POLICY RESEARCH WORKING PAPER   5707

Intersubjective Meaning and Collective Action in 'Fragile' Societies

Theory, Evidence and Policy Implications

Varun Gauri
Michael Woolcock
Deval Desai

Abstract

The capacity to act collectively is not just a matter of groups sharing interests, incentives and values (or being sufficiently small), as standard economic theory predicts, but a prior and shared understanding of the constituent elements of problem(s) and possible solutions. From this standpoint, the failure to act collectively can stem at least in part from relevant groups failing to ascribe a common intersubjective meaning to situations, processes and events. Though this is a general phenomenon, it is particularly salient in countries characterized by societal fragility and endemic conflict. We develop a conceptual account of intersubjective meanings, explain its relevance to development practice and research, and examine its implications for development work related to building the rule of law and managing common pool resources.

Intersubjective Meaning and Collective Action in 'Fragile' Societies: Theory, Evidence and Policy Implications[1]

Varun Gauri, World Bank

Michael Woolcock, World Bank

Deval Desai, World Bank

Introduction

This paper explores the significance of the concept of 'intersubjective meaning,' or 'intersubjectivity,' for developing countries generally, but particularly those characterized by 'societal fragility'.[2] By intersubjective meaning we refer to the extent to which multiple relevant actors share a common subjective understanding of the nature of the problems they face, and the possible solutions to those problems. For example, facing persistent questions about the legitimate use of public resources, it matters whether key actors regard the giving of such resources to associates as corruption or upholding a social norm; all parties can share, as an ethical value and policy aspiration, a desire for public servants to be prudent stewards of resources entrusted to them, even as their actual responses to this desire, and its perceived legitimacy by internal and external actors, can vary considerably.[3]

Countries characterized by 'societal fragility' are those that possess, among other things[4], numerous qualitatively different ways of understanding and prioritizing their core problems and solutions. So understood, societal fragility – or its opposite, social cohesion – is not a static, immutable property of a country or an essentialist characteristic of a particular 'culture', nor something that is axiomatically a function of ethnic diversity or 'linguistic fractionalization' (however defined or measured); it is, rather, *a socially constructed and historically produced administrative capacity*, which is to say, a capacity that varies over time and is forged (or squandered) in the crucible of domestic politics and legal systems, in response to internal and external challenges. For example, though Indonesia is a quintessentially 'imagined community' (Anderson 1983), so named because it has a national coherence that belies its status as one of the most culturally diverse and geographically dispersed countries in the world, its remarkably rapid and peaceful 'triple transition' since 1997 – from autocracy to democracy, from command to market economy, from centralized to decentralized administration – can be properly interpreted not only as a product of 'effective policy choices', but its social cohesion, on which the design and implementation of these policies rests. In short, Indonesia's social cohesion has manifest itself in a capacity to generate and sustain over time a legitimate domestic political consensus about the

---

[2] Intersubjectivity may refer to emotions and mental states whose meanings are absent, weak, or contested; but for this essay, we use the terms interchangeably.

[3] Having discussed several differences between Western and Middle Eastern understandings of "corruption", Rosen (2010: 81) concludes by arguing that "[f]or Afghans to understand corruption as Americans do more or less entails their having to experience the whole web of religious, social and economic concepts that Americans have experienced. That really is asking too much."

[4] Other such factors can include high economic inequality, a weak 'rule of law', endemic poverty, and pervasive crime.

nature of the problems it confronts, which of its many such problems to prioritize, and how to manage the inherently difficult trade-offs and distributional consequences associated with realizing possible solutions to them.[5]

This thesis has direct relevance for development practice. For some time, it has been apparent that the quality of governance is of crucial importance for development outcomes, that, as Rodrik et al (2004) put it, "institutions rule". As a consequence, the avowed goal of current development practice and analysis is typically less to "get the prices right" than to get the institutions right. This aspiration holds across a variety of sectors, including basic service delivery, infrastructure provision, trade policy, and financial regulation, as well as for national political institutions more generally. But it is by now well-recognized that if institutions are to be understood as "the rules of the game" (North 1990), the rules consist not only, and perhaps not primarily, of the formal, written rules that govern the functioning of organizations, but the informal practices and "political cultures" that shape the behavior and expectations of people who interact with those organizations (Fukuyama 2004, 2011).[6] This means that the external analyst, or policymaker, cannot and should not make recommendations for institutional change based simply on the way that new formal incentives are expected to affect behavior, but also needs to analyze repeated practices and the shared meanings that underlie them, however unclear their basis in observable incentives.

Two examples might help illustrate this. In public health, the observed obstacles to raising immunization rates include, on the demand side, the travel and opportunity cost that mothers incur when they bring children to vaccination sites. Policymakers typically respond by providing childhood vaccines for free and extending their provision to outlying health posts. But the resistance to immunization can also include factors such as the historically constructed social position of women, which affect their ability to control family resources (Caldwell 1986), as well as the experiences of rural inhabitants with colonial and national efforts to sterilize populations and otherwise limit fertility, which make them distrustful of modern medicine (Connolly 2008). Moreover, resistance to immunization can

---

[5] Of course, whether and how this cohesion withstands subsequent challenges – which could emerge in the wake of either development failure (recession, civil war) or success (expanding education, infrastructure and telecommunications) – remains to be seen.

[6] Briggs (2008: 22) usefully argues that, even if institutions are understood in Northian terms, we need to go beyond the narrower (if more technical) analyses of game theory – which focuses on "how the players play particular games" – to ask "why those games, and not others, arise in the first place, why some players, and not others, get to play, how rules of engagement shift . . . and how players acquire the resources – both tangible and intangible – with which to play."

also be driven by people's understandings of the core mechanisms that determine one's health and illness (Nichter 1995), which can range from physiology to ancestors to spirits to fate. Thus, the obstacles to raising immunization rates are not simply straightforward economic costs, but the meanings that potential recipients ascribe to the practice of immunization itself, which are heavily conditioned by historical experience and a host of (not readily observable) cultural phenomena.

Land administration provides another telling example. For most contemporary development professionals, 'land' is a commodity to be bought, sold and 'improved', an economic resource with exchange value determined by the security of the title to it ('property rights') and its prevailing market price. That is certainly one meaning of 'land', but both in the past and still today land can mean something else entirely, which in turn can be a basis for serious conflict when these different meanings interact. In his masterful discussion of the development of land transactions in colonial New England, for example, Cronon (1983: 70) astutely observes that the Indians "thought they were selling one thing and the English thought they were buying another". For the Native Americans, 'land' was named for its functional purpose ("at or near the cleared lands"[7]), not nostalgic longings of towns back in Britain (Ipswich, Gloucester, Manchester); *groups* could grant *access* (usufruct rights) to land, but the very notion that *individuals* could have exclusive *ownership* of it (property rights) was inconceivable – land was intimately associated with collective identity, connections to ancestors and the procurement of livelihoods.[8] Disputes borne of such ontologically discordant understandings of 'land' continue to play out today. As the World Bank has recently learned the hard way in Cambodia, the disbursement of property titles, even (or especially) to ostensibly public land, is not merely a complex logistical exercise, but a task that requires detailed ongoing attention to managing the evolving local politics and contentious claim-making that necessarily accompanies any effort to alter the status of 'land'.[9]

These examples notwithstanding, one may ask: given that here is surely no shortage of weighty and pressing matters to ponder in development, why allow oneself to be distracted from enhancing

---

[7] This is the Indian name corresponding to Plymouth County, Massachusetts (Cronon 1983: 65).
[8] Cronon (1983: 75) goes on to note that "[t]o the abstraction of legal boundaries was added the abstraction of price, a measurement of property's value assessed on a unitary scale. More than anything else, it was the treatment of land and property as commodities traded at market that distinguished English conceptions of ownership from Indian ones."
[9] The World Bank's news release on the serious societal tension surrounding this project, its eventual cancellation and subsequent review by the Inspection Panel, is available at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/LMAP_press_release.pdf?&resourceurlname=LMAP_press_release.pdf

economic growth, building infrastructure, improving health, education, governance, irrigation and agriculture etc in favor of a complex, subtle issue? The answer is: Because the *fact*, not merely the truism, that different people see the world in different ways – and do so for reasons that go beyond having contrasting interests, incentives and 'values' (as is typical of orthodox disputes between domestic political parties or professional groups) – is a key factor in explaining collective action failure, and such failure is central to explaining how countries (and groups) respond to both shocks and opportunities, which in turn is crucial to explaining long- and short- run development trajectories (Rodrik 1999). Put differently, societies characterized by low levels of shared intersubjective meaning will be more likely to suffer from pervasive collective action failures[10], which in turn will undermine their capacity to respond to challenges and opportunities alike; it is in this sense that such societies can be 'fragile'.[11] In making the connection between intersubjectivity and collective action, we hope to show in this paper that intersubjective meaning is logically and empirically *prior* to interests, incentives and values, which (along with group size) are the standard referents in economic theories of collective action failure.

The paper proceeds as follows. In Section One we further develop the notion of intersubjective meaning and its significance for development. Section Two applies the concept to two prominent accounts of collective action and to three related areas of development thinking and practice: (a) North, Wallis and Weingast's (2009) historical account of collective action for minimizing violent conflict and developing the rule of law, (b) Ostrom's (1990, 2005) account of the management of common pool resources, and (c) donor work on the rule of law. The section aims to show how leaving intersubjectivity out of social scientific explanations of collective action failure leave significant lacunae in the explanatory narratives. Section Three concludes by summarizing the implications of our argument for development policy in fragile societies.

I.   *Understanding and Applying Intersubjectivity's Analytical Foundations*

The French revolutionaries of 1848 chose the now-famous trilogy "Liberte, Egalite, Fraternite" as the motto for the Second Republic, inscribing it on everything from letterheads to official buildings. At the onset of the Second Empire just four years later, however, Louis-Napoleon ordered the erasure of the

---

[10] Mansuri and Rao (2011) refer to this as 'civil society failure', to distinguish it from (but include it in the same vernacular frame as) the more familiar notions of market and state failure. Our focus on intersubjectivity and collection action failure could be construed as a sub-set of the broader notions of civil society failure.
[11] On this point, see the related arguments in Rodrik (1999) and Easterly, Ritzen and Woolcock (2006).

motto wherever possible. But after Parisian leaders had painted the phrase on the walls of the Commune in 1870 (followed by "ou Mort"), the Third republic readopted it, despite the misgivings of many who thought it implied a leveling of society. Under German occupation, the government replaced the trilogy with another: "Work, Family, Fatherland." Finally, the words reappeared in the 1946 and 1958 French Constitutions, and now have become the national motto.[12]

What can be learned from this controversy? For many social scientists, particularly methodological individualists, the answer would be: Not much. From this standpoint, changing a motto might signal to supporters and rivals that a particular French faction has in fact achieved power, but the ideational content of the motto – the significance of using, say, "fraternité" rather than one of the proposed alternative terms for the sense of French collective understanding (e.g., "unité," "force") – is unlikely to be taken seriously as a causal factor in historical and political explanation. We question that working assumption. The burden of this paper is to develop an account of how shared meanings arise, and demonstrate how they constrain and enable certain forms of collective action.

Intersubjective meanings are concepts, arguments, beliefs and judgments that cannot be attributed to individuals; rather, they are the shared property of groups of human beings. The reason that they cannot be the property of a single individual is that they are not abstractions inside one's head (as in, for instance, a picture one might have of heaven), but are rooted in the rules that govern social practices. They both arise from and are constitutive of coordinated social action, and would not exist in the form that they do were it not for the particular forms of coordination that prevail in a society.

Further illustrations from a variety of fields might be helpful. Bodily and mental health, for instance, are difficult to assess without a widely shared understanding of the normal range of physical and mental experience. The range of activities that a society typically expects its members to perform, and the attendant social judgments, constitute the primary standards against which one assesses one's own (and others') "health." More concretely, they provide the benchmarks for evaluating the sufficiency and "healthiness" of a person's physical attributes (e.g., anatomy, height, weight, range of motion) and mental experiences (e.g., a unified identity, self-control).[13] In a related way, knowledge claims, whether

---

[12] See http://www.diplomatie.gouv.fr/en/france_159/institutions-and-politics_6814/the-symbols-of-the-republic_2002/liberty-equality-fraternity_1503.html
[13] See Brown (1995) and Payer (1996) on the social construction of medicine and medical concepts. See also Watters (2010) on the manner in which Western mental health professionals, via their 'definitive' *Diagnostic and Statistical Manual of Mental Disorders IV* (DSM IV), have dramatically altered how the rest of the world comes to

one's own or those of another, rely on concepts such as "certainty," "confidence," or "falsifiability," whose meanings derive from the coordinated social practices of scientific investigation (see Kuhn 1970, Lakatos 1978). Perhaps the most familiar forms of intersubjectivity arise in psychology. Psychic states such as love and friendship require not only mutual affection but a resonating with the emotions and the inner world of an intimate – grasping, at least for a moment, each other's state of mind. In other words, they require not only mutual affection but the mutual recognition of mutual affection (Stern 2004, Ornstein 1991), a recognition which in turn is supported by social practices such as courtship, the intimate marriage, and the nuclear family.

Although sidelined in rational choice accounts of history and social and political phenomena, intersubjectivity is hardly unrecognized in social theory more broadly. Wedeen (2002) summarizes the work of social, political, philosophical, and anthropological theorists who have developed accounts of socially rooted meaning-making practices (see also Swidler 1986). It would be easy to multiply the examples.[14] Still, intersubjectivity remains marginal in development, which remains heavily influenced by standard welfare economics. In the remainder of this section, we focus on the theoretical underpinnings of intersubjectivity rather than specific examples, and for this we primarily follow accounts from Charles Taylor (1985, 1992, 1995a, 1995b) and Pierre Bourdieu (1980).

It is useful to start with criticisms of intersubjective meanings. From a certain point of view, it is flatly commonsensical that meanings must be located within the minds of individuals rather than in societies. After all, all social phenomena – including laws, customs, roles, and norms – would not exist if individuals did not. No individuals, no societies. So in some sense it looks as though individuals are the causal agents in the construction of social meaning. Taylor (1995a), however, takes aim at forms of "atomism" such as this. He locates their principal theoretical source in welfare economics, which holds that value judgments ought to be based on outcomes, and particularly on the raw, uninterpreted happiness or utility that they provide to individuals in their subjective experience. Importantly, the utilities to be weighed in such states of affairs are those of individuals. So welfare economics supports the more broadly individualist argument for locating meanings in individual minds when it holds that, in the last analysis, all goods are the goods (and products) of individuals.

---

understand and respond to mental health concerns (e.g. donors presuming that all tsunami survivors in Sri Lanka must have suffered 'Post Traumatic Stress Disorder', which in turn led to millions of dollars being spent on the deployment of counselors and therapists – except that Sri Lankans themselves, it turned out, seemed not to be 'suffering' from this condition at all).

[14] See for instance Swidler and Watkins (2010) and Hall and Lamont (2010).

There is a qualification: welfare economics recognizes public goods. For example, it may, with available technology, be impossible for one ship to benefit from a lighthouse without many others benefiting as well. But, as Taylor notes (1995a: 129), the ultimate value of a public good in welfare economics – such as a lighthouse, a dam, a road, or national defense – derives from the value (utility) it has for individuals. The public good remains "decomposable" into a set of hypothetical goods available to individuals; if there were no people, one would not easily conclude that the lighthouse were a "good" at all.

Taylor argues that this approach – in which *all* goods are located in individual minds – is fundamentally mistaken. In particular, it fails to take account of the peculiar nature of thoughts. Thoughts exist against a background dimension of meaning and "require a background of available meanings in order to be the thoughts that they are" (p. 131). In other words, there is an analogy between thinking and making a move in some rule-governed human activity in which questions of validity and invalidity arise, such as a game. Taylor notes that it makes no sense to speak of a queen-side castle in checkers. Similarly, when a bad historical movie portrays a neolithic villager who is happy to have a "sophisticated" lover, it is jarring. Nothing the villager could say could *count* as describing someone as "fulfilling" or "sophisticated" because the whole way of classifying things as "fulfilling" or "sophisticated" did not exist for him (if we are right about his world). His language lacked the resources to make those judgments. And the lack wasn't contingent – there is no way to imagine a way around it (as in the failure of neolithic villagers to build pyramids, which might have been different had they had a larger labor force). The impossibility of conceiving such an event suggests that validity is at play.

Taylor argues that meaning events are to be distinguished from plain events. Meaning events exist in two-dimensional space – a communication takes the meaning it does only against the background of shared meanings. One way to understand this is to draw on Saussure's linguistic distinction between *langue* (the abstract systematic principles of a language) and *parole* (an individual speech act). To understand individual speech acts, you have to understand the rules of the language in which they are expressed. This is analogous to the game of chess. To understand the meaning of particular move, you have to understand the rules of the game and the set of meaningful moves to which those rules give rise. But there is an important distinction between games like chess and human language. The acts of *parole* all presuppose the existence of *langue* and make no sense without it, but the latter is constantly recreated in acts of *parole*. In other words, speech acts have the ability to change

the language itself, whereas a chess move will not change the rules of chess. And most relevant for the purposes of the present paper, the abstract systematic principles of a language affect the ways in which individuals speak and think – they have a causal relationship to every individual speech act – even if those rules cannot be located in the mind of any single individual. No individual could internalize all of the explicit and implicit rules of a system of language, with all its variation and dynamism. Rather, the abstract principles of language arise from the coordinated practice of communication. Even if, over time, *langue* has taken the shape it does through acts of *parole*, it does not mean that *langue* is decomposable into all of the speech acts that have been made in human history – the speech acts that have shaped *langue* were what they were only against the background of the *langue* of their day.

Taylor argues that although Saussure's distinction is about language, the same could be said of other phenomena in social life, such as roles, laws, offices and statuses. Expressions regarding them, and judgments and social debates about them, share the same two-dimensional structure of speech acts; in other words, they only make sense against a specific set of shared background understandings and practices. As in the case of language, these shared background meanings and practices are not decomposable. They are not merely accidentally or contingently related to those judgments and experiences; rather, those judgments and experiences could not exist without them. By contrast, it is quite possible to imagine the benefits that public goods bestow on individuals without the public good itself – elevated homes and new crops conceivably might provide as much value as a dam. But if one values a fulfilling life, there is no substitute for the shared meanings and practices in which 'fulfillment' is conceivable.

But then the question arises, where does this shared set of social and political background meanings reside, if not in individuals? Taylor contends that intersubjective meanings in social and political life arise from coordinated social practices. "The meanings and norms implicit in these practices are not just in the minds of the actors but are out there in the practices themselves, practices which cannot be conceived as a set of individual actions, but which are essentially modes of social relation, of mutual action" (Taylor 1985, p. 36). In other words, one cannot separate out actions and their causes (such as incentives) from the cultural background that gives meaning to those actions. As Tilly (1999: 20) puts it, culture and structure are two parts of the "same stream of transactions".

When struggling to make sense of shared background meanings that are not the property of individuals, analysts are often tempted by two degenerate conceptualizations of culture. First is the

notion that groups or societies think in a kind of mystical, quasi-Hegelian fashion. Here one imagines a thick culture that, like an ether, pervades and determines history. Second, some analysts (particularly methodological individualists using surveys to get at meanings and identities), take the view that culture inheres within the minds of individuals as an essence. Methodological individualists typically look for correlations between self-reported beliefs and behavior at the individual level (e.g., are members of a particular religion more likely to exhibit altruism?). In contrast to these views, we want to emphasize an account in which intersubjective meanings are a necessary consequence of the structure of meaning *events*, which require a shared background – or what Taylor (2003) calls 'social imaginaries' – to take the form that they do. When individuals make political, social, and economic choices, their expression takes the meaning it does because the individuals themselves – *as members of a community or communities* – know the social background, and those who interpret their choices are confident of the meanings they ascribe to the choices because they know that the individuals who have acted are acting against the shared social background. As Taylor (1985: 40) famously puts it, "What the ontology of mainstream social science lacks is the notion of meaning as not simply for an individual subject; of a subject who can be a 'we' as well as an 'I'."

Because many analysts view shared meanings as cultural essences rather than interpretations of coordinated social practice, there is a tendency to emphasize their role in the construction of ethnicities, group boundaries and identities. But it is important to emphasize that intersubjective meanings involve much more than group identities. Rather, they are constitutive for the full variety of spheres in which coordinated social action occurs, including social relations, politics and governance, economics and exchange, and spiritual practice. In Indonesia, for example, the practice of deliberation leading to a social agreement is called *musywarah*. Most notably for our purposes, *musywarah* is not mere bargaining, in which various private interests are weighed against each other on the basis of (more or less equal) positions of leverage and using (more or less fair) processes of aggregation. Rather, *musywarah* is a process of deliberation regarding private concerns that engenders its own legitimacy; in fact, in some accounts, it is an alternative to voting.[15] This language for the description of deliberation in Indonesia enables an experience of organicism in society more difficult to achieve in, say, England, but disables the widespread use of court-based adjudication.

---

[15] See Gibson and Woolcock (2008) for a discussion of the role of development projects in shaping the terms of public deliberation regarding resource allocation and community disputes between high and low status groups in rural Indonesia.

But what is true of Indonesia is also true of the North Atlantic world, in which the full array of social and economic practices that mainstream economics, political science, and other social sciences assume are the natural behavior of human beings in fact depend on historically constructed intersubjective meanings. Bargaining and negotiation, for instance, are not natural phenomena; rather they are social practices of relatively recent invention. Negotiating in the sense that we use the term today requires a set of understandings about good faith, autonomy, what it means to break off negotiations, how to enter into negotiations. People cannot bring into negotiations the set of ideas and norms constitutive of negotiations themselves. "These must be the common property of society before there can be any question of anyone entering into negotiation or not" (Taylor 1971: 27). And these practices were developed over the course of history.

For development theory and practice, this account of intersubjectivity has three general implications. (The sections below describe two more specific implications for the understanding of conflict and common pool resources). First, the methods used to grasp the sources of meaning need to go beyond surveys and questionnaires. Surveys and questionnaires usefully identify the beliefs, opinions, and evaluations in the minds of individuals, but the shared background understandings necessary for establishing meaning events rarely receive full articulation in the minds of individuals; rather, meaning events come to full articulation in particular social contexts. Surveys that aim to elicit them often fail because they typically do not operate in such a way that the respondent can access them at will.[16] An understanding of intersubjectively constructed concepts requires further ethnographic, historical, and interpretive work. In particular, social cohesion and "consensus" are not based in simultaneously held concepts in people's minds, as evidenced by identical answers to standard questions; in reality, evidence of cohesion, consensus, and shared intersubjectivity is to be found in regularities of physical behavior, communicative style, and social organization. For instance, hierarchical understandings of a society may be more readily observed by looking at how people hold their bodies, when confronted with an authority figure, than by asking people to answer a survey.

---

[16] We note that recent work deploying 'anchoring vignettes' (e.g., King et al 2004) within household surveys assessing cross-national phenomena goes some way to addressing this concern. The methodological role of such vignettes, however, is largely to enhance the construct validity of survey questions (i.e., the extent to which a given concept, such as 'government effectiveness', elicits comparable responses in different contexts). Our concern with meaning events is broader, including the extent to which survey respondents recognize surveys themselves as a legitimate means of determining, comparing and disseminating knowledge (and, in turn, shaping policy).

The second implication involves what it means to follow a rule, and our understanding of institutions. Taylor notes that for any given rule, even one as narrow as a mathematical one, the number of potential misunderstandings is endless, and cites Wittgenstein's example: "We could imagine someone to whom we teach a series by giving him a sample range, say 0, 2, 4, 6, 8, . . . He might carry on quite well till 1000, and then write 1004, 1008, 1012. He is indignant when we tell him he's got it wrong. He misunderstood our sample range to be illustrating the rule: 'Add 2 up to 1000, 4 up to 2000, 6 up to 3000, and so on.'" The same is true of all kinds of rules. If you want explain how to get into town, you might tell someone to just follow the arrows, but how are they to know they are to follow the point of the arrow rather than the feathers? And of course, it is even more problematic for laws and norms, which admit of enormous variation in interpretation. Any explanation of what 'following a rule' means will leave some issues unresolved, which require further explanation, ad infinitum. And yet people do seem to understand how to follow rules, and social coordination does take place. How do people know what a rule requires them to do?

Taylor's answer is that following rules is a social practice rather than a cognitive activity or what rational choice theorists would call "common knowledge". To illustrate, he repeats Wittgenstein's rhetorical question: "Is what is called 'obeying a rule' something it would be possible for only *one* man to do only *once* in his life?" People do frame understandings and representations of what the world is like, what they are doing, what they aim to do, and what is expected of them. "But much of our intelligent action in the world, sensitive as it usually is to our situation and goals, is carried on unformulated. It flows from an understanding that is largely inarticulate" (Taylor 1995b: 170). Taylor contends that shared understanding is embodied, rooted in the ways that social practices inscribe knowledge into people's non-cognitive awareness and habitual activities. It is possible to know how to get around a place without being able to draw a map of it. Moreover, that practical knowledge about how to get around a place includes knowledge that a map does not: it includes an awareness of how events and movement are supposed to unfold in time. Knowledge is embodied. A person might exhibit deference through the distance he keeps form others, without being able to articulate the rule regarding the ways in which deference to elders ought to be expressed. To take another example, the normal back-and-forth of a conversation is rooted in the social practice of how to construct a conversation with someone, which is not best understood as two distinct actors using and following social rules about how to talk, but as shared agency, in the same way that dance is shared agency.

The implication for our understanding of institutions emerges when Taylor draws on Bourdieu's concept of the *habitus* to express this level of understanding. For Bourdieu (1980: 56), the *habitus* is "embodied history, internalized as a second nature and so forgotten as history." For Bourdieu, *habitus* is one way in which history is preserved, but the other way in which it is preserved is encoded in the rules and logic of institutions. Without the *habitus*, however, institutional rules remain inert, without much consequence for the unfolding of events. It is the habitus that allows agents to "inhabit institutions, to appropriate them practically, and so to keep them in activity, continuously pulling from the state of dead letters, reviving the sense deposited in them, but at the same time imposing the revisions and transformations that reactivation entails" (1980: 57). Clearly, the upshot for development is that analyses of institutional rules, without an accompanying assessment of their relation to embodied knowledge and shared practices, is likely to be of only limited use for "getting institutions right".[17]

The third implication follows from the second. Institutions and intersubjective meanings (or embodied knowledge) can be reinforcing or divergent. Meanings and institutions are not necessarily "in tune" with each other. Revolutionary ideas, for example, precede the institutions they intend to create. Additionally, meanings and institutions can interweave in various ways. There can be a more or less stable pattern of mutual reinforcement where the meanings strengthen the institutions and keep them alive, and the institutions continually regenerate the meanings in each succeeding generation. But it may come to appear that the institutions grows corrupt, and some may call for rectification, which in turn may lead to the generation of a rival set of meanings (religious reform), or may lead some to withdraw from the institutions altogether and turn to another practice with a distinct set of meanings (mass religious conversion). Meanings and institutions can fall out of "tune" with one another: for instance, technological change can make certain organizations too costly or facilitate the appearance of a rival institutional form, or a change in the social standing of a group closely associated with a practice can undermine or strengthen it.[18] These will affect the meanings through which the institutions are

---

[17] In his 'Lectures in Jurisprudence', Adam Smith made similar arguments with respect to how the seemingly self-evident (even 'natural') significance of money as a legitimate basis of exchange in fact had to be learned, and was learned through social practice as part of a broader process of acquiring skills of persuasion and negotiation. "The offering of a shilling, which to us appears to have so plain and simple a meaning, is in fact offering an argument to persuade one to do so and so as it is in his interest. Men always endeavour to persuade others to be of their opinion even when the matter is of no consequence to them… And in this manner, every one is practicing oratory on others thro the whole of his life…" (cited in Purdy, 2010: 15-16).

[18] See also the fascinating accounts in Appiah (2010) on the demise of the gentlemanly duel in Victorian England, of foot-binding among women in early twentieth-century China, and of global slavery – all practices which had endured immutably for centuries but which came to an end in a matter of decades (i.e., relatively rapidly), not

collectively described. Similarly, the meanings of an institutional form can be lost over time, or undermined by new insights (Taylor 1992).

II.   *Applications to development thinking and practice*

We turn now to two particular arenas of collection action – conflict and constitutionalism, and common pool resource management – and explore some of the salient differences between how they are understood by mainstream social science and a perspective emphasizing intersubjective meaning.

(a) Conflict, Constitutionalism, and the Rule of Law

Economic accounts of the origins of political institutions typically argue that new institutions, such as democracies and constitutions, arise when the expected returns from new forms of social coordination exceed the expected returns to violence, rent-seeking and other forms of expropriation. Most such accounts give limited attention to the emergence of norms, beliefs and related social phenomena. *Violence and Social Orders* (North, Wallis and Weingast 2009; henceforth NWW) is exceptional in this regard. While very much an economic account, the book repeatedly emphasizes the significant role of norms of equality and impersonality in the emergence of what the authors call "open access orders." Still, the conceptualization of beliefs does not recognize intersubjectivity, and as a result, we argue that the book's explanatory framework is significantly limited. This section describes the NWW approach in order to illustrate what is lost when accounts of conflict and constitutionalism leave out intersubjectivity. The NWW approach has also been influential in development policy (for instance, its framework figures significantly in the 2011 World Development Report), and so an assessment of that book also illuminates some of the limitations of the mainstream approach to conflict undertaken by development actors.

The motivating observation in NWW is that open access orders differ in fundamental ways from limited access orders. Open access orders have: higher long-term growth rates and especially fewer years of negative growth; economies and societies with more specialization and division of labor; less

---

because of economic reasons but because of changes brought about by social movements that successfully altered the societal bases of honor, prestige and status. One sees similar processes at work today, Appaih argues, in efforts to delegitimize the practices of *sati* (bride burning), 'honor killings' (e.g., the execution of women who have been raped, as punishment for shaming their family name) and female genital mutilation.

large-scale conflict and violence; larger numbers of civil society organizations and private firms; larger and more decentralized governments; and more social consensus around the norm of treating people equally and without regard to their personal social connections and positions. The core argument of NWW is that these differences between countries with open access orders (for which they propose a rough and ready threshold of GDP per capita of $20,000) and those with closed access orders are no accident. The goal of the book is to develop an explanatory logic that demonstrates how these characteristics are mutually reinforcing and give rise to the dual equilibria.

In the limited access order (or the "natural state"), a category into which NWW collect all human societies prior to 1800 and almost all low- and middle-income countries today, social order arises when elites overcome a security dilemma by agreeing to share the future revenues that arise from a peace pact. The state provides third-party enforcement for a variety of intra-elite bargains and exchanges; but because the state itself is no more than an intra-elite bargain among the dominant coalition, it is inherently unstable, and liable to break down as pact participants continually reappraise the value of social cooperation as new technologies develop and exogenous shocks arise. The core problem is that the capture of state authority is the main route to economic advancement, and as a consequence, the stakes of political competition are very high. Some natural states are able to secure more stability for elites by establishing intra-elite relations on predictable law (predictability for elites can generate additional rents), creating organizations that endure beyond the lives of their members (thus becoming "perpetually lived organizations"), and consolidating political control over the military. Upon crossing various "door-step conditions", some of these "mature" natural states then make the transition to open access orders.

In open access orders, the state permits wide latitude for all individuals to establish new organizations, especially limited liability corporations and political parties. The emergence of more and various kinds of organizations erodes the rents that elites had divided among themselves in limited access orders. It also has the effect of separating political institutions from personal identities, inducing further specialization of labor and technological innovation through a process of Schumpeterian competition, and consolidating political control over the military. It exposes every organization – political, economic, social, and military – to potential competition if it assumes too much political power or captures excessive rents. Essentially, the emergence of open access to civil society, economic, and political organizations generates a large number of veto points in a society, and across almost every

issue area and sector. Organizations can coordinate to withdraw support from politicians who overstep constitutional boundaries and can provide competition to firms that capture excessive rents. The proliferation of perpetually lived organizations also creates a world in which "impersonal" relations predominate. These organizations are crucial for the development of a shared belief system in which people are treated equally and according to impersonal laws.

Although NWW repeatedly emphasize the importance of beliefs and identities in open access orders, their conceptualization of beliefs is individualistic rather than intersubjective. Early on, they clarify that they use the word "society" as shorthand for the aggregate of the individuals, rather than a causal agent in itself: "We are aware that societies are not actors. *Societies* do not deal with anything; individuals do" (NWW p. 13, fn; emphasis in the original). Although their "Note on Beliefs" acknowledges that they do not explain the origins of beliefs, it is clear from their discussion that individuals generate beliefs when they compare received explanations (from their parents and schools) of how the world works with their experience of how it works, and that common beliefs arise from the largely independent and simultaneous cognitions of all (or most) individuals in a society:

> The two main channels of belief formation are individual experience and education. Human beings are genetically programmed to learn in both ways. Human cultures, in part, are common information passed on through education, whether formal in the sense of classrooms or informal in the sense of parents and others teaching social norms to children. Neither way of forming beliefs is completely reliable, in part, because the beliefs we draw from experience are inaccurate models of the world around us. (NWW p. 28)

In this account, belief systems are purely cognitive phenomena in which aggregates of individuals come to develop "common information" and shared "models" of external causation. The notion that the formation and expression of an individual's beliefs requires a shared set of background meanings, and that coordinated social practices give rise to shared background meanings, are foreign to this account. Finally, despite their repeated emphasis on the role of beliefs in history, they provide almost no direct evidence that beliefs have, in fact, played a causal role in the development and maintenance of open access orders. At one point, when arguing that even mature natural states, such as Korea and Venezuela, may not exhibit societal beliefs consistent with open access, they point to polls showing that many individuals in those countries would accept military coups in certain circumstances and believe that authoritarians

are better at solving some of society's problems (NWW p. 139). On this account, the stability of those societies seems to rest on individual opinions, rather than on coordinated social practices.

The conceptualization of beliefs as exclusively individualistic, rather than intersubjective as well as individual, has an important analytical consequence for North, Wallis and Weingast: it obscures their explanation of constitutional consensus, which is crucial for open access orders. The control of violence – constitutionalism – depends on what they call a "consensus condition," which entails that "citizens in open access orders share beliefs about the appropriateness of central tenets of their constitution so that they help police the rules by withdrawing support from officials who seek to violate these tenets" (NWW p. 118). Despite the importance this idea plays in their account, they provide no direct evidence that such a consensus exists in any open access order. They argue that in open access orders the control of government is contestable and subject to "clear and well-understood rules" (NWW p. 111), yet never provide an account of which constitutional rules are perceived to be clear and well-understood. Constitutions are "focal points" that "create common expectations among citizens about the behavior of others" (Weingast 2005), but constitutions contain many provisions, often in conflict. Which constitute the focal points? How would the analyst even demonstrate that such a consensus condition existed in a society? It would be difficult even for a large, expensive opinion survey to characterize the set of conditions that might constitute a fundamental breach of the constitution. One could observe that the society is at peace, but then to infer from this that a consensus exists would be to impute a value to the explanatory variable from the value of the dependent variable. This seems to be what NWW are doing. Wedeen (2002: 718) notes that this is a characteristic problem with rational choice accounts that understand culture to be the convergence of individual beliefs. As she puts it, the rational choice concept of "common knowledge"

> tends to assume the shared quality or commonness of knowledge rather than to
> question how – or the extent to which – such understandings are, in fact, tacitly
> understood or consensually shared. In other words, "common knowledge" derives from
> a consideration of knowledge that can reasonably be considered common, rather than
> from a consideration of culture as a manifold outcome of human activity. . . By
> naturalizing the concept of culture in this way, rational choice theorists forgo the ability
> to know whether common knowledge actually exists in any particular instance or
> whether another, unspecified, variable is doing the work of coordinating action. By
> tracking how common knowledge gets produced, is subject to change, or is implicated in

political relationships of leverage and domination, we can produce robust explanations of why people coordinate their actions when they do, while avoiding erroneous causal inferences.

NWW present a compelling account for how constitutions acquire "self-enforcing" properties (see also Weingast 2005), but even self-enforcing constitutions are not self-interpreting. They note that struggles, "often violent" (NWW p. 118), are necessary to widen open access orders to full participation by formerly excluded groups, such as racial minorities and women. But if violence is required, it is not clear on what the political consensus is actually based. In retrospect one knows that the U.S. Civil War, the U.S. New Deal struggles, and the European and North American protests of the 1960s did not split those nations, but at the time it would have been difficult to assert that a constitutional consensus existed. Their account also assumes that rent-seeking behavior and power-grabbing typically take the form of naked violations of constitutional tenets, rather than more subtle distortions. For instance, even though private sector unionization is still constitutionally protected in open access orders, in some of them organized interests have worked to transform rules governing collective bargaining in such a way as to limit open access to the organizational form called a union, and in so doing generate additional rents for themselves. In simplest terms, the problem is that when NWW write that "If a group attempts to extract too much, then other groups who are not normally active on an issue are likely to begin paying attention, with the potential to alter dramatically the political forces on this issue and hence the outcome," they do not explain how anyone, either the analyst or the actors involved, know how much (and how much of what) constitutes "too much" (NWW p. 128). Although there is insufficient space to elaborate the argument, the same problem applies to the emergence of the norms of "impersonality" and "equality" in the NWW account: the authors assume their existence instead of providing evidence for them, and do not explain how they arise.

Consider an alternative account of constitutionalism. For Hart (1961), societies and their members know that certain rules constitute authoritative law – rather than obsolescent, unobserved, or trivial law – on the basis of a "rule of recognition." The rule of recognition may include a variety of elements; in other words, when someone asks how one knows that a rule is actually valid law, a person might point to an authoritative list of laws, a custom, the actions of a legislature, judicial decisions or something else (Hart 1961: 101). But given this diversity of sources of law, how does consensus arise and how is it maintained? Hart argues that in modern

societies a law is known *as law* when most citizens conform to it <u>and</u> when legal officials consider it valid based on their derivations of primary and secondary rules. In other words, there is no consensus as such; instead, constitutionalism depends, in part, on the practices of knowledge generation and dissemination by legal officials (which in turn are partly based on their material interests), as well as the day-to-day practices of ordinary citizens. Constitutionalism is thus understood to be a social practice.

The advantage of this kind of account, relative to one that assumes a consensus, is that it opens space for the analyst to describe the relationship, whether mutually supporting or fricative, between the practices of legal officials and ordinary citizens, between the development of interpretive communities who lay down and contest ground rules around legal argument (Kennedy 1991), between the ways in which legal practice can generate constitutional change, and the variety of constraints that ordinary citizens and legal officials impose on such change. The account in NWW describes open access orders but does not explain how the belief systems that sustain them arise. In his review of *Violence and Social Orders*, Bates (2010: 752-6) laments that the book "is largely devoted to characterization and classification," and believes that a more explanatory book would have included more "micro-level reasoning" and given greater attention to the strategies adopted by individual actors. We concur with this diagnosis, but argue here that an account of coordinated social practices and intersubjective meanings would provide additional explanatory power, and for the story of how beliefs arise and are maintained, a stronger one.

North, Wallis and Weingast (2009) and Hart (1961) – and, respectively, the broader approaches they represent – thus embody rather contrasting visions of constitutionalism and conflict, visions whose core assumptions about the status, persistence, sources of legitimacy and change mechanisms of constitutionalism and conflict lead to correspondingly different policy implications. The former, with its emphasis on institutional design issues and the dynamics by which intra-elite conflicts are resolved, more readily lends itself to a policy agenda emphasizing the reform of institutional structures and the prioritization of elite concerns, in the belief that these realms disproportionately establish the overall "rules of the game" and incentive structures, which in turn shape the behavior of individuals operating under them. The latter approach, though sensitive to institutional design and incentives, emphasizes instead the prevailing practices by which different groups – which includes, but is far from limited to, the

elite – involved in a given issue produce, via both observable and unobservable processes, agreements and disagreements about the reform process itself, the means by which these might be resolved (and in what order), and mutually legitimate mechanisms for bringing about (or resisting) change. In short, institutional form and function – what they 'look like' and what they actually 'do' – are not necessarily axiomatic: to get the organizational functionality that is desired, it is necessary but insufficient to focus exclusively (as much policy reform efforts do) on institutional design issues alone. It is also important to consider the ways in which inter-group dynamics shape what is think-able, say-able and (thus) do-able with respect to the means by which any consensus is produced regarding the very essence of what institutions are, what their legitimate functions should be, what issues (among many) should be prioritized, and how they should be changed (or not).

(b) Collective Action and the Maintenance of Common Pool Resources

A pervasive challenge facing all communities, but especially poor rural communities in developing countries, is the management of common pool resources, such as streams, fisheries and forests. This problem is a canonical one for rational choice theorists, who struggle to explain how individuals will contribute to the maintenance of the common resource (e.g., by regularly securing the integrity of dam walls, checking salination levels, etc) or avoid 'the tragedy of the commons' (in which individual group members over-fish or over-graze existing stocks), since the interests of individuals and the collective seem to be radically divergent: what is optimal and thus rational for the individual – to sit back and let others maintain the resource, while harvesting a disproportionate share of its fruits – generates, in the long-run, a collective outcome – a neglected or barren resource – benefiting no-one.

This problem, while real, occurs far less frequently that theory would predict; life for the billions of poor people living in rural areas in developing countries, many of whom depend on common pool resources for their very survival, would be impossible if it was as pervasive as theory would have us believe. Observing this gulf between theory and behavior, a number of researchers – most famously Elinor Ostrom (1990, 2005), who in 2009 won a Nobel Prize for her work[19] – have sought to revisit the theory. Without necessarily abandoning rationality assumptions, these scholars have highlighted the complementary importance of social norms, produced and reinforced through repeated social practices

---

[19] See also, among many others, Wade (1988) and Ellickson (1993). An extensive review symposium of Ostrom's seminal work on common pool resource management is provided in *Perspectives on Politics* (2010).

not just through small cohesive groups (as emphasized by Olson 1965) but across larger territorial space. For example, the presence of norms giving priority to maximizing the welfare of the *group* (as opposed to the individual) are often a feature of such community interactions, defying the very presumption that the rational, utility-maximizing, self-interested individual is always and everywhere the unit of analysis on which action is based, or should be interpreted.

Whether at the level of the individual or group, however, for present purposes it is important to recognize that success in the management of common pool resources turns in the first instance on shared understandings of what effective 'management' means and what ultimate ends the resource's use is believed to serve. When UNESCO declares a particular geographical location to be a World Heritage Site, for example, it imbues this site with a particular historical, ecological and legal status that may or may not accord with those of its traditional users or the prevailing national government, even if all parties nominally share a common 'interest' in the site's maintenance; in such instances, the successful 'management' of this common resource ultimately turns on the extent to which these parties' rather different sources of legitimacy and authority can nonetheless come to a sufficiently shared understanding of the problem and possible solutions, which in turn will be largely a product of social practices (such as ongoing deliberation and equitable diplomatic relations). This is a particularly salient issue in Vanuatu, where the 'Chief Roy Mata Domain' has been declared a World Heritage Site since 2008, a status explicitly sought by the government of Vanuatu as part of a package of defense mechanisms mobilized against the predations of international commercial interests, but one that has created additional confusion for resident villagers who regard the area as a primary basis of identity and livelihood provision. Reconciling these disparate understandings of 'resources', 'management' and 'the law' remains an ongoing struggle, one ultimately grounded in the different meanings that each group – international agencies, regional bodies, national governments, commercial enterprises and community groups – has of these concepts.[20]

Our concern here is less with whether local community institutions are demonstrably "better" (or "worse") at managing such resources than states or markets, and more with the prior question of how different stakeholder groups – with their correspondingly different understandings of what better

---

[20] On the details of this case, see Serrano and Stefanova (2010). See also Agrawal (2001) and especially Mansuri and Rao (2011: chapter 5), who provide a detailed review of the empirical evidence – which they find to be decidedly mixed – on the efficacy of community-based and decentralized approaches to managing common pool resources. See also the important reviews provided by Agrawal et al (2009) and Ribot et al (2009).

or worse management *means* – forge (or fail to forge) sufficiently common understandings of the status of the resource, its boundaries, the purpose and mechanisms of management, jurisdictional responsibilities, and procedures to be followed in the event of subsequent disagreement. Little of this can be axiomatically inferred from deducing each group's putative "interests", size or demographic characteristics. Even so, as Mansuri and Rao (2011) correctly conclude, it is often the nature and extent of inequality between – and even within – stakeholder groups (contra Olson 1965), not heterogeneity per se, and the quality of state-society relations, that is a critical determinant of success.

Successfully bridging these otherwise broad ontological and epistemological gaps can yield mutually beneficial outcomes. Uphoff's (1994) account of rice production practices in a particular community in Gal Oya, Sri Lanka, for example, shows how spectacular gains in productivity occurred when both local farmers and external horticultural specialists found a way, through repeated dialogue and mutually respectful interaction, to harness their different knowledge of irrigation, fertilizers, seed placement and harvesting techniques to achieve production yields neither had been able to attain on their own. The binding constraint here was not "interests" or "incentives" but shared intersubjective meaning: had farmers and scientists held rigidly to their particular and preferred understanding of what drives and constrains rice yields, a sub-optimal (as it turned out) result would have ensued. Their new (superior) knowledge, it should be stressed, was a product of integrating two otherwise distinctive epistemological understandings of rice production – one might crudely call them 'science' and 'tradition' (or, following Geertz, 'local knowledge') – each with correspondingly different intersubjective meanings of what soil, water and seeds "are", how they interact and their interactions adjusted to produce "rice". Deliberative mechanisms, in short, provided a means by which seemingly contrasting intersubjective meanings of rice production could be reconciled for mutual benefit.

A different but related example comes from Tsai (2007), who demonstrates how, in rural China, the embeddedness of local officials in everyday community life can serve as an effective accountability mechanism, ensuring that officials perform their duties as mediators of everyday disputes surrounding common pool resources despite the fact that such officials are not democratically elected (thus facing direct accountability to voters) and that the broader system of government itself may place a much higher premium on party loyalty and the attainment of centrally-determined policy "targets" (such as the number of children born) than demonstrated workplace performance as the basis for recognition and promotion. Orthodox theories of organizations and accountability, with their narrow focus on

material and political incentives, struggle to account for the relative effectiveness of such officials; a different lens, one which pays closer attention to idiosyncratic contextual realities, shows that a salient variable shaping performance can be the means by which honor is produced and upheld in interactions between villagers and officials, a process that requires an expanded understanding of what "incentives" mean to participants, and thus to analysts. For Tsai, it is the everyday practice of social interaction between officials and villagers that consolidate such common understandings and (thus) nurture shared interests and accountability; importantly, she also argues that distinctively Chinese social institutions which are open to all (as opposed to church groups, which are restrictive by way of membership and, by definition, place officials in an overtly religious space they are otherwise formally barred, qua an official, from occupying) are more likely to facilitate and sustain such understandings.

As we show below, these types of examples are instructive for policy, especially as it pertains to the formulation of strategies linking development outcomes and rule of law reform in contexts of state fragility and societal conflict and violence.

(c) Intersubjectivity and Donor Theory and Practice of Rule of Law Reform

(Re-)establishing the rule of law in situations of fragility and conflict is a pervasive concern for donors of all stripes, including major multilateral institutions (World Bank 2011a; UNDP 2000; African Development Fund 2008; European Commission 2007) and bilateral actors (DFID 2010; Dutch Ministry of Foreign Affairs 2007; France Coopération 2007; German Federal Ministry for Economic Cooperation and Development 2007). These actors ascribe a range of definitional characteristics to the rule of law, have a range of concerns – from developmental impacts, to security risks, to political or military interests – and a concomitant range of policy approaches: some emphasize the importance of establishing basic security, others viable mechanisms for dispute resolution, still others building the presence of the state. As a result, it is difficult to ascribe a single unifying feature or approach to donors; nevertheless, we make some general claims here (albeit understandably broad-brush), based on a critical understanding of the *World Development Report 2011* (World Bank 2011a), which through research and an extensive consultation process does attempt to draw out commonalities and shared understandings in donor approaches.

Rule of law reformers share a fundamental axiom: that establishing and upholding the rule of law – be it to establish law and order, enforce contracts or hold political power-holders to account - is a

core function of the state (AusAID 2011). This is translated through NWW's influential work; for a given definition of the rule of law and of "institutions" (ranging from the "rules of the game" to a more organizational understanding), donors see the rule of law as, simultaneously, an institutional value (that is, informing process) and an institutional goal (that is, informing substance and outcomes). In other words, institutions uphold and enforce the rule of law – institutions do, indeed, rule.

In situations of fragility or conflict, it is thus (tautologically) understood that the state in question is generally weak, limited or absent. As a result, the state and state institutions are unable to uphold and enforce the rule of law to the desired level. As matter of general principle, donors seek to provide inputs to institutions that lead to desired outputs. At the rhetorical and analytical levels, for example, AusAid (2010) presumes that *institutions themselves* can be the subject of intervention. At the operational level, phase 1 of the $27.75 million Justice Sector Reform Project in Afghanistan (World Bank 2011b) sought to "improve" state institutions (including the Supreme Court and the Attorney-General's Office) through specific inputs such as human resource reform and training for officials. As a result, we see a conceptual process of *institutional reification* on the part of donors: the WDR 2011, for example, narrates a story of change that involves the transformation of institutions through engaging with stresses and risks that *act upon* institutions (World Bank 2011a).

The most evident problem, or symptom, of such an approach is the need to engage with and mediate between different understandings of what law is – that is, what is knowable, say-able, and do-able about the law - something which donors have been notoriously ineffective at doing (Desai and Sage 2011). This is part of what Simmons (2000: 333) sees – in the context of public international law - as a "broader critique of social scientific methods that attribute meaning to actions, rather than allowing these meanings to reveal themselves through intersubjective discourse." In situations of legal or normative pluralism – retributive versus reconciliatory approaches to the punishment of rape in Liberia (Isser, Lubkemann and N'Tow 2009), or competing conceptions of ownership of natural resources and legitimate methods of dispute resolution in the arid lands of Northern Kenya (Chopra 2008a; Chopra 2008b), for example – the nature of the conflict cannot be understood without recourse to background meaning systems such as non-state justice institutions that determine issues such as the nature of and sanction for rape. As a result, forging spaces for the development of "meta-rules" (Barron, Smith and Woolcock 2004), or spaces in which different background meanings can engage and help generate overarching rules governing the application of different systems, comes to the fore.

Yet in making a move to engage with non-state justice systems, rhetoric and analysis has often focused on the symptom that triggers such shifts – the move away from state-centrism – rather than the cause – the need to engage with background meaning: in other words, to see the rule of law in a manner parallel to a Kuhnian approach to the natural sciences – an "intersubjective, interpretive project [] that does not involve detached and neutral investigations" (Mootz 1993: 253). As an example of the symptom/cause disjunct, the WDR 2011 reflects on lessons learned from practice and finds that it is important to engage with non-state mechanisms because they may prove more effective than the state at maintaining social cohesion at the community level.[21]

The logic of this approach has important emerging implications for development policy and practice: institutions of the rule of law are reified objects, rather than indivisibly embedded and recreated in social practice. As a result, they are still subject to an input-> output model of reform, but one that resituates the locus of reform from individual institutions to whole systems (World Bank 2011a). Taking this logic one step further, given that individuals are not agents in the contestation and definition of institutions, the success of these inputs and outputs can be measured (if we presume a methodological individualism and a stylized public choice approach to policy) based on the choice to use these institutions: in other words, individuals can be consumers but do not (re-)define the institution through social practice. As a result, for some theory (and the donor practice it influences), competition is king: Botero *et al* (2003) adopt such an approach to present a model of judicial reform, for example, that argues for "incentive-oriented reform… to increase accountability, competition and choice" between legal institutions and between judges; this is reiterated by Cabrillo and Fitzpatrick (2008: 58) and extended to the provision of legal services (232). At the level of practice, Barendrecht and de Vries (2005) highlight ADR – including non-state justice systems – as a means to foster "innovation" and generate healthy competition in the market for legal services. We do not argue that all donor policy and practice in the field of rule of law reform is underpinned by a belief in competition between institutions; rather, this is the logical extension of an approach that reifies institutions and removes them from the meaning systems that generate, contest and redefine them continuously.

If we presume that within the parameters of a competition-based approach the state is still the ultimate object of desire as regards rule of law interventions in fragile or conflict-affected settings

---

[21] It is important to note that the WDR 2011 also sees these institutions as potential "best fit": that is, apt to the context. We extend this analysis here, arguing for an enriched understanding of "context" to account for intersubjective meaning systems.

(Ghani, Lockhart and Carnahan 2005), we are then presented with the following dynamic: donors may seek to engage in contexts marked by fragility and social fracture by establishing *competing* institutional systems of the rule of law and letting the users decide, the presumption being that the systems that provide better outcomes will be those of the state. Such an approach is in clear contrast to the context- and process-driven one that gave rise to the need to establish meta-rules in fragile settings, which recognizes the need to build bridges between competing meaning systems rather than allow competition to take its course: the fundamental disjuncture around intersubjective or reified institutions gives rise to "competition versus cohesion".

Phase 2 of the Justice Sector Reform Project in Afghanistan, which is currently under development and is the subject of continued modification (World Bank 2011b), is evolving in a fashion that reflects this tension. An aspect of the design under discussion is a "partnership for justice" to improve the delivery of legal services, which recognizes the socially-generated legitimacy of non-state institutions and avoids direct engagement in order not to undermine them, preferring instead to carry out a range of analyses in order better to understand them and their impact on the formal system. At the same time, it attempts to build links between the formal and informal systems of justice, as the project's main purpose is to create a local system capable of meeting demand for service, requiring harmonization of inputs. According to current thinking on the project, the benefit of this harmonization is that people can experience both systems, the presumption being that, as the two systems are juxtaposed and compete for "users", people will begin to choose an improving formal system as it leverages its scale and backing of the state (thereby fitting in with the Afghan government's overall justice strategy).

The tensions reflected in phase 2 of the Afghanistan project reflect the idea that the tension in donor approaches to the rule of law outlined above becomes less a question of technique and more one of political theory and appropriate underlying political order. The approach laid out in the foregoing sections of this paper stresses "the intersubjectivity of meaning, the significance of our communal identity to our personal identity and the interrelationship of people, rather than their autonomy, detachment, and antagonism" (Massaro 1989: 2121). While we do not seek to be prescriptive in identifying one correct approach, we certainly assert that *analyses* of the rule of law would be enriched by accounting for intersubjective meaning systems, thereby structuring more effective operations.

For example, a World Bank Institutional and Governance Review of Honduras (World Bank 2009: 23-26) highlights inefficiencies, corruption and capture in the judiciary, which forms part of a broader narrative of capture and clientelism across all branches of the state. However, an understanding of the histories of violent conflict in Honduras can shed a different light on the provenance of such behavior, and situate in a set of broader intersubjective meanings shared and contested amongst (parts of) society. Honduras, under the influence of private and state actors and a key route for control of the banana trade, suffered from civil and transnational violent conflict through the first half of the 20th century, and was repeatedly occupied by American troops during this period (Langley 2002: 170-186). At the same time, there was aggressive action by banana companies to undermine collective labor movements, moving thousands of workers of different ethnicities from one country to another to saturate labor markets and reduce wages (Bourgois 1989: 217; Euraque 2002: 240-2). In the Honduran context, the notion that patron-client relations are intersubjectively understood as providing security and safety, rather than simply being an issue of corruption, allows collective action problems to be reconceptualized in light of historical contingencies. Such an understanding would undermine a competition-based approach to reform – people are unlikely to flock to the "best-"performing institutions but will rather stay within the safe confines of neopatrimonial networks - and opens the door for policy and programming based on security concerns rather than or alongside governance and anti-corruption interventions.

III.   Conclusions and Implications for Analysis, Policy and Programs

In this paper we have argued that current understandings and analyses of collective action are limited, emphasizing reified institutions and the incentives and information that structure action around them. This is particularly true of fragile and conflict-affected contexts, which cannot be fully understood without reference to their social and historical production. We have used examples of collective action around common pool environmental resources, and collective use of (and subordination to) rule of law institutions in situations of fragility, conflict and violence to demonstrate the analytic and explicatory bounds of such an approach.

Specifically, we have sought to show that the concept of "intersubjective meanings" – shared understandings that give rise to shared meaning systems – is essential for understanding the social

27

dimensions of collective action, particularly in fragile contexts. This extends to the social and historical contingencies of collective action problems, which are constitutive of these meaning systems. As a result, we can now draw out a series of seven recommendations that might inform development actors in responding to collective action problems in such difficult contexts.

Analytic

1) This approach opens up a range of *conceptual spaces*, founded on the need to enquire into "common understandings" in a given social order. Analysts of collective action can engage with these in order to understand what 'individual' and 'collective' mean for given people in given contexts. These spaces are multidisciplinary, taking in (*inter alia*) anthropology, history, sociology and even law as elucidatory of background understandings (Bamberger *et al* 2009; Lasser *et al* 1999; Kennedy 1985).

2) This approach broadens the range of *institutional spaces* for analysis. Analyses should also engage with institutions that generate and shape common understandings. This implies giving greater sensitivity to spaces in which such understandings are forged, contested and reformed, including the media, legal/dispute resolution institutions, religious groups, educational organizations, government communication departments, etc.

3) By implication, the analyst must engage with two *reflexive spaces*. First, the analyst must be sensitive to the ways in which her understanding of the world is intersubjectively constructed and the possibilities of *intersubjective dissonance* with the subjects of analysis.[22] Second, the analyst must be sensitive to the role of the donor or development agency as active intervener, creating (as much as responding to) the contexts in which it works.

Policy

4) To be able to provide policy recommendations, it is important to understand the relationships between institutions and intersubjective meaning – the extent to which each channel generates or frames the other. For example, is budgeting a national or local issue? Is healthcare an

---

[22] This insight is not new: for a recent treatment of this matter (including methodological individualism and intersubjectivity) and an attempt to introduce a new research framework, see Gillespie and Cornish (2010).

entitlement? Is education for girls a necessity or a luxury? What standards of conduct are expected from justice sector officials?

5) Policy needs to expand its ambit to concern itself with spaces for the generation, consumption and development of intersubjective meaning. For example, moving towards a concern with equity and participation in education or the ownership structures of the media.

Programs

6) Programs that allow common understandings to be brought out and engaged with need to be designed alongside technical interventions. This might include communicative or performative interaction, including theatre, the radio and television (Harter *et al* 2007).

7) "Peer-educators" (Bayly 2004), who are able to vernacularize the global and translate vernacular understandings, become essential to programming, foregrounding intersubjective understandings and linking them to development aspirations (Woolcock *et al* 2011).

We do not mean to suggest that collective action problems are purely an issue of socially-constituted understanding. Political economy accounts of institutions, the rule of law, fragility, and common pool resources, which emphasize individual incentives, commitment problems, and asymmetric information, remain powerful for understanding why certain events happen when they do, and why some observed equilibria (good and bad) are difficult to change. However, by pointing to the background set of meanings that help constitute the actions available to individual actors, we seek to open up spaces for more nuanced analysis, policy and programs that may lead to more effective pathways to attaining development outcomes.

References

African Development Fund (2008) "Strategy for Enhanced Engagement in Fragile States", January, at
http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/30736191-EN-STRATEGY-FOR-ENHANCED-ENGAGEMENT-IN-FRAGILES-STATES.PDF

Agrawal, Arun (2001) "Common Property Institutions and Sustainable Governance of Resources" *World Development* 29(10): 1649-72

Agrawal, Arun et al (2009)

Anderson, Benedict (1983) *Imagined Communities* London: Verso

Appiah, Kwame Anthony (2010) *The Honor Code: How Moral Revolutions Happen* New York: Norton

AusAID (2010) "Issues Paper: Law and Justice Evaluation", November, at
http://www.ode.ausaid.gov.au/publications/pdf/issues-law-justice-nov2010.doc

_____ (2011) "DRAFT Guidance note on working in situations of fragility and violent conflict", February, copy on file with the authors

Bamberger, Michael, Vijayendra Rao and Michael Woolcock (2010) "Using Mixed Methods in Monitoring and Evaluation: Experiences from International Development", in Abbas Tashakkori and Charles Teddlie (eds.) *Handbook of Mixed Methods in Social and Behavioral Research* (2nd revised edition) Thousand Oaks, CA: Sage Publications, pp. 613-641

Barendrecht, Maurits and Berend de Vries (2005) "Fitting the Forum to the Fuss with Sticky Defaults: Failure in the Market for Dispute Resolution Services" *Cardozo Journal of Conflict Resolution* 7(1): 83-118

Barron, Patrick, Claire Smith and Michael Woolcock (2004) "Understanding Local Level Conflict in Developing Countries: Theory, Evidence, and Implications from Indonesia" Working Paper 19, Conflict Prevention and Reconstruction Unit, Washington, DC: The World Bank

Bates, Robert (2010) Review of 'Violence and Social Orders' *Journal of Economic Literature* 48(3): 752-56

Bayly, C. A. (2004) *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons* London: Blackwell

_____ (2011) "Indigenous and Colonial Origins of Comparative Development: The Case of Colonial India and Africa", in C. A. Bayly, Vijayendra Rao, Simon Szreter and Michael Woolcock (eds.) *History, Historians and Development Policy: A Necessary Dialogue* Manchester: University of Manchester Press, pp. 39-64

Botero, Juan Carlos, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Alexander Volokh, (2003) "Judicial Reform" *World Bank Research Observer* 18(1): 61-88

Bourdieu, Pierre (1980) *The Logic of Practice* Palo Alto: Stanford University Press

Bourgois, Philippe (1989) *Ethnicity at Work: Divided Labor on a Central American Banana Plantation*, Baltimore and London: Johns Hopkins University Press

Briggs, Xavier de Souza (2008) *Democracy as Problem Solving: Civic Capacity in Communities Across the Globe* Cambridge, MA: MIT Press

Brown, Phil (1995) "Naming and Framing: The Social Construction of Diagnosis and Illness" *Journal of Health and Social Behavior* 35(Extra Issue): 34-52

Cabrillo, Francisco and Sean Fitzpatrick (2008) *The Economics of Courts and Litigation* Cheltenham, UK: Edward Elgar

Caldwell, John C. (1986) "Routes to Low Mortality in Poor Countries" *Population and Development Review* 12(2): 171-220

Chopra, Tanja (2008a) "Reconciling Society and the Judiciary in Northern Kenya", Justice for the Poor and Legal Resources Foundation Trust Research Report

_____ (2008b) "Building informal justice in Northern Kenya", Justice for the Poor and Legal Resources Foundation Trust Research Report

Connelly, Matthew (2008) *Fatal Misconception: The Struggle to Control World Population* Cambridge, MA: Belknap Press

Cronon, William (1983) *Changes in the Land: Indians, Colonists and the Ecology of New England* New York: Hill and Wang

Desai, Deval and Caroline Sage (2011), "Justice", Background Paper prepared for the World Development Report 2011, at http://wdr2011.worldbank.org/justice

DFID (2010), "Building Peaceful States and Societies: A DFID Practice Paper", at http://www.dfid.gov.uk/Documents/publications1/governance/Building-peaceful-states-and-societies.pdf.

Dutch Ministry of Foreign Affairs (2007), "Our common concern: Investing in development in a changing world", at http://www.minbuza.nl/dsresource?objectid=buzabeheer:32207&type=pdf

Easterly, William, Jozef Ritzen and Michael Woolcock (2006) "Social Cohesion, Institutions and Growth" *Economics and Politics* 18(2): 103-120

Ellickson, Robert (1993) *Order without Law: How Neighbors Settle Disputes* Cambridge, MA: Harvard University Press

Euraque, Dario (2003) "The Threat of Blackness to the Mestizo Nation: Race and Ethnicity in the Honduran Banana Economy, 1920s and 1930s", in Steven Striffler, and Mark Moberg (eds.), *Banana Wars: Power, Production, and History in the Americas* Durham: Duke University Press, pp. 229-248

European Commission (2007) "Towards an EU Response to Situations of Fragility: Engaging in Difficult Environments for Sustainable Development, Stability and Peace", Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Region, SEC(2007) 1417, at http://ec.europa.eu/europeaid/what/education/documents/eu_communication_situations_of_fragility_en.pdf

France Coopération (2007) "Fragile States and Situations of Fragility: France's Policy Paper", at http://www.diplomatie.gouv.fr/en/IMG/pdf/EtatsFragiles-2.pdf

Fukuyama, Francis (2004) *State-Building*: *Governance and World Order in the 21st Century* Ithaca, NY: Cornell University Press

_____ (2011) *The Origins of Political Order: From Prehuman Times to the French Revolution* New York: Farrar, Straus and Giroux

Gauri, Varun and Daniel M. Brinks (eds.) (2008) *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* New York: Cambridge University Press

German Federal Ministry for Economic Cooperation and Development (2007) "Development-Oriented Transformation in Conditions of Fragile Statehood and Poor Government Performance", at http://www.oecd.org/dataoecd/4/38/43480415.pdf

Ghani, Ashraf, Clare Lockhart and Michael Carnahan (2005) "State-building in fragile and conflict-affected conditions", Paper prepared for a workshop at the Greentree Foundation, September 18-21, at http://www.effectivestates.org/Papers/State%20Building%20in%20fragile%20and%20conflict%20affected%20conditions.pdf.

Gibson, Christopher and Michael Woolcock (2008) 'Empowerment, Deliberative Development and Local Level Politics in Indonesia: Participatory Projects as a Source of Countervailing Power' *Studies in Comparative International Development* 43(2): 151-180

Gillespie, Alex and Fiona Cornish (2010) "Intersubjectivity: Towards a Dialogical Analysis" *Journal for the Theory of Social Behaviour* 40(1): 19-46

Hall, Peter and Michele Lamont (eds.) (2010) *Successful Societies: How Institutions and Culture Affect Health* New York: Cambridge University Press

Hart, H.L.A. (1961) *The Concept of Law* Oxford: Clarendon Press

Harter, Lynn, Devendra Sharma, Saumya Pant, Arvind Singhal and Yogita Sharma (2007) "Catalyzing Social Reform Through Participatory Folk Performances in Rural India", in Larry Frey and Kevin Carragee (eds.) *Communication and Social Activism* Cresskill, NJ: Hampton Press, pp. 285-314

Isser, Deborah, Stephen Lubkemann and Saah N'Tow (2009) *Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options*. Washington, D.C.: United States Institute of Peace

Kennedy, David (1985) "International Legal Education" *Harvard International Law Journal* 26: 361-384

Kennedy, Duncan (1991) "A Semiotics of Legal Argument" *Syracuse Law Review* 42: 75-116

King, Gary, Christopher J.L. Murray, Joshua A. Salomon and Ajay Tandon (2004) "Enhancing the Validity and Cross-Cultural Comparability of Survey Research" *American Political Science Review* 98(1): 191-207

Kuhn, Thomas (1970) *The Structure of Scientific Revolutions* Chicago: University of Chicago Press

Lakatos, Imre (1978) *The Methodology of Scientific Research Programmes: Philosophical Papers, Volume One* Cambridge: Cambridge University Press

Langley, Lester (2002) *The Banana Wars: United States Intervention in the Caribbean, 1898-1934* New York: Rowman & Littefield

Lasser, Mitchel, Duncan Kennedy, David Kennedy and Nathaniel Berman (1999) "Critical Legal Theory", in Susan Tiefenbrun (ed.) *Law and the Arts*, Westport, CT: Greenwood Press, pp. 115-145

Mansuri, Ghazala and Vijayendra Rao (2011) *Localizing Development: Does Participation Work?* Washington: World Bank (forthcoming)

Massaro, Toni (1989) "Legal Storytelling: Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?" *Michigan Law Review* 87: 2099-2127

Mootz, Francis (1993) "Is the Rule of Law Possible in a Postmodern World?" *Washington Law Review* 68: 249-305

Nichter, Mark (1995) "Vaccinations in the Third World: A Consideration of Community Demand" *Social Science and Medicine* 41(5): 617-632

North, Douglass (1990) *Institutions, Institutional Change and Economic Performance* New York: Cambridge University Press

North, Douglass, John Wallace and Barry Weingast (2009) *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* New York: Cambridge University Press

Olson, Mancur (1965) *The Logic of Collective Action: Public Goods and the Theory of Groups* Cambridge: Harvard University

Ornstein, Paul H. (ed.) (1991) *The Search for the Self: Selected Writings of Heinz Kohut, 1978-1981* New York: International Universities Press

Ostrom, Elinor (1990) *Governing the Commons: The Evolution of Institutions for Collective Action.* Cambridge: Cambridge University Press

_____ (2005) *Understanding Institutional Diversity* Princeton: Princeton University Press

Payer, Lynn (1996) *Medicine and Culture: Varieties of Treatment in the United States, England, West Germany and France* New York: Holt Paperbacks

Perspectives on Politics (2010) Vol. 8, No. 2. A review symposium of Elinor Ostrom's *Governing the Commons: The Evolution of Institutions for Collective Action.*

Purdy, Jedediah (2010) *The Meaning of Property: Freedom, Community and the Legal Imagination* New Haven: Yale University Press

Ribot, Jesse et al (2009)

Rodrik, Dani (1999) "Where Did All the Growth Go? External Shocks, Social Conflict and Growth Collapses" *Journal of Economic Growth* 4(4): 385-412

Rodrik, Dani, Arvind Subramanian and Francesco Trebbi (2004) "Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development" *Journal of Economic Growth* 9(2): 131-65

Rosen, Lawrence (2010) "Understanding Corruption" *The American Interest* March/April: 78-82

Serrano, Katharaina and Milena Stefanova (2010) "Between International Law, *Kastom* and Sustainable Development: Cultural Heritage in Vanuatu" University of the South Pacific, mimeo

Simmons, Beth (2000) "Money and the Law: Why Comply with the Public International Law of Money?" *Yale Journal of International Law* 25: 323-362

Stern, Daniel (2004) *The Present Moment in Psychotherapy and Everyday Life* New York: Norton

Swidler, Ann (1986) "Culture in Action: Symbols and Strategies" *American Sociological Review* 51(2): 273-86

Swidler, Ann and Susan Watkins (2010) "Practices of Deliberation in Malawi" Paper presented at the Deliberative Development Conference, World Bank, November 12

Taylor, Charles (1971) "Interpretation and the Sciences of Man" *Review of Metaphysics* 25(1): 3-51

_____ (1985) "Interpretation and the Sciences of Man", in *Philosophy and the Human Sciences: Philosophical Papers, Volume 2* New York: Cambridge University Press, pp. 15-57

_____ (1992) *Sources of the Self: The Making of Modern Identity* Cambridge, MA: Harvard University Press

_____ (1995a) "Irreducibly Social Goods", in *Philosophical Arguments* Cambridge, MA: Harvard University Press, pp. 127-45

_____ (1995b) "To Follow a Rule", in *Philosophical Arguments* Cambridge, MA: Harvard University Press, pp. 165-80

Tilly, Charles (1999) *Durable Inequality* Berkeley: University of California Press

Tsai, Lilly (2007) *Accountability without Democracy: Solidary Groups and Public Goods Provision in Rural China* New York: Cambridge University Press

UNDP (2000), Executive Board of the United Nations Development Programme and of the United Nations Population Fund, "Role of UNDP in crisis and post-conflict situations", UN Doc. DP/2001/4, at http://www.undp.org/execbrd/pdf/dp01-4.pdf

Uphoff, Norman (1994) *Learning from Gal Oya: Possibilities for Participatory Development* Ithaca: Cornell University Press

Wade, Robert (1988) *Village Republics: Economic Conditions for Collective Action in South India* New York: Cambridge University Press

Watters, Ethan (2010) *Crazy Like Us: The Globalization of the American Psyche* New York: Free Press

Wedeen, Lisa (2002) "Conceptualizing Culture: Possibilities for Political Science" *American Political Science Review* 96(4): 713-728

Woolcock, Michael, Simon Szreter and Vijayendra Rao (2011) "How and Why does History Matter for Development Policy?" *Journal of Development Studies* 47(1): 1-35

World Bank (2009) "Honduras Institutional and Governance Review: Strengthening Performance Accountability in Honduras", Report Number 53517-HO, Volume 1

_____ (2011a) *World Development Report 2011: Conflict, Security and Development* Washington, DC: World Bank

_____ (2011b) "Afghanistan Justice Sector Reform Project: DRAFT Concept Note", copy on file with the authors