THREE ESSAYS ON INSTITUTIONAL CHANGE IN AFGHANISTAN

by

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A Dissertation
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Master of Arts
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Director: Christopher Coyne, Professor
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DEDICATION

To my Parents - *Mah*, your unrelenting love and innumerable sacrifices gave wings to all my aspirations. Dad, your unconditional support and encouragement taught me to strive higher, farther and with principle. And to my Father, whose loving memories have, and always will, continue to comfort and inspire me.
I will forever be grateful.

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TABLE OF CONTENTS

Page
List of Figures viii
Abstract ix
Introduction 1
Chapter 1 - Contracts under Pashtunwali 6
I. INTRODUCTION 6
II. Literature Review 7
III. INSTITUTIONS OF PASHTUNWALI 12
A. Pashtunwali Norms 14
B. Honor vs. Reputation 15
C. The Jirga System 23
IV. TRADE AND CONTRACT UNDER ANARCHY 28
A. Intergroup Trade 37
V. IMPLICATIONS 46
Chapter 2 - Fitting a Square Peg in a Round Hole: Why the West's Effort to Reform Afghanistan's National Institutions Have Failed 47
I. INTRODUCTION 47
The intentions were to help rebuild and reform Afghanistan. The goal of the U.S. was to 47
II. Literature Review 50
III. The Realities of Afghanistan: A Meta-View 55
SECTION IV. Analysis of Existing Institutions in Afghanistan 59
A) The importance of tribal organization in Afghanistan 59
B) Local conflict resolution: Who resolves conflict in Afghanistan? 69
C) Maintain Peace and Social Cohesion through Community-Based Dispute Resolution 75
D) Incentive for being a decision-maker and resolving disputes. 80
E) Local Policing 83

F) Community-led Aid: National Solidarity Program 90
SECTION V. Implications 91
Chapter 3 - Institutional Change and the Dichotomy Between the West's Efforts: A Micro-level Analysis 94
I. INTRODUCTION 94
II. Literature Review 98
III. INSTITUTIONAL SETTING OF ISTALIF 106
IV. IMPLICATIONS 131
Concluding Remarks 133
References 136
"A Survey of the Afghan People." 2011. *Asia Foundation.* 136
Benson, B. 1988. "Legal Evolution in Primitive Societies," *Journal of Institutional and* 137
Dupree, L. 1973. *Afghanistan*. New York: Oxford University Press, USA. 140
Fukuyama, Francis. 1996. *Trust*. New York: Simon & Schuster. 141
Istalif District Profile. 2002. UNHCR Sub-Office, Central Region. 142
Keane, John. 1996. *Reflections on Violence.* London: Verso. 143
Klein, D. 1997. *Reputation*. Ann Arbor: University of Michigan Press. 143
Landa, Janet T. 1981. "A Theory of the Ethnically Homogeneous Middleman Group: An 143
Leeson, P. T. and Edward P. Stringham. 2005. "Is Government Inevitable?" *Independent* 144
Menger, Carl. [1871] 1994. *Principles of Economics*. Grove City, PA: Libertarian Press. 145
Ovaska, Tomi. 2003. "The Failure of Development Aid," *Cato Journal* 23(2): 175–188. 146
Pashtunwali: Honour Among Them. 2006. *Special Report. The Economist.* 146
Rice, Condeleezza. 2005. "Remarks at American Bar Association's Rule of Law 147
Scott, James C. 1998. *Seeing Like a State*. New Haven: Yale University Press. 148
Sowell, T. 1980. *Knowledge and Decisions*. New York: Basic Books. 148
The Library of Congress. Retrieved from http://countrystudies.us/afghanistan/72.htm 149
Vogelsang, Willem. 2002. *The Afghans.* Oxford: Blackwell. 149
Whitehead, A. 1929. *The Aims of Education and Other Essays*. New York: Macmillan. 149

Biography..... 150

LIST OF FIGURES

Figure Page
Figure 1 Unemployment .....**Error! Bookmark not defined.**

ABSTRACT

THREE ESSAYS ON INSTITUTIONAL CHANGE IN AFGHANISTAN

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This dissertation will explore the institutional changes in Afghanistan in two different periods. The first part of the dissertation will highlight the historical institutional setting before the invasion of the Taliban in the late 1980's. The majority of rural areas in Afghanistan were embedded with customary law known as Pashtunwali, which consisted of self-enforcing norms coordinating credit transaction, and facilitating peace and harmony. The second part of the dissertation will discuss the effects of the post-U.S. intervention reforms in Afghanistan, focusing on explaining the disjoint between intended policy goals and the realities on the ground. Embedded and effective norms at the local level create a dysfunctional marriage between imposed formal rules and already established informal rules. The central contribution is the blending and application of insights from the New Institutional and Austrian economics literature for understanding (1) the ability of "outsiders" to generate exogenous institutional change, (2) the unintended consequences associated with such efforts, and (3) the realities of Afghanistan

in the pre- and post-occupation periods. The dissertation consists of five sections outlined below as a survey of the relevant literature, three essays, and concluding remarks and implications.

INTRODUCTION

The recognition of the role of institutions in economic, social, and political outcomes is not a novel idea. Human behavior has always been guided by given constraints. Pioneers who laid out these ideas range from philosophers Adam Smith and Montesquieu in the 18th century to the more recent economists such as F.A. Hayek, Ronald Coase, Douglass North, and James Buchanan. While there is widespread recognition that "institutions matter," Buchanan (1995) warns that this claim seems to be a call for economists to explore structural constraint that can implicitly be assumed to be subject to exogenous change. He stresses, "Such an interpretation [that institutions matter] prompts ideas to the effect that reform limited to modifications in formal institutional structures may be all that is required to insure progress toward the achievement of agreed upon end-state objectives" (p.195). Buchanan (1995) advises to "acknowledge the influence of internal constraints on behavior" and objectively analyze the "directional efficiency of institutional reform" (p.195). What this means is that just because we cannot explain something does not mean it does not exist, such as the influence of informal institutions and cultural *métis*.

North (1990) famously states, "Institutions are the rules of the game in a society" (p.3). These rules are either informal or formal and serve to constrain social organization. Hayek (1979) highlights the importance of informal institutions being complementary to

formal rules such as codified constitutions. Those "fortunate countries" Hayek writes, "have made constitutions work which did not explicitly state all that they presupposed, or which did not even exist in written form" (1979, p.107–108). The emergence of institutions such as language, law, and money has served civilizations but has not been through any design but spontaneous order (Hayek 1979; Menger [1871] 1994; Mises 1949). Informal institutions constitute norms and belief systems that are embedded in culture. As Buchanan (1995) emphasizes,

> If the propositions of economic sciences are to be useful in drawing normative inferences concerning the constitutional-organizational structure of society, cultural parameters that describe the behavioral attitudes of participants must be taken into account. In this sense, there is indeed an Economics that must be culture bound (p.199).

Boettke (2001) further explores "Why culture matters", and concludes that while "economic performance is a function of the rules of the game…[and] rules are a function of 'culture'…[then] Rules are only RULES if customary practice dictates" (p.257, capital letter original). Customary law binds people and therefore is reciprocal in nature of the benefits. According to Benson (1990):

> Customary law is recognized not because it is backed by the power of some strong individual or institution, but because each individual recognizes the benefits of behaving in accordance with other individuals' expectations, given that others also behave as he expects. Alternatively, if a minority coercively imposes law from above, then that law will require much more force to maintain social order than is required when law develops from the bottom through mutual recognition and acceptance (p. 12).

Hence, Hayek's (1979) emphasis that we develop reason because we follow rules, not design rules through our reason (Boettke 2001, p.257). Taken together, what this implies is that if economics is the study of human behavior given certain constraints, and human behavior is "influenced by norms that act as internal constraints" (Buchanan 1995,

p.194), then economists must strive to understand internal constraints influenced by culture and informal institutions.

In Afghanistan, the lack of state presence is historical in nature. The state never had a strong hold on the lives of people. Historically, a majority of the population has lived in rural areas under their own rules and institutions. The Pashtun tribes, which consisted of half of the population (CIA World Factbook) before the Taliban invasion, lived according to the customary law known as Pashtunwali. In 1815, Mountstuart Elphinstone mentions "Pooshtoonwulle" as a "peculiar code" among Pashtun tribes (p.165). The Pashtun culture and tradition has traveled through generations for centuries. Pashtunwali, which translates to "the way of the Pashtuns" (Rzehak 2011, p.2), is a code of honor (*nang*). There are no formal written rules, and the most important concept, *nang*, is fungible and functions like a reputation mechanism as a social capital (Ginsburg, p.7). According to Pashtunwali, cooperation and coordination are critical in keeping peace and harmony. The use of council members, called jirga, allow for adjudication and conflict resolution according to the set of informal norms. Trade and credit transactions were coordinated through self-enforcing norms of honor not only between ethnically homogenous tribes but also between heterogeneous tribes such as Pashtuns and Hazaras. This has important implications because economic transactions were not regulated by the state. Private individuals managed to use spontaneously emergent institutions as a mutually beneficial system to enforce cooperation and economic prosperity.

The present situation in Afghanistan may seem different than decades ago, with development aid, military assistance, and policy reform affecting the country. However,

these historical institutional arrangements are still intact and therefore play a central role in the feasible institutional alternatives that currently exist in Afghanistan. This recognition is crucial because there exists a dichotomy between the Western alliance's intended goals of policy reforms through exogenous institutional change and the historical-based realities on the ground. For example, local areas such as Istalif still abide by a specific set of complex, context-specific informal norms, which are different than those in other areas of the country (see Coburn 2011).

The first chapter explores the historical evolution and role of Pashtunwali norms in Afghanistan. I analyze the economics of Pashtunwali and highlight the notion of honor in as a self-enforcing conflict resolution mechanism facilitating cooperation and trade. Evidence shows that in the absence of effective state-based institutions, credit was present and enforced in rural areas of Afghanistan between ethnically homogenous people and ethnically diverse agents.

The second chapter surveys the literature on implementing institutional change in regards to the knowledge problem and the enforcement cost of imposing formal rules when there is a disjoint with existing institutions. Research suggests that exogenous rule reforms often suffer from a knowledge problem and therefore fail to "stick" in the desired manner. Employing this logic I explore the local realities on the ground in Afghanistan with particular focus on the central role of tribes and jirgas, the practice of Pashtunwali (customary law), the use of community-based conflict resolution, and the relative effectiveness of local policing. In doing so, I highlight the disjoint between these realities and the desired reforms intended to change Afghanistan's institutions.

Using the anthropological analysis of Coburn (2011) as a starting point, the third chapter examines the local institutions in Istalif, a town in Afghanistan. I discuss the effective practices, and self-enforcing norms and conventions exercised by the economic and political actors. Istalif represents one manifestation of this reality, and makes clear why efforts at top-down institutional change have often failed to stick in the desired manner. The recognition and appreciation of the local complexities in Afghanistan lead to strong skepticism regarding proposed efforts to impose reforms through national institutions.

CHAPTER 1 - CONTRACTS UNDER PASHTUNWALI

I. INTRODUCTION

How do private individuals take advantage of the gains of exchange without the state to enforce contracts? This is an important question given that the benefits of peaceful economic cooperation are at stake in a world with incomplete markets and ineffective governments. First, as Rajan (2004) points out, it is a more realistic approach to assume incomplete markets in "a world where nothing is enforceable... – as in the world of Hobbes" (p.57). In the spirit of Rajan's call to "assume anarchy," this chapter analyzes Pashtunwali, a norm-based institution, which allowed for repeated trade and self-enforcing contracts between the nomads in Afghanistan during the mid-20th century. In the absence of state and formal legal system, ethnically diverse tribes from distant provinces were able to freely trade and develop bazaars. Honor was the feedback mechanism to ensure that a mutually beneficial trade takes place without cheating. When there were defectors, the enforcement mechanism consisted of the *jirga* system, which adjudicates disputes and enforces punishments through ostracism. In contrast to the position that long-term trade and contracts depend on the enforcement of state- created rules and regulations, the historical record lends credence to the theories that contracts can be self-enforcing and that market participation can regulate themselves.

II. Literature Review

In recent years, there has been a growing discussion in the academic literature about the reliance of individuals on informal institutions, as compared to more formal institutions provided by state, to resolve conflicts and encourage trade where government was ineffective or absent. Benson (1988, 1989); Leeson and Stringham (2005); and Posner (1980) document the functioning of conflict-inhibiting norms in a variety of primitive societies. Coyne and Leeson (2011) explore the emergence of conflict-inhibiting norms as institutions that promote cooperation in the absence of the state, but also when the state is unable to coordinate cooperation and limit conflict. Anderson and Hill (1979, 2004) analyze land club rules in the absence of government in the 19th century American West. They discuss land club rules based on norms enforced through boycott and ostracism. Individuals also use norms to govern their relations where governments do exist but norms are a more cost effective means of limiting conflict compared to state-made institutions. Ellickson (1991) for example describes how cattle ranchers in Shasta County, California established norm-based enforcement mechanisms such as *gossip* to enforce property rights. The threat of negative gossip was a cheaper and more effective punishment mechanism to modify behavior compared to lawsuits. Ostrom (1990) and Ostrom, et al. (1994) discuss situations where private individuals rely on norms to enforce property rights and limit conflict when the state is existent but ineffective.

Boot, et al. (1993); Klein and Leffler (1981); and Telser (1980) present theories of how contracts can be enforced without state institutions. One of the major aspects of their

analysis is the central role of repeated interactions and reputation. The benefits of abiding by one's contract are greater than the benefit of a one-time cheat, which induces cooperation. Specifically, Klein (1997) shows that even in situations where contracts cannot be enforced, reputation is an important mechanism to create incentives for cooperation. Schaeffer (2008) examines the informal money transfer system, *hawala*, as a self-enforcing remittance network between South Asia and the rest of the world. *Ex ante* signaling devices reassure peripheral clients while *ex post* reputation mechanisms sustains cooperation within the core of the network. Bernstein (1992) analyzes the mechanics of trading in an unregulated diamond industry and finds that norms, such as reputation building, are used to signal cooperation and trustworthiness in order to encourage repeated trade rather than making a one-time gain from cheating. Landa (1981, 1994) shows that reputation can be established through a close-knit ethnic community. However, as traders become more socially diverse, close-knit ethnic reputation may disappear. While this may initially seem to provide a problem for securing cooperative behaviors, a recent literature shows that this need not be the case. Leeson (2005, 2006, 2007b, 2008, 2009a) provides an array of examples where decentralized self-enforcing institutions were established to prevent conflict and facilitate cooperation between heterogeneous, inter-group agents. In pre-colonial Africa, mechanisms such as social distance-reducing signals were placed to facilitate trade between heterogeneous agents (Leeson 2005). Norms were also developed to transform the middlemen's incentive from violent banditry to peaceful exchange (2007b). Elsewhere, Leeson (2007c) shows, in Somalia for example, certain norms provided a form of governance in the absence of the

state. He finds that the state of anarchy in 1991 indicated an improvement in welfare when examining the before-and-after comparison of available development indices. Additionally, Leeson (2009c) studies the decentralized legal order, *Leges Marchiarum*, of Anglo-Scottish borderlands in the sixteenth century. He states, "These laws of lawlessness governed all aspects of cross-border interaction" (p.471) to regulate the system of intergroup banditry and prevent hostility. Leeson (2010) highlights the emergence of conflict-inhibiting norms which 18thcentury merchant ships enforced to promote cooperation instead of conflict. Leeson (2007a, 2009a, 2009b) analyzes the Caribbean pirates' remarkable self-governed societies while in the midst of the ocean where anarchy was evident. Pirates established and agreed to "pirate codes" called "articles of agreement" that entailed conflict-inhibiting norms. Furthermore, Benson (1989) and Milgrom, et al. (1990) document that in the absence of state-created institutions, socially diverse medieval merchants in Europe relied on the privately established and enforced *lex mercatoria*, or Law Merchant, to facilitate trade. Likewise, Greif (1989, 1993) and Clay (1997a, 1997b) discuss the interaction between long distance merchants trading. Incentives for cheating are eliminated when information regarding the reliability of prospective merchants can be shared. Such multilateral reputation mechanisms (Greif 1993; Greif, et al. 1994) facilitate trade and eliminate cheating between merchants who do not have previous experience and/or don't plan to trade with each other in the future. Furthermore, Stringham (2003) examines the first stock market, the Amsterdam Bourse, where financial contracts were unenforceable by government courts. Traders were able to develop trading instruments such as the reputation

mechanism that enabled them to trade without sophisticated financial contracts. Finally, Ginsburg (2011) provides a general framework of Pashtunwali and analyzes the mechanism of the norms facilitating cooperation. He identifies Pashtunwali as "adjudicating under anarchy," an informal legal institution that is able to coordinate private expectations to other parties' likely behavior in the absence of an effective formal state.

This chapter contributes to these two strands of literature: the literature on the role of self-enforcing norms that coordinate cooperation, and the literature on the economics of Pashtunwali. First, I explore the economic transactions within Pashtun nomads, and between Pashtuns and non-Pashtun nomads (Hazaras). This study attempts to understand the use of Pashtunwali norms in terms of trade and credit between individuals in the absence of state regulation, which will add to the existing literature on self-enforcing norms to coordinate human interaction. Pashtunwali, a customary law, allowed for repeated trade and self-enforcing contracts between the nomads in Afghanistan during the mid-20th century. In the absence of formal legal systems and state regulation, ethnically diverse tribes from distant provinces were able to freely trade and develop bazaars, and ultimately offer lending contracts. *Honor* was the feedback mechanism to ensure a mutually beneficial trade takes place without cheating. Frederiksen (1996) say the notions of Pashtunwali have proved to be "important for the growth and maintenance of Hazarbuz trading activity" (p.223) because they are able to enforce contracts without resorting to state regulation.

When there were defectors, the enforcement mechanism consisted of the jirga system – council of tribe members – that adjudicated disputes and enforced punishments through ostracism, fines, burning of the house, and ultimate revenge by the injured party. Jirgas are still present in Afghanistan as an informal enforcement mechanism. In contrast to the position that long-term trade and contracts depend on the enforcement of state created rules and regulations (Glaeser, Johnson, and Shleifer 2001; Olson 1996), the historical record lends credence to the theories that contracts can be self-enforcing and that market participants can regulate themselves (Benson 1989; Milgrom, North, and Weingast 1990; Boettke, Coyne, and Leeson 2008; Leeson 2007, 2008). Afghanistan's century-old rural economy deserves a significant economic analysis, and has largely been neglected by the economics discipline. The study will help highlight the foundations of the Afghan society and its economic history.

Second, my analysis will extend Ginsburg's (2011) explanation of conflict inhibiting Pashtunwali norms in terms of trade relations between ethnically diverse tribes. Ginsburg (2011) identifies Pashtunwali to have a "particular logic of its own" and refers to it as "adjudication under anarchy" (p. 2). While Ginsburg (2011) views the threat of (or expected) revenge as the peace-keeping equilibrium variable in the hawk-dove game, my analysis will show that the preservation of honor is a conflict-inhibiting mechanism in trade between Pashtuns and non-Pashtun tribes. Several mechanisms of privately enforced sanctions were used through the system of honor. Cooperation was rewarded with building social capital such as honor. Defectors who lost the trust of business

partners were deemed dishonorable, which is the worst affliction to a Pashtun. Non-Pashtuns, while not observant of Pashtunwali norms, followed the system of honor.

The chapter has the following structure: Section II analyzes Pashtunwali norms and its historical evolution. This section develops honor as a mechanism facilitating cooperation. Furthermore, I will identify the economics of Pashtunwali in terms of a self-enforcing conflict resolution mechanism. Section III extends the honor mechanism beyond facilitating cooperation to further explain it as a trade facilitator. To do so I will draw on the extensive evidence from anthropologist groundwork by Dupree (1973); Frederiksen (1996); and Ferdinand (1962, 2006). Their research is a thorough analysis of trade and credit between ethnically diverse tribes in 20th century Afghanistan. Evidence shows that without state based institutions, credit was present and enforced in rural areas of Afghanistan between ethnically homogenous people and ethnically diverse agents. Section IV examines the implications of the analysis.

III. INSTITUTIONS OF PASHTUNWALI

Afghanistan is often depicted as a war-torn country with a tragic economic development. But Afghanistan has not always experienced conflict and disorder from frequent civil wars, ethnic feuds, and lawlessness. In fact, since the late-19th century, between 1881 and 1978 specifically, Afghanistan had greater stability than many European countries (Roy 2003, p.1). More interestingly however, the majority of population that lived in rural areas, where the state was absent and ineffective, cooperation and order was present within and amongst the rural tribes. The question is,

what facilitated cooperation during this period? My analysis shows it was an important customary law known as Pashtunwali, adhered to by majority of rural Pashtun tribes.

Pashtunwali is an "indigenously introduced endogenous institution" (Boettke, Coyne, and Leeson 2008) by Pashtuns. Pashtuns are the largest ethnic group in Afghanistan compromising almost 50%[1] of the population. Afghanistan's native Pashtun tribes have been known to inhabit the region since at least the 1st millennium BC. "Herodotus mentions a tribe called Pactyan as inhabiting much of what is today Afghanistan...and it is speculated by some that these people were the ancient ancestors of the Pashtuns" (Sabahuddin, p.15). Misdaq (2006) states, "Pashtuns form one of the world's greatest tribal groups, occupying extensive and varied lands, and are endowed with a particular warrior upbringing and history that has been a challenge to many armies and empires throughout recorded history" (Misdaq 2006, p.10). In 1815, Mountstuart Elphinstone mentions "Pooshtoonwulle" as a "peculiar code" (p.165) . The Pashtun culture and tradition have traveled through generations for centuries. Pashtunwali[2], which translates to "the way of the Pashtuns," is a code of honor (*nang*). The set of norms has evolved from the indigenous individuals of Pashtun tribes as a fluid institution. More importantly, being Pashtun means to adhere to Pashtunwali. A Pashtun without honor is the worst affliction on him and his tribe; therefore, he will adhere to Pashtunwali to maintain his honor at any cost.

[1] http://www.umsl.edu/services/govdocs/wofact90/world12.txt
[2] See e.g., Pashtoonwali, at http://www.khyber.org/culture/pashtunwali.shtml ("Pukhtoonwali, Pukhto and Pukhtoon have become almost synonymous terms). Pashtunwali is an alternative and acceptable spelling.

A. Pashtunwali Norms

Pashtunwali is a set of unwritten norms that rely on honor. The preservation of honor becomes an essential mechanism amongst other norms to enforce cooperation and limit conflict. The major norms are: *badal* means revenge – eye for an eye; when a Pashtun is wronged, he is required to defend his honor at any cost. *Nanawati* means mediation and forgiveness after a conflict, or one's surrender, is also prescribed to uphold a Pashtun's honor. *Melmastia* means hospitality and sanctuary or protection, enhances a Pashtun's honor. These three main tenets of Pashtunwali, revenge, mediation, and hospitality, rely on the most important pillar called *nang*, or defending one's honor.

Often times, a *jirga*, which is a council of elders, is requested to resolve a conflict through mediation (*nanawati*). The *jirga* system can further announce a *teega/kanray*, which is a cessation of feuds and bloodshed. Furthermore, a repentant individual can ask for forgiveness through an open statement of announcing guilt (*tor*). *Nanawati* creates a "congenial atmosphere for peaceful co-existence and mutual understanding through eventual reconciliation" ("Pashtunwali" 2013). Hospitality (*melmastia)* is a measure of honor; the more hospitable, the more one is honorable. *Melmastia* is also in accordance with *nanawati* to create sanctuary if needed. Resorting to any other means other than cooperation is a disgrace to a Pashtun's honor when a peaceful resolution has been offered.

In the event, when conflict between two parties is not peacefully resolved, revenge is a retaliation tactic of last resort. Because honor must be preserved at all costs (Dupree 1973), revenge (*badal*) is expected to defend one's honor, women's honor, and

property (*ghayrat/namus*) (Ginsburg 2011). *Baramta/bota,* a branch of *badal,* is an enforcement mechanism by taking hostage as ransom for recovery or restitution of property/debt. Otherwise, *saz*, blood money or the exchange of daughters for marriage will be requested for compensation. Expected revenge is a mechanism that deters a Pashtun from engaging in a transaction that can potentially turn him into a defector. A more in-depth analysis regarding this mechanism will be provided after the discussion between the differences of honor and reputation in regards to Pashtunwali.

B. Honor vs. Reputation

Philosophers such as Aristotle, Montesquieu, and Adam Smith have put great importance on honor because it connects individuals. However, the term *honor* can be interpreted in many ways, such as reputation. Given that honor is the most significant pillar of Pashtuns, it is important to define and understand honor in terms of Pashtunwali before elaborating on the norms.

Post (1986) makes a distinction between "reputation as property" and "reputation as honor". He identifies *reputation as property* similarly to the concept of reputation according to conventional wisdom where it is "earned" through an individual's effort and he is in control of "creating his reputation" (p.698). Reputation provides an individual with a means to "possess personal identities that are distinct and anterior to their social identities" (p.696). Therefore, reputation as property "presupposes that all persons are equal…no person has the right to a reputation other than that created by the evaluative process of the market" (p.696). Reputation is "not an absolute, a matter of either honor or

dishonor" (p.696). Reputation becomes fixed and is largely internalized. This is the definition similar to Ginsburg's (2011) discussion of Pashtunwali. He claims that the concept of honor, *nang*, is "fungible" which means it can be replaced or refined similar to reputation. My analysis will distinguish between honor and reputation, while Ginsburg (2011) treats reputation and honor as interchangeable.

Conversely, "reputation as honor" is ascribed by social status. According to Post (1986), honor is earned, not created "through effort or labor; he claims a right to it by virtue of the status with which society endows his social role" (p.700). In this setting, individuals have different social roles and are therefore "inherently unequal" (p.700). Thus, the concept of honor creates a hierarchy within these social roles. In Pashtun society for example, while members of jirga have equal voice, the elderly have greater role in their tribe and decision-making. Furthermore, O'Neill (2003) develops two concepts of honor, the personal and social aspect of honor. Personal honor is a "sense of honour" that refers to the individual's values as "bundle of goals…[that] include a readiness to defend his family, group, territory or religion…[and] the bundle contains a further goal: to want to be seen as honorable" (p.230). Social honor, on the other hand, refers to an "audience's estimate of his personal honour" (p.230). Similarly in Pashtunwali, a Pashtun is required to defend that bundle of goals in order to be honorable among his social group. O'Neill (2003) estimates the utility function of an honorable man by measuring personal honor as h, and the group's expectation of that personal honor – individual's social honor – as E[H]. A person therefore wants his utility function to be hE[H], which suggests a high social honor to be part of his personal honor. O'Neill

(2003) states that honor is therefore "self-referential, and this distinguishes it from other social regulators like duty, virtue and principle, or social face and humiliation" (p.230). More importantly,

> The social functions of a high E[H] are deterrence and reassurance. It deters my adversary from violating my interests and reassures those in my group that I will stand with them, giving them a reason to stand with me. Keeping my honour secret would undermine those purposes. The idea that honour means wanting to be seen as honorable leads individuals to credibly display it, usually by a costly or risky deed. It means that they worry about small transgressions that do little harm to their interests, and will carry out retaliation even when doing that will not repair the harm done. Another person's challenge may be a purely verbal or symbolic act but it can put one's honour at risk (p.231).

Honor, unlike reputation, demands for a greater signaling device and consequential retaliation tactic when at risk. Honor also has an externality aspect. A dishonorable act affects the members of society. According to Post (1986), preserving honor "entails more than the protection of merely individual interests. Since honor is not created by individual labor, but instead by shared social perceptions that transcend the behavior of particular persons, honor is 'a public good, not merely a private possession' (Bellah, 1986)" (p.702). Members of the same social status have an incentive to be involved in preserving the honor of their fellow men. "The protection of honor thus involves the maintenance of 'the consensus of the society with regard to the order of precedence' (J. Pitt-Rivers, 1966)" (Post, p.702). In Pashtunwali, the main principles such as mediation, forgiveness, hospitality and sanctuary under the tenets of *nanawati* and *melmastia*, depict the importance of the externality of honor because members of either opposing families or tribes will be as affected if conflicts are not resolved and mediation practiced in a peaceful manner.

Honor (unlike reputation), once lost cannot be regained. Post (1986) explains, honor "can be forfeited by improper behavior, but it cannot be individually created" (p.701). Honor is fixed, which means "honor cannot be converted into a continuous medium of exchange" (p.700). An individual's identity is tied to their honor; therefore, the relative cost of losing honor is significantly higher than losing one's reputation, which could be regained with exerted effort. "Whereas reputation as property presupposes that individual identity is distinct from reputation, in the sense that an individual can always construct a new reputation, honor is a matter that swallows 'the whole man'...identity is essentially, or at least importantly, linked to institutional roles" (Post, p.701).

Accordingly, Appiah (2010) explores the theory of honor in several historical settings pertinent to the people and culture of that society such as Pashtuns. He first explains that,

> Having honor means being entitled to respect. As a result, if you want to know whether a society has a concern with honor, look first to see whether people there think anyone has a right to be treated with respect. The next thing to look for of shared norms, a code. An honor code says how people of certain identities can gain the right to respect, how they can lose it, and how having and losing honor changes the way they should be treated (p.175).

Honor codes expect a certain standard of behavior among individuals similarly to Pashtunwali's customary law. Appiah (2010) suggests, Pashtunwali lays great stress on maintaining one's honor by loyalty to one's kin, bravery in battle, hospitality to guests, retaliation for insults, and revenge for injury, whether against oneself or against members of one's family or tribe. The essence of an honorable Pashtun entails maintaining, "One's own good name and that of one's family or tribe" (p.151). In other words, honor is internalized and externalized. Consequently, "if you adhere to an honor code, you'll not

only respond with respect to those who keep it, you'll respond with contempt to those who don't" (p.175). Self-respect is achieved through meeting the standards of Pashtunwali; likewise, failing to meet the standard will result in shame and contempt for oneself. Appiah (2010) points out,

> the honorable person cares about honor itself, not simply about the social reward of being considered honorable. Emotions like shame (and price) are reinforced, it's true, when other people are watching – especially those whose respect matters to me most. Nevertheless, honor requires me to conform to the standard for its own sake, not merely for the sake of reputation and its reward. And someone who aims at reputation for its own sake is taking a dishonorable short cut. (p.18)

The strict guidance of Pashtunwali rests on maintaining honor rather than simply having a good reputation.

> Someone who just wants to be respected won't care whether he is really living up to the code; he will just want to be thought to be living up to it. He will be managing his reputation, not maintaining his honor. To be honorable you have both to understand the honor code and to be attached to it: these are the conditions that the anthropologist Frank Henderson Stewart takes to define a sense of honor. For the honorable person, honor itself is the thing that matters, not honor's rewards. You feel shame when you have not met the standards of the honor code; and you feel it- remember Descartes – whether or not anyone else knows you have failed. Shame is the feeling appropriate to one's own dishonorable behavior (p.16).

The important matter of an honor code is that "people who respect a shared code belong to a shared honor world, whether or not they share an identity…they *acknowledge the demands of the code* makes of them in virtues of their identity and expect others to do the same" (italics inserted, p.175). This definition introduces an important caveat; individuals with different identities can still share an honor code as long as there is an acknowledgement and adherence to the rules. In this case, Pashtuns and non-Pashtuns are able to share Pashtunwali customary law as long as there is mutual understanding and adherence to the honor norms.

The reason honor is stressed rather than simply reputation is because adherence to Pashtuwali's norms provides a stronger enforcement mechanism – honor is externalized, internalized, has a greater signaling force and expected retaliation, and honor is fixed (once lost, it cannot be restored). According to Groh (2006), "The Pashtun's concept of honor is not derived from a western society's modern definition of honor which is based on morality or justice, but rather from a close, *unquestionable observance of Pashtunwali*" (p.16) (italics inserted). In other words, a Pashtun has honor when he acknowledges and adheres to Pashtunwali. Ginsburg's (2011) analysis of Pashtunwali as a conflict-inhibiting mechanism identifies *nang* (honor) as reputation. However, as it will become clear, the difference illuminates how honor unlike reputation is able to better identify defectors through signaling mechanisms and the efficient flow of information**.** There are three main reasons why honor relative to reputation becomes an important mechanism. First, maintaining an already ascribed honor becomes synonymous with adherence to Pashtunwali norms such as being hospitable, using the jirga process of conflict resolution, and preserving peace by avoiding violence. Pashtun author Abdullah Bakhtani states, "a person who speaks Pashto but has no Pashtunwali is not a Pashtun because persons from other peoples also have learned Pashto and speak it. Only a person who does Pashto and follows its rules has Pashtunwali" (cited in Rzehak, p.9). While creating reputation is a choice, a Pashtun initially has no choice of inheriting honor by being born into Pashtun family. He must either maintain his honor by adhering to Pashtunwali or be ostracized. In other words, acquiring honor requires a Pashtun to maintain that honor. Secondly, honor unlike reputation, is externalized and linked to

social status. Members of the same social order therefore share the honor, have an incentive to invest in maintaining the honor, and punish if one deviates. Finally, once honor is lost, it cannot be restored, which leads to losing one's identity as a Pashtun and being ostracized even by non-Pashtun tribes. These attributes of honor in accordance with Pashtunwali establish an enforcement mechanism that allows individuals in Pashtun societies to ultimately follow a code of coordination and cooperation without immediately resorting to the use of violence.

The main issue facing individuals is how to separate "cheaters" from "non cheaters." A mutual exchange takes places when there is a separating equilibrium mechanism such as establishing a costly signal to solve this asymmetrical information problem. Among Pashtuns, defending their honor becomes a costly signal, as they have to constantly display their adherence to Pashtunwali norms in order to maintain their honor. Certain tenets such as honesty, hospitality, defending women, land, and property, and adherence to a jirga's verdict, all become part of an honorable Pashtun's "duties." Landa (1994) offers perspective on practices similar to hospitality and gift exchange system because they "serve as signaling devices of *mutual cooperative intent* on the part of both the giver and receiver" (p.162). These signaling devices separate cheaters from non-cheaters because non-cheaters maintain honor and therefore if they defect they lose their identity and all future flow of benefits. A one-shot defector is further punished through the jirga, the expected use of revenge such as hostage taking and burning of the house.

While these aspects, being honorable meaning adhering to Pashtunwali norms are important, a well-developed communication system allows for a constant flow of

information sharing. With over 90% (Frederiksen 1996) of illiterate Afghans, oral information becomes critical. Frederiksen (1996) states that he was “deeply impressed by the reliability and the speed at which information traveled” (p.230). Information regarding middlemen, traders, and buyers were mainly a focus point, but specifically regarding the genealogy of Pashtuns allows individuals to establish which tribe a Pashtun is from and therefore learn of their honor status. According to Rzehak (2011), “Genealogical knowledge is of vital necessity in a society which is structured along patrilineal descent groups of different size” (p.8). A Pashtun has great knowledge about his forefathers and ancestors…“for about seven or eight generations as a minimum” (p.8). However, extensive information on genealogical knowledge is obtained by elder tribesmen who are “regarded as experts in the field…[and] they refer to the written genealogy trees (shajara) of their clan, sub-tribe, or tribe” (p.8). The transparency of information is facilitated through frequent family interactions and personal networks. “Oral knowledge of the genealogical traditions remains absolutely essential. When two Pashtuns men meet for the first time, they often check their genealogical roots. If they find a common ancestor, the chance acquaintance will turn into a relationship with mutual obligations and support” (p.9). Common ancestor means if they share honor as tribe members.

Every Afghan is born into a tribe, and every tribe is either honorable or dishonorable in the eyes of society. In history, non-Pashtuns have also become observant of Pashtunwali. While Pashtunwali is strict on adhering to its norms, it is the application of Pashtunwali, which translates into an “honorable” man. The costly signals for non-

Pashtuns were not only to follow Pashtunwali norms but also learn the Pashto language and marry into Pashtun families. The flow of information becomes even more important in this setting when non-Pashtuns enter a tribe. A jirga examines and determines whether the individual is worthy or honorable. Honor here again has an externality factor and is a one shot deal.

In the absence of a formal rule of law, harmonious social and economic interaction between intergroups such as Pashtuns and non-Pashtuns were prevalent in rural Afghanistan. When disputes arose between these heterogeneous groups, Pashtunwali enforcement mechanisms were relied upon to deter and punish defectors. While not directly observant of all Pashtunwali norms, non-Pashtuns such as Hazaras did adhere to the important norms such as the jirga and its conflict resolution norms. The jirga system to resolve disputes is used by other ethnicities. Hazaras used this mechanism as well; however the difference is the defense of honor, which is not strongly present amongst non-Pashtuns.

C. The Jirga System

The use of *jirga* is an important part of Pashtunwali because the norms are enforced by the jirga. The jirga system is a customary judicial institution without a hierarchical structure since there is no one head or adjudicator. The jirga has been called "the closest thing to Athenian democracy that has existed since the original" (Spain 1963, 69). When a conflict arises, a case is heard by a jirga. Opposing parties choose the council of elders/tribesmen and hear the case in equal voice. According to Ghani (1978),

“the arbitration committee(s) were appointed through the agreement of the two parties, and their decisions could be repealed in a larger committee. Special mechanisms for adjusting the conflicts between individuals, lineages, clans and tribes did exist but the overall tendency, at every level, was that characterized by mediation” (p.269). Once the case is discussed and arbitrated, the jirga’s final decision is declared to both parties and becomes common knowledge. The decision is adhered to; otherwise the enforcement mechanisms are punitive measures, ostracism, and/or ultimately decided by revenge of the opposing party. An offender that is non-adherent to the norms and the jirga’s decision loses his honor and is therefore ostracized. More importantly, he is no longer considered a Pashtun and loses his identity. Other tribes (Pashtun and non-Pashtun) will also follow the verdict of the jirga and alienate him. These cases are rare since the idea of not defending one’s honor has a worse alternative.

Ginsburg (2011) further explains the conflict-inhibiting mechanism of Pashtunwali norms. He identifies Pashtunwali as having a “particular logic of its own” and refers to it as “adjudication under anarchy” (p. 2). Conflict resolution under an ineffective central government requires alternative methods and institutions that carry out effective private sanctions but also limit escalation of violence. Enforcement of laws must be through private means, therefore, “norms must be self-enforcing, meaning that they are within the interests of individuals to comply with even without centralized coercion” (p.4). While Pashtunwali is a code of honor and behavior rather than a conventional legal code, it “consists of a set of meta-rules about the legitimate subjects of conflict and legitimate ways of resolving them. It is a *cultural* system that channels, and

thus limits, private violence" (p.2) (italics inserted). Institutions like Pashtunwali rely on coordinating parties' expectations of their behavior. Disputants would rather avoid war when cooperation is relatively more socially optimal. However, they are unable to coordinate since both want to signal that they are willing to fight in order to gain, hoping the other will back down. The feedback mechanism of honor and the enforcement mechanism of the jirga system have coordination-enhancing properties that align interests.

In Pashtunwali, the use of a jirga is an important institution to enhance coordinating cooperation and lower the probability for the escalation of violence. Members of the jirga have equal status and have no direct coercive power. While the jirga council members do not have coercive power, the winning party has the right to use force if and only if the losing party does not adhere to the announced verdict. The use of coercion is through burning of the house, hostage taking, and eye for an eye in the case of revenge. The task of a jirga is to deliberate with equal voice and announce a verdict. After the "winner" of the dispute is declared in front of the disputants and their tribe members, common knowledge is established. Common knowledge is when both parties are aware of the final decision, and the content of the decision, but more importantly, this knowledge is shared. While compliance is not guaranteed through a non-coercive sanction system and the "loser" may choose to continue the conflict, the announcement of the verdict becomes self-enforcing because it becomes common knowledge. Ginsburg (2011) explains,

> knowing that the other party has 'won' the loser may suspect that the winner will be more recalcitrant and less likely to back down. Further, the winner's supporters may be willing

> to help him, whereas the loser's supporters, expecting the winning side to defend their claim, may now back down. In such a situation, the adjudicators' decision may in fact be self-fulfilling, in that parties' expectation about others' behavior may lead to compliance without centralized sanctions (p.5).

The legal announcement of the verdict creates common knowledge and therefore a "mechanism for compliance" because the members of society update "their assessments about the likely behavior by the other party" (p.6). It implies that informal law can be adhered to without the use of coercion if it can shape "private beliefs in the likely strategies of other players" (p.6). Accordingly, Benson (1990) states,

> In order for a dispute to end satisfactorily, a decision has to be acceptable—verifiable—not just to the parties most directly affected, but to the groups or firms representing these parties and to groups who, although not directly involved, might be drawn into a confrontation with of the groups in the dispute under consideration (p.36).

Ginsburg (2011) argues Pashtunwali norms and institutions are able to "coordinate private behavior and reduce violence" (p.6). He concludes that Pashtunwali is a self-enforcing system of "non-state norms" that is able to use "non-coercive adjudication" (p.6) to resolve conflicts. Pashtunwali's task as a legal institution coordinates private behavior rather than coerce sanctions. The institutional structure of the jirga system of announcing the decisions creates common knowledge among the disputants and the members of tribes, which facilitates dispute resolution.

Furthermore, the jirga is also able to enforce its punishment through fines and ostracism. When such measures cannot resolve the dispute, a creditor may seize the debtor's cattle for ransom. A harsher method, *baramta/bota*, a branch of *badal* (revenge), is taking the guilty party's kinsman as ransom. The jirga can announce that the winning party can use the hostage tactic without repercussions if the guilty party does not heed to the verdict. This enforcement mechanism allows the winning party to recover

property/debt or reach some agreement within a specific period. Blood vengeance is the most severe method of the enforcement mechanism for the jirga. Retaliation or blood feud (Ginsburg 2011) by an individual known as *badal* is a duty in Pashtunwali when one's honor is questioned and if the defector does not adhere to the jirga's decision. Expected revenge from the private individual signals an aggressive behavior that the probability of progressed conflict is likely and therefore a deterrent to escalated conflict. The use of blood revenge is rare between individuals because of the use of the jirga as a council that uses harmonious methods of mediation and conflict resolution not resorting to more extreme and violent measures. According to Afridi (1980),

> In a society which believes in the doctrine of "an eye for an eye and a tooth for a tooth" and where the shackles of a disinterested and impartial law enforcing agency are non-existent, it is natural that there will be feuds and enmities which extend at times through generations. This has caused the ruin of many a family along the Pukhtuns, since the restrictions imposed on normal economic and social activity of that family is enough to make life impossible for them. On the positive side "one must accept the fact that it is only because of this unremitting principles of revenge that crime in the tribal areas is limited in number and extent. Tribal ties disallow the rule of might the most powerful and affluent Malik will think twice before imposing his will through force on the poorest or weakest of this clansmen. The consequences of any rash act are so serve that they have a deterrent effect. However, when an incident does occur, the tribesman is honour bound to abide by the principle of badal. Here again the strategy of indirect approach is used and the culprit does not usually suffer the consequences personally but revenge may be visited on his close relative or property. There is no time-limit to feuds which may drag on for generations if not resolved. Usually the intervention by a Jirga or some religious or influential leader helps in the settlement of the dispute (p.24-25).

Winston Churchill had said Pashtunwali is "a code of honour so strange and inconsistent that it is incomprehensible to a logical mind" (The *Economist* 2006). Pashtunwali's self-enforcing norms nonetheless were able to coordinate cooperation amongst traders, resolve disputes, and establish peace and harmony without the use of state institutions. As a result, it can be further inferred that the underlying belief system of a society determines the institutional setting.

IV. TRADE AND CONTRACT UNDER ANARCHY

While conventional wisdom suggests an active role of the state to limit conflict between individuals and enforce contracts, my analysis shows that this is not always the case. In cases where the state is weak, dysfunctional, or absent, the government cannot be relied upon to ensure cooperation and coordination between members of society. In such instances, appreciating and understanding the role of informal norms is of paramount importance. Historically, there are numerous instances of peaceful interaction and cooperation between homogenous and ethnically diverse groups in the absence of the state.

In the late mid-20th century, approximately 60 per cent of Afghanistan's national GDP was comprised of agriculture and pastoralism (Grötzbach 1990) and more than 80 per cent of the Afghans were directly dependent on the rural economy (Rubin 1995). Consequently, trade became a significant part of the rural life and further encouraged the expansion of bazaars. Trade existed within Pashtun tribes, but it extended between ethnically diverse traders. Over time, they also established bazaars that accommodated thousands of Afghan traders. More importantly, credit between the two diverse groups emerged allowing more complex transactions to occur. Local trade and credit arrangements between the Pashtun nomads and the Hazaras (Tajik descent) occurred during the summer time, when the nomads traveled with caravans to attend the bazaars.

How were trade and credit transactions facilitated between tribes in rural areas of Afghanistan in the absence of state regulations during the late mid-20th century? It was

discussed earlier that Pashtunwali and its system of jirga were able to limit conflict within Pashtuns without the state institutions. First, the importance of honor to a Pashtun signals adherence to the norms of Pashtunwali and therefore a self-enforcing mechanism to deter defectors. A Pashtun without honor means the worst affliction on him and his tribe, resulting in ostracism and loss of prospective trade opportunities. According to Groh (2006), "A Pashtun must maintain the code to maintain his honor and to maintain his identity as a Pashtun" (p.16). Furthermore, the jirga system was based on customary law, effectively resolving conflicts through adjudication. While the use of force and violence was not a used by the jirga, punishments such as fines and the exercise of revenge (*badal*) were applied. According to Groh (2006), "The concept of justice is wrapped up in a Pashtun's maintenance of his honor. Action which must be taken to preserve honor, but contradicts or breaks the laws of a state would seem perfectly acceptable to a Pashtun" (p.16). In other words, to preserve his honor, a Pashtun would go as far as breaking formal or religious law. Trade, similar to other social interactions, requires a mutual understanding of expected behavior between Pashtuns. Informal systems of trade and credit were based on the self-enforcing norms like honor and the use of jirga.

Trade between Pashtun nomads, whether from the same tribe or not, was based on the adherence to Pashtunwali. In more complex credit agreements, the terms of contract were set before a jirga and witnesses. This was a back up system where the jirga would intervene if either of the party breached the contract. In most cases, the preservation of honor was a self-enforcing mechanism in rural areas of Afghanistan because the cost of losing honor and therefore one's identity outweighed the benefit of a one-time fraud.

Unlike reputation, once honor is lost it cannot be restored with repairing the damage. Ferdinand (2006) states, “Customers who were not involved in feuds with other persons were generally more accepted than those engaging in conflict. The single most important factor, even in petty trade, was whether the seller knew the customers or could trust them. If that were not the case, a guarantor would have to step in before credit was given” (p.396). This trust signifies the underlying honor system in Pashtunwali, in other words, I trust you because you are honorable. Trading was thus “founded upon the reciprocal trust” which, guaranteed that “repayment conditions will be respected” and therefore credit transactions were “not a problem” (Frederiksen, p.230). Furthermore, ostracism and the loss of prospective business opportunities further deter defectors. Other times, a collateral system called “gerawi” allowed the Pashtun to gain prescriptive rights to land if the loan was not paid back on time (Ferdinand 1996, p.134). This was an exception rather than the rule. Even in situations where repeated trade was not a factor – where a traveling debtor considered a breach of contract – the possibility that the lender would have business relations with the debtor’s tribesmen was enough to deter defection. In this case, a debtor’s honor is also his tribe’s honor, and any detriment was shared. Therefore, even when he took advantage of a one-shot deal, he would be accountable for his actions by his tribesmen.

According to Frederiksen (1996), the Hazarbuz, a Pashtun nomad tribe in Afghanistan, became major tea traders and merchants covering most of northern Afghanistan and trading with other ethnicities during the early 20th century in the absence of an effective state. “The Hazarbuz were among other Pashtuns, who in principle had the

same moral codes (*Pashtunwali)*" (original italics) (p.262). According to Frederiksen (1996), "The Hazarbuz state for them the most important word in trading is zamanat, which in Pashto and Farsi means 'trust' or 'guarantee" (p.231) stemming from honor. Most Hazarbuz traders were middlemen; they "would obtain the tea on credit from his kinsmen, and resell it at his own financial risk" (p.192). "A middleman often followed a fixed route, so that customers would know when he would appear" (p.198). His fixed route created a trading network but also a personal connection to fellow Pashtuns. This was an enforcement mechanism for creating credibility since continuing trade rested on being repaid. According to Frederiksen's (1996) interviews, some middlemen "did not write down how much the individual customer owed him. He remembered each client. As a rule, he would have the same customer over many years. The customer was called *bay'par* (regular customer), and the trader knew that he was to be trusted" (p.198). The general rule for the trading nomads was to "obtain the tea on credit from other Hazarbuz and [sell] it to another dealer, or directly to the consumer" (p.144). Tea was an essential commodity at that time, but as it will become clear, other goods from iron to clothing were traded as well. Furthermore, credit was also offered without the use of state contracts. Frederiksen (1996) states, "Loans are a well-known phenomena among the Hazarbuz. They are a form of mutual aid" (p.146). According to Ferdinand (2006) "The large wholesale business was particularly attractive to the bazaar people and major customers – who returned every year, and were known well by the bazaar traders – were offered credit, just as they were able to offer credit to their customers later" (p.355). Frederiksen (1996) further reveals, "It appears that there existed a whole variety of

contracts for establishing borrowing agreements and repaying loans whether in cash or in kind" (p.146). While formal institutions did not exist nor utilized by traders, the informal institutions of Pashtunwali were facilitating cooperation. Frederiksen (1996) explains, "[Pashtunwali] compromises notions of honour and shame as well as personal and family independence and autonomy" (p.62). The lack of shame is also seen as dishonorable. In other words, if one lacks shame it signals their disregard for Pashtunwali norms and therefore others refrain from associating themselves. For example, defecting from a credit transaction is perceived as shameful, if one does not feel shame, they are dishonorable, the most obscene for a Pashtun's honor code. This would signal to other traders and lenders not to do business with the "dishonorable" individual. According to Ferdinand (2006),

> The Pashtuns have a highly valued code of honour (Pashtunwali) and express strong contempt for unsuitable and shameful behaviour. Some conflicts start and end swiftly, some are more profound, and others result in short or long term blood feuds. This splits tribal groupings into friends and enemies, a factor of great importance to the trade. The behavioural codex of the Pashtun also forces them to exercise considerable self-discipline for the common good [trade]. Conflicts between enemies are shelved as long as a common foe threatens the whole group or when a person is the guest of a third party. A Pashtun person may well be a guest of his enemy, or camp next to his enemies in the bazaars, with no problem occurring. Although trade nomads are normally well armed, their weapons are generally packed away in the bazaars (p.360).

The concept of honor relative to reputation is that honor is a shot-shot deal, once damaged it cannot be repaired. Therefore, the preservation of honor becomes self-enforcing. Furthermore, unlike reputation, honor is shared with his tribe, which implies that his ill actions to other tribes will ultimately lead to him being reprimanded by his tribesmen.

In order to appreciate the concept of honor and use of jirga as a self-enforcing norm, it is important to further highlight the underlying institutional setting. Despite the transition to trading, the Hazarbuz "have been able to remain a well-integrated social group with a high degree of internal group solidarity" (p.42), keeping the norms of Pashtunwali intact. The notions of Pashtunwali have proved to be "important for the growth and maintenance of Hazarbuz trading activity" (p.223) because they are able to enforce contracts without resorting to state regulation. Pashtunwali in terms of Hazarbuz' tribal ideology, can be understood as

> being a member of a group which is organized according to certain specific principles. Among these principles is the segmentary patrilineal lineage system, which helps to structure their everyday life, and which obtains practical significance with reference to relations of work and in the coordination of various activities. At the same time it is an extremely flexible system which continually adapts to the demands of the real world, and within which an individual can always find his place in relation to other members (p.228).

The element of honor is critical in self-governing segmentary societies because the claim is that without a coercive state, the stronger actor will have an aggressive strategy while the weaker actor resorts to a passive strategy. Ginsburg (2011) answers the question of why the concept of honor helps in this situation to keep peace:

> Honor norms may emerge in situations in which each member of the society has private information on his ability to defend himself and to assert claims. To avoid becoming a target of predatory attack, each actor has an incentive to signal that he is willing to assert and defend himself, which in turn can crystallize into norms about honor. Honor norms deter aggressors from engaging in predatory behavior, since they force all individuals to signal that they will play the Hawkish strategy (p.7).

Conflict may be inevitable when the concept of honor encourages the strong and the weak to signal an aggressive behavior. But the information of who is relatively stronger

is unknown and therefore the risk of a mistake is high and escalated conflict is often avoided. According to Afridi (1980)

> The general impression regarding the Tribal Areas is that a state of anarchy prevails and advantages of the law are enjoyed by the strong only. One also imagines that crime is rampant and there is a general state of lawlessness due to the non-existence of a law enforcement force and judicial courts. This is, however, far from the truth, and it would be safe to state that crime is much more rare here than in the adjoining settled areas…The process is usually set in motion by the weaker party approaching a third party, usually of recognized influence and strength, to intervene and bring about a settlement. The Jirga or council, who are then selected with the consent of the parties, go about their task of dealing with the issues in accordance with the customary law (Afridi, p.28).

In a peaceful society, tribes coordinated cooperation without the use of direct force. Self-enforcing Pashtunwali norms of honor and the jirga had emerged to deter defectors and resolve disputes.

A traveling nomad indicates to Ferdinand that when they established the bazaar along with other tribes, " they had a jirga system to settle every disturbance arising from thieves... and they often agreed not to protect the thieves of their own tribes" (Ferdinand 2006, p.305). The jirga system and the agreements were based on Pashtunwali norms of honor. Preserving one's honor indicated their identity as a Pashtun and a member of society. A breach of agreement meant a dishonorable man and therefore punished further with ostracism and loss of trading partners. Traders and creditors realized the benefits of on-going trade even in the absence of authoritative regulation. Their preservation of honor created a mechanism for self-enforcing contracts in trade and credit arrangements. The jirga therefore was a back-up system that reassured traders in case there was a defector. In situations when one violates a credit agreement and defects to cheating, the jirga steps in as the adjudicator. In the event that conflict escalates to possible blood vengeance before reaching a hearing, the jirga would interfere. The jirga hears both sides,

adjudicates the dispute, and provides a verdict. If the guilty party does not abide by the final decision, then the jirga punishes the guilty party through several measures (i.e. monetary fine, ostracism, burning of the house, and ultimately to be left in the mercy of the winning party – revenge). Rarely did it reach the more extreme measures since a Pashtun's honor is also tied to his adherence of the jirga, a very important institution of Pashtunwali. According to Frederiksen (1996), a dispute about land ownership resulted in a murder in 1975.

> Several jirgahs were called together, in which all khans and kandidars participated, including the nomads. Consensus had to be reached and it was difficult…Nevertheless, negotiations succeeded and blood vengeance did not take place…The official legal system would not have been in a position to prevent this. Respect for the communal decision-making and a general acceptance, or at least formal adherence, to well-defined norms and moral codes governing member's behaviour is characteristic of the Hazarbuz (p.230).

Evidently, the use of informal rules was more effective than state institutions. The use of jirga is a significant informal institution in Pashtunwali. Frederiksen (1996) explains that the Hazarbuz have an informal system, "a well-functioning apparatus at several different levels, with Great Khan, khan, kandidar, and maliks, each of whom represents the tribe…and who helps keep order" (p.228). However, "the individual's authority and influence does not extend any further than the respect he enjoys due to his personal qualities, as an individual he does not have the opportunity to use physical force to enforce his decision" (p.228-29). Consensus by the jirga is critical to "all essential questions of common interest for the group…the fundamental principle is that one must negotiate in order to find a solution acceptable to all" (p.230). According to Barfield (2003), "The acceptance of any authority has to be seen as voluntary and not coerced by force. The jirga, where men meet as equals to discuss problems or resolve disputes, is the

forum in which such decision making normally occurred" (p.5). Groh (2006) goes as far saying, "the Pashtun use a truly Greek form of democracy giving all those entitled to participate in the jirgah an equal voice and an equal opportunity to be heard" (p.17). The process of this type of adjudication allows for reviewing and discussing the conflict at hand before announcing a verdict that could potentially escalate to violence.

Coordination and cooperation emerged through informal norms of Pashtunwali among traders and creditors without state regulation. According to Frederiksen (1996), trade among the Hazarbuz had developed through "1) a well-developed information system, 2) reciprocal trust between individuals in the trading chain, and 3) flexible credit possibilities" (p.230). Given that the notion of trust and honor were discussed in terms of trade and credit, it is important to highlight the implications of sharing information on coordinating trade and credit. According to Frederiksen, with nearly 90%[3] of illiterate Afghans, "oral information is therefore the most important, and it is especially the constantly traveling middlemen among the Hazarbuz, who operate as indispensable intermediaries between Kabul and the most remote corners of the country" (p.230). Frederiksen (1996) says he was "deeply impressed by the reliability and the speed at which information travelled [sic]" (p.230). Ferdinand (2006) agrees and states, "It is worth recalling, that the level of information among Pashtun nomad and traders about matters in both local and distant areas was undoubtedly incredibly high at that time, as it is today. Their knowledge when it comes to available opportunities has never ceased to surprise me" (p.309). Traders, middlemen, and tribesmen constantly shared information

[3] The Library of Congress also verifies this statistic but with caution. http://countrystudies.us/afghanistan/72.htm

that involved previous and prospective business associates. Information was mainly shared regarding an individual's standing and their honor, especially if they did anything that damaged their honor or someone else's honor. As mentioned previously, traders and creditors were less reluctant to engage in business if they had information regarding someone's dishonorable act or previous feuds. Information regarding one's tribesmen was also important because that trader would be ostracized in the case of a dishonorable act. Honor unlike reputation is not only internalized but also collectively endured. This implies that their system of information further enhanced honor as a self-enforcing norm. With information traveling fast, it was relatively easier to learn about other traders' misconduct in business affairs. Given that information was shared and verified efficiently, it deterred traders from taking advantage of a one-shot deal.

A. Intergroup Trade

Many academics have challenged the notion that in the absence of an effective state, intergroup conflict becomes the norm. Mutually beneficial trade or gift exchange systems were present in places such as the Hiri of Central Papua (Seligman 1910), the Te of the Central Highlands (Bus 1951), the Kalinga of the Philippine Islands (Service 1975), the Kula Ring of the East Papuo-Melanesian tribal groups (Landa and Carr 1983), and the Moka of Mount Hagen (Strathern 1971). Leeson (2006) specifically demonstrated that "heterogeneous individuals cooperate for mutual gain by engaging in shared customs and practices to signal credibility to outsiders where formal institutions are absent" (p.904). The cases put forth by Leeson (2006) illustrates intergroup

cooperation as the rule rather than the exception in societies where the state was absent. Accordingly, the dominant occurrence of intergroup cooperation over conflict indicates "the solution to uncertainty and informational asymmetries employed by heterogeneous agents to reap the benefits of peaceful exchange" (p.904).

Similarly, Ferdinand (1962, 2006) explores contract and credit transactions between Pashtuns and Hazara (Tajik descent) traders in the absence of state regulation. Anthropologist Klaus Ferdinand[4] in his works, Afghan Nomads: Caravans, Conflicts, and Trade in Afghanistan and British India, 1800-1980 (2006) and Nomad Expansion and Commerce in Central Afghanistan (1962), analyzes the economic relations between Pashtun and Hazara tribes during the late mid-20th century. Pashtun and Hazaras have different cultures, languages, belief systems, and tribal affiliations. They are not only ethnically diverse but also from different sects of Islam, Sunni and Shi'a respectively. According to Ferdinand (2006), Pashtuns and Hazaras also had political feuds, to the extent that until the 1920's Hazaras were enslaved and impoverished. Ferdinand (1962, 2006) explains that while they are ethnically and socially diverse, the relations between the two tribes were mainly economic in nature. Hazaras were not born into Pashtun culture and did not necessarily view honor as part of their identity, but they did use honor in terms of trust, and the jirga system for conflict resolution as a feedback mechanism. And while there is no description on whether Hazaras adhered to Pashtunwali norms, it is evident that they did not reject it either. This implies that between Pashtun and Hazara

[4] Ferdinand's dedication to understanding the interaction of nomads in Afghanistan has made him an expert in this area. He has traveled to the provinces and has had a first hand account of the day-to-day transactions between the nomads, participated in the bazaars, and spoken to many individuals. Robert L. Canfield, Professor of Anthropology at Washington University in St. Louis, states, "Ferdinand absorbed virtually all the relevant work by anthropologists on the topic up through the 1990's, when his bibliographic virtuosity trails off. His preeminent focus is the 'traditional' life of Pashtun nomads and their means of livelihood and forms of trading as practiced through most of the three-centuries prior to 1980" (Canfield 2008, p.295)

traders, a set of self-enforcing norms emerged to facilitate mutual gain from exchange. It was understood that even though Hazaras themselves were not of Pashtun descent, some tribes adapted to become Pashtun. According to Vogelsang (2002), non-Pashtun tribes, such as the people of Taymani (Hazaras) who speak Farsi, went as far as adopting the Pashto language, identity, culture, and even use the same black tent[5] used in bazaars, in order to feel affinity with Pashtun traders. Nonetheless, Pashtunwali was the backbone of trading between Pashtuns and similar norms such as honor, trust, and the use of jirga emerged between Hazaras and Pashtuns in these bazaars.

Cooperation was rewarded with building social capital such as honor and trust. Breaking one's trust would lead to a dishonorable act. Trust (*itbar*), an unwritten convention, was the backbone of trading society for these merchants. All business transactions from the sale of goods to contracts relating to property were based on trust, especially when the business partner was not Pashtun. The notion of honor became common knowledge, implying that Hazaras realized the important use of honor in Pashtun customary law and that a Pashtun understands that by default he is dealing with someone that can damage his honor. Furthermore, when a verbal agreement was made in the presence of the village elder and a breach of contract occurred, it violated their trust and was therefore considered dishonorable and ungentlemanly conduct, contravening their effective norms. The level of trust was incredible between the ethnically diverse traders, "if the nomads own cows, they are often left to the care of the Hazara for the winter, the milk being used as payment…" (p.130). Trust becomes an important tenet of

[5] According to Barfield and Szabo (1991), "The style of a black tent is often a good ethnic marker that declares the identity of the inhabitants at a distance" (p.2).

the traders. Continuous trade and the adoption of certain tenets like honor and trust promoted credit arrangements and therefore more complex transaction between the ethnically diverse traders. While repeated-dealings were an obvious choice for the regular trader, a one-shot cheater could take advantage of the system. A one-shot cheater however was unlikely not only because their main earnings came from the bazaar trading but also because he would lose his honor. Lost honor meant that his tribe's tradesmen, and therefore all the other tribes' tradesmen, would ostracize him. If however one did take advantage of a one-shot interaction, he would be sent through the jirga system and punished severely. In the case where the offender does not adhere to the prescribed ruling of the jirga (i.e., fines), the injured party would take revenge (*badal*). This last resort of expected revenge is a self-enforcing mechanism to deter defectors because it is an arbitrary call by the injured party (it can range from hostage taking to burning of the house).

The exchange of goods and credit arrangements occurred since the mid-1880's in the absence of the state and continued throughout the late 1970's (Ferdinand 1962, 2006). Ferdinand (1962) asserts, "The culture of these nomads is so that it is necessary for them to trade" (p.125). One Pashtun nomad who comes to Hazarjat, a province of Hazaras for trade, told Ferdinand (1962), "there is still much to gain…there is no better business in the world than ours" (p.135). According to Ferdinand (2006), Pashtun and Hazara nomads "specialised in seasonal trade based on credit payment. In other parts of Ghor, we encountered Pashtun nomads in rented premises in villages and itinerant Taymani nomads conducting trade from their tents" (p.395). Ferdinand (1962) states "Installment

payment systems" and "advance payments for later delivery" were typical between the Pashtun nomads and the Hazaras (p.131). The Hazaras were "constantly short of cash" and the Pashtun nomads were generous with credit. A nomad told Ferdinand, "if a man wants to borrow 100 Afgh. we always give him 200" (p.132). In one aspect, Ferdinand analyzed this as Hazaras "sinking deeper and deeper into debt…a vicious cycle" (p.132). However, this relationship was established solely on mutually beneficial trade and deepened their economic relationship. Given Hazaras' liquidity constraints, Pashtun nomads would buy their land. Interestingly, the cultivation of a Pashtun's land was sometimes left in the hands of the Hazara under a tenant system. Consequently, as more bazaars evolved in the Central rural areas of Afghanistan, petty traders become large wholesale traders. Deferred payment was typical and customers returned yearly to pay off their credit or renegotiate their contract. Ferdinand (2006) describes,

> The relationship between buyers and sellers varied a lot, from brief encounters followed by a quick deal of lifelong relationship based on partnerships, with recurring meetings, negotiations, and exchanges. Mutual trust and peaceful political situation strengthened the relationship between partners and promoted trade business. People described the "the peace of the market" as a fundamental prerequisite for favourable trading conditions (358-9).

Credit was not only offered to larger traders, "Cooperating groups of petty traders (*saudagar*) could also obtain credit if the credit period they offered their customers was shorter than the full year that applied" (Ferdinand 2006, p.356). It was due to this installment trade that bazaars became wholesale markets for these nomads.

Furthermore, two main bazaars, called Gomab and Abul, were held opposite of Chaqcharan, a city in central Afghanistan. It was an open and desolate area ideal for the trading tents. According to Ferdinand, in Gomab "the bazaar reaches at most 300-350

tents and groups of open-air campers. If we allot on average six men to a tent this gives us about 2000 eastern traders" and less than 2000 western nomads (p.142). The traders both in Gomab and Abul consisted of 30 Pashtun and Tajik tribes speaking both Farsi and Pashto (Ferdinand 1962, p.144). The traded goods ranged from iron goods, sheep and even butter, yet "payment could wait until the following year" (p.143). Clearly, the bazaars extended beyond a barter and trade society. According to Fry (1974), bazaar economy in Afghanistan is characterized as the "traditional, small-scale entrepreneurial activities" (Fry 1974, p.64). Frederiksen (1996) assert, "A bazaar thus contains much more than simple trading transactions and economic relations" (p.162). As nomads became wealthier due to their persisting trade, they also became better entrepreneurs. According to Ferdinand (2006), "New traders would thus step in and fill the niches left by the trade nomads when they withdrew, niches the urban bazaar was unable to fill on its own. Some of these groups would base their trade on long-term credit, which had been a special feature among trade nomads, and on simple transactions with the local population. (p.395). Clearly, ethnically diverse traders utilized bazaars to trade and facilitate credit arrangements. It is however important to highlight the important mechanism in place which coordinated trade without the use of force.

With ethnically diverse traders cooperating peacefully, it would be common wisdom that the state enforced rule of law. Ferdinand (1962) claims, "If one considers how tribally composite are the bazars of Abul and Gomab, it is not surprising that a tribal administration has been a necessity" (p.150). The reality was of contrary assumptions. Ferdinand (1962) states, "The bazar administration, or *mir* administration as it is called,

we heard more about before we reached the bazars than we were there" (p.150). Supposedly, the *mirs'* authority was to implement "the current legal regulations, mediated, fixed compensation, and imposed fines when required" (p.153). Yet, "Both in Abul and Gomab they were practically in a state of dissolution" (p.150). In other words, while outsiders had the impression that there still existed an active state regulation at the bazaars, it had become unnecessary over time. According to Ferdinand (1962), "tribal people rejected the idea [of a bazar *mir*] quite scornfully, for there was really no need for a *mir* to keep order, they could do that themselves" (p.150). Furthermore, "There had been no disturbances for a long time, and none could remember when there had been anything so violent as a murder" (p.150). The reality was that self-enforcing norms emerged to coordinate trade and credit. Ferdinand (1962) asserts, "The general impression of the bazars was that everything was extremely quiet and well-organised…law and order prevailed primarily because of the self-evinced by the trading nomads" (p.152). In the unlikely event that there were defectors and conflicts, "The breach of order was to be resolved by the decision of the *jirga* (council) in the form of a compromise in accordance with the normal Pashtun rules" (italics original, p.152). These Pashtun rules were not formal state laws; they were customary laws based on emergent norms. For example, if a peaceful agreement was not reached through the jirga system, revenge (*badal*) was expected, but "postponed and executed outside bazar limits" (p.152). Otherwise, defectors like thieves would be "punished very severely. If caught the thief must pay 9 times the value of that stolen, again an ordinary Pashtun regulation" (p.152).

Society was based on informal rules that governed the nomads and traders from ethnically diverse tribes.

Evidently, the *mir* institution was present at one point during King Zaher Shah's reign, along with superficial government officials in the early mid-20th century. According to Ferdinand (2006),

> In 1953, the government representatives, the governors as well as others, were polite and respectful visitors to the bazaar. In 1960, the government was represented by a small police force, an officer and some eight to ten soldiers at Abul, but the authority within the bazaar still rested with Mir Ahmad Khan. The soldiers stayed in tents a short distance from the bazaar…. when showing us around in the bazaar together with Mir Ahmad Khan, he told us that this was actually the very first time he had set foot there (p.362).

In 1953, Peters (1954) was part of the Danish Scientific Mission to Afghanistan. His main mission was to explore the Abul camp where the annual bazaar occurred. Peters (1954) says, a government official "welcomed us and presented himself and the other official as respectively Kwadja Mohammad Khan, Hakim-i-ala of Ghor (headquarters, Kala-i-Ghor or Taiwara), and Abdul Aziz, Hakim-i-Kalan of Chak Charan (headquarters, Kala Kausi)" (p.48). Along with these two governors, there were also two *mirs* in Abul camp. The *mirs* were elected by the traders but did not represent the government. Interestingly, the governor of Ghor division in Herat province, a Tajik, "always attended the meeting [bazaar]. He had been doing so for the last ten years. Pointing to his two guards, *unarmed* Afghan soldiers in uniform, he proudly stated that that was all the needed to keep order" (italics added p.51). The use of force was unnecessary since emergent norms had achieved law and order to coordinate traders. The governor of Ghor said, "The Pakhtoons know and respect me, and I have never had any trouble with them" (p.51). When disputes occurred, the issues were resolved before it escalated. Peters

(1954) explains, “We saw two quarrels. One was about some banknotes which a trader accused another of having passed on to him when they were bad; the other, between a buyer and a seller of bags of sheep’s fat, the latter having defaulted on the date fixed for the delivery of the goods” (p.52). First, it is clear that the early bazaars were beyond a barter system with long term informal contract system and credit transactions. Secondly, disputes were resolved by the jirga system. According to Peters (1954), “Mir Ahmad settled both cases...and the [offenders] submitted to the judgment without a murmur” (p.52). There is no description for this particular period about what would occur if they did not adhere to the *mir*’s decision. However, it is safe to assume that informal norms would be applied because “Mohammad Khan [government official] told us that all matters were thus decided by the Pathans themselves, and that he had never to interfere” (p.52). Furthermore, as Peters passed the *mirs* tent on the last day, he says there was “a group of prisoners, heavily chained together three at a time…they were murderers and thieves” (p.50) waiting for their jirga trial. Ferdinand (2006) states, “The mir was not engaged in business matters” (p.360). According to Ferdinand (2006), “these self-developed markets were based on conditions defined by the involved parties with minimal government intervention” (p.359). Despite the fact that force was not exercised, the use of a *mir*, a more interventionist institution, had disappeared over time as self-enforcing norms emerged. Clearly, informal norms such as the notion of honor, trust, and the jirga system were effective in coordinating trade and credit arrangements.

V. IMPLICATIONS

While contributing to two strands of literature, one on self-enforcing norms and the second on the use of Pashtunwali in limiting conflict, I highlight the central role of Pashtunwali's norms, such as honor and the jirga, in enforcing trading contracts between Pashtun and Hazara tribes in Afghanistan. It is important to appreciate the role of informal institutions to ensure cooperation and peace in the absence of an active formal state. My analysis shows that informal norms emerged to enforce contracts within Pashtuns and between ethnically diverse traders. Several mechanisms of privately enforced sanctions were used through the system of honor. Cooperation was rewarded with building social capital such as honor. Defectors who lost the trust of business partners were deemed dishonorable; the worst affliction to a Pashtun. Non-Pashtuns, while not observant of Pashtunwali norms, followed the system of honor and jirga. Privately enforced norms have been underestimated to facilitate cooperation without state created sanctions. My analysis demonstrates that in rural Afghanistan, in the absence of an effective state authority, Pashtunwali norms are able to facilitate not only cooperation, but also credit transactions between ethnically diverse traders.

CHAPTER 2 - FITTING A SQUARE PEG IN A ROUND HOLE: WHY THE WEST'S EFFORT TO REFORM AFGHANISTAN'S NATIONAL INSTITUTIONS HAVE FAILED

I. INTRODUCTION

Institutional changes in Afghanistan during the past decade (2002-2012) have been disappointing, and the Afghan people have largely rejected exogenously-imposed policy reforms.

In 2002, President Bush promised that,

> Peace will be achieved by helping Afghanistan develop its own stable government. Peace will be achieved by helping Afghanistan train and develop its own national army. And peace will be achieved through an education system for boys and girls which works (*New York Times* April 18, 2002)

The intentions were to help rebuild and reform Afghanistan. The goal of the U.S. was to

> build an Afghanistan that is free from this evil and is a better place in which to live, we are working in the best traditions of George Marshall. Marshall knew that our military victory against enemies in World War II had to be followed by a moral victory that resulted in better lives for individual human beings (George W. Bush, *Washington Post* April 17, 2002)

Since 2002, the U.S. has spent $89.42 billion (Special Inspector General for Afghanistan Reconstruction April Quarterly Report 2012, p.4) for reform and reconstruction in Afghanistan. This includes funding for security, governance, development, counter-narcotics, humanitarian assistance, and oversight and operations. One of the major goals of these efforts was to reform weak institutions. This meta-goal is evident from the 2002 Afghanistan Freedom Support Act (AFSA), which substantially increased the U.S.'s

economic and military assistance to Afghanistan. The AFSA outlines its goals to establish:

> [A] democratic state inhospitable to international terrorism, drug trafficking and narcotics cultivation, at peace with its neighbors; and able to provide its own internal and external security. U.S. efforts in support of this goal are intended to help create national security institutions, provide humanitarian and reconstruction assistance, and reinforce the primacy of the central government over Afghanistan's provinces (Special Inspector General for Afghanistan Reconstruction October Quarterly Report 2008, p.14)

Furthermore, in 2008, former President George W. Bush stated,

> We're using Provincial Reconstruction Teams of military and civilian experts to help local communities fight corruption, improve governance, and jumpstart their economies. We're using Agricultural Development Teams to help Afghan farmers feed their people and become more self-sufficient (White House Fact Sheet 2008, Retrieved from http://georgewbush-whitehouse.archives.gov/infocus/afghanistan/).

While these policies may have been well-intended, Afghans have, to date, rejected these reforms. The reality is that Afghans have their own local forms of policing and law (i.e., Pashtunwali), which have been in place for centuries. For example, community-based dispute resolution through the jirga, an informal judiciary system, is used more effectively - 90% of cases go to the jirga (Barfield et al. 2006) - despite the formal judiciary system put in place by the Western Allies and Afghan national policy makers. These established mechanisms at the local level have been effective in facilitating cooperation but are at odds with the proposed reforms summarized above. The outcome of "outsiders" attempting to impose exogenous institutions has been a failure due to rejection by the people of Afghanistan.

This chapter analyzes the disconnect between the desired U.S. policy reform efforts and the institutional realities on the ground. The main contribution of this chapter is to provide a bridge, grounded in the economic way of thinking, between the intended meta-goals of the Western Allies in Afghanistan—e.g., a strong, Western-style national

government, legal system, enhancing security, national economic development, etc.—and the actual consequences and realities at the local level. It is my conjecture that the gap between objectives and actual outcomes (i.e. rejection of reforms by Afghan citizens) is due to the disconnect and conflict between the proposed meta-reforms and the historically-established institutions in Afghanistan.

This chapter contributes to two strands of literature. The first is the New Institutional Economics, and specifically, the literature on the importance of self-enforcing norms and culture for social, economic, and political outcomes (Benson (1989); Milgrom, North, and Weingast (1990); Klein (1997); Boettke, Coyne, and Leeson (2008); Leeson (2007, 2008)). In doing so, I illuminate how these factors manifest themselves in the context of Afghanistan. Secondly, my analysis extends the Austrian Economics literature, by applying the "institutional stickiness" framework to Afghanistan's current institutional setting. By using the New Development Economics set forth by Boettke, Coyne, and Leeson (2008), this chapter addresses the gap in the literature on Afghanistan by analyzing the disconnect between the institutional reform and the realities on the ground through this economic lens. The main objective is to explain this broken bridge between desired and actual outcomes using a blend of insights from these two literatures.

This chapter proceeds as follows. Section II surveys the literature on implementing institutional change in regards to the knowledge problem and the enforcement cost of imposing formal rules when there is a disjoint with existing institutions. Research suggests that rule reform introduced through foreign institutions

such as the U.S. military, aid agencies, and even the high officials of Afghanistan, suffer from a knowledge problem and therefore fail to "stick" in the desired manner. Section III addresses the unsuccessful U.S. top-down approach to democratize, secure, and create rule of law in the past decade in Afghanistan. I will explore the gap by tracing the disjoint between the policy goals of reformers in Afghanistan and the realities on the ground. Section IV provides an explanation of the general overview of the realities on the ground in regards to the important role of tribes and jirgas, the practice of Pashtunwali (customary law), use of community-based conflict resolution, and the relative effectiveness of local policing. Section V provides implications and concluding remarks.

II. Literature Review

There is a large existing literature discussing the ineffectiveness and unintended consequences of exporting institutions and policies. For example, Bovard (1986); Burnside and Dollar (2000); World Bank (1998); Vásquez (1998); Easterly (2001); Easterly and Levine (2001); and Ovaska (2003) show that development aid has had disappointing results in the past 50 years in terms of generating growth through the encouragement of good policies and beneficial institutional changes. Easterly (2001, 2006) indicates that foreign aid fails to spur economic growth through rule reform. The use of sanctions (Pape 1997) to influence reforms, whether economic, political, or social rules, has resulted in more failures than successes. Coyne (2007) specifically shows the inability of the U.S. to effectively impose liberal democratic institutions in Iraq and Afghanistan, as well as numerous other countries, via military occupation. Furthermore,

Scott (1998); Blewett (1995); and Boettke, Coyne, and Leeson (2008) provide numerous examples of the failures of government intervention to achieve the desired goals to improve upon the status quo through well-designed institutional reforms. Within the Austrian literature, the importance of the knowledge constraint facing planners and reformers has received much emphasis (see, for example, Mises 1920; Hayek 1945; Sowell 1980; Lavoie 1985; Boettke 1993; Ikeda 1997; Boettke 2001; Coyne 2007; Coyne and Mathers 2010; Coyne 2013). This point has also been recognized by those outside of the Austrian tradition. For example, Berkowitz, et al. (2003) show, "Where law develops internally… legal institutions tend to be highly effective. By contrast, where foreign law is imposed and legal evolution is external rather than internal, legal institutions tend to be much weaker" (p.189). Given that there exists a vast number of studies shedding light on the disappointing results of attempts to impose policies and reforms on other countries, it is useful to provide an in-depth economic explanation for how a country like Afghanistan rejects the well-intended policies (such as national police force, formal judiciary systems, and a centralized system of rule of law) of outsiders.

The question remains as to why there is a dichotomy between rule reforms designed by planners and the realities on the ground. The central issue is the cost required to make rules stick (Boettke et al. 2008). North (1990) states, "Institutions are the rules of the game in a society" (p.3). These rules, either informal or formal, work to constrain social organization. Informal rules are the norms and customs such as customary law held by people. Formal rules are written codified rules. Hayek (1979) points out that the formal rules are the ultimate codification of the underlying beliefs and norms of society

that has evolved through their history. North (1990) explains that informal constraints come from culture - "socially transmitted information" (p.37). Boyd and Richerson (1985) define culture as the "transmission from one generation to the next, via teaching and imitation, of knowledge, values, and other factors that influence behavior" (p.2). Scott (1998) uses the concept of *métis* to explain embedded culture within a society, which affect the formation of institutions. He argues that the historical evolutionary process of informal rules or *métis* is unique, contentiously evolving, and beyond the understanding of its current followers. According to Couyoumdjian (2012), "Culture, habits, norms, and *métis*, the informal rules that are most relevant to the transplantation of institutions, seem to be tacit in nature; in this sense, they represent a form of tacit knowledge" (p.495). The fact that informal institutions are tacit in nature imposes a constraint on the process of institutional transplantation leading to constraints on the feasible set of reforms (p.506).

North (1990) emphasizes the concept of institutional "path dependency" which illustrates the importance of past experiences that are reflected in institutions. In other words, historically developed beliefs and rules constrain choices in the present. North (1990, 2005) argues that formal rules must be aligned with, and complement, the informal rules in order for them to function as desired. While North (1990, 2005) argues this concept, a more in-depth explanation is necessary regarding the relationship between embedded institutions and reforms. Boettke, Coyne, and Leeson (2008) provide a framework for understanding institutional "stickiness" which holds that the effectiveness of rule reform – its 'stickiness'– is a function of the knowledge-distance between the rule

designers and the "locals" who will ultimately be subject to the rules. The further this distance, the less likely the designed rules will stick. According to Boettke, Coyne, and Leeson (2008), "Foreign institutional designers are less equipped to tailor institutions in such a way that they do not conflict with indigenous *métis* because of this increased physical and social distance, which tends to make designers less aware of the local conditions where they desire to transplant institutions" (p.342). As Figure 1 displays, the further the Foreign-Introduced Exogenous (FEX) Institutions from the *métis* of society – knowledge-distance between the local knowledge and the knowledge possessed by those designing rules" – the more likely that the rule reform will fail to "stick" in the desired manner (Coyne 2012, p.6).

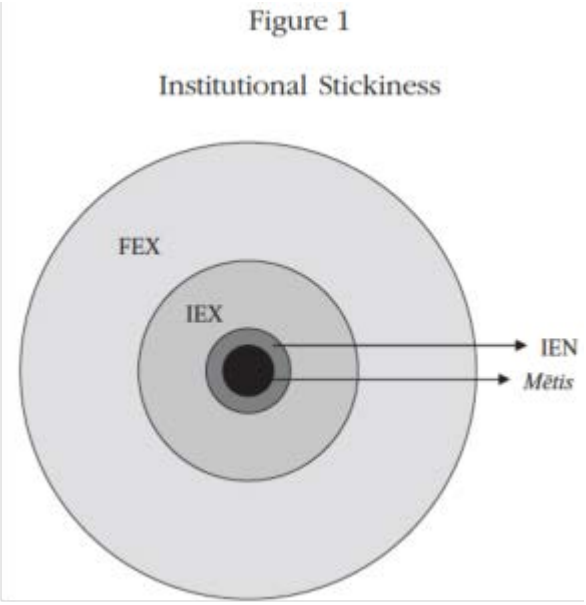

Figure 1: Institutional Stickiness

Furthermore, Coyne (2012) suggests,

> Rules are less likely to stick when they are designed by reformers who are distant from the locus of knowledge associated with the problem they seek to address. Appreciating both the incentive and epistemic aspects of rule reform allows for a better understanding of the limits of such efforts. Interventions aimed at influencing embedded social and cultural factors—i.e., informal rules—are the least likely to succeed because they tend to require knowledge which cannot be easily understood, let along formalized. In general, while determining the transferability of different rules and 'institutional components' is not always easy, thinking about rule reforms in these terms provides a starting point which appreciates the limits of what can be constructed through human reason (p.4).

Furthermore, as this context-specific knowledge gap increases, voluntary compliance diminishes, and the relative enforcement cost increases in order to implement formal rule change (Boettke 2001; Coyne 2012). As the Berkowitz, et al. (2003) empirical study suggests, outsiders transplanting legal institutions is highly ineffective. The issue is not simply of foreigners exporting institutions, but rather of the knowledge problem that arises in regards to the knowledge context. Rule reform fails to "stick" as the distance, both proximity and knowledge, between rule design and "institutional take-hold" increases.

In the context of Afghanistan, this matters because the policies implemented by the U.S. are largely at odds with the indigenous customs and belief system of the people. As stated above, the majority of Afghans use informal judiciary systems, community-based conflict resolution mechanisms through the jirga system, and see their local policing as more effective than the nationalized police force implanted by the U.S. and other foreign agents. As Boettke (2001) and Coyne (2012) point out, transplanting formal rules is fundamentally different from transplanting the social system that underpins and supports those rules. Absent the necessary complementary rules, formal rules will fail to operate as desired. Whether we call it institutions, informal rules, culture, or customary

law, they all influence our incentive structure beyond that is not ascribed formally (or by the State). Therefore, rules become rules effectively if the informal constraints such as customary practices allow it. Therefore, formal rules will "stick" and operate as desired when they are supported by people's belief systems. In such an instance people's norms and traditions will align with the formal rules and as a result reduce the enforcement cost of formal rules. In contrast, when formal rules and policy is at odds with the people's belief system, these rules are less likely to function as desired, hence increasing the relative cost of enforcement. Boettke (2001) states, "There simply is no way to establish binding rules except through the translation of customary practice into rules of social interaction" (p.257). The argument is that "When culture and economic logic coincide, commercial experimentation flourishes and material progress lifts the masses of people from subsistence. Absent this coincidence…behavior is diverted either into a *sub rosa* existence or manifests itself in counterproductive 'rent seeking' games" (p.262-3). In Afghanistan, as policy moves further and further from this cultural and economic marriage, the less likely rule reform has become successful to local conditions. The consequential higher relative enforcement cost is present due to the rejection of these policies by the Afghan people.

III. The Realities of Afghanistan: A Meta-View

United States and their allies intended to bring peace and social cohesion in Afghanistan through several means. USAID, for example, expressed their objective as a strategy "aimed to support the rapid transition of Afghanistan to a more stable and

productive state through the promotion of democracy, rule of law, and sustainable economic and social development responsive to citizens' needs" (U.S. Foreign Assistance for Afghanistan Post Performance Management Plan: 2011-2015 Report 2010, p.5). More importantly, they intend to enhance the rule of law in Afghanistan. Toward this end, $248 million was spent on funding the "Enhancing Rule of Law" initiative.

> The principal focus of the U.S. rule of law effort is to reverse the public perception of GIRoA [Government of the Islamic Republic of Afghanistan] as weak or predatory by helping the Afghan government and local communities develop responsive and predictable dispute resolution mechanisms that offer an alternative to the Taliban shadow justice system. Assistance will be provided in support of Afghan efforts to strengthen the formal state justice system, stabilize the traditional justice system, and build a safe, secure, and humane civilian corrections system (p.5).

According to the Asia Foundation in their 2011 survey of Afghan's perception, "insecurity (including attacks, violence and terrorism) is identified as the biggest problem in Afghanistan by over a third of respondents (38%), particularly in the South East (56%), East (53%), and South West (52%)" where violence is at the highest (p.3). In addition, "less than half of respondents say the government is doing a good job in reviving/developing the economy (46%), creating job opportunities (36%) and fighting corruption (35%)" (p.5). Further, the 2011 survey "records the highest levels of positive assessments of national government performance since 2008 in all regions except the South East, North West and Central/Kabul" (p.11). These areas are predominantly either highly dangerous areas or places where the government has a clear presence. Interestingly, 68% of respondents agree that it is unacceptable to talk negatively about the government (p.6). These statistics show that people are a) reluctant in criticizing the government where government is present or b) are in remote areas where they do not see government action. However, "The survey shows that the majority of Afghans [76%]

think that corruption is a major problem in all facets of life and at all levels of government. A little more than half of respondents say corruption is a major problem in their daily life (56%) and their local authorities (56%); these figures have been rising since 2007" (p.5). Corruption in provincial government seems to be highest at 64% (p.5), according to Afghans. Taken together, these results indicate that security, governance, and corruption – themes that policy makers wanted to tackle – are still a major issue for the Afghan people.

According to Biddle (2012), there are major limits to institution building and governance reforms in Afghanistan. Wilder (2007) highlights the ineffectiveness of institution-building and state-building in Afghanistan. For instance, the over-arching police institution implemented by the U.S. – the Afghan National Police (ANP) – is ineffective and rejected by the local people. Afghan people perceive these U.S. enforced institutions and governance structures as robbers rather than cops. Wilder (2007) states, "the Afghan public…still routinely accuse the police of being corrupt, ineffective and behaving like 'robbers' rather than 'cops'" (p.67). In an interview, Brigadier General Gary O'Brien, former Deputy Commander of Combined Security Transition Command-Afghanistan, reveals that, "There are some parts of Afghanistan where the last thing people want to see is the police showing up" because they are seen as corrupt and part of the problem" (Cotter 2007, *Edmonton Sun*). The former Deputy Commander added, the ANP "do not provide security for the people – they are the robbers of the people" (Cotter 2007, *Edmonton Sun*). There have been accounts where the current interventions are viewed as worse than when the Taliban reigned. Sands (2007) interviews Anwar Ali, a

truck driver who says, “Forget about the Taliban. Our biggest problems are with the police” (Sands 2007, *San Francisco Chronicle*). The main problems are corruption and abuse of power. According to Jones and Pickering (2008), Afghanistan faces a “fundamental crisis of governance” (p.27). Beyond Afghanistan, there is abundant empirical evidence suggesting the failure of reform through military occupation (Bueno de Mesquita and Downs 2006; Pickering and Peceny 2006; Coyne 2007). Afghanistan is no different. Indeed, the clear rejection of intended reforms and policies in Afghanistan is evident in the ongoing insider police attacks. According to NATO, there have been at least 135 Afghan policemen and soldiers attacked and killed by insiders since 2007.

In order to understand this rejection of reforms, it is important to understand the realities on the ground. In Afghanistan, private local policing called the arbakai is utilized. Jones and Muñoz (2010) state, “For Pashtun communities, the traditional arbakai are also enforcers of tribal law, as well as security providers. In addition, their task of providing security to the community can mean avoiding violence” (p.30). More importantly, rule of law operates at the local informal level of society. While there exists a formal judiciary branch implemented by the U.S., the jirga and other customary bodies hear over 90% of legal cases (Barfield et al. 2006). Overall, the most serious disputes regarding family, land, and criminal activities are settled by the jirga. Furthermore, local dispute resolution maintains the peace and cohesion through customary law and order. According to the Asia Foundation (2011), “local shura and jirga remain the most trusted and accessible conflict resolution mechanisms for Afghans, particularly in rural areas.” They conclude, “The traditional justice system continues to be seen to perform better than

the modern state justice system on all counts" (p.13). Given their long tradition, the belief systems and informal institutions are utilized more effectively despite the fact that the U.S. policies might seem to outsiders to offer a superior solution.

SECTION IV. Analysis of Existing Institutions in Afghanistan

A) The importance of tribal organization in Afghanistan

Unlike, the assumption of foreign policy makers, the tribal system in Afghanistan has remained a cohesive organization. The organizational set up by the tribes and ethnic groups translate into unique institutions that are particular to Afghan social, political, and economic functions. The main Pashtun tribes, for example, compete in different settings to acquire power. However, policy reform to strengthen the central government without understanding the underlying embedded institutions has disturbed the dynamic between tribes and ethnic groups. Barfield (2007) highlights the importance of the social organization within tribes in rural parts of Afghanistan, specifically, the relationship between major Pashtun tribes – the Ghilzai and the Durrani. In Afghanistan's history, "the Ghilzai seemed to thrive politically in time of war and anarchy and so often produced the major military figures who were self made men" (p.3). The Durrani, on the other hand, ended up "winning the peace from a position of weakness and were able to restore leadership to families that had dominated Afghan politics for generations with leaders who lacked a strong military base" (p.3). Today's Taliban insurgency has transformed from their original Ghilzai leadership (Mullah Omar and previous guerrilla fighters against foreigners) to having their base in the Durrani south. Barfield asks: "what

light does this throw on the renewed Taliban insurgency, one of the first in Afghan history to have its base in the Durrani south rather than the Ghilzai east?" (p.3). This is an important shift to the organization of insurgency and consequently on tribal cohesion. How tribes will respond to this shift will have major implications on the strategies of the political, economic, and social agents in Afghanistan. The incentive mechanisms change, as will become evident in the next chapter. Foreign policy makers, however, are oblivious of this change. These flaws in assumptions regarding the political and economic setting at the local level illuminate only the beginning of the knowledge problem.

Many policy reforms do not account for this important aspect of Afghanistan's society. According to Barfield (2007), this shift is not due to ideology but "in the dynamics of social organization that itself is rooted in the long term structure of their respective agrarian economies" (p.3). By agrarian economies, he means life at subsistence level and fragmented land ownership that limited the emergence of powerful hereditary leaders. This does not mean, however, that economic development leads to the emergence of powerful leaders, but that the powerful Durrani landholders who had irrigated land "supported a hierarchical political system that required large agricultural surpluses to sustain them" (p.3). In other words, they have embedded institutions that are spontaneous and flexible. The Ghilzais "poor subsistence based regions cope better with economic or political disruption and are harder to coerce because of their isolation" (p.15). The political sphere within the Ghilzai is highly competitive and therefore creates a relatively easy entry into leadership. Consequently, the most charismatic and ambitious men are able to advance in "times of war and political anarchy when military leadership

is most highly valued and poor social or economic background is not a barrier" (p.15). During the 1970's and 1980's, Ghilzais became mujahideen commanders to fight against the Soviet occupation. The Ghilzai society is similar to Ibn Khaldun's description of desert civilizations. Barfield adopts Ibn Khaldun's understanding and explains, "In the absence of a money economy, people support themselves at a basic level. When surplus comes their way they invest in relationships. Hospitality, communal feasts, gift giving and other forms of redistribution raise the status of the givers, and it is this social esteem or fame that is more cherished than money" (p.5). This is a description of rural Pashtuns' notion of honor (nang). According to Ibn Khaldun, desert civilizations have unique social attributes. Barfield says,

> The most important of these was their strong group solidarity based on kinship and descent. This generated 'asabiya, or group feeling, which bound all member [sic] of a social group together when facing the outside world. In such a system the group interest trumps individual interest to such an extent that loyalty to the group supersedes everything else (p.6).

As becomes clear, these institutions of honor and loyalty in terms of protecting their tribe does not align with the policy reforms intended to be implemented. The Durrani leadership, on the other hand, are the elites that have enjoyed more political than military power due to their close relationship to the central government. Unlike Durranis, who enjoyed the support of their home regions, the tribes of Ghilzai regarded their leaders with contempt when they entered the national stage. During times of war, however, the Durrani leadership were disadvantaged because their "regions were more vulnerable to retaliation, their populations more concentrated, and the topography less favorable to guerilla war" (p.15). For example, within the communist ranks, the Durrani were often closer to the urbanized Tajiks than their rural co-ethnics in the military ranks. However,

the Durrani would gain their advantage during times of peace because they "had a long established elite that could negotiate for them" (p.15). The elites were highly educated and therefore gave them an "advantage in the world of diplomacy where dealing with non-Afghans was key to success" (p.15). Followers would generally accept their leaders' decisions, which was not the case for Ghilzais.

As predicted, Afghan Durranis, who were previously exiled in western countries, held cabinet chairs after the U.S. intervention, end of civil war, and the overthrow of the Taliban. Existing mujahideen commanders (mostly Ghilzai) were furious with this situation and saw the revived government officials as "carpetbaggers"[6]. The Bonn Agreement in 2001 established an interim governing structure and the Bonn delegates selected Hamid Karzai as head of the interim government. The imposed political institutions by the U.S. and western allies selecting Hamid Karzai, a Durrani, as head of state in Afghanistan in 2001, had important implications. Without understanding the underlying political relationships, the outcome has not aligned with already embedded institutions, and therefore has created disruption and dysfunction in the political and social arena.

According to Barfield's analysis, "In a continuing civil war conflict situation, Karzai would have never emerged at the top. But in a contest where dealing with the outside world took precedence he had signal advantage over Ghilzai rivals" (p.16). Blumenthal (2005) reports that during the Bonn Conference "Democracy was an afterthought for the White House," which James Dobbins, a former Bush envoy to

[6] definition: political candidates who seeks election in an area where they have no local connections

Afghanistan "believed [democracy] had little application to Afghans" (*The Guardian*). According to Johnson (2006), "The Bonn Agreement was also not a 'peace agreement' to the decade-long Afghan civil war and conflict between the Taliban and the U.S.-led Northern Alliance, as Bonn only brought together the winners of the U.S. led Operational [sic] Enduring Freedom (OEF), not the warring parties" (p.2). It is clear that not only were interests unaligned but exporting a government structure into an already embedded society created hostility and rejection. According to Katzman (2012), the perception of Afghans towards the central government is "predatory" (p.40).

The reelection of Karzai was also driven by foreign policy makers rather than based on political institutions in place by the people on the ground. Johnson (2006) explains, "Karzai was also the only candidate who enjoyed access to U.S. military aircraft for campaign travel as well as round-the-clock protection by a private U.S. security firm" (p.12). Furthermore, Reynolds and Wilder (2004) illustrate the suspiciously allocated $30 million for registering Afghan refugees, who are primarily Pashtun, in Pakistan to "increase the number of Pashtun voters to help re-elect President Karzai" (p.6). Shahrani (2004) reports, "The appearance of favoritism in the ethnically charged climate of Afghan politics makes it seem that the goal of the campaign is to elect a president at any cost, especially in the eyes of the often ignored and abused non-Pashtun 'minorities" (para. 15). As much as outsiders attempt to engage in policy and reform efforts, the reality of embedded institutions constrain the effectiveness of these attempts to change Afghan society. The 2004 Presidential elections data in Afghanistan showed that "the Afghan presidential election represent and reflect historical ethnic patterns that have long

driven conflict dynamics in the county" (Johnson 2006, p.13). Voters voted along ethnic lines even if their favorite candidate was from another ethnicity, meaning, "no candidate received significant support outside of their particular ethno-linguistic group" (p.13). According to Johnson (2006),

> This does not represent an encouraging finding for the success of a strong presidential system based on the primacy of one ethnic group in deference to others. In fact it has been argued that a strong presidential system can be a recipe for disaster in countries such as Afghanistan where political elites are deeply divided: a pure presidential system effectively permits only one winner, while potentially generating many disgruntled losers (p.13).

Clearly, attempts to transplant exogenous institutions have been highly ineffective. Furthermore, the lack of binding rules and illegitimacy is explained by the lack of tacit knowledge of the customary practices by foreign actors. Foreign policy makers and the Karzai administration have distanced themselves from appreciating the informal institutions governing many parts of Afghanistan. Given, the further rejection of imposed policies by the Afghan people, the relative cost of enforcement has increased leading to counterproductive rent seeking. According to Johnson (2006):

> While the US administration assumes the election of an Afghan president was the first step on the path towards democracy, it appears that this very action is belied by ethnic divisions, which, unless properly addressed, threaten to derail any long-term hope of a democratic Afghanistan. By not signaling a willingness to vote outside ethnic boundaries and come together, Afghan citizens have begun a voting trend that does not portend well for any future parliamentary government, whose constituents will vote not for compromise but for ethnicity. (pp.14-15).

History shows that Afghanistan's governments have failed to "create a sense of genuine national unity in times other than during crisis" (Johnson 2006, p.8). However, while ethnically and linguistically different, many of these groups share cultural aspects. The four main ethnicities in Afghanistan have four different ideas about Afghanistan's state. The reality is that "Pashtuns would like a strong Pashtun-run central state; Tajiks focus

on power sharing in the central state, and Uzbeks and Hazaras desire recognition of their identities and mechanisms of local government" (p.8). Yet Pashtuns, like other ethnic groups "emphasize tribal structures and codes at the expense of the state" (p.8) even as they have ruled Afghanistan the most. It was the Soviet Union's invasion that prompted other ethnic groups to "truly establish themselves as a political and military force" (p.8). The political landscape with its diverse ethnic groups and respective idiosyncratic customary belief structures has managed to create a history of ineffective strong state run governments. According to Johnson (2006), "the failure of many past Afghan regimes has been their inability to bridge the gap between these competing groups and their willingness to play different groups against each other in order to consolidate their power" (p.8). Given that "new and improved" policies are well intended, transplanting these institutions will not stick to local conditions because these reforms do not align with the underlying beliefs and norms of society that has evolved through their history.

Furthermore, the revival of the Taliban was unexpected but successful because they were organized as a religious movement. According to Barfield (2007), "Scholars have long noted that religious leaders could transcend tribal boundaries and unite people in the name of religion who would not otherwise cooperate" (p.16). One of those scholars, Ibn Khaldun, argued that religion was a unique strategy to bring rival tribes into cooperation. Pashtun tribes similar to the Bedouins have had a history of reluctance to subjugations, and have defended their honor and boundary with their lives. Barfield quotes Ibn Khaldun,

> [Pashtuns'] individual aspirations rarely coincide. But when there is religion (among them) through prophethood or sainthood, then they have some restraining influence on

> themselves. The qualities of haughtiness and jealousy leave them. It is, then easy for them to subordinate themselves and unite (as a social organization) (p.16).

In Afghanistan's history, resistance against foreign intervention has had its roots within the Ghilzais. Most mujahideen warlords, for example, were from Ghilzai tribes and fought during the Afghan civil war. The resurgent Taliban, however, had a different dynamic. They learned from the mujahideen's failures, and incorporated powerful Durrani Pashtuns in their religious movement during the late 1990's. This force allowed them to attract rival Pashtun leaders because "there was no honor or prestige lost in subordinating oneself to the will of God or God's agents" (Barfield 2007, p.16). Consequently, these Pashtuns were gaining dominant roles in Afghan politics "without having to cede any ground to specific rival clans" (p.16). The Taliban expanded successfully and peacefully into Pashtun areas, allowing tribal leaders to retain their local power under a Taliban administration. They restored order for the steep price of "severe religious policies" (p.17). However, the Taliban's inability to provide public good marginalized them from the people, and when the U.S. intervened in 2001, the "tribal Pashtun elite in the south refused to ally themselves with the Taliban" (p.17).

Barfield highlights an unprecedented phenomenon in Afghanistan's history–the renewed Taliban insurgency has its base in the Durrani south (Hamid Karzai's ethnic tribe), rather than the Ghilzai east (i.e., the original Taliban leader, Mullah Omar). This has important implications on the institutions within the rural parts of Afghanistan because it led to a shift in the rules of the game:

> After four years of quiet in the south the Taliban made a concerted effort this past year [2006] to show they are still a powerful military force. While this proved that they remained players in Afghan politics that need to be reckoned with, the more likely reason for initiating large scale conflict was that the Taliban (and their Pakistani backers) saw

> the changeover to NATO troops in the south as a sign of weakness they could and should exploit. The Taliban and its leaders have always represented an alternative to the traditional Durrani tribal leadership structure and a threat to it. As the jihadi factions in the NWFP have done, they would like to use their access to vast sums of outside money, arms and their fervent Islamic ideology to displace much of the established tribal leadership (Barfield 2007, p.17).

This setting, replacing traditional tribal structure, has changed in the south. Durrani leaders "have a much greater capacity to cut deals with the Kabul government," have "access to outside funds and can depend on a powerful international military force," but more importantly are able to "mobilize larger numbers of people than do the eastern Ghilzais if they decide that this is in their interest" (Barfield 2007, p.17). The Taliban have become an attractive alternative again due to security and economic benefits, "not sympathy for their ideology" (p.17).

This trend has not changed; these ethnic groups have historical roots in their political institutions and are flexible with time and space. Unlike foreign agents, including the Afghan officials, the indigenous people and arising ethnic tribes possess the tacit knowledge to govern their society and provide peace and security. The realization of a complex tribal dynamic and its unique set of institutions is important in this dire striving to help Afghanistan become stable and peaceful again. Self-regulating forces, such as the *arbakai* have been adept at protecting people from the Taliban where "tribal structures are strongest," the *Economist* (2008) notes. Given that policy reform was set to strengthen the central government rather than the tribal structures, "NATO commanders are now studying these areas hard" that have been able to protect themselves from the Taliban (*Economist*, 2008). It is imperative to realize the importance of these self-regulating systems of arbakai, jirga arbitration, and Pashtunwali. According to the

Economist (2008), “the Taliban have struggled to gain ground against the ancient code of tribal behaviour known as Pushtunwali (literally, ‘do Pushtun’),” which are areas that have strong tribal structures.

Furthermore, in 2007, Britain's prime minister, Gordon Brown, explained that we must strengthen the “traditional Afghan *arbakai*” (tribal private police and security) and that Britain needs to “understand the tribal dynamics” (*Economist*, 2008). While this may seem like a knowledge problem that can be overcome, it is an impossible task to completely understand the historical, social, economic, and political institutions governing the Afghan people. The ethnic breakdown of Afghans consists of approximately 40% Pashtuns, 30% Tajiks, and the rest Hazaras, Turkmen, Uzbeks, Baluchis, and others. The *Economist* (2008) reports, “One veteran says that to fight in Afghanistan ‘you must approach every village as its own campaign’”. In other words, every village has a unique set of informal conventions relevant to its institutional setting. The complexity is indeed baffling because just the Pashtun tribal culture is based on Pashtunwali, a customary law that has evolved over centuries and is dynamic. According to the *Economist* (2008), “There are some 60 Pushtun tribes and 400 sub-tribes, many at odds with each other.” Foreign introduced policies strengthening the central government interfere with how political institutions function in Afghanistan. Embedded norms to facilitate tribal harmony are disrupted, leading to counterproductive rent seeking games by stronger and favored groups. Johnson and Mason (2008) state, “Re-empowering the village councils of elders and restoring their community leadership is the only way to re-create the traditional check against the powerful political network of rural mullahs, who

have been radicalized by the Taliban" (The *Atlantic*, 2008).

More importantly, governance has even deeper roots where in the rural areas, Pashtuns for example have their "own systems of tribal governance and law, and its people don't want Western styles of either" (The *Atlantic*, 2008). This does not imply that they will eventually support the Taliban, in fact, they see the Taliban as adopting "an alien and intolerant form of Islam, [which] goes against the grain of traditional respect for elders and decision by consensus" (The *Atlantic*, 2008). There is an alienation of the people in policy reform. According to The *Atlantic* (2008),

> Politically and strategically, the most important level of governance in Afghanistan is neither national nor regional nor provincial. Afghan identity is rooted in the woleswali: the districts within each province that are typically home to a single clan or tribe. Historically, unrest has always bubbled up from this stratum—whether against Alexander, the Victorian British, or the Soviet Union.

According to NATO General McKiernan, policy reform "needs to be an Afghan-led effort on how to engage the tribes and what the incentives are and how to use the traditional tribal authorities to help with community security and community assistance" (quoted in Bruno 2008, p.3). Some have realized the limits of top down policy implementation and have urged to link policy to the local conditions in order for the institutional reforms to stick.

B) Local conflict resolution: Who resolves conflict in Afghanistan?

After the U.S. overthrew the Taliban in 2001, the Western allies subsequently joined to engage in reforming and rebuilding Afghanistan. Over the past decade, there

has been a nation-wide mission to transplant rule of law institutions. In Afghanistan, NATO's mission states,

> ISAF [International Security Assistance Force], through its Provincial Reconstruction Teams (PRTS), helps the Afghan Authorities strengthen the institutions required to fully establish good governance and rule of law and to promote human rights. The principal mission of the PRTs in this respect consists of building capacity, supporting the growth of governance structures and promoting an environment within which governance can improve. (NATO Mission, Retrieved from http://www.isaf.nato.int/mission.html).

While these policy reforms might be well-intended, there is a serious limit to reforming an already embedded institutionalized society with its own unique set of beliefs structure. The objectives of foreign reformers were to promote governance and justice by implementing a formal judiciary branch and prescribing a system of rule of law. But these reforms were exported without the complementary informal rules to serve as the foundation. The marriage between enforced formal institutions and informal institutions is absent, resulting in dysfunction and high enforcement costs. To understand why, one must understand the long-established indigenous dispute-resolution mechanisms in Afghanistan.

Barfield, et al. (2006) finds that the jirga and other customary bodies hear over 90% of legal cases. The United States Institute of Peace (USIP) study maps the informal and formal justice system in eastern Afghanistan, specifically three districts in both Paktia and Nangarhar provinces. The Liaison Office (TLO) collaborated with the USIP and conducted interviews of 300 villages and dispute resolution bodies. The quantitative and qualitative data includes three types of cases: Criminal, Family, and Land. Their major findings were that 1) "Jirgas settle most Criminal disputes in rural districts, and a large number in urban areas"; 2) "Jirgas handle the large majority of Land cases", and 3)

"Family disputes [violent and criminal acts included] tend to go either to jirgas made up of family members, or to the Ulema Shura" (p.ii). The Ulema Shura[7] is a council where the council members are either selected or elected, but for a longer period (Miakhel, 2009). In Paktia, family disputes are settled strictly by a jirga (made up of family members) and in Nangarhar, most are settled by the shura. "TLO's data and interviews strongly indicate that local people view these bodies as highly legitimate, and capable of handling even the most sensitive disputes, especially regarding Family problems" (USIP 2011, p.iv).

Murder cases were the exception and handled by the state largely because witnesses feared repercussion from the state for not calling the police. Land disputes were mainly handled by jirgas due to strict state private property policies. Most families in Paktia and Nangarhar do not have "formal recognition of their [land] holdings"; the jirga whose members have knowledge regarding the land distribution settled most disputes. State confiscation of land was another reason for using the jirga. The study states, "The occupation of land titled to the government also proved extremely common in rural areas of both provinces" (USIP 2011, p.iii). Nonetheless, land cases that did not necessarily present documentation and confiscation issues were still brought to the jirga. In the urban areas of Jalalabad for example, land cases involving "boundaries, access, and related issues" were heard by the jirga. Interestingly, "the City Court reported hearing no such cases in the past year, and judges on the Court of Civil Appeals went so far as to opine

[7] "In theory, the term jirga refers to a traditional, ad hoc body of elders who meet to settle disputes, while shura is an Arabic word meaning "council" that can refer to any permanent discussion body, including those involved in dispute resolution. In practice, interviewees did not employ this distinction and the nature of dispute resolution bodies in the areas studied was neither entirely ad hoc nor entirely set. Thus their paper uses the terms *shura* and *jirga* interchangeably.

that jirgas could hear these cases more efficiently than courts, as boundary cases benefit from the local knowledge jirgamaran can provide" (USIP 2011, p.23). The USIP (2011) study suggests, "Within urban areas, informal justice, on balance, still predominates" (p.iii). Despite the fact that formal courts are present and available in the urban areas, disputes are still settled informally, which the study claims "is in some ways stronger in the city than in the countryside" (p.iii).

A separate study states, "although the state justice system is relatively strong in Jalalabad, informal justice institutions still resolve the majority of civil disputes and a significant proportion of minor and less minor criminal cases" (USIP 2009, p.11). Overall, this matters because the reforms designed by reformers do not align with the embedded institutions in place. The Afghan people continue to practice their own customary beliefs to reach cooperation, and provide governance and security.

Furthermore, the community-based conflict resolution process was based on the principles of Pashtunwali. The USIP study states, "The actual processes in all of the institutions involved in the informal justice system broadly follow the principles of the jirga-mechanism. The primary basis for decision-making is the pashtunwali" (The Liaison Office Report 2009, p.12). Overall, the most serious disputes regarding family, land, and criminal activities are settled by the jirga. The jirga has taken this important role because of three reasons: First, the people trust the jirgas' efficient settlement mechanisms since the objective of these informal adjudication processes are "reconciliation and keeping community peace" (USIP Report 2011, p.17). Secondly, the

people perceive the courts as costly due to corruption and inefficiencies. According to USIP (2011),

> More broadly, it also seems likely that many parties do not register decisions with the courts because jirgas are, locally, stronger and more important: If the government is exerting little control outside the district center, then its approval will not actually add much to a verdict or settlement in one's favor (p.42).

Finally, Barr (2012) reports from the *Guardian* that the state courts and police are actively in a "counter-insurgency" role rather than law enforcement, which makes them ineffective. Given formal policy reform does not align with local conditions, the people exercise their informal emergent norms. Tribes are taking measures to tackle insurgency at the local level. While the principles of Pashtunwali enforced cooperation between tribes, time and conditions changed to include other agreements, which were not necessarily exclusive of Pashtunwali norms. According to the TLO (2009), there are several kinds of agreements between tribes that prohibit any transaction with insurgents that could potentially harm the peace and cooperation between members of tribes. Differences in arrangements "exist in terms of the areas covered and the degree of institutionalisation, with some of the agreements existing only in oral form and others as written contracts, signed by all the tribe's elders" (p.15). The enforcement mechanism of these agreements required the use of arbakai. The tribal contract between members of the Salam Khel in Ahmad Aba district is an example. In 2009, elders met and added several new provisions to a past agreement that reflect new issues. The TLO (2009) reports,

> Of the 24 provisions, the 14 in the first two parts pertain to social occasions and ceremonies like marriages and funerals. Most of them cap the expenses that are allowed to be made and ban certain practices considered dangerous like firing shots into the air. The third part deals with criminal offences and sets out rules for dealing with disputes (p.15).

Furthermore, tribes implemented fines between 50,000 and 100,000 Afs (approx $1,000 and $2,000 respectively) on growing, smuggling and consuming narcotics, robbery, and abduction since it had become a major problem and attracted insurgents. According to previous agreements based on Pashtunwali norms, tensions, disputes, and fights were to be dealt with through a tribal council of local elders mediation process (TLO 2009). A specific 18-member arbakai was established to enforce these agreements (p.16). These institutional agreements are not only between tribes, "but also by residents of villages or clusters of villages" (p.16). Residents of Machalgho village of the Salam Khel for example, "have to adhere both to the Salam Khel agreement and on agreement at the village-level, which prohibits banditry as well as hosting insurgents or smugglers, punishable by burning down the house of the offender" (p.16). New and improvised contracts are implemented between and within villages to address continuing issues.

Clearly, the use of informal institutions is utilized rather than the imposed formal reforms. The Western allies along with the Afghan government have failed to appreciate the underlying *métis* in Afghan society. Even with a great effort to provide formal institutions, many Afghans still resort to their embedded customary beliefs structure. While it may seem idiosyncratic to the rest of the world, Pashtunwali and the conflict resolutions process of the jirga are the institutions that have remained intact and effective at the local level. These informal institutions are sticky because they are closest to the *métis* of this particular society.

C) Maintain Peace and Social Cohesion through Community-Based Dispute Resolution

In 2005, Secretary of State Condoleezza Rice said, "The advance of freedom and the success of democracy and the flourishing of human potential all depend on governments that honor and enforce the rule of law". And in order to achieve this goal in Afghanistan, Rice said, the U.S. has "dedicated more than $62 million since the fall of the Taliban to build new courthouses, to train new judges and to reform the nation's regulatory system" (Remarks at the American Bar Association's Rule of Law Symposium 2007). Between 2001 and 2007, the total U.S. government assistance to Afghanistan in Rule of Law (ROL) Programs exceeded $22.8 billion. The programs contributed to create "a just and secure society" (DOD, Inspection of Rule-of-Law Programs in Afghanistan 2008, p.4). However, the Afghan National Police (ANP), the main body responsible for enforcing rule of law and securing the country, has failed.

According to the Government Office of Accountability 2008 Report, despite the Afghan National Police (ANP) numbers rising to nearly 70,000 personnel and overall U.S. expenditure of over $6 billion to develop the ANP, they found that "no police unit (0 of 433) was assessed as fully capable of performing its mission and more than three-fourths of units rated (334 of 433) were assessed as not capable" (p.6). Furthermore, 96 percent (296 units of 308) of rated uniformed police districts and all of border police battalions (33 of 33), "which together comprise about 75 percent of the ANP's authorized end-strength, were rated as not capable" (p.6). In a survey, "Afghan Perceptions of Corruption," Delesgues and Torabi (2007) find that the justice and police were the most corrupt sector. "77% of respondents said that corruption was prevalent in the public

sector. The judicial (courts and the Ministry of Justice) and security (Ministry of Interior and Directorate of National Security) institutions were deemed the most corrupt when they were seen as sector" (p.18). Furthermore, the Afghanistan Human Development Report 2007 states, "The judiciary is perceived as the most corrupt institution within Afghanistan" (p.72).

The goals of reforms have not only failed but also rejected by the people of Afghanistan. The reality is that in many parts of Afghanistan, disputes are settled on a community basis drawing on informal institutions in order to achieve harmony and cooperation. The Asia Foundation in 2011 surveyed the perception of community-based resolution in Afghanistan and finds that "The largest proportion of respondents (66%) stated that [their] problem was taken to a local shura or jirga for resolution" (p.7). The "satisfaction with shura/jirga (83%) continues to be higher than with state courts (78%)" (p.7). Their survey findings "suggest that respondents more frequently address common problems such as land disputes to the institutions that are the closest to their local community. Dispute resolution mechanisms that are strongly anchored in local communities, such as mullahs, malik/khan and local shura/jirga are also amongst the most effective in resolving disputes" (p.13).

The percentage of respondents trusting their tribal and religious leaders to resolve issues in their local area have risen to 70% compared to "61% in 2006, 60% in 2007, 69% in 2008, and 67% in 2009)" (p.6-7). Their study finds that the use of an informal justice system "reflects the accessibility of these institutions and the fact that local shura and jirga remain the most trusted and accessible conflict resolution mechanisms for

Afghans, particularly in rural areas" (p.12). The report concludes, "The traditional justice system continues to be seen to perform better than the modern state justice system on all counts" (p.13). Informal institutions have evolved through history and it underlies the important customary structure of the people. Reforms will not stick as effective institutions without understanding and, more importantly, incorporating the system of established beliefs and norms into the formal framework.

In the past decade, new programs and reforms have been encouraging a strong central government to introduce new institutions to provide peace and security. These initiatives, however, fail to appreciate the crucial link between informal and formal institutions. Miakhel (2010) asserts, "Most programs and strategies are devised by foreign consultants rather than local experts, and often borrow liberally from strategies and programs from other countries without adequately adapting them to Afghanistan's unique sociocultural and political milieu" (p.5). Clearly, the link between the customary aspect of society – mainly the *métis*– and formal policy reform is missing. Miakhel (2010) states that outsiders "tore down the old administrative, judicial and security systems, replacing them with Western-oriented structures alien to the average Afghan. Many of those imposed systems and structures are out of place and unworkable in the Afghan context" (p.5). In other words, formal institutions are not aligned with informal embedded institutions and therefore do not stick to local conditions.

The question remains then, how is peace and social cohesion achieved in Afghanistan? Informal institutions are the means of enforcing rule of law, establishing codes of conduct, negotiating peace, and maintaining cooperation. Smith and Manalan

(2009) studied community-based dispute resolution in eastern Afghanistan. Their main finding is that "Community-based dispute resolution processes are a key way in which peace and social cohesion are maintained in villages" (p.37). Disputes resolution is negotiated under the jirga, the council members in a tribe. The use of a jirga is important because they are the body that enforce rule of law as an informal institution without the use of coercion. The main objective of jirgas in this realm is to "keep the peace within a community" (p.37) using customary law known as Islah and qanoon-i-urfi. "Islah essentially means the promotion of peace and maintaining social cohesion in the community through negotiation and reconciliation and this underlies and informs many of the decisions made using customary law" (p.38). "Islah better describes the principle behind qanoon-i-urfi; that is, of resolving disputes in order to make peace between disputants; urf simply means custom" (p.38). The terms Islah and urf however are used interchangeably. It is important to recognize the pragmatic process of these traditional practices that "change over time and are flexible to political, social and economic context" in order to keep harmony in the community.

The efforts of exogenous foreign policy to promote rule of law and peace have failed. Informal institutions have been able to effectively promote rule of law and peace despite the reforms. According to Miakhel (2010), "Existing social and leadership structures in many parts of Afghanistan allow for local decision making. It is through these structures–jirgas and shuras (councils)–that people address day-to-day issues and resolve grievances" (p.6). In their research, Smith and Manalan (2009) found that, "Qanoon-i-urfi was used to resolve or to attempt to resolve the majority of cases" (p.38).

One of the main reasons that a more customary approach, Islah, is applied to conflict resolution in order to maintain peace is because it "allows for negotiation and flexibility compared with the perceived rigidity and inapplicability of Sharia-based decisions to the prevailing social and economic conditions" (p.38). In a society with over 99% of the citizens affiliated with Islam and therefore its association with Sharia law, it gives credence to the effectiveness of customary practices and informal institutions to resolve disputes peacefully.

However, while peace and cohesion in the community is important, the idea of justice seems to be at question. Do they ignore justice and seek the truth behind a crime for the sake of keeping the peace? The respondents in Bamiyan stated, "the flexibility of urf-based decisions allows for these things," meaning that creating peace allows them to ultimately find the "truth behind a dispute" (p.38). At the heart of qanoon-i-urf (customary law) and the jalasa (adjudication) process is the idea that a resolution will be negotiated until all sides agree. Rather than jalasa members enforcing a decision, the aim is to reach a consensus on a resolution to the dispute. A jalasa is when jirga members, disputants, and witnesses are hearing, discussing, and negotiating the case at hand. The first stage of a jalasa is for disputants to agree to be heard by a jirga and give authority to the white-beards, therefore agreeing, "to accept whatever decision they make" (p.43). The power of the jirga to enforce these rules and decisions come from their customary law, Pashtunwali. The white-beards' implementation power stems from the authority and honor they hold in the community. The use of informal institutions to resolve conflict

without coercive power is embedded in their customary law. According to Smith and Manalan (2009) while,

> white-beards become frustrated when their decisions are ignored or not implemented, to bring in any kind of external force for implementation—particularly that using coercive power rather than obligation through authority—would be to go against the very principles of peace-making and negotiation that qanoon-i-urfi rests on (p.43).

One of the major contentions of utilizing customary law rather than state law for conflict resolution is the alleged injustice and human rights violations that women face. Smith and Manalan (2009) in their study of informal justice system in Bamiyan province state, "While women's access to and participation in these processes may be constrained, spaces for women to participate in dispute resolution processes can be found" (p.37). And "Decisions made through these processes, contrary to common belief, can provide recourse for women to assert their rights" (p.37). Clearly, the institutional setting established by the indigenous people is effective despite the suggested new and improved system of justice system set by outsiders. According to Miakhel (2010), "The locals know best how to find solutions to their problems" (p.7). Foreign nations and the Afghan national government have tried to implant and enforce a system of rule of law that is not sticking to the institutions at the local level.

D) Incentive for being a decision-maker and resolving disputes.

What incentives, beyond the obvious collective benefit of harmony do the jirga members have to keep the peace in the community? According to a study in Bamiyan, Smith and Manalan (2009) say, "the desirable characteristics for decision-makers in dispute resolution are not those of self-interest but involve concern for the well-being of

the community overall and an ability to be just as well as knowledgeable" (p.15). Another incentive among the elders was to enhance their honor by becoming a decision-maker for their community. The study claims, "the reasons for white-beards taking on this responsibility go beyond being a purely rational decision-making process and rest in an acceptance of the prescribed roles for particular members of the community" (p.15-16). One white-beard explains: "Since the past, white-beards have wanted to resolve villagers' disputes. White-beards don't want to see their villagers in trouble or [with] problems. Our fathers have done this and now we are doing it" (p.16). The authors argue however that this incentive has "no apparent personal benefit to be gained, of an economic nature for example, from being a decision-maker" (p.15). They claim that it is the community honor that provides the incentive to be a decision maker. "The maintenance of community honour, and through this personal honour, is a primary motivation for white-beards to contain and resolve disputes within their villages. A village which is known to have many unresolved disputes is seen as a dishonour to the elders of that community" (p.15). While the authors contended that taking up the responsibility of decision-maker is not a "purely rational decision-making process," it is clear that the maintenance of honor translates into an incentive mechanism, and is therefore rational from the perspective of the actor. The white-beards internalize the benefits of community honor, which transpires to their personal honor.

> Consequently, it is argued that by maintaining peace and resolving disputes in the village, white-beards maintain not only the honour of the village but, in turn, their personal honour. In maintaining both personal and village honour they enhance the amount of respect they have and, in turn, increase their own levels of authority and personal power (Smith and Manalan 2009, p.15).

Furthermore, there are other incentives in maintaining the honor of community peace. According to the research unit, “another motivation is to avoid a dispute affecting others; villages are small and communities are interwoven to such a degree that if one member of the community is in dispute it will affect others” (p.15). One of the main concerns of disputes between tribes is the escalation of violence. At the local level, there exists two main self-enforcing institutions which deliver peace and cooperation. Community-based conflict resolution and self-regulating forces known as *arbakai*, are informal institutions that effectively provide cooperation and security at the local level in many parts of Afghanistan.

At the national level, as stated before, a plethora of reforms, programs, and resources have been dispersed to secure Afghanistan. While the goals of reforms were to bring security, the reality on the ground paints a different picture. Bumiller (2012) from the *New York Times* reports, “violence in Afghanistan is higher than it was before the surge of American forces into the country two years ago.” It is important to understand the missing link. Formal institutions, like the implantation of reforms in the justice system, police sector, and national army, do not align with the informal institutions in Afghanistan. The embedded culture of honor, the use of customary law of Pashtunwali, and the effectiveness of the jirga are spontaneous orders that reflect the *métis* of the society. Incorporating informal institutions into policy reforms is the key for formal institutions to stick. The problem however is far more complex than simply realizing this need. The embedded culture and informal institution is tacit in nature, in other words, meaning that the knowledge problem is impossible to solve. These norms and beliefs

structure have evolved over history and is unique to each sector, tribe, and culture of society. With a myriad number of tribes and cultural settings, understanding the tacit knowledge of the informal institutions is intricate, multiplex, and unfeasible.

E) Local Policing

The United States' rule reform in Afghanistan aimed to strengthen the Afghan National Police (ANP) to enforce security and rule of law. The international community and the U.S., through the Law and Order Trust Fund for Afghanistan, have contributed more than $2 billion. The Afghan National Police has a total strength of nearly 150,000 men. Furthermore, NATO's presence in Afghanistan since 2003 included 50 troop nations and a total strength of International Security Assistance Force (ISAF) of 100,330 personnel. NATO's Mission states:

> In accordance with all the relevant Security Council Resolutions, the main role of ISAF is to assist the Afghan government in the establishment of a secure and stable environment. To this end, ISAF forces conduct security and stability operations throughout the country together with the Afghan National Security Forces and are directly involved in the development of the Afghan National Security Forces through mentoring, training and equipping (http://www.isaf.nato.int/mission.html).

While reform and resources have been implemented in Afghanistan, the goals do not align with reality. At the local level, security and police paint a very different picture than what the Western allies and the Afghan government envisioned. According to Lau (2003), "Afghanistan's official law, i.e. the formal legal system established under the provisions of a constitution, does not represent the de facto norms that govern the lives of the majority of the population" (p.7). There exist statuary laws and regulations, but only on paper. Security and rule of law remain inadequate in Afghanistan. While the U.S. and

NATO created the Afghan local police (ALP) force, it has had negative unintended consequences. The Afghan local police are a network of defense force under the supervision of the Afghan National Police designed to protect local communities from the Taliban. According to Barr (2012),

> in practice [the ALP] are sometimes no more than deputised gunmen loyal to a local warlord or members of violent local militias who are given a new uniform. Not only have these groups frequently preyed on the local population and contributed to ethnic violence, they have too often spun beyond the control of those who established and supported them *(The Guardian).*

The policies to implement rule of law and security have failed mainly because foreign institutions do not align with already embedded cultural and beliefs structure. In rural areas, effective private local policing and jirgas providing conflict resolution are present without the use of state institutions. Afghanistan has a long history of community policing and enforcement of rule of law by the local indigenous population. Tribes and local communities have experienced emerging institutions for organizing local forces for dispute resolution and defending borders.

Pashtuns have five major institutions for community defense forces. The Arbakai, Chagha, Chalweshtai, Lashkar, and Tsalweshtai are all security forces, locally called upon, and serve the community from protecting the locals to securing the borders from raiding groups and invaders. The size of these forces range from 40 to 50,000 men depending on the need: local, regional, or national. These forces are not warlord militias since there is no autonomous control over them to monopolize violence. And in each case, the local jirga implements and enforces the decisions. Arbakai and Laskhars are the two main forces used. Karokhail and Schmeidl (2009) explain, “Arbakai are raised for specific purposes all within the interest of community security or protection of

community resources" (p.322). Tariq (2008) explains that there are three main reasons the arbakai are called in for: "to implement the decisions of the Jirga; to maintain law and order; and to defend and protect borders and boundaries of the tribe or community" (p.6).

Lashkars, on the other hand, are different from other forces, "partly because they are usually offensive, intended to attack a specific target and then disband" (Jones and Muñoz 2010, p.28). Arbakai are therefore more commonly used than lashkars since they are small and defensive, and cannot be easily manipulated by powerful commanders to gain and maintain power. According to Karokhail and Schmeidl (2009), "Despite the fact that an individual arbakai force is never very big, its combined force can overshadow state security providers" (p.323). In 2005 for example, arbakai operations in Paktia mounted to approximately 1,950 guards compared to 660 provincial and district government police (p.323-324). State enforced security is simply unable to reach many rural areas since there is one ANP for every 3,500 residents compared to the ratio of one arbakai guard for every 1,200 residents (p.324). But more importantly, the effectiveness of the arbakai institution trumps the state security mechanism of ANP and ALP. Jones and Muñoz (2010) highlight three key principles for arbakai: "First, leadership of the institution is collectively accepted. Second, the benefits and interests of all members of the tribe or community are equally shared. Third, tribe or community members are equally responsible for financial obligations and expenses" (p.29). Tariq (2008) states, "In the Arbakai system there are two mechanisms for accountability, each of which contributes to guaranteeing the sustainability of the system. These mechanisms function

both upwards and downwards" (p.7). Upward accountability occurs when the arbakai is accountable directly to the jirga, who lead and supervise these forces.

Tariq (2008) explains, "The Jirga is a collective mechanism, therefore guaranteeing transparency. This allows for Jirga members to supervise the implementation of various tasks by the Arbakai closely and carefully" (p.7). The jirga is a decision making body with clear division in responsibilities but utilizing the arbakai as an enforcement institution. The important difference between the jirga and the arbakai is that while the jirga members enjoy the autonomy to make decisions and manage the arbakai, the arbakai on the other hand, have the "power to implement, but not to change the decision" (p.7). According to Tariq (2008), this "clear distinction of responsibilities makes it easy for the Jirga and the people to monitor the Arbakai to ensure they follow these accountability mechanisms (Lam 1996; Wade 1992; Moore 1989)" (p.7). These informal institutions have embedded cultural and customary belief systems that allow for binding rules. The formal institutional reforms implemented through NATO, the United States, and the international community does not incorporate the *métis* of Afghan society. Given that "outsiders," including Afghan government officials, try to integrate already embedded institutions into policy reform, the complexity of such task is immense. The following explanation of the merger between arbakai, jirga, and the notion of Pashtunwali will paint a better picture of its complexity.

Self-enforcing mechanisms within the jirga and Pashtunwali system coordinate and ensure an effective and accountable arbakai force. There are three dimensions, which allows for "downward accountability…information, justification, and punishment"

(Schedler 1999, p.17). These mechanisms make "the Arbakai system trustable and sustainable" (Tariq 2008, p.8) because there is shared common knowledge of the information and the meetings. "Every member of the tribe has the right to ask their leaders and representatives, elected by them to the Jirga, to justify their decision" (p.8). In the case where an arbakai defects or acts against the set rules, they will be "blacklisted." Furthermore, the system of financing the arbakai is one of collective action. According to Tariq (2008),

> The strength of this downward accountability mechanism in the system derives from the fact that equal financial shares are paid for the Arbakai by all members of the tribe and from the equal social status of the members. This equality of share and payment gives equal power to every member of the tribe and the right to speak up when they feel something is wrong. It also provides equal power to their representatives in the decision making process (p.8).

While arbakai have leadership and the commanders are referred to as "ameer" or "masher or kiftan," they report directly to the jirga. As Karokhail and Schmeidl (2009) assert, arbakai's "jurisdiction is limited to the territory governed by the respective jirga/shura they are mandated by" and "if a village raises an arbakai it cannot work anywhere else (this creates parallels to neighborhood watch committees)" (p.324). In contrast to militias, which are often considered as dishonorable to join, local forces like arbakai and chalweshtai consider their responsibilities as honorable and do not seek monetary compensation (Tariq, 2008). Their loyalty is to their community rather than an individual leader. Jones and Muñoz (2010) explain that unlike for auxiliary paramilitary, "the weight of community opinion is so strong that some arbakai are not even armed. Their power comes from the community, which can impose its will through informal law enforcement ranging from ostracism to house burning" (p.30).

The most important responsibility of arbakai forces is to prevent harm to the community. According to an interview with a Pashtun tribal leaders, "If violence can be avoided by negotiating safe passage for transiting guerrillas, that could be the most prudent and preferable course of action" (p.30). Jones and Muñoz (2010) states,

> For Pashtun communities, the traditional arbakai are also enforcers of tribal law, as well as security providers. In addition, their task of providing security to the community can mean avoiding violence. An arbakai may decide not to confront insurgents or criminals entering their territory with violence. Instead, the predisposition of the arbakai could be to engage and negotiate. If the insurgents agreed not to attack government forces in the arbakai territory (which would bring trouble to the community from government forces) and if they promised not to engage in other hostile or subversive acts, community leaders might let them pass unmolested (p.30).

These forces, however, have been seen as an obstacle rather than the solution in the eyes of rule reformers. Pashtunwal's tribal code, melmastia, binds Pashtuns to be hospitable and kind to peaceful visitors seeking for food and shelter, regardless if the travelers are insurgents in the eyes of the foreigners. Foreign agents, including Afghan officials, "might view this accommodation as treason and might characterize the community as collaborators, subject to the house searches and nighttime raids that have contributed to popular support for the insurgency" (Jones and Muñoz 2010, p.31). Conversely, the arbakai are there to protect the community in case the "insurgents refused to negotiate and tried to collect taxes from the population, recruit young men, behead opponents, try to set up their own regime, and threaten the peace of the community." The arbakai are local villagers, they are not official soldiers or warriors, and therefore a decision to fight could be pragmatic but a cautious one. In Afghanistan, these forces are strongest in provinces of Paktia, Paktika, and Khowst. The southern and eastern Pashtun communities such as Kandahar also use similar local defense forces like arbakai. According to Jones

and Muñoz (2010), “Many Pashtun communities have some mechanism for bringing individuals together for self-defense and other communal tasks” (p.32) that is effective and is governed within the boundaries of embedded norms.

The institution of community defense forces like arbakai has been a strong tradition among Pashtuns. While their structure is often small and limited to local level protection, they are nonetheless effectively defensive and constrained by the rules of the jirga and people. Members of the community call upon these defense forces according to their need. The time and knowledge problem is tackled when the indigenous population is able to initiate and enforce these institutions according to their own customary laws and necessities. Several interviews with Afghan tribal and community leaders “indicate that arbakai and other similar institutions that are seen openly as directly controlled by the government may not enjoy local support and would probably not be effective” (p.32). State enforced policing is clearly not aligned with the institutions on the ground. In addition, Afghan opinion of the U.S. and NATO Coalition forces is at its “lowest point since 2001” (p.32), therefore, there is a rejection of foreign defense policies to the extent that “any jirga or shura calling for overt cooperation with what is increasingly seen as a foreign army of occupation may be counterproductive” (p.32). Clearly, there is a dysfunction of reform when formal institutions are not aligned with informal embedded customary settings. It is important to understand that efforts by outsiders, including the Afghan government, will further disrupt the traditional institutions of community police protecting and securing villages across Afghanistan.

F) Community-led Aid: National Solidarity Program

There has been a debate regarding reconstruction and policy reform from a bottom-up approach, where the people on the ground have an incentive to drive change and accountability. While this seems like a better step towards closing the knowledge gap between locals and policy makers, it has faced many challenges. The Afghan Ministry of Rural Rehabilitation and Development created the National Solidarity Program (NSP) to advocate community-led development programs. The NSP is funded through major country donors and other international development aid agencies, and has become the largest development program in Afghanistan (Beath, Christia, and Enikolopov 2012). The structure of NSP is based on two major interventions at the local level.

The first is to build "representative institutions for village governance" by creating a Community Development Council (CDC) in each village (Beath, et al. 2012, p.8). The second intervention of NSP is to "disburse 'block grants', valued at $200 per household up to a village maximum of $60,000, to support the implementation of projects designed and selected by the CDC in consultation with the village community" (p.7). The NSP intended to establish a sense of local ownership in projects. According to Amin (2012), "the NSP today consists of 28,884 Community Development Councils, which are elected to consult with locals to establish a list of development priorities" (p.2). Many of the development projects are "meant to benefit a broad public, not just specific groups"; therefore, their main goal is to emphasize "partnership between the government and local populations by integrating local preferences and ideas" (Amin 2012, p.2). The NSP was structured to incorporate the notion of "participatory development," which aimed to

engage the local community in development projects, but it has simply become a "poster child for the concept" (Amin 2012, p.2).

The disjoint between the NSP and the results can be explained by the complex historical institutional setting already in place, which are at odds with new policies. There is a unique set of *métis* that is not easily visible to outsiders. The tacit knowledge behind many of their practices is impossible to grasp on many levels. According to Amin (2012), "rural Afghans have low tolerance for social risk. Local consensus generally favors non-controversial programs, which, in turn, leads to a complete denial of important projects" (para.7). Projects are rejected because the norms and customs have devised a different incentive structure than what is seen important by policy makers. The assessment of NSP so far seems to do "the exact opposite of what the program was once hoped to deliver" (Amin 2012, para.3). World Bank Economists, Mansuri and Rao (2012), suggest that local aid projects that engage in community development councils fall short of expectations. When new institutions do not align with existing ones, the settings change and therefore the rules of the game become arbitrary.

SECTION V. Implications

This chapter has several important implications for understanding the limits of state intervention in a complex institutional setting. First, conventional wisdom suggests an active role of foreign agents and organizations to engage in reconstructing societies. My analysis shows that it is not always the case because when there are already established institutions governed by a unique set of *métis*, foreign policy reform will not

stick. The disjoint between intended policy and reality lies in the vast gap between local institutions and the new, desired institutions. In such instances, appreciating and understanding the role of informal norms is of paramount importance, as is realizing that reforms will not take hold simply by extending the projects or spending more resources.

Second, I delineate the limits of outsiders to impose desired institutional reforms on foreign societies. In analyzing reform efforts in Afghanistan, I highlight the importance of the institutional stickiness framework to understand the recent events. The main implication is that absent the appropriate foundation based embedded institutions, even well-intended reforms will fail. Formal institutions not grounded in customary belief structure will lack stickiness and become ineffective. In addition to understanding the situation in Afghanistan, this has important implications for future attempts at rule reform in other contexts.

Afghanistan, a complex society with historically set informal institutions, has been at the center of focus for U.S.-led rule reforms in the past decade. Reforming and rebuilding has been difficult and will remain complicated because the society has a unique set of *métis* that does not simply become clearly visible with time or resources. The informal institutions will continue to be at odds with reformers' goal of establishing Western-style institutions because it is impossible to grasp the tacit knowledge behind existing customary practices. A web of intricate norms and customs network the people and their incentive structure. Thus far, policies to change and rebuild the structure of Afghanistan have failed. A plethora of examples, from developing a national police to enforcing rule of law, indicates that reforms have been rejected by the Afghan people,

while yielding numerous negative unintended consequences. The Afghan national government is as foreign to the local conditions as outside donors, international organizations, and Western policy makers. Rebuilding, reform, and peace must only evolve endogenously through the existing institutions because otherwise it will not stick to local conditions.

CHAPTER 3 - INSTITUTIONAL CHANGE AND THE DICHOTOMY BETWEEN THE WEST'S EFFORTS: A MICRO-LEVEL ANALYSIS

"*What has yet to be more widely recognized is that the present order of society has largely arisen, not by design, but by the prevailing of the more effective institutions in a process of competition*"- F. A.Hayek *Law, Legislation, and Liberty.*

I. INTRODUCTION

This chapter is an extension of chapter 2, and focuses on the micro level outcomes in Afghanistan as they relate to exogenously-imposed institutions. The main contribution of this chapter is to provide a detailed case study of existing customary practices at the local level and highlight the disjoint between these practices and the international efforts to reform institutions. While the previous chapter focused on the issue of institutional stickiness at the national or "macro" level, this chapter focuses on one particular, local case to further illuminate the issue of institutional stickiness in Afghanistan.

The U.S.'s goal in Afghanistan is especially targeted to enhancing market enterprise, rule of law, and local governance. Similarly, the USAID's mission was to specifically strengthen rule of law:

> The principal focus of the U.S. rule of law effort is to reverse the public perception of [Government of Islamic Republic of Afghanistan] GIRoA as weak or predatory by helping the Afghan government and local communities develop responsive and predictable dispute resolution mechanisms that offer an alternative to the Taliban shadow justice system. Assistance will be provided in support of Afghan efforts to strengthen the formal state justice system, stabilize the traditional justice system, and build a safe, secure, and humane civilian corrections system (U.S. Foreign Assistance for Afghanistan Post Performance Management Plan Report 2010, p.5).

While the efforts to reform and rebuild may have been well intended, the failure to appreciate the local dynamics of existing institutional arrangements resulted in the rejection of these policies by the Afghan people, and the ultimate failure of the goals of the West. Coburn's (2011) analysis of Istalif, a small town outside of Kabul, illustrates the unique set of institutional arrangements in the context of local markets, water rights, and land right dispute resolution mechanisms. These context-specific customary principles effectively coordinate cooperation and preserve peace and harmony within the local town. The notion of honor serves as an enforcement mechanism for local leaders to compete and maintain peace, but also to represent the preferences of their people. Competing actors also use 'masterly inactivity' – the effort to avoid direct confrontation in uncertain conditions – which provides an incentive system to refrain from using violence. As this chapter will demonstrate, "outsiders" (the Western alliance and Afghan government) are unable to grasp this delicate balance and the tacit nature of these embedded institutions to generate institutional change

Both Hayek (1945, 1967) and North (1990, 2005) recognize the importance of informal institutions that govern societies. Formal rules must align with the embedded cultural belief system; without this marriage, institutions do not "take-hold" and become ineffective. Most institutional analysis has been at the national level due to a lack of detail regarding specific local conditions. However, Coburn (2011) provides the first post-Taliban, micro level analysis of the workings of a local Afghanistan town through anthropological field research. Drawing specifically on his research, I will use these descriptive data sources to bridge the economic understanding regarding the policies

imposed by international agencies and the realities on the ground in Afghanistan. Informal institutional arrangements in Afghanistan are not homogenous, but differ greatly across local contexts. This chapter illustrates the complexity of these arrangements in one context, Istalif, a town located outside of Kabul. The analysis will highlight the nuances in Istalif specific to its local setting, which does not resonate through the rest of the country. In fact, every local area in Afghanistan has its own set of unique embedded institutions according to their history and hence, it becomes even more difficult for outsiders (U.S. and Afghan governments) to understand these different realities that are specific to the time and space knowledge of these localities. It is not just that there is a knowledge gap as it relates to some homogenous set of local institutions, but instead that the local institutions vary so greatly that they cannot be treated in any kind of homogenous manner.

While there is vast literature on the importance of institutions in terms of economic prosperity, rule of law, and, governance, the reasons for the failures of institutional reform in Afghanistan have not been analyzed at the micro level. Numerous assessments identify the failures of reform in Afghanistan but are unable to explain why well-intended reforms are not upheld at the local level. My contribution is to provide evidence at the micro level and highlight the disjoint between exogenously-imposed institutions at the local level. First, I will explain through the “institutional stickiness” lens that institutional reforms in Afghanistan do not take hold to local conditions. The embedded customs and norms are effective because they are the result of spontaneous emergence. Therefore, reforming customary practices leads to non-adherence and

rejection of policies. Secondly, given formal reforms are at odds with existing informal institutions, enforcement costs increase as policy makers strive to impose institutional change, resulting in either the failure of reforms or the need for coercion to force local Afghan citizens to adopt the desired policies.

The chapter has the following structure: Section II provides an extensive overview of the relevant literature on institutions. I will highlight the literature on institutional importance in terms of formal and informal rules in a social, economic, political, and legal setting. Afghanistan has been under the lens of the West to implement policies that are intended to strengthen central governance, enforce and codify rule of law, and increase formal policing. The stickiness framework, New Development Economics (Boettke, Coyne, and Leeson 2008), and the enforcement cost of implanting institutions (Coyne 2012), illustrate the struggles between the underlying institutional realities in society and the attempt to enforce new formal institutions. Section III analyzes the unique customary setting in Istalif and the conflicting responses from the Afghans in regards to the intended institutional reforms. Furthermore, I will question why the Afghan people do not desire to adopt reforms such as democracy, free market enterprise, and central policing. The answer lies in the already embedded institutions at the local level. Self-enforcing norms and conventions are effective and therefore now at odds with the Western-led enforced institutions. Using the anthropological analysis of Coburn (2011), which examines the institutional setting in Istalif, I discuss the informal practices exercised by the economic and political actors that resonate throughout the rural areas. Section IV examines the implications.

II. Literature Review

The new institutional economics and Austrian economics literature provide an explanation for the reason why we often observe a gap between intended reforms and actual outcomes that deviate from those goals. Hayek (1945, 1967); Landa (1981, 1994); North (1990, 2005); Benson (1990); Boettke (2001); Leeson (2005, 2006, 2007b, 2008, 2009); and Coyne and Leeson (2011) highlight the importance of institutions as one of the main drivers of self-enforcing rules that govern societies. Informal rules such as culture and norms play a complementary role to formal and codified rules; without this marriage, institutions become ineffective. According to Boettke (2001), "When culture and economic logic coincide, commercial experimentation flourishes and material progress lifts the masses of people from subsistence. Absent this coincidence…behavior is diverted either into a *sub rosa* existence or manifests itself in counterproductive 'rent seeking' games" (p.262-3).

While North (1990) emphasizes that rules and belief systems developed in the past periods constrain choices in the present, Hayek (1945) further examines the knowledge problem with implementing outside institutions. The focus of this chapter is tacit knowledge governed by the indigenous people which Hayek (1967) defines as knowledge that cannot be easily articulated; in other words, "we are not in fact able to specify all the rules which govern our perceptions and actions" (p.60). According to Polanyi ([1958] 2002), tacit knowledge cannot be captured or taught because a person with tacit knowledge is unable to convey it through language or mathematics. "The aim

of a skilful performance is achieved by the observance of a set of rules which are not known as such to the person following them" (Polanyi, p.49). Therefore, informal rules have tacit knowledge embedded in them. Language, law, and money are spontaneous emergent social orders that were not formulated, but were learned through trial and error and experience (Menger 1936). Hayek (1979) states, "The basic tools of civilization – language, morals, law and money – are all the result of spontaneous growth and not of design" (p.163). Frey (1997) agrees, and explains that the preferences of local agents have "intrinsic motivations" which lead to spontaneously emergent institutions. Tacit knowledge, and therefore the knowledge problem, have implications for the design of institutions. Reforms consist of formal rules, but the already existing institutions consist of both formal *and* informal rules, which are tacit in nature. Law, for example, is referred to as a "cognitive institution" (Means 1980), and the role of culture and mental cognition becomes an obstacle of institutional design (Denzau and North, 1994; North, 2005). Hayek (1979) further explains, "Law is, of course, neither an unalterable fact of nature, nor a product of intellectual design, but the result of a process of evolution in which a system of rules developed in constant interaction with a changing order of human actions which is distinct from it" (p.207).

Institutions evolve over time in response to the underlying belief system of the people. Institutions either emerge spontaneously or attempt to change through design. "It would be no exaggeration to say that social theory begins with – and has an object only because of – the discovery that there exist orderly structures which are the product of the action of many men but are not the result of human design" (Hayek 1973, p.37).

Furthermore, it is an error to assume that the existing institutions are all the product of design, because social order could not depend on utilizing the available knowledge (Hayek 1973). There is a permanent limitation of our knowledge. Human institutions are neither invented nor designed. Institutions such as culture and tradition of rules of conduct that are learned "have never been 'invented' and whose functions the acting individuals usually do not understand" (1979, p.155). According to Hayek (1979), "The conception that man has, in the service of his innate desires, consciously constructed an order of society is, however, erroneous, because without the cultural evolution which lies between instinct and the capacity of rational design he would have possessed the reason which now makes him try to do so" (p.162).

Easterly (2008) emphasizes the important difference between the top down view and bottom up view of institutions. While a top down approach of institutions is determined by political leaders, the bottom up approach views institutions "as emerging spontaneously from the social norms, customs, traditions, beliefs, and values of individuals within a society, with the written law only formalizing what is already mainly shaped by the attitudes of individuals" (p.95). There are contrasting implications between the top down and bottom up view of institutions. Top down advocates suggest replacing old institutions by starting with a "blank slate...and making new laws at any time" (p.95). In this setting, political leaders and economists in the top down view recommend and design institutions through "pure reason", neglecting the implications of the knowledge problem. On the other hand, the bottom up view of institutions understands the importance of existing institutions and therefore the constraints of changing them.

According to Easterly, institutional change is “evolutionary rather than revolutionary” (p.95). Realizing the significant implications of the knowledge problem, advocates “express reluctance to make drastic changes to institutions whose rationale they cannot fully comprehend, showing respect for the historical evolution that has somehow yielded today's institutions” (p.95). These economists and political leaders realize that institutions have emerged for a reason, “This is not to advocate the extreme view that ‘what is, is right,’ only the more modest view that ‘what is, is for a reason" (p.95). In other words,

> Even if the bottom up economists can think of NO reason why a particular institution exists, they are still cautious about changing existing institutions abruptly (assuming such institutions are not too obviously destructive) with the knowledge that there is SOME reason, not yet understood and perhaps never to be understood, for their existence (capitalization original, p.96)

The tacit nature of the knowledge problem constrains reform because it is nearly impossible to appreciate existing institutions. Ultimately, effective embedded institutions are disrupted due to intervention and can further affect the changes leading to unintended consequences.

Rodrik (2000) also recognizes that institutions are important for the process of economic development; he argues however that the problem is that of understanding which institutions matter and how they tend to stick.[8] Therefore, Boettke, Coyne, and Leeson (2008) examine the importance of not only the path dependence of institutions, but also how culture and history matter for economic development. They provide a framework that they call the New Development Economics in which they analyze the institutional “stickiness” in terms of the regression theorem. Their analysis has significant implications limiting economic development through the enforcement of “outside”

[8] Rodrik, D. (2000), ‘Institutions for High-Quality Growth: What They Are and How to Acquire Them’, *Studies in Comparative International Development*, 35(3): 3–31.

institutions. While “indigenously-introduced endogenous” (IEN) institutions endogenously emerge spontaneously and stick to local condition, outside implantation of institutions (FEX) will be at odds with the *métis* of society and therefore will not stick. These foreign-introduced exogenous (FEX) institutions, and even the indigenously introduced exogenous (IEX) institutions, will less likely stick due the considerable “distance between the process of institutional design and the location of hoped institutional ‘take-hold” (p.342). Boettke, et al. conclude that local institutions have a deep-rooted stickiness to the people’s belief systems; any divergence from their setting will create disruption and prevent the indigenous people from enhancing their existing and effective institutions. While the reconstructive efforts in the 1940’s and 1950’s by the U.S. and Great Britain in Japan and Germany was positive, this success is attributed “to the fact that a significant portion of the Japanese *métis* remained intact in the postwar period” (p.346). Fukuyama (1996) explains that the relationship of Japanese culture is aligned with trade and market exchange. In an effort to democratize Germany, the indigenous institutional setting was aligned with the reforms. Marshall (1989) states, “It was recognized, however, that beneath the nationalist and aggressive policies perpetuated by German central governments, there had existed a healthy democratic tradition at the local level” (p.191). The reforms in Bosnia during the mid-1990’s however had much more disappointing results when the U.S. tried to bring peace and sustainability. The institutional reforms did not align with the underlying belief system, and while the internal ethnic conflict ended with signing the Daytona Peace Agreement in 1995 through the external pressure, the indigenous people did not institute the agreement. According to

Kreimer, et al. (2000), occupying forces were not ‘imposing’ order per se but “the United States and other key participants exerted substantial pressure on the…parties” (p.23). Boettke, Coyne, and Leeson (2008) explain, “The fact that the FEX institutional-based peace treaty was not aligned with the underlying *métis* of the parties involved, coupled with the stipulations of the DPA regarding the political order, is to blame for the reconstruction’s failure” (p.348).

Furthermore, legal institutions, an important factor of development and one that has been implanted in Afghanistan, are attributed to the degree of indigenously introduced institutions. Berkowitz, et al. (2003) assert,

> the social, economic and institutional context often differs remarkably between origin and transplant country, creating fundamentally different conditions for effectuating the imported legal order in the latter. Transplant countries therefore are likely to suffer from the transplant effect, i.e. the mismatch between preexisting conditions and institutions and transplanted law, which weakens the effectiveness of the imported legal order (p.171).

When formal institutions are incompatible with the informal belief systems, it is unlikely that formal reforms will stick to local conditions. As Sunstein (1996) states, “the meaning of legal statements is a function of social norms, not of the speaker's intentions” (p.2050). Therefore, when law or any formal institutions is transplanted, there are unintended consequences. According to Pistor (2000), “however perfectly designed a law that is supplied from the outside may be, its impact is ultimately determined by how it is understood by law makers, law enforcers, and law users at the receiving end” (p.8). Therefore, Berkowitz, et al. (2003) expect when law is transplanted, the gap increases between “law on the books and law in action” (p.177). They clarify that, “The logic of this prediction follows from the idea that the law is primarily a ‘cognitive institution’.

This is self-evident with respect to the informal legal order" (p.177). Means (1980) explains "cognitive institution" is something that "could convey only the knowledge already embodied in existing practice" (p.47). In other words, these authors highlight the knowledge problem in regards to enforced foreign institutions. According to Berkowitz, et al. (2003) "Observance of [foreign] law requires knowledge of the customs and habits of a social group. The fact that formal legal orders have put the key elements of the legal order in writing tends to disguise the fact that the effectiveness of these rules also rests on knowledge and understanding of these rules and their underlying values by social actors" (p.177). Finally, Berkowitz, et al. (2003) aimed to determine whether transplanted foreign law is more or less effective in developing "level of legality that are comparable with those of origins" (p.177). Their empirical study indicates,

> Where law develops internally through a process of trial and error, innovation and correction, and with the participation and involvement of users of the law, legal professionals and other interested parties, legal institutions tend to be highly effective. By contrast, where foreign law is imposed and legal evolution is external rather than internal, legal institutions tend to be much weaker (p.189).

In 1748, Montesquieu wrote,

> Law in general is human reason, inasmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular cases in which this human reason is applied. They should be adapted in such a manner to the people for whom they are made, as to render it very unlikely for those of one nation to be proper for another (p.104).

Given that endogenously emergent institutions are compatible with the existing social norms, they are more likely to stick to local conditions. Exogenously introduced institutions are more likely to be inconsistent with underlying belief systems due to the vast knowledge problem. Any effort to enforce these formal institutions will lead to reform failure and the use of excessive force.

In an effort to explain whether institutional transplants are even viable, Couyoumdjian (2012) examines 18th century philosopher and social reformer Jeremy Bentham's proposal that given the constraints of local knowledge of "Place and Time," transfer and implantation of efficient institutions is possible. According to Couyoumdjian, the effective transfer of institutions is not viable by simply being aware of what type of knowledge is necessary. He explains, "This is due to the fact that the core of informal institutions is tacit, which imposes a fundamental constraint on the process of institutional transplantation; informal norms must co-exist with formal rules, and such merging requires some accommodation of both types of rules" (p.489). He provides an example of the early 19th century Spanish America when, after the end of the colonial system, the new republican constitution was at odds with the reality and the *métis* of society. The new constitution's "proclaimed grand principles, which were not adequately debated and maybe were even incomprehensible to the majority of the population in these countries (Halperin Donghi 1973; Safford 1985). The result was an extensive process of 'cycling over institutions" (p.504).

Coyne (2012) further emphasizes the importance of existing endowment of effective informal rules functioning within a society. He argues, "Reforms which attempt to transplant formal rules are not the same thing as transplanting the entire social system that generated that institution in the first place. Absent the complementary informal rules to serve as a foundation, formal rules will be dysfunctional" (p.7). Furthermore, as formal reforms become more at odds with the existing informal institutions, external enforcement costs increase. This implies that the enforcement cost increases as the local

norms are more and more at odds with the formal implantation of rules, thus creating the constant threat of coercion to encourage cooperation and coordination around formal institutions. Deviation from the society's belief system creates a costly trade-off to a point of "establishing formal rules becomes too costly relative to the perceived benefits of those rules" (p.9). While there is vast literature on the general importance of institutions in terms of economic development, the reasons for the failures of reform in Afghanistan has not been analyzed through the institutional stickiness lens. Political explanations[9] of the failures of reform in Afghanistan identify the shortcomings but are not able to explain why well-intended beneficial reforms are not able to stick. My contribution to the literature will attempt to utilize the tools of new institutional economics and Austrian economics analysis to explain why policy reform failed when implemented as outside institutions. Hence, this chapter will contribute to two strands to literature: 1) stickiness framework and enforcement cost analysis in terms of Afghanistan; and 2) extend the literature on the economic understanding of Afghanistan's institutions.

III. INSTITUTIONAL SETTING OF ISTALIF

After the fall of the Taliban in 2002, Istalif was strained with high political tensions, lack of cooperation, and rising disputes. Yet, today, Istalif is one of the most peaceful towns in Afghanistan. With an anthropological lens, Coburn views Istalif's current situation as a paradox. How can an ethnically diverse town, competing for scare

[9] http://www.cfr.org/afghanistan/salvaging-governance-reform-afghanistan/p27778

resources, and feuding powerful agents coordinate peace and cooperation, especially when international military intervention was limited relative to other parts of Afghanistan? In other words, how did the people of Istalif coordinate around cooperation and peace without formal state institutions? In Istalif, idiosyncratic norms emerged in the economic and political arena. One of the characteristics that Coburn (2011) identifies in regards to the political and economic agents is their adherence to honor, which is a self-enforcing norm. The second institutional norm is what Coburn terms as "masterly inactivity," which is a strategy to intentionally mask the political and economic tensions in order to avoid violence between the local agents. This incentive structure was effective because the uncertain condition of Istalif was tainted with the real threat of violence while no one group had monopoly on violence. The objective of both institutional norms was to maintain the peace and cooperation between local agents.

The institution of honor dominates political, economic, and social aspects. With seven main groups of political agents – local (qaum) leaders, religious leaders, merchant class, former militia groups, the district government, the police, and the international groups – pursuing to shape the daily politics of Istalif, the major influential voice was the malik. The malik was the qaum leader chosen by the people. According to Coburn, "Qaum leaders derived most of their power from honor and claims of historical authenticity" (p.110). They hold the tacit knowledge of the town, the people, and the political institutional setting, more importantly the complex web of relationships. On the other hand, religious leaders relied on religious capital, the new merchant class relied on their increasing wealth, the former militia groups, district governor, and the police

maintained influence by using the threat of violence, and the NGOs and the international military relied on a blend of economic capital, the threat of violence, and external networks to reinforce their positions. Honor was the only enforcement mechanism behind keeping peace in the eyes of the locals, who demanded the balance of power between these political agents to be upheld without resorting to actual violence. Coburn explains, "This honor was primarily embodied cultural capital, but it was a form of cultural capital that both reinforced, and was reinforced by, social capital" (p.111). In other words, honor was a self-enforcing mechanism as the qaum leader – the malik – "maintained a network of allies who respected him because of his honor, which in turn gave him wider political support" (p.111). The process of achieving and maintaining honor was challenging. The people of Istalif elected a malik and prescribed the power boundaries through the jirga system, a council of elders. Negative rumors about powerful men circulated frequently, and the malik often worried about such talk. Therefore, if the malik was able to keep peace, he maintained his honor and hence remained in power. Istalif maintained a decentralized system where each family, tradesmen, or qaum relied on their own efforts to advance economically but collectively cooperate to maintain peace and harmony. The malik was also an arbitrator in conflict resolution cases. Other groups realized the important relationship of the malik with the people, and therefore kept a close connection to the malik. The malik understood the delicate balance of power. He had honor and the people behind him; the rest of the groups lacked that relationship but maintained the threat of violence.

The political and economic settings compose a complex set of institutions in Istalif. According to Coburn, “Economic power was often complemented by social power, in the form of allies, through internal and external networks. Internal social capital came through an individual’s network of relationships (with kin, friends, and neighbors), primarily in the town” (p.108). This intricate web of interrelated network system emerged through a spontaneous order, which means there is no manual that can teach others how the society in Istalif operates, and therefore what the underlying issues are to which solutions can be offered. Each of the political groups took up on a certain social capital, whether religious, cultural, or economical capital. Interestingly, while the threat of violence was pervasive, “violence was a rare occurrence in Istalif” (p.109). People understood that neither the local nor the national government have monopoly on violence. The state also lacked political legitimacy, especially at the local level. Yet, the locals and their leaders did not “attempt to publicly question the state’s claim to power” (p.186). However, the threat of violence was used as an advantage. Every group used the threat of violence differently. “Maliks were reluctant to use the threat of violence to gain power not just because they did not have the military resources, but because their power relied on honor” (p.115). Coburn gives an example of a malik that was once a mid-level commander and had used force to obtain his position. In the eyes of Istalifis, “He had a reputation of being corrupt” and he was not trusted with solving the people’s disputes. Coburn explains, “because this commander had used force to become a part of the qaum system, his power continued to come from the threat of violence, not from an honorable reputation” (p.130). Similarly, if a malik had close ties to the government, the people

would be suspicious and expect betrayal. According to Coburn, “The more a leader associated with foreigners or the government, the less Istalifis trusted him” (p.114). It is clear that the people of Istalif value their customary practices of honor and anyone who defects is categorized in a separate group with less influence. Commanders and government officials on the other hand were not seen as leaders in the community, because they paraded their force by always being armed.

While the 2003 Disarmament, Demobilization and Reintegration Program (DDR) attempted to disarm all members of civil society, the former militia kept most of their weapons. According to these commanders, it was for self-defense purposes. Not surprisingly, “Since the rest of the residents had turned in most of their arms, the commanders, even lightly armed, were much better equipped than any other group” (p.129) In this environment, the indigenous people established honor as a self-enforcing mechanism, but also realized that the threat of force was evident. Despite the difference between these two main groups utilizing their power, the “simplification of the role of the malik in Istalifi discourse, maliks adapted rapidly to changing political conditions” (p.115). The fragile boundaries and complex balance of powers created an uncertainty of peace. Given that the threat of violence was used to maintain power, emergent institutions of guarding honor and exercising masterly inactivity ensured peace and coordination. Defectors were reminded that, “any shift in incentive structures in town threatened to realign interests, awaken old feuds, and end the peace that had tenuously reigned in the area since the fall of the Taliban” (p.217). The emphasis on the relationship between violence and power is critical in understanding the incentive structure of Istalif’s

institutional setting. It is important to stress that the interpretation of violence changes over time and space (Keane 1996; Coburn 2011). “Structural elements and cultural understanding reshape violence in different settings…[therefore] violence and power have a continuously shifting relationships; one cannot exist without redefining a culture’s understanding of the other” (Coburn, p.208-209).

There exists a knowledge gap and, given the international community’s intervention in Istalif and in many parts of Afghanistan, it must be addressed. There is a deeper knowledge problem than simply realizing the ambiguity of the role of state and the idiosyncratic norms of Istalif. Coburn explains that violence depends on the incentive structure in the realm of cultural and social setting in Istalif. More precisely, what shapes an individual to refrain from violence versus choosing violence? Keane (1996) narrowly defines violence as “any uninvited but intentional or half-intentional act of physically violating the body of a person who previously had lived in ‘peace’” (p.6). According to Coburn’s analysis of Istalif, “This definition is useful for our understanding of politics in Istalif because it emphasizes the way violence implies a change in the status quo – from what is understood to be peace to what is understood to be violence” (p.210). In other words, violence has the power to change a relationship or a condition forever. Given that this is the reality in Istalif does not mean that the same exact dynamic is present in other parts of Afghanistan. This institutional setting is unique to the norms embedded in the cultural and customary belief system of Istalif. Exogenous institutional reform will have a vast knowledge problem in understanding the local conditions given the historical and cultural aspect of the people.

Common wisdom claims that the international community along with the Afghan government has designed the political institutions currently at work; in reality, the local leaders are governing the people of Istalif. According to Coburn, “the Karzai regime attempted to centralize the government, taking advantage of the new, executive-oriented government the constitution had established” (p.134). The approach of the central government was “to assign governors and other officials to areas that were not their homes…to ensure that officials’ primary loyalty was to the central government, not to the local figures of power (maliks, religious leaders, and commanders)” (p.134). Even the negotiations of securing the position of police chiefs and police officers were through patronage networks that took place at the Ministry of the Interior in Kabul, “and the process of assigning police officers to certain districts was completely untransparent to the people in Istalif” (p.135). In Istalif, while the district governor was “technically in charge of most matters concerning the national government…In reality, he delegated much of this work to maliks, who were far more familiar with the local population” (p.132). His influence came from his connections with Kabul. Clearly, the governor was aware of his limited cultural, social, and economic capital, mainly because his ties were based upon external networks and therefore, as an outsider, was not able to build relationships with the local community. His powers were weak and poorly defined, and he was “rarely visible in town” (p.132). Ironically, if the governor had tried to develop more local alliances, it “would have weakened his ties to Kabul, and he would have lost the little power he did have” (p.134). However, these practices were based on the institutional settings in Istalif. The people of Istalif referred to the state as the “product of

Kabul" and the international policies as disturbing the "traditional social order" (p.134). According to Coburn, "many of their concerns about the presence of international NGOs and the military were that programs were being designed to bring external values" (p.135). These exogenous institutions did not align with the embedded institutions of Istalif. According to Coburn,

> No group was less effective at accumulating influence than the international groups, whose various projects involved a mix of development, state-building, and stabilization goals. Despite the large amounts of money being spent in Istalif and the military might of the armed forces, neither the NGOs nor the international military did much to influence local politics (p.139).

Despite their potential, especially their capability of violence and access to the economic and political network, "the effect of international presence seldom had its intended consequences" (p.137). The disjunction between exogenous and existing endogenous institutions at the local level has unintended consequences. Coburn highlights that "Programs conceived in Kabul, or, more often, abroad, did not adapt easily to local conditions" (p.138). For example, the microloan program, while popular and effective in other parts of the world, was unsuccessful in meeting the capital needs of Istalifis. Inflation, high prices, and time-consuming applications further limited the available funds offered by the NGOs. However, the emerging merchant class and other forms of credit offered by shopkeepers fulfilled the demands of Istalifis. Ultimately, "The contrasting goals of the international community and those of Istalif's residents made the creation of political power more challenging…NGO's goals often had little to do with a desire to improve the life in Istalif" (p.140). The obstacle of exogenous institutions is beyond simply realizing the realities at the local level. The knowledge problem is tacit in nature; any formal reform will be ineffective if not properly aligned with the customary belief

system of the local people. In other words, institutions must emerge rather than be designed to be effective. According to Coburn, "Most of the projects had been conceived abroad, and the goals of the development workers was to ensure that the programs ran as described in their funding documents, not in a way that created real change" (p.140). Real change is nearly impossible when the disparities are so wide between exogenous and existing endogenous institutions. Assuming problems are identified and solutions offered; institutional change must be driven endogenously in order to be lasting.

Embedded institutions in the town of Istalif were unaligned with the many outside policy reforms. The rejection of policies is apparent in the ways that the locals had already emerged norms to govern themselves. First, it is important to emphasize that there was little crime in Istalif. Even when disputes occurred, the people preferred to use the jirga system rather than involve the police. Coburn provides an example of "shopowners in the bazaar collectively paid for a night watchman, even though one of the police posts was near the center of the bazaar. The shopkeepers seemed to fear the police just as much as they feared criminals" (p.136). In order to explain how peace and cooperation were achieved in this complex setting of different competing political and economic actors, it is important to first emphasize why Istalifis encouraged these multiple groups to persist in the first place. In Istalif there is a saying, "*Yek bam wa du hawa' – 'there is one roof, but two weathers,"* meaning two individuals can be on the same roof yet experience different conditions (italics original, p.141). In a fragile state, where different actors possess limited power and have the threat of violence at their disposal, leads to a more uncertain environment with a high probability of escalating to violence.

But according to Coburn, “the structure these conditions created encouraged groups to use political strategies that relied primarily on disengagement, allowing each group to horde power, but only within the boundaries of its realm” (p.141). These boundaries emerged in response to the fragmented yet threatening power to encourage masterly inactivity and ensure peace and cooperation.

> Politics in Istalif were an ineffective process in which it was in the best interest of most actors to conserve the resources they had and limit the access others had to these resources. This approach tended to lead toward inactivity, often against the best interest of the majority, but in a way that was generally stable and peaceful (p.141).

This approach may seem absurd to individuals who assume violence as a last resort when thinking about the political tension, instability, and violence that result from the linear political process. The assumption is that if individuals interact in society with scarce resources, disagreements on the distribution of resources lead to tensions and disputes, and ultimately lead to violence if not regulated by the state or other force. In other words, the assumption is that violence results from the failures of government forces and the lack of institutions such as democracy and civil society. These assumptions, however, do not hold in Istalif and in many parts of Afghanistan. Coburn states, “The situation in Istalif illustrates the fundamental flaws in many assumptions that have guided the international intervention – particularly about violence, stability, and state-building in the twenty-first century” (p.218). It is important to clarify that “this was not simply a case of the international community misunderstanding unruly Afghan tribes” (p.218). The threat of violence or resorting to violence was not due to the failures of government institutions but rather a strategic decision.

While informal institutions seem weak or unstable in the eyes of the international community, it has been more effective than the proposed formal reforms. For example, while the international community and the Afghan government supported voter education in Istalif, in the past elections, they failed to account for the unintended consequences, which have led to "increased political tension and violence in certain areas" (p.221). Coburn's analysis states, "These fairly uniform state-building programs ignore the local political landscape and the way cultural contexts shape the nature of violence, particularly its unpredictability" (p.221). In a unique setting like Istalif, politics lacked transparency and the fragile boundaries emphasized the limits of power. Meanwhile, "individuals were strongly encouraged not to take drastic political action that would reveal the true groups weakness" (p.217). Fragmented power in Istalif meant,

> [T]he state had some power, but could not really penetrate society; commanders had been demobilized, but had not submitted all their arms; qaum leaders maintained much of their influence on neighborhood politics but could not mobilize on more serious issues; and international military forces and NGOs had enough strength to upset this balance, but little interest in involving themselves in local politics (p.146).

This inaction, coined as "masterly inactivity" by Coburn refers to "the political practice of avoiding direct confrontation while simultaneously working inconspicuously to ensure that any competing group in town would have to mobilize followers directly in order to access resources – thus, forcing opponents to spend as much political capital as possible" (p.145). In other words, the local agents in Istalif intentionally created an ambiguous separation of state and society in order to maintain peace. After the fall of the Taliban, masterly inactivity became a product of the political landscape in Istalif. According to Coburn,

> Choosing inactivity preserved the status quo, while engaging in a public struggle risked defeat, which would result in the loss of honor. Such a loss would have further damaged the façade of political and social power each man attempted to create, thus ensuring more losses in the future. In a system where the potential cost of losing in a confrontation outweighed the potential gains from winning in most scenarios, individuals went out of their way to avoid the appearance of engagement (p.146).

The objective of masterly inactivity was to maintain political stagnation and to ensure that no single group could establish hegemonic control over local politics. Coburn emphasizes, unlike other parts of Afghanistan, “Istalifis adopted a series of unique practices that discouraged state penetration into society and temporarily regulated violence” (p.217). These practices had emerged spontaneously and were aligned with the customary belief system of Istalif at the local level.

“Politics in Istalif were shaped by what Charles Lindholm calls ‘competitive egalitarian individualism” (Coburn, p.214). Alex de Tocqueville had a similar analysis of early U.S. democracy. Tocqueville ([1835] 2003) warns against the dangers of democracy and “the potential excesses caused by the tyranny of the majority” (p.214). Such "majoritarianism” systems required checks and balances between the branches of government so that they “were not as vulnerable to the whims of the masses” (p.214). In places like Istalif, social and economic organizations have a long history of furthering “the peculiar moral stance typical of people who live by trade – an attitude that is individualistic, calculating, risk-taking, and adaptive to circumstances” (Lindholm 2002, p.31). According to Coburn, “The result in Istalif was a social system dominated by groups, based on professions that were prone to disintegration due to the fierce individualism and adaptability they promoted” (p.216). Furthermore, these multiple political groups were fiercely competitive in nature. Conventionally, formal governments

are able to control violence because they have monopoly on violence. When no group has a monopoly on violence, the threat of violence exists. Coburn asserts, "Istalif's political structures prevented violence, not through direct competition in a public forum, but through the tacit agreement to avoid public confrontation and the understanding that an outbreak of violence threatened the well-being of the entire community" (p.216).

In Istalif, norms emerged at the local level to compete and govern without leading to violence. Embedded institutions like honor norms and masterly inactivity were based on the incentive structure and deeply rooted *métis* of the indigenous people. The decisions and strategies that were practiced reflect their unique belief system. The knowledge problem is further magnified due to the flaws of assumption and misconception of reality. Therefore, designers of institutions lack an appreciation of the emergent idiosyncratic norms. This knowledge problem will lead to policy failures, regardless of its intentions. Ultimately, formal reform will not stick at the local level when they do not align with these norms and conventions.

For instance, the World Bank's initiative, The National Solidarity Program, was designed to "emphasise community participation, empowerment, local contribution, and the development of community capacity"[10] (Nixon 2008, p.34). The intended design was to build local governance through an elected Community Development Council (CDC) in charge of distribution of funds. The unintended consequences of the program in Istalif disrupted the embedded institutions. According to Coburn, the CDC, "simply reinforced the power of local political actors, who took advantage of the government funds the NSP

[10] Nixon, Hamish. 2008. "Subnational State-Building in Afghanistan." Kabul: AREU).

provided, using funds to create more patronage for themselves" (p.193). Furthermore, the international coalitions and NGOs intended to influence social, economic, and political structures. As mentioned above the "line between a terrorist and a legitimate, state sponsored violence" was unclear to the people of Istalif (p.211). NGOs contributed funding to the economy but it "created perverse incentives that limited economic cooperation" (p.212). Coburn reports instances where Istalifis went out of their way to choose aid projects that "the international community and the government were highly unlikely to support…or that were economically insignificant" (p.178). The objective was to avoid windfall effects in a "system that disincentivized investment in the community and cooperation that would build up enough political capital to incrementally alter the status quo" (p.178) and damage the informal institutions. The main concern was that "any increase in power would have threatened the tenuous balance in town achieved" therefore, "most political actors found it in their best interest to act conservatively instead of promoting intergroup or townwide mobilization, and in some cases, they worked to ensure that such projects failed" (p.178). The lack of direct confrontation led to an environment where "there was no real way to gauge the political might of a group or its ability (or inability) to mobilize a substantial number of people in town" (p.179).

According to Coburn, "The case of Istalif specifically demonstrates that stability is not a consequence of state institutions" (p.213). Clearly, the formal reforms did not stick to local conditions because they did not align with existing and effective informal conventions. The NGOs and intentional military simply did not have the ability to change

because the locals rejected these reforms once it altered their informal institutional settings.

Coburn further illuminates the international community's misperception of Istalif's state. They interpreted Istalif and the rest of Afghanistan according to the "Westphalian model of the sovereign, clearly bounded nation-state" and identified the state as an "entity with a monopoly of violence" (p.212). Clearly, that was an inaccurate view of the daily life, especially in Istalif. Coburn provides an example to account the difference between the perceptions of the international community and Istalifis. In one incident, a conflict escalated between two national political figures in the main highway near Istalif. A government official, Attorney General Sabet (a Pashtun), had taken matters into his own hands by directing traffic when he realized that traffic violations and disorder had created extreme congestion. General Mohammad Jurat, an ambiguous figure in the eyes of Istalifis, soon challenged him when Sabet stopped his convoy. The situation quickly escalated into what some suggest that "Sabet evidently hit Jurat with a water bottle" and later "sent police to arrest Jurat" (p.199). When Jurat escaped back to his town in Panjshir, Sabet involved the national and international press. The international account was very different from the local accounts. "In international accounts, Jurat was the villain because he threatened Western notions of what the state should look like; the international media assumed the major issue was the fragility of the Afghan state" (p.203). In contrast to the international community, Istalifis viewed Sabet as the "primary offender because he did the most to publicly undermine the division between society and the state" (p.203). According to the locals, Sabet had dismissed the institutional settings

in Afghan politics. Moreover, “Sabet’s actions were seen as a violation of this informal truce” between Pashtuns and Panjshiris in the government (p.200). According to Coburn,

> The key difference was that the international community did not fully realize the ambiguity of the state’s role in Afghanistan. Instead they acted as if Afghanistan followed the bounded, Westphalian model, which certain figures representing state institutions and all others threatening the state’s power (p.203).

The locals were aware that the government and its officials were corrupt but they also believed to work “diligently to maintain the fiction” (p.198) was necessary. The Western notion of state describes corruption resulting “from government officials not performing their duties correctly, as opposed to the reality that corruption reflected the state’s lack of clear borders and the ways local patronage networks connected to government officials” (p.203). Evidently, this reveals the divergence between the exogenous agents and the local’s conceptualization of politics in Istalif. Istalifis believe this event was a lesson that disputes not bounded by the emergent informal institutions could escalate into violence and threaten peace. The international actors are only accustomed to operate “in a political paradigm that conceptualized the state using the Westphalian model, thinking about the Afghan state in different terms was simply impossible” (p.204). For the international community to admit there is an ambiguous state, “it would have been necessary to completely rethink paradigms of international aid and intervention” (p.205). In other words, the international community not only had misconceptions about the Afghan state, they would never admit to the realities of the institutional settings because it would risk their entire purpose and presence.

The locals in Istalif discovered a self-governing system with endogenous institutions that entail unique customary beliefs. Political actors in Istalif,

> chose not to act violently – not because democratization had somehow let them participates in a civil democratic system, but because violence was temporarily unappealing choice, given the economic and political incentives in the town (p.219).

The aspect of unpredictability is an important phenomenon when violence is introduced in towns like Istalif. The local actors realize that the existing political and social tension, combined with the unpredictable nature of violence, jeopardized the delicate balance of powers between the groups. Coburn states, "In Istalif, the political and social conditions had caused a situation in which political power was defined and distributed in such a way that individuals were invested in the preservation of the fragile balance between relatively equivalent competitors" (p.219). Locals were not only aware of these realities but also understood the importance of keeping peace. Therefore, given their tacit knowledge, the use of masterly inactivity was effective. Not every town in Afghanistan had the same evolved institutional setting. Paktya and Kandahar, both nearby cities, used violence as an effective tool and had an increasing number of insurgents from tribes. According to Coburn, given "the politically uncertain conditions of Istalif, the construction and maintenance of a symbolic state-society division became a useful fiction, created by the economic and political conditions of the times" (p.184). Furthermore, this established a useful fiction which "helped preserve the peaceful political balance" (p.184) known as masterly inactivity. How did fiction of an independent state maintain stability? Given that the state lacked the monopoly over violence and the government officials had a weak bureaucracy, by "maintaining the fiction, government officials could act as if there were no warlords in town to threaten their power" (p.203). The combination of the multiple number of political actors and the emergent use of masterly inactivity maintained an ambiguous state with no one truly knowing the power of the other. The objective of

masterly inactivity was to maintain political stagnation and to ensure that no single group could establish hegemonic control over local politics. One violent incident could quickly escalate and break down the peaceful institutional settings established by the people.

Actors in Istalif were constantly faced with choosing to expose their power, and therefore signaling to choose between using the threat of violence or exercising masterly inactivity. For instance, in a gathering, a religious leader was asked to address a crime and the requested compensation to the family. Given that the state authorities had already heard this case, he did not want to overstep the vague boundaries of state and society. As a religious leader, he simply declared the crime as a sin against Islam and that the matter will be decided by the law (*qanoon)*. According to Coburn,

> Disagreeing with the district governor could have elicited a response that would have revealed the weakness of both sides, but agreeing…would have further legitimized the governor's power and made the mawlawi seem beholden to the state. Instead, the mawlawi's use of masterly inactivity minimized conflict, cost him little, and preserved the useful fiction of the state-society divide (p.189).

The absence of violence is therefore not "a product of a strong state, democratic competition, or even its residents' attempts to avoid state control; it came from a complex political situation based on a temporary arrangement of incentives and the ways that groups organized socially" (p.217). Nonetheless, the international community and especially the U.S. government enforced reforms on "the assumptions that politics enfranchisement ends violence" (p.218). Not only were their assumptions lacking reality in Istalif, the knowledge problem was beyond identifying the issues. Moreover, the policy reforms were completely unaligned with the local institutional settings in Istalif, leading to failure and higher enforcement costs.

In addition to the political arena, masterly inactivity was also present in the economic sphere. Interestingly, beyond political stagnation, “Istalifis missed out on key economic and political opportunities” (p.145). In cases of competition within the local market, disputes over land, and even water rights, “there was the potential for cooperation and also for violent competition, but by choosing strategies of masterly inactivity, Istalifs preserved the status quo, avoiding both change and violence” (p.146). The fragility of peace and cooperation is based on the adherence of honor. The use of honor was an enforcement mechanism to keep peace and cooperation in Istalif. However, when the international community introduced policies enhancing the central government and instituting ministries to engage in their already harmonious system, Istalifis rejected the reforms.

In one example, Coburn (2011) provides an anecdote regarding a prospective plan by the Afghan Ministry of Rural Rehabilitation and Development for paving a road between Istalif and the main highway between Kabul and Charikar. While the plan seemed like a positive sum gain for all, the discussion was beyond these benefits and the plan ultimately failed. In his recount of the meeting, Coburn learned that the paving of the road would have had unintended consequences unaware by the “outsiders” (the policy makers, engineers, and development aid workers). The competition between maliks in these provinces proved to be the main factor for avoiding a windfall effect. Coburn (2011) explains, “Since any increase in power would have threatened the tenuous balance the town achieved, most political actors found it in their best interest to act conservatively instead of promoting inter-group or townwide mobilization, and in some cases, they

worked to ensure that such projects failed" (p.178). The argument was, "Although building the road was in everyone's best interest, it was also in everyone's best interest to keep the other malik from gaining prestige and unbalancing the distribution of power in town" (p.151). The people of Istalif were willing to give up this economic opportunity rather than risking what was believed as "returning to the inequitable distribution of resources from the days just after the fall of the Taliban" (p.151). During thirty years of war, "Istalifis had witnessed an incredible array of violence, from aerial bombardment by outsiders to civil war between neighboring villages, culminating in the complete razing of the town by the Taliban" (p.211). This shows that given the conditions, temporary economic opportunities were refused which could have potentially been used to further political tensions and ultimately lead to violence. The objective was to maintain the institutional setting, which had achieved peace and cooperation. But with international coalitions in and around Istalif, "there was no clear line between terrorists violence and legitimate, state-sponsored violence" (p.211). War continued to prevail in people's memory, and violence seemed imminent, especially since "police, international troops, and former local militias moved around town, heavily and conspicuously armed" (p.211).

Furthermore, the enforcement mechanism beyond the benefits of peace in a fragile system was honor. Each group had a certain amount of power within the evolved boundaries. With unsuccessful projects in the past, supporting the road had the risk of losing honor if the road project failed. However, the opposing malik did not explicitly oppose the project either; he would have lost honor if the road were built. And "open opposition would have exposed his selfish motives and undermined his authority as a

malik and a leader of the people" (p.152). It is an intricate system of balancing masterly inactivity on both sides. Neither of the maliks exposed their personal feuds, "Instead, by discussing the early post-Taliban period, [the malik] relied on arguments he knew fit into the public narrative of Istalif's history" (p.152). Eventually, when the people of Istalif realized the economic benefit of an improved road without jeopardizing peace and cooperation, they "decided to build a road [to Bagh-e Mullah, a gozar about a mile and a half north of the bazaar] together" (p.152). The cost was split by a businessman in their community and locals volunteering their time and labor. "None of the town's main political figures had been involved" (p.153). Clearly, when people at the local level realize certain benefits, they are able to successfully achieve those goals, without the interference of international and state actors.

Masterly inactivity was also present in local markets. The bazaar in Istalif was comprised of over two hundred shops, belonging to a diverse group like potters, the new merchant class, and commanders. Approximately 28 types of shops competed in the bazaar. The institutional setting in this environment was complex and unique to the time and space. Economic capital and opportunity was available but "competition was muted and tensions dulled by the fact that most of the economic and political competitors in the bazaar were influenced by masterly inactivity" (Coburn, p.158). Clearly, competition was fierce and shop owners did compete, however it was not done overtly. Coburn explains that competition was not about publicly approaching customers; instead, many invited prospective customers in for "tea and conversations, with the clear hope that this would eventually lead to business" (p.160). Businessmen were building relationships

before seeking profit because they lived in uncertain conditions. Furthermore, differentiating between shops depended on reputation. When Coburn questioned one potter why he bought his groceries “at the far end of the bazaar,” bypassing many other shops on his way, his answer was regarding “the importance of social relationship and economics” (p.162). Competition was based on reputation, not just personal but also in terms of business. Being friends is a social relationship but having good customer service was a competing mechanism. According to Coburn,

> Most shopkeepers used a strategy of masterly inactivity, in which they carefully guarded the reputation of their shops within their social network but did not directly challenge their neighbors. Instead they gossiped about their rivals, in the hope that undermining their reputations would increase their own business (p.162).

This strategy of masterly inactivity further maintained their already emergent relationships. Interestingly, some groups were more present in the bazaars than others. Maliks were the most present in the bazaar, while the police, former militias and commanders, and religious leaders were less visible. The presence of the local leader more than the other agents established a sense of kinship and alliances. Coburn asserts, “In the bazaar, everyone knew everyone, at least by reputation. Because of business ties, kinship, and political alliances, any incident had lasting implications” (p.164). More importantly, their approach achieved their main objective -- to keep the peace in the bazaar and society through building and maintaining relationships. According to Coburn, “The lack of direct competition resulting from masterly inactivity contributed to an absence of violence in the bazaar “ (p.163). In contrast to Istalif’s calm business environment, violence quickly escalated in Kabul's market area and violence was “much more common” (p.163). These are subtle inferences that evolve from embedded

institutions ingrained in the *métis* of society. Local people on the ground have the tacit knowledge of these incentive structures and emergent self-enforcing cooperation mechanisms.

Masterly inactivity was also exercised in the realm of property rights. In Istalif, property right ambiguities and the threat of land disputes were worse than many other areas. According to Coburn, "The town had been completely abandoned after the second round of Taliban attacks in 1997, and Istalifis, for the most part, did not return as a group, meaning there were plenty of opportunities to usurp the land of those who returned later" (p.167). In contrast to this reality, the UNHCR reports landownership was "Well defined, no problems reported" [11] in the district of Istalif. Whether the reality was unreported disputes or the well-defined property rights rests on the fact that there was an "*absence* of land disputes" (italics original, p. 168). When conflict occurred, it was immediately resolved through the jirga system. Coburn explains that property right documentations "lacked uniformity," many were handwritten, others amended with witnesses, and some deeds were reissued. In other words, property rights were not formally defined. And "in almost all land rights disputes, the state continued to grant local leaders power to shape the outcomes, even when the district governor seemed to be officially resolving them" (p.195). Informal institutions enforced a peaceful means to maintain peace and cooperation regarding land ownership without involving the state and powerful local leaders.

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[11] UNHCR Sub-Office, Central Region April 4 2002, "Istalif District Profile" http://www.ecoi.net/file_upload/10561_accord358_District_Profile_istalif_04_04_02.pdf

Evidently, “Signatures by local leaders proved that the community had accepted the land claim and the transaction; the people signing could serve as witnesses in any disputes” (p.172). Political imbalance after the fall of the Taliban resulted in a rise in ownership disputes. Consequently, “Land disputes were not simply about ownership; they were about the community’s acceptance of certain political balance” (p.172). According to Coburn, “This led community leaders to practice and encourage a strategy of masterly inactivity, which made land dispute less noticeable and decreased direct confrontation over property” (p.172). This approach incorporates the local customary belief system of citizens of Istalif. In an unstable political arena, ambiguous and complex property rights could quickly result in violence. In the meanwhile, the town of Istalif coordinated the “collective understanding that land disputes were disruptive conflicts that could upset delicate political balances” (p.169) and escalate to violence. Even shopkeepers and building owners were less interested in overt property rights conflict and direct competition; maintaining peaceful relationships “was an easy, inexpensive way to create and maintain social and political alliances in an important public area of Istalif” (p.167). More importantly, individuals took measures to ultimately avoid conflict. According to Coburn, “while the bazaar represented economic opportunity and flux more than anywhere else in town, shopkeepers and building owners alike worked to minimize both change and overt competition” (p.167). They shared a “sense of conservatism, a desire to avoid conflict (especially public conflict), and a general pattern of masterly inactivity” (p.167). In other words, masterly inactivity was an active move to maintain the peace which had emerged through informal institutions. Policy reform tackling the

ambiguity of land ownership is beyond the solution of simply defining private property rights. The knowledge problem cannot be grappled since the realities of local condition are much more complex than prescribing exogenous formal reform.

Finally, Coburn asks, “Could Istalifis have more actively resisted the state, which was ineffective, corrupt, and generally treated with disdain?” (p.205). He answers perhaps, but that the alternatives remain unclear. In Istalif, people did not fear of being “incapable of throwing off the state” or the violence that would cause physical injury; “they were concerned by the potential violence and uncertainty that accompanies the alternatives” (p.205). The fear was that a single violent act could result in political chaos, which were peacefully coordinated within the local area. According to Coburn, “Commanders could have re-exerted their power, mullahs could have regained some of the respect they had had during the Taliban era, the international military could have increased its presence in the area – or all of these groups could have clashed simultaneously” (p.205). In an uncertain environment tainted with memories of war, and the threat of violence a reality, the people of Istalif achieved peace and cooperation without resorting to force or state institutions. The endogenously introduced institutions allowed for all groups in Istalif to coordinate an understanding based on preserving harmony. In contrast, the foreign institutional reforms fail because it fails to stick because they are at odds with existing local conditions.

IV. IMPLICATIONS

There are several implications for understanding the limits of foreign introduced institutions to facilitate peace and cooperation. Istalif, a town of multiple groups with different intended goals and powers, was able to promote a peaceful environment without the use of force, international actors, or state interventions. Afghanistan has one of the richest cultural histories in the world. The social, political, and economic dynamics are unique to its history and people. Miakhel (2010) explains the famous phrase - "all politics is local" by Thomas O'Neill (former U.S. Speaker of the House) - most resonates in Afghanistan. For Afghans and especially for Istalifis, what happens at the local level is more important than in Kabul, the capital. At the local level, embedded informal institutions created an incentive structure to establish and preserve peace. Honor was one of the mechanisms to facilitate cooperation between groups like the malik and district governor. Based on their customary belief systems, leaders achieving their power through honor had more impact. Ultimately, the people chose their leader -- the malik -- based on his reputation of preserving his honor and the honor of the village. The malik, a political actor himself, was the coordinator between other political groups and the people on the ground, without the power of force. He shared the tacit knowledge of the underlying informal institutions with the agents in Istalif.

Masterly inactivity was an incentive to cooperate because although it was a quiet cooperation, it was better than a loud escalation of violence. Cooperation was a consequence of immediate conflict resolution mechanisms. And although a dispute resulted in a peaceful resolution, sometimes neither side was happy with the outcome.

But the possibility that disputes would recur and "to have escalated the dispute under the political conditions at the time would have required involving other parties (such as the district governor) in time-consuming meetings, potential bribes, and a loss of control over the outcome" (p.177). While this was not what the international agencies pictured, given the local conditions of Istalif, this was what the people desired. The indigenous people were the only ones to build peace and cooperation effectively. In order to maintain the emergent peace in the town of Istalif, the people rejected foreign policies.

In order to understand the incentive structure, it is important to grasp the underlying informal institutions. Formal reforms have failed to achieve their intended goals and the implemented policies are not sticking at the local level. The disjoint between policy goal and reality is attributed to the lack of knowledge, more specifically the tacit knowledge in regards to the *métis* of society. According to Coburn, "The political categories often discussed by international actors are not always the most important for understanding the local political situation" (p.220). Furthermore, the international agents' analysis of how political actors operate in an ambiguous state with the likelihood of violence is flawed. In Istalif, "power coalesced around political actors operating as religious figures, government officials, and commanders" (p.220). Coburn witnessed Istalif's complex local conditions, the intricate web of relationships, and the daily operations of the political actors and concludes that "a decrease in the amount of money being spent in the country, and a drawdown of international troops, seem likely to reduce violence because these measures will remove a significant source of political tension" (p.222). It is critical to realize that well-intended policies only disrupt effective

informal institutions. Ultimately, foreign agents are unable to grapple with the complexities of local conditions and cannot appreciate the underlying mechanisms of customary belief systems. The knowledge problem becomes far more complicated when dealing with Afghanistan, a country comprised of myriad unique institutional settings like Istalif. Exogenous reforms will not stick to the local level when there is a great cultural and knowledge gap between already embedded informal institutions and formal institutions. Finally, the lack of sticky institutions will lead to more policies implementations, and therefore a higher enforcement cost and excessive force.

Concluding Remarks

My dissertation has several important implications for understanding the limits of state intervention to facilitate cooperation. First, while conventional wisdom suggests an active role of the state to coordinate peace between individuals and enforce contracts, my analysis illustrates that this is not always the case. In societies like Afghanistan, where the state is weak, dysfunctional, or absent is most areas, the government cannot be relied upon to ensure cooperation and coordination between members of society. In such cases, appreciating and understanding the role of informal institutions is of paramount importance. I highlight the central role of Pashtunwali's self-enforcing norms, such as honor and the jirga, in enforcing trading contracts within Pashtuns and between ethnically diverse tribes in Afghanistan. My analysis demonstrates that in rural Afghanistan, in the absence of an effective state authority, Pashtunwali norms are able to facilitate not only cooperation, but also credit transactions between ethnically diverse traders.

Second, I make clear the limits on the ability of outsiders to impose desired institutional reforms on foreign societies. In order to demonstrate this, I draw on the literature on norms and institutional stickiness, and apply them to efforts at institutional reform in Afghanistan. In doing so I provide an illustration of the power of the institutional stickiness framework while simultaneously providing insight into the recent events in Afghanistan. The main implication is that even well-intentioned reforms will fail absent an appropriate foundation grounded in customary practice. In addition to understanding the situation in Afghanistan, this has important implications for future attempts at rule reform in other contexts.

Finally, I provide micro-level evidence of the disjoint between exogenously-imposed institutions and the realities at the local level in Afghanistan. In line with most discussions of institutional reform efforts in Afghanistan, chapter 2 focuses on reforms at the national, or macro, level—e.g., national political, legal, and economic institutions. This chapter drew on evidence from the everyday life in a local Afghan town, Istalif, to further demonstrate the disconnect between the desired reforms at the national level and the realities at the local level. The daily operations of the town of Istalif illuminate the true complexity and difficulty of external reformers overcoming the knowledge problem associated with institutional reform. In Afghanistan, there is a long history of the absence of a single "national identity" and all politics is truly local. Istalif represents one manifestation of this reality and makes clear why efforts at top-down institutional have failed to stick in the desire manner. The recognition of the local complexities in Afghanistan should lead to strong skepticism of subsequent proposed efforts to impose

institutional change through national institutions. Given the local realities, the only way such reforms will “stick,” absent the requisite customary base, is through the threat, or use, of excessive force.

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