

# Counterinsurgency, Legitimacy, and the Rule of Law

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Law features more prominently in warfare today than at any time in memory. Stories about the legality of detaining “unlawful combatants” or “unprivileged belligerents” in Guantanamo Bay appear in the headlines weekly. Questions of venue, a question usually considered one of the most technical questions in legal procedure, have reached the American popular consciousness in the form of debates over whether to try suspected terrorists in civilian courts or military commissions. The current set of conflicts may prove to be the most heavily litigated in human history.

The conflicts in Iraq and Afghanistan have witnessed an even greater expansion of law’s role in war—law as a means of warfare. Much of the important front-line action in both theaters has been borne by teams of lawyers and development specialists. Both the military and US civilian development agencies have embraced these ostensibly legal activities—referred to generally as “rule of law”—for their contribution to our campaigns. For instance, in 2010, civilian and military rule of law capabilities were dramatically expanded in Afghanistan with the appointment of Ambassador Hans Klemm as the Coordinating Director of Rule of Law and Law Enforcement at the US Embassy Afghanistan and the establishment of the Rule of Law Field Force-Afghanistan (ROLFF-A) to provide greater capability to conduct rule of law operations in nonpermissive environments. The commitment to rule of law as part of the Afghanistan campaign appears to be increasing, with the expansion of ROLFF-A into the multinational NATO Rule of Law Field Support Mission in the summer of 2011.

Law’s ascendance as a means of warfare is tied to the ascendance of counterinsurgency as a form of warfare. Counterinsurgency, as a contest between opposing groups to be recognized by a particular population as their legitimate government, places the host nation government’s legitimacy at the center of the conflict. Establishing the rule of law, then, is important to counterinsurgents because of its contribution to a government’s legitimacy. The rule

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of law features prominently in the growing stability operations doctrine as well. Not only are stability operations central to counterinsurgency, but the value of the rule of law in providing stability goes beyond counterinsurgency to stability operations conducted in other contexts.<sup>1</sup>

Although “legitimacy is the main objective” in counterinsurgency, the counterinsurgency and stability operations doctrines both lack a meaningful definition of legitimacy and a model for how the rule of law contributes to legitimacy.<sup>2</sup> Counterinsurgents are hardly the first to address the problem, though. Questions about how legitimacy and law operate together have long been studied in jurisprudence and social psychology. The two fields approach the question quite differently, but both offer insight into what legitimacy means to counterinsurgents and how it can be integrated in a counterinsurgency campaign.

### ***Counterinsurgency, Rule of Law, and Legitimacy***

It would be hard to overstate the role of law in counterinsurgency doctrine. The *Counterinsurgency Field Manual* mentions “rule of law” 30 times, including an entire section on “Establishing the Rule of Law.”<sup>3</sup> Given its importance in current operations, it is no surprise that the “rule of law” has received attention. As defined by the Army:

Rule of law is a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with international human rights principles. It also requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in applying the law, separation of powers, participation in decisionmaking, and legal certainty. Such measures also help to avoid arbitrariness as well as promote procedural and legal transparency.<sup>4</sup>

Counterinsurgency is not a contest for law, though, but a contest for “legitimacy.” If the number of mentions is any measure, the *Counterinsurgency Field Manual’s* use of “rule of law” 30 times suggests attachment to the concept, but the 124 references to “legitimacy” (along with a section titled “Legitimacy Is the Main Objective”<sup>5</sup>) denotes something closer to devotion. Legitimacy is the bottom line of accepted counterinsurgency theory: “The primary objective of any COIN operation is to foster development of effective governance by a legitimate government.”<sup>6</sup>

Although legitimacy is central to counterinsurgency, counterinsurgency theory lacks a comprehensive understanding of how the rule of law affects legitimacy, or, for that matter, a robust definition of legitimacy itself. On the former point, the *Counterinsurgency Field Manual* offers at least some traction:

The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread, enduring societal support.<sup>7</sup>

The *Stability Operations Field Manual* provides a more detailed description of how the rule of law affects legitimacy:

Rule of law enhances the legitimacy of the host-nation government by establishing principles that limit the power of the state and by setting rules and procedures that prohibit accumulating autocratic or oligarchic power. It dictates government conduct according to prescribed and publicly recognized regulations while protecting the rights of all members of society. It also provides a vehicle for resolving disputes nonviolently and in a manner integral to establishing enduring peace and stability.<sup>8</sup>

Although the doctrine describes the importance of the rule of law—“a major factor” and the “key”—and even describes some things the rule of law does, it does not describe a mechanism of causation. Although it suggests a connection between the rule of law and legitimacy, the doctrine does not explain how the law-to-legitimacy chain works.

The rule of law is hardly alone as means for building legitimacy. The *Counterinsurgency Field Manual* highlights several other sources of legitimacy:

The host nation increases its legitimacy through providing security, expanding effective governance, providing essential services, and achieving incremental success in meeting public expectations.<sup>9</sup>

Tasks that provide an overt and direct benefit for the community are key, initial priorities. Special funds (or other available resources) should be available to pay wages to local people to do such beneficial work. Accomplishing these tasks can begin the process of establishing HN government legitimacy. Sample tasks include—

- Collecting and clearing trash from the streets.
- Removing or painting over insurgent symbols or colors.
- Building and improving roads.
- Digging wells.
- Preparing and building an indigenous local security force.
- Securing, moving, and distributing supplies.
- Providing guides, sentries, and translators.
- Building and improving schools and similar facilities.<sup>10</sup>

Such a large set of sources for legitimacy substantially complicates the inquiry. If legitimacy can be built both through establishing the rule of law and collecting the trash, how do we know which efforts lead to the greatest increases in legitimacy? Should we spend less on fighting corruption in Afghanistan and more on dumpsters? More importantly, how would we know when we should be doing what?

### ***Attempts at Defining Legitimacy***

On the question of legitimacy itself, the doctrine is decidedly better at identifying when it exists or what brings it about than what it is. The

Counterinsurgency Field Manual offers “six possible indicators of legitimacy that can be used to analyze threats to stability”:

- The ability to provide security for the populace (including protection from internal and external threats).
- Selection of leaders at a frequency and in a manner considered just and fair by a substantial majority of the populace.
- A high level of popular participation in or support for political processes.
- A culturally acceptable level of corruption.
- A culturally acceptable level and rate of political, economic, and social development.
- A high level of regime acceptance by major social institutions.<sup>11</sup>

The *Stability Operations Manual* attempts a more complete description, but eventually falls back on a description of perceptions:

Legitimacy derives from the legal framework that governs the state and the source of that authority. It reflects not only the supremacy of the law, but also the foundation upon which the law was developed: the collective will of the people through the consent of the governed. It reflects, or is a measure of, the perceptions of several groups: the local populace, individuals serving within the civil institutions of the host nation, neighboring states, the international community, and the American public.<sup>12</sup>

In the simplest terms, then, the doctrine equates legitimacy with consent. “Successful stability operations ultimately depend on the legitimacy of the host-nation government—its acceptance by the populace as the governing body. All stability operations are conducted with that aim.”<sup>13</sup> Similarly, in counterinsurgency, “legitimacy derives from the consent of the governed, though leaders and led can have very different motivations.”<sup>14</sup> “Governments described as ‘legitimate’ rule primarily with the consent of the governed; those described as ‘illegitimate’ tend to rely mainly or entirely on coercion.”<sup>15</sup> “Long-term success in COIN depends on the people taking charge of their own affairs and consenting to the government’s rule.”<sup>16</sup>

### ***Legitimacy as Consent?***

Consent itself, though, is far too slight a concept to serve as a definition of legitimacy. A version of legitimacy defined solely in terms of consent easily collapses into a version of legitimacy defined as popularity, which is an inadequate foundation for counterinsurgency. Counterinsurgency requires a long-term commitment on the part of the host nation government and, in turn, the government needs an equally long-term commitment on the part of the population. The fact of consent to the government’s rule tells one little about the basis for that consent, and consent based in raw popularity is a fragile foundation for legitimacy. Rather, counterinsurgents need a deeper relationship with the population than mere acquiescence.

Any definition of legitimacy useful for counterinsurgency needs to include an internal, normative commitment to the government on the part of the population that goes beyond mere consent—not only a willingness to accept the government’s rule but a recognition of the government’s authority to rule. Consent is the way that a population is likely to express its perception that its government is legitimate, but consent alone is not a sufficient condition for legitimacy. If the population has an internal commitment to the government, consent will follow, but it is the internal commitment represented by consent that is the actual objective of counterinsurgents, not the consent itself.

The question remains, though, exactly what form that commitment should take and how to generate it.

### ***Legitimacy for Counterinsurgency***

As with any abstract concept, there are a number of possible definitions of legitimacy. The problem for counterinsurgents is to pick a model of legitimacy that informs thinking about counterinsurgency in a helpful way.

As a competition between competing claims to govern, insurgency necessarily has a strong ideological component. Any workable definition of legitimacy should therefore include the ideological basis underlying a particular government. Herbert Kelman put it succinctly:

[I]t is essential to the effective functioning of the nation-state that the basic tenets of its ideology be widely accepted within the population. This does not necessarily mean a well-articulated, highly structured acceptance of the ideology at a cognitive level. It does mean, however, that the average citizen is prepared to meet the expectations of the citizen role and to comply with the demands that the state makes upon him, even when this requires considerable personal sacrifice.<sup>17</sup>

The nature of that ideological component is itself somewhat contingent. It may be a philosophical claim about the nature of the government (as were many of the claims of our own insurgency against the British) or it may represent a normative commitment to some other concept, such as religious, ethnic, or clan identity, all of which have been important in the recent conflicts in Afghanistan and Iraq.<sup>18</sup> There is no single ideology that legitimacy must be linked to; rather the point is to recognize the necessity of ideological narrative as a component of legitimacy. That may seem like an uncontroversial point, but it is not. Arguments to allow government to devolve to warlordism, for instance, are arguments premised in a view of legitimacy limited to efficacy (or even consent) but devoid of concern over the ideological basis for rule. At some level, debates over whether to follow counterinsurgency or counterterrorism strategies in Afghanistan are about whether to include ideology as a component of our war effort.

Legitimacy is also important to counterinsurgents for its ability to generate compliance. A regime subject to an insurgency that is unable to secure compliance with its laws loses credibility, which in turn further reduces compliance, leading to a descending cycle. Consequently, a model of legitimacy

for counterinsurgency needs to include compliance as both an objective and a component of that legitimacy.

But the problems faced by counterinsurgents—and the opportunities presented by the concept of legitimacy—go beyond mere compliance. A government facing an armed insurgency is asking its citizens to choose it as the governing authority; those choices have important, practical consequences for citizens, including consequences for social connections and even the possibility that members of the population will be asked to take up arms against (or suffer attacks from) insurgents. What counterinsurgents require is something more akin to commitment in order to induce not only passive compliance but a willingness to make personal sacrifices in support of the government. “In times of national crisis the state demands sacrifices from individual citizens that they would not normally make if they were acting purely in terms of their personal interests—at least their short-run interests.”<sup>19</sup>

Indeed, if given the choice, counterinsurgents would likely take commitment over compliance. Whether the legitimacy of the government is increased more by the credibility it gets through increased compliance or by a committed but disobedient populace is an empirical and culturally contingent matter. If the regime can claim what H. L. A. Hart called the “internal aspect”<sup>20</sup>—a commitment to the government as the source of rules—the battle for legitimacy is largely won, even if most citizens frequently ignore the law. A regime is legitimate when it is viewed as such, not when people comply with its rules. Although compliance is likely to be present when the regime is viewed as legitimate, it needn’t be. In some countries, for instance, the cultural practice could be that national law is only enforced intermittently. Identifying legitimacy as an internal commitment on the part of the populace toward the government, though, explains neither what the content of that commitment is nor how governments can grow it.

The two questions are related because citizens understandably connect the legitimacy of a government’s laws with the legitimacy of the government itself. Identifying the appropriate relationship between the content of laws and the legitimacy of a regime is the key to harnessing the power of law to build a regime’s legitimacy. One of the major sources of compliance with legal rules is a sense of moral obligation to the rule itself. For the most part, what keeps most of us from killing each other is our own view of the immorality of murder (and perhaps the social consequences of the fact that murder is viewed as immoral by the wider community), not that the state has outlawed murder. Similarly, regimes build legitimacy by promulgating rules that comport with the moral commitments of the populace—one of the reasons why the citizens of Virginia think it has a legitimate government is because that government has outlawed murder. The point is not merely that popular rulers make for popular regimes or that citizens will recognize a government as legitimate if it provides them with services—a purely instrumentalist view of legitimacy. Rather, in this regard the social science largely comports with jurisprudence: feelings of legitimacy

tend to be more closely related to moral concepts like fairness rather than with instrumentalist ones like who is willing to provide the best social services.<sup>21</sup>

Recognizing the ability of government to build legitimacy by adopting rules that comport with popular morality simultaneously reveals the limits of such a strategy for counterinsurgents: viable insurgencies can only exist when their claims to legitimacy have ideological salience with a substantial portion of the population. In an insurgency, the content of the population's underlying normative commitment is itself contested. While the government should certainly attempt to convince the populace of the moral superiority of its proposed legal system over that of the insurgents, it cannot necessarily rely on widespread moral agreement with its laws as its sole source of legitimacy. At the same time, the military and criminal aspects of conducting a counterinsurgency are likely to lead the government to prefer measures that might be in tension with the population's moral commitments, or merely be unpopular, in the short term. Governments may increase taxes to pay for security forces, increase association with foreign supporters, and adopt extraordinary criminal laws (such as designating insurgent groups as terrorists and outlawing assistance to them) and procedures to deal with the security threat posed by the insurgency. A government that attempts to build its legitimacy by adopting measures that comport with existing popular morality is extremely constrained in its ability to use the legal system as one of the tools in conducting the counterinsurgency.

What governments subject to insurgencies require is discretion. For counterinsurgents, legitimacy is a "reservoir of loyalty on which leaders can draw, giving them discretionary authority they require to govern effectively."<sup>22</sup> The most valuable form of legitimacy for a regime fighting a counterinsurgency is one that provides the ability to successfully promulgate rules that may be inconsistent with popular morality without substantially harming the population's commitment to the regime. Legitimacy is what fills the gap between the population's agreement with the regime's policies and their agreement with the regime's right to demand loyalty. The more legitimacy a regime has, the wider that gap can be.

### ***Law's Central Role in Legitimacy***

Identifying legitimacy as the population's internal commitment to the government's authority to rule gives much greater definition to the work of counterinsurgents and the various means they have to carry out that work. Connecting legitimacy to an internal commitment to authority allows counterinsurgents to prioritize their work in ways that a list of "[t]asks that provide an overt and direct benefit for the community" does not. Tasks that are not directly related to the act of governing are likely of secondary importance to counterinsurgents; those that not only provide material benefits to the population but do so while reinforcing the regime's role as a government should receive priority. For instance, health, educational, and sanitation programs (recall the example of removing trash from the streets) are likely to increase the government's popularity. Popularity is important in all political contests;

counterinsurgents should consider such programs for their ability to generate popular support as well as for their humanitarian value. But improvements in providing services do not necessarily contribute to the government's legitimacy. While digging wells (another example from the *Counterinsurgency Field Manual*) may be a good way to improve the population's well-being and thus its regard for the government, the appreciation well-digging generates is indistinguishable from the type of gratitude bestowed upon anyone providing material assistance, including those with no claim to govern—even foreign interveners. There is nothing about digging wells that buttresses the well-digger's claim to make rules for the government of a society. Similarly, while governments can ingratiate themselves with the population by providing services, they do not necessarily enhance their claim to govern by doing so.

Unlike many other objects of development in counterinsurgency, law is central to the act of governing. Regulation by law is not only a necessary role of the state, it is one the state must engage in exclusively to maintain its claim as the legitimate government. In many places, trash collection (for instance) is a purely private activity conducted by contractors rather than the government. More importantly for counterinsurgents focused on legitimacy, even where the government operates services like trash collection, a competing trash hauling company does not threaten the legitimacy of the government. The same is not true of regulation by law. Arresting, trying, and punishing criminals, is a function that separates governments from other actors. The same would be true of a parallel civil dispute resolution system operating outside the auspices of the state, such as is the case with the Taliban in Afghanistan.<sup>23</sup> Indeed, a monopoly on the use of force in the resolution of disputes is the essence of a government—a government that does not wield that power exclusively is likely a government in name only.<sup>24</sup> In a counterinsurgency, the state must not only provide a functioning legal system, it must do so well enough to displace its competitors. What separates governments from other providers of goods and services is the ability to promulgate and enforce law, and so “rule of law” programs rightly claim a preeminent role in the contest for legitimacy that defines counterinsurgency.

### ***Law as a Tool for Building Legitimacy***

Having identified a model of legitimacy and a necessary relationship to law, the question remains how counterinsurgents can best use the law to build legitimacy. In this regard, the social science literature has considerably more to say than jurisprudence does. Numerous models have been offered to explain how individuals associate legal systems with legitimacy. As previously suggested, individuals may think the law is legitimate because of its substantive qualities, either because outcomes favor the individual (an instrumentalist view) or because the individual views the outcomes as fair—both are forms of distributive justice.<sup>25</sup> But distributive justice is not the only source of legitimacy. Individuals may also view a legal system as legitimate because they have a favorable view of the procedures a regime follows in exercising its authority—a measure of procedural justice.<sup>26</sup>

Approaching the problem of building legitimacy through the lens of procedural justice offers important advantages to counterinsurgents. What gives substantive law much of its power to build legitimacy is its ability to connect the government to prevailing social norms. But substantive law is not the only source of that connection. Many procedural rules superficially have little connection to popular morality, but most procedures are rooted in fairness, to which most societies have a strong normative commitment.<sup>27</sup> Procedures related to fairness may be as effective as (some posit they are more effective than<sup>28</sup>) the normative content of substantive law (and well ahead of instrumentalist concerns) for their effect on legitimacy.<sup>29</sup> Of course, changes to procedural law can impose some of the same limits on counterinsurgents as changes to substantive law: subjecting operations to procedural limitations can seriously limit the discretion of counterinsurgents in prosecuting the insurgency, a limit demonstrated no more clearly than by recent debates over the appropriateness of procedures in the United States' own counterterrorism campaign. Procedure is hardly a panacea for building legitimacy. Not only is the line between substance and procedure notoriously thin, fairness itself has an inescapable relationship to outcomes, meaning that procedural changes do not make instrumentalist concerns irrelevant.<sup>30</sup> But there is still reason to think that procedural law offers opportunities to counterinsurgents to build legitimacy through law in ways superior to changes in substantive law.

The substantive or procedural distinction suggests an additional refinement in how counterinsurgents should understand legitimacy. Relying on social norms as reflected in substantive law to build legitimacy might increase the perception that the regime is legitimate, but, because that legitimacy is a product of alignment between the regime and the population's own moral commitments, it is less likely to build deference. An approach to building legitimacy based on substantive conceptions like distributive justice is essentially winning legitimacy by surrendering discretion. Even if procedural justice is less effective at building legitimacy than morally popular substantive law, the type of legitimacy procedural justice builds is more likely to include a sense of deference than a form of legitimacy that is itself dependent on compliance with social conceptions of distributive justice.<sup>31</sup> If what the regime desires is deference, procedural justice is a far more effective path than substantive reform.

The broad conception of fairness embodied in procedural law is likely to be more widely held than the norms underlying particular substantive rules; even pluralistic societies tend to share common conceptions of fairness.<sup>32</sup> Although many social values are likely to be contested between the host nation government and insurgents, because the notions of fairness underlying procedural justice are at the core of a country's social identity, insurgents are less likely to distinguish themselves from the host-nation government by offering an alternative vision of procedural justice than distributive justice. Robust procedural protections can also legitimize restrictive policies that would otherwise lead to protest; consider the public perception of warrant-based vs. warrantless searches. A judge's participation in authorizing searches and wire taps might fail to satisfy

dissidents that they are being treated fairly, but the government is trying to make itself more legitimate in the eyes of the “uncommitted middle,” not dissidents.<sup>33</sup> In less extreme cases (where the underlying decision does not tread so closely to controversial substantive law), procedures, especially those designed to key upon notions of interactional justice (such as the requirement of a hearing), may enhance legitimacy even while doing very little to constrain officials’ discretion.<sup>34</sup>

The mechanism through which procedural law operates to build legitimacy may also have advantages for counterinsurgents. Procedural rules build legitimacy by reinforcing group identity, both by providing the benefits of procedure based on state-centric identity such as citizenship but also by providing the individual information about his status within the group—procedures demonstrate that the government values the individual and, thus validated, the individual develops an affinity for the government.<sup>35</sup> Under this “group engagement” model, changes in procedure do not change behavior directly; they do so by increasing the degree to which individuals identify with the group, which in turn increases the likelihood that they will accept decisions made by the government.

Another major advantage procedural law has over substantive law as a source of legitimacy is related to compliance. Although a number of experts have suggested that compliance may be overrated as a means of building legitimacy in the context of counterinsurgency, it is hardly irrelevant—compliance strengthens the regime. Unlike in the case of substantive legal rules, though, the government itself largely controls compliance with procedural rules: judges decide whether to comply with procedural requirements when conducting proceedings; if the procedural law calls for a hearing before pronouncing judgment and the judge actually holds a hearing, that denotes compliance with the government’s laws. The executive is also in a strong position to enhance the legitimacy of the government by choosing to engage the legal system in conducting its own business, including the counterinsurgency itself. Bringing insurgent cases into the judicial system is valuable because it allows the government to brand insurgents criminals and provides judicial sanction to outcomes in individual cases, but it also represents the government’s own choice to rely on the legal system.<sup>36</sup> Like individual citizens who choose to obey the law and to bring their own cases in government courts, the executive similarly chooses whether to invoke the legal system in a variety of civil and criminal cases, the most visible of which are likely to be insurgent cases themselves. Controlling whether citizens comply with the law is an age-old problem. The government’s ability to unilaterally control compliance with many procedural rules without having to rely on the cooperation of citizens substantially reduces the cost of generating compliance and the legitimacy that accompanies it.

There are, of course, risks in relying on procedural reform in counterinsurgency. An emphasis on procedural changes can present a temptation to engage in formalist reform projects that lack any connection to popular notions of justice. If the purpose of “rule of law” programs in counterinsurgency is to build an internal, ideologically based commitment to the government, the

specific reforms themselves should touch upon the population's moral commitments; empty formalism is unlikely to do so.

## **Conclusion**

Counterinsurgency is an unusual form of warfare—one in which law and legitimacy figure prominently as a means to defeat a nation's enemies. Recognizing that legitimacy is valuable, though, and identifying exactly what it is that makes it valuable are two different things. For counterinsurgents, the value of legitimacy is in convincing the population to not only prefer the government over the alternative offered by insurgents but to be willing to incur sacrifice to preserve the government and grant the government discretion to adopt measures necessary to defend itself against the insurgency. That type of relationship between a people and a government is likely to exist only when the population has an internal, ideological commitment to the government. Compliance with the government's laws can also contribute to the government's legitimacy, but it is only a secondary consequence of the type of commitment that counterinsurgents require.

Given the needs and limitations of a counterinsurgency, counterinsurgents should focus on the potential for procedural justice as a source of legitimacy. Often, the social norms underlying distributive justice will be a contested part of the insurgency while conceptions of fairness underlying procedural justice are likely to be both widely held and uncontroversial. The form of legitimacy generated by procedural reforms is likely to be more helpful to counterinsurgents than that produced by substantive legal reform. Tying counterinsurgency campaigns to substantive legal reform is likely to overly constrain counterinsurgents to either unstable or instrumentalist conceptions of distributive justice, but procedural reforms build faith in process rather than outcome, allowing counterinsurgents the discretion they need to adopt potentially unpopular measures. The way in which procedural justice builds legitimacy, too, helps counterinsurgents. Procedural justice contributes to legitimacy by reinforcing group identity and the state's validation of individuals' social worth.

## **NOTES**

1. U.S. Department of the Army, *Stability Operations*, Field Manual 3-07 (Washington, DC: U.S. Department of the Army, 2008), 1-27 (on the role of the rule of law in "conflict transformation"); *ibid.*, 1-17 ("Failure to ensure continuity of rule of law through [the] transition [from military occupation to local civilian control] threatens the safety and security of the local populace, erodes the legitimacy of the host nation, and serves as an obstacle to long-term development and achieving the desired end state."); *ibid.*, 2-11 ("Long-term development aims to institutionalize a rule of law culture within the government and society.").

2. U.S. Department of the Army, *Counterinsurgency*, Field Manual 3-24 (Washington, DC: U.S. Department of the Army, 2006), 1-21.

3. *Ibid.*, D-8.

4. FM 3-07, 1-9.

5. FM 3-24, 1-21.

6. Ibid. As is the case with many aspects of counterinsurgency, the role of legitimacy has general application as well. Also see U.S. Department of the Army, *Operations*, Field Manual 3-0 (Washington, DC: U.S. Department of the Army, 2008), 2-4 (“A stable peace may include any or all of the following: a safe and secure populace, a legitimate central government, a viable market economy, and an effective rule of law.”).

7. FM 3-24, 1-22.

8. FM 3-07, 1-9.

9. FM 3-24, 5-2.

10. Ibid., 5-21.

11. Ibid., 1-21.

12. FM 3-07, 1-7.

13. FM 3-0, 3-14.

14. FM 3-24, 1-9.

15. Ibid., 1-21.

16. Ibid., 1-1.

17. Herbert C. Kelman, “Patterns of Personal Involvement in the National System: A Social-Psychological Analysis of Political Legitimacy,” in *International Politics and Foreign Policy*, ed. James N. Rosenau (New York: Free Press, 1969), 278.

18. There is considerable dispute, however, on the role ethnic identity plays in conceptions of legitimacy. See Tom R. Tyler, “Procedural Justice, Identity and Deference to the Law: What Shapes Rule-Following in a Period of Transition,” *Australian Journal of Psychology* 61, no. 1 (2009): 34.

19. Kelman, “Patterns of Personal Involvement,” 278-79.

20. H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press 1994), 56-57.

21. See, for example, Tom R. Tyler, *Why People Obey the Law* (Princeton: Princeton University Press, 2006), 72-74.

22. Ibid., 26. Tyler elsewhere describes legitimacy as a “cushion of support,” Ibid., 30.

23. C. J. Chivers, “In Eastern Afghanistan, at War with the Taliban’s Shadowy Rule,” *The New York Times*, February 6, 2011.

24. The Judge Advocate General’s Legal Center & School, U.S. Army, *The Rule of Law Handbook, A Practitioner’s Guide* (Charlottesville, VA: Center for Law and Military Operations, 2007), 7.

25. Linda J. Skitka, Jennifer Winquist, and Susan Hutchinson, “Are Outcome Fairness and Outcome Favorability Distinguishable Psychological Constructs A Meta-Analytic Review,” *Social Justice Research* 16, no. 4 (December 2003): 309.

26. Tom R. Tyler, “A Psychological Perspective on the Legitimacy of Institutions and Authorities,” in *The Psychology of Legitimacy: Emerging Perspectives on Ideology, Justice, and Intergroup Relations*, ed. J.T. Jost and Brenda Major (Cambridge, UK: Cambridge University Press, 2001), 416-36.

27. Tyler, *Why People Obey the Law*, 107 (“If unfavorable outcomes are delivered through procedures viewed as fair, the unfavorable outcomes do not harm the legitimacy of legal authorities.”).

28. Ibid., 64.

29. Ibid., 72-74, 100.

30. Skitka et al., “Are Outcome Fairness and Outcome Favorability.”

31. Tyler, *Why People Obey the Law*, 107 (“The important role of procedural justice in mediating the political effects of experience means that fair procedures can act as a cushion of support when authorities are delivering unfavorable outcomes.”); *ibid.*, 275 (“Through legitimacy, procedural justice encourages deference.”).

32. Ibid., 109.

33. FM 3-24, 1-20.

34. Jason A. Colquitt et al., “Justice at the Millennium: A Meta-Analytic Review of 25 Years of Organizational Justice Research,” *Journal of Applied Psychology* 86, no. 3 (2001): 426-27.

35. Tyler, “Procedural Justice, Identity and Deference,” 33.

36. FM 3-24, 1-24.