



Institutional stickiness and Afghanistan's unending revolution

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Abstract

Analysis of revolutions typically focuses on de jure constitutions and how their elite- or mass-led character influences their consequences. De facto constitutions are political and economic rules that people use to govern themselves which may or may not be recognized in the evolving de jure constitution. We argue that the nature of change resulting from revolutions depends on whether the emergent constitutional order recognizes the autonomy of de facto constitutions. We theorize neglect, disregard, and hostility toward de facto constitutions contributes to cycles of constitutional instability. We use this theory to explain Afghanistan's unending revolution. Neither elite-led nor mass-led revolutions in Afghanistan produced a lasting constitutional order because they share a disregard for the de facto constitution.

Keywords Revolutions · De jure institutions · De facto institutions · Predation · Foreign aid · Afghanistan

JEL Classification B52 · D74 · O19 · P30

1 Introduction

One of the great debates in the study of revolutions is whether elite- or mass-led revolutions are more likely to produce positive institutional change. As Vahabi et al. (2020a) explain, a defining feature of elite revolutions is that they maintain old institutional forms while adding new content. These elites manage to improve institutions while avoiding the chaos of mass revolutions by leading the revolution and giving themselves a place in the emergent constitutional order. An example is England's Glorious Revolution of 1688/89 which largely avoided violence and established rules generally considered institutional improvements. Mass revolutions, which are characterized by active involvement of the masses in politics, are thought to contribute to de-institutionalization. Elites may lead the revolt, but the emphasis is on organic and spontaneous change, despite the role of revolutionary leaders. Both Lenin and Mao, for example, led revolutions but maintained an

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image that those movements were organic. These revolutions are more likely to result in pernicious changes in institutions. Examples include communist revolutions which both institutionalized terror and destroyed incentives for wealth creation (Boettke, 1990; Dikötter, 2010; Gregory, 2004).

Though the conventional wisdom is that elite revolutions are more likely to involve positive changes, Vahabi (2010) argues that mass social protest can be unified for a common cause. The American and French revolutions involved the masses and the fruits of revolution were institutional improvements. Accordingly, mass revolution can be thought of as a source of improvements in institutions even though they lack the gradualism usually associated with productive social revolutions (Vahabi et al., 2020a). Considering the examples of communist cases, it is not always that mass-led revolutions lead to disastrous outcomes.

In this paper we argue that the elite- or mass-led character of revolutions is less significant than how *de jure* constitutions align with *de facto* constitutions. *De jure* constitutions are the bundles of rules governing relations within government, including separation of powers, federalism, and bureaucratic processes and procedures, as well as relations among government and its citizens, including the extent of democracy and the rules governing elections for political office. *De facto* constitutions are rules embodied in custom, culture, and practices that define economic and political relationships in a community, including what people consider their rights. *De facto* constitutions often predate emergence of formal government, operating alongside of it, and have often passed the test of time. *De jure* constitutions may recognize *de facto* constitutions by not enforcing rules, as in situations of a *de facto* federation where the central government may not recognize customary and traditional governance but allows it to persist or is unable to eliminate it. In such situations of passive recognition, a critical question is whether the formal rules institutionalize that relationship (such as by formalizing the *de facto* federation) or attempt to eliminate it (as in situations where revolutions actively deny authority of *de facto* constitutional orders). Importantly, both elite- and mass-led revolutions require choices about how much autonomy to provide to *de facto* constitutions in the emergent order precisely because all societies have a *de facto* constitution and no revolution can eliminate them entirely.

In our theory of revolutions, elite-led or mass-led revolutions vary in the extent they reinforce *de facto* institutions. To the extent elite-led revolutions are gradual reforms, they can move in the gradual direction of recognition of *de facto* constitutions or gradually erode them. Mass revolutions may seek to destroy institutions, but they can do so in a way that maintains, to an extent, *de facto* institutions, or they can attempt to wipe them out along with previous *de jure* constitutional rules. Our main hypothesis is that continual and seemingly perpetual disagreement over political rules at the highest level of society is more likely when the *de jure* constitutions are hostile to *de facto* constitutions that are perceived as legitimate and effective by the people living under those rules.

We use the theory to explain Afghanistan's unending revolution. By "unending revolution" we mean seemingly perpetual conflict to define and redefine political rules at the highest level of society. This is how we characterize Afghanistan. From the time of its inception as a recognized nation in 1747, Afghanistan has seen many constitutional revolutions, none of which provided for a lasting political order. Some can be described as elite-led (in the sense that they originated from members of ruling dynasties), and some can be thought of as mass-led (such as the communist revolution, though much like Lenin's and Mao's revolutions, Afghanistan's communists often had little patience for "the people"). Regardless of the degree to which they were closer to the ideal types of elite- or mass-led revolutions, few revolutions have seen much improvement. The reason is that Afghanistan's revolutionaries, and the new constitutions they declared, shared a

disdain for de facto institutions and generally failed to provide meaningful autonomy for them in the new constitutional order. Still, Afghan rulers who have been the most disdainful of de facto constitutional orders have generally done more to contribute to internecine violence; on the other hand, those who have attempted to provide marginal recognition of the de facto constitution, or at least left it alone, contributed to positive institutional change. Afghanistan's political economy history also suggests that extreme conflict and violence reflects the strength of the de facto constitution and of the government to impose its will. The reason why the communist revolution—the closest thing Afghanistan has had to a mass-led revolution—sparked decades of internecine violence is because the de facto constitutional order is perceived as effective and legitimate. This meant that incentives to fight to preserve the de facto constitutional order were especially strong and that the communists were not powerful enough to suppress conflict. Elite-led revolutions—the extent we can call Afghan revolutions “elite”—did not contribute to as much violence, as they mostly ignored the de facto constitution. However, the revolutions were still unable to establish a lasting de jure constitutional order because they did little to provide a positive role for it in the emergent constitutional order. The result is a vicious cycle in which new constitutional orders fail to recognize informal norms in society resulting in a gap between de facto and de jure rules that, as it grows, further stokes the flames of disorder and violence.

Our analysis also speaks to the question of how we describe revolutions. The terms “elite revolution” and “mass revolution” are, to an extent, ideal types not a perfect fit for any revolution, including in Afghanistan. Some of Afghanistan's revolutions were led by members of ruling dynasties, and the country was led by kings, which suggests certain aspects of an elite revolution. The constitution established in 2004 also had features of an elite agreement. The communist revolution, and the Taliban, are closer to what we think of as mass movements because they opposed the monarchy and all secular government in the name of the Afghan people. We engage these issues in describing the Afghan case, though our main point is that it is important to focus on how revolutionaries deal with the de facto constitution, not whether we call them “elite” or “mass” revolutions. When we do, we will see that the revolution that perhaps best fits the elite model—the Musahiban dynasty, which ruled for four decades in the twentieth century and was arguably an elite—caused, perhaps, fewer problems than other revolutions, while the ones closer to the mass-revolution ideal type—the communists and Taliban—contributed to more violence and chaos than the others. In this way, we engage the literature on elite and mass revolutions while appreciating that those terms are ideal types that require care in their application outside of contexts such as Europe, Russia, and China.

Our perspective also offers insight into revolutions more generally. For example, the American Revolution of 1776 and subsequent constitution-making is often analyzed from a de jure perspective. However, the de jure rules aligned with rules that were developing in communities, such as informal claiming of property and self-proclaimed recognition of local self-governance in towns during colonial times. The US Constitution, as ratified in 1789, for example, recognized that people wanted property and self-governance. Rules continued to evolve throughout the nineteenth century to recognize de facto institutions including recognition of rights of individuals to assemble themselves into claim associations that had their own written constitutions but that were not initially recognized by law (Murtazashvili, 2013). The American Revolution was based, in part, on the idea that government should be organized to respect what people were already doing. This revolution was extending the frontier by establishing property rights and by creating political rules that formalized the right to self-government. The fact that the revolution was largely

aligned with what people were doing, and not simply its mass character, is one of the reasons why the constitutional order has been a lasting one.

The American government's relationship with Native Americans, especially the centuries of effort to eradicate or assimilate Indians into white culture and institutions, also fits within our theoretical framework. Even though Indians had governments, property, and much to trade (Anderson & McChesney, 1994), the US Constitution did not recognize these institutions, thus, institutionalizing a permanent conflict between *de jure* and *de facto* constitutions. Indian governance institutions, despite great odds, endured (Lear, 2006). Part of the reason for the persistent poverty on many Indian reservations today was the long failure of the government to recognize the autonomy of the *de facto* constitution among tribal nations.

Our view of constitutions mainly extends Boettke et al. (2008) theory of institutional stickiness. They argued that the efficiency of a proposed institutional change depends on its relationship to indigenous agents in previous time periods. Boettke, Coyne, and Leeson's taxonomy of institutions consists of foreign-introduced exogenous institutions, indigenously introduced exogenous institutions, and indigenously introduced endogenous institutions. They did not explicitly consider that both elite and mass revolutions can impose exogenous institutions that undermine *de facto* constitutions. Thus, it is not whether the revolution is elite- or mass-led that determines their consequences; rather, the relationship between *de jure* and *de facto* constitutions explains the extent to which revolutions are efficient, and, hence, more likely to promote economic development.

Our paper is organized as follows. The next section defines the concepts of *de jure* and *de facto* constitutions. We then develop a taxonomy of revolutions based on the character of the movement (elite- or mass-led) and its substantive goals (to exogenously impose institutions or to recognize existing institutions). After presenting our theory, we consider the *de facto* constitution in Afghanistan and then compare four revolutionary periods in Afghanistan. Our paper concludes with a discussion of the lessons from Afghanistan for the study of revolutions.

2 Conceptualizing constitutional orders

The concepts of *de jure* and *de facto* constitutions are a refinement of the formal-informal institutions divide in new institutional economics as well as an extension, we argue, of the constitutional economics of James Buchanan and Gordon Tullock. Max Weber conceptualized formal institutions as rational-legal rules, such as firms, governments, constitutions, and bureaucracies. Economists initially adopted a rational-legal perspective of the firm as a nexus of contracts, with emphasis on the legal foundations of firm governance, first with Coase's theory of the firm and later with Alchian and Demsetz (1972) and Jensen and Meckling (1976).

Douglass North did not require a rational-legal aspect to formal institutions. Rather, North (1990) categorized formal institutions as including constitutions, contracts, and forms of government. Whether they are rational-legal is less significant in the Northian framework than that the rules stabilize expectations of the actors who are required to abide by them. In this regard, the Northian and Weberian perspectives align. Weber believed rational-legal rules reduce uncertainty for actors so that they can formulate anticipations about the future and act accordingly. North was more explicit that rational-legal (bureaucratic) legitimacy is not the only way to make the future predictable. In North's framework,

informal institutions include traditions, customs, moral values, religious beliefs, and superstitions (North, 2005). This view of informal institutions reflected development in theories of firm which recognized that reputations, not simply the formal rules, often explained how business gets done (Ellickson, 1991; Macaulay, 1963). Likewise, it provides an analysis of political rules which recognized that working rules, not what is specified in parchment institutions, explain how government operate in practice (Ostrom et al., 1961).

Law and economics scholars have increasingly recognized the importance of *de jure* and *de facto* institutions (Law & Versteeg, 2011, 2013). *De jure* institutions come from law and operate as rules. Constitutions, laws, and regulations that come from the state are examples of *de jure* institutions. *De facto* institutions are reflected in practice and outcomes. One perspective, emphasized in law and economics, is that *de jure* institutions must be followed in practice in order to analyze the gap between *de jure* and *de facto*. Perfect enforcement leads to overlap of *de jure* and *de facto* institutions (Voigt, 2011).

Our interest is in *de jure* and *de facto* *constitutions*. As such, a useful starting point is Buchanan and Tullock's (1962) constitutional economics. They conceptualized constitutions as a form of social contract that defines the political institutions of a community. Studies of revolutions typically think of constitutions as the rules governing government and its relation to citizens. However, there are often multiple constitutional orders in society. Though Buchanan and Tullock were especially concerned with *de jure* constitutions, their conceptualization of constitutions and constitutionality applied to the state, families, and firms (Buchanan, 1975). In this regard, Buchanan's and Tullock's constitutional economics provides a natural fit for consideration of *de jure* and *de facto* constitutions.

De jure constitutions are political rules enforced by governments. Constitutional rights are necessarily enforced by governments (Bromley, 2006). Since enforcement is often challenging, there may be opportunities for robust *de facto* constitutions which are rules that serve similar purposes as a *de jure* constitution but are based on custom or tradition. As legal pluralists have long recognized, there are often multiple sources of "legal" authority in all legal systems (Galanter, 1981).

The notion of a *de facto* constitution recognizes that the informal institutions of interest are those which govern politics outside of the state. In this regard, it captures the fundamental rules for how people decide political conflicts and resolve disputes. It captures the self-governing communities described by Elinor Ostrom (1990) and James Scott (2009), as well as traditional and tribal governance structures that are not *de jure* but represent a significant source of order as described by Jennifer Murtazashvili (2016). Further, *de facto* constitution is about the informal norms governing relations in society and is not reserved to tribal or traditional societies. An important example is given by Vahabi et al. (2020b): they show that the post-World War II period in France gave rise to social policy by self-organized citizens and that this model of social welfare competed with the social policy provided by government. In such instances, society may reestablish traditional institutions for provision of social welfare. Once the *de facto* constitution asserts itself, a significant question is whether the formal rules align with them or undetermine them. In this regard, the concepts of *de jure* and *de facto* constitutions constitutes a synthesis of the constitutional political economy of Buchanan and colleagues with that of Elinor Ostrom and James Scott.

Consideration of *de jure* and *de facto* constitutions also offers insight into the incompleteness of revolutions. Goldstone (2023) argues that constitutions rarely achieve their expressed goals but that there is no single reason for it as many types produce similar outcomes. Revolutions that are a sequence of steps and successions that lead to stable outcomes are relatively rare. And as Grajzl and Murrell (2023) observe, many social

innovations that result in fundamental shifts in institutions or culture occur via nonviolent means and do not have a clear beginning or end. Afghanistan has these features of instability as well as lack of a clear beginning or end. The reason, we argue, has much to do with the mismatch of constitutional change with the *de facto* constitution. More generally, there is probably less reason to see a revolution as succeeding in its expressed goals (riches, equality, less corruption, a lasting order) unless the revolutionaries, as they envision new changes, make explicit a role for traditional orders in the emergent order.

3 A theory of institutional stickiness and revolutions

North (1990) divided institutions into formal and informal rules that influence behavior of individuals and organizations. These rules should be enforceable to influence behavior (Alston et al., 2018). Constitutions are rules at the highest level of society. *De jure* constitutions come from law, while *de facto* constitutions come from society. In this paper, we see revolutions as primarily changes in *de jure* constitutions.

A change in *de jure* constitutions typically involve choices about the extent of recognition of *de facto* constitutions. For example, constitutional changes may create formal rules that recognize the autonomy and authority of customary law, or they may declare that such laws are invalid. As we discuss in the case of Afghanistan, some revolutions produced new constitutions that recognized customary governance (including even the Taliban, who recognized customary governance during their first rule from around 1996 to 2001); most rulers initiating constitutional reform, however, declared that only the laws that came from government were legally valid, thus, creating a conflict between *de jure* and *de facto* constitutional orders.

Our approach extends the theory of institutional stickiness as follows. According to Boettke et al. (2008), institutional change depends on its relationship to indigenous agents in previous time periods. Their concern was with foreign-introduced exogenous institutions, which they argued would be less likely to promote economic development. One example would be imposing democracy when the culture is not ready for it (Coyne, 2008). In this context, “culture” includes all manner of informal institutions. We focus more precisely on *de facto* constitutions, which are rules governing political relations that are based on custom and tradition. Thus, we do not explicitly consider informal institutions such as religious ritual or superstition, which often have a significant role in governing individual behavior (Leeson & Suarez, 2015), and which might be subject of constitutional reforms. For example, constitutional reforms could see superstition as traditional and outdated ways of thinking and attempt to stamp them out. That is likely significant in many instances, though our focus is more specifically on *de facto* constitutions, which we have defined as rules governing political relations at the local level that typically operate parallel to formal government institutions.

Their perspective can be used to develop a taxonomy of revolutions. Elite versus mass led is one significant variable to understand the nature of revolutions. Both can receive external support, which we consider as well. Both elite and mass led reforms vary in the extent that they recognize *de facto* constitutions. Hence, we have four quadrants of institutional change.

In the first quadrant, we have elite-led, exogenous revolutions. These are revolutions which are imposed by elites and, while gradual, disregard *de facto* constitutions. The

gradual disregard for de facto constitutional orders makes it less likely that the process will trigger a mass backlash, but the process is not efficient.

The second quadrant consists of elite-led, endogenous institutional reform. These are gradual changes that seek to align with de facto constitutions. Such revolutions are efficient, provided the de facto constitutions have stood the test of time in the sense that people find them useful and effective in governing. This is perhaps the best outcome of revolution, according to much of the literature on revolutionary change.

The third and fourth quadrants involve mass-led revolutions. As noted above, mass revolutions attempt to de-institutionalize. However, they cannot entirely wipe the slate clean and vary in the extent to which they maintain a role for de facto constitutions. Exogenous mass-led revolutions seek to replace de facto constitutions with new, formal ones. When these attempts put effective and legitimate customary and traditional political institutions in their sites, the prospects for violence are especially high: individuals have something to fight for, namely, their ways of life and the rules that give them something to fight for. Mass-led endogenous revolutions that focus on formal power relations, while minimizing customary and traditional governance, or directly targeting it, are especially likely to result in fighting over the rules of the game.

Foreign assistance has been criticized for its inability to promote efficient institutional change.¹ Foreign aid, in our theory, can go with or against the grain of revolutions seeking to stamp out de facto constitutions (Levy, 2014). For example, the international community could, in principle, provide material support to customary and traditional political institutions even when the de jure constitution fails to recognize a role for them. Alternatively, foreign aid can support both elite or mass revolutions that seek to centralize political control, thus, speeding up a process of disregard of customary and traditional ways of life. In our theory, foreign aid that supports either elite-led or mass-led revolutions that seek to impose institutions exogenously will exacerbate the social costs of these revolutions.

Our perspective extends the institutional stickiness perspective to revolutions as follows. One reason why a revolutionary scream leads to correctives that improve social welfare have at least something to do with de facto constitutions: efficient screams recognize, to an extent, the de facto constitutions that people use to govern their day-to-day affairs. It also suggests reasons why revolutions may lead to internecine violence and insurgencies, namely, mass revolutions that seek to eliminate or replace de facto constitutions orders with government. The economic logic of this is straightforward analysis of opportunity costs: tried and true constitutional orders at the local level that may not have formal recognition give people something to fight for when confronted with changes in formal constitutional rules that further marginalize them.

4 Afghanistan's de facto constitution

A case study of Afghanistan is, unfortunately, timely as the Taliban returned to power in 2021. The Taliban previously ruled from 1996 until the US government and Northern Afghan allies ousted them in 2001. The Taliban continue to rule in a predatory manner, imposing a conservative, nationalistic, Islamic ideology on the entire population. This

¹ See, for example, Dutta et al (2013), Leeson and Harris (2018), and Murtazashvili and Murtazashvili (2020)

includes discrimination and violent retribution against non-Pashtun groups in society and the exclusion of women and girls from school beyond the elementary school level.

Despite centuries of despotic and centralized rule, Afghanistan's de facto constitution has remained largely robust. Local self-governance has been a source of stability in the country during the Taliban's first reign of power in the 1990s. It was not completely unscathed. For example, in the mid-1990s, the Taliban embarked on a plan to replace local customary representatives with mullahs (religious intermediaries) they could more easily control (Murtazashvili, 2016). They have done the same in the post-2021 period.

Before describing the de facto constitution, it is useful to mention the formal constitution. As the Persian Safavid Empire declined, tribal leaders met in Kandahar in 1747 and declared the founding of the Durrani Empire. The Durrani Empire would become the Afghan state in the 1830s. The constitutional convention was not the usual sort one thinks of when considering the Glorious Revolutions in England, France, and the United States. Rather, the Afghan leadership met at a Loya Jirga, or Grand Council, to decide whether they would declare themselves a government and who would lead them (Barfield, 2004). In Pashto, jirga means circle or assembly. It can refer to national assemblies but is also the way that people make decisions: they meet in a circle and deliberate about important issues. This is the central feature of the Afghan de facto constitution. At this Loya Jirga, representatives of Afghan tribes decided they would indeed be a political entity and that they would be led by Ahmad Shah Durrani (Dupree, 1973).

The Durrani Empire did not have much capacity. There was a leader, a king (shah), but he had little authority over the nation he claimed (Barfield, 2010). However, weak state capacity was not the only problem facing the nascent state. The time of state weakness corresponded to spread of overland trading routes across the country, as well as a time when the king recognized some autonomy of local leaders. Ahmad Shah recognized his precarious position, and so he initiated a conscription policy in which he exchanged rights to land to local tribal elites in exchange for them supplying him with soldiers.

Ahmad Shah Durrani was also lax on traders, as tax rates on traders were low to non-existent. Hence, this period has been described as a de facto federation (Murtazashvili, 2014). It was one in which the government, by virtue of its weakness but also as a result of policy, recognized a substantial role for the de facto constitution. Then, as well as today, this de facto federation involves decision-making centralized in the jirga (or shura), which is the customary method for deciding important local matters (Murtazashvili & Murtazashvili, 2016a, b). For our purposes, the organization of Afghanistan's de facto constitution involves a significant role for deliberative councils, for community-appointed village representatives (maliks or arbabs), and mullahs. Much of the governance of the country occurs through individuals who serve in these three community-defined, customary roles.

Despite some virtues, the de facto federation was not stable and suffered from near-continual revolts, including from the King's relatives. Starting the 1850s, a series of Kings attempted to impose more strict centralized control (Noelle, 1997). Most notoriously, Abdur Rahman, who ruled from 1880 to 1901, ruthlessly coalesced power around him after he ousted his main rival. Once he had control, his main objective was to destroy the customary basis of Afghan society, as he believed that it was a source of great disorder because customary leaders constantly contested the extension of royal power. He waged major campaigns to subjugate his opposition. Mostly, this involved efforts by titular Pashtuns to root out other ethnic groups and chase them from their land, especially Hazaras in central Afghanistan (Barkey, 1996). Part of his strategy was to declare Hazaras infidels, after which he could allow his soldiers the rights to Hazara property and women.

Otherwise, Islamic law would prohibit such behavior toward other Muslims (Olesen, 1995). By declaring them infidels, Abdur Rahman found a way around those prohibitions.

Afghanistan in the early twentieth century was mainly an agrarian economy and much of the economy was based on small-scale farming and herding (Guha, 1964). After the reign of Abdur Rahman, the center eased its desire to control communities in such a direct manner. As a result, the relationship formed around ties between the state and customary leaders at the local level, such as local leaders with inherited titles like khans, maliks or arbabs (village representatives), and local elders or religious leader. Each khan or malik would serve as the representative of its village to engage with the representatives of the state on a very basic and limited set of parameters. Though khans, like any other local powerbrokers, could be corrupted, the most extensive anthropological accounts found that they were largely accountable to the people and that they were considered to be local public goods providers (for a discussion of the khan system, see especially Anderson, 1978, 1983).

What is most significant is whether the *de facto* constitution is as effective as governance institution. According to Jennifer Murtazashvili, it is. Through ethnographic fieldwork, she found that customary institutions continue to perform a variety of functions despite decades of civil war. Some of these functions include providing opportunities to resolve disputes, as people can generally call on maliks or a mullah to resolve disputes, and for more serious issues, any individual or household (usually led by a man) can call a Jirga or Shura. These institutions are inclusive in that they allow any household to participate in deliberation. Representation of women and girls occurs through men's participation, though in some instances, women participate. In contemporary Afghanistan, even women have served as customary leaders (Murtazashvili, 2016).

The *de facto* constitution also enables a system of private property.² Very few Afghans have legal titles to their property. Rather, over 90 percent of Afghans, according to a nationally representative survey, have property rights that are based on customary deeds—a deed, sometimes countersigned by a customary representative such as malik, that is taken as signifying a right to ownership of land for private use (Murtazashvili & Murtazashvili, 2016b). Though Afghanistan has a customary system of governance, it does not result in collective ownership. Some lands are communally owned, such as a pasture (Alden Wily, 2013; Stanfield et al., 2010), but more commonly Afghans own their land on an individual basis. This is enshrined in the customary deeds mentioned above. Those deeds to land are held in the village, are symbolic of private ownership, and typically are respected.

One might think maliks or khans are part of a patronage network or a quasi-feudal vestige since their power over people derives from tradition in a largely agrarian economy. Indeed, there are many accounts of Afghanistan that see them through a neo-Marxist prism (Deschamps & Roe, 2009; Roe, 2011). But this social contract was very much suitable to the rural agrarian and mostly self-sufficient economies of the rural Afghanistan. This customary system of exchange was best suited to the minimalist social contract of the time and very much cost effective. It was an efficient mechanism for governance for the rulers based in Kabul. Indeed, when the communists began to attack these institutions in the 1970s, one reason people mobilized was because the khans and maliks were known to provide public goods, and without them, governance quality declined. This was because the communists, who knew little of rural life, attempted to rule with little compass. Rural Afghans found the

² For a more discussion of the comparative advantages of customary institutions in managing property relations, see Murtazashvili and Murtazashvili (2021).

communists as they were: outsiders, with little knowledge of the conditions of rural communities (Edwards, 2002).

The accounts above suggest that the de facto constitution was a trusted institution, and effective in establishing property rights and a forum to resolve disputes, especially in comparison to the imperfect alternative of formal government. At the same time, customary governance is imperfect: they often limit participation to men and some disputes go unresolved, especially when they involve powerful outsiders, including some warlords. But they do not have to be perfect. Following Demsetz (1969), what is necessary is to discern which institutions work best among imperfect alternatives. In Afghanistan, customary institutions are typically a good alternative to a corrupt state and, before the Taliban returned to power, some even used Taliban courts as an alternative to government courts because the latter were seen as especially corrupt (Murtazashvili & Murtazashvili, 2015).³

5 Afghanistan's unending revolution

5.1 Constitutional instability as a norm

Gilles Dorronsoro, in his book *Revolution Unending* (2013), considers the chaos in Afghanistan from the time of the Soviet invasion in 1979. Unfortunately, chaos is a more pervasive feature of Afghanistan's political economy than the communist period. In the first 125 years after the founding of the Afghan Empire in 1747, one of the main problems was conflict among relatives of the King for control of the center. Afghanistan's game of thrones was what led Abdur Rahman, who ruled from 1880 to 1901, to seek to centralize state power above all else. He was an especially violent ruler, engaging in several major campaigns to destroy his rivals, especially those rivals from other ethnic groups (Abdur Rahman, like most Afghan rulers, was Durrani Pashtun). Abdur Rahman also enacted policies and tactics to eliminate the "middle men" and "false prophets" in the country (Rahman, 1900). It was a direct assault on the de facto constitution.

Abdur Rahman's son Habibullah ruled from 1901 to 1919, and in 1919, a young Amanullah assumed power. Amanullah—the Abdur Rahman's grandson—was perhaps best known for declaring independence from the British and for initiating a process of modernization. Amanullah sought closer ties to Turkey and its symbol of nationalist radical reform, Mustafa Kemal Atatürk (Poullada, 1973). But from a domestic politics perspective, Amanullah was known most as an ambitious social reformer. These modernizing reforms included abolishing the bride price and the lottery for military conscription, both of which conflicted with custom: the bride price was an institution that has existed for centuries and the lottery system reduced the roles of customary authorities to decide who served in the military (Tapper, 1984). Abdur Rahman had little patience for traditional society but his one-in-eight conscription system (one of eight men were to serve) enabled customary leaders to have a role in deciding who served. Amanullah's radical approach to social reforms were alien to the Afghan society of Afghanistan because they were imposed from above and without consultation. This resulted in a backlash by local religious and customary

³ For a similar analysis of comparing imperfect alternatives, see Coyne and Leeson (2012) on comparisons of criminal justice in Liberia, Leeson on clan governance in Somalia (2007), and Crepelle et al (2022) on military societies providing policing services in Indian country. In each of these examples, the authors show that customary or traditional governance often works better than predatory rule by government.

leaders that would ultimately lead to the collapse of Amanullah's reign in 1929 (Poulada, 1973). Amanullah proved so incapable of governing that he was eventually ousted by a warrior-peasant named Habibullah Kalakani from a village north of Kabul (Barfield, 2010).

5.2 The Musahiban and the “decade of democracy”

Habibullah Kalakani was a revolutionary, not a leader, and he did not come to power with a strong social base of support. He never consolidated his power long enough to govern. His reign lasted only a few months and was plagued by endemic corruption (Dupree, 1973). He was eventually overthrown by Afghanistan's final royal dynasty: the Musahiban. The most prominent of them was King Zahir Shah who ruled from 1933 until he was chased out by his cousin, Mohammed Daud, in 1973. He was able to maintain stability and order during four decades of his rule in the country as well as faced increased pressure from society to provide more public goods and services (Barfield, 2010). This required expanding and transforming the nature of the state.

Zahir Shah embarked upon a series of pluralistic reforms in the last decade of his rule (1963–1973). This included a new constitution in 1964 which created a constitutional monarchy. It recognized the basic rights of the citizens and allowed for a modern and independent parliament. These reforms limited the powers of the royal family and allowed for those outside the royal family to serve in the cabinet and in other senior government positions. Starting with these developments in the last decade of his rule, the possibility of direct engagement with individuals and the government through an elected legislature began to take shape.

The radical social reforms and modernization policies of King Amanullah were reversed during Zahir Shah's rule because of his desire to maintain stability and his recognition of the importance of self-governance. By working with the population in this way, Zahir Shah gained the respect of local leaders who helped him maintain stability and consolidation of his rule. He understood that a decentralized model of government was most appropriate for Afghanistan because of the diversity of social norms and values in the country. Zahir Shah understood that to stay in power, he must rule alongside religious leaders and rural communities and not interfere with their ways of life. He learned from Amanullah that if a leader imposes social change from the top too quickly they will face instability. Although most of the King Zahir Shah's rule is characterized by economic stagnation and institutional stasis, the constitutional reforms he introduced in the last decade of his rule did provide citizens basic rights for the first time.

The democratic constitution also followed earlier progress in individual and political freedom. From 1947 to 1953, Shah Mahmood, Zahir Shah's uncle, served as prime minister. During that time, there were several democratic reforms, including elections of mayors and a parliament, and several newspapers and other innovative publications began to operate. For the first time, loosely organized political parties also emerged (Coburn & Larson, 2014). Some in power felt threatened by greater Citizens participation, thus, in 1953, Mohammad Daud, the cousin of Zahir Shah, was appointed to replace Shah Mahmood as prime minister. Daud prioritized authority and internal order over democracy and individual freedoms. Parties were banned and, while elections for the national assembly were still held, the votes were manipulated. Daud instituted a series of centralizing political controls during this period.

Rather than imposing radical reforms from the top, Zahir Shah allowed groups who had been organizing around the country to form into groups that became political parties. This political liberalization built upon the short pluralist period from 1947 to 53, but it was only during the last decade of Zahir Shah's ruling that Afghanistan became a constitutional monarchy. The country was largely peaceful and Zahir Shah provided some recognition of local customary institutions that were the basis of most local politics. It simultaneously promoted local elections for mayors and encouraged pluralism through media and party development.

5.3 Communist rule

To an extent, the Musahiban dynasty was a success, as there was peace, though there was not much economic development. That is significant insofar as it gave the communists something to rationalize their plans. The problem is that Afghanistan's communists, much like the Musahiban, did not see much of a positive role for the *de facto* constitution. But, rather than disregard it, they attempted to destroy customary institutions that were reminiscent of the time of Abdur Rahaman. Like Abdur Rahman, Afghanistan's communists blamed customary society for economic underdevelopment.

Communist parties began to organize during Zahir Shah's constitutional monarchy. They were, in fact, some of the first parties to organize. Daud came to power in a coup in 1973 and was sympathetic to left-wing economic policies, though apparently not sympathetic enough—the communists ousted Daud in 1978. Daud had moved the country to the left, even briefly earning the moniker of The Red Prince for his flirtations with the Soviet Union.

The Afghan communists established their party, the People's Democratic Party of Afghanistan (PDPA), in 1965. It had two main factions: the nationalist Khalq, who favored radical reform, and the Parcham, who favored more gradual reform (these factions had existed for decades before). Communist movements are typically mass movements with leaders. They also vary substantially in how they deal with informal institutions. In Afghanistan, this was clear from the differences in the two leading factions, the Khalq and Parchamis. The Khalq were much more bent on removing customary and traditional institutions than either the Parchamis or Daud (Dupree, 1979). Table 1 lists the communist-era rulers, including their affiliations, to illustrate the great instability of this time (as there were seven presidents in a little over a decade).

Daud turned to the Soviet Union after the US government rejected his unconditional requests for weapons systems to create a modern army and because of Daud's concern about US support for newly-independent Pakistan (Edwards, 1996). The Soviet influence was institutionalized with the first five-year plan that began in 1956 after approval by a Loya Jirga in 1955. Key institutional features—the organization of central government, the system of public finance, and the public bureaucracy—were similar to Soviet systems imposed elsewhere, all of which predated the communist revolution that commenced in 1978 (Murtazashvili, 2022).

Khalqis believed Daud was too moderate and moving too slow. Both Khalqis and Parchamis were less supportive of customary and traditional institutions than Daud who was focused more on national level institutions while leaving rural Afghanistan some autonomy. Afghan communists and their hostile ideology towards religion and customary values were perhaps the most alien experiment in the political history of Afghanistan.

Table 1 Left-wing and communist rule, 1973–92. *Source:* Adapted from Murtazashvili and Murtazashvili (2021)

Ruler	Birth–death	Reign/title	Political affiliation
Mohammed Daud Khan	1909–78	July 1973–April 1978 President of Republic of Afghanistan; assassinated	None
Nur Muhammad Taraki	1917–79	April 1978–September 1979 Chairman of Presidium of Revolutionary Council; assassinated (in October 1979)	PDPA, Khalq faction
Hafizullah Amin	1929–79 ^a	September 1979–December 1979 Chairman of Presidium of Revolutionary Council; assassinated	PDPA, Khalq faction
Babrak Karmal	1929–96	December 1979–October 1986 Chairman of Presidium of Revolutionary Council; dismissed	PDPA, Parcham faction
Haji Mohammad Chamkani		November 1986–September 1987 Acting chairman	PDPA, Parcham faction
Mohammad Najibullah	1947–96 ^b	November 1987–April 1992 Chairman of Presidium of Revolutionary Council, then president; resigned	PDPA, Parcham faction; then Homeland Party
Abdul Rahim Hatif	1926–2013	April 16, 1992–April 28, 1992; interim president; exiled	None

^aSoviet Union invaded Afghanistan in December 1979^bNajibullah declared the country the Republic of Afghanistan, which lasted from 1987 until 1992; he held the office of president after the PDPA government fell

The Musahiban, to an extent, respected religious and traditional institutions, but the communist leaders had overt antagonistic remarks and policies towards the religious and traditional values of society (Edwards, 1996). Recorded footages of the communist rulers making fun of the religious and traditional beliefs and practices of society in the official meetings of the cabinet is a testimony to this hostility. From the onset, the communist capture of power and their radical policies created a backlash from the traditional segments of society, which, coupled with the failure and split of the communist party over power, further added to instability in the country.

The communist-backed regime collapsed in 1992 and the Taliban emerged in 1996. This corresponded to a new ideology, radical Islam, as a basis for governance. Though the opposition to communists encompassed all ethnicities, including ethnic Hazaras and Uzbeks who had historically been sidelined from power and politics, the Taliban were mainly interested in imposing Pashtun norms though many were simply imported from outside and had no previous basis in Afghan society. The legendary Tajik commander, Ahmad Shah Masoud, was a prominent figure who united all ethnicities in the fight against the Soviets and, later, in the resistance against the Taliban in the 1990s. These changing ethnic dynamics were reflected in the post-Soviet era in the creation of a coalitional government under the presidency of a Tajik leader, Burhanuddin Rabbani, in 1992. Although Mujahideen government included the prominent political elites from all ethnicities, including the Pashtun Jihadi leader Gulbuddin Hekmatyar as the prime minister, this coalition soon was broken by the Hekmatyar. Ethnic reservations lead to the civil wars of the 1990s among the Mujahideen factions and the emergence of Taliban in 1996 (Rashid, 2010).

5.4 The Republic of Afghanistan

The Taliban were in control of much of Afghanistan from 1996 until 2001. In 2001, the US and Northern Alliance allies quickly forced the Taliban from the government. The Taliban were not defeated, though, and later regrouped (Jones, 2008). They were, however, unable to prevent the emergence of a new constitutional system. The democratic Islamic Republic of Afghanistan was, in a sense, a revolution with a completely new constitution (adopted in 2004) and a return to democracy.

It was also a centralized, and arguably elitist, process. The highly centralized political system was not crafted by a democratic consensus in the 2004 Constitutional Loya Jirga. It was imposed by President Karzai and his team and supported by the US government representative Afghan-American Ambassador Zalmay Khalilzad. The rationale was that working with a centralized rule and powerful president would streamline the anti-terrorism military goals which, at the time, were a higher priority for the US government. In effect, the 2004 constitution of Afghanistan was an adoption of 1964 constitution of Zahir Shah with some improvements on the civil liberties and gender representation, but bestowing the president more powers than a King (Maley, 2009).

This highly centralized rule was incompatible with the realities of post-war Afghanistan and often created conflict and competition among other minority ethnicities (Hazara and Uzbeks) in forming coalitions with other two main rivals for presidency (Pashtuns and Tajiks) in times of elections. One reason for the failure of democratic governance and fraudulent elections was this incompatibility of the centralized rule: the president wins all in a country where the ethnic composition of the country required a more decentralized system where share of all ethnic groups is institutionalized and guaranteed through

constitutional mechanisms and not in the discretion of a highly powerful president (Murtazashvili, 2022).

Centralization can be contrasted with the de facto power sharing that had characterized political relations in the country. It is true that Afghan rules have generally aspired to centralize power and true that the country has generally involve a de facto balance of power between the central and customary and traditional powers in society. The incompatibility between the highly centralized Pashtun-centric rule and the de-facto post-war power dynamics and between the ethnicities and socially federal mosaic of the country contributed to lack of consolidation of post-2001 democratic political order and the failure of US-led state building in post-2001 era.

Another challenge is that the institutions that were established were based on previous institutions, especially those established by the communist government (Murtazashvili, 2015). The old Soviet-style system of public administration remained in 2001 because the Taliban had done little to move beyond it from 1996 to 2001. This included a budgetary process that was extremely centralized, with all decisions about financing being made by the central government. The international community, when they initiated state-building, did little to alter those institutions.

The reason why this was a challenge was precisely because the budgeting system ensured there was no real way for customary or traditional institutions to participate in decisions about the use of government finances. Rather, it contributed to a continuity of the disregard that had existed under previous regimes. It was not especially like the first Taliban government from 1996 to 2001; it was more similar to the disregard of customary governance under Daud, and before that, under Amanullah (though not as extreme as what was done by Abdur Rahman, the communists, or the Taliban).

As far as the de facto consideration, there was largely no progress in providing for formal autonomy of customary governance. There were never formal elections for these councils. Rather, the World Bank initiated a project, the National Solidarity Program, to hold mixed gender elections, and to help in deciding aid projects (Beath et al., 2017). The issue was that this project occurred largely parallel to customary governance and was, in fact, based on the presumption that customary governance was no longer operating in the previous decades of war. On balance, there was persistence during this revolutionary time, but not with respect to the de facto constitution. The Soviet-style institutions were generally ineffective because they were centralized. Despite this, most decision-making that had been local was folded into the new regime and the process for deciding on how to organize society was highly centralized during the state-building effort from 2001 to 2021.

5.5 The return of the Taliban

Since 2021, the Taliban regime is largely unconstrained by formal rules and they have already shown a penchant to expropriate property. Beyond that, they have enforced tight controls on people, especially women and girls, who have been prohibited from education. As Vahabi (2015) emphasizes, human capital is most able to flee the predatory government. Afghan human capital attempted to escape, but whoever could not escape faced violent cultural assimilation campaigns. Predatory governments, then, have incentives to monitor and surveil in hopes of assimilating cultures. In China, reeducation and prison camps are the norm (Caskey & Murtazashvili, 2022). Native Americans were dispossessed, forced to reservations, and then subjected to violence coercion through boarding schools that explicitly meant to kill the Indian to save the man (Alston et al., 2021). In Afghanistan,

this predatory cultural assimilation consists of banning education. Beyond that, it continues with genocidal campaigns against other ethnic groups: Hazara, Tajik, and essentially anyone who is not a Pashtun.

The Taliban rule is, in a sense, a movement for “tradition.” Though, it is clear that the institutions that the Taliban seek to impose are exogenous in the sense they differ dramatically from the *de facto* constitution. The communists were a mass movement, yet out of touch with the masses (Edwards, 2002). Like the communists, the Taliban seek to impose their ideology. In the Taliban’s ideology there is no room for political parties or accommodation for liberal thoughts, as it is based on a strict interpretation of Sharia and any political groups or worldview other than that of Taliban is considered as outlaw and against the rule of god which needs to be suppressed and destroyed (Crews, 2009). It is also antagonistic to most of the norms, tradition, and culture of Afghan society and cannot reflect anything else but the strict interpretation of Taliban leaders from Sharia law (Crews & Tarzi, 2009).

These features mean that what the Taliban are doing is, above all, attempting to impose rules exogenous to Afghan society. They are as extreme in their desire to do so as the communists, though the ideology differs. What remains the same is that they have little regard for the *de facto* constitution.

The Taliban’s state is predatory, not only on economic dimension, but also on the dimensions of identity and culture, especially to non-Pashtun ethnicities. The systematic imposing of one language and identity over entire country, the forced displacement of indigenous ethnic minorities from agriculturally fertile lands in the north, and the resettling of Pashtun tribes in those areas for strategic reasons of internal geopolitics are some of the features of Taliban predatory regime.

That said, the Taliban’s policies have, in the past, shown some regard for the *de facto* constitution. This is most clear in the 1964 land laws the Taliban reverted to in the late 1990s. They did so by recognizing customary land governance to some extent and by returning some of the land stolen by communists to the people they took it from (Murtazashvili & Murtazashvili, 2021). Despite this, there is a massive disconnect between Taliban rules and how many Afghans live.

The Taliban are doing what many revolutionaries in Afghanistan have done: attempt to impose rules on Afghan society and culture that have little to do with the *de facto* constitution. For this reason, one expects that the unending revolutions will continue, though in some cases, this can involve improvements provided the next revolutionaries recognize, to a greater degree, the necessity of establishing a new constitutional order that provides for autonomy of local and customary institutions.

6 Discussion and conclusion

Afghanistan has seen many *de jure* revolutions. Amidst this sea of instability, the *de facto* constitution remains. One of the reasons for the unending revolution is that even the moderate constitutional reformers had little patience for customary society. Whether revolutions are elite- or mass-led is less relevant to understanding whether this results in efficiency than whether *de jure* constitution recognizes autonomy of *de facto* institutions, especially the *de facto* constitution. Afghanistan’s political economic history is one in which both elite-led and mass-led revolutions, even those that allow for endogenous processes of change, have largely left customary society out of the *de jure* constitution.

The Afghan case also provides insight into what revolutions fail worse than others. Mass revolutions appear to have triggered much more conflict and suffering than elite revolutions. This reflects the robustness of *de facto* constitutions. Afghanistan's *de facto* constitution offers opportunities to resolve disputes and provides for property ownership. Hence, the mass revolutions that specifically targeted them provoked a hornet's nest. The *de facto* constitution gives people something to fight for.

It is also important to consider that part of the issue was that the government was never strong enough to eliminate customary authority or, at least, to subjugate it. Here, again, the example of Indian relations with the federal government of the United States are relevant. Indians had effective, trusted institutions. They were also unable to defeat the federal government in the Indian wars, leading to subjugation. There was no insurgency and no civil war over Indians. Thus, the Afghanistan example suggests that failure to provide for autonomy is even riskier for the government when it does not have much capacity in the first place (though the US example also demonstrates that a lasting constitutional order can also involve substantial inequities).

The Afghan case also affirms a theme Vahabi (2023) has identified in considering the Iranian revolution: it is often challenging to put events into the boxes of elite or mass revolutions. This is also the case in Afghanistan. The Taliban have features of both elite and mass revolutions. To an extent, they are elitists in that they seek gradual change. They recognize customary and traditional institutions. Indeed, their land reforms in the late 1990s reversed some of the communist policies expropriating land, as well as recognizes customary law, to an extent. But they also have other qualities of a mass movement, such as attempting to wipe clean customary governance leaders and replace them with their own at the local level. For example, efforts to kill off maliks and replace them with mullahs has features of a mass revolution but it is also gradual and elite in that the Taliban recognized to some extent the *de facto* constitutions. However, as we discussed, they also attempted to redefine it by replacing maliks with mullahs. Consequently, many people oppose the Taliban despite them recognizing some legitimacy for customary law.

Afghanistan's revolution in 2001, rather than gradual change that recognized informal institutions, had some features of a mass movement in that it assumed de-institutionalization. The idea that there was a blank slate to build institutions exemplifies this. It is perhaps best described as an elite revolution that was presented as a mass-led revolution, one in which the government, with support from the international community, was establishing positive institutions. Since the state-building activities generally disregarded the *de facto* Constitution, that can be understood as one of many reasons why Afghanistan's reconstruction effort ultimately failed.

In conclusion, in many contexts, it is critical to consider *de facto* constitutions, especially the customary and traditional institutions that govern much of economic, social, and political relations. Revolutions always involve choices about what to do with these institutions. For elite revolutions to produce positive institutional change, they should recognize *de facto* constitutions. Gradual revolutions can slowly undermine or reorganize *de facto* constitutions. Mass revolutions that target *de facto* constitutions are especially risky. The logic of opportunity costs offers insight into why people fight against the government: robust *de facto* constitutions give people something to fight for. At the same time, as the brief discussions of the American Revolution suggest, there is more to the mass scream in 1776 that explain why it produced a lasting order: recognition of institutions that already emerged, especially those involving property rights, and establishing an institutional framework to enable self-governance.

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