

# **Building Legitimate States After Civil Wars\***

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Angola, Cambodia, Liberia, Somalia are all generally regarded not only as failed states, but as state-building failures. The list could easily be extended. In each instance, an international trustee, typically the United Nations or a “coalition of the willing” sanctioned by the United Nations, intervened more or less forcefully to rehabilitate a state that had fallen into anarchy and chaos. In each, success was, at best, short-lived. The record of state-building by international trustees since the end of the Cold War is grim and offers few reasons for optimism.<sup>1</sup>

Max Weber’s (1948, 78) famously defined the state as “a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.” State-building after a civil war, in turn, requires the reconstruction of both the state’s monopoly of violence and the legitimacy of that monopoly. As we know from the literature on civil war termination, in the absence of total victory rebuilding a state’s monopoly of force can be quite difficult. Barbara Walter (1997) describes this as “the critical barrier to civil war settlement.” The disarming of one or more groups or the merging of forces can leave groups vulnerable, hesitant to enter negotiations, and reluctant to implement agreements once reached. Most important, with coercion being their primary political instrument, disarming or merging forces implies changing the balance of power between the groups that existed at the time of agreement. This fatally

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<sup>1</sup> I use the term international trustee to refer generically to external parties that exert authority over failed states. I recognize that there are large differences in how these trustees carry out their responsibilities, and that the term is politically charged. Some object to its association with colonialism. This is particularly the case among advocates of a greater role for outside powers in overseeing state-building who fear that the term will alienate post-colonial states wary of their own sovereignty. Others correctly point out that “trustee” has a particular legal definition within United Nations-based international law, and none of the trustees I will discuss below have been appointed in that formal status. Nonetheless, all of the interventions discussed here are led by a *de facto* trustee that performs many of the responsibilities as legal trustees, at least for a limited period of time. I could use a euphemism such as “external power” to describe international trustees, but I prefer the latter term precisely because it links the modern with colonial practice and emphasizes the historical continuity in the treatment of weak states.

undermines the credibility of any peace agreement. If one or the other party is weakened by its agreement to disarm, then the stronger party will have an incentive to violate the agreement in the future; fearing this, the weaker party will refuse to make or implement the agreement. Without denying its importance, this problem of rebuilding the state's monopoly of coercive violence is relatively well understood – if still difficult to solve.

Perhaps even tougher, however, is rebuilding the legitimacy of the state after civil war. Typically, the old political community has been torn apart by the violence. Loyalty to the state, especially if it is controlled or dominated by one group, has evaporated. Short of total victory by the state, the political differences that led to war must be accommodated by changing the pre-war institutions and rules, but there is no foundation on which to build new institutions. In the anarchy that exists after a civil war, groups face the enormously difficult task of rebuilding legitimacy in an environment of fear, animosity, and often hate.

Legitimacy is central to nearly all political relationships. It is seldom discussed by social scientists, however, because it is “squishy,” vague, impossible to define precisely or operationalize in any neat fashion. The concept has been largely ignored in the state-building literature. Yet, key to successful state-building is restoring the *legitimacy* of the state's monopoly of violence. In this chapter, I focus on rebuilding legitimacy after civil wars both because of its difficulty and importance, but also because we understand this process so poorly.

The current model of state-building employed by the international community has been roundly criticized. This model compartmentalizes coercive force to keep (or make) peace between the warring parties and often simultaneous soft interventions to rebuild the

state. There is often little or no coordination between the two, nor is any perceived as necessary. Peacekeeping restricts the use of coercive force to monitoring and enforcing the ceasefire or peace agreement between the combatants. State-building emphasizes post-conflict reconstruction through the writing of a new, more democratic constitution and the prompt election of a more representative government. Importantly, the current model implicitly rests on a formal-legal conception of legitimacy in which law or institutions confer authority on individuals, who then employ that authority to create a social order. But a formal-legal approach, however well suited to established states governed by a rule of law, is inappropriate in the anarchy that prevails after a civil war. Precisely because the prior regime has lost its legitimacy, there is no accepted legal or institutional framework that can confer authority on a nascent government, no matter how democratically constituted.

In this chapter, I develop an alternative, relational conception of legitimacy drawn from social contract theories of the state.<sup>2</sup> In this approach, authority derives from a mutually-beneficial contract in which the ruler provides a social order of benefit to the ruled, and the ruled in turn comply with the extractions (e.g., taxes) and constraints on their behavior (e.g., law) that are necessary to the production of that order. The contract becomes self-enforcing – or legitimate – when individuals and groups become “vested” in that social order by undertaking investments specific to the particular contract. What Hartzell and Hoddie in the Introduction call civil and economic society are necessary to support political society. It is precisely because civic or economic interests have interests vested in the new political order that the latter can survive. In this way, legitimacy follows from social order, not the other way around as in the current model.

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<sup>2</sup> See also (Lake, forthcoming).

This alternative conception implies that hard interventions to provide security, protect property rights, and adjudicate disputes within society should be the first step in state-building. Ironically, the social contract – easily associated with soft interventions -- may require the use or threat of coercive violence by an international trustee to create an initial social order that the state can then inherit and claim as its own. Through their significantly greater resources and coercive capabilities, trustees can “lend” credibility to a newly formed state and reset expectations in more positive directions. Trustees must also legitimate their own role in the process of state-building to those over whom they govern, however, and they do so most effectively not by gaining the approval of the United Nations, as is now believed, but by being a critical contributor to the reestablishment of social order. Hard and soft interventions are both necessary and complementary, and meld together. Compartmentalization undermines their efficacy. Coercion is necessary to create social order, and social order then legitimates the state. Performance in both arenas matters.

### **Legitimacy**

The concept of legitimacy is typically invoked by scholars when the coercive force employed by rulers is inadequate to explain observed levels of compliance with commands, rules, and laws (see Hurd, 1999). As long recognized by such philosophers as Machiavelli and Rousseau, “pure” coercive power cannot govern a society, at least not for long (see Tyler, 2001; Zelditch, 2001). Keeping soldiers and tanks on every street corner and spies in every coffeehouse and living room is not only costly, but is ultimately ineffective. Any regime that desires to endure must find some mechanism for inducing what Levi (1988, 48-70) has called “quasi-voluntary compliance” – behavior that is

voluntary because subjects choose to comply, but quasi-voluntary because non-compliance can in principle be sanctioned. Legitimacy is the bridge between choice and compulsion.

Legitimacy is constituted by collective acceptance of the ruler's right to rule. That is, a state is legitimate when citizens accept that it has the right to issue certain commands and, in turn, that they have an obligation or duty to comply. Thus, a ruler is legitimate – possesses authority -- when directives and laws are understood by subordinates as binding on the members of the relevant community, even if they fail to comply in practice at all times. Obligation arises from the collective's belief in rightful rule. Even though I might occasionally defect from the law (e.g., exceed the speed limit) or even reject that the state has the right to enact certain laws (e.g., monitoring of phone calls and email, restrictions on a woman's right to choose), if others accept this law or right the state is thereby empowered to make binding decrees regardless of my beliefs or motivations and to punish me for violations. Alternatively, no matter how fervently I might believe in the rightness of a ruler, if everyone around me denies that authority and defies the law, the ruler cannot be regarded as legitimate. It is this collective belief that legitimates (and limits) a state and gives it authority over its members (Bernard, 1962, 169; Lasswell & Kaplan, 1950, 133).

Successful state-building, in turn, requires not only the (re)creation of a monopoly of violence but also the (re)establishment of the legitimacy of rule, or the collective acceptance of the people to the use of that monopoly. Legitimacy is a variable, not an absolute. The larger the proportion of the community that accepts its authority, the more legitimate the state. There is no threshold of legitimacy over which we would necessarily

agree that state-building has been successful, or under which it has clearly failed. Success is a relative term. Ideally, however, we might hold up as a normative objective that rebuilt states ought to be able to exercise sufficient authority to prevent widespread and systematic violence and to channel political demands into routine bargaining and compromise rather than continued war.

### **Current State-Building Practice and the Theory of Legitimacy**

There is no single, well articulated theory of state-building in the present era. Nonetheless, we can infer backwards from current practice to theory, and then subject that theory to critical examination. Nor is there a single practice of state-building. Each episode is unique, involving different actors who have pursued different actions in different orders. Yet, there is enough commonality across instances to posit a broad model of current state-building practice.<sup>3</sup> This model has a two central features and several ancillary components.

First, the international trustee, sometimes with the assistance of residual national militaries or police, assumes responsibility for public security during the transition to a new state. This often entails creating a secure environment for NGOs to deliver humanitarian assistance, monitoring and enforcing a ceasefire between warring factions, the cantonment and disarming of militias or government forces, and general policing during political reconstruction. Creating public security is intended to open up a space in which political reforms can be enacted.

Second, the international trustee also assumes primary responsibility for rebuilding and redesigning the political institutions of the state on more inclusive and

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<sup>3</sup> On current practice, see Chesterman (2004), Paris (2004), Fukuyama (2004, 2006), Doyle and Sambanis (2006).

democratic principles. As soon as practicable after the end of hostilities, the principal parties are brought together in a constitutional convention composed of all “acceptable” stakeholders within the country, typically excluding only those responsible for widespread atrocities or who represent an overthrown faction (e.g., the Khmer Rouge in Cambodia). This convention is charged with writing inclusive rules of political participation and creating a new structure of democratic politics tailored to the unique historical and factional experience of the country. As part of this process, an interim government is often created. Once the constitution is ratified or validated in some manner, internationally monitored elections are held for the newly created national offices. In all cases that did not immediately dissolve into renewed fighting, all United Nations peace building operations in the 1990s resulted in elections within three years (Paris, 2004, 19). Participatory institutions are clearly seen as a priority and perhaps even a panacea in contemporary state-building efforts.

In addition to reconstructing the political institutions of the state, contemporary state-building efforts may also include economic liberalization and political reconciliation. Along with political liberalization, Paris (2004, 19) argues that contemporary state builders have also sought to implement the Washington Consensus on economic policy, including reducing barriers to international trade and investment and stimulating the growth of private enterprise. Although descriptively correct, economic liberalization does not appear to be a co-equal part of the core state-building model. Economic liberalization was typically not part of the formal mandate adopted by international organizations overseeing the state-building mission, but was usually grafted on by the international financial institutions as a condition for (often desperately needed)

development aid. In addition, the international financial institutions and others pushed the Washington Consensus everywhere during this period, not just in post-civil war states. It was part of the “good governance” movement but not intellectually or practically connected to state-building in any unique way.

State builders have also recommended and often implemented some mechanism for political reconciliation, including truth commissions, war crimes trials for human rights abusers, and lustration (Boraine, 2005; Chesterman, 2004, Chapter 5; Teitel, 2003).<sup>4</sup> There is more variance in reconciliation efforts and mechanisms than in democratization or liberalization, so it is difficult to regard this as a core feature of state-building, but they are nonetheless frequent enough to deserve note. Perhaps because of the wide variance in mechanisms, there is little consensus on their effectiveness in state-building (Brahm, 2007; Call, 2003, 2004; Horne & Levi, 2004).

### **Formal-Legal Legitimacy**

Underlying this current model is a theory of state-building that itself rests on a particular, formal-legal conception of authority that is, unfortunately, inappropriate in the context of post-civil war states.<sup>5</sup> Paris (2004), one of the few scholars to probe behind practice to the theory of state-building, finds the intellectual roots of current policy in liberal Wilsonianism and its belief that democracy is the cure for not only interstate but also intrastate conflict. This is, I think, largely correct, but does not go far enough.

Building democracy is but one particular form of a deeper reliance on a formal-legal conception of authority. It is not just that democracy appears to be insufficient or perhaps

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<sup>4</sup> Lustration is the term used mostly in Eastern Europe for wide-scale dismissal and disqualification of individuals on the basis of party membership or association. In specific cases, it is also referred to as de-Nazification (Germany) or de-Bathification (Iraq).

<sup>5</sup> For an extended discussion of formal-legal approaches to authority and a positive theory of legitimacy, see Lake (forthcoming, Chapters 2 and 3), available at: <http://dss.ucsd.edu/~dlake/HIR%20page.htm>.

counterproductive in building stable states, but that leading with the construction of *any* political institution is unlikely to produce a legitimate government after civil war.

The formal-legal approach to authority derives from the work of Max Weber. In this view, lawful or duly constituted institutions confer authority on their officers, who then have the power and duty to govern according to the rules of those institutions. Legitimate authority is thus derived from institutions. One day, Arnold Schwarzenegger is simply a muscle bound actor and producer, and the next he is the duly elected Governor of California with all the rights and responsibilities of that office. From a regular citizen, he acquires authority because of the office he occupies. Critically, in this formal-legal approach, institutions confer authority on individuals who then govern more or less well to produce a particular social order. In shorthand, the key sequencing of events is understood to be institutions  $\Rightarrow$  authority  $\Rightarrow$  order.

This theory is reflected in the current model of state-building in its emphasis on creating a new institution (the constitution) and in holding new elections. The duly ratified constitution is expected to confer authority on the individuals who are elected to fill the positions it creates. These officials are then expected to govern legitimately or with the consent of the population. It is not democracy per se that confers legitimacy in this approach. In another era, creating a new monarchy as was common in the new states of Eastern Europe after World War I had much the same intent and outcome, with the king ruling with the consent of his subjects. Popular sovereignty or elections are just the contemporary manifestation of this same general process through which institutions confer authority on individuals to govern. Once they have authority, moreover, officials are expected to govern and make the hard choices in establishing a secure social order

that benefits the people and allows them to be re-elected (directly as individuals or indirectly via parties) in the future. The period through the election is widely known as the “transition” after which a new state is born.

In post-civil war states, however, institutions are non-existent or weak and are not regarded as legitimate by significant groups. In the absence of a pre-existing legal framework that justifies and itself legitimates institutions, there is no foundation for determining “duly constituted” authority. In the anarchy of a post-civil war state, there are by definition no legitimate institutions that can confer authority on anyone. The formal-legal approach more generally suffers from an acute “chicken-and-egg” problem. If institutions confer authority on individual office holders, who or what confers authority on those institutions? Lawful institutions cannot exist without law, but law cannot exist without institutions. A formal-legal approach can never explain its own origins. Law cannot emerge from the state of nature without some other catalyst. In post-civil war states, institutions and the authority they foster cannot arise spontaneously.

Under the current model, the focus is on creating a legitimate *process* by which a new government is constituted – or through which this chicken-and-egg problem can be resolved. Created by and itself adopting inclusionary political processes, the new government is expected to be regarded by the people as legitimate. If all groups are involved in the process of institutional design and creation, it is anticipated that all will buy into those institutions and accept the state’s authority over them. This very much reflects what Fukuyama (1992) described as an “end of history” ideology, but it is in this sense that the democratic nature of current state-building matters.

Yet, even if democracy is inherently legitimating in the West, it is far from clear that this same criterion for legitimacy is widely accepted or employed elsewhere – and especially in post-civil war states. Neo-conservatives have sometimes averred that it is a form of racism to imply that developing peoples are not yet ready for democracy, but it is equally an act of hubris to assume that democracy alone is sufficient to legitimate new state institutions, especially in countries without a long tradition (institution) of democratic rule. The evidence to date, as Paris (2004) ably shows, is that democratization has, at best, no impact on building effective states and may even have a detrimental effect by reifying divisions and distrust. Although it is an unquestioned article of faith in developed countries that democracy is a “good thing” and desirable for all -- and I will admit to sharing this faith in general -- there has been little sustained analysis of this point, especially in post-civil war states, and there is little evidence that democracy per se can produce legitimate governments in weak or fragile states.<sup>6</sup>

### **International Formal-Legal Legitimacy**

International trustees and the international community more generally play a major role in contemporary state-building. In essence, post-civil war states are not commonly assumed to be in “receivership” or to be “wards” of the international community that, in turn, can appoint a trustee to oversee their affairs until such time as they are able to take responsibility on their own. The international trustees, in turn, devote substantial effort to legitimating their own role in state-building. This is, in part, an attempt to avoid original sin: if the trustee is illegitimate, then no state created by that

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<sup>6</sup> On democracy as a preferred form of rule, see Lake (1992); Lake and Baum (2001); Baum and Lake (2003).

trustee can be legitimate. If the trustee is to function as a catalyst for effective state-building, it must itself be regarded as legitimate.

Much of the debate over peacemaking in the 1990s can be understood as an attempt to determine when external intervention is legitimate. This problem does not arise in peace-keeping, where the international monitors are invited in by the parties to a conflict – including the sovereign state itself. But peace enforcement clashes with the principles of sovereignty and self-determination. Thus, over the last decades, the states of the international community wrestled with when and in what form external intervention was permissible and appropriate – in a word, when was it legitimate. This was, of course, largely a debate internal to the international community and not one that involved the states that were targets of intervention. By the time most countries reached the point where the international community was considering intervention, there were typically no states competent to negotiate with any international trustee.

In turn, a formal-legal conception of authority underlies this entire debate about intervention. If societies cannot create legitimacy from within the state of nature themselves, then some prior institution – in this case, the United Nations or some other international body – must confer legitimacy on the newly constructed state. The approval of a trustee by some international body, then, came to be understood by the international community as a means of conferring authority on an organization or state to govern a “failed” member of that community. If the people within a territory could not themselves authorize a ruler to govern on their behalf, it was assumed – if only implicitly -- that the international community could legitimate a ruler for them.

Yet, it is not obvious that international legitimacy, if it exists, can then legitimate a state created or overseen by an international trustee.<sup>7</sup> The international community has worried about how it legitimates its role to itself, but has been far less concerned whether this actually legitimates the nascent state it is seeking to build. Nor is there evidence that international legitimacy matters to the population that must ultimately comply with the rule of the state. Even if the United Nations Security Council approves a mission or a coalition of the willing to impose stability and build a state in a territory, there is no guarantee that the people on the ground will concur. These are very different audiences with very different interests. Nearly every international intervention since the end of the Cold War has been approved and overseen by some international organization. But the state-building record is, at best, mixed. Even with international legitimacy, a large number of post-civil war states fail and do not ever obtain domestic support. To point to a case of state-building very much in the news, albeit a product of foreign invasion rather than civil war, in Afghanistan the support of the United Nations and the success of U.S. efforts to write a new constitution and elect new officials has done little to legitimate the state or extend its reach beyond Kabul. As the continuing power of the regional warlords and a resurgent Taliban indicate, the state has neither a monopoly over physical violence nor legitimacy over the people and territory it supposedly governs. This could be for lack of effort (good ideas, badly implemented) or other sources of failure, but the record clearly suggests that international approval is not itself a sufficient condition for domestic legitimacy.

### **An Alternative Model of State-Building**

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<sup>7</sup> On the tension between international and local legitimacy, see Woodward (2004).

If a formal-legal conception of authority is an inappropriate foundation for a theory of state-building after civil war, and if the policies that follow from this conception appear not to produce the desired result, we should examine alternative theories of legitimacy and their policy implications. One such alternative is social contract theory, rooted in a relational conception of authority. This seems a particularly promising direction for inquiry precisely because it seeks to explain the emergence of authority from within the state of nature.<sup>8</sup>

In a relational conception of authority, legitimacy does not follow from the office or position of the ruler but from a bargain between ruler and ruled. Authority is understood not as law, as in a formal-legal approach, but as a contract in which the ruler provides the social order demanded by the ruled, and the ruled accept the authority of the ruler to exert the restraints on their behavior necessary to provide that order. In equilibrium, the ruler gets a sufficient return on effort to make the provision of social order worthwhile, and the ruled get sufficient social order to offset the loss of freedom entailed in complying with the former's authority. If the ruler extracts too much or provides too little social order, the ruled can withdraw their consent – and the ruler's legitimacy evaporates. In this way, relational authority is contingent on the actions of both ruler and ruled.

Following Hedley Bull (1977, 5), a social order is “a pattern of human activity that sustains elementary, primary, or universal goals of social life,” including security against violence resulting in death or bodily harm, an assurance that property will not be subject to challenges that are constant or without limit, and an expectation that promises

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<sup>8</sup> Social contract theories of the state begin with Thomas Hobbes. Modern approaches include Auster and Silver (1979), North (1981), Levi (1988), Olson (2000) and Timmons (2004).

and agreements, once made, will be kept. As a shorthand, then, we can think of social order as the protection of persons, property, and promises. Social order possesses large externalities and, in some ways, approaches a public good.<sup>9</sup> As a result, individuals will typically seek to free ride on the efforts of others, purely voluntary efforts will produce less social order than desired, and the net outcome will be collectively suboptimal.<sup>10</sup>

One of the defining characteristics of political authority is that those who hold it can legitimately use coercion. As a result, such authorities are uniquely adapted to solve collective action problems.<sup>11</sup> They can extract taxes, labor, or other resources necessary to pay for the production of social order, and limit behaviors by individuals that would weaken that order. In turn, because the ruled anticipate the suboptimality of strictly voluntary provision, they grant authority to the ruler necessary to solve the free rider problem and acquiesce to the extractions and constraints imposed by that ruler. Although other forms of authority, including moral and religious authorities, can also facilitate collective action, it is the ability to use coercion legitimately that makes the modern state so effective in producing social order on a large scale. In this way, social order binds ruler and ruled in an authority relationship. Without the desired social order, the ruled have no reason to subordinate themselves voluntarily to the commands of the ruler, and without the compliance of the ruled, the ruler lacks the endogenous means to produce the social order.

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<sup>9</sup> More precisely, externalities are large but the cost of producing social order increases with distance and population. Social order, therefore, can be best conceived as a geographically limited public good.

<sup>10</sup> On theories of public goods, see Olson (1965) and Cornes and Sandler (1986).

<sup>11</sup> Despite the suboptimality of voluntary efforts, and the comparative advantage of an authoritative actor in solving collective action problems, social order does not necessarily require an “orderer,” an entity responsible for producing that pattern of activity. Bull (1977) argues that the society of states, even under anarchy, produces a rudimentary social order. And as a generation of research has shown, cooperation is clearly possible “under anarchy” between formally equal actors both within and between states (Ostrom, 1990; Oye, 1985).

This relational conception of authority has three important implications. First, relational authority is inherently strategic with both ruler and ruled integral to the contract. Indeed, the ruler does not possess authority unless the ruled acknowledge an obligation to comply with her will (Bernard, 1962, 163; Simon, 1976, 146). In turn, legitimacy that is granted can be withdrawn if the ruler tries to exploit her authority. The ruler's authority and her ability to use coercion legitimately follows from the satisfaction of the ruled with the social order so produced (Bernard, 1962, 164-165). Obedience springs not from authority or coercion. Rather, authority and the capacity to coerce derive from the interest the ruled have in the social order (Gourevitch, 1999, 142).

Second, authority is not a condition but a variable that exists in greater or lesser degrees in different times and places. Most important, authority varies in strength, measured by the maximum divergence between the ruler's command and the willingness of the ruled to comply. The ruler is weak when she is limited to willing only that which the ruled would do anyway. She is strong when the ruled are willing undertake abhorrent actions at her behest. At the same time, authority is never absolute. There is always some command that the ruler could issue that the ruled would defy.

Third, a relational conception also implies that the key problem in any hierarchy is limiting abuses of authority by the ruler (Simon, 1976, 134). Granting coercive power to the ruler to create and enforce a social order necessarily gives the ruler the ability to use coercion in her own self-interest. A ruler may decide to coerce her subjects to ensure her hold on office even if the latter withdraw their support, to extract "rents" (defined as returns for producing a social order greater than her opportunity costs) for herself or her principal supporters, or simply for her own, megalomaniacal purposes. Thus, to grant

authority to a ruler, the ruled must be relatively confident that the authority will be used for the intended purpose of creating a social order. Within states, the creation of relatively more democratic institutions that diffuse power and ensure popular preferences are represented in the policy process is one common method of creating credibility – or “tying the sovereign’s hands” in North and Weingast’s (1989) now classic rendition of this problem.

The potential for abuse might seem irrelevant in a post-civil war state where the problem is typically too little rather than too much authority, but it is often the fear of abuse that prevents individuals and groups from conferring authority on any state. Such fears of abusive central authority, for instance, are critical to blocking the reconstruction of the state in Somalia today (Bradbury, 2003, 15 and 21; Menkhaus, 2003, 408). This is also a concern for international trustees, who must also credibly commit to particular policies or courses of action as a necessary and typically prior step in any grant of authority (see below).

### **The Origins of Legitimacy**

In this relational conception, legitimacy arises from the self-interest of actors who invest in or acquire assets that are specific to or have more value in a particular authority relationship than in others. Such “vested interests” – typically a term of opprobrium, decried by political reformers and radicals everywhere – are the foundation for the contract between ruler and ruled and essential to the group’s interest in supporting a specific authority relationship.

Actors acquire a wide variety of assets in everyday life. Individuals buy property, pursue an education, develop specialized knowledge and skills suited to particular

occupations, and save for old age. Some assets will be generic, easily switched with little loss in value from one use or regime to another. Other assets will be highly specific to a particular authority relationship and the policies it produces, and can be deployed to other uses or used under alternative regimes only with substantial loss in value.<sup>12</sup>

At all levels, as actors invest in relationally specific assets they become dependent on the authority that produces a particular social order or set of rules characterizing which persons, property, and promises are protected. In turn, actors acquire incentives to support the ruler and suppress possible dissidents who would overturn that order. In this way, the group – as a community of actors vested in a particular order and relationship – legitimates the ruler’s authority. Authority becomes more robust – more legitimate – as subordinates acquire more assets that are dependent on that hierarchy.

Constitutions within countries are authority contracts in that they specify the rights and obligations of both citizens (the ruled) and the state (the ruler). All constitutions must be self-enforcing (Weingast, 1997). Although it may centralize or decentralize authority and preserve a large realm of private authority to citizens or aggrandize all rights to the state, any constitution exists only so long as the parties to that contract accept and agree to work within its rules -- there is no “third party” above or outside the constitution with responsibility for enforcing it.<sup>13</sup>

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<sup>12</sup> On asset specificity see Williamson (1975, 1985). On the role of specific assets in international hierarchy, see Lake (1999).

<sup>13</sup> Although a constitutional court, such as the Supreme Court in the case of the United States, may be charged with interpreting the contract, its rulings have force only if other political actors accept its powers. And even though the military or police may be sworn to uphold and protect the constitution, their oaths are binding only as long as they choose to be bound. All of the actors that might be charged to enforce a constitution are themselves governed by that contract. Hardin (1999) argues that constitutions condition contracts and elevates them to a precontract status. More accurately, constitutions are meta-contracts on which most other contracts in society depend.

Constitutions become self-enforcing and persist as individuals and groups develop vested interests in the particular sets of rules outlined in the contract and the policies derived from those rules. As constitutionally derived rules create incentives for actors, the parties respond by making investments premised, in part, on those rules and their attendant outcomes. Individuals acquire property on the expectation that the state will protect their rights. They enter into contracts with one another with some confidence that constitutionally prescribed actors and rules will help enforce those private agreements. The same holds for policies that follow from those constitutionally-derived rules. Individuals condition their retirement savings on state pension plans and other programs that assist the elderly – or their absence. Firms invest in plant and equipment on the expectation that property protections and particular investment incentives will continue.

As they make rule or policy-specific investments, actors acquire new incentives in the preservation of the constitution that produces those rules and policies. In other words, they become vested in the constitution and can be expected to devote political effort to defending it. American farmers, whose broad geographic dispersion gives them considerable clout within Congress and the ability to lobby effectively, are dependent on government subsidies. If these socially inefficient subsidies were withdrawn, for instance, crop prices would fall, land values would decline, and some now poorer farmers would be forced to shift to new occupations and acquire new skills. To forestall the decline in the values of their assets – both land and skills – farmers fight hard to maintain their current subsidies and would fight even harder to preserve their disproportionate representation in Congress were it ever challenged. More generally, as the Bush administration's failed attempt at reform again demonstrates, Social Security remains the

“third rail” of American politics. Because it affects so many people and conditions so deeply their lifetime consumption and savings habits, the population as a whole is acutely dependent on the program and politicians can change it only at their peril. The elderly, who cannot alter a lifetime of consumption and savings retroactively nor redeploy their assets and start saving for a future under a different policy regime, are particularly vigorous advocates of the status quo. The same calculus occurs in developing countries as well, whether it is rural farmers adjusting practice to the incentives created by state marketing boards (Bates, 1981) or cronies who are dependent on an autocratic leader for privileged access to government contracts and resources (Fisman, 2001). The greater the rule or policy-induced investments, and the more specific those investments are to particular rules or policies, the greater the coalition in favor of preserving the extant constitution and its policy outputs even when the results may be “sub-optimal” relative to that enacted by an ideal social planner.

Vesting may also, over time, alter the composition of groups affected by rules and policies. As the “winners” win, some fraction of their gains will be devoted to protecting their investments. Conversely, as the “losers” lose, they have less to fight with and may, at an extreme, be eliminated from the political arena (see Becker, 1983; Hathaway, 1998; Rogowski, 1989). As recent changes in tax law have contributed to increased income inequality in the United States, for instance, the wealthiest individuals have enjoyed even higher incomes and the opportunity to use their disproportionate gains to preserve beneficial policies, while the poorest Americans have lost both economically and politically. Even groups initially harmed by a policy may, over time, redeploy their assets, make new investments, and eventually come to support what they initially

opposed. For instance, renters in the United States are disadvantaged by the mortgage interest tax deduction. This creates incentives for people who might otherwise prefer to rent to purchase homes. Once they become homeowners, these former renters often become fervent advocates of the mortgage interest deduction. Again, the political decimation of the losers from policy occurs in developing countries as well. Agricultural policies biased against rural farmers and favoring of urban dwellers lead to increased migration to the cities, swelling the ranks and political power of the latter at the expense of the former (Bates, 1981). By favoring groups or realigning incentives, rules and policies strengthen defenders and weaken opponents and, thus, become harder to challenge or overturn. Thus, by creating winners, constitutions and their derived rules and policies endogenously create their own supporters in the form of individuals or groups who have stakes in the existing order and who will act politically to protect their interests.

In this world of relational authority, self-enforcing constitutions and vested interests, formal legal institutions are the reflection of authority, not its foundation. It is not the constitution itself that confers authority, but the self-interest of the parties to that contract that permits the ruler to rule. As relationally-specific assets accumulate and the parties become vested in a particular social order, this self-interest legitimates the ruler's authority. The ruled confer the authority on the ruler and, indeed, empower the ruler to preserve and enforce the rules under which they benefit.

### **State-Building in the State of Nature**

This relational approach reverses the sequence of steps posited by the formal-legal conception of authority and state-building policies premised on that conception. In the relational approach, social order encourages the vesting of individuals and groups in

that order, which in turn creates groups with an interest in defending that order – and supporting the ruler behind it. As vested interests accumulate specific assets, society as a collective legitimates and empowers a ruler with authority. Stable political regimes then follow from that order and authority rather than vice versa. In shorthand, order ⇒ authority ⇒ institutions. This implies a very different theory of state-building with, at least, two key implications.

First, establishing social order ought to be the highest priority of would be state builders. Especially in the anarchy of a post-civil war state, social order is a pre-requisite for legitimate political authority. Rather than writing constitutions and holding elections, state-builders need to demonstrate first that they can restore order. This means, at a minimum, ensuring that they can protect people and property from violence and provide general public safety so that individuals can acquire food, shelter, and basic health services. In addition, state-builders must reestablish a functioning legal system to punish criminals, adjudicate disputes over property, and enforce promises made between individuals in the course of economic exchange and their daily lives.<sup>14</sup> Only once persons, property, and promises are relatively secure will individuals grant their consent to the state.<sup>15</sup>

Second, the social order created must be credible if it is to become legitimate. Vesting interests in a particular social order is necessary for the collective consent that makes an order self-reinforcing. Stakeholders must be created who then empower the state to enforce that order. Individuals and groups must believe that this order and not some alternative order -- this set of rules and procedures and not some different set -- will

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<sup>14</sup> On establishing a rule of law in failed states, see Rose-Ackerman (2004).

<sup>15</sup> On the importance of loyalty and the role of stakeholders in state-building, see Meierhenrich (2004).

be in place over time before they begin investing in the specific assets that then bind them to that order and create incentives to support or even defend a particular regime. How these collective beliefs get formed frankly remains something of a mystery: political stability is really nothing more a convergence of many individuals expecting stability. How and why individuals suddenly converge on an expectation that this regime will “stick” while others have not is unclear. Nonetheless, it is essential to the creation of legitimacy. The difficulty of orchestrating a convergence in beliefs may explain the persistence of many weak states of uncertain legitimacy. The problem of building order, legitimacy, and states is essentially one of establishing the credibility of that order.

In the short run, state builders can secure a social order simply by establishing a coercive presence within a fragile state that can protect people, defend property, and adjudicate disputes. The soft intervention techniques identified by Rothchild (this volume) thus often require a parallel “hard” intervention to take root and to ignite the process of vesting interests.

Over the longer run, however, state builders must also help the conflicting factions reconcile with one another and establish new rules on the treatment of groups and individuals, the distribution and use of property, and crime and contracts. This necessarily involves negotiating some of the divisive issues that contributed to civil war in the first place. In the formal-legal approach, democracy is expected to address these issues by empowering new groups and “normalizing” conflicts within transparent political institutions. A relational approaches suggests that underlying issues need to be addressed sufficiently so that groups “buy into” the new order established by the trustee. Both approaches seek to transform the incentives of the actors, one through the design of

democratic institutions, the other through addressing the underlying issues over which relations between groups broke down.

Once a social order is established, and accepted as authoritative, state builders can then turn to creating an interim government, writing a new constitution, and holding elections, as appropriate. But unlike in formal-legal theory and current practice, institution-building is clearly a secondary concern. Indeed, it is expected that as groups become vested in the new order, institutions will tend to arise organically from the interests of the groups in preserving that order. Where the formal-legal approach placed institutional design at the forefront of state-building practice, a relational approach expects institutions to emerge more gradually and perhaps spontaneously from the interactions of groups as they gain confidence in a particular social order. Most importantly, institutions follow rather than precede the development of a new political regime.

There is considerable evidence to support this theory of state-building. Although the formation of original “states” from within the state-of-nature is shrouded in the mists of time, a relational conception appears consistent with what we know about the process.<sup>16</sup> In the anthropological literature on “contact era” Melanesia, which provides one of the few windows into “living” societies creating their first authority structures, one prominent form is the local “big man,” an individual who uses his comparative advantage in material accumulation to generate wealth and, in turn, to earn authority over those who become his followers (Sahlins, 2000). In a related conception drawn from the same region and period, Maurice Godelier posits a “great man” model in which individuals use

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<sup>16</sup> In addition to the cases and works discussed below, see the collaborative efforts edited by Feinman and Marcus (1998); and Diehl (2000).

their comparative advantage in hunting and violence, gardening, or ritual knowledge to attain authority (see Godelier & Strathern, 1991). Productive abilities, knowledge, and fighting skill all appear to be resources that potential leaders can draw upon to produce a local social order and, in turn, authority. These big man societies are particularly interesting because they possess authority structures without any formal-legal apparatus or even the institution of hereditary chieftaincy. Similarly, based largely on archeological evidence from the Upper Mantaro Valley in Peru (500-1534), Thy, Denmark (2300-1300 BC), and Kaua'i, Hawaii (800-1824), Timothy Earle (1997) posits a nexus of economic, military, and ideology powers as necessary to the emergence of early chiefdoms. But central to all three cases, Earle argues, was the ability of the chief to provide the public goods of defense (in Peru and Denmark) and irrigation (in Hawaii) which were necessary to the agricultural surpluses that secured the compliance of the ruled. In discussing the rise of the ancient Mesopotamian empires, the first large scale political units with a well documented archeological record, Michael Mann points to the important role of “compulsory cooperation,” first identified by Herbert Spencer (1969). Synthesizing the large literature on this period, Mann (1986, esp. 146-155) argues that the ancient empires appear to have grown by providing a social order that facilitated investment and trade, and thereby led to a deeper division of labor, higher incomes, institutionalized loyalty and greater authority for the imperial center. The strength of this authority, in turn, declined with distance from the imperial core, with the empire giving way to vassal states and then marcher lords in a series of concentric rings. In all of these cases, formal-legal institutions follow rather than drive the process. In the end, authority rests on the ruler’s ability to

deliver the “goods” demanded by the ruled, and the latter’s willingness to recognize as legitimate the status of the former.

Contemporary cases follow this same general outline.<sup>17</sup> In the absence of a legitimate state, it appears that groups can emerge that assume state-like powers and may, eventually, become states. By providing social insurance benefits for their members, for instance, Hamas in Gaza and Hezbollah in Southern Lebanon have grown from social service organizations into radical Islamic groups, then quasi-states with specific areas under their control, and now into national governing parties in still fragile states (Berman & Laitin, 2005; Iannaccone & Berman, 2006). Maoist rebels in Nepal earned legitimacy by restoring order in the absence of the state, providing justice through “people’s courts,” collecting taxes, awarding contracts, providing basic health care, and aiding victims of flooding.<sup>18</sup> The rebels have now joined the government. In Somaliland, unlike in the southern regions of Somalia, clan elders have kept the peace, rebuilt public goods destroyed by Siad Barre’s regime and the civil war (e.g., airports, water supplies), and created a new governing structure that incorporates their traditional role and status (Ahmed & Green, 1999, 123-124; Bradbury, 2003, 19; Huliaras, 2002, 160-163). On this foundation, in turn, a new constitution approved in 2002 began the process of creating a new multi-party political system -- one which, surprisingly, survived its first constitutional succession of power (Bradbury, Abokor, & Yusuf, 2003). In these and other cases, the first step towards legitimacy is the provision of a stable social order of value to the group’s members.

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<sup>17</sup> On the importance of providing social services in Uganda, in particular, see Widner (2004).

<sup>18</sup> “Judged by the People,” *The Economist*, October 7, 2006, p.48.

Conversely, it appears that the inability to deliver basic public services is intimately connected to state failure. The State Failure Task Force studied leading indicators of state failure and concluded that infant mortality was a significant predictor.<sup>19</sup> The task force lacked a good theory for why infant mortality should matter. However, in the relational approach advanced here, a state that is unable to deliver sufficient public services to mothers and young children to prevent escalating mortality is easily understood as failing to keep its part of the social contract. When the state is unable or perhaps unwilling to provide for its most vulnerable, the population will withdraw its support and possibly back other potential sources of authority that can deliver the necessary social order. In this sense, infant mortality is not just a leading indicator of state failure, but a crucial cause.

In addition, the lessons learned from contemporary state-building efforts resonate with this relational approach.<sup>20</sup> Although it did not originally begin as a civil war, and describing it as such remains controversial, the overriding lesson from the Iraq war is the need to provide social order early in the state-building process. Analysts now see the failure to provide adequate troops to maintain order in Iraq as the crucial mistake of the American occupation. Despite considerable efforts to build new, more inclusive, and democratic institutions, the United States-led effort foundered on the inability to protect persons and property in the major population centers. Faced with widespread insecurity, groups turned inward, split along sectarian lines, and then turned on each other, fatally undermining the power-sharing institutions carefully designed by the American authorities and the Iraqis themselves. The so-called surge begun in early 2007 was

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<sup>19</sup> See the State Failure Task Force Report: Phase III (Goldstone, Gurr, Harff, & Levy, 2000) and King and Zeng (2001). For a related discussion, see Rotberg (2004, 20-25).

<sup>20</sup> See Dobbins et al. (2007).

designed to reverse these early mistakes by clearing, holding, and rebuilding sections of Baghdad. By providing security and restarting the delivery of public services, the United States undercut the growing insurgency, and even “flipped” the loyalty of Sunni tribes in Anbar province. It remains to be seen whether this will ultimately be effective. Yet, the Iraq case demonstrates most strongly that new institutions by themselves cannot endure without a foundation of social order.

### **Competitors for Legitimacy**

Theorizing from the state of nature is a useful exercise as it reduces the problem of building legitimate states to its essence and reveals an alternative approach of greater potential. In reality, however, civil war in the modern world seldom reduces society to the anomie envisioned in the “original condition.” Rather, civil war typically activates ethnic, religious, or other identity group loyalties and renews the role of the group itself as a provider of security and social welfare. In some cases, these alternative loyalties and group structures prevent the state from acquiring legitimacy (Boone, 2003). But once contemporary states fall into violence, society typically reverts not to anomie but to some prior or even emergent sub-national identity groups. In civil war, these groups then enter a “social” state of nature or group-based anarchy. In this condition, groups not individuals are the relevant units of analysis. Group-based anarchy makes the process of building legitimate states more complex and difficult in three ways.

First, to transfer legitimacy from the group to the state, individuals must be convinced that the state can provide a more secure order that leaves them better off than can the group. In the anomie of the original condition, the social product permitted by any social contract with the state is likely to be very much larger than the “nasty” and

“brutish” status quo. Subordinating themselves to the state to escape the state of nature appears relatively attractive to all these socially isolated individuals. In a social state of nature, groups that cohere and survive are typically hierarchical, authoritative actors able to organize for self-defense and the provision of at least rudimentary social services. Clans, religious groups, or ethnic groups band together to provide at least minimal protection and support for their members. Although perhaps smaller than that realized under an effective state, the social product created by the group may be significant.<sup>21</sup> This implies that the state cannot just provide any social order and gain the allegiance of its citizens. It must provide a better social order and a larger social product than can the groups. In the original condition, the state can beat nothing with something; in a social state of nature, it must beat something with something even better. In a group-based anarchy, the nascent state faces a more challenging task requiring even greater credibility.

Second, group anarchy creates the possibility of redistributive bargaining, which makes it harder to settle on a peaceful equilibrium. In the original condition, each person is the equal of any other, or at least not so dissimilar in physical strength or resources that he or she can permanently dominate others. As a result, all will share relatively equally in the benefits of the social contract. In a social state of nature, groups will not be equal but will likely vary in size, resources or ability. Each will use its attributes to bargain for a larger share of the social product created by a new state. With each group demanding its “fair” share of any joint gains, cooperation can become difficult even in the face of substantial benefits from living under a common state. Groups may cycle through any set of redistributive schemes, delaying agreement. And if any agreement locks in a particular distribution of benefits, the more heavily groups value the future, the more difficult it will

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<sup>21</sup> On the rebuilding of social life in Somalia absent the state, see Bradbury (2003).

be to arrive at a new contract (Fearon, 1998). Unequal groups produce redistributive bargaining that always makes escaping anarchy more not less difficult than in the original condition.

Third, as hierarchically organized entities themselves, groups will create leaders with some measure of authority. At a minimum, leaders of groups successful enough to organize and participate in the political process will possess the ability to speak for the group and represent it to others. With this authority comes the potential for its abuse, and gives leaders the opportunity to act in their own interests rather than for the group as a whole. Importantly, leaders may develop a vested interest in their positions as leaders, and the privileges and rents that follow from that status, that would not carry over into a new state either because they might be excluded from power or they might simply become one of several group leaders in the new central government. To the extent that leaders are vested in privileged positions within their groups and have autonomy in conducting affairs, they may undercut efforts to forge a new social contract for the state.

In no case does competition between groups and between groups and the state make building legitimacy easier. Rather, groups appear to make a complex and difficult process even more so. Indeed, the stronger and more successful the groups qua groups, the harder it is to create legitimacy for nascent states. Not only is the threshold for granting legitimacy to the state higher, but redistributive bargaining and self-seeking elites may thwart negotiations and undermine otherwise well-intentioned efforts.

These problems cannot be solved by building institutions earlier rather than later in the process. Writing rules for new institutions will only exacerbate the problem of lock-in and redistributive bargaining. Greater democracy may tie political power to group

size, but it disadvantages groups that have resources other than sheer population. It may also threaten the position of group elites.

Rather, a relational approach to authority suggests that the social product from a common state may be still be large. In a social state of nature, the groups themselves are still limited in their opportunities for exchange and specialization and consume resources for self-protection that might be devoted to more productive activities. Building a state can still carry potentially large benefits. A relational approach suggests that in the presence of competing groups, would-be state builders have to work harder to both provide a more secure and robust social order and demonstrate the credibility of that order and the limits on their own authority.

### **Relational Authority and International Trustees**

International trustees are not necessary for state-building. States have risen on their own and, in the case of post-colonial states, they have often struggled into existence despite the opposition of dominant members of the international community. It has been argued that Somaliland escaped some of the worst violence and regained stability quickly after the Somali civil war precisely because it was spared from a United Nations intervention (Ahmed & Green, 1999, 121-125).<sup>22</sup>

Nonetheless, international trustees may be able to accelerate the process of state-building, thereby possibly saving lives and years of instability and suffering. Possessing reservoirs of resources and force much larger than those of any domestic group, trustees can play an important role in state-building by establishing a focal point around which expectations of order can converge. The international trustee thus provides credibility for

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<sup>22</sup> This is, of course, endogenous, since the United Nations did not intervene in the northern districts of Somalia which were more stable to begin with.

the new order, which can then ignite the process of vesting. As groups then invest in regime specific assets, the new political equilibrium becomes self-enforcing or, in a word, legitimate. Once this happens, the role of the trustee can be phased out. But until then, trustees can play an important role by creating expectations that then become self-fulfilling prophecies.

The organic process of state-building just described depends upon some actor – be it an individual or group -- acquiring a sufficient social surplus that it can begin solving the larger community's problems of collective action. As cooperation deepens and the social surplus expands further, the actor acquires legitimacy, including the ability to wield coercive violence authoritatively. This further facilitates collective action, reinforcing the cycle. This organic process is likely to be a function of happenstance, at least in its early stages, and subject to reversals and abuse, as the nascent ruler diverts her newfound authority to her personal gain. Although the historical and contemporary evidence suggests that authority can emerge spontaneously from a state of nature, there are no guarantees that this process will occur at all or in a timely fashion. International trustees can serve as catalysts, however, by facilitating the emergence of collective action, establishing a social order, and expanding the social surplus that eventually leads individuals and groups to buy into a new regime. To fulfill this role as catalyst, the international trustee itself must have some measure of legitimacy in the eyes of the subject population.

If the trustee is to function as a catalyst for effective state-building, it must itself be regarded as legitimate. A relational conception of authority suggests that trustees legitimate their rule not by being duly appointed by some international body, as presumed

at present, but by playing a critical role in the establishment and maintenance of social order within the post-civil war state. This conception implies that they will be accepted by the relevant population to the extent that they provide important services that protect people, property, and promises. The more crucial the services they provide in securing an order, the more authority the trustees will earn. In this case, trustees do well by doing good. Thus, the highest priority for a new trustee is to act quickly to establish a secure social order and thereby legitimate its presence. Trustees are also likely to earn international legitimacy – even without receiving a prior multilateral imprimatur – by effectively stabilizing and creating a social order that would otherwise not exist. The ability of the trustee to provide order will legitimate its role both domestically and internationally. Although the current intervention in Iraq began as a foreign occupation and has only recently turned into a civil war, it is now generally regarded that the failure of the United States to secure Iraq immediately after the fall of Baghdad was a critical mistake that undermined its credibility, promoted sectarianism, and failed to create legitimacy for itself or the weak state it eventually spawned. Had it succeeded in Iraq, moreover, it is likely that the absence of United Nations support would have diminished in importance and other states would have eventually come forward to support its efforts. With the failure to achieve stability, however, initial opposition to the war has grown – reflected in more countries withdrawing their troops from the coalition.

In a relational conception, trustees must also legitimate themselves by limiting their power over the society they rule. As discussed above, and as described by North and Weingast (1989), to gain the consent of their subjects rulers must credibly commit not to exploit the authority they acquire – they must “tie their own hands.” In the case of

international trustees, they have at least the potential for exerting extraordinary power over their subjects due to their greater material and political resources. To gain the consent of their subjects, trustees must credibly commit to limited rule.

From the 1990s on, trustees have used two strategies to tie their hands. First, they have acted through multilateral institutions. Whether the institution itself served as a trustee, or a single state (or coalition of states) was empowered by the institution, the effect of multilateralism has been to check the power of the trustee and open its actions to external oversight (Lake, 1999, 235-245 and 254-256; Thompson, 2006). Given diverse interests, and fears that precedent might empower other states to intervene in their internal affairs, many states have been eager to limit the power of international trustees. Any attempt by trustees to exceed their limited mandates would quickly prompt complaints and possibly censure. This is roughly equivalent to the division of powers within countries. In the United States, for instance, three equal branches of government check one another; if the executive exceeds his authority, the legislature or judiciary can (in principle) reign in action. Multilateralism performs a similar role internationally. Unlike in the formal-legal approach, it is not that the international institution directly legitimates the trustee by the authority that it confers upon it. Rather, multilateralism legitimates trustees by limiting their ability to exploit the power they exercise over subject peoples.

Second, trustees have explicitly limited the time period in which they expect to exercise their authority. Trusteeships are now intended to be temporary, transient, transitional relationships. Although some have taken on a semi-permanent status (e.g., Bosnia), these are still regarded as anomalous. This is, perhaps, the most dramatic

difference between past and present trustee relationships. The European empires of the 19<sup>th</sup> century, but even the strategic trusteeships created after World War II by the United Nations, were expected to be enduring, open-ended sets of authority relationships. Today, states create trusteeships with the expectation that they will be self-negating, or that the country will eventually return to self-rule. This may be because the trustees themselves have no “stomach” for empire, and are not willing to pay the costs of continuing rule over a foreign territory.<sup>23</sup> But it nonetheless signals to subject peoples that the trustee has limited ambitions. It is precisely the willingness of trustees to submit themselves to multilateral oversight and temporary governance that makes their commitment to limited rule credible to subject peoples – and helps legitimate their role in establishing new social orders and states.

This need to commit credibly to limited rule, however, undercuts or at least is in tension with the need to establish the credibility of the new social order. As I have argued, for individuals and groups to begin acquiring assets specific to a social order, they must have some expectation that the order will endure; the more confident they are in a social order, the more quickly they will acquire specific assets and become vested in that order. Trustees can help create such expectations by guaranteeing the social order and promising to remain “as long as it takes” to create a stable regime. But to credibly commit to limited rule, the same trustee must restrict the time period in which it will govern – or at least subject its rule to periodic review and reauthorization that is not simply a “rubber stamp” or otherwise guaranteed. Trustees must obviously walk a tightrope between too long and too short of a commitment. Too long and their role may be rejected as “imperialist” and illegitimate. Too short and they may fail to establish

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<sup>23</sup> Ferguson (2004), Lal (2004) and other “neo-neo-imperialists” bemoan this fact.

secure social orders and the necessary vesting of interests in those orders that allow them to survive. Insensitive to this tradeoff and the need to strike the right balance, it appears that the international community's concern with restricting the length of the trusteeship has in practice undercut the trustee's ability to produce a stable social order and regime.

In acquiring legitimacy for themselves, international trustees also face a larger tension, in that producing a social order that legitimates the trustee may undermine the legitimacy of the nascent state. This tension arises because the mechanism for legitimating the trustee and the state is the same, the provision of a social order. As a result, when both a trustee and state are active and order is provided, it is ambiguous, at best, which entity should get the political "credit." The more actively the trustee courts public support by extolling its contributions to reconstruction, the greater the credit it earns at the expense of the state. Indeed, the trustee's efforts to legitimate itself may even detract from the perceived competence and effectiveness of the state, leaving the latter crippled in the eyes of its own public. Although all may benefit from successful reconstruction, at the margin there is an inherent struggle between trustee and state over the apportionment of the credit and, thus, legitimacy. To alleviate this tension, the trustee should work in collaboration with the state in "shared responsibility" or, better for the long run, adopt a self-abnegating posture in which it attributes as much credit as possible to the new state – perhaps even when it is not entirely deserved.

### **Conclusion**

State-building remains a somewhat mysterious process. Clearly, states have been built over the last four-to-five centuries. Some are successful, producing enormous prosperity for their citizens while sustaining their liberty. Others have cycled through

alternative regimes, often with considerable strife. Still others are mired in near anarchy and produce only misery for their embattled inhabitants. Why some succeed while others fail is one of the biggest questions confronting modern societies and academic analysts.

State-building as an intentional process may be a peculiarly modern phenomenon. Political philosophers clearly theorized early notions of the state, but in most cases state-building itself was a natural and organic process that unfolded over decades if not generations. The idea that citizens and concerned outsiders might sit down and design and erect a state from scratch is, perhaps, unique to our age.

In thinking about state-building as a conscious process, it might seem natural to start with the success stories: states that strongly govern through and are, in turn, strongly governed by the rule of law. Thus, a formal-legal model of authority might appear to be an appropriate point of departure. Unfortunately, this confuses the endpoint of state-building with the process of state-building. In the anarchy of a post-civil war society, a relational view that begins with the origins of authority and legitimacy seems, on reflection, likely to be superior.

This alternative approach to legitimacy leads to a very different theory and policy of state-building. It emphasizes above all that a credible social order is a prerequisite to effective institution-building. It implies that current state-builders are putting the proverbial cart before the horse, and that it is better for the beast to pull rather than push any vehicle over what is always difficult terrain. It also implies that state-building requires a sustained, long-term effort by participants and international trustees alike – and should not be undertaken, or is likely to fail, unless the parties are prepared to invest substantial resources in building in sequence order, authority and only then institutions.

Finally, this alternative approach to state-building blurs the distinctions between soft and hard intervention and between political and economic and civil societies, central to this volume. Soft interventions, especially humanitarian aid and economic reconstruction, are an essential part of the state-building process. They can buy otherwise fearful factions into the social order. But such soft interventions often rely on or meld into hard, coercive intervention. Whether by the international trustee or nascent state, restoring a measure of social order and, in turn, prosperity is necessary for legitimacy. After any civil war, coercion may be necessary to break the cycle of violence and restore expectations of social order. The policy question is not whether the international community should use either soft or hard intervention, but what is the proper mix between the two sets of techniques.

In turn, political and economic and civil societies are not separate, but integrated and mutually supportive. Indeed, the present model of state building has tried to isolate and simultaneously democratize political society, without notable success. A relational approach sees the vesting of interests by social and economic actors in the political order as essential to the legitimacy of the state. In this view, legitimacy does not follow in a top-down fashion from some set of legal institutions or processes, but rather from the bottom-up by giving groups and interests a stake in social order and, later, the political mechanisms necessary to the reproduction of that order. This is not a matter of fitting new political institutions to some set of pre-existing social groups, or of developing civil or economic society as autonomous spheres, but rather of shaping expectations of social order, vesting new interests in that order, and then designing political institutions that reflect the new constellation of interests in the post-Civil War peace.

## References

- Ahmed, I. I., & Green, R. H. (1999). The Heritage of War and State Collapse in Somalia and Somaliland: Local-level Effects, External Interventions and Reconstruction. *Third World Quarterly*, 20(1), 113-127.
- Auster, R. D., & Silver, M. (1979). *The State as Firm*. Hingham, MA: Martinus Nijhoff.
- Bates, R. H. (1981). *Markets and States in Tropical Africa: The Political Basis of Agricultural Policies*. Berkeley: University of California Press.
- Baum, M. A., & Lake, D. A. (2003). The Political Economy of Growth: Democracy and Human Capital. *American Journal of Political Science*, 47(2), 333-347.
- Becker, G. S. (1983). A Theory of Competition Among Pressure Groups for Political Influence. *Quarterly Journal of Economics*, 98(3), 371-400.
- Berman, E., & Laitin, D. D. (2005). Hard Targets: Evidence on the Tactical Use of Suicide Attacks: National Bureau of Economic Research.
- Bernard, C. I. (1962). *The Functions of the Executive*. Cambridge, MA: Harvard University Press.
- Boone, C. (2003). *Political Topographies of the African State: Territorial Authority and Institutional Choice*. New York: Cambridge University Press.
- Boraine, A. (2005). Transitional Justice. In S. Chesterman, M. Ignatieff & R. Thakur (Eds.), *Making States Work: State Failure and the Crisis of Governance* (pp. 318-338). New York: United Nations University Press.
- Bradbury, M. (2003). Living with Statelessness: the Somali Road to Development. *Conflict, Security and Development*, 3(1), 7-25.
- Bradbury, M., Abokor, A. Y., & Yusuf, H. A. (2003). Somaliland: Choosing Politics over Violence. *Review of African Political Economy*, 97, 455-478.
- Brahm, E. (2007). Uncovering the Truth: Examining Truth Commission Success and Impact. *International Studies Perspectives*, 8(1), 16-35.
- Bull, H. (1977). *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.
- Call, C. T. (2003). Democratisation, War and State-Building: Constructing the Rule of Law in El Salvador. *Journal of Latin American Studies*, 35, 827-862.
- Call, C. T. (2004). Is Transitional Justice Really Just? *Brown Journal of World Affairs*, 11(1), 101-113.
- Chesterman, S. (2004). *You, the People: The United Nations, Transitional Administration, and State-Building*. New York: Oxford University Press.
- Cornes, R., & Sandler, T. (1986). *The Theory of Externalities, Public Goods, and Club Goods*. New York: Cambridge University Press.
- Diehl, M. W. (Ed.). (2000). *Hierarchies in Action: Cui Bono?* Carbondale, IL: Center for Archaeological Investigations, Southern Illinois University.
- Dobbins, J., Jones, S. G., Crane, K., & DeGrasse, B. C. (2007). *The Beginner's Guide to Nation-Building*. Santa Monica, CA: RAND Corporation.
- Doyle, M. W., & Sambanis, N. (2006). *Making War and Building Peace: United Nations Peace Operations*. Princeton, NJ: Princeton University Press.
- Earle, T. (1997). *How Chiefs Come to Power: The Political Economy in Prehistory*. Stanford, CA: Stanford University Press.

- Fearon, J. D. (1998). Bargaining, Enforcement, and International Cooperation. *International Organization*, 52(2), 269-305.
- Feinman, G. M., & Marcus, J. (Eds.). (1998). *Archaic States*. Sante Fe, NM: School of American Research Press.
- Ferguson, N. (2004). *Colossus: The Price of America's Empire*. New York: Penguin Press.
- Fisman, R. (2001). Estimating the Value of Political Connections. *American Economic Review*, 91(4), 1095-1102.
- Fukuyama, F. (1992). *The End of History and the Last Man*. New York: Free Press.
- Fukuyama, F. (2004). *State-Building: Governance and World Order in the 21st Century*. Ithaca, NY: Cornell University Press.
- Fukuyama, F. (Ed.). (2006). *Nation-Building: Beyond Afghanistan and Iraq*. Baltimore, MD: Johns Hopkins University Press.
- Godelier, M., & Strathern, M. (Eds.). (1991). *Big Men and Great Men: Personifications of Power in Melanesia*. New York: Cambridge University Press.
- Goldstone, J. A., Gurr, T. R., Harff, B., & Levy, M. A. (2000). *State Failure Task Force Report: Phase III Findings*. McLean, VA: Science Applications International Corporation.
- Gourevitch, P. A. (1999). The Governance Problem in International Relations. In D. A. Lake & R. Powell (Eds.), *Strategic Choice and International Relations* (pp. 137-164). Princeton, NJ: Princeton University Press.
- Hardin, R. (1999). *Liberalism, Constitutionalism, and Democracy*. New York: Oxford University Press.
- Hathaway, O. (1998). Positive Feedback: The Impact of Trade Liberalization on Industry Demands for Protection. *International Organization*, 52(3), 575-612.
- Horne, C. M., & Levi, M. (2004). Does Lustration Promote Trustworthy Governance? An Exploration of the Experience of Central and Eastern Europe. In S. Rose-Ackerman & J. Kornai (Eds.), *Building a Trustworthy State in Post-Socialist Transition* (pp. 52-74). New York: Palgrave MacMillan.
- Huliaras, A. (2002). The Viability of Somaliland: Internal Constraints and Regional Geopolitics. *Journal of Contemporary African Studies*, 20(2), 157-182.
- Hurd, I. (1999). Legitimacy and Authority in International Relations. *International Organization*, 53(2), 379-408.
- Iannaccone, L. R., & Berman, E. (2006). Religious Extremists: The Good, the Bad, and the Deadly. *Public Choice*, 128(1-2), 109-129.
- King, G., & Zeng, L. (2001). Improving Forecasts of State Failure. *World Politics*, 53(4), 623-658.
- Lake, D. A. (1992). Power Pacifists: Democratic States and War. *American Political Science Review*, 86(1), 24-37.
- Lake, D. A. (1999). *Entangling Relations: American Foreign Policy in its Century*. Princeton, NJ: Princeton University Press.
- Lake, D. A. (forthcoming). *Hierarchy in International Relations*.
- Lake, D. A., & Baum, M. A. (2001). The Invisible Hand of Democracy: Political Control and the Provision of Public Services. *Comparative Political Studies*, 34(6), 587-621.

- Lal, D. (2004). *In Praise of Empires: Globalization and Order*. New York: Palgrave Macmillan.
- Lasswell, H. D., & Kaplan, A. (1950). *Power and Society: A Framework for Analysis*. New Haven, CT: Yale University Press.
- Levi, M. (1988). *Of Rule and Revenue*. Berkeley, CA: University of California Press.
- Mann, M. (1986). *The Sources of Social Power, Volume 1: A History of Power from the Beginning to A.D. 1760*. New York: Cambridge University Press.
- Meierhenrich, J. (2004). Forming States after Failure. In R. I. Rotberg (Ed.), *When States Fail: Causes and Consequences* (pp. 153-169). Princeton, NJ: Princeton University Press.
- Menkhaus, K. (2003). State Collapse in Somalia: Second Thoughts. *Review of African Political Economy*, 97, 405-422.
- North, D. C. (1981). *Structure and Change in Economic History*. New York: W. W. Norton.
- North, D. C., & Weingast, B. R. (1989). Constitutions and Credible Commitments: The Evolution of the Institutions of Public Choice in 17th Century England. *Journal of Economic History*, 49, 803-832.
- Olson, M. (1965). *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press.
- Olson, M. (2000). *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*. New York: Basic Books.
- Ostrom, E. (1990). *Governing the Commons*. New York: Cambridge University Press.
- Oye, K. A. (Ed.). (1985). *Cooperation Under Anarchy*. Princeton, NJ: Princeton University Press.
- Paris, R. (2004). *At War's End: Building Peace After Civil Conflict*. New York: Cambridge University Press.
- Rogowski, R. (1989). *Commerce and Coalitions: How Trade Affects Domestic Political Alignments*. Princeton, NJ: Princeton University Press.
- Rose-Ackerman, S. (2004). Establishing the Rule of Law. In R. I. Rotberg (Ed.), *When States Fail: Causes and Consequences* (pp. 182-221). Princeton, NJ: Princeton University Press.
- Rotberg, R. I. (Ed.). (2004). *When States Fail: Causes and Consequences*. Princeton, NJ: Princeton University Press.
- Sahlins, M. (2000). *Culture in Practice: Selected Essays*. New York: Zone Books.
- Simon, H. A. (1976). *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization* (Third Edition ed.). New York: Free Press.
- Spencer, H. (1969). *Principles of Sociology* (1-volume abridged ed.). London: Macmillan.
- Teitel, R. G. (2003). Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16, 69-94.
- Thompson, A. (2006). Screening Power: The Security Council as an Informative Agent. In D. Hawkins, D. A. Lake, D. Nielson & M. J. Tierney (Eds.), *Delegation Under Anarchy: Principals, Agents, and International Organizations*. New York: Cambridge University Press.
- Timmons, J. (2004). *The Fiscal Contract: States, Taxes, and Public Services*. Unpublished Ph.D. dissertation, University of California, San Diego.

- Tyler, T. R. (2001). A Psychological Perspective on the Legitimacy of Institutions and Authorities. In J. T. Jost & B. Major (Eds.), *The Psychology of Legitimacy: Emerging Perspectives on Ideology, Justice, and Intergroup Relations*. New York: Cambridge University Press.
- Walter, B. F. (1997). The Critical Barrier to Civil War Settlement. *International Organization*, 51(3), 335-364.
- Weber, M. (1948). *From Max Weber* (H. H. Gerth & C. W. Mills, Trans.). New York: Galaxy.
- Weingast, B. R. (1997). The Political Foundations of Democracy and the Rule of Law. *American Political Science Review*, 91(2), 245-263.
- Widner, J. A. (2004). Building Effective Trust in the Aftermath of Severe Conflict. In R. I. Rotberg (Ed.), *When States Fail: Causes and Consequences* (pp. 222-236). Princeton, NJ: Princeton University Press.
- Williamson, O. E. (1975). *Markets and Hierarchies: Analysis and Antitrust Implications*. New York: Free Press.
- Williamson, O. E. (1985). *The Economic Institutions of Capitalism: Firms, Markets, and Relational Contracting*. New York: Free Press.
- Woodward, S. L. (2004). State-building Operations: International vs. Local Legitimacy?, *Nation-Building, State-Building and International Intervention: Between 'Liberation' and Symptom Relief*. Centre d'Etudes et Recherche Internationale, Paris.
- Zelditch, M. J. (2001). Theories of Legitimacy. In J. T. Jost & B. Major (Eds.), *The Psychology of Legitimacy: Emerging Perspectives on Ideology, Justice, and Intergroup Relations* (pp. 33-53). New York: Cambridge University Press.