

# Local Orders and International Engagement in South Asia

MATTHEW J. NELSON



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## ABOUT THE RECONSTITUTING LOCAL ORDERS PROJECT

Led by Brookings Senior Fellows Vanda Felbab-Brown, Shadi Hamid, and Harold Trinkunas, the Brookings Seminar on Reconstituting Local Orders seeks to better understand how domestic political order breaks down and is reconstituted. It draws out policy implications and recommends more effective action for local governments and the international community. It examines these issues by bringing together top-level experts and policymakers.

The present disorder in the international system is significantly augmented by the breakdown of domestic order across a number of key states. Around the globe, the politics of identity, ideology and religion are producing highly polarized societies and deepening conflicts among non-state actors and between non-state actors and the state. In the Middle East, the Arab Spring disrupted long calcified political systems in ways that are still producing unpredictable effects on the regional order. The collapse of political order in Libya has wide-ranging consequences for governance across the Sahel, intensifying Mali and Nigeria's fragility and highlighting the many deficiencies of their states. Meanwhile, Russia's annexation of Crimea was facilitated by a breakdown of political order in Ukraine, and Russia's aggressive external posture also partially reflects and compensates for its internal weaknesses. But even emerging powers such as India and Brazil face profound and persistent governance problems, including in public safety and the rule of law. Among the topics explored in the Seminar are the construction of institutions and counter-institutions in the Middle East and South Asia; the role of external interveners and local militias in conflict settings; and forms of governance in slums and prisons, such as by criminal groups.

The Seminar is a collaborative research space that serves as a launching pad for cutting edge debate and research around questions of local and transnational order. The core of the analytical and policy-prescriptive exploration focuses on how political and social orders are reconstituted, the resulting impact on regional order and the international system, and what roles the international community should play. Among the products of the Seminar are analytical and policy papers as well as shorter articles and blog posts that examine cross-regional comparisons and identify policy implications and recommendations.

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## Introduction

In this paper, four brief case studies are used to examine specific patterns of non-state social order (also known as “local orders”)—tribal, Islamic, mafia-based, and so on—and the challenges that they pose for international and, specifically, Western engagements in South Asian governance and security. Non-state social orders that depart from Western policy priorities are notoriously difficult to change. In order to work more effectively *within* them, policy makers require high-level “translation” skills—skills that allow them to manage the tensions between seemingly divergent normative and political traditions.

The first two case studies describe local orders in India and Pakistan. Each draws attention to a relatively stable mafia or protection racket affecting local property relations, and each concludes with an account of governance and security-related concerns, asking how the international community might intervene. For those with an interest in the well-being of marginalized groups (e.g. women and the urban poor), the answers are far from obvious. In India, efforts to address the immediate interests of the urban poor occasionally involve stepping *away* from the rule of law. But in Pakistan, efforts to protect the property rights of Muslim women may involve a push to enforce *Islamic* law.

The second two cases move away from a limited account of local orders to consider efforts on the part of international actors to “translate” Western norms in Bangladesh and Afghanistan. Both cases describe patterns

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of translation between Western norms and local orders with broadly unexpected consequences. In Bangladesh, European Union (EU) officials seeking to promote “the rule of law” discovered that the meaning of this phrase was transformed as it travelled from Brussels, via elite NGOs, to local villagers. In Afghanistan, an American NGO working with local mul-lahs found that its (successful) efforts to translate women’s rights into local articulations of shariah were dismissed by key donors in Washington.

Together, these four case studies suggest that nuanced patterns of engagement with local orders are not impossible, but across South Asia the political dynamics underpinning such engagements are complex. The challenge does not lie in replacing local orders with a monolithic appreciation for state power; the challenge lies in developing the area-specific knowledge required to operate *within* local orders while, at the same time, appreciating the delicate balance—indeed, the difficult trade-offs—between them.

### Local Orders: How Might the International Community Intervene?

#### *Urban Poor / Rule of Law / India*

The first case study draws on the concept of “political society” developed by Partha Chatterjee following several years of fieldwork in Kolkata.<sup>1</sup> This concept describes a pattern of local politics in urban slums—a pattern in which slum residents occupying land illegally draw on their substantial numbers to elect representatives who promise to *suspend* the enforcement of local property laws.

Ordinarily, representatives are elected to amend existing laws in ways that suit their constituents. But the representatives Chatterjee describes do not amend local laws. Instead, they cultivate a form of electoral accountability in which, every few years, votes are exchanged for extra-legal and, thus, relatively arbitrary patterns of statutory non-enforcement. As the demographic profile of the slum changes, so too does the profile of those who benefit from this local order. In fact, the underlying pattern of electoral accountability works two ways: winning groups secure a greater measure of impunity; losing groups are faced with the enforcement of unpalatable laws.

<sup>1</sup> Partha Chatterjee, *The Politics of the Governed* (New York, NY: Columbia, 2004).

In Kolkata, Chatterjee presents this pattern of electoral exchange as a robust and enduring protection racket involving protection from the enforcement of existing laws. He does not describe this racket as a purely transactional arrangement. Instead, he describes it as a moral relationship connecting politicians to local voters—a relationship allowing for the very survival of certain local residents. Here, patronage is not limited to the formal distribution of positive goods such as electricity, education, and water. Instead it is tied to the informal distribution of privileged access to (survival-enhancing) impunity.

Chatterjee distinguishes political society from an elite-oriented civil society in which voters and their lobbyists press for the redrafting (and enforcement) of specific statutory laws. Within “political society,” he notes, constitutionalism gives way to particular forms of popular sovereignty: in political society, protection rackets are popular. Political society, he writes, allows “the arbitrary power of government to mitigate the ... tyrannical power of the law.”<sup>2</sup>

Of course the stability of political society is a matter of debate, particularly insofar as its informally negotiated arrangements tend to disregard the group-based neutrality associated with public goods. Moreover, these arrangements are (by definition) revocable—periodic bulldozing to accommodate payments from rich developers are not uncommon, generating considerable uncertainty and, occasionally, violence.

In this sense, Kolkata resembles Mumbai. In Mumbai, Marathi sons-of-the-soil work with the police to contain the expanding influence of (non-Marathi) rural-to-urban migrants. But in some parts of the city Marathi residents also collude with mafias. In fact, with reference to Marathi parties like Shiv Sena, it is often difficult to distinguish the work of the police from that of land-grabbing mafias. It is difficult to distinguish them because, in political society, both are expected to use their violence selectively. Both are expected to protect their supporters (and only their supporters)—a pattern that breeds instability by accelerating the privatization of violence.<sup>3</sup>

<sup>2</sup> Chatterjee, *The Politics of the Governed*, 17.

<sup>3</sup> In Karachi, one is reminded of Sindhi concerns regarding Muhajir migrants (and Muhajir concerns regarding Pashtun migrants). This is, in fact, the ethnic swamp in which Tehreek-e-Taliban mafias have also begun to swim. Last year, Army Rangers were deployed to drain this swamp. But one wonders: will the arrival of Pakistan's (mostly Punjabi) Rangers exacerbate the violence underpinning Karachi's ethnicized “local orders”?

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Typically, international actors seeking to enhance the well-being of India’s poor opt for one of two approaches. Those who oppose the exclusionary upper-caste middle-class Hindu nationalism of Shiv Sena (or the BJP) seek to shore up the welfarist orientation of Indian legislation and, then, provide for the enforcement of that legislation. Those who oppose the dirigisme of the Indian National Congress argue that economic opportunities (e.g. jobs) will flow from the enforcement of neoliberal property laws.

Pointing to an already-existing alternative rooted in India’s “local order,” however, Partha Chatterjee illuminates a third option more commonly associated with the selective-enforcement politics of former Bihar Chief Minister Lalu Yadav. In fact, Chatterjee does not limit his account to Kolkata, Mumbai, or Bihar. He claims to describe a richer form of electoral accountability and “democracy” in several different parts of the world.<sup>4</sup>

The question is: what might it mean for international actors to support this alternative form of democracy? Are international actors seeking to advance the well-being of India’s poor, reinforce existing forms of state authority, and engage local orders prepared to shore up state officials engaged in subverting the rule of law? Perhaps, but in general probably not.

#### ***Muslim Women / Rule of Law / Pakistan***

Turning to Pakistan, important parts of Chatterjee’s argument resurface whenever one encounters the notion that Islamic law is unchangeable or historically immune to ongoing forms of renegotiation. In fact, my own research regarding the production of local orders has examined the ways in which, notwithstanding considerable evidence of important modifications over time, this sense of historical immutability has become bound up with a set of political practices in which elected representatives are called upon, not to amend the ostensibly immutable terms of “statutory shariah” (that is, state-based forms of Islamic law) but, rather, to *avoid* their consistent enforcement.<sup>5</sup>

<sup>4</sup> Partha Chatterjee, *Lineages of Political Society*, (New York, NY: Columbia, 2011), 15. See also James Holston on favela-based mafias in Latin America or Jean and John L. Comaroff on “alternative” forms of democracy in Southern Africa: James Holston, *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil* (Princeton, NJ: Princeton, 2009); and John Comaroff, “Postcolonial Politics and Discourses of Democracy in Southern Africa: An Anthropological Reflection on African Political Modernities,” *Journal of Anthropological Research* 43, no. 2 (1997): 123-46.

<sup>5</sup> Matthew J. Nelson, *In the Shadow of Shari’ah: Islam, Islamic Law, and Democracy in Pakistan* (New York, NY: Columbia 2011).

In Pakistan, these Chatterjee-style political practices often emerge with reference to Islamic laws concerning property and, more specifically, Islamic laws of inheritance first spelled out in the Qur'an (verses 4:11, 12, 176) and then in statutory laws: 1948, 1951, 1961, 1963, and so on. These laws assign specific Qur'anic shares to women (leaving the remainder of each estate to men). But, precisely insofar as this is the case, these laws also encourage those with an attachment to all-male estates—that is, an attachment to patrilineal tribal customs long reinforced by the colonial state—to avoid the regular enforcement of Pakistan's postcolonial laws.

Islamic law does not deny women's inheritance rights. It specifies those rights very clearly. But, with its focus on female inheritance, many landowners fear that Islamic law will shatter Pakistan's customary ancestral estates—estates within which women are customarily disinherited precisely insofar as they are expected to leave their home villages when they marry. Indeed, it is precisely this clash between (customary) marriage patterns and (Islamic) inheritance that worries Muslim men—men who reject the notion that women should be allowed to carry their land away when they marry.

In fact, turning to the development of complex local orders, the primary challenge for many politicians does not lie in modifying the country's ostensibly sacred Islamic laws. Instead it lies in addressing the well-founded concerns of landowning clans seeking to balance the country's Islamic laws with the exigencies of tribal custom.

Within Pakistani district courts, many disputes pit the representatives of "customary" tribal clans against adversaries attempting to claim their Islamic rights. Unfortunately, few expect to resolve their disputes in court. Typically, landowning clans with strong political connections (owing to the power of clan-based voting blocs) call on an array of state officials to bleed their opponents with administrative hassles and courtroom delays until a custom-friendly compromise can be extracted *outside* of the courts. The courts are just one small part of a much larger protection racket in which, à la Chatterjee, electoral support is tied to patterns of protection from the enforcement of existing laws.

Of course this pattern of informal justice is a source of considerable frustration, driving many rural families into cities and many city dwellers abroad.

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(According to one report, it was a family property dispute that drove the family of San Bernardino killer Tashfeen Malik away from Pakistan to Saudi Arabia.<sup>6</sup>) Indeed, this climate of extra-legality surrounding local property disputes also supports politically well-connected mafias, including a mafia led by former National Assembly Member Shah Abdul Aziz, which rose to prominence following the expansion of a militant mosque in Islamabad known as the Lal Masjid. (A military assault on this mosque in 2007 is widely believed to have prompted the formation of the Pakistani Taliban.)

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Armed with a deeper understanding of Pakistan’s local orders, those with an interest in supporting marginalized groups (for example, Muslim women) need not shy away from the enforcement of existing law; in some cases, they may be advised to press for the enforcement of Islamic laws. Are Western actors prepared to do this? Perhaps, but in general probably not.

### Local Orders: What Happens When the International Community Intervenes?

My final two cases move away from a limited account of local orders to consider broadly related efforts to “translate” Western norms into local idioms. Focusing on Western efforts to promote the rule of law in Bangladesh and gender justice in Afghanistan, I ask, “What happens to international actors when they engage local orders and try to work *within* them?”

<sup>6</sup> Declan Walsh “Tashfeen Malik Was a ‘Saudi Girl’ Who Stood Out at a Pakistani University,” *New York Times*, December 6, 2015, [http://www.nytimes.com/2015/12/07/world/asia/in-conservative-pakistani-city-a-saudi-girl-who-stood-out.html?\\_r=0](http://www.nytimes.com/2015/12/07/world/asia/in-conservative-pakistani-city-a-saudi-girl-who-stood-out.html?_r=0).

<sup>7</sup> Nelson, *In the Shadow of Shari’ah*.

**European Union / Local NGOs / Bangladesh**

My third case grows out of a doctoral dissertation written by Tobias Berger at the Free University in Berlin.<sup>8</sup> Berger examined EU-funded rule-of-law programming in Bangladesh, focusing on how some of the meanings attached to rule-of-law norms were transformed as they travelled from Brussels, via Dhaka-based NGOs, to rural villages.

Typically, scholars with an interest in norm diffusion focus on the role of global advocacy networks, paying little attention to the ways in which such networks, working in new social contexts, reshape the meanings of norms themselves.<sup>9</sup> In Berger's thesis, however, the interconnectedness of international vocabularies—everyone refers to “the rule of law”—is not confused with any type of normative assimilation. Instead, Berger examines the ways in which local actors function as brokers or translators—translators who *transform* the meaning of a common phrase.

In Brussels, Berger notes that the rule of law was tied to a particular sense of “legal equality,” i.e. equality before the law (whatever that law might be). But in Dhaka, this phrase was taken up by elite staff members working for a prominent English-speaking NGO and refashioned as a vector for ideas about social equality: what many NGO workers described as the pursuit of “social justice”. In the hands of Western-funded NGOs, in other words, the rule of law became an instrument of change for the poor.

Finally, however, when the rule of law came into contact with local villagers, it was re-read (once again) as a template for “community harmony”: typically, forms of harmony that preserved the economic, religious, or caste-based power of certain male elites. Prominent villagers, in other words, claimed to embrace “the rule of law,” but the meaning of that norm was different.

Returning from their fieldwork, each NGO worker was required to complete a set of program evaluation forms for their bosses in Dhaka and Brussels. Within these forms, most NGO workers noted that, after attending a

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<sup>8</sup> Tobias Berger, “Global Norms and Local Courts: Translating the Rule of Law in Rural Bangladesh” (PhD thesis, Berlin Graduate School for Transnational Studies, 2014); this thesis was jointly supervised by Professor Thomas Risse and myself (Free University of Berlin).

<sup>9</sup> Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell, 1998).

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series of training sessions, many villagers expressed high levels of satisfaction with “the rule of law.” Indeed, sweeping claims regarding the local benefits of EU funding soon began to proliferate.

With reference to the family property disputes that lay behind so many village-level conflicts Berger reports that, as a result of program interventions, many women did in fact gain access to documents they could present in court. In court, they rarely managed to secure an enforceable judgment. But, as in Pakistan, they did manage to secure an informal compromise outside of the courts themselves. In Pakistan, such compromises tended to privilege the terms of tribal custom. But, in Bangladesh, these compromises were somewhat more in keeping with state-based laws guaranteeing Muslim women access to their Islamic inheritance rights.

This turn to female-friendly agreements (based on Islamic law) rendered outside of the district courts was not the “legal equality” initially envisioned in Brussels. But, empirically speaking, it *was* a different outcome than the one prevailing before. EU funding made a difference—a difference that adjusted without fully displacing a complex rural order. This outcome was not rooted in the secular ideals of elite civil society or the formal checks and balances of an established parliamentary democracy. It was, rather, an EU-funded outcome rooted in the fabric of rural Bangladesh.

If international actors in Brussels were to focus on this process of “translation,” one wonders what they might say. Would they be inclined to increase their funding for a program enhancing women’s access to extrajudicial compromises and Islamic social norms? Perhaps, but again probably not.

#### ***American NGOs / Local Mullahs / Afghanistan***

My final case study grows out of a project undertaken by a prominent American NGO working in Afghanistan. This project engaged hundreds of Afghan mullahs to access local communities and, then, leveraged that access for the advancement of women’s rights.

The NGO understood that, over the years, its habit of working with secular human rights organizations had brought it into contact with a smaller and smaller portion of the Afghan population. It resolved to reverse this trend,

preparing a list of established local mullahs committed to improving the well-being of Afghan women.

The problem lay in deciding whether this American NGO should attempt to access the mullahs' extensive grassroots networks without, at the same time, ceding control over the language of women's rights. Would something central to their mission be lost, they wondered, if their religious partners sought to describe discriminatory customs as a "sin"? Would their core commitments be compromised if, in a bid to cultivate an appreciation for women's rights, some villagers were accused of forsaking or insulting Islam? Given existing tensions between religious, tribal, and Western norms, they were reluctant to stir up a fight.

Eventually, the organization convinced itself that its core values did not conflict with those of its religious partners—that, notwithstanding certain forms of gendered differentiation, there was nothing in the Qur'anic language preferred by local mullahs that automatically cut against the basic issues that concerned them: girl's education, women's employment, access to justice, and so on. In the end, they simply resolved to *translate* their values into a more persuasive religious idiom.

For the American NGO, the price of local access was not defined in terms of core program objectives. Like those who opted to work with Taliban commanders to reduce opium production during the 1990s, the NGO appreciated the ways in which respected mullahs used religious references to challenge local patterns that concerned them. Still, there was a price to pay, and that price was paid in terms of discursive control. Those working for the NGO believed that this was a reasonable price to pay. But, closer to home, many of their donors disagreed.

In Washington, London, Ottawa, and Canberra, crucial donors tied to skeptical Western voters worried that Afghan mullahs were not the best partners for a program focusing on women's rights. Indeed, even as these concerns took shape in Washington, the NGO faced similar concerns from Afghan religious leaders who felt that foreign organizations should not use Afghan mullahs to reshape traditional norms. Briefly, the NGO found itself on the horns of a dilemma: access to Afghan villagers *versus* access to program funds.

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This was not an unfamiliar dilemma. In fact this is a dilemma that emerges whenever foreigners engage “Islamic” orders abroad. But it also emerges in the West, as the Archbishop of Canterbury discovered when he claimed that informal shariah tribunals might have a role to play in providing access to justice for British Muslims.<sup>10</sup> Once again, well-informed Western efforts to engage Muslim communities *via* the terms of shariah were seen as politically divisive.

### Conclusion

Recalling Isaiah Berlin’s heuristic distinction between hedgehogs, who favor only one normative order, and foxes, who value several different orders simultaneously, scholars and policy makers with an interest in engaging local orders are required to think like foxes.<sup>11</sup> Following Max Weber’s distinction between the “charismatic” authority of religious elites, the “customary” authority of tribal jirgas, and the “rational” authority of state courts—*without any sense of priority*—those seeking new ways to engage local orders require a deep appreciation for all three while, at the same time, realizing that any effort to stress just one will produce a corresponding reaction in the others.<sup>12</sup>

Nuanced forms of international engagement with local orders are not impossible; but, across South Asia, the political dynamics underpinning such engagements are complex. Augmenting the influence of tribal elites by denying Muslim women their Qur’anic inheritance may lead local mullahs working with marginalized groups to press for the restoration of shariah. Similarly, augmenting the power of existing states by enforcing women’s rights could lead “custom-friendly” elites to explore informal alternatives.

The challenge for international actors does not lie in eradicating irksome local orders or subsuming them within monolithic forms of state pow-

<sup>10</sup> “Sharia Law in UK Is ‘Unavoidable,’” BBC, February 7, 2008, <http://news.bbc.co.uk/2/hi/uk/7232661.stm>.

<sup>11</sup> Isaiah Berlin, *The Hedgehog and the Fox: An Essay on Tolstoy’s View of History* (Princeton, NJ: Princeton, 2013).

<sup>12</sup> Max Weber, *Economy and Society*, eds. Roth and Wittich, (Berkeley, CA: University of California, 1978).

er. The challenge lies in developing the sort of area-specific knowledge required to operate *within* local orders while appreciating the trade-offs *between* them.

Over-centralization has a tendency to produce specific forms of resistance. But the creation of bright boundaries between alternative orders often has a similar effect. Blurry boundaries are normal. The challenge lies in locating a skilled cadre of “translators” to toggle across these boundaries. These are the actors who construct the *modi vivendi* that allow Western actors to understand and engage local orders in complex environments like South Asia. These are the actors who redefine, in order to advance, the goals we aim to achieve.

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## ABOUT THE AUTHOR

Matthew Nelson is a Reader in the Department of Politics at the School of Oriental and African Studies (SOAS), University of London. His research focuses on the comparative and international politics of South Asia, with an emphasis on non-elite politics, comparative political thought, the politics of Islamic institutions, and democracy. He is the author of *In the Shadow of Shari'ah: Islam, Islamic Law, and Democracy in Pakistan* (Columbia University Press, 2011).



