

The Rule of Law in Afghanistan Failed Long Before the Taliban's Triumph

To be rightfully concerned about the present is not an excuse to distort the past.

Nearly five years after Taliban insurgents toppled the Islamic Republic of Afghanistan, calls still ring out for a return to the rule of law. [U.N. officials](#) contend that Taliban governance “precipitated the collapse of the rule of law and judicial independence in Afghanistan.” [Amnesty International](#) pleads for the Taliban to “reinstate a formal constitutional and legal framework and the rule of law.”

The idea that Afghanistan lost the rule of law in 2021 is compelling. It is also a fantasy. The United States, and the international community more broadly, abandoned rule of law in Afghanistan long before the Taliban returned.

The U.S.-backed regime that the Taliban defeated was one of the [most corrupt](#) states on Earth. And within that regime, police and courts were consistently ranked among the most corrupt parts. For example, a major 2018 [survey](#) found “corruption within the local security and justice sector in Afghanistan remains a key driver of insecurity in the country.” The United States’ willingness to not only tolerate but also perpetuate corruption and lawlessness proved essential for the [Taliban’s success](#).

What of the U.S. role? Here, too, reality and rhetoric clash. Government officials and outside commentators routinely stress the idea that progress in law and justice was occurring and would have continued. As my recent work in [Law & Social Inquiry](#) shows, this is not the case.

Trying and Failing

At first, the U.S. envisioned the new Islamic Republic of Afghanistan as committed to the rule of law. Yet, initial efforts were outsourced to Italy and achieved little. Worse still, they backed a strong presidency and an unrepresentative parliamentary system that offered a decidedly weak foundation for a state built on the rule of law.

As the Taliban insurgency gathered strength in the mid 2000s, Afghan government [corruption](#) became a key concern. Courts were expensive, unprofessional, predatory, and generally ineffective. While ordinary people suffered, impunity became the norm for the powerful. This prompted U.S. President George W. Bush to [pledge](#) to “replace the rule of the Taliban with the rule of law.”

Initial U.S. efforts focused on legislative reform, capacity building, and increased public engagement. Yet, they failed to stem the Taliban insurgency or improve justice. Aid programs

focused on improving knowledge and reforming laws. Yet, bad laws and insufficient knowledge were not the real problems. Those were law and governance rooted in injustice.

U.S. President Barack Obama promised to fix the [deteriorating situation](#) in Afghanistan. The so-called [Afghan Surge](#) (2010–2014) sought to improve law and order and support lasting military gains. The surge poured in vast resources but on a short timeline to defeat the Taliban and establish a stable, democratic Afghanistan. In doing so, Obama went beyond Bush in trying to work directly with powerful tribal authorities, who had long maintained order throughout much of the country. To counter lingering security challenges, the military itself became directly involved in rule of law aid.

The practical results, however, were [profoundly disappointing](#). Resources mattered little absent a commitment to rule of law ideals. Non-state justice actors were hesitant to cast their lot with the internationally backed regime. Military units faced the same chronic problems of insecurity and inability to transform rule of law programing into rule of law realities.

Failing to Try

After 2014, however, a subtle but profound change happened. The U.S. still officially backed the rule of law, but innovation ceased. Instead of trying to innovate or push the Afghan government toward real reforms, the U.S. continued to back the same policies and programs that had already failed. For instance, Surge-era USAID program implementers explicitly [noted](#) the pervasive corruption alongside “weak political support for rule of law reforms,” and “a lack of willingness...to support and adopt reforms.” Nevertheless, the [next round](#) of rule of law programing sought to “combat[] corruption by empowering relevant Afghan Government agencies/institutions.”

For the rest of Obama’s second term and all of President Donald Trump’s first term, rule of law efforts were symbolic. U.S. policymakers were keen to signal they had not abandoned the rule of law in Afghanistan. However, they no longer sought to change realities on the ground. Previously unsuccessful strategies and programing were uncritically replicated. So too were partnerships with disinterested, uncooperative Afghan stakeholders.

No consideration was given to why earlier efforts failed, and frequently, there were even denials that they had failed. Official rule of law policy embraced highly optimistic or even outright false assumptions and lacked credibility as policy or practice. Not only did U.S. rule of law efforts fail from 2015 onward, but there was no plausible vision for how they could have succeeded. Failing programs are unlikely to start working somehow. Nor are corrupt institutions and actors going to stop being corrupt simply by providing additional resources or training. Even the flagship U.S.-funded anti-corruption initiative itself was exposed as [deeply corrupt](#). Failing efforts were consistently tolerated because the [political consequences](#) of admitting failure were deemed higher than the practical consequences of supporting failing policy.

Back to the Future

What can be learned from this failure? First and foremost, policymakers ignore justice at their peril. After all, profound law and justice failures provided the initial opening for a renewed insurgency. Effective legal order constituted the core of the Taliban's political program, it underpinned their claim to be Afghanistan's legitimate rulers, and it highlighted the previous state justice system's failures. Taliban justice, while undeniably brutal, sought to provide what state courts could not: locally intelligible and [legitimate justice](#).

U.S. policymakers were so fearful that the Taliban might return to power that they were not prepared to meaningfully challenge the regime's increasingly anti-democratic tendencies. From Karzai's second term onward, even presidential elections were profoundly compromised. During the 2014 election, fraud and irregularities were so rampant that the U.S. was forced to help establish an extraconstitutional unity government between the top two candidates, Ashraf Ghani and Abdullah Abdullah. The final vote totals were never even released. President Ghani [may not](#) have even garnered the most votes. U.S. officials did not attempt to prevent another hopelessly compromised presidential election in 2019. After a prolonged deadlock, U.S. diplomats brokered another [National Unity Government](#). Despite the instability and loss of legitimacy triggered by earlier electoral crises, U.S. policymakers gave up on trying to ensure anything resembling a fair vote. Disinterest in democracy, as with the rule of law, made an already tenuous regime ever more brittle.

Logically, for the Afghan government to be a credible partner for peace, or even simply to endure, it required real legitimacy. The U.S.-backed government needed to offer credible law and order held in at least roughly the same esteem as Taliban justice. Beyond that, it needed to stand for values that large swathes of the Afghan population were willing to fight to preserve. The regime collapsed before U.S. troops even completed their withdrawal. No matter how much is spent on rule of law promotion and for how long, it is likely to fail without a legitimate, accountable, and democratic government. Ultimately, pursuing symbolic rule of law promotion had very real and disastrous consequences. It also shows that international actors must make law and justice a real priority, not just a rhetorical one.

The end result has been more suffering for ordinary Afghans under an [increasingly harsh](#) Taliban rule and ongoing [humanitarian disaster](#). These concerns very much deserve attention. To be rightfully concerned about the present, however, is not an excuse to distort the past.

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