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Ohio Northern University Law Review

Kormendy Lecture

Strengthening Governance and Rule of Law in an Era of Crisis

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More than fifty years ago, one of America's most prominent political leaders, Speaker of the House Sam Rayburn, said, "[a]ny jackass can kick a barn door down, but it takes a carpenter to build it back."¹ Rayburn's remark speaks volumes about the difficulties facing us today in the search for sound policy and in our political discourse. Rayburn's words have particular resonance for me as they relate to the extremely difficult challenges in the international arena as it has developed thus far in the twenty-first century. I think it is safe to say that whatever walk of life you have chosen or will choose, the importance of becoming, or finding, good carpenters is ever more pressing.

As we look at the conflicted world around us, the demand for the benefits of good governance and rule of law in places where it is most needed and most lacking will grow, as will the difficulties and complexities of providing it.² The effort to meet this demand is inherently quixotic.³ I

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1. *The Prelude of the 83rd*, TIME, Jan. 12, 1953, at 17.

2. See generally Ibrahim J. Gassama, *Ballots and Bullets: The Right to Democratic Governance in International Law After the Egyptian Coup*, 32 WIS. INT'L L.J. 621 (2014) (discussing the basic need for democratic governance in Egypt and the difficulties faced in implementing good governance in an unstable global climate).

3. "Extravagantly chivalrous or foolishly idealistic; visionary; impractical or impracticable." *Quixotic*, WEBSTER'S NEW WORLD COLLEGE DICTIONARY (3d ed. 1997). Much like author Miguel de

am not an academic, and not especially familiar with theory and research in this area. I have been a practitioner, spending years working in damaged and struggling parts of the world, trying to protect American interests by promoting stability and providing the assistance needed to make people safer and more prosperous. While at times I have felt practitioners could benefit from more access to the theories, analyses, and models of the academic world, by necessity we work in the nexus of policy and the confines of realities on the ground. It is from that perspective that I want to share some thoughts with you about how important the work of good governance is, how necessary it is to match theory and policy with realistic analysis and expectation, and why it is at the same time so difficult and so necessary to strengthen governance and rule of law.

The world has entered an era of crisis in international affairs that in my view is unprecedented in variety and dimension.⁴ Unprecedented or not, it is undoubtedly the case that in the first two decades of this century we have entered a new era.⁵ Conventional and unconventional threats to our security have multiplied, malignant terrorist ideologies threaten the safety and values of much of the world, information moves ever faster, whether true or not, and our digitized lives are under assault.⁶ Massive movements of people, driven by conflict, poverty or both, challenge our collective consciousness as they threaten the capacity to cope with them;⁷ according to the United Nations, there are a record 65 million displaced migrants and refugees

Cervantes' titular character who set out to renew notions of chivalry and bring justice to the world to no avail, the monumental task of bringing the rule of law and good governance to conflicted areas around the world may appear as overly idealistic or unobtainable. See generally MIGUEL DE CERVANTES SAAVEDRA, *DON QUIXOTE* (Edith Grossman ed. trans., 1st ed. 2003) (1547-1616).

4. See Jason Keiber, *We're In a New Era of International Cooperation Against Terrorism. Is That Good or Bad?*, WASH. POST (Mar. 16, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/31/were-in-a-new-era-of-international-cooperation-against-terrorism-is-that-good-or-bad/?utm_term=.2fabecee3aaf (discussing American and European cooperation in combatting terrorism in the post-9/11 international landscape); see also David Rothkopf, *A Time of Unprecedented Instability?*, FOREIGN POLICY, (July 21, 2014), <http://foreignpolicy.com/2014/07/21/a-time-of-unprecedented-instability/>. In that piece, the author interviewed former national security advisor to President Jimmy Carter, Zbigniew Brzezinski, in which he stated that we may "be living in a period of unprecedented instability worldwide," due to, *inter alia*, the prevalence of populist movements throughout the world as well as the spread of terrorism resulting from instability in the Middle East. *Id.*

5. See Rothkopf, *supra* note 4.

6. See *id.* We have already seen the effect of breaches of cybersecurity in the United States and abroad, both in the form of hacking of corporations and state sponsored ransomware attacks. See Lily Hay Newman, *The Biggest Cybersecurity Disasters of 2017 So Far*, WIRED (July, 1 2017 10:00 AM), <https://www.wired.com/story/2017-biggest-hacks-so-far/>.

7. See Shiv Malik, *UNHCR Report Says Refugee Numbers at 15-Year High*, THE GUARDIAN (June 19, 2011), <https://www.theguardian.com/world/2011/jun/20/unhcr-report-refugee-numbers-15-year-high> ("The number of forcibly displaced people around the world has reached a 15-year high, according to the UN high commission for refugees (UNHCR), with the vast majority languishing in poor countries ill-equipped to cater to their needs.").

seeking safer ground somewhere in the world.⁸ The institutions and the political and international order which have enabled the United States and many other nations to prosper and grow as never before are being called into question and in some cases purposely undermined.⁹ The rapid acceleration of the pace of change, spurred by unprecedented innovation in technology, is both empowering and threatening.

This is the unfolding new context in which the effort to promote good governance finds itself. The lack of good governance, in any country, makes dealing with any of these challenges more difficult. In conflicted and violent parts of the world, and in countries struggling to end or recover from war, it threatens the state itself.¹⁰ In this era, that ultimately threatens our own security.¹¹ This is a reality which needs to be understood, and for which there is no easy or quick remedy.

We are impelled to pursue development and good governance both because it is right to do so, consistent with our values, and because we increasingly understand, especially since 9/11, that failed states and instability are threats to our security.¹² Since the end of the Cold War, the international community has engaged in a nation building enterprise, in multiple settings and contexts, which has at best been a limited success.¹³

8. Diedre McPhillips, *Record Number Displaced on World Refugee Day*, US NEWS (June 20, 2017 7:56 AM), <https://www.usnews.com/news/best-countries/articles/2017-06-20/record-number-of-displaced-people-on-world-refugee-day>.

9. See generally Charles A. Kupchan, *The Decline of the West: Why America Must Prepare for the End of Dominance*, THE ATLANTIC (Mar. 20, 2012), <https://www.theatlantic.com/international/archive/2012/03/the-decline-of-the-west-why-america-must-prepare-for-the-end-of-dominance/254779/> (broadly discussing how the post-Cold War world is continuing to change, transitioning power from the West to “the rest”).

10. See Sahar F. Aziz, *Rethinking Counterterrorism in the Age of ISIS: Lessons from Sinai*, 95 NEB. L. REV. 307, 308 (2016).

Failing states are havens for terrorism. A toxic combination of social, economic, and political crises attract violent extremist groups to establish bases in these lawless states. As the groups grow in strength, the violence spreads from the immediate vicinity to the nation, to the region, and sometimes even other continents.

Id.

11. See *id.* (discussing terrorist attacks in New York, London, and Madrid, among others, as a result of this unrest).

12. *Id.*

13. See Qerim Qerimi, *The “S Word” and the Security Council: The Role and Power of the United Nations Security Council in the Creation of New States*, 36 T. JEFFERSON L. REV. 181, 187-88 (2013).

After the fall of the Iron Curtain, the [United Nations] became a revived organization—more active and capable of managing international crises. At the end of the last century and the first decade of the twenty-first century, the [United Nations] made a conspicuous departure from the Cold War conundrum, although not with entirely satisfactory results. The [United Nation]’s involvement in settling complex sovereign disputes and sovereignty-related

Efforts have generally fallen short, and in some cases, failed.¹⁴ Seldom, if ever, have they succeeded to the degree and on the timeline foreseen or hoped for, although there have been notable successes in development and economic growth.¹⁵ However, the strengthening of good governance has often proven resistant to outside influence and programs.¹⁶

The notion, almost taken for granted at the turn of this century, that the democratic model of political organization and governance had taken hold around the world, if not in every nation, is now in question.¹⁷ Our efforts to promote good governance and rule of law in other nations mostly take place in the framework of promoting democratic practice and values.¹⁸ But as Professor Larry Diamond of Stanford University, one of our most astute students of democracy, observed recently, the Trump Administration faces “a world with more authoritarian momentum and greater democratic instability than at any time in the last several decades.”¹⁹ He asserts that the “‘third wave’ of global democratic expansion that began in the mid-1970s and crested in the 1990s, had already begun to subside as early as 2005.”²⁰ During the latter part of that heyday of democratic expansion, I was the U.S. Deputy Representative to the United Nations. At the time, Americans took satisfaction from the notion that the democratic model was on the rise the world over and many member nations aspired to establish their democratic credentials. As Diamond observes,

[i]n the post-Cold War era, democratic values became universal—in the sense that they appealed to large swaths of humanity in virtually

conflicts could perhaps best be characterized as a mixture of success and failure, of absolute or relative absence and presence, or of reception and denial.

Id.

14. *Id.*

15. *See id.*: *see also* *FEATURE: Developing Countries Experiencing Unprecedented Growth*, *Says UN Report*, UN NEWS CENTRE (Mar. 14, 2013), <http://www.un.org/apps/news/story.asp?NewsID=44371#.WaSBH7R-X8>.

16. “The bottom line is that there is no quick, cheap, or reliable way for outsiders to engineer a democratic transition and especially when the country in question has little or no prior experience with it and contains deep social divides.” *See* Stephen M. Walt, *Why is America so Bad at Promoting Democracy in Other Countries?*, FOREIGN POLICY (Apr. 25, 2016), <http://foreignpolicy.com/2016/04/25/why-is-america-so-bad-at-promoting-democracy-in-other-countries/>.

17. “[N]early a quarter of the world’s democracies have eroded or relapsed in the past 30 years.”

Id.

18. *See id.* (suggesting that the best way to spread the American model of democracy abroad is accomplished through “genuine, significant, and committed” diplomacy and by setting the example at home in the United States).

19. Larry Diamond, *Democracy After Trump: Can a Populist Stop Democratic Decline?*, FOREIGN AFFAIRS (Nov. 14, 2016), <https://www.foreignaffairs.com/articles/world/2016-11-14/democracy-after-trump>.

20. *Id.*

every region of the world—while all ideological rivals were in retreat [D]emocracy became, for the first time in human history, the most common form of government in the world.²¹

The vision of a secure march to democracy has, however, become clouded. As new issues of governance develop even within the most advanced democratic systems, democratic government is increasingly challenged to meet the political needs of its citizens.²² We have for decades assumed that the democratic model is central to good governance and rule of law,²³ and I believe that over time, it is. But in our own societies, as well as in our work to strengthen governance around the world, we will be challenged to demonstrate that assumption remains valid—and opposed by those who believe it is not.

As the era of crisis unfolds and the insecurity of populations around the world increasingly threatens our own security, the United States and its many allies will, I trust, continue working to improve governance and bolster struggling states as an integral part of the fight for our own security and values.²⁴ Up until a couple of weeks ago, I would have ended this thought by simply stating that this endeavor, the strengthening of states, has for decades been seen by administrations of both parties as being consistent with our interests, and our values.²⁵

Today, however, that concept seems to be called into question by President Trump, who is emphasizing hard power and “winning” while proposing huge cuts in the civilian instruments of American influence and power,²⁶ embodied principally in the State Department and the United

21. *Id.*

22. See Walt, *supra* note 16.

23. Spreading democratic governance and principles abroad has been a hallmark of past administrations.

If you're a dedicated Wilsonian, the past quarter-century must have been pretty discouraging. Convinced liberal democracy was the only viable political formula for a globalizing world, the last three U.S. administrations embraced Wilsonian ideals and made democracy promotion a key element of U.S. foreign policy . . . Unfortunately, [according to Professor Diamond and Mark Plattner] these efforts at democracy promotion have not fared well.

Id.

24. Although “democratic pessimism” has become a mainstream belief, the promotion of democratic values abroad is still very much alive in U.S. foreign policy, even if it is subtler than it has been in the past. Thomas Carothers, *Is the United States Giving Up on Supporting Democracy Abroad?*, FOREIGN POLICY (Sept. 8, 2016 10:53 AM), <http://foreignpolicy.com/2016/09/08/is-the-united-states-giving-up-on-supporting-democracy-abroad/>.

25. See Walt, *supra* note 16.

26. See Carothers, *supra* note 24.

If the American people choose Donald Trump for president, democracy promotion would likely fall off the stage of U.S. foreign policy almost entirely. This is plain to see given

States Agency for International Development (USAID).²⁷ Going down this path would be a huge mistake, and make it impossible for the United States to lead the international, multifaceted effort required to respond to this era of crisis, including the need to contain and defeat the violent extremist ideology which threatens the values to which most of the world—what we might call the “civilized world”—aspires.²⁸ The military instrument is certainly required. But there will be no “winning” of the conflict with terror, no stemming of massive movements of people, no promotion of the stability America and the world so badly need by military means alone.²⁹

With or without the \$54 billion in additional funding for security sought by the President,³⁰ our armed forces, intelligence, and law enforcement agencies are, and will remain, unparalleled in the world.³¹ But most of the leaders of our armed forces, military and civilian, have understood for quite some time the intrinsic need to marry military and civilian instruments of American power.³² Former Secretary of Defense Bob Gates and current Secretary of Defense Jim Mattis have both prominently argued that the civilian component of our security instruments must be stronger and better resourced,³³ precisely because of the limitations on what our military can

Trump’s apparent admiration of strongmen like Russian President Vladimir Putin, his determination to pull the United States into a defensive crouch, and his florid disrespect for basic principles of democracy and rights even at home.

Id.

27. President Trump’s call to merge USAID with the State Department would lead to large budget cuts, slashing USAID’s budget by nearly one-third, which would result in the elimination of thirty to thirty-five per cent of USAID field missions and would potentially cut its regional bureaus by over sixty-five per cent. Bryant Harris et al., *The End of Foreign Aid as We Know It*, FOREIGN POLICY (Apr. 24, 2017), <http://foreignpolicy.com/2017/04/24/u-s-agency-for-international-development-foreign-aid-state-department-trump-slash-foreign-funding/>.

28. *See id.*

29. *See* Walt, *supra* note 16 (“What doesn’t work is military intervention (aka ‘foreign-imposed regime change.’”).

30. Michael D. Shear & Jennifer Steinhauer, *Trump to Seek \$54 Billion Increase in Military Spending*, NY TIMES (Feb. 27, 2017), <https://www.nytimes.com/2017/02/27/us/politics/trump-budget-military.html>.

31. *See* Skye Gould & Paul Szoldra, *The 25 Most Powerful Militaries in the World*, BUSINESS INSIDER (Mar. 15, 2017 1:16 PM), <http://www.businessinsider.com/the-worlds-most-powerful-militaries-2017-3>.

32. *See Letter from 121 Retired U.S. Generals and Admirals to Congress*, U.S. GLOBAL LEADERSHIP COALITION (Feb. 27, 2017), http://www.usglc.org/downloads/2017/02/FY18_International_Affairs_Budget_House_Senate.pdf [hereinafter *Letter from Retired Generals and Admirals*].

33. Former Defense Secretary Bob Gates called for “a dramatic increase in spending on the civilian instruments of national security—diplomacy, strategic communications, foreign assistance, civic action and economic reconstruction and development.” Thom Shanker, *Defense Secretary Urges More Spending for U.S. Diplomacy*, NY TIMES (Nov. 27, 2007), <http://www.nytimes.com/2007/11/27/washington/27gates.html>. Likewise, current Secretary of Defense Jim Mattis has urged the need for diplomacy in addition to military spending. *See* Russo Read, *Mattis: A Strong Military is Crucial to Effective Diplomacy*, THE DAILY CALLER (Mar. 22, 2017 11:31 AM),

accomplish on its own. At the end of February, immediately after President Trump announced his proposed cuts to the State Department budget, 121 former generals and admirals signed a message to the Congressional leadership warning of the folly—my word, not theirs—of such action.³⁴ They wrote “many of the crises our nation faces do not have military solutions alone . . . [including] stabilizing weak and fragile states that can lead to greater instability.”³⁵

Our armed forces simply must have strong civilian and policy partners, working together with them, to protect the American people over the medium and long term. Winning battles is not enough, and defeating ISIS is not enough. What happens, for example, after Mosul is liberated, or ISIS is defeated in Syria? Both tasks will be achieved, I have no doubt. But that will not be the end the conflict. It is the hard political work of diplomacy, development, coalition building, and governance which must come together with the military instrument if enduring stability is to be established.³⁶

In today’s world, instability is a threat and stronger states, with better governance, are a counter to instability.³⁷ That was a central argument in bringing the issue of AIDS to the United Nations Security Council in 2000, a historic session conceived of and pushed through by the late Ambassador Richard Holbrooke when I was his Deputy.³⁸ Many in the United Nations objected to bringing AIDS, a health issue, to the foremost forum for international security issues, the Security Council.³⁹ We prevailed in the argument that a disease which was out of control and threatening to ravage populations in Africa and other parts of the world was a threat to stability and the very ability of governments to function, and thus an imminent threat

<http://dailycaller.com/2017/03/22/mattis-a-strong-military-is-crucial-to-effective-diplomacy/>; see also Alex Lockie, *Mattis Once Said If State Department Funding Gets Cut ‘Then I Need to Buy More Ammunition’*, BUSINESS INSIDER (Feb. 27, 2017 4:27 PM), <http://www.businessinsider.com/mattis-state-department-funding-need-to-buy-more-ammunition-2017-2>.

34. See *Letter from Retired Generals and Admirals*, *supra* note 32; see also Nicole Gaouette, *Retired Generals: Don’t Cut State Department*, CNN (Feb. 27, 2017 9:57 AM), <http://www.cnn.com/2017/02/27/politics/generals-letter-state-department-budget-cuts/index.html>.

35. *Letter from Retired Generals and Admirals*, *supra* note 32.

36. See *id.* (“The State Department, USAID, Millennium Challenge Corporation, Peace Corps and other development agencies are critical to preventing conflict and reducing the need to put our men and women in uniform in harm’s way.”).

37. “Rather than global cop, it’s more accurate to call America the world’s majority shareholder, investing its resources in global stability less out of charity than self-interest.” Thanassis Cambanis, *Why It Pays to Be the World’s Policeman—Literally*, POLITICO (Jan. 7, 2017), <http://www.politico.com/magazine/story/2017/01/why-it-pays-to-be-the-worlds-policemanliterally-214605>.

38. See Alexandra Ossola, *How HIV Became a Matter of International Security*, THE INDEPENDENT (May 22, 2017), http://www.independent.co.uk/news/long_reads/how-hiv-became-a-matter-of-international-security-a7732701.html.

39. “Holbrooke was met with resistance. Congressmen criticized him on television; friends and dignitaries warned him privately not to confuse humanitarian issues with national security.” *Id.*

to security.⁴⁰ That session of the Security Council was the genesis of the spurred international effort to combat AIDS, save millions of lives and support societies—in the interest of global security.⁴¹

So let us have this debate. It is important that the American people understand the risks and the stakes at hand. Failure to strengthen and make more effective all our instruments of power will before long undermine the security of the United States and our allies as the number of failing or incoherent states grows.

That said, it is very challenging, and often frustrating, for practitioners and political leaders to engage in “nation building,”⁴² which for many has become a pejorative term. Both Presidents Bush and Obama tried to avoid being dragged into nation building in Iraq, Afghanistan, and elsewhere, even as the need for it became more apparent.⁴³ In my work at the United Nations, at NATO, in the Middle East, and in Afghanistan, I became involved with security and development in countries throughout the world, at different stages of conflict and with different histories and cultures. I have come to prefer the term “state strengthening” to “nation building.” Outside influence, I would argue, cannot “build” a nation itself. But it can help local actors, if they are willing, to make the state stronger and more capable and credible. The work to do so consists of three building blocks, which, while interrelated, have a certain hierarchy.⁴⁴

The first fundamental building block is security. Without the provision of security for much, if not all, of the populace, the other elements of progress are continually degraded if not outright impossible to achieve.⁴⁵ The second, building on security, is development: the ability to use outside assistance, generate electricity and economic activity, provide health care,

40. “Eventually, Holbrooke prevailed Aids became the first epidemic in modern history to morph beyond a topic of public health into an issue of national and even international security.” *Id.*

41. *See id.*

42. *See generally* Qerimi, *supra* note 13.

43. “There are many ways to describe the gamut of anger, controversy, and complex reality that surrounds the creation, modification, and/or termination of the still central actor of the world public order—the State.” *Id.* at 182.

44. *See generally* Ambassador Curtis A. Ward, *Security Imperatives for Development and Governance in U.S.-Caribbean Relations*, U.S. DEPT. OF STATE DIPLOMACY BRIEFING SERIES (June 27, 2011) http://caribbeanresearchandpolicycenter.org/publications/docs/Security_Development_and_Governance-Imperatives_for_the_Caribbean.pdf. (This panel discussion focused on “‘Security, Development, and Governance’, recogniz[ing] the correlation between three distinct, but linked components” of American foreign policy in the context of U.S.-Caribbean relations).

45. *See* Alonso Gurmendi Dunkelberg, *Your Country, My Rules: Can Military Occupations Create Successful Transitions?*, 46 GEO. J. INT’L L. 979 (2015) (discussing how military occupation is necessary for security; participation from local actors is equally, if not more, necessary in successful state building enterprises); *see also* Matthew Dearing, *Nation Building is Dirty Business*, FOREIGN POLICY (Mar. 10, 2015), <http://foreignpolicy.com/2015/03/10/nation-building-is-dirty-business/>.

educate the populace, and so on.⁴⁶ The third, building on both security and development, is governance and rule of law, necessary for an inclusive political system and strengthening of the state.⁴⁷ This is the most difficult of the three, the most vexed by political conflict, personal ambition, corruption, and competition for privilege and advantage. It is also an area where outside actors are inclined to be most insistent on seeing progress and transformation, on their own terms, acutely aware that corruption is corrosive and state failure threatens security.

Advances on each of the three building blocks reinforce progress in the others. Greater security allows for more development, prosperity, and education, which should in turn increase the prospects for sounder governance and the potential for a virtuous cycle of improving security, development, and governance, supporting each other. The dilemma is that achieving such a virtuous cycle in many times and places flies in the face of human character and experience. After all, we see this in the history of the development of our own country, where we still struggle with imperfections of governance and rule of law and freedom. And still, we as outsiders expect those we are trying to help to overcome their histories and to see the wisdom of the virtuous cycle, in a matter of years rather than the generations we ourselves required.

Dr. Stephen Krasner of Stanford University argues in an Atlantic Council Policy Paper *Autocracies Failed and Unfailed: Limited Strategies for State Building*, for which I wrote the forward, that,

[t]he fundamental challenge for modern wealthy democracies committed to promoting better governance is that their opportunities are hostage to the preferences of national elites in closed-access polities [i.e., authoritarian regimes], where political power is exercised in arbitrary ways . . . The nature of an elite is to be self-interested, and to that end, elites work to maintain political control, offering them the most assured path to wealth and power.⁴⁸

Many of the elements of developing governance outsiders seek, and which many people might desire—free and fair elections, elimination of corruption, fair and equal access to the law, an effective civil service, free media—are, Dr. Krasner argues, likely not to be welcomed by national elites who see such progress as inimical to their access to power and

46. See Dunkelberg, *supra* note 45; see also Dearing, *supra* note 45.

47. See Dunkelberg, *supra* note 45 at 990-92 (discussing the “arguably successful case of transformative occupation . . .” of post-World War II Germany).

48. Stephen D. Krasner, *Autocracies Failed and Unfailed: Limited Strategies for State Building*, ATLANTIC COUNCIL (2016), http://www.atlanticcouncil.org/images/publications/Failed_States_SP_0315_web.pdf.

wealth.⁴⁹ He concludes that that “despite the potential for corruption, the support or endorsement of local political elites is a necessary condition for success. Without such support, external actors will fail in their efforts to improve local governance. They must therefore focus on modest objectives that include the preferences of the national elites.”⁵⁰ He calls for a more realistic and modest approach to state building aimed at what he calls “good enough governance,” a term he credits to Merilee Grindle, of Harvard’s Kennedy School, in 2004.⁵¹

Professor Krasner further divides today’s world into three kinds of polities along a governance spectrum.⁵² The members of the Organization for Economic Cooperation and Development (OECD) are in the “open access” polity, composed of wealthy democracies and the kinds of systems most people would prefer to live in.⁵³ The “closed access” polity is the most repressive and most directly controlled by elites whose material, political, and even physical well-being is entwined with their status.⁵⁴ The third polity lies in between the open access and closed access polities, with a mixture of elite interest and more opportunity for external actors to improve governance.⁵⁵ Exploiting those opportunities is, he says, “a daunting task, one that requires more intimate knowledge of polities than most US officials [or any outsider, I would add] are likely to have.”⁵⁶

Professor Krasner is quite correct in focusing on the role of elites in impacting development of governance and rule of law and in calling attention to the limitations of outside actors within even relatively open systems, no matter the resources at their disposal. But as a practitioner, I would not draw such sharp lines between the three polities, and would pursue opportunity even within the closed order polity. In reality there are grey areas of opportunity to build and influence even under difficult conditions. And I would prefer to describe the goal as seeking “constant progress governance” rather than the notion of “good enough governance,” which suggests an end state.⁵⁷ But Krasner has identified critical factors impeding the success of our well-intentioned efforts that we need to take account of—especially the difficulties posed by lack of intimate knowledge of local figures, politics, and dynamics.⁵⁸ Outside actors can seldom get

49. *Id.* at iii.

50. *Id.*

51. *Id.* at 8.

52. *Id.* at 3.

53. Krasner, *supra* note 48, at 3.

54. *Id.* at 3-4.

55. *Id.* at 4-5.

56. *Id.* at 7.

57. *See id.* at 21.

58. Krasner, *supra* note 48, at 5-7.

inside the system they are trying to help and influence.⁵⁹ This is always the diplomat's challenge, made exponentially more difficult by the limited tours and access of foreign officials in places like Afghanistan and Iraq.⁶⁰

Doing better at doing good requires an understanding of political realities in the countries at hand, a nuanced strategy for responding to them, and expectations tempered by realism about what can be accomplished, over what period of time. Key questions then for the policy maker and practitioner are how to engage which elites, whose inclination is likely to favor the status quo, and with what arguments? There is in my experience often space to impact elite definitions of self-interest, of duty, and even of patriotism. Pursuit of self-interest is indeed integral to elite behavior, as it is for most of us.⁶¹ The question for the diplomat is how to shape and mold the perceived self-interest. I would also argue that the importance of the individual should never be underestimated, given the many times in history that individuals have stepped beyond narrow definitions of personal interest to serve their people.

In light of the above considerations, we can learn from the experience of international efforts in Afghanistan, one of the poorest and most conflicted countries of the world. The United States and its partners continue to make a huge investment in promoting development and governance there in the interests of the international community's security.⁶² Afghanistan today falls into Professor Krasner's mixed category, with challenged but developing institutions, a vibrant media, and a dynamic political scene with aspirations by many for better governance, democracy and rule of law—and the powerful influence of elites.⁶³

First, and foremost, it bears repeating that there is no military solution to the conflict in Afghanistan, nor to other conflicts throughout the world in which we are engaged.⁶⁴ We, the civilized world, are in a long term confrontation with an enemy hostile to our values and animated by a distorted, violent ideology.⁶⁵ Prevailing will require a long term effort, with

59. *Id.* at 3-4.

60. See Greg Jaffe, *Sorting Out a New Life Back Home*, WASH. POST (Mar. 28, 2016), http://www.washingtonpost.com/sf/national/2016/03/28/sorting-out-a-new-life-back-home/?utm_term=.7efbd01ea24f (levying one criticism against the war in Afghanistan in that, due to replacement of officers in military and civilian command, there is no institutional knowledge of the situation).

61. See Krasner, *supra* note 48, at 3.

62. See David Petraeus & Michael O'Hanlon, *The U.S. Needs to Keep Troops in Afghanistan*, WASH. POST (July 7, 2015), https://www.washingtonpost.com/opinions/afghanistan-after-obama/2015/07/07/63dd6dc2-1e8e-11e5-aeb9-a411a84c9d55_story.html?utm_term=.d4881b9ee707.

63. See Krasner, *supra* note 48, at 4-5, 12.

64. See Walt, *supra* note 16.

65. See Scott Mackey, *A Legacy of Success in Afghanistan*, FOREIGN POLICY (Mar. 16, 2015), <http://foreignpolicy.com/2015/03/16/a-legacy-of-success-in-afghanistan/>.

all the instruments of power at our disposal, including the important work of development and strengthening states.⁶⁶ The solution must ultimately come from within the Islamic and developing worlds themselves, with our support. Strengthening the state is an essential component of draining the energy which feeds the enemy. The role of that work is more, not less, important if we are to prevail.

In Afghanistan, the issue of elites is central to the experience of decades of conflict, and to the period of reconstruction over the past decade.⁶⁷ Corruption has been endemic, and politics are fractious, to say the least.⁶⁸ But nonetheless we have found ways to encourage Afghan performance, including mechanisms to encourage “constant progress”: setting agreed benchmarks, updating goals, and establishing incentives for performance. The process is not perfect, but it does create a dynamic dialogue among the government, the international community, and the Afghan people. We developed ways to help the Afghans mitigate the forces of disunity and ethnic and tribal stress, and to help the Afghan political class to avoid collapse. Afghanistan is not a failed state, and while the cost has been high, great things have been accomplished by the Afghans, with international support, over the past 15 years.⁶⁹ At the same time as we insist on performance in connection with our support, we must also expect and accept the limitations of our influence in a foreign society. The picture today is decidedly mixed, as we should expect, with uneven progress but with the possibility of continued progress.⁷⁰

The chances for success are greatest when we have partners. We have a partner in the current Afghan government,⁷¹ and we have an imposing coalition of international partners working with us on the security, development, and governance elements of the Afghan project. We need this coalition, and it needs American engagement and leadership to continue. It is the model for what we are building and will need in other parts of the world as well.

The United States, and its international partners, have spent billions of dollars over the years in promoting Afghan development, governance, and rule of law.⁷² While Afghanistan is a far different place than it was a decade

66. *Id.*

67. *See* Krasner, *supra* note 48, at 4, 12.

68. *Id.* at 12-13.

69. *See* Jaffe, *supra* note 60; *see also* Petraeus & O’Hanlon, *supra* note 62.

70. *See* Mackey, *supra* note 65.

71. *See id.* (“Most notably, the United States now has a new and trustworthy partner in Afghan president Ashraf Ghani . . .”).

72. *See* Tom Engelhardt, *How Much Does it Cost to Liberate a Country?*, NATION (Nov. 12, 2015), <https://www.thenation.com/article/how-much-does-it-cost-to-liberate-a-country/> (detailing, rather scathingly, the vast amount of money spent in Afghanistan since 2001).

and a half ago, with many metrics moving in the right direction, the glass is still half full.⁷³ One of the principal impediments to filling the glass is the difficulty in closing the gap between establishing standards and programs, and actual behavior and practice. This is a fundamental problem, especially where new standards of law or behavior challenge prerogatives, not only of elites, and ingrained values. And to the extent that such new standards are perceived as originating from the outside, rather than from society itself, the challenge of implementation is that much greater.

A case in point is the law on the Elimination of Violence Against Women (EVAW) decreed by President Karzai in 2009.⁷⁴ This law is of historic importance, a groundbreaking effort to establish women's societal and legal rights.⁷⁵ President Karzai promulgated the law by decree because securing parliamentary agreement was and remains problematic.⁷⁶ The law's impact and enforcement remain uneven.⁷⁷ As with other governance standards, the populace, institutions, and the legal system need to be educated in the existence and meaning of the standard.⁷⁸ In the case of the EVAW, women themselves needed to understand the scope and meaning of the law so they could use it. And critically, it became glaringly clear that the support of men for the rights of women is essential. At the same time, the government struggles to implement the desired programs and protections.⁷⁹ But as this unfolds, a positive trend is developing over time despite numerous setbacks and resistance to what are often initially seen as foreign values.

Another example is establishing the appropriate role of justice, courts, and lawyers. Despite all the difficulties in the justice arena, the 2016 Asia Foundation Survey of the Afghan People found that 74.3% of Afghans correctly identify the role of defense lawyers, despite the relative novelty of the concept.⁸⁰ Despite the continued widespread use of traditional justice (local elders, assemblies, mediation) for dispute resolution, 21% of Afghans have been represented by a lawyer in a criminal case, or know someone

73. See Krasner, *supra* note 48, at 12; see also Mackey, *supra* note 65.

74. Laura Belkner, *The Secular and Religious Legal Framework of Afghanistan as Compared to Western Notions of Equal Protection and Human Rights Treaties: Is Afghanistan's Legal Code Facially Consistent with Sex Equality?*, 20 CARDOZO J. INT'L & COMP. L. 501, 526 (2012).

75. See Fawzia Koofi, *It's Time to Act for Afghan Women: Pass EVAW*, FOREIGN POLICY (Jan. 13, 2015), <http://foreignpolicy.com/2015/01/13/its-time-to-act-for-afghan-women-pass-the-evaw/>.

76. See *id.*

77. See Belkner, *supra* note 74, at 526.

78. See Koofi, *supra* note 75.

79. *Id.*

80. HENRY DUKE BURBRIDGE ET AL., *AFGHANISTAN IN 2016: A SURVEY OF THE AFGHAN PEOPLE* 111 (Zachary Warren et al. eds., The Asia Foundation 2016), http://asiafoundation.org/wp-content/uploads/2016/12/2016_Survey-of-the-Afghan-People_full-survey.Apr2017.pdf.

who has been.⁸¹ But, in a reminder about the importance of information, most Afghans still say they do not know of any government office or authority in their area where they can go to have problems resolved.⁸² But many more of them now know there should be one, and that they should have access to a lawyer.⁸³

Education at all levels is fundamental and transformative, but it takes a long time to realize the potential of a new generation in a country where the majority of the population is under 30.⁸⁴ Many more boys and girls are in Afghan schools at all levels than have been for decades, including in higher education.⁸⁵ In the Asia Foundation Survey, more women identify education as their biggest problem rather than employment or domestic violence.⁸⁶ Education is the key, fundamental building block.⁸⁷ Without it, building the kind of states which most of the world would like to see prosper—whether in the OECD world or in zones of conflict and the globe in between—is beyond the realm of the possible.⁸⁸

The education and engagement of women in any conflicted developing society should be a strategic goal, as has been the case in Afghanistan. This is critical to better prospects for young people, good governance, and in most cases, the mitigation of violence and extremism. In the Asia Foundation Survey, 74% of Afghans felt that women should be allowed to work outside the home, a marked shift from 62.5% in 2011.⁸⁹ The vast majority, 93.6%, support at least basic education for women,⁹⁰ with a still very significant 72% supporting higher education as long as the school is close to home.⁹¹

We, our coalition partners and the Afghans themselves have certainly made mistakes in the attempt to get the country on its own feet. We can learn from those mistakes, but a critical lesson is that lasting results that increase our security take time. We must certainly learn to be more effective and efficient with the resources available, in a world where the demand for strengthening states is growing as the era of crisis impacts our

81. *Id.* at 112.

82. *Id.*

83. *Id.*

84. *See id.* at 89.

85. “By 2013, estimates of school enrollment had increased to 9.1 million, including 3.75 million girls.” BURBRIDGE ET AL., *supra* note 80, at 86.

86. *Id.* at 27.

87. *See* Elizabeth King, *Education is Fundamental to Development and Growth*, The World Bank (Jan. 28, 2011), <http://blogs.worldbank.org/education/education-is-fundamental-to-development-and-growth>.

88. *See id.*

89. BURBRIDGE ET AL., *supra* note 80, at 143.

90. *Id.*

91. *Id.*

security. As we in the OECD world struggle with our own issues of governance and rule of law, we should be mindful of our own history, and a bit humble about our expectations of others and the ability of the outside actor to control or influence. As in the struggle with violent extremism, lasting solutions will come from internal actors, grounded in their history, culture and societies.

In this dynamic relationship between outside support and internal action, progress toward a world of greater inclusion, more stable societies, development, and better governance and rule of law are demonstrably attainable. We can see this in one of the most difficult examples, Afghanistan. We can also see it globally. As New York Times columnist Nicholas Kristoff recently observed, great strides have been made in the last decades in the effort to raise global living standards.⁹² In the early 1980s, more than 40 per cent of the global population lived in extreme poverty, “defined as earning less than \$1.90 per person per day, adjusted for inflation.”⁹³ This year, fewer than ten per cent are, and by 2030 is it expected that just three or four per cent will be.⁹⁴ In a stark demonstration of the critical role of education, until the 1960s the majority of humans had always been illiterate; now, eighty-five per cent of adults can read and write.⁹⁵ I wager that the growth in literacy and dramatic decline in extreme poverty go hand in hand. It is remarkable, Kristoff writes, that each day in today’s world “some 18,000 children who in the past would have died of simple diseases will survive, about 300,000 people will gain electricity and a cool 250,000 will graduate from extreme poverty.”⁹⁶

There is reason to take heart, if we and many others the world over continue to make the effort. The importance of strategic patience, and of explaining to our publics the advantages of strengthening states in the era of crisis, are paramount. One of our great Secretaries of State, George Shultz, explained in a recent interview that diplomacy—building relationships, negotiating solutions to tough problems, bringing expertise and persuasion and power to bear—is like tending a garden: “if you plant a garden and go away for six months, what have you got when you come back? Weeds.”⁹⁷ The effort cannot be sustained without the political support of Americans

92. See Nicholas Kristoff, *Why 2017 May Be the Best Year Ever*, NY TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/opinion/sunday/why-2017-may-be-the-best-year-ever.html?mcubz=0>.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. James E. Goodby, *Groundbreaking Diplomacy: An Interview with George Shultz*, AM. FOREIGN SERV. ASS’N, <http://www.afsa.org/groundbreaking-diplomacy-interview-george-shultz> (last visited Aug. 23, 2017).

and our international partners. If it is not sustained, I fear that our way of life and values will come under growing assault as military means fail, as they must, to deliver long term solutions. This will be hard but necessary. I encourage you to be, or support, the good carpenters we need in building the barns needed to secure our future.