Governance in the Aftermath of Violent Internal Conflict

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Governments weakened by violent internal conflict fail to administer justice or protect private property, undermining the process of economic development. Given the acute constraints facing formal governance in this context, governance rooted in informal or customary institutions is often more likely to succeed. To demonstrate the relative success of customary governance, I first discuss theoretical frameworks to analyze institutions in the aftermath of violent internal conflict. Then, I review the recent scholarship on Afghanistan and Rwanda that shows customary governance thriving where formal governance did not.

"Humanomics," as proposed by Smith and Wilson (2019), is a richer framework than standard neoclassical approaches to analyze institutions. Drawing heavily from Adam Smith's *Theory of Moral Sentiments*, they distinguish between an impersonal world of markets and exchange and a smaller world of social interactions while emphasizing how the latter provides a foundation of norms to support the former. The emphasis on norms that emerge through social interaction is closely related to the framework proposed by Boettke et al. (2008) to analyze institutional change. I apply these two frameworks to study institutions in the postconflict context.

State capacity and efficient political institutions facilitate impersonal exchange and are associated with economic development (Fukuyama 2011; Pritchett et al. 2013;

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Acemoglu and Robinson 2019). Those living in extreme poverty mostly reside in conflict-torn areas under governments with limited state capacity and weak formal institutions. Violent internal conflict further undermines and disrupts these development-supporting institutions (Chen et al. 2008; Besley and Persson 2009; Chowdhury and Murshed 2016).[1] Internal conflict is part of a cycle of conflict and underdevelopment (Collier and Hoeffler 2004; Cox et al. 2019), which has left the poorest billion people in the world living in extreme poverty (Collier 2007). How can this vicious cycle be broken? Collier, among others, argues that the way out of the cycle of conflict and underdevelopment is to strengthen formal institutions. They promote development policies aimed at building state capacity (Levy and Kpundeh 2004; Andrews et al. 2017), improving formal economic institutions (O'Reilly 2014), and supporting democratization (Collier et al. 2003; Paris 2010).

Yet, the track record of reforming formal institutions is mixed, especially when reform is imposed from the outside. Coyne (2008a) chronicles the repeated failure of the United States to "export democracy" by force. The issue of whether foreign aid helps or harms institutional quality is hotly debated. Foreign aid may increase the size of government (Remmer 2004) and reduce economic freedom (Young and Sheehan 2014). Even studies that show positive effects of aid on institutions concede that these improvements are modest (Jones and Tarp 2016; Pavlik et al. 2022). Given the constraints, external attempts to make substantial reforms to formal economic and political institutions face substantial obstacles.

Within the framework of humanomics, institutions emerge from interactions within families, groups of friends, and civil society (Smith and Wilson 2019, 103). Therefore, a successful process of reestablishing institutions that have been disrupted by conflict is more likely to emerge from a similar bottom-up process than from the imposition of institutions from outside the given social context. In what follows I apply the broader view on the effectiveness of customary or informal institutions to weak states in the postconflict context.

Section 2 discusses the theory of why indigenously introduced customary institutions are more likely to succeed. Sections 3 and 4 review the recent scholarship on the efficacy of customary institutions in Afghanistan and Rwanda. Section 5 concludes.

A Framework for Understanding Postconflict Institutions

Describing Adam Smith's perspective in *The Theory of Moral Sentiments*, Smith and Wilson (2019, 96) note that "the general rules we follow emerge out of inductive experience and are not the consequence of applying reason or deliberate human design." A framework for analyzing institutional change in the aftermath of conflict

1. In some instances violent internal conflict is also associated with a deterioration in economic freedom (O'Reilly and Powell 2015; Brice 2018; O'Reilly 2021).

should reflect that institutions emerge from experience. I use a taxonomy of institutions from Boettke et al. (2008), which is closely related to the humanomics approach. The taxonomy provides us with a framework to organize our analysis of how likely changes to institutions are to take root in society, or how likely they are to "stick." Institutions more closely connected to informal practices—including norms and culture that are learned from experience (or *mētis*)—are more likely to take root. See Boettke et al. (2008) for more in-depth discussions of *mētis*.

Institutions can be thought of as either exogenous or endogenous. Exogenous institutions are imposed from above by formal authorities. By contrast, endogenous institutions are enforced by local agents. Smith and Wilson (2019, 97) invoke the language of Hayek (1988) to describe the endogenous nature of rules of justice and property as "spontaneous orders directed and mediated by the community-grown rules of interaction." Along a different dimension, institutions can either be "indigenously introduced," meaning that they are designed by insiders, or "foreign introduced," which are institutions designed chiefly by outsiders.

These definitions give rise to three broad types of institutions (Boettke et al. 2008). Indigenously introduced endogenous institutions are most likely to take root because of their close connection to experience, and therefore to human sentiment. The humanomics framework clearly focuses on indigenously introduced endogenous institutions. Indigenously introduced exogenous institutions describe emergent indigenous institutions that have been formalized. Despite being enforced by a formal authority, they did emerge indigenously through trial and error. According to Boettke et al. (2008) these institutions retain some connection to *mētis* and therefore have an intermediate degree of stickiness. Ostrom (2000) notes that "at least minimal recognition" by a formal authority is important if a system of informal governance is to progress over time. This suggests that indigenously introduced exogenous institutions may also perform well. Finally, foreign-introduced exogenous institutions are designed outside the context in which they will be implemented. Lacking roots in culture, norms, and traditions, these institutions tend be less "sticky," meaning they are less likely to take root.[2]

A broad literature demonstrates the efficacy of customary or informal institutions. Informal institutions help secure property rights (Williamson and Kerekes 2011) and facilitate economic performance (Williamson 2009). Informal polycentric systems can solve collective-action problems to effectively govern resources (Ostrom 1990). Through a series of historical case studies (Leeson 2007c; Leeson and Coyne 2012), the literature on efficient anarchy argues that the absence of formal government institutions would improve efficiency and outcomes, especially when the formal governance faces significant constraints (Leeson 2007a). Most closely related to the present study is the literature on developing countries (for example, Easterly 2008) and specifically on Somalia, which argues that customary governance has filled the

2. In addition, efforts at transplanting these institutions through reconstruction in the postconflict context face serious constraints (Coyne 2008b; Coyne and Boettke 2009).

gap left by dysfunctional formal institutions, leading to better development outcomes (Mubarak 2002; Leeson 2007b; Powell et al. 2008). What are the implications of the literature on the efficacy of informal customary institutions for economic development in the aftermath of conflict more generally?

I apply the broad literature on the efficacy of customary and informal institutions to the specific context of societies that have recently experienced violent internal conflict. The cases of Afghanistan and Rwanda highlight the recent research and point to a path for development for fragile states.

None of this is to say that changing formal institutions after violent conflict can never work. For example, the Meiji Restoration of Japan is an example of formal institutional change that corresponded to economic success. Similarly, Coyne (2008) discusses the success of formal institutional change in Germany and Japan after World War II. Rather, the argument presented here is Bayesian. The status quo perspective among leading academic economists, for example Paul Collier (2007), and development-policy practitioners is that poor and conflict-torn countries need more state capacity and better formal political institutions. Informal and customary institutions get more attention now than in the past, but the theory and cases discussed here should lead us to update our priors about the efficacy of informal institutions, particularly in contexts where constraints on formal institutions are acute.

Customary Governance in Afghanistan

The Postconflict Context

The Soviet-backed Afghan government that held power through the 1980s attempted to replace customary village governance with central authority. Similarly, the Taliban held considerable power throughout the 1990s and put religious law above customary law (Murtazashvili 2016, 60–64). Following the U.S. invasion in 2001, most political authority remained centralized, and attempts to import foreign-introduced exogenous institutions failed to take root in Afghan society (Coyne 2008a). Eventually, despite two decades of state building and billions of dollars, the formal institutions of the Afghan state crumbled as the United States withdrew.

Following the U.S. invasion, emphasis was placed on centralized political institutions and top-down attempts at state building which ultimately contributed to the collapse of the national government (Murtazashvili 2022). Yet, customary village governance began to reemerge in rural Afghanistan. Since its reemergence, research on customary governance in Afghanistan has flourished (Murtazashvili and Murtazashvili 2015, 2016b; Murtazashvili 2016). Though governance is unique to each village, some common traits are present across ethnicity, religion, and geography; see Murtazashvili (2016) for a detailed description. Customary Afghan governance is a set of emergent informal institutions that Boettke et al. (2008) would characterize as indigenously introduced endogenous institutions.

Property Rights: Land Titling

How has customary governance performed relative to national or international governance in terms of protecting property and resolving disputes? Murtazashvili and Murtazashvili (2015; 2019) compare the efficacy of formal versus informal land titling in Afghanistan. Ideally, the formal system would secure property rights, reduce disputes, and increase the amount of usable collateral. Yet these potential benefits have not been realized due to the lack of state capacity and the prohibitive costs of implementing the formal system. Many formal registries have been destroyed and no cadastral survey has been conducted since 1965 (Murtazashvili and Murtazashvili 2019). Further, corruption and a lack of capacity in the formal courts constrain the adjudication process for land disputes, and as a result few Afghans resolve land disputes through the formal courts (Alden Wily 2013). Murtazashvili and Murtazashvili (2015, 298) indicate that given these constraints, Afghans "expressed little confidence in formal authorities to resolve land conflict." In contrast, most Afghans that use customary governance have not experienced land-tenure insecurity and do not complain about corrupt village adjudicators (Murtazashvili and Murtazashvili 2015).

Are alternatives to formal land titling feasible? Murtazashvili and Murtazashvili (2016a, 120) find that self-governance in rural Afghanistan protects property rights relatively well in terms of clarity of allocation, alienability, security from trespass, and credibility. In contrast to efforts by formal authorities to issue formal land titles, Community-Based Land Adjudication and Registration (CBLAR) programs pursue the more modest goal of recording the community consensus of who holds the rights to land and resources, and they rely more heavily on community-based or customary dispute resolution. Murtazashvili and Murtazashvili review various CBLAR programs that have been implemented in Afghanistan and find that these systems are "perceived as cheaper, faster and more accessible than the court system" (2016b, 237). The lack of capacity and credibility of the formal legal system coupled with the credibility of the informal system lead Murtazashvili and Murtazashvili to conclude that "CBLAR is a low-cost, feasible alternative to legal titling" (235). They have also found that community-based registration "appears to work well in clarifying ownership" (2019, 263). Fieldwork and an analysis of survey responses indicate that customary governance in Afghanistan can secure property rights and resolve disputes and often does so more efficiently and with more credibility than the formal Afghan government.

Governance and Reconciliation

Separate from customary governance, Community Development Councils (CDCs) are created by the national Afghan government to coordinate development aid projects with the input of local Afghans. CDCs appear to be effective at fulfilling their most fundamental goal, which is the delivery of development aid. However, the substantial constraints faced by nongovernmental organizations limit what they can

achieve beyond infrastructure projects (Coyne 2013, 178). CDCs can be characterized as indigenously introduced exogenous institutions even though they maintain some endogenous characteristics because they are imposed from the top down by the national government and designed by the World Bank (Murtazashvili 2016, 91–92). In the model by Boettke et al. (2008), CDCs have less institutional stickiness than the customary councils but more than the national or provincial government.

To assess the efficacy of CDCs, Jochem et al. (2016) compare three potential ways of establishing village governance that are recognized by the national government: formal elections, the formalization of CDCs, and the formalization of customary councils. Both formal elections and the formalization of CDCs are associated with greater support for elections and greater satisfaction with the selection process. However, the proposed formalization of CDCs and customary councils is associated with a greater belief that village interests will be represented. A narrow perspective that elections imply democratic institutions suggests that formal elections are more effective than customary councils. But a more nuanced view of democracy and inclusive institutions that considers representation of stakeholders leads to the opposite conclusion.

Finally, which institutional arrangements facilitate postconflict reconciliation? Reconciliation may provide a foundation for peace by building social capital (Cilliers et al. 2016). Institutions with a connection to moral sentiments, experience, and history should be better equipped to reach a mutual solution. In Afghanistan, the proposed formalization of both CDCs and customary councils increases support for reconciliation with the Taliban (Jochem et al. 2016). By contrast, no effect is found by introducing elections. As predicted, the stickiest institutions, CDCs and customary councils, are associated with postconflict reconciliation.

The literature on land titling, governance, and reconciliation in Afghanistan show that the institutions most rooted in local experience, such as customary councils, are examples of the stickiest institutions. Their formalization or recognition by the national government may be seen as a step toward the less sticky indigenously introduced exogenous institutions, though they remain far more sticky than the national government or CDCs. The collapse of the national government in 2021 is further evidence of the inability of the top-down formal institutions to provide adequate governance and of the relative robustness of customary alternatives. Formalized or not, the institutions in Afghanistan with indigenous roots have performed well and, in many cases, outperformed more top-down formal institutions.

The Gacaca Courts in Rwanda

The Postgenocide Context

In 1994 the Rwandan genocide left an estimated 800,000 people dead and about 100,000 genocide suspects in prison. Prior to the genocide, Rwanda was one of the least developed countries in the world, with a particularly weak state.

The Rwandan government and international community attempted to bring justice to Rwandans by trying cases through the formal Rwandan justice system and the International Criminal Tribunal for Rwanda (ICTR). However, the constraints faced by the Rwandan government had only tightened since the genocide and war. Clark (2010) describes a formal judicial system that was "decimated." Despite millions in aid dollars to build state capacity, train lawyers, and generally rebuild the formal judicial system, eight years after the genocide the formal Rwandan justice system had processed 8,363 cases, less than 10 percent of cases (Republic of Rwanda, 2012). The ICTR had tried fewer than a hundred cases. A decade after the genocide, tens of thousands of suspects were still imprisoned in overcrowded prisons. The Gacaca courts are an informal dispute-resolution system that has its roots in the thirteenth century. This system heard as many as 90 percent of the cases in rural areas as recently as the 1980s (Clark 2010). The customary Gacaca courts are clearly an example of indigenously introduced endogenous institutions. A modernized version of Gacaca was introduced to hear genocide cases in 2005. The modernized version introduced the participation of women, sentencing guidelines, and other reforms. Despite these modernizations, the Gacaca courts were administered at a local level and maintained many of their customary characteristics. The Gacaca courts are indigenously introduced institutions that, despite their formal recognition, maintain a much closer connection to *mētis* than the formal judicial system.

Dispute Resolution and Legal Institutions

Within just five years of their introduction, the Gacaca courts had processed nearly all of the genocide cases. O'Reilly and Zhang (2018) argue that the Gacaca courts gathered useful information about guilt and innocence, increased access to justice, and provided proportional justice. The severity and distribution of the sentences decided by the formal system and the Gacaca system are notably similar (Brehm et al. 2014; Hola and Brehm 2016), with the Gacaca system providing these outcomes more quickly and at a fraction of the cost (Clark 2010).

Survey evidence indicates confidence in the Gacaca courts. Pozen et al. (2014) find that over 90 percent of those surveyed agree or strongly agree with the statement "I have confidence in the gacaca process." Similarly, they find that 92 percent of respondents say that Gacaca has done "an excellent job" or "a pretty good job" of "improving trust among neighbors," a pattern echoed by survey results in Rettig (2008).

Processing the genocide cases through the Gacaca system meant that the formal legal system could focus on resolving other disputes, including commercial disputes. Responses of firms in the World Bank Enterprise Survey indicate that the perceptions of courts improved sharply following the introduction of the Gacaca courts. The percentage of firms that disagreed with the statement that the court system was fair, honest, and uncorrupt sharply decreased. Similarly, before Gacaca most firms

perceived the courts as at least a minor obstacle to conducting business, but after the operation of the Gacaca courts 73 percent reported that the courts were no obstacle (O'Reilly and Zhang 2018).

Aggregate measures of institutional quality, including generalized trust, as measured by the World Values Survey, and the quality of the legal system and the protection of property rights, as measured by the Fraser Institute (Gwartney et al. 2016), notably improved during the operation of the Gacaca courts. O'Reilly and Zhang (2018) argue that the introduction of the emergent Gacaca courts improved the administration of justice and appears to have improved both formal and informal institutional quality.

Abunzi Mediation

As the Gacaca courts were reintroduced to hear genocide cases, Abunzi mediation was reintroduced, modernized, and recognized by the Rwandan government to mediate nongenocide civil cases and to hear minor criminal cases (Karimunda 2019). Abunzi mediation was implemented in part to relieve the pressure on overburdened formal local courts (Bornkamm 2012).

Though Abunzi mediation has been the subject of far less scholarship than Gacaca, the available evidence generally finds that Abunzi mediation improved access to justice for Rwandans (Mutisi 2012). In fieldwork, Clark (2010, 124) describes a subject reporting that "the abunzi system in his sector had proven useful for the resolution of day-to-day disputes, which would typically remain unresolved because people could not afford to take their cases to the national courts." Though it is difficult to assess satisfaction, Karimunda (2019) finds that relatively few Abunzi cases were appealed to the formal Primary Tribunal. Abunzi mediation is not without flaws or critics. Mutisi (2012) notes concerns that the process may become politicized and that the process relies on state power for compliance. An in-depth study of Abunzi mediation as an example of indigenously emergent customary institutions would be a valuable contribution to the literature.

Reconciliation and Adaptability

Which institutions best facilitated reconciliation in Rwanda? Betts (2005) notes that according to the ICTR website in 2004, it considered its main achievement "as 'forging a substantial body of case law (jurisprudence) . . . a solid foundation for the work of the ICC.'" Building precedent in international humanitarian law may be a laudable goal, but it is not tightly linked to reconciliation for Rwandans. The Rwandan government has criticized the ICTR for its distance and limited connection to Rwanda (Clark 2010, 136). From ethnographic fieldwork, Clark (167) finds that "justice delivered through the ICTR or foreign courts is perceived as less rigorous

for genocide suspects because it [forgoes] direct engagement with the general population." Although the ICTR heard the most egregious cases, survey data confirms that its sentences were less severe than those handed down by the national courts or the Gacaca courts (Hola and Brehm 2016). For more discussion of the Gacaca courts in the communities, see Clark (2010) and Bornkamm (2012).

A final potential advantage of Gacaca and Abunzi is their adaptability. Hola and Brehm (2016) find that Gacaca judges used discretion to adapt sentences and that the severity of sentences decreased over time, reflecting the pattern of a less retributive process. Clark (2010, 341) concludes his discussion of reconciliation by noting that Gacaca "has already reaped significant restorative dividends in some communities." More generally, Rwandans have taken a distinctly humanomics approach to reconciliation. Through interviews with Rwandans, Roost (2018) emphasizes the importance of local context and notes that "many more participants described the everyday strategies of living together . . . rather than any legal approach." In their synthesis of the literature, O'Reilly and Zhang (2018) argue that Gacaca has facilitated reconciliation and trust.

Conclusion

In the aftermath of violent conflict, formal governance is often left weak and ineffective. The most common prescription in these contexts is to strengthen formal institutions. Yet these external or top-down attempts at institution building often fail to deliver. In this study I apply the frameworks of humanomics as proposed by Smith and Wilson (2019) and institutional change by Boettke et al. (2008) to analyze the efficacy of customary institutions in the aftermath of violent conflict. Reviews of the literature on recent iterations of customary governance in Afghanistan and Rwanda reveal that governance rooted in customary institutions can perform well in the highly constrained postconflict context.

Institutions emerge through interactions in small groups that reward their members via praise and punish via blame (Smith and Wilson 2019, 98, 105). Therefore, rebuilding institutions destroyed by conflict is most likely to succeed through interactions in small groups, as is the case with informal customary governance. After its reemergence and recognition, the customary governance in Afghanistan strengthened property rights by improving land titling relative to the constrained formal system. The newly formalized customary councils increased confidence that village interests would be represented and facilitated postconflict reconciliation. In Rwanda, the reintroduction and formal recognition of the Gacaca and Abunzi courts increased access to justice relative to that offered by the formal alternative. The Gacaca courts also facilitated reconciliation in the aftermath of the genocide.

In both cases, the reemergence and recognition of customary governance improved the performance of institutions and led to better outcomes than formal

alternatives did. With just two case studies it is difficult to parse whether simply letting customary governance function or formally recognizing these institutions led to better outcomes. Regardless, in cases where formal institutions are highly constrained, such as in the aftermath of violent internal conflict, a reliance on or recognition of customary institutions may be a viable path toward functioning institutions that provide effective governance.

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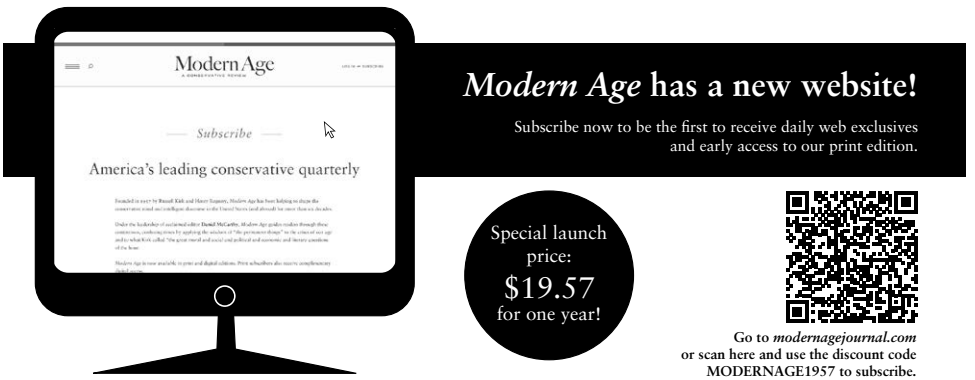
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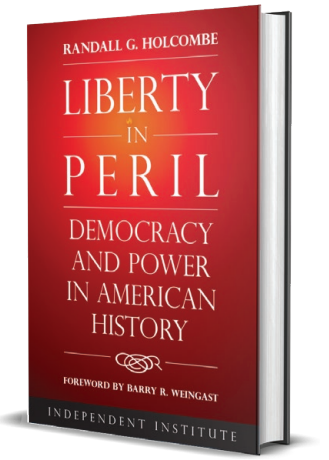
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