to pursue a rapid expansion in the size of the ANP and little emphasis on civilian policing.¹⁹⁰

A serious attempt to confront structural and political problems at the MoI was made in 2005, as part of a major pay and rank reform intended partly to weed out the illiterate and corrupt among the generals. Given the political clout of the men and their networks, the process required enormous and unusually coordinated effort from reformers, international and Afghan alike; it is one of the few examples where real political capital was put into justice reform. It succeeded in removing a significant number of officers who had failed the exam or the vetting process.¹⁹¹ A strong international reaction at the time stopped President Karzai from reappointing fourteen of the failed generals, who included men accused of torture, murder and drug-trafficking – but today many are back in senior positions. There was no solid institutional basis at the MoI to sustain the pressure, and on its own the political attention inevitably flagged. According to Murray, ‘New internationals have come in and, to them, [the reform] was just another initiative. Now they are concerned about fighting the insurgency.’ Indeed, these days ‘[the international community and the ministry] don’t care if police have a corrupt or criminal background, they just want bodies. They can’t find enough police. It’s OK in the north, but in the south there is a huge shortage of officers.’¹⁹²

The shortcomings of police reform have major consequences for both rule of law and wider stability in Afghanistan.¹⁹³ For many Afghans the police are the only government organ with which they have significant interaction, and ‘the perceived legitimacy of Government depends almost entirely on them.’¹⁹⁴ As Murray stresses, there are many good (and extremely brave) police and some pockets of excellence, and the force as a whole is making enormous sacrifices.¹⁹⁵ But a series of studies report that despite international investment the ANP remains ill-trained, ill-equipped, ethnically unbalanced and badly affected by corruption:¹⁹⁶ actual involvement in crime (especially drug-trafficking) and collaboration with the Taliban are significant problems. The force is largely performing para-military tasks and is plagued by

185 M. Lefevre, *Local Defence in Afghanistan*, Afghan Analysts’ Network, 2010, p. 1.

186 Author’s interview with a wide variety of Afghan sources in Kabul and elsewhere, August and September 2010.

187 Interview, Kabul, January 2010.

188 S. Chilton, E. Schiewek and T. Bremmers, *Evaluation of the Appropriate Size of the Afghan National Police Force Manning List (Tashkil)* (Kabul: European Commission, 2009), p. 9.

189 Interview, Kabul, February 2010.

190 Mol, *Afghan National Police Strategy* (Kabul: Ministry of the Interior, 2010), p. 17, accessed via <http://www.ntm-a.com/documents/other/anps.pdf>. The plan does acknowledge that policing has been focused on counter-insurgency and support for its more traditional role is needed (pp. 9, 17), but this does not appear to have filtered into training as yet.

191 Wilder, *Cops or Robbers?*, p. 14.

192 Authors’ interview, Kabul, February 2010.

193 Studies also indicate they are especially important in countering terrorist violence: RAND’s research, for example, found that 40% of terrorist groups were defeated by police action, in contrast to just 7% defeated militarily. RAND, *How Terrorist Groups End: Lessons for Countering al Qa’ida* (RAND Corporation, 2008).

194 As a former general and professor at the Police Academy emphasized, ‘the police are the reflection mirror of the government, in which the general public judges the entire system’. Cited in RUSI, *Reforming the Afghan National Police* (London: Royal United Services Institute, 2009), p. 16. See www.rusi.org/downloads/assets/ANP_Nov09.pdf.

195 Interview, Kabul, January, February 2010.

196 See www.rusi.org/downloads/assets/ANP_Nov09.pdf; cf Chilton et al., *Evaluation of the Appropriate Size*.

high rates of illiteracy (80%), attrition (20% per annum) and drug use (20–50%). The number of police continues to grow exponentially, but the prospect of having a force which can deliver justice or basic security – let alone effective counter-insurgency – seems as far away as ever.

Judiciary

Relative to the police, the judiciary and state prosecutors – the most direct tools to establish rule of law – are Cinderella services, having received much less attention and support. The Italian government was given the lead after 2001, but their modest efforts focused on reforming laws, some work on infrastructure, and training courses. Overall, the international effort is widely seen to have lacked coherence and had minimal impact on justice provision.¹⁹⁷ One diplomat, trying to defend the help which had been given to the sector, said that ‘after a joint effort, we came up with a strategy, a good strategy, in 2007’ – that is, six years after the fall of the Taliban.¹⁹⁸ ‘Rule of law reform has been slow to the point of glacial’ was how a senior UN staff member described it.¹⁹⁹ International players are highly critical of their own record and express a great deal of unhappiness with the current reform process, describing a lack of coordination, and often even a lack of basic knowledge of what is going on.²⁰⁰

The only serious attempt at cleaning up corruption in the judiciary was made unilaterally by the Supreme Court, starting in 2009. Ninety-two judges were arrested after they were caught taking bribes on camera in sting operations conducted by the Judicial Inspectorate. The effort was undertaken without the support or knowledge of international actors working in the sector; indeed not all of them were happy with the legality of entrapment or the lack of an appeals process, even though the arrests, sackings and detentions appear to have had some effect on judges’ behaviour.²⁰¹ Ultimately, however, death threats have slowed and possibly even stopped the clean-up programme.²⁰²

Afghan practitioners interviewed for this report – including judges, prosecutors and defence attorneys – were derisive of the current state system. Formal justice is so weak that an estimated 80% of disputes are taken to informal courts, outside the state sector; in insurgency-affected areas such as Helmand, that the proportion can rise to 99%.²⁰³ Concerns about corruption and political interference from party, factional or tribal networks were repeatedly raised. ‘At the moment, the justice system and prosecutor service are completely corrupt,’ said one prosecutor in Kabul:

You can never expect them to be fair or clean. They only punish those who are not backed by anyone with political power. Police, prosecutors and judges are all weak – from a hundred people, twenty may have a good education, that is, they understand the law and the constitution. It’s like trying to slaughter a cow with a blunt knife.²⁰⁴

One example illustrates what has become a nationwide problem. A woman called Salima accused a rich and well-connected local Jamiat commander of abducting and raping her:

The case went before the court and they called me to a private room and said, ‘Can you give us 100,000 Afghanis?’ [about \$2000]. I said I couldn’t, so they asked for 50,000 Afghanis. I said I couldn’t pay that much either. The judge said, ‘Why are you wasting our time?’

197 Author interviews with Afghans and internationals working in the justice sector, January, February 2010.

198 The diplomat is referring to the multilateral strategy on justice, which is supported by a World Bank-managed trust fund. Interview, Kabul, January 2010.

199 Interview, Kabul, February 2010.

200 Interviews with major international donors and agencies, Kabul, February 2010.

201 Judges told one author in summer 2009 that ‘a new clamp-down on corruption’ was making all the judges nervous. One defence attorney in Kabul also said the operation was having some success and that it was unprecedented (Kabul, January 2010).

202 Interview with senior judge, Kabul, January 2010.

203 Fraser Hirst, who worked there for the UK Department for International Development (DFID), reports that there was an average of just 21 criminal convictions a year in Helmand between 2003 and 2008 – for a population of 1.5 million. ‘Even if people came across the formal system,’ reports Fraser, ‘it was slow, corrupt, expensive, unfair, and they didn’t understand it. What they wanted was a cheap, accessible, understandable, legitimate system run by people they trusted and knew.’

204 Interview, Kabul, January 2010.

The court found in the man's favour, although Salima had medical evidence and witnesses. She believes it was not just the commander's money but his factional clout which meant her case was dismissed.²⁰⁵

This case underlies the critical importance of the political aspects of the weakness of the justice system. Nader Nadery, a member of the Afghanistan Independent Human Rights Commission, argues this is why technical aid will never be enough. He gives an example from Jalalabad, where he says that, unusually for Afghanistan, judges are educated – they are graduates in Law or *Shar'ia* – and the courts are open and working. But interference from strongmen means this is not enough:

*One judge went through his notebook. 'On this day,' said the judge, 'I had a call from Haji Din Mohammad. He asked me why I had made such and such a judgment. Another day it was Haji Zahir or Hazrat Ali, or the Governor, who called. They all call every few days. Why wouldn't this happen, when I go on my bicycle to buy potatoes and they all have bodyguards and armoured cars?'*²⁰⁶

Prosecutors report similar problems, as one of them described:

*The high-ranking authorities do have dossiers against senior people – generals, commanders, etc. – following peoples' complaints. But they are protected by the highest authorities in the land. We're afraid – we think if we're serious, we'll be harmed.*²⁰⁷

Political influence is particularly egregious at the very top of the justice system. The constitution gives the president the right to pardon criminals whose sentences have been confirmed by the Supreme Court. However, the system, such as it is, lacks transparency, and disproportionately benefits the rich or well-connected, while their victims are rarely consulted and may not even be aware of the decisions being taken: the more controversial ones especially are often unpublicized.²⁰⁸ In 2009, Amnesty International estimated that 800–1,000 presidential pardons were being granted annually; ahead of the presidential elections, they believe the numbers went up, with most being granted to people associated with powerful families.²⁰⁹ 'Even when Afghanistan's beleaguered machinery works,' said Amnesty's Asia-Pacific Director, Sam Zareefi, '[there is] this notion that powerful people can, literally, get away with murder. In case after case ... when a family is brave enough to get their case through the justice system, we see a pardon trumping the judiciary.'

As Supreme Court Judge Mohammad Qassim Haleemi argues, both material and political support are required to clean up the justice system. 'Judges need court houses, residences, transport, a decent salary and good security, so that they are not dependent on powerful people [who are then able to] own their verdicts.' Beyond that, though, 'they need the support of the president, Hamid Karzai, and of the international community. They need the president to back their decisions.'²¹⁰

205 K. Clark, interview, 2006, for BBC report. Most Afghans who have had dealings with the courts have a story to tell about bribes demanded by judges, although usually they are not so dramatic. Those without power or influence rarely stand a chance. Another case involved a police officer in Kabul who had married a thirteen-year-old, only to pimp her to other men, including police officers. The girl showed one author medical papers from a doctor confirming her condition as someone who had been serially raped. The man was arrested, but released after ten days. Going to the district governor, the prosecutor and the police, the girl said no one looked after her and her family, 'They said I was bad and a liar and they shouted at us. They wouldn't listen. Because we're poor, no one is investigating.' (Clark interview, Kabul, 2006)

206 Author's interview, Kabul, February 2010. The names mentioned are all locally powerful figures.

207 Author's interview, Kabul, February 2010.

208 Sara, a woman from Samangan who successfully took three men to court after they had publicly gang-raped her, discovered the men had been pardoned only when she saw them walking free in her village. She had faced immense difficulties getting them to court: close factional comrades and relatives of the rapists included the district governor, district court judge, one of the province's MPs (now dead) and one of President Karzai's advisers. Less than a year after the pardons, her husband was murdered after he reportedly refused to stop pursuing the case. 'When the president released the rapists,' said Sara's brother-in-law, 'they thought if they could get away with rape and kidnapping, they could get away with murder. No one would say anything.' (Clark, BBC reports 2009)

209 Interview with Sam Zareefi, London office, July 2009, for BBC *Assignment*. Major criminals pardoned without announcement before the elections include Bilal, caught transporting heroin when head of the Border Guards in Takhar Province. His uncle, Haji Din Mohammad became the president's election campaign manager after the pardon. Another was Akbar Agha, a Taliban commander from Kandahar who had been imprisoned for kidnapping UN workers in Kabul in 2004. The decision to release him was made just before the elections; he was released during the following Eid al-Adhar in November 2009 (see Clark reports, BBC, July 2009, April 2010).

210 Author's interview, Kabul, January 2010.

As it has become clear that the Taliban are ‘winning’ on justice, the judicial services are finally about to receive large amounts of aid and attention. DFID has responded to the weakness of the formal justice system in Helmand by supporting the informal sector, a move clearly galvanized by seeing Taliban courts doing well.²¹¹ Meanwhile the US government’s own new Rule of Law Strategy recognizes that ‘access to justice is limited’ – although it blames the war and the consequent culture of impunity rather than any post-2001 policies.²¹² The strategy acknowledges that reform is essential to counter the insurgency,²¹³ and aims to ‘help increase the Afghan government’s legitimacy and improve its perceptions among Afghans by promoting a culture that values the rule of law above powerful interests’²¹⁴ On the surface, that marks a significant change, but it has yet to be put into practice. The key question is how far intellectual recognition of the need to confront those core political challenges will translate to action when it comes to the crunch.

211 DFID has helped set up new institutions – prisoner review *shuras* which monitor detentions and ensure prisoners do not languish in prison, and district justice *shuras* which rule on civil and minor criminal cases and send more serious criminals cases into the formal system.

212 United States Government, *United States Rule of Law Strategy* (Washington, DC: US Government, 2009). Paper copy received by the authors in February 2010.

213 This is explicitly reflected in its stated objective, which is to focus assistance on programmes that will, ‘a) offer Afghans meaningful access to fair, efficient and transparent justice based on Afghan law and b) help eliminate Taleban justice and defeat the insurgency.’

214 The policy takes a holistic approach, encompassing police, prosecutors, defence council, judges, law schools, prisons and informal courts, and aims to address corruption, organized crime and land disputes, among other issues. It also recognizes this is not achievable without the strong support of national and local Afghan leaders. US Government, *United States Rule of Law Strategy*.

8 Policy Options: The Price of Action and Inaction

Before his dismissal as the senior military commander in Afghanistan, General McChrystal noted:

The conflict in Afghanistan is often described as a war of ideas and perceptions; this is true and demands important consideration. However, perceptions are generally derived from actions and real conditions, for example by the provision or a lack of security, governance, and economic opportunity. Thus the key to changing perceptions is to change the fundamental underlying truths.²¹⁵

The first hurdle to cross for international and Afghan policy-makers is to send a coherent and credible signal that progress on justice and governance is a hard-edged priority rather than a pious sentiment. But this is impossible without coordinated changes in the substance of policy as well as in rhetoric. Especially for the international partners, the perception of hypocrisy and incoherence if this is not achieved merely causes confusion and contempt.

Of course, the task is not without difficulty. The fear of creating a political backlash and potential instability is commonly cited (by both Afghans and internationals) as a reason for not prioritizing justice issues. That fear can be exaggerated, but there are genuine trade-offs between the short term and the long term: almost by definition those committing abuses and fuelling insurgency will be those with power and influence (and very likely providing critical intelligence, logistics and security services). Where foreigners are involved there can also be legitimate concerns about sovereignty. These are perennial and genuine dilemmas for politically sensitive reform, and an argument for tactical intelligence and a nuanced approach in dealing with justice issues – but only so long as it is in the service of clear strategic vision. The evidence suggests that this could yield positive results without necessarily causing a crisis: for example, when the paramount Uzbek strongman, General Abdul Rashid Dostum, was pushed into exile in Turkey in 2005, it failed to lead to the instability that might have been predicted given his supposed hold on the Uzbek community. But the international strategy since 2001 has instead tended to be sporadic but humiliating public lecturing of the Afghan government, coupled with a lack of real will to follow up, and an underlying message that when it comes to *substantive* issues (for example contracts for security services) these questions are not actually of real importance. Exactly the opposite approach would seem to be needed: more tact, respect, and diplomacy – but a much more serious intent.

But the point is that the reluctance to act is not just a matter of reasonable caution. For much of the post-2001 period there has been a fundamental lack of interest or urgency in investing in long-range concerns about justice. Despite some significant and positive changes in the past year, it has never been a clear strategic priority, even one constrained by the need to avoid a crisis – a matter of pushing the limits as far as possible in the given conditions. Changing this is the single overarching recommendation of this report, for both Afghans and foreigners. What this means in practice will vary from case to case and sector to sector, but the point is to have a guiding strategic aim, one that gives greater strategic weight to justice across the board.

As both government and its international backers gear themselves up for a possible peace deal with the Taliban, the issue of justice is more important than ever. In May 2010, President Karzai set out his approach to reconciliation in a keynote speech in which he referred to the Taliban as upset brothers, as ‘*Taliban jan*’ (dear Taliban):

[In 2001] our government was established. I came to Kabul, but back in my homeland, what I thought and the government thought was not implemented. The people were bothered on the pretext that they were Taliban. Our government officials, bullying individuals, would break into people's houses by force ... usurping people's property ... saying 'You are Taleban or are linked to the Taleban'. Some people had to leave their houses and villages for this fear ... The foreigners too made big mistakes in this process. They went to people's houses ... The Afghan government and the foreigners have a main responsibility to return those Taleban, who have been forced to leave their homes and take up a weapon due to cruelty, misbehaviour or other wrongdoings of the Afghan government and the foreigners, to their country and homes with apology and respect.²¹⁶

It was an oddly blameless vision – for both the government and the Taliban. Karzai admitted that grievances by the state had led to armed revolt, but in a surreal twist, spoke as if this had not happened on his watch. He also explained away Taliban abuses, describing how some Afghans, had attended ‘hotbeds and training centres of terrorism (in the neighbouring countries) ... and some came back to Afghanistan, trampled, killed and bothered this land's sons and closed their schools because of strangers.’²¹⁷ The president's thinking suggests a deal which would be equally devoid of accountability for either side of the conflict. International thinking on reconciliation remains incoherent, but there is a strong current which would readily accept this, on the grounds that ‘we have to work with Afghanistan as it is, not how we would like it to be’. One diplomat involved in thinking about reconciliation bluntly stated that any deal struck would be between ‘the Quetta-based Taleban leadership, the drugs mafia, the mafia in government and the northern warlords’. Any hope for anything better, he said, was just wishful thinking. If talks go ahead, the very real danger is of a peace settlement which repeats the model of 2001.

Such a deal would again leave Afghans hoping for stability without justice. On past precedent this is a risky assumption, though it also appears to be implicitly accepted in a number of the more widely discussed scenarios for international policy after the start the withdrawal of US forces in 2011, which stress limited counter-terrorism action over any effort to support state-building. The light-footprint approach has its attractions, but the viability of any policy which assumes a minimally effective and durable Afghan state without addressing justice issues demands careful examination. In the short term Afghanistan could be held together without progress on justice issues, but even with a peace agreement (and Pakistani backing for it), a government of disparate Taliban, corrupt strongmen and occasional technocrats will inevitably face major internal and external stresses, from unregulated competition over resources and power and from the deep suspicion between the Taliban and their former rivals. The narcotics economy will add to political subversion and violent competition. Afghanistan will never be like Stalin's Russia, a deeply repressive but stable country: in its insurgency-favourable environment, a degree of armed opposition to such a government is all too likely. While Afghanistan's neighbours might be persuaded to resist taking advantage of this, it is a risky assumption on which to base policy. And if a peace deal breaks down or is not possible, Afghanistan and its backers will be left trying to sustain an arrangement similar to the Najibullah regime of 1989–92, but with a government that is more corrupt and has less military and administrative capacity, and whose predatory behaviour has alienated many of its own people. Western states may be less likely to collapse than the Soviet Union, but the same public opinion that is creating pressure for a withdrawal may constrain their ability to indefinitely prop up a government involved in a brutal war.

The bottom line is that there is a strong argument that durable stability – of the sort that will not require a choice in a few years' time between renewed intervention and leaving Afghanistan to descend into the sort of crisis that led to Taliban rule and 9/11 – in the end requires a minimum degree of justice and legitimacy, two central elements of state-building. That is arguably the criterion by which success should be judged. One can advance different views about how long it will take and the best strategy to make that progress in the given conditions, and it is important to note that some of these paths could well include the departure of foreign forces – something of a separate issue for consideration. But there should be clarity about the overall strategic aim.

216 President Karzai's opening speech to the National Consultative Peace Jirga, Kabul, 2 June 2010.

217 Ibid.

9 Conclusion

Lakhdar Brahimi eventually came to the conclusion that, far from being marginal, justice and the justice sector were in fact fundamental to how the post-2001 settlement in Afghanistan would be played out.

*Without solid, credible and non-corrupt institutions that embody the rule of law, democracy and human rights will remain elusive and confined to the realm of high-minded international rhetoric rather than reality. Building the capacity of the judicial system and the police is often the most fundamental task in re-establishing law and order, and with it, justice, accountability and public trust. The international community, including the United Nations, is just starting to pay enough attention to rule-of-law issues. In Afghanistan, the judicial reform process was largely neglected, and I must confess that I personally bear a large part of responsibility for that.*²¹⁸

The history of the last nine years is a powerful argument that justice is critical to the basic political stability and government control over Afghan territory that are often presented as key to the security concerns of the international community and Afghans themselves. Given the role of injustice in fuelling the conflict, a lack of a clear strategy to deal with the issue is almost equivalent to a lack of strategy for the domestic political aspects of the insurgency – a disturbing prospect given the first principle of counter-insurgency is supposedly a stress on politics rather than military operations.

Justice, and human rights, which can provide a framework for justice, are as a result not just a matter of idealism: they are a matter of entirely self-interested realism and strategic calculation, of importance even if one disregards any moral considerations. Ironically, it is supposed *realpolitik* that has in the end proved to be an unaffordable indulgence. The prioritization of the short-term imperatives of the ‘Global War on Terror’ over justice and long-term state-building is often presented as the hard-headed pursuit of international security interests, but it has in fact been a major contributor to the rise of the insurgency – at the expense of ordinary Afghans who have suffered the consequences of both injustice and insecurity.

According to its Rule of Law strategy, Washington now recognizes that ‘justice and security are inseparable.’²¹⁹ The same conclusion is also voiced by the most senior international military officers in the armed forces. Afghans who have struggled to clean up the system with little international support have not failed to notice that the change in tone has followed Taliban successes. As one former deputy minister said:

*The West cries about corruption now, but they didn’t care before. They’re ready to fight the Taliban, but they’ve been indifferent to the snakes and scorpions which bite Afghans. Only when the corruption started to affect the international community did they became ready to act.*²²⁰

And evidence of a real readiness to act is still in question. A little historical perspective shows that calls for change are nothing new: one of General Petraeus’s predecessors first announced a shift towards

218 Brahimi, ‘State Building in Crisis’.

219 US Government, *United States Rule of Law Strategy*.

220 Author’s interview, Kabul, January 2010.

governance and justice five years ago,²²¹ and 'enduring stability' has supposedly been the priority since 2003. It is striking how many times the lesson of the importance of justice to stability has been learnt before (often at great cost), and yet how little impact it has had on underlying policy – something that suggests a degree of caution is needed about any new statements on governance.

Afghan and international efforts to promote justice have so far had too little relevance to what McChrystal called the 'fundamental underlying truths'. With a few exceptions, policy changes have not included a willingness to bear real costs when justice and more immediate priorities have collided. The pattern since 2001 has rather tended to be one of repeated pursuit of short-term solutions which do not confront the underlying challenges, especially with regard to justice. Despite the fact that these solutions frequently fail (or indeed make things worse), failure has tended to produce another short-term fix, rather than a determination to finally confront the elephant in the room – after all, the worse the crisis, the less one can afford to take a long-term approach. A minimal historical perspective makes clear the major role of injustice in the decline in security since 2001, but at no point has this led to strategic clarity about the need to finally confront the underlying problem – an extraordinary gap.

As pressure grows for the withdrawal of foreign forces, so will the temptation presented by these shortcuts. The challenge is that it is precisely now that it is important to have a strategy which engages with these problems. It is far from an exact parallel, but there are echoes of 1992, when the lack of interest in building a viable state allowed the Taliban to establish their power; perhaps now is a time to remember the lessons of that era. Of course, these issues are often difficult to deal with. But the point is that justice has so far never been a genuine priority when it comes to the crunch, an issue of core interests that will command hard-edged support when it competes with other priorities. Changing this is critical for any prospect of long-term stability in Afghanistan.

221 'From autumn 2003, the American military strategy changed from "going after the bad guys and killing them" to counter-insurgency: this meant working for nation-wide "enduring stability" and conceiving the enemy no longer as, "just terrorists (but) anything which threatens to undermine security and stability" (Major Rick Olsen, Commander of CJTF 180, 8 May 2004). This supposedly put warlords, armed factions, narcotics and a recognition that the war had a political dimension on the agenda. According to the head of the Coalition, General David Barno, "The real battle is for the Afghan people ... They are the centre of gravity of our operations." Unless legitimate Afghan institutions were built up, it was thought, Afghanistan would remain a source of instability.' Clark et al., 'Provincial Reconstruction Teams in Afghanistan'.



CHATHAM HOUSE

Chatham House, 10 St James Square, London SW1Y 4LE
T: +44 (0)20 7957 5700 E: contact@chathamhouse.org.uk
F: +44 (0)20 7957 5710 www.chathamhouse.org.uk

Charity Registration Number: 208223