CABBAGES AND KINGS:
BRIDGING THE GAP FOR MORE EFFECTIVE CAPACITY-BUILDING

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"The time has come," the Walrus said,
"To talk of many things:
Of shoes—and ships—and sealing-wax—
Of cabbages—and kings—[1]

INTRODUCTION

        With apologies to Lewis Carroll, in the context of contemporary rule of law stability and reconstruction operations, including those being undertaken in Iraq and Afghanistan, "the time has come . . . to talk of *many* things"; not simply of *kings*, but also of *cabbages* and all things between.

        Nation-building. State-building. International Humanitarian Interventions. Phase IV Post-Invasion/Post-Liberation Operations. Counter-Insurgency "Hearts and Minds" Operations. Post-Conflict Stability & Reconstruction Operations ("SRO"). No matter how *"it"* is labeled, the

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        [1]   LEWIS CARROLL, *The Walrus and the Carpenter, in* THROUGH THE LOOKING GLASS AND WHAT ALICE FOUND THERE 64 (1917).

United States, its coalition allies, and the broader "international community" have all been in the "business" of *"it"* since World War II. More significantly, since the onset of "international community" combined, joint and inter-agency operations in Bosnia and Herzegovina, they have been increasing their engagement in *"it."*[2] In support thereof, untold numbers of conferences examining the implications of *"it"* have been held; thousands of barrels of ink, reams of paper, and terabytes of electronic data have been spent in both learned and unlearned treatises examining *"its"* conduct; "revolutionary" military doctrines pertaining to *"it"* have been established, reestablished, and disestablished; scads of "tactics, techniques & procedures" ("TTPs") operationalizing *"it"* have been drafted *and* ignored; and innovative interagency agencies attempting to coordinate *"it"* have been concocted, underfunded and largely allowed to wither. Astonishingly, for all the effort and commentary expended on *"it,"* the success of *"it"* has not been a common theme—*or* end state.[3]

This paper argues that one of the main reasons recent *"it"* efforts (i.e. SRO)[4] have

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[2]   James Dobbins et al., America's Role in Nation-Building: From Germany to Iraq 1–2 (2003).

[3]   *See generally* Robert Hoekstra & Charles E. Tucker, Jr., *Adjusting to Stabilization and Reconstruction Operations,* 2 PRISM 13, 18–19 (2010), *available at* http://www.ndu.edu/press/lib/images/prism1-2/2_Prism_13-26_Hoekstra_Tucker.pdf (giving some reasons why these operations generally failed).

[4]   For the remainder of this paper, the authors will refer to the operations in question as "stabilization and reconstruction operations" ("SRO"). The Department of Defense ("DoD") defines stability operations as, "an overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief." Paragraph 4(d) of the DoD Instruction further notes, "[t]he Department shall assist other U.S. Government agencies, foreign governments and security forces, and international governmental organizations in planning and executing reconstruction and stabilization efforts, to include: (1) Disarming, demobilizing, and reintegrating former belligerents into civil society. (2) Rehabilitating former belligerents and units into legitimate security forces. (3) Strengthening governance and the rule of law. (4) Fostering economic stability and development." *See* Dep't Defense Instruction, Directive 3000.05, paras. 3–4, (Sept. 16, 2009), *available at* http://www.dtic.mil/whs/directives/corres /pdf/300005p.pdf; *see also* Nora Bensahel et al., Improving Capacity for Stabilization and Reconstruction Operations 3–4 (2009), *available at* http://www.rand.org/pubs/monographs /2009/RAND_MG852.pdf.

> The family of efforts grouped together under stabilization and reconstruction encompasses a range of overlapping missions that are themselves components of a broad range of different engagements and Approaches. Stabilization, for example, generally refers to the effort to end conflict and social, economic, and political upheaval. Stability in each of these spheres is necessary for effective reconstruction because without it, any gains will be short-lived.

> Stabilization, thus defined, is one component of a wide range of possible operations. For example, stabilization can be carried out as part of an intervention. Indeed, it can be the express purpose of an intervention to end violence. It is also crucial in the aftermath of combat operations, which may have intentionally or unintentionally helped spur additional conflict. Stabilization is also an accepted component of counterinsurgency operations because efforts to gain local support, which are so central to counterinsurgency, generally require ending violence and upheaval. Counterterrorism operations may also include a stabilization component. For example, if these operations take place in an unstable environment, stabilization may be critical to gathering intelligence. Definitionally, stabilization is part and parcel of post-conflict operations and necessary for any sort of nation-building efforts to take place.

> Reconstruction refers to the process of developing or redeveloping structures that permit sustainable self-government, social and economic development, and security. Reconstruction picks up where

largely been unsuccessful is because most of the intellectual effort expended by the "international community" on post-1995 SRO capacity-building in general—and rule of law engagements in particular—has been on the supposedly *big* issues; the "kingly" issues. Such oft-examined "kingly" issues include: the (debatable) wisdom of imposing (or, if one's sensibilities prefer, "facilitating") federalism, confederalism, or regionalism; the proper drafting and/or redrafting of constitutions; the putative benefits of creating "big D Democracy;" the movement of certain societies from centralized economies to free market economies; the well-publicized and well-resourced conduct (pre-mature or otherwise) of national elections; the lofty (and largely unmet) goals of implementing "post-conflict" (*sic*) criminal justice ("PCJ") mechanisms; and the absolute imperative of establishing (and actively implementing) "international community" "exit strategies." What are not often examined (or appropriately resourced), however, are the most appropriate means and methods of facilitating day-to-day local/regional governance and rule of law capacity-building mechanisms; i.e., the "cabbage" matters.

Admittedly, the "international community's" impetus to be—and the learned "academy's" impetus to support—the Thomas Jeffersons ("Constitutional-ists"), Governor Morrises ("Election-ists"), Susan B. Anthonys ("Suffrage-ists"), Justice Jacksons ("War Crimes Just-ists"), Adam Smith's ("Free Market-ists"), or even General MacArthurs ("Enlightened Occupier "Govern-ists") of one's generation are understandable. Furthermore, while such lofty efforts and aspirations may (arguably) be laudable, the fact is that such matters absorb an inordinate amount of the "international community's" learned SRO discourse—*and resources*. Meanwhile, what largely goes unheralded and unresourced, is the other side—*the more critical side*—of stability and reconstruction operations, to wit: the systematic, "day-to-day," "boots on the ground," "lawyers at the dock," "teachers in the class," "bottom-up" capacity-building approach to effectuating effective civil societies, establishing local governance and achieving rule of law. It is this side of capacity-building—the "cabbages" side—that must be emphasized, evaluated, empowered and resourced if "international community" stability and reconstruction operations are to be successfully undertaken.[5]

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stabilization leaves off in any and all of the sorts of operations just described. This is why stabilization is a necessary precondition for reconstruction: Without it, subsequent efforts are not sustainable. Although some reconstruction and stabilization efforts coincide, the former cannot succeed without the latter.

In the context of violent conflict, these two families of tasks play different roles. Stabilization is, by definition, the key to ending violence. Reconstruction, by contrast, is believed to help prevent a return to violence by addressing longer-term drivers of violent conflict. Although reconstruction and stabilization tasks are distinct, they affect each other in important ways. Once basic security has been established, reconstruction tasks are critical to eliminating many of the factors that can drive further violence. By ensuring that a society and an economy grow, reconstruction gives people and their leaders the stake in a nonviolent future that is crucial to building that future. Chapter Two further defines the specific tasks that fall under stabilization and reconstruction missions.

Id.

    [5]   *See generally* Carolyn Bull, *Building the Rule of Law under UN Transitional Administration* 2 (UN, Policy Brief No. 7, Nov. 7, 2007), *available at* http://unu.edu/publications/briefs/policy-briefs/2007/pb07-07.pdf.

[A] central concern of actors engaged in attempting this transformation has been the lack of priority accorded to rule of law issues relative to other more visible and immediate state-building demands. A second, related concern is that of continued disappointing results in attempts to implement rule of law reform. . . . UN transitional administrations have sought primarily to establish the rule of law through state-based enforcement mechanisms: establishing formal rules of behaviour with the force

Simply put, local governance capacity-building military personnel (e.g. Civil Affairs personnel), foreign service civilian personnel (e.g. personnel from the U.S. State Department's Office of the Coordinator for Reconstruction and Stabilization[6]), and governmentally-secured private contractors, as well as local governance capacity-building (vice service providing) NGOs and universities, (not to mention capacity-implementing "host-nation" governments and citizens) require significantly more resourcing, assistance, and informed advice from their "international community" colleagues on how to successfully grow "cabbages". It is true that military personnel largely provide security and quell destabilizing forces. However, when backed into a "counter-insurgency" corner, and/or when "mission creep" otherwise dictates, they also often engage in "Civil Affairs" SRO implementation. Likewise, Private Military Contractors and (some) civil society organizations do everything and anything else, from building physical infrastructure to training law enforcement personnel, judges and prosecutors (i.e., they engage in "justice sector reform"). Non-governmental Organizations ("NGOs") provide direct support, including providing food, aid, healthcare, and (on occasion) education to local populations.[7] And – when allowed - universities can provide long-term sustainable tools for creating free societies.[8] The "cabbages" work performed by all these groups is critical to the successful implementation of any SRO capacity-building engagement.[9] However, while "kingly" efforts, such as drafting of constitutions and the prosecution of war criminals are endlessly emphasized, implemented and debated – particularly within the "academy"—the critical work of growing local governance and civil-society rule of law "cabbages" goes largely unsupported, thereby explaining why our post World War II nation building efforts have widely missed the mark.

The fact that local governance and rule of law capacity building receives little intellectual support from the "international community" in general, and "the academy" in particular, does not mean it does not occur. To the contrary, while some academics endlessly debate what the "international community" *should* be doing about supposedly heady matters of central state governance, out of necessity, personnel "on the ground" are already "doing" the less heralded (albeit far more critical) "stuff" of actually creating, training, and implementing day-to-

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> of law (the legal system) and constructing coercive state structures to enforce those laws (state organisations such as judiciaries, police forces and prisons). This approach has enjoyed only limited success in establishing the rule of law.

Id. Citing previous UN-supported rule of law operational deficiencies, Bull proposed a number of recommendations including:

> 1) Building the rule of law should not be equated automatically with establishing state-based coercive mechanisms such as state law, judiciaries and police systems; 2) Giving real substance to rule of law institutions may depend primarily on internal processes of change; 3) Post-conflict disrupted states are a hostile intervention environment, to which the liberal normative template of UN state-building may be fundamentally ill-suited; 4) Rule of law promotion is a long-term enterprise ill-suited to truncated interventions; and 5) Front-end planning is critical.

Id. at 5–7.

[6]   *See, e.g., Office of the Coordinator for Reconstruction and Stabilization,* U.S. DEP'T. OF STATE, http://www.state.gov/s/crs/.

[7]   *See* Hoekstra & Tucker, *supra* note 3 (providing a broader discussion of the role such entities play in rule of law operations).

[8]   *See, e.g.*, INT'L HUMAN RIGHTS LAW INST., DEPAUL UNIVERSITY, http://www.law.depaul.edu/centers_institutes/ihrli/projects/ (describing the international rule of law programs).

[9]   Joe Klein, *It's Time for Extreme Peacekeeping,* TIME, Nov. 23, 2003, at 25.

day local governance and civil society rule of law. However, because of a dearth of support, there is little doctrine to guide them in such critical efforts. There is little academic analysis to sustain them. Instead, their efforts go largely unsupported—*at least in part*—because their "international community" colleagues and academic friends are otherwise focused on supposedly more "serious matters." Notwithstanding this situation, *effective* SRO (*"it") requires effective local governance and rule of law capacity building*[10] —and this, in turn, requires that *intellectually sound ideas* be incorporated into day-to-day operations. The "bottom line" is that successful *"it"* requires dialogue among those who are "thinking" about the issues, those who are "doing" the actual work of capacity-building, and those who are "receiving" the assistance. Thus, successful SRO requires that more attention be directed toward the local governance and rule of law efforts of capacity-builders on the ground—the military, the private contractors, the NGO workers, the civil society implementers, the local citizens—so they may incorporate effective capacity-building doctrines and techniques into their own work and do so in order to achieve successful end states.

I.   A BRIEF OVERVIEW OF CAPACITY BUILDING

For better or worse, since World War II the "international community" has routinely been engaging "in the business" of intervening in the affairs of less developed, under-developed or non-developed states. In so doing, it has employed various actors to oust putatively oppressive regimes, "reform" economies, and attempt to (re)create stronger civil societies.[11] Achieving success in such endeavors has not proven easy. One reason for this has been that the state "clients" with whom we have been dealing have routinely been, "lack[ing] the institutional capacity to implement and enforce policies . . . driven by an underlying lack of legitimacy of the political system as a whole."[12]   The "international community's" "weak state" clients also routinely, "commit human rights abuses, provoke humanitarian disasters, drive massive waves of immigration . . . attack their neighbors and are breeding grounds for terrorism."[13]   Equally as significant has been the fact that the "international community" has routinely deemed "weak states" to be a threat to global peace, security, and prosperity, thus necessitating the utilization of significant "kinetic" resources to quell and reform their militaries, para-militaries and/or militias.[14] Clearly, such factors have proven to be formidable obstacles. They have also sapped the desire and/or ability of the "international community" to deal with the nuts-and-bolts issues associated with systematically encouraging local civil society development.

Current "international community" SRO is somewhat different from that undertaken by the Allies in the 1940s and 50s. In the wake of total war, Germany and Japan's respective

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[10]   *See* Bull, *supra* note 5, at 5.

> Adherence to the rule of law as a value system appears to depend on the extent to which *local actors* accept it as legitimate and commit voluntarily to it. In this respect, power dynamics may have a profound influence . . . [T]he legitimacy of the rule of law is undermined where it is not perceived as compatible with pre-existing social values, where local actors do not have a sense of 'ownership' over key processes or where the new system does not deliver desired and reliable outcomes.

Id.

[11]   DOBBINS ET AL., *supra* note 2, at xvii.

[12]   FRANCES FUKUYAMA, STATE-BUILDING: GOVERNANCE AND WORLD ORDER IN THE 21ST CENTURY 96 (2004).

[13]   *Id*. at 92–93.

[14]   Chester A. Crocker, *Engaging Failing States*, 82 FOREIGN AFF. 32, 33–34 (2003).

physical infrastructure and economies were left in shambles, their political institutions de-legitimized, and their citizens in dire need of the most basic of provisions. However, both countries had significant pre-war experience with successful local governance. Clearly, this basic local governance capacity needed to be reconstituted, but it did not need to be created from scratch. Thus, the basic ability of Germany and Japan to reconstitute their own local governance structures allowed the Allies to concentrate on undertaking the formidable tasks of physical infrastructure redevelopment, economic redevelopment and national level political-military reform. Given this, after the fall of the Third Reich, the Allied High Commission (comprised of US, French, British, and Soviet actors) occupied a defeated Germany with the goal of implementing national level democracy reforms, demobilizing the army, rebuilding the national economy and eliminating the vestiges of Germany's Nazi past. Admittedly, the occupying powers implemented their national level democratic reforms through the systematic implementation of a "bottom up process," whereby they exorcized the reach of previous political parties at the local level and then, gradually, expanded more democratic influences to the regional and national levels. Equally as admittedly, it was only after these efforts proved to be successful—fully three years after Germany's unconditional surrender—when the country held its first national elections.[15] But the fact remains the Allies had "something" to work with. This "something" was an ability of Germany to reconstitute its basic local governance capacity.

Given their ability to focus on national level structures, Allied forces were able to concentrate on demobilizing the armies and training German soldiers on constabulary duties. Simultaneously, certain Allied governments injected German factories and mines with resources and funds to spur economic development. At the local level, the Allies, while promoting national level democracy and freedom of expression reforms, vetted elementary school teachers, replaced pro-Nazi classroom textbooks, and monitored newspapers to remove any Nazi sentiment that would filter through.[16] More globally, by 1949, the Allies approved a constitution and transferred autonomy to the Federal Republic of Germany.[17] Again, however, the Allies did not need to create newspapers, schools, or local governance structures from scratch. They "simply" had to exorcise the vestiges of National Socialism from largely pre-existing governance structures.

In the meantime, in the immediate post-war aftermath, Japan retained even more of its sovereignty—and its existing national and local governance structure—than did Germany. The Supreme Allied Commander operating in Japan did so behind the fiction of a grant of authority from the Emperor. Thus, in theory if not practice, the Occupier, acting through the Emperor, garnered internal legitimacy. Regardless, because of the preexistence of Japan's internal governance capacity, by early 1946 the Japanese government was able to draft and approve a new constitution.[18] While broadly reformative in scope, the creation of the new constitution was enabled by the fact that Japan had a history of effective local governance capacity. This left the Far Eastern Commission (i.e. the Allied group formed to oversee the reconstruction process), free to provide basic foodstuffs while the Country returned to its feet, as well as to concentrate its democracy promotion efforts on emphasizing serious educational *reform*. US military and governmental units were sent to schools to enforce new policies that deemphasized nationalism,

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[15]   DOBBINS ET AL., *supra* note 2, at 8–9, 16.

[16]   *Id*. at 10, 16.

[17]   Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, 8 UCLA J. INT'L L. & FOREIGN AFF., 385, 395 (2003).

[18]   *Id*. at 396.

militarism and anything that could spark hyper-nationalist sentiments.[19] Again, the Allies did not have to create these local and national governance structures from scratch. They "simply" had to exorcise the vestiges of militarism from largely pre-existing governance structures.

        With the advent of "humanitarian interventions" in the Balkans, the "international community" midwifed a new era in state building SRO. Simply put, the political-military interventions occurring after the end of the end of the Cold War required far less by way of military force than had been seen in the past, but far more by way of in-depth interventions into the basic governance structures of "client states." This was particularly true with regard to creating the governance and legal structures needed to ameliorate widespread human rights and minority-population abuses occurring within failing or failed states.[20] Thus, markedly different from the Allied occupations in Germany and Japan, the "international community's" various "coalitions of the willing" routinely intervened in the internal affairs of sovereign countries *because* of the lack of local and national governance capacity, or because the presence of corrupt leaders, ethnic tensions, and/or complicated national histories were dismantling any vestiges of political legitimacy. Significantly, the skill sets and focus necessary for interveners to successfully build the local governance capacities necessary to deal with such deficiencies was severely lacking. Instead, the wrong people (e.g. centralist constitutionalists) were routinely sent at the wrong time (i.e. immediately after an armed intervention) to implement the wrong national level (vice local) programs. A case in point is the "international community's" 1995 "humanitarian intervention" into Bosnia and Herzegovina ("BiH").

        Clearly, pre-intervention human rights abuses in BiH were grave, and civil governance mechanisms either non-existent or ineffective. Thus, in the face of such a governance vacuum, Serbian and Croatian militias undertook a systematic campaign of ethnic cleansing against Bosnian Muslims and did so in order to obtain political strongholds within various regions of the former Yugoslavia. As a result, countless civilian casualties, massive population displacements, and large-scale food shortages ensued. To ameliorate this crisis, the "international community" negotiated an end to the conflict, as memorialized in the 1995 Dayton Accords.[21] Thereafter, the "international community," as ensconced in the Office of the High Representative ("OHR") and the Implementation Force ("IFOR") (a NATO-led multinational force), entered BiH as "a political trustee,"[22] thereby taking over security and administrative functions for the benefit the people of BiH.[23] In so doing, the expressly stated purpose of this reconstruction and stabilization capacity-building effort was to democratize the country by addressing the refugee/internal displaced person crisis, ameliorating the human rights abuses of the civilian population, promoting peace among the various ethnic groups, bringing human rights abusers/war criminals to justice, and rebuilding BiH as a free market force within the global economy.[24] For whatever their arguable merit, such goals were markedly different in nature and scope than the Allies' post-war goals in Germany and

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[19]   DOBBINS ET AL., *supra* note 2, at 25–50.

[20]   FUKUYAMA, *supra* note 12, at 97; *see also* William B. Wood, *Post-Conflict Intervention Revisited: Relief, Reconstruction, Rehabilitation, and Reform*, 29 FLETCHER F. WORLD AFF. 119, 120 (2005).

[21]   Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 I.L.M. 75 (1996) [hereinafter Dayton Accord]; RICHARD HOLBROOKE, TO END A WAR 289–90 (1998); *see also* Carl Bildt, *Holbrooke's History*, 40 SURVIVAL 187, 187–91 (outlining Holbrooke's role in negotiating the Dayton Accord).

[22]   Perritt, *supra* note 17, at 398.

[23]   Dina Francesca Haynes, *Introduction, in* DECONSTRUCTING THE RECONSTRUCTION: HUMAN RIGHTS AND THE RULE OF LAW IN POSTWAR BOSNIA AND HERZEGOVINA xv, xviii-xix (2008).

[24]   DOBBINS ET AL., *supra* note 2, at 92–100.

Japan. Specifically, such goals meant that the "international community" was not only signing-on to secure the peace in BiH, but it was also signing-on to engage in a nation-wide vetting of corrupt influences, as well as fundamentally restructuring the operations of various largely dysfunctional or non-functional local governance structures.[25] Despite this fact, the "international community" acted as it had in the past and did so by focusing on "kingly" issues, including (prematurely) holding national elections, drafting a (non-workable) confederal constitution, and moving to establish an international criminal court with responsibility for prosecuting alleged war criminals. All the while, such core "cabbage issues," such as helping to set up non-discriminatory inter-ethnic school systems, focusing on property claims issues, and/or enforcing refugee/IDP relocation, went largely unaddressed.

The High Representative and others in the "international community" reputedly used the Dayton Accords as a template for their structural stabilization and reconstruction of the country. Notwithstanding this contention, the OHR's primary contribution to reconstructing BiH was to initially institutionally create a weak form of political trusteeship *for itself*.[26] However, even though OHR was initially charged with general oversight, coordinating, and reporting duties, by 1997, when it became apparent that local officials were not meeting the goals established by the Dayton framework, the High Representative aggressively moved them aside, stunted the further development of local governance structures, and assumed greater administrative governance authority for itself. In other words, rather than enhance local governance capacity, OHR ultimately assumed a centralized national-centric SRO role for itself.[27]

In the meantime, the United Nation's International Police Task Force ("UN/IPTF") began monitoring and training the BiH national police force.[28] However, before this effort could even hope to become marginally effective - and well before local governance structures could be built and assume some degree of functionality - the "international community" induced BiH to hold its first national level post-war "democratic" elections. Widespread ethnically based bloc voting ensued.[29] Soon thereafter, without waiting to implement an effective economic policy to back it up, the "international community" induced BiH to establish a new currency. High inflation ensued. At about the same time, the "international community" failed in its efforts to facilitate and coordinate the safe return of about one million displaced persons.[30] As a result, widespread ethnically based violence re-ensued. Thus today, one could hardly call Bosnia and Herzegovina an "international community" success story.

In 1999, immediately on the heels of the "international community's" botched "humanitarian intervention" in BiH, NATO, acting on behalf of the "international community," launched an air campaign to ameliorate grave human rights abuses occurring between Serbs and Albanians in Kosovo. This military campaign came to an end in June 1999 when Serbian

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[25]   Dayton Accord, *supra* note 21, at Annex IA.

[26]   Dina Francesca Haynes, *The Deux Ex Machina Descends: The Laws, Priorities and Players Central to the International Administration of Post-Conflict Bosnia and Herzegovina*, *in* DECONSTRUCTING THE RECONSTRUCTION: HUMAN RIGHTS AND THE RULE OF LAW IN POSTWAR BOSNIA AND HERZEGOVINA 3, 8 (Dina Francesca Haynes ed. 2008).

[27]   The IPTF was mandated to monitor, advise, and train Bosnian police but had no executive authority to investigate, arrest, or perform other police functions. *See* ROBERT M. PERITO, THE AMERICAN EXPERIENCE WITH POLICE IN PEACE OPERATIONS 50–51 (2002).

[28]   *Id*.

[29]   Haynes, *supra* note 26, at 14, n.21.

[30]   DOBBINS ET AL*., supra* note 2, at 99, 104.

President Milosevic accepted NATO's settlement terms.[31] As part of the settlement, the "international community" accepted a mandate to politically intervene in the internal governance affairs of Kosovo. As a result, NATO assumed responsibility for all security aspects of the "humanitarian operation," while the UN was entrusted with overseeing all capacity-building projects. As at least one commentator has noted, Kosovo became the "zenith of UN-sponsored political trusteeship."[32] And yet, this effort SRO also largely failed to produce viable fruit. One reason for this is that when Serbian governance officials abandoned the territory, Kosovo was left with virtually no civil governance administrative capability. Accordingly, UN personnel were required to set up and oversee the administration of the region. Thus, the UN High Commissioner for Refugees ("UNHCR") and certain international NGOs undertook a concerted effort to tackle a massive housing and refugee crisis. They did so, however, by directly providing goods and services to the people of Kosovo. In the meantime, with regard to Kosovo's crippled economy, the EU injected massive amounts of money into the region and attempted to "reform" the national banking system.[33] In fact, Kosovo received more financial assistance from the "international community" than any other post-World War II reconstruction effort. Whatever else might be said of this effort, it was not local-Kosovar-centric. In fact, scholars have likened the presence of the "international community" in both Kosovo and BiH to the British Raj since so many of the security, economic, administrative, and humanitarian projects they directly administered were undertaken by foreigners.[34] As a result, success in Kosovo has proven elusive.[35]

Enter Operation Enduring Freedom ("OEF") and the global war on terrorism ("GWOT"). Before the initiation of OEF, Afghanistan was a tribal confederacy with state institutions so weak the Taliban, a non-state actor, yielded most of the political influence within the country.[36] The problems inflicting Afghanistan then—*and now*—were many. Despite this, after international security, the imposition of democracy was the primarily articulated purpose of OEF. Human rights abuses—particularly those faced by women—were also specifically to be addressed. The Taliban had stripped females of most rights; the country had little freedom of expression or religion; and the law of the land was a repressive form of fundamentalist Shari'a. Thus, in short, OEF's articulated humanitarian goals were to secure equal rights for all, address the plight of millions of displaced Afghans, and provide the most basic of provisions to the populace.[37] As of today, these goals have largely gone unmet.

Since 2001, the Coalition has used the Bonn Agreement as a legal framework for the democratization of Afghanistan. In express departure from the BiH Dayton Accords, provisions

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[31]   *Id*. at 111–12.

[32]   Perritt, *supra* note 17, at 401.

[33]   DOBBINS ET AL., *supra* note 2, at 114, 123–24.

[34]   Dina Francesca Haynes, *Lessons From Bosnia's Arizona Market: Harm to Women in a Neoliberalized Post-Conflict Reconstruction Process,* 158 U. PA. L. REV. 1779, 1807 (2010); *see also* Fukuyama, *supra* note 12, at 103.

[35]   For example, despite the fact that Kosovo declared independence from Serbia in 2008, its status has not yet been recognized by key powers, such as Russia. Further, Kosovar democracy building has had mixed results. Corruption and organized crime are rampant. Ethnic conflicts between the Serbs and Albanians fester and cause unrest. Some talk of partitioning the area—part of it to Serbia and the rest to independent Kosovo—to subdue ethnic hostilities. Therefore, as of now, the status of Kosovo remains unclear. *See* STEVEN WOEHREL, CONG. RESEARCH SERV., RS21721, KOSOVO: CURRENT ISSUES AND U.S. POLICY (2010), *available at* http://www.fas.org/sgp/crs/row/RS21721.pdf.

[36]   Fukuyama, *supra* note 12, at 101–02.

[37]   DOBBINS ET AL., *supra* note 2, at 129, 131–32.

specifically addressing human rights and gender rights were included as a part of the Agreement. Under the Bonn Agreement, the UN Assistance Mission in Afghanistan ("UNAMA") was charged with general oversight of the governance and rule of law capacity-building process.[38] In the meantime, the U.S. military established a civil-military task force—a "Provisional Reconstruction Team" ("PRT")[39]—to, "provide immediate humanitarian assistance to the local populace" and provide for coordination among the other international civilian groups.[40] Other countries divided capacity-building responsibilities among themselves: Germany was in charge of police training; Italy was entrusted with training the judiciary; Japan with disarmament; and the U.K. responsible for the anti-Opium campaign.[41] Unlike Kosovo, where the OHR was ultimately given broad administrative authority over reconstruction, UNAMA's authority under the Bonn Agreement was to enable *local* representatives—i.e. *loya jirgas*—to form local transitional government teams and to do so within the first six months of UNAMA's mandate.[42] Thereafter, democratic elections were to be to be held within two years of the establishment of the *loya jirga.*[43]

As has been previously noted by commentators, notwithstanding the local governance provisional safeguards contained in the Bonn Agreement, the "international community" has - once again - largely failed to successfully implement a local governance approach to its governance and rule of capacity-building SRO. One reason for this is that, from the beginning, the PRTs, "were imperfectly realized, haphazardly implemented, and inadequately resourced. They were also not doctrinally integrated with U.S. coalition partners." In fact:

> We *still* find ourselves struggling to adequately define their mission and doctrine, let alone appropriately resource them. This undoubtedly *helps* explain the predicament in which we find ourselves. Therefore, one lesson that should be internalized from our experience in Afghanistan is that for optimal effectiveness, coordinated response mechanisms utilized during conflicts . . . and political crises need to be institutionally recognized, doctrinally supported, adequately staffed, sufficiently trained, and appropriately resourced. Simply put, to be effective, SRO coordination mechanisms cannot be an afterthought . . . . [C]lear institutional mechanisms and parameters must be established—and articulated—before initializing SROs.[44]

Meanwhile, Operation Iraqi Freedom was designed as a primarily U.S.-led preemptive

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[38]   *Id*. at 142.

[39]   "PRTs are the primary mechanisms through which the international community delivers assistance at the provincial and district level in Afghanistan. As noted by USAID, 'As a result of their provincial focus and civilian and military resources, PRTs have a unique mandate to improve security, support good governance, and enhance provincial development. The combination of international civilian and military resources . . . allows the PRT to have wide latitude to implement their mandate.'" *See* Hoekstra and Tucker, *supra* note 3, at 18 (citing U.S. AGENCY FOR INT'L DEV., http://afghanistan.usaid.gov/en /Page.PRT.aspx).

[40]   DOBBINS ET AL.*, supra* note 2, at 140.

[41]   Larry P. Goodson, *The Lessons of Nation-Building in Afghanistan, in* NATION BUILDING: BEYOND AFGHANISTAN AND IRAQ 145, 149 (Francis Fukuyama ed. 2006).

[42]   DOBBINS ET AL.*, supra* note 2, at 142–43.

[43]   Goodson, *supra* note 41, at 157.

[44]   Hoekstra & Tucker, *supra* note 3, at 19.

war against Iraq. Thus, it did not initially receive broad support from the "international community."[45] Regardless, the war in Iraq had the *potential* of proceeding more effectively than had coalition interventions in countries such as Afghanistan. One reason to have been somewhat optimistic was that, unlike Afghanistan, Iraq had working local governance institutional structures in place prior to the US intervention. It also possessed a valuable commodity to help pay for these governance structures, to wit: oil.[46] Despite this, upon undertaking the post-invasion (i.e. "Phase IV") of the operation, the U.S. needlessly dismantled many existing Iraqi local governance structures and left itself in the unenviable position of later having to reconstruct these structures. In the meantime, during the reconstruction process, the occupying powers created the Coalition Provisional Authority ("CPA"), a transitional occupying governance structure designed to oversee the interim Iraqi General Council compromised of representatives from Iraq's diverse ethnic groups. However, rather than concentrate on reconstructing the aforementioned dismantled local governance structures, the CPA primarily concentrated its reconstruction efforts on the creation of a new constitution, as well as building national level state institutions and finding WMDs.[47] It did so to its detriment. In fact, as at least one observer has noted, America's SRO intervention in Iraq was, a "Fiasco."[48]

II.   A DIALOGIC APPROACH TO CAPACITY BUILDING

I like to watch the way the elephant walks, the way it puts its foot down. It puts its foot down with respect for the Earth. It doesn't fight the Earth, it respects it and keeps its balance.
–John Marin[49]

I have always been fond of the West African proverb: 'Speak softly and carry a big stick; you will go far.'
–Teddy Roosevelt[50]

Small is beautiful.
–E.F. Schumacher[51]

As powerful members of the "international community," the United States and its coalition allies should be mindful of Marin's admonition that, as "elephants," when we *put our foot down* we must do it *with respect.* Or, with deference to Teddy Roosevelt, *because* we carry *a big stick*, we should *speak* (or *walk*) *softly* with regard to our foreign interventions, as well with

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[45]   DOBBINS ET AL., *supra* note 2, at 167.

[46]   Fukuyama, *supra* note 12, at 101.

[47]   Jennifer Stilt, *Islamic Law and the Making and Remaking of the Iraqi Legal System,* 36 GEO. WASH. INT'L L. REV. 695, 695–704; *see also* Dan E. Stigall, *Refugees and Legal Reform in Iraq: The Iraqi Civil Code, International Standards for the Treatment of Displaced Persons, and the Art of Attainable Solutions,* 34 RUTGERS L. REV. 1, 1 (2009).

[48]   THOMAS E. RICKS, FIASCO: THE AMERICAN MILITARY ADVENTURE IN IRAQ (2007).

[49]   MARTHA TEDESCHI & KRISTI DAHM, JOHN MARIN'S WATERCOLORS: A MEDIUM FOR MODERNISM 173 (2010).

[50]   NATHAN MILLER, THEODORE ROOSEVELT: A LIFE 337 (1992).

[51]   E.F. SCHUMACHER, SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED (1973).

regard to what we do after we intervene. And yet, despite occasional reminders from some of our colleagues in the "international community,"[52] the hereinabove review of recent history demonstrates we have not always walked softly *or* with respect. Instead, seemingly oblivious to our past blunders, we have repeatedly intervened in the affairs of others, exclusively marshaled limited resources around "kingly" matters, and done so without adequately resourcing "smaller,"[53] "softer,"[54] more respectful, programs designed to address the "cabbage" issues pertinent to daily life. Admittedly we, as members of the "international community," should intervene (i.e., "put our foot down") to help avert crises where and when we can,[55] but we must do so in a way that respects the very societies, humanity, and culture of the people for whom we are intervening.[56] We must also be ever mindful of our limitations. Thus, we in the "international community" need to watch more, do less, and act with care.

The impetus to intervene apparently stems from a belief—widely held within the "international community" —that it has the capacity not only to intervene militarily in intractable disputes, but also the capacity to help build or rebuild societies.[57] However, as noted herein, this

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[52]   *See generally* Press Release, Secretary-General, Secretary-General Presents his Annual Report to General Assembly, U.N. Press Release GA/9596 (Sept. 20, 1999), *available at* http://www.un.org/News/Press/docs/1999/19990920 .sgsm7136.html (noting the importance of the UN and its charter in an increasingly globalized world).

[53]   SCHUMACHER, *supra* note 51, at 1 *et seq*.

[54]   JOSEPH S. NYE, JR., SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS 1–32 (2004).

[55]   For example, when addressing his vision of the use of American power, President Clinton noted, "[t]he United States cannot and should not try to solve every problem in the world, but where our interests are clear and our values are at stake, where we can make a difference, we must act and we must lead." THE CLINTON FOREIGN POLICY READER: PRESIDENTIAL SPEECHES WITH COMMENTARY 182 (Alvin Z. Rubinstein et. al. eds. 2000); s*ee also* NINA SERAFINO, CONG. RESEARCH SERV., RL33557, PEACEKEEPING AND RELATED STABILITY OPERATIONS: ISSUES OF U.S. MILITARY INVOLVEMENT 5 (2006) (citing CONG. RESEARCH SERV. CRS REPORT 94-805 F, THE USE OF FORCE: KEY STATEMENTS BY WEINBERGER, SHULTZ, ASPIN, BUSH, POWELL, ALBRIGHT, AND PERRY 3 (1995) (listing factors to consider when deciding whether or not the U.S. should engage forces abroad)).

[56]   As noted in the current U.S. National Security Strategy:

> Where governments are incapable of meeting their citizens' basic needs . . . the consequences are often global. . . . To advance our common security, we must address the underlying political and economic deficits that foster instability, enable radicalization and extremism, and ultimately undermine the ability of governments to manage threats within their borders and to be our partners in addressing common challenges.
>
> . . . [W]e have also learned that the effectiveness of these efforts is profoundly affected by the capacity of governments and the political will of their leaders. We will take these constraints into account in designing appropriate assistance strategies and will facilitate the kind of collaboration that is essential—within our government and with international organizations—in those instances when we engage in the difficult work of helping to bring conflicts to an end.

THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 26–27 (May 2010), http://www. whitehouse.gov/sites/default/ files/rss_viewer/national_security_strategy.pdf [hereinafter 2010 National Security Strategy].

[57]   *See* U.N. Secretary-General, *Implementing the Responsibility to Protect*, U.N. Doc. A/63/677 (Jan. 12, 2009) (detailing the emerging human rights concept of "Responsibility to Protect" (R2P)). The Secretary-General's report was prepared with the assistance of the Secretary-General's Special Adviser on issues related to the responsibility to protect, Edward Luck. Luck was appointed in February 2008 to consult with Member States on the best approach for implementing the Responsibility to Protect (R2P). The report specifically notes, in a section entitled "Pillar Two: International assistance and capacity-building," that:

has not proven to be true. Thus, if it is to continue intervening and undertaking SROs, the "international community" must develop an adequate "international capacity" to appropriately provide governance and rule of law "capacity-building" assistance.[58] To do so, members of the "international community" must share their "lessons learned" and "capacity-building tools with one another. They must train together. They must create effective combined, joint and inter-agency capacity-building doctrine. They must enter into a more coherent dialogue with one another—particularly with regard to what "works" and what does not. Most importantly, they must engage "the academy" in a credible *dialogic approach* whereby continual discourse is fostered not only between academics and policy makers, but also between academics and "nuts-and-bolts" capacity-building actors. In short, "the academy" needs to become more relevant not only to one another, but also to the day-to-day "capacity-builders" who are actually undertaking the very difficult "business" of stability and reconstruction. Such an approach would not simply make academics available to answer, correct, silence, or extend each others' previous work, but would also enable them to inform and continually be informed by the previous —and present— work of capacity-building implementers.[59] Unfortunately, successful governance and rule of law capacity-building does not lend itself to simple solutions; it does not lend itself to easy imposition mechanisms; it does not lend itself to simple training modules; and it certainly does not lend itself to previously oft-asserted academic pronouncements advocating the type of "Central-ist," "National-level-ist," "Constitutional-ist," "Election-ist," "Suffrage-ist," "War Crimes Just-ist," "Free Market-ist," "Enlightened Occupier Govern-ist" approaches applied in the past. Thus, a new, pragmatic, "small is beautiful," academic-implementer-academic *dialogic approach* must be encouraged and brought into play *vis-à-vis* complex governance and rule of law capacity-building SRO engagements.

III. BUILDING THE RULE OF LAW

In addition to capacity, the impetus to intervene also implies a core belief by the

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The international community should, as appropriate, encourage and help States to exercise this [responsibility to protect] responsibility.'. . .We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out. These provisions suggest that this assistance could take one of four forms: (a) encouraging States to meet their responsibilities . . . ; (b) helping them to exercise this responsibility . . . ; (c) helping them to build their capacity to protect . . . ; and (d) assisting States under stress before crises and conflicts break out. . . . While the first form of assistance implies persuading States to do what they ought to do, the other three suggest mutual commitment and an active partnership between the international community and the State.

Id. ¶ 28 (quoting G.A. Res. 60/1, ¶¶ 138–40, U.N. Doc. A/RES/60/1 (Oct. 24, 2005), *available at* http://www.responsibilitytoprotect.org/files/2005%20World %20Summit%20Outcome%20Document.pdf.

   [58]   *Accord* 2010 National Security Strategy, *supra* note 56, at 14.

To succeed, we must update, balance, and integrate all of the tools of American power and work with our allies and partners to do the same. . . . We must invest in diplomacy and development capabilities and institutions in a way that complements and reinforces our global partners.

Id.

   [59]   *See generally* the essays of M.M. Bakhtin, *reprinted in* THE DIALOGIC IMAGINATION: FOUR ESSAYS BY M.M. BAKHTIN (Michael Holquist ed., Caryl Emerson & Michael Holquist trans. 1981).

"international community" that it has the desire to enable or enhance reliable relationships between world actors. If this is true, then one way to ensure relational reliability is to enhance—or where missing, build—the rule of law. This said, developing rule of law societies is an ends rather than a means. Thus, building the rule of law requires more than simply applying a mechanistic training approach, and it certainly requires more than a top-down imposition of constitutions and national level laws. The "bottom line" is that societal rule of law does not grow organically through centralized, top-down, interventions. Instead, it must be systematically developed from the bottom-up, it must be nurtured, and it must be sustained.[60] Simply put, building the rule of law cannot be an after-thought—or a cynical short-term "exit strategy" mechanism.[61] Instead, in any successful SRO capacity-building endeavor, "cabbage"-issue related governance and rule of law capacity-building must be core elements of the business.[62]

Frankly, there is a dearth of learned discourse on the most appropriate pragmatic approach(es) to undertake when building the rule of law. This said, what scholarship is available is not particularly helpful to implementers on the ground. For example, *theoretical* academic debates on whether the "international community" should focus on *formalist* structural approaches, or take comprehensive *substantive* approaches (i.e., importing values into rule of law that are somewhat based on international consensus) do not particularly help implementers decide whether to concentrate on imposing centralized national level laws (as was done by the Coalition Provisional Authority in Iraq),[63] or whether to assume a more decentralized, bottom-up approach

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[60]   JANE STROMSETH ET AL., CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 181 (2006).

[61]   Gideon Rose, *The Exit Strategy Delusion*, 77 FOREIGN AFF. 56, 56–57 (1998).

[62]   Although scholars have yet to arrive at a consensus of exactly what "rule of law" means, Richard Fallon has proposed three values of rule of law that provide a starting point for discussion. That is, rule of law: 1) protects people against anarchy; 2) it allows people to plan their affairs with confidence because they know the legal consequences of their actions; and 3) it protects people from the arbitrary exercise of power by public officials. STROMSETH ET AL., *supra* note 60, at 69–70.

[63]   *See, e.g.*, CPA Order No. 11, CPA/ORD/8 June 2003/11 (regarding licensing telecommunications services and equipment), CPA Order No. 12, CPA/ORD/7 June 2003/12 (establishing a trade liberalization policy, later rescinded), CPA Order No. 20, CPA/ORD/14 July 2003/20 (establishing a Trade Bank of Iraq), CPA Order No. 22, CPA/ORD/7 August 2003/22 (creating a new Iraqi Army), CPA Order No. 23, CPA/ORD/7 August 2003/23 (creating a Code of Military Discipline for the new Iraqi Army), CPA Order No. 24, CPA/ORD/13 August 2003/24 (establishing a Ministry of Science and Technology), CPA Order No. 36, CPA/ORD/3 October 2003/36 (regarding the regulation of oil distribution), CPA Order No. 39, CPA/ORD/19 September 2003/39 (regarding foreign investment), CPA Order No. 43, CPA/ORD/14 October 2003/43 (issuing new Iraqi Dinar Banknotes), CPA Order No. 54, CPA/ORD/24 February 2004/54 (establishing a new trade liberalization policy), CPA Order No. 64, CPA/ORD/19 February 2004/64 (amending Company Law No. 21 of 1997 (Iraq)), CPA Order No. 68, CPA/ORD/4 April 2004/68 (establishing a Ministerial Committee for National Security, essentially an Iraqi national intelligence service), CPA Order No. 74, CPA/ORD/18 April 2004/74 (establishing an interim law on securities markets), CPA Order No. 76, CPA/ORD/20 May 2004/76 (regarding consolidations of state-owned enterprises), CPA Order No. 80, CPA/ORD/26 April 2004/80 (amending the Trademarks and Descriptions Law No. 21 of 1957 (Iraq)), CPA Order No. 81, CPA/ORD/26 April 2004/81 (amending the Patents and Industrial Designs Laws and Regulations No. 65 of 1971 (Iraq)), CPA Order No. 83, CPA/ORD/29 April 2004/83 (amending Copyright Law No. 3 of 1971 (Iraq)), and CPA Order No. 89, CPA/ORD/5 May 2004/89 (amending the Labor Code Law No. 71 of 1987 (Iraq)), *available at CPA Official Documents*, THE COALITION PROVISIONAL AUTHORITY, http://www.iraqcoalition.org/regulations /#Orders (last visited May 12, 2011) (cataloguing the 100 orders issued by the Coalition Provisional Authority in Iraq, a temporary/transitional occupying force, between May 16, 2003 and June 28, 2004).

as advocated herein.[64]   Such deficiencies in the academic literature should be rectified. Conversely, there should be more *pragmatically* focused academic discourse on "nuts and bolts" formalist versus substantive issues, such as whether the rule of law can actually be promoted through the use of clearly defined institutions. Similarly, there should be more pragmatically focused *dialogic* discourse on whether the "international community" should focus its SRO rule of law capacity-building efforts on such substantive issues as the extent to which autonomy should be left to post-conflict states to fill in the rule of law according to their own norms and values. Specifically—given the lack of consensus on the issue—rule of law practitioners could use significantly more *pragmatic* advice on methods of determining whether SRO rule of law interventions, in locations such as Afghanistan, must as a matter of doctrine, incorporate a broad spectrum array of substantive issues, including human rights.[65] The "bottom line" is that while theoretical academic debates of "kingly" issues may be theoretically useful in terms of implementing rule of law systems, "the academy" would be of even more relevant to practitioners if it concentrated some of its effort on the actual methods by which such rule of law systems— including systems to deal with "cabbage issues"—come into place.

In the meantime, there needs to be more learned examinations of, and discourse on, the mechanisms and personnel required for implementing rule of law. In particular, practitioners need more pragmatically focused discourse on the meaning and implementation of "capacity-building." They need assistance on understanding the exact nature of rule of law capacity. They need to know what it specifically takes to help build rule of law societies. For example, anecdotal experience has shown that stand-alone sector-specific trainings (e.g. coalition military and private military contractor trainings of judges) are not sufficient to create a "rule of law societies." In fact, when poorly timed, poorly coordinated, poorly conducted, and/or inadequately reinforced, they may actually be counter-productive to establishing a rule of law society.[66] Likewise, anecdotal experience demonstrates that rule of law capacity-building needs to be long-term and embedded in processes that are owned and driven by external as well as internal actors (such as universities and law schools). In short, capacity-building needs to be context-specific and more facilitative rather than interventionist. And yet, millions of dollars and years of effort have been expended on such means and mechanisms as military/contractor-driven rule of law trainings of judicial and other law enforcement personnel. So, where is the dispositive learned literature to validate—*or not*—such efforts? And where is the scientific research to aid them—or other— practitioners on how to proceed?

With regard to the "kings" versus "cabbages" issue, the learned literature is sparse.

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[64]   *See* STROMSETH ET AL., *supra* note 60, at 83 (advocating for "effective local participation in decision-making").

[65]   *Id*. at 71.

[66]   *See* Hoekstra & Tucker, *supra,* note 3, at 19, 22.

> [P]remature uncoordinated, ill-executed, and poorly articulated international SRO responses may also backfire since they can unreasonably raise local expectations (which cannot possibly be met) and lead to the opinion that the international community may have the wherewithal to help, but not the inclination. . . . Simply put, in the past, when nonkinetic stabilization and reconstruction efforts have been placed under the operational control of the military, interagency civil engagement and reconstruction priorities have often been left unrealized. For this reason, in future SROs, as soon as security allows, it will be vital to prioritize and institutionalize State Department input into DOD decisionmaking.

Id.

Much more could – and should – be written on the subject. Until that time, the United Nations Development Programme ("UNDP") provides a good starting point for evaluating the issue by defining capacity-building as, "the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time."[67] The UNDP goes on to highlight three levels of capacity: 1) the enabling environment; 2) the organizational level; and 3) the individual level.[68] Significantly, the UNDP notes that capacity *at the individual level* is the most important and most neglected of these levels. Perhaps more learned dialogic discourse would help prove—or disprove—this assertion.

IV. CONCLUSION—FACILITATING THE DEVELOPMENT OF RULE OF LAW CULTURES

"[T]he rule of law is a matter of cultural commitments as much as a matter of formal institutions and legal codes. . . ."[69] Thus, facilitating the development of effective governance and the rule of law requires going beyond traditional academic and top-down approaches that mainly focus on centralized national level legal forms and institutions. Further, successful governance and rule of law capacity-building requires a willingness to focus on long-term initiatives—not short term exit strategies. And even more significantly, successful governance and rule of law capacity-building programs must provide *at least some* significant level of focus on "cabbage issues," such as civil law (vice criminal law) enhancement (i.e., business law, family law, property law & etc., rather than a nearly exclusive enhancement of criminal law systems), enhancing legal education, creating for-profit and *pro bono* community-based/university-based law clinics, and the linking of formal legal institutions (including universities) with traditional civil society organizations and practices.

In the meantime, the importance of including civil society organizations in this process cannot be over stated. Such organizations help bridge the gap between formal legal institutions and local populations. They can serve as watchdogs to help keep formal legal institutions honest and ensure institutional injustices are ameliorated.[70] This said, since civil society organizations vary enormously in quality, it is also important to identify—*and then communicate with*—well functioning organizations that "can help identify needs, disseminate information, prevent disputes . . . and be a locus for community-based initiatives."[71] Likewise, other quasi-official groups, such as local bar associations and judges associations, can also be helpful in strengthening rule of law in post-conflict societies. These organizations—if appropriately resourced and monitored—can provide training programs, judicial exchanges, and codes of conduct for their members. However, their ultimate value depends on their accountability, transparency, and commitment to high ethical standards.[72] The "international community" can play an important role in ensuring they do so.

Finally, for any governance and rule of law capacity-building SRO to be a success,

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[67]   UNITED NATIONS DEVELOPMENT PROGRAMME, FREQUENTLY ASKED QUESTIONS: THE UNDP APPROACH TO SUPPORTING CAPACITY DEVELOPMENT 3 (June 2009), *available at* http://content.undp.org/go/cms-service/download/asset/?asset_id =2072460.

[68]   *Id*. at 5.

[69]   STROMSETH ET AL., *supra* note 60, at 325.

[70]   *Id*. at 330.

[71]   *Id*. at 331.

[72]   *Id*. at 332–33.

enhancing the legal education capacity of the "client state" is critical. This is particularly true with regard to long-term sustainability issues. In many post-conflict settings, law schools and the legal profession are in need of significant reform.   Participatory education and improved integration between law schools, lawyers, legally oriented NGOs, and the larger local and "international" communities can help to create a stable legal system. There are many things the "international community" can do to help achieve this goal. Some examples include expanding participatory training and improving integration of law schools with legal professions, NGOs, and the larger society. Producing publications on human rights and international law can also bring more awareness to these issues and allow citizens to devise feasible ways to address these topics. The expansion and improvement of law libraries can assist young lawyers in engaging directly with the law. Moreover, assisting law schools to develop a suitable curriculum that reflect local sensibilities, while at the same time fitting into the larger international context, can lead to long term sustainability.[73]

The "bottom line" is that the "international community" and "academy" must put local people at the center of governance and rule of law capacity-building development. It is not sufficient, acceptable, or sustainable to design policies and programs in isolation of local citizens. Clearly, international government institutions and academia will—and should—debate such "kingly issues" as the forms of democracy, federalism, and constitutionalism that would best serve post-conflict societies. However, they—we—should also be mindful that such "kingly ideals" are the end state—not a genesis—of successful engagement.

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[73]   *Id*. at 333–34.