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Legal Rule and Tribal Politics: The US Army and the Taliban in Afghanistan (2001–13)

Adam Baczko

ABSTRACT

This article investigates the implications of two competing modes of governance, those of the US Army and the Taliban, through the lens of the relations between property, citizenship and political authority in Kunar, Afghanistan, between 2001 and 2013. To account for the political struggle in the province, the author outlines two models of governance: a political one based on mediation and conciliation, which the US Army applied; and a legal one promoting direct relations between the rulers and the ruled, upheld by the Taliban. After looking at the political dynamics in Kunar since the nineteenth century and since 2001, I argue that it is paradoxically the Taliban that placed itself in continuity with the state, while the US Army played tribal politics and undermined the legitimacy of the regime it had helped to install in Kabul. Kunar is a case of an armed confrontation in which different militarized groups compete to impose their rule by controlling space and access to landed property.

INTRODUCTION

By comparing the approaches of the US Army and the Taliban in Kunar, Afghanistan, this article looks at how militarized groups compete for authority by ruling over property and citizenship. After the American-led intervention in Afghanistan in 2001, entire regions remained beyond the reach of the newly installed regime and came progressively under the rule of the Taliban. The Western intervention primarily affected the cities, where society had been deeply transformed. Just as in the 1980s, the countryside became the theatre of intense fighting and political struggle, which translated

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into private conflicts, generally crystallizing over land issues. The province of Kunar, in the east of the country at the border with Pakistan, witnessed some of the fiercest fighting of the war, in addition to a rise in land conflicts. By 2013, despite a large investment of resources by the United States, the US Army was forced to withdraw, the Kabul regime had lost control of the province, and the Taliban had taken over most of the countryside.

Armed violence alone does not account for the failure of the US intervention and the taking over of most of the countryside by the Taliban. Rather than the insurgency/counter-insurgency frame which is regularly applied in academia and beyond to characterize the war (e.g. Giustozzi, 2012), by focusing on the ruling of land and space, I look at 2001–13 in the perspective of the longer history of the formation of the Afghan state, ‘a historical process of conflicts, negotiations and compromises between different groups’ (Berman and Lonsdale, 1992: 5; see also Bayart, 2009). Historically, Kunar has been a typical case of a province defined by the state as a margin, a borderland, in which authority was exercised through various direct and indirect means (Barkey, 1994; Das and Poole, 2004; Korf and Raeymaekers, 2013). Defining who is part of the polity, the rights accompanying political belonging, and how the land may be appropriated have been central features of the implementation of authority. Conversely, it is in such margins that the central authority and its regimes of property and citizenship were repeatedly questioned and reconfigured (Ramirez, 2011; Roitman, 2005; Trejo, 2012). After 2001, Kunar experienced a particularly brutal version of the US Army strategy in Afghanistan, focused on hunting ‘terrorists’ and strengthening local institutions at the expense of the central authority in Kabul, which other US agencies were supporting as part of a project of ‘state building’. It was also one of the provinces — with neighbouring Nuristan — in which the Taliban quickly took control of a large part of the territory and imposed its rule. Cross-cut by the US Army and opposed by the Taliban, Hamid Karzai’s regime in Kabul never managed to apply its authority beyond the provincial capital.

To account for the US Army and the Taliban modes of governance in Kunar, I distinguish between two ideal types, a political model of governance and a legal one, the former based on conciliation and negotiation, the latter on the strict application of procedures and decisions. Both modes of governance require armed force to uphold authority, especially in a context of civil war where the monopoly of violence is questioned. Yet they also rely on conflict resolution and the capacity to define criteria of belonging to the political community and rights deriving from it. It is on the latter issues that the political and legal modes of governance differ: they correspond to two visions of the relations between political authority, citizenship and property.

On the one hand, the political mode of governance depends on the ability of leaders to settle deals, which requires them to be non-partisan, and implies a collective definition of ownership and a mediated definition of citizenship. Since the middle of the nineteenth century, the political mode of governance

has been upheld by tribal elites. When the US Army entered Kunar, they attempted to buy the support of the tribal elites by funding and implementing programmes supporting a revival — in fact a reinvention — of tribal institutions. Yet they engaged in tribal politics without understanding its principles (in particular the need to remain non-partisan) or its effect (collective interpretations of the disputes), with the consequences of aggravating violence.

On the other hand, the judicial model requires a monopolistic leadership whose orders and judgments are enforced, and corresponds to an individual definition of possession and a direct relation between the citizen and the state. The Afghan kings, and a growing civil service over which they presided, were the main promoters of this rule. If in the middle of the nineteenth century the tribal and state elites were indeed competing for authority in Kunar, this opposition had become more conceptual a century later. The state's judicial mode of governance had definitively asserted itself over the tribes, whose political mode of governance had become increasingly dependent on the state's strategy and resources. In an apparent paradox, it is the Taliban that has acted in continuity with the Afghan state, perceiving itself as such. It emphasized the construction of a judicial system, with predictable procedures and systematic enforcement of verdicts. In a context where disputes had familial, tribal and ethnic dimensions, the Taliban mode of governance appeased social relations, reducing conflicts to judicial affairs, for which the verdict was to be considered final.

Why did the United States circumvent the state and support tribal politics? Why, conversely, did the Taliban act as a state? Within the intervention in Afghanistan, the diversity of agencies (international, American, Afghan, military, civilian, private, public–private, public, etc.) led to various and often contradictory priorities and strategies, from 'state building' to 'grass-roots democracy', from a focus on development to women's rights, counter-narcotics, or terrorism. Yet, despite these numerous differences, the actors of the US intervention shared a common (mis)understanding of Afghanistan. Hilly topography and orientalist romanticism both participated in the formation of an 'imaginary anthropology' of Kunar, and of Afghanistan more generally (Dorronsoro, 2014; Monsutti, 2013). The American (or Western) military and civilian experts focused on the tribal nature of social relations in Afghanistan, interpreted through Geertz's primordial lens (Akram-Lodhi, 2016; Braithwaite and Wardak, 2013; Gant, 2009; Geertz, 1973; Martin, 2015; Ronfeldt, 2007; Wardak and Braithwaite, 2013). They reinterpreted modern Afghan history, using Ibn Khaldun's classical cycles of centralization by the state versus rebellion by the tribes to account for the Taliban resurgence, reduced to a congruence of various segmentary and local interests (Barfield, 2010; Johnson and Zellen, 2014; Rothstein and Arquilla, 2012). Afghanistan was described as an 'ungoverned space' (Clunan and Trinkunas, 2010) or an unruly 'graveyard of empires' (Jones, 2009), and always deemed fundamentally different (Mason, 2011). Local society was

thus accounted for in a straightforward manner: independently-minded tribal Afghans resisted modernization and state penetration, a narrative to which was often added that of religious extremism (Barfield, 2010; Junger, 2010; Williams, 2008).

This interpretation of Kunar's social dynamics could rely on the anthropological studies of the border areas in eastern Afghanistan and Pakistan from the 1950s to the late 1970s. In their writings, Frederic Barth (1959), Akbar Ahmed (1976), Charles Lindholm (1981) and Louis Duprée (1984) had all described a self-governed region without much presence of the state — an 'ordered anarchy', in Lindholm's words. Between ideal grassroots democracy and Hobbesian dystopia, these apolitical interpretations missed the historical role of the state since the nineteenth century (Dorransoro, 2005; Gregorian, 1969). On the eve of the civil war, tribe elites in Kunar, as in the rest of Afghanistan, had been severely weakened by a century of economic and social transformations (Anderson, 1975, 1978; Tapper, 1983). The Taliban, on the other hand, were born out of the civil war in the 1990s and developed by mobilizing over the demand for law and order. In the 2000s, the same claims — unanswered by the Western intervention and the new regime in Kabul — allowed them to implant themselves again in Kunar, and more generally in Afghanistan. The Taliban emphasized the construction of a centralized parallel administration with shadow governors, judges and health and security officers at the district, provincial and national levels. They provided judicial services and taxed the most lucrative economic activities — opium cultivation and international development projects in particular (Baczko, 2013; Giustozzi, 2009).

This article is based on fieldwork carried out in Afghanistan from 2010 to 2015. During those six years, I went to Afghanistan once or twice a year, staying between one and three months each time. Because of the precarious security situation in Kunar, I favoured repeated short stays of several days, conducting non- and semi-structured interviews primarily with people involved in interpersonal conflicts over land and family issues, in particular those who had been involved with the Taliban courts. Presence in Kunar also allowed some direct observations and informal talks, and sometimes interviews with members of militarized groups (the Asadabad Provincial Reconstruction Team, Afghan auxiliaries to the US Army, US Army personnel, Taliban judges, Taliban fighters). I conducted additional interviews in the cities of Kabul and Jalalabad, where it was easier for some people to meet me and discuss their experiences. During my visits, I worked and stayed with several privileged informants who introduced me to people, translated during the interviews, and encouraged in my interviewees the trust they showed when speaking to me in such a complex environment. All my privileged informants exhibited some degree of ambiguity in their social and political positions — Alain de Bures for being a foreigner who had lived for 30 years in the region, including under Taliban rule; the others, Afghans, for being connected to both sides of the war because of their

family networks and personal trajectories. This provided me, and them, with relative security, especially with regard to insurgency, which by that time controlled most of the countryside. Further fieldwork in Ghazni, Nangarhar, Laghman, Kandahar and Kunduz provinces, and a research project with Antonio Giustozzi and Claudio Franco for Integrity Watch Afghanistan on the Taliban judicial system — based on interviews with tens of Taliban fighters, commanders, judges and court users (see Giustozzi et al., 2012) — have on the whole confirmed, despite local specificities, the general patterns that I observed in Kunar over land issues and Taliban courts.

In the following pages, I contextualize the confrontation between the US Army and the Taliban in Kunar in a longer historical perspective. I begin with tribal politics before the civil war, and reflect on how the US Army managed social relations in this context after 2001. I then examine the formation of the state in Kunar and how the Taliban insurgency remobilized the same mode of governance in their own administration of the province.

THE DECLINE AND REINVENTION OF TRIBAL POLITICS

The US Army, and in particular the Special Forces, managed social relations in Kunar via a mode of governance based on negotiations and settlements. Because it was the most powerful actor in the region from 2002 until its withdrawal in 2013, people would turn to the American military to solve collective and individual disputes. Soldiers participated in the management of local conflicts, cross-cutting the regime's administration. They considered they were adapting to the 'local' ways of the region, and indeed they were alluding to patterns and practices that echoed the methods used by tribal elites to maintain some authority until the 1978 insurrection. Jihadi commanders, who emerged in the struggle against the invasion by the Soviet Union and had become local strongmen in the 1990s and 2000s, had also employed similar forms of governance. This political mode of management of social relations was based on the principle that a political actor could locally impose a deal between contenders by adopting a non-partisan position. Yet, when the American military applied a similar type of rule in Kunar, they got involved in local politics, looking for allies in their 'war against terror'. Eager for intelligence, they overlooked the importance of not having stakes in private and collective conflicts.

The Tribes: Conciliation, Negotiation and Arbitration

The political mode of governance was applied in Kunar by the tribal elites to deal with numerous conflicts relating mostly to land, but also to matrimonial, tribal and ethnic questions. The origin of this model lies in the local socio-economic structure: Kunar is a province of small owners, in which land ownership is the main resource. Arable lands are scarce in mountainous

terrain, representing less than a tenth of the province's 4,000 km². In addition, cultivable land is scattered and poor, with a yield significantly worse than the national average (Ghani, 1984: 152). The population is almost entirely rural, with the exception of the inhabitants of the provincial capital of Asadabad. The latter remains a rural town, organized around one street which serves as the commercial interface for the products of the surrounding countryside and the manufactured goods from outside. The population of Kunar thus lives, directly or indirectly, from the 32,000 hectares of arable land. Unlike Kandahar, Mazar-e Sharif or Ghazni provinces, large domains are rare, with the exception of the high forestlands, which yield little revenue and are mostly used as seasonal pasture for the sheep. The poor quality of the land, its limited size and its dispersion restricted capitalist accumulation. In addition, the fragmentation of plots was encouraged by Afghan legislation, inspired by Islamic Law. Each time someone managed, despite the topography, to create a domain of some size in Kunar, their death would terminate the accumulation via an imposed division of the goods amongst the descendants (Ghani, 1984: 95–102). The land remained somewhat evenly distributed, therefore, with an average of 1 ha for a family of 10, fostering a relatively egalitarian social structure.

In such conditions, cultivable land was both a private good and a private stake, at the core of neighbourhood and family relations. Plots were bought and sold, and circulated among individuals. In the archives of the Islamic court of Asadabad, Ashraf Ghani found no fewer than 236 cases of land transactions between 1885 and 1890. His investigations show an open and dynamic market, with Hindu traders in Asadabad playing a central role, buying and selling properties (*ibid.*: 98–9). Cultivable land in Kunar has been used as a stock of capital, easily changeable into liquidities. It allowed families to face difficult times and to afford significant expenditures, in particular those conferring social status, such as the payment of a dowry. Collective conflicts — between villages, tribes or ethnic groups — were generally about non-arable lands, such as forests and pastures.¹

If arable land remained a private issue in Kunar until the war, the fragility of its possession turned it into a recurrent cause of conflict. Few owners had titles attesting judicially to the possession of their good and its precise boundaries. In addition, the setting of boundaries was not visible in the landscape and depended exclusively on the memory of each of the proprietors. Similarly, no cadastre and very few recordings of the limits of specific fields had been collected. Ultimately, the system of demarcation of the plots functioned through the defence of one's property against neighbours who might be tempted to grab some or all of it. In other words, defence and

1. In 1896, during the conquest and conversion to Islam of Nuristan by King Abdul-Rahman Khan, Pashtun and Safi tribes of Kunar took possession of the non-cultivable high lands at the expense of Dardic-speaking, non-Islamic minorities. Since then, tensions between the communities of the province have often crystallized around those lands.

deterrence were integral to land ownership. The mutual nature of this deterrence meant that it defined effectively the boundaries between the plots. Yet this mechanism implied constant tension between neighbours. In the 1970s, the anthropologist Whitney Azoy described this dynamic, which affected peasants in Kunar:

Everyone in a local community has some sense of whose land is whose. The absence, however, of precise survey and standardized documentation leads to disputes that are pursued through self-help. For all landholders, large and small alike, there is a constant need for vigilance against encroachment. Only such watchfulness and forceful appearance of potential response can prevent predation. . . .

Boundary lines are vague, irrigation barrages are flimsy, sheep are easily led away, and women are considered wild cards because of their innate sexuality. Virtually everyone, even more to the point, is a potential predator. Obviously some sort of deterrent is necessary (Azoy, 2003: 31–2).

For the people involved, the handling of a dispute about land was critical. Whosoever allowed himself to look weak, while a neighbour or a kinsman was trying to appropriate his lands, increased the risk of attacks in the future. To fight back became necessary, both to protect one's property and to deter further attempts. Land disputes, even benign, could rapidly escalate and turn into cycles of reprisals.

The violence related to land took place in an environment characterized by extremely dense social networks. Any individual action lived on in an ethic of honour (*namus*), incarnated in the name (*nam*) which was passed on from father to son (Edwards, 1996: 41). Personal reputation played a fundamental role in people's place within the community, which was an amalgamation of various identities — tribal, ethnic or village-based. It was those social networks that could be mobilized to face rival claims, but they simultaneously created an omnipresent risk of escalation of the conflict from a private to a collective one. Against such a threat of exacerbated violence, extremely strict regulation over the use of force accompanied the insertion in social networks. As Pierre Centlivres (1997: 51) explained:

Violence in Afghanistan is part of culture; it is not in rupture with it. It is therefore an event, a daily presence, 'traditional' in a sense, and recurring. Maybe, here and there, it reaches an extreme degree, yet in no way out of normality. One can even speak of a valorization of violence, to the extent that it is, with the strict rules that Afghan society shares with other types of societies, inseparable from honour, from the ideal of the free man, from the correct management of its affairs, from an ethic of conflict (Jamous, 1981; Pitt-Rivers, 1977). 'It has been said of those societies' Pitt-Rivers points out, 'that they were without law or anarchical and it is true that they are prone to intestine violence, but this very violence obeys rules as strict as those of a sacred game'.

Violence was part of daily life long before the war. Because it was considered normal, it was also normalized. The same ethic of honour that encourages a person to avenge spilled blood specified the acceptable forms and correct conditions of retaliation. To describe those social relations in the neighbouring valley of Swat in Pakistan, the anthropologist Charles

Lindholm uses the expression quoted earlier, 'ordered anarchy' (Lindholm, 1981: 148). Individuals were sovereign, with no institution capable of preventing them from using force, but strict rules imposed the form that their action should take. Akbar Ahmed argues in the same vein that weak social stratification, fuelled by the parcelling up of land, preserves the values of independence and reciprocity between people, providing a solid basis for tribal structures (Ahmed, 1976).

These tribal institutions, composed of an elite of notables (*khan*) and village heads (*malek*), regulated rivalry and violence through conciliation, negotiation and sometimes arbitration. Such settlements were delivered in various ways — for instance, by convening a *jirga* or *shura*, a gathering of local elites — but all followed the same principle of non-partisan positioning. This was achieved either by inviting people considered external to the dispute, or by bringing in people considered close to each of the conflicting parties. Despite having personal interests, tribal leaders might attain a non-partisan position by having large networks of patronage, obvious charisma, or recognized traditional or religious knowledge. A classical figure in Kunar with a major role in dispute conciliation was the *sadat*, a saint who claimed descent from the Prophet Mahomet (Ghani, 1978: 269; Lindholm, 1979: 489). The *sadats'* positioning outside the social networks, the respect they commanded, and sometimes their charisma all gave weight to their judgments. Traditionally, the *sadat* would receive land at the border of regions owned by rival lineages, tribes or ethnic groups: his role was to separate the rivals and avoid further conflict (Ghani, 1978: 269).

The disaggregation of the traditional elites during the conflict with the Soviet Union led to the dislocation of this tribal mode of governance in the 1980s, and its replacement by a new social group, the commanders, whose legitimacy was built by leading fighters (Edwards, 2002; Rubin, 2002). Their profiles varied, with different religious, tribal or higher education backgrounds, and they imposed their rule on Kunar using the features of existing rule (Dorransoro, 2005). Until the Taliban takeover of the province in 1996, they settled disputes and struck deals, but in an arbitrary way, in line with their own interests and those of their supporters. In order to impose themselves they mobilized along family, tribal and ethnic lines, often transforming private disputes into collective conflicts. When the United States chased the Taliban from Afghanistan, these commanders, many of whom had taken refuge with the Northern Alliance, returned and monopolized local positions and resources.

The US Army: Imaginary Afghanistan and the Instrumentalization of Social Relations

When the US Army entered Kunar in 2002, the soldiers attempted to engage with existing social relations, mobilizing patterns from the tribal mode of

governance but without following its core principle of non-partisan positioning. Indeed, the American military imagined Afghanistan as a tribal country that had always resisted any centralized rule. They based their interpretations on the nineteenth and twentieth century anthropology of Pashtun societies, within an overview similar to Lindholm's 'ordered anarchy', and on the orientalist literature. Ibn Khaldun and his book on the fourteenth-century Arab Maghreb is regularly quoted, often without having been read. The Special Forces — the only troops to be deployed in Kunar during the early years — were especially subjected to this imaginary anthropology of Afghanistan. This orientalism was tainted with racism, obvious in the comparison between Afghans and Native Americans. One unit named its military post Fort Navajo, while Major Jim Gant, who commanded the Special Forces detachment in 2003–4, nicknamed a village leader Sitting Bull (Gant, 2009: 16). A few years after his deployment, Gant wrote 'One Tribe at a Time', a pamphlet reflecting on his experience in Kunar. With the words of Major Gant, an imaginary Afghanistan swam into view, a country of clans, unaffected by history, from which the state had always been absent. Throughout, the essay develops the same essentialist idea:

The central cultural fact about Afghanistan is that it is constituted of tribes. Not individuals, not Western-style citizens — but tribes and tribesmen. It is my deep belief — and the thesis of this paper — that the answer to the problems that face the Afghan people, as well as other future threats to US security in the region, will be found in understanding and then helping the tribal system of Afghanistan to flourish. (ibid.: 9)

When one says 'Afghan people' what I believe they are really saying is 'tribal member'. (ibid.: 11)

Their tribal systems have been there for centuries and will be there for many more. (ibid.: 12)

Afghanistan has never had a strong central government and never will. That is a fact that we need to accept, sooner rather than later. (ibid.: 13)

The pamphlet had considerable resonance. It was recommended reading for the American soldiers before their deployment in Afghanistan. General McCrystal, head of the military coalition between 2009 and 2010, distributed 'One Tribe at a Time' to all his commanding officers. His successor, General Petraeus, praised the text repeatedly. Similarly, David Kilcullen, an Australian officer who became a very close adviser to Petraeus, described Afghanistan and Kunar as an area where tribes rule without central authority (Kilcullen, 2009: 77). The American military was wrong about Kunar, and more generally about Afghanistan; it missed both the dislocation of traditional institutions in the 1980s and the demand for the state, one of the drivers for the rapid rise of the Taliban in the 1990s and 2000s.

The tribal vision of the US Army led it to cross-cut the new regime of Hamid Karzai, undermining its fragile legitimacy. It implemented its rule by defining the village as the scale of political action and the tribe as the

political community. Special Force units organized their own gatherings of selected leaders that they named *shura* or *jirga* and that they convened on a regular basis. People went directly to the officers in order to obtain development projects for their village and to solve disputes, undercutting the nascent administration. In 2005, the governor of Kunar, Sayed Faizal Akbar, resigned from his position, explaining that the involvement of the American military in local politics was hindering his management of the province.

The bypassing of the state became significant once foreign intervention expanded, with regular troops being deployed in Kunar. Every US Army officer received US\$ 1 million that could be spent freely in his area to buy intelligence or fund projects. A dedicated unit, the Provincial Reconstruction Team (PRT), was created to fund civilian projects aimed at ‘winning hearts and minds’. The highly paid consultants I met in 2010 at the Asadabad base — a Texan rancher, a crop specialist from Michigan University and a young graduate from a top US university — were all ignorant of Afghanistan, not to speak of Kunar. They had a budget of more than US\$ 80 million, equivalent to between a quarter and a half of the total economy of the province, which they did not know how to spend. While the PRT would almost never leave the Asadabad military base and lacked translators, those who had access to the restricted area — the entrepreneurs who fed the US Army with auxiliaries and intelligence — quickly monopolized the contracts and the distribution of money. In keeping with the global trend of the privatization of development in relation to military interventions (Nagaraj, 2015), for-profit and non-profit organizations were directly contracted to provide services, ranging from supply to governance. Development Alternatives Incorporated, a US company, managed three districts of Kunar directly for several years. It made deals with tribal leaders and offered projects to those who would accept the exclusion of the Taliban from their region.

The cross-cutting of the Afghan state also affected the security sector, through the formation of militias. The Special Forces detachment in Asadabad set up a force of 800 fighters, well-paid volunteers outside of the state payroll and authority. The US Army also armed ethnic minorities, such as the Pashai fighters of the former jihad commander Hazrat Ali, and used his men to secure segments of the road between Jalalabad and Asadabad. More generally, weapons and money were distributed to build ‘tribal militias’ (Kilcullen, 2009). Yet, by arming groups they perceived to be tribes or minorities, hastily mapped, and giving them legitimacy by calling them Afghan Local Police, the Americans were effectively supporting warlords (Hakimi, 2013). In order to pacify Kunar, they gave commanders and the population the means to bypass the state, and to solve their conflicts independently through the use of force.

Naively, without any serious understanding of the dynamics in the province, the US Army thus became involved in local conflicts. Major Jim Gant explains in detail how he obtained the favour of a tribal leader:

The highland people had taken and were using some land that belonged to the lowland people. The Malik told me the land had been given to his tribe by the ‘King of Afghanistan’ many, many years ago and that he would show me the papers. I told him he didn’t need to show me any papers. His word was enough. . . . I made the decision to support him. ‘Malik, I am with you. My men and I will go with you and speak with the highlanders again. If they do not turn the land back over to you, we will fight with you against them’. (Gant, 2009: 18)

Major Gant suggests — a laconic ‘suffice it to say that the dispute with the highlanders was resolved’ — that he helped his ‘friend’ to grab the contested land (*ibid.*: 19). The US military indeed followed patterns of the tribal mode of managing social relations, but without taking a non-partisan stance. Their strategy of local co-optation and deals upset social relations and existing settlements, and the partisan logic of the Special Forces turned them into the blind arm of private vendettas.

To fight its ‘war on terror’, the US Army instrumentalized social relations; at the same time it became an instrument of local revenge (Baczko, 2012; Martin, 2015). The mission of the Special Forces detachments was to track and eliminate Al Qaeda and Taliban militants, without distinctions (Strick van Linschoten and Kuehn, 2012). Their activities remained separated from the rest of the foreign intervention, outside of NATO command, under the exclusively American ‘Enduring Freedom’ command. Deployed for six months to one year, these elite troops operated in Kunar without practical supervision, following informal channels. As a former Afghan translator with the American Special Forces in Kunar in the first years of the intervention explained:

ODB [Operation Detachment Battle, the name used by the Special Forces detachment in the provinces] carried out its operation without supervision; we would never write reports; we were totally independent. We would shoot first, ask questions later. In Kunar, a lot of the arrested people were not Taliban.

[Me: How did you know?]

I was translating during the interrogation, it was obvious during the interrogation.

Ignorant of the local dynamics, the Special Forces favoured any person who would provide them with information (Akbar, 2005). In this way, Malek Zarin, a former commander from the jihad against the Soviet, known as a wood trafficker, won the trust of the soldiers. In addition to providing intelligence, he supplied the bases and also proposed his son as a translator. Until his death in a suicide bombing in 2011, he used the American support to fight his former rival commanders in the high Kunar valley. Furthermore, ‘targeted killings’ operations, often conducted at night, exacerbated conflicts (Gopal, 2014). The intelligence used was often based on denunciation, much of which was calumny. Accusing a rival of being Taliban, in a context in which the Special Forces had an elastic licence to kill, was an easy way to get rid of an annoying neighbour or kinsman. The US Army thus transformed private disputes and old rivalries into collective conflicts between tribes and ethnic groups, and politicized them.

LEGAL RULE AND THE STATE

In the territory that they control in Kunar, the Taliban operate a law-based mode of governance, based on procedural decision making and enforcement. Court verdicts and edicts are the components of a largely monopolistic management of social relations. In the 1990s, when they took power, and since the 2000s, in the territory they governed as an insurgency, the Taliban imposed themselves, building hierarchical institutions which applied procedures taken from a combination of positive and religious law. This mode of governance was largely in keeping with the process of socio-genesis of the state that had started at the end of the nineteenth century. Far from the orientalist vision of a country without a state, Afghanistan, with borders that remained stable for more than a century, was a country in which the state asserted itself in a continuous manner. The Taliban courts, like those of the Afghan state, promoted a vision of authority directly exerted between the state and its subjects, and of property as the possession of an individual. This rule extended beyond the limited resources of the judicial institutions by delegating to the tribes the power to rule on a steadily declining range of issues requiring judgment. What the anthropologists studying Pashtun tribes had overlooked, is that they were not so much an alternative source of authority as part of a continuing process in which the growing influence of a central state was slowly asserting its monopoly of violence.

The Forgotten State

From its formation at the end of the nineteenth century, the Afghan state has been a determinant actor in Kunar. The structure of land ownership and identities has evolved through the various policies and guarantees put forward by the state in steering a fragile balance between an imprecise demarcation of plots of land and the traditional regulation of violence. The monopoly of the state in Kunar thus followed an Eliasian process of autonomization of the political authority from its tribal legitimacy (Elias, 1982). In the nineteenth century, the King of Afghanistan was a *primus inter pares*, a tribal leader above the other tribal leaders, who constantly had to demonstrate his superiority. He arbitrated conflicts and negotiated settlements, based on relations of patronage typical of tribal rule. With the reign of Abdul-Rahman Khan (1880–1901), the King started to derive his authority from alternative sources, both religious and political. Abdul-Rahman Khan was proclaimed Emir al-Mumenin, Commander of the Believers, by the religious savants, the *ulema*, and engaged in several military campaigns. Through two military campaigns, he unified the two territories of Hazarajat and Kafirstan (the country of the unbelievers), renamed Nuristan (the country of the light). This process of conquest followed both a political rationale — the two mountainous regions refused to recognize the authority of the King

— and a religious one, since they were populated respectively by Shias and non-Muslims (Kakar, 1979). His successors continued his work by modernizing the bureaucracy and by implementing a series of reforms. Revealingly, the term ‘Afghan’ progressively turned from an ethnonym describing the Pashtun into a demonym describing all the citizens of the internationally recognized country of Afghanistan. The assertion of the state was regularly contested by traditional elites, especially in the 1920s, when the eastern tribes rebelled, taking Kabul and overthrowing the King. Yet by the 1940s, with the mechanization of the army, the state had imposed its rule and the tribes had lost the ability to challenge it (Gregorian, 1969).

The contentious formation of the Afghan state was particularly visible in Kunar when the tribes rose again in 1947. The conflict started over two issues that directly concerned both the monopoly of violence and the definition of citizenship. Until the 1940s, the tribes had regularly provided a discretionary quota of men and money. These men were grouped in the same regiments and positioned in the province, or in the neighbouring city of Jalalabad. Recruitment and imposition therefore followed a logic of tribute and reflected a vision of citizenship that was mediated by membership of the tribe. In 1947, King Zaher Shah decreed that recruitment and tax collection would be direct. The recruits would be scattered across the country, and people would be taxed as citizens, without any form of mediation. This display of the shift from the ethnic-tribal definition to a national one triggered the revolt of the tribes of Kunar. The troops of the monarchy curbed the uprising and its leaders were exiled to the north of the country. The repression of Kunar’s revolt was a moment of simultaneous affirmation of the state’s monopoly of violence and the supremacy of individual citizenship over lineage. In the following decades, dedicated high schools were opened in Kabul to which the tribal elites sent their sons to become part of the state’s bureaucracy (Edwards, 2002).

When anthropologists observed provinces such as Kunar, they did not see the state and therefore deemed it absent.² Yet the state was everywhere. The court of Asadabad dated from the end of the nineteenth century. It ruled continuously until the 1978 insurgency, basing its authority on Islamic Law, a religious legitimacy and an alternative to the traditional tribal one. As Ghani (1983: 353) explains:

2. Anthropologists were largely influenced by the situation on the other side of the border, in the tribal areas of Pakistan. British imperial rule had led to the promulgation in the 1870s of dedicated crime regulations based on reinvented customs and traditions (Hopkins, 2011). Although, until the drawing of the Durand line in 1893, this imperial governmentality could be applied in Kunar, the British administration in Peshawar had little influence in territories so far from its bases. Kunar (and Afghanistan more generally) did not experience prolonged colonial rule, only limited influence from the bordering British dominion over India (Hanifi, 2011).

Whereas the 79,000-strong army provided the state with the power to sanction the suppression of local customs, the prevalence of significant divisions within the rural area turned courts into major centers of recourse for dispute-settlement. The imposition of sharia not only changed the symbolic system of reference of the disputants but it also opened the disputing arena to new actors, the most significant of whom were women. The form of the law was defined by the state while its content was determined by patterns of conflict at the local level. The existence of appeal, however, gave the state an important role in the arbitration of social relations within the civil society. The entry of the state as arbitrator of social cleavages allowed it to consolidate its role in the management of the flow of material and human resources in and out of the local community.

In the twentieth century, the tribal institutions continued with their dispute-resolution mechanisms, but did so within a state frame (Tapper, 1983). The characterization of an 'ordered anarchy' and the vision of self-governance through tribal institutions overlooked the role of 'last resort' of Kabul, which had become necessary to the authority of the traditional elite. When violence escalated to a degree that the tribes could no longer contain, the affair was taken over by the state, whose authority was guaranteed by coercion. The judicial mode of state governance was therefore not asserted in contradiction to the political mode of tribal governance, although in the long term it did undermine it and impose itself as the dominant form of rule. The state court solved conflicts that the tribes were unable to regulate and resolve, producing a frame within which the authority of the notables was expressed, at the same time that the presence of the state was strengthening. In fact, the tribal governance as it survived through the twentieth century can be compared to a particular form of delegation (Hibou, 1998). The tribal reading of social life in Afghanistan is reminiscent, though beyond the colonial framework, of the confusion that Mahmood Mamdani denounces when he explains that British indirect rule hides a specific form of decentralized despotism, which is in a sense another particular form of delegation (Mamdani, 1996). The civil war, which started in 1978, demonstrated the dependence of the tribes on the state. Indeed, with the exception of the town of Asadabad, the bulk of Kunar remained outside the reach of Kabul until the coming of the Taliban in 1996. The tribal elite, which tried to rule the province, lost the ability to regulate violence and to solve disputes, showing how much they depended on the state through the effects of its absence.

The Taliban: The Judicial Management of Collective Conflicts

The governance of the Taliban in the 1990s and 2000s shared a strong insistence on justice and procedure, from a state perspective. The armed movement emerged in the mid-1990s in the south of Afghanistan, in opposition to the strife and disorder resulting from the rivalries between commanders, hence the 'justice and order' inscription on their white flags (Davis, 1998). Kunar had suffered under such conflicts and the Taliban were welcomed when they entered the province, almost without resistance, in 1996.

The court of Asadabad was among the first institutions they set up in the province. The Taliban judicial system took advantage of their exteriority — the movement as such was not involved in the various feuds that existed in the province. A general amnesty was declared for the period of the civil war. Added to harsh punishments cast by the judges for any subsequent private use of force, the amnesty stopped the revenge cycles that had been running for more than 15 years. People who lived in Kunar between 1996 and 2001 recurrently referred in interviews to this period as one of relative appeasement, especially regarding land issues.

From 2003, when Taliban militants started to come back to the province, they positioned themselves in opposition to the extreme corruption that characterized the administration of the province and the disorder related to the return of the Jihadi commanders, and also to the strategy of the US Special Forces. Against the instrumentalization of social relations by the US Army they brought a moralistic rhetoric, supported by a claim to religious legitimacy. Rejecting any ethnic, tribal or partisan claim in Kunar, they depoliticized conflicts into judicial affairs by positioning themselves as impartial judges.

Compared to the limited resources of the insurgency, the Taliban mode of governance over-emphasized institutions and formalism. While fighting the US Army, the Taliban invested time and resources in organizing a proto-state structure with procedures, official documents and internal regulations. This parallel administration was hierarchical and centralized. In every district, a governor was nominated and was responsible to the Taliban governor of the province. The latter was then responsible to a committee in charge of eastern Afghanistan and to the executive body of the Taliban in Quetta, Pakistan (Giustozzi and Baczko, 2014). That such a hierarchized system remained functional despite the daily killings of cadres by the US Special Forces is suggestive of its degree of organization. In addition, the insurgency managed to take over the public services that the local administration of Karzai's regime, undermined by corruption and nepotism, had neglected, and became effectively *the* authority. The movement asserted its authority over the everyday life of the inhabitants of the rural areas of Kunar. The Taliban collected taxes from people and from national and foreign organizations working in the province. It controlled prices in the markets and delivered authorization to work in its areas — including to international NGOs, as long as their work had been praised by the villagers and they had no ties to the Western military coalition. They even organized their own school system (Giustozzi and Franco, 2011). Any official document was stamped with the official designation of the Taliban regime, 'Islamic Emirate of Afghanistan', a way to reassert their interpretation of history, that of a government in exile facing a foreign occupation.

The judicial system was the core institution of the Taliban governance apparatus. Judges were appointed in each district to resolve disputes and manage social relations. As in the 1990s, the judge was the central figure of

a moralistic rule that emphasized order. Islamic Law, and more specifically the Koran and collections of Hadiths, constituted the main jurisprudential references. The implementation of justice remained the exclusive domain of clerics, trained in religious schools and socially recognized as competent to administer Islamic Law. Like other Taliban institutions, the courts were centralized, with appeal and supervision systems at the district, province and national levels. Altogether, the Taliban system of justice managed hundreds of judges all over Afghanistan — far more than the foreign-supported official justice system (Baczko, 2013).

Judges used practices that in part resembled those of a formal procedural justice system, though a summary one. To lodge a complaint, one had to fill in an application for the judge. An investigation was set up by the judge and his assistants — this generally took anything from a few days to several weeks — and a hearing was organized with both disputing parties, in the common room of a house, set as the court for the occasion. The hearing generally lasted from a few hours to a whole day. The judge, supported by assistants, looked into the documents and listened to the witnesses brought by the parties. He would then make his determination or, if necessary, devote some time to further investigation. The speed of the judgment was particularly appreciated, especially in comparison with the slowness of the incumbent court in Asadabad, in which cases could take years, depending on the levels of corruption. Witnesses were central to the judicial process in Kunar. While Islamic Law legitimated a focus on testimonies, an even more decisive factor was the lack of documents or material proofs, especially in relation to land issues. The sentence of the judge was written on a piece of paper, stamped with the seal of the Islamic Emirate of Afghanistan, the name of the Taliban state. The paper was presented as an official document, which the Taliban judge kept as a record of the judgment, with a serial number.

In practice, the sentences of the Taliban judges included a degree of ad hoc deliberation. For instance, a notable from Shal Valley explained to me how, in a dispute relating to demarcation between two plots examined in 2012, the Taliban judge questioned him and the other elders of the village, one by one. He followed the majority opinion, but presented his verdict as if it were an application of Islamic law. As he was close to the Taliban, he knew how the verdict had been reached, but the other elders did not. The Taliban had no dedicated police force and the courts' verdicts were enforced by the fighters, making it very difficult to oppose a sentence outside of their own system of appeal. This contrasted again with the incumbent system of justice, in which the judges would not go out of Asadabad due to the security situation, and the verdicts were often negotiable if the losing party was willing to pay the judge or the police. As an inhabitant from Shal Valley put it to me in 2010: 'The Taliban judges say what they will do and they do what they have said'. Another inhabitant from Asmar contrasted it with the incumbent system of justice: 'What is the difference between the government judges and Taliban

ones? When the Taliban judge pronounces a sentence, they implement the decision. When they say something, they mean it’.

The Taliban explicitly organized their system in a non-partisan manner. Judges were prevented from forming ties with the population and becoming biased through nominations from outside the province or district, and by regular rotation. Judges were deemed impartial and their actions perceived as unbiased and not inclined towards any particular community or social group. The ethnic minorities, Gujars or Nuristanis, who had often held grudges relating to the use of pasture lands or forest high in the mountains, repeatedly won cases against Pashtuns, who constituted the majority of the insurgency. The judges were closely monitored by the Taliban provincial administration, to whom judges were required to send a copy of each of their verdicts, and who regularly checked among the population how the work of the judge was perceived. This system of justice allowed the Taliban to solve numerous private conflicts, some of which had been going on for years. In cases of land conflict, the Taliban courts issued property titles that were accepted by the incumbent administration. By doing so, they were creating, in the uncertain context of the civil war, an environment with norms, in which property was recognized and guaranteed by a political authority.

By rebuilding a balance between political order and property, the Taliban produced norms of justice, and came to be recognized as the effective authority in Kunar. In continuity with the formation of the state in Afghanistan, the Taliban reduced the space available to a mode of governance based on deals, settlements and arbitration. The Taliban still let the villagers attempt to solve their problems, as long as no crime had been committed or no one filed a complaint. It was also careful not to antagonize the population — for instance, it avoided implementing in Kunar the half-share of inheritance to which unmarried and widowed women are entitled under Islamic Law. Judges could be contacted by mobile phone and made regular rounds to villages, asking the population if they wanted to report any issue.

CONCLUSION

This article has argued that armed assertion of power alone does not account for the defeat of the US Army and the taking over of the countryside by the Taliban. Both armed actors involved themselves in land issues, but through very different governance practices. On the one hand, the US Army, and in particular the Special Forces, circumvented the nascent regime in Kabul, thus contradicting the approach of other US agencies which were supporting the regime in a process of ‘state building’. The American soldiers negotiated directly with people who provided them with information and with auxiliaries — defined by the military as ‘tribal elites’ — and in return

offered these ‘friends’ support and resources. Thus, the US Army became involved in local land conflicts, defining ownership as a collective issue and turning to these ‘tribal elites’ as representatives and arbiters. Conversely, the Taliban progressively built a centralized parallel administration, based on courts, in which they implemented mechanisms to avoid corruption and partisanship. When possible, the Taliban courts individualized land conflict, reducing the stakes.

To understand the effects of the US Army and Taliban rule in Kunar, this article compared two ideal-typical models of governance, a legal and a political one, which differ in how they define the regime of property and citizenship, with direct implications for violence and authority. The differentiated effects of these two rules also derived from their inscription in the political history of Afghanistan, in particular the formation of the Afghan state as the slow imposition of a legal rule over tribal politics. As the American military was inspired by an imaginary anthropology of Afghanistan as a stateless country ruled by tribes, it missed a central point: tribal institutions had been dependent on the Afghan state during the twentieth century. The Taliban, on the other hand, perceived itself to be the Islamic Emirate of Afghanistan, a legitimate authority faced with a foreign invasion. It therefore strove to rebuild its administration, performing the state. Its court system allowed it to position itself as the guarantor of property rights, and therefore make its rule serve the interests of many small owners in Kunar.

The competition between the US Army and the Taliban is a case of armed confrontation in which different militarized groups compete to impose rule by controlling access to citizenship and landed property. In Kunar, citizenship proved less of an issue than property, but contemporary civil wars provide numerous examples in which both become stakes. Such a perspective builds on the recent calls to revisit legitimacy and sovereignty (Hansen and Stepputat, 2006; Lund, 2013; Monsutti, 2012; Randeria, 2007). Armed actors position themselves as the authority by providing access to rights and by arbitrating related conflicts. In Syria, for instance, the rebels, the Kurdish Democratic Union Party (PYD) and the Islamic State each created judiciary systems, which compete with the incumbent one. These courts play a central role in defining who is part of the polity and with what rights (Baczko et al., 2016). Similarly, in the eastern regions of the Democratic Republic of Congo, militarized groups participated in the construction of ethnic categories, in particular by drawing exclusionary lines that closely reflected land ownership (Vlassenroot, 2002). In Colombia, the Revolutionary Armed Forces (FARC) contested the state by implementing its own administration, in a close relationship with local rural communities (Esposina, 2009). These various configurations suggest that defining the regimes of property and citizenship will determine whether a militarized actor is able to impose its authority effectively and assert some degree of sovereignty.

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