Leveraging Legitimacy: A Key Tool in Population-Centric Counterinsurgency

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Permanently separating insurgents from the population, facilitating effective self-defense of a sovereign host nation government, and removing ultimate causes, are necessary conditions for defeating an insurgency. Success results, if possible, as counterinsurgents systematically develop trusted networks, out-compete insurgents for population allegiance, and destroy insurgent forces.

Utility and legitimacy are two bases counterinsurgents can use to secure a population’s compliance. The quest for physical and psychological security predominates as human motives generally - let alone during the uncertainties and brutality of war. Delivering essential services, providing security, and satisfying elementary human needs, despite counterinsurgent coercion, produces population compliance. This Hobbesian predicament well-describes why counterinsurgents are treated to distant stares, surreptitious overtures, studied neglect, or outright.

hostility by an insurgency-contested population.  

The *Counterinsurgency (COIN) Manual* maintains a realist approach to these facts of the human condition.

*Interests* refer to the core motivations that drive behavior. . . . During any period of instability, people’s primary interest is physical security for themselves and their families. . . . *Essential Services* provide those things that sustain life. . . . [such as] food, water, clothing, shelter, and medical treatment. Stabilizing a population requires meeting these needs. People pursue essential needs until they are met, at any cost and from any source. People support the source that meets their needs. If it is an insurgent source, the population is likely to support the insurgency. If the HN [host nation] government provides reliable essential services, the population is more likely to support it.  

Moreover, if survival depends on tribal social structures, COIN practitioners must carefully leverage those networks and dynamics without which households, kin, clan, and sub-tribes confront a hostile environment and enemy others.  

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5 *COIN Manual*, pp. 97, 98; emphases in original. Again: “[I]ndeed, the importance of security in situations where violence has escalated cannot be overemphasized. In such cases, establishing security can win the people’s confidence and enable a government to develop legitimacy in other areas” (*COIN Manual*, p. 38); See also, David Galula, *Counterinsurgency Warfare*, esp. pp. 54-55, 81-86.  
  
  Sean D. Naylor, “Keeping the enemy at bay: FOB Baylough’s mission is to win over locals and disrupt Taliban forces,” *Army Times*, July 27, 2009, pp. 20-21; Rajiv Chandraskeharan, “In Afghanistan, U.S. May Shift Strategy,” *Washington Post Online*, July 31, 2009 (Accessed, August 1, 2009), citing a draft of the forthcoming report commissioned by Gen. McChrystal, in which he states: “The report calls for intelligence resources to be realigned to focus more on tribal and social dynamics so commanders can identify local power brokers and work with them. Until recently, the vast majority of U.S. and NATO intelligence assets had been oriented toward tracking insurgents”; LTC Chris Kolenda, charged by Gen. McChrystal with directing and coordinating the Strategic Assessment Group on Afghanistan is described as an “amateur ethnologist” and known particularly for his detailed, expert, insider-knowledge on tribal dynamics in a region of Northeast Afghanistan (for the full story, see:
Utility-centered compliance can be ignored only at one’s peril. A second means, *legitimate domination*, is also key. The present *COIN Manual* repeatedly notes that establishing legitimacy is a key COIN objective yet mistakenly conceives legitimacy as an attribute exclusive to national governance.

The primary objective of any COIN operation is to foster development of effective governance by a legitimate government. . . . A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread, enduring societal support. Such government respect for rules—ideally ones recorded in a constitution and laws adopted through a credible, democratic process—is the essence of the rule of law, as such it is a powerful potential tool for counterinsurgents. . . A COIN effort cannot achieve lasting success without the HN government achieving legitimacy.

Legitimate governance *is* necessary to COIN victory. However; equating the concept ‘legitimacy’ with legitimate governance, and legitimate governance with western liberal democratic constitutionalism narrows the sociological scope of this key concept. It also obscures its strategic relevance.

This article seeks to remedy these two deficiencies by reintroducing the classical conceptualization of ‘legitimate domination; briefly define its subtypes; and identify key points of potential relevance—tactical, strategic, and operational--to current COIN operations.
‘Legitimate Domination’: Classical Background

The concept and typology of ‘legitimate domination’ was pioneered by the great classical German sociologist Max Weber (1864-1920). To understand this concept three constituent terms require definition: power, domination, and legitimacy. ‘Power’ (Macht) is the capacity to compel others to do as one commands. More sociologically, power is defined as the “probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability exists.”

Dominion (Herrschaft) is a special case of power manifest as actual compliance and obedience to command since “power of command does not exist unless the authority which is claimed by somebody is actually heeded to a socially relevant degree.” The final constituent, ‘legitimacy’ (Geltung), is the perceived subjective validity of domination granted by those subject to its rule. Legitimate domination diametrically contrasts with the mere de-facto power by superordinates to coerce subordinates: it denotes a normatively-sanctioned right and not a nakedly coercive mere capacity to exercise the power of command. Weber’s key claim here is that in addition to utilitarian calculation that at “the basis of every authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige.” The key sociological consequence is that “in a given case [of domination] the particular claim to legitimacy is to a significant degree and according to its type treated as ‘valid’; [and] that this fact confirms the position of the persons claiming authority and that it helps to determine the choice of means of its exercise.”

Types of Legitimate Domination

Legitimate domination (always understood to mean ‘authorized power of command’ or ‘authority,’ for short) is of three types—charismatic, traditional, and legal-rational—each distinguished by “the ultimate grounds” or “kind of claim to legitimacy” typically made.
Charismatic Domination. Charismatic domination in its classic form is person-centric. It rests on the subjective belief that a given individual is in possession of extraordinary, inspired powers and is therefore worthy of command and obedience. These imputed “supernatural, superhuman, or at least specifically exceptional powers or qualities” . . . are by their very nature “not accessible to the ordinary person” and are regarded by those imputing such charisma “as of divine origin or as exemplary, and on the basis of them the individual concerned is treated as a ‘leader’” 20. “In the case of charismatic authority,” Weber continues, “it is the charismatically qualified leader as such who is obeyed by virtue of personal trust in his revelation, his heroism or his exemplary qualities”.21 Charismatic domination can also become depersonalized. “Here,” Weber states, “we find that peculiar transformation of charisma into an institution: as permanent structures and traditions replace the belief in revelation and heroism of charismatic personalities, charisma becomes part of an established social structure”.22 It is through this depersonalization or ‘routinization’ that charisma expands to encompass swaths of social structure and not merely specific individuals, their disciples, and followers.

Traditional Domination. Traditional domination is precedent-centric. It rests on the subjective perception by followers that ‘what has been’ and is of great antiquity, time-honored, historically-rooted, and deeply customary, authorizes the power of command. This “sanctity of immemorial traditions and . . . legitimacy of those exercising authority under them”23 is comprised of several sub-types: gerontocracy or ‘rule of elders’; primary patriarchalism, which authorizes adult male power and prerogative over household property and relationships; and patrimonialism which authorizes the power of command to ‘manors’ and/or to a single dominant patrimonial ‘royal house’.24 As a “special case of patriarchal domination” patrimonial domination is deeply steeped in traditional loyalties which clearly establish rights, expectations, obligations, and a normative-framework: one that shuns innovations that might threaten these time-honored relationships.

Legal-Rational Domination. Legal-rational domination is procedural-centric. It rests on the perceived subjective validity of power arising from the application and jurisdiction of objective, impersonal, and un-prejudicial procedures. Belief in this presumption of unbiased procedural objectivity in the application of rules and norms shifts the basis of legitimacy to “the norms rather than to the person,” 25 and to belief in the “legality of enacted rules and the right of those elevated to authority under such rules to issue commands”. 26

authority and questions of religion and state, is a key dynamic. For Weber’s classic discussion, see Economy and Society, v. 2, ch. 15 entire (pp. 1158-1211).


21 Weber, Economy and Society, v.1, p. 216. The origins of charismatic domination itself, and its multiplicity of forms, is pithily summarized by Weber: “Kingship is preceded by all those charismatic forms which assure relief in the face of extraordinary external or internal distress which promise success in risky undertakings. In early history, the precursor of the king, the chieftain, often has a double function: He is the patriarch of the family or sib, but also the charismatic leader in hunt and war, the magician, rainmaker, medicine man—hence priest and doctor. . . (Ibid., v.2, p. 1142).


24 Weber’s discussion of “estate-type domination” (See Economy and Society, v.2, ch. 13, 1071-1110) while fascinating in itself, deals with the evolution of “fief-based” medieval western European feudal institutions and is not of practical or strategic relevance for the present insurgencies under consideration.


Legal-rational domination is applicable to modern legal institutions, bureaucratic organizations, and complex formal organizations of many types. It is also applicable to professional and scientific associations, scientific reasoning and methodology, and all institutions whose incumbents and offices are presumably governed by impersonal, objectively-binding, and neutrally-applied criteria that together sufficiently determine the grounds upon which domination and its prerogatives rest. Legal-rational authority bases itself in the belief that efficiency, merit, professional competence, expertise, occupational specialization, and a formal educational credential are objectively necessary and neutrally-applied functional requisites of modern societal organization.27

The purest form of legal-rational domination, Weber famously observes, is modern bureaucratic organization.28 Modern bureaucratic organization is a compelling rationally-necessary organizational necessity for any complex enterprise and applies “with equal facility to a wide variety of fields” including “profit-making business or in charitable organizations,” and also “in any number of other types of private enterprises serving ideal or material interests”. It also applies to political and religious organizations.29 Weber lists what are recognizable to all of us ‘moderns’: organizations of “church and state, of armies, political parties, economic enterprises, interest groups, endowments, clubs . . . Its development is, to take the most striking case, at the root of the modern Western state”.30

Leveraging Legitimate Domination

The perceived subjective validity of the power of command (‘authority’) rests, as described above, on specific grounds. Let us now examine key points of leverage of relevance for ongoing COIN operations.

Leveraging Charismatic Domination. Charismatic domination is a remarkable social phenomenon. It is a revolutionary force31 that mobilizes disciples and followers. It is lightning that strikes with ferocity. In its depersonalized form charisma’s afterglow radiates a sanctified aura for offices and institutions, and commands compliance owed incumbents benefitting from its presumed inspired provenance. Charismatic domination is characterized, however, by strategically-significant instability. The potential for revocation or the withering of subjective recognition is a first source of instability. “If those to whom he feels sent do not recognize him,” Weber states, “his claim collapses”.32

27 Max Weber: “The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization. . . . Precision, speed, unambiguity, knowledge of files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs—these are raised to the optimum point in the strictly bureaucratic administration” (Economy and Society, v.2, p. 973).
31 Weber: “[C]harisma, in its most potent forms, disrupts rational rule as well as tradition altogether and overturns all notions of sanctity. Instead of reverence for customs that are ancient and hence sacred, it enforces the inner subjection to the unprecedented and absolutely unique and therefore Divine. In this purely empirical and value-free sense charisma is indeed the specifically creative revolutionary force of history” (Economy and Society, v.2, p. 1117).
It is recognition on the part of those subject to authority which is decisive for the validity of charisma. This recognition is freely given and guaranteed by what is held to be a proof, originally always a miracle, and consists in devotion to the corresponding revelation, hero worship, or absolute trust in the claim to legitimacy. . . Psychologically this recognition is a matter of complete personal devotion to the possessor of the quality, arising out of enthusiasm, or of despair and hope. (italics added)33

Subjective recognition is tightly-coupled to a second source of instability: charisma’s requirement that it must be continuously proved. The persistent ‘delivering of the goods’ is by no means a certainty, however. For some time pure personalized charisma in its revolutionary mode may move mountains. Inevitably though ‘the world’s’ empirical regularities exact their revenge, and intractable obstacles defeat or at least frustrate charisma’s apparently gravity-defying powers. Disenchantment arises as followers fail to experience improved lives or do not attribute these improvements to those charismatic gifts. “If proof and success elude the leader for long,” Weber writes, “if he appears deserted by his god or his magical or heroic powers, above all, if his leadership fails to benefit his followers, it is likely that his charismatic authority will disappear.”34 The charismatic hero “gains and retains [charismatic domination] solely by proving his powers in practice. He must work miracles, if he wants to be prophet. He must perform heroic deeds, if he wants to be a warlord. Most of all, his divine mission must prove itself . . .” 35

Third, charismatic domination presumes radical arrogance and its correlate, disloyalty. It answers to no power beyond its own self-proclaimed right to interpret the divine command. This applies also to unpredictable threats that may arise from other charismatically-invested or even cultivated rivals: there is no possible means of preventing nor mediating likely rivalries that arise and whose contrary visions, powers, plans, and following, will have a similar claim to power’s command. This unpredictability offers opportunities for counterinsurgents to ally with defenders of traditional Islamic religious authority who, in opposition to various self-professed charismatic usurpers, defend the necessity of a learned, reasoned, or at least authoritative legal procedure and verdict (fatwa).36

Fourth, charismatic domination is eventually ‘captured’ by the world it seeks to ‘revolutionize’. “[I]n its pure form,” Weber states, “ [charisma] may be said to exist only in statu nascendi [an a state of emergence] . . . and cannot remain stable, but becomes either traditionalized or rationalized, or a combination of both”.37 The original charismatic group lives off “‘booty’ or extortion, whether by force or by other means, [a]s the typical form of provision

33 Weber, Economy and Society, v.1, p. 242; Also: . “It is the mere fact of recognizing the personal mission of a charismatic master [that] establishes his power. Whether it is more active or passive, this recognition derives from the surrender of the faithful to the extraordinary and unheard-of, to what is alien to all regulation and tradition and therefore is viewed as divine—surrender which arises from distress or enthusiasm” (v.2, p. 1115; italics added).
36 See, for example: Dr. E. Alshech, “The Emergence of the ‘Infallible Jihadi Fighter’—The Salafi Jihadist’s Quest for Religious Legitimacy,” MEMRI, June 2008, Inquiry and Analysis, #446.
for needs” on the grounds that it “repudiates any sort of involvement in the everyday routine world.” With the death of the original charismatic leader and eventual decline of the original charismatic community a predictably tragic path leads from what is initially a “unique, transitory gift of grace of extraordinary times and persons” to inexorably become “a permanent possession of everyday life . . . In every case charisma is henceforth exposed to the conditions of everyday life and to the powers dominating it, especially to the economic interests.” 38 Once the right is finally granted to the charismatic successor community to “found families and to engage in economic pursuits” that “turbulently emotional life that knows no economic rationality” fateful succumbs “to a slow death by suffocation under the weight of material interests: every hour of its existence brings it nearer to this end”.39

Uncertainties about the relative authority, endurance, and predicted trajectory of charismatic persons or offices raises important short-term strategic and tactical challenges.40 Is this charisma grounded in a meteoric but short-lived path? a planet with enormous gravitational attraction whose orbit appears set and all captured in its forces likely to pattern their lives according to certain dictates, and no others? a sun whose centrality to a deeply believing powerful constituency is truly vital and whose powers must be channeled and can only be avoided at one’s peril? Or a sun whose former heat, while still evident, is dissipating as it succumbs to its eventual fate, or can be assisted to realize it either sooner, or later?

Leveraging Traditional Domination. The strategic importance of traditional domination for COIN warrants the focused attention it has lately received,41 the increasing demand for enhanced cultural literacy, and astute observations on sub-state dimensions of legitimacy offered by cultural anthropologists familiar with non-Western tribally-based social orders.

Traditional domination—i.e. authority based on the belief in the sanctity of immemorial tradition—is humanity’s center of gravity. Core human relationships, institutions, patterns, and expectations arising in human reproduction, marriage, family, household, kin, clan, tribe, and nation are sanctified by tradition, and most often religiously sanctified as divinely-authored, favored, or commanded prescription and proscription. Traditional domination resides in the authority of precedent: the authority of fathers, parents, household, and clan elders; of tribal sheiks; of customary and traditional religious authorities. It upholds the sanctified ancient order against those who would overthrow its patterns and pulse. Tradition is the repository for the time-honored, and time-tested. It has passed the test of reality because it is present in and as reality. It is not hypothetical, but actual.42 It is the slayer of chaos, randomness, uncertainty, danger, the illicit, and the forsaken. Moreover, as charisma becomes routine and depersonalized it itself becomes time-honored tradition, though basking in charisma’s fading glow.

41 See endnote # 6 above.
Traditional domination rests not on a person, but on the authority of the tradition or precedent, and applies in three spheres: (1) a specific person as its embodiment, exemplar, and carrier as one who is obeyed “because of their traditional status”. ; (2) a specific rule or norm to be upheld that “directly determine[s] the content of the command . . . believed to be valid within certain limits”. and (3), the permissible discretion or scope provided for its interpretation and application “which tradition leaves open to him. . .” Obedience owed to the patriarchal master, for example, is owed exclusively to “his traditional status” and his authority itself is “strictly bound by tradition”.

If COIN objectives are advanced by defending traditional domination it is imperative to avidly honor, uphold, and lend prestige to those traditions, and on that basis, the legitimacy of specific persons, norms or rules, and discretion are secured. An ardent defense of traditional domination is especially vital to the sin-qua-non counterinsurgent mission of identifying, isolating, and destroying anti-American global jihadist networks before they successfully subvert, co-opt, and transform tribal-nationalist, territorially-specific Islamist insurgencies.

Fear of evil happenings arising from having offended those divine powers commanding one’s traditions erects mighty barriers to innovation. Moreover, traditional domination is frequently localistic, particularistic and familistic; it elevates blood, household, clan, tribe, ethno-religious groups, a specific territory, way of life, and sacred narrative. It opposes universal revolutionary ideals that devalue existing socio-cultural, socio-religious, and socio-political prerogatives. Against revolution, including global jihadist revolution, tradition asserts at most incremental innovation, but far more often, its sanctity and continuity. In sum, tradition’s irrevocably antagonistic relation to every kind of purely personalized revolutionary charisma should be exploited.

COIN strategy that necessitates opposing and delegitimizing traditional domination presents enormous risks: counterinsurgents cannot in the short-run challenge the sanctified status of those traditions which ‘from time immemorial’ have governed the ethos, folkways, and very nature of social organization and interaction. It is possible, however, on traditional grounds, to oppose a specific person, norm, or discretion. Counterinsurgents can charge that tradition is being misappropriated, misapplied, betrayed, mocked, or otherwise dishonored. In short, the insurgents’ power of command can be challenged using that very type of domination (tradition) they themselves claim. This strategy takes full advantage of the fact that tradition, despite its

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46 See David C. Gompert and John Gordon, IV, War by Other Means, esp. chapter 3, “Countering Type III Insurgency,” for an extremely insightful discussion of four types of insurgency and the necessity of disaggregation and eliminating the nexus between global jihadism (Type 4) and others; See also, David Kilkullen, The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One, esp. 12-16, 28-38. (Oxford: Oxford University Press, 2009).
self-professions, contains tools for its revision (though only in the name of tradition and never a non-traditionally-sanctioned innovation).48

However, if insurgents are fighting to defend, maintain, or restore authoritative traditions that are in opposition to counterinsurgent objectives, and few if any possibilities exist for challenging persons, rules, or interpretive discretion, the above leverage is unavailable. Assuming counterinsurgents cannot succeed in delegitimizing traditions that are antithetical to their goals, priority can shift to delegitimizing civilian-directed terrorist violence as means, and neutralizing or co-opting traditional-restorationist insurgents.

It is decisive to understand that tradition will be forced to defend (or even originate) an insurgency if the counterinsurgent aspires to establish a de-traditionalized form of life threatening (or appearing to threaten) existing prerogative. It is for that reason that the current COIN Manual can be criticized, i.e. it mistakenly elevates liberal democratic constitutional legal norms as a more or less dominant ideal for deflating the insurgencies to which we are now party. This is true if ‘good governance’ or truly effective governance is only possible on the basis of these ideals. It is deeply problematic, however, if legitimate governance can be differently sustained: for example, strategies that undermine global jihad while simultaneously asserting, defending, or restoring traditionalist domination resting on elders, patriarchal household, clan, tribe, nation, ethno-religious group, and religious law.49

Leveraging Legal-Rational Domination. Owing to its replacement of charisma’s person-centered and tradition’s precedent-centered domination with “a ‘rational’ character,” governed by “rules, means-ends calculus, and of matter-of-factness predominating,” Weber claims that the “rise and expansion [of legal-rational domination] has everywhere had ‘revolutionary’ results”.50 Yet by its very nature this revolution is janus-faced: in its wake we find winners and losers, creation and destruction, power and powerlessness, enablement and constraint. In the broadest sense the rise of bureaucratic organization gives rise to a bifurcation of societal organization into two rival mechanisms for organizing production and distributing its fruits: nepotocracy (i.e, “who you know” based on rule and reward of one’s kin, regardless of objectively determined ability), and meritocracy (i.e., “what you know” based on reward of objectively-determined ability, regardless of kinship).51

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48 See especially Richard T. Antoun, Understanding Fundamentalism: Christian, Islamic, and Jewish Movements, 2nd ed. (Lanham, MD: Rowman and Littlefield, 2008), chapter 3, for the ways in which this ‘tradioning’ is accomplished.

49 Patrimonialism, though not directly germane to current COIN in Afghanistan, Pakistan, or Iraq, may be indirectly significant. Royal and princely patrimonial domination in conservative Gulf Arab oil sheikdoms, for example, may be highly significant in not only leveraging these societies against potential insurgency, but leveraging them in broader traditionalist coalitions designed to isolate and delegitimate global jihadists from traditionist aligned populations residing in insurgent-vulnerable social orders.


51 For a discussion of the origin of the concept ‘meritocracy’ and analysis of the conflict between meritocracy and nepotocracy, see Paul Kamolnick, The Just Meritocracy: IQ, Class Mobility, and American Social Policy (Westport, CT: Praeger, 2005), esp. chapter 3.
Individuals can and do benefit when ‘fairness,’ ‘efficiency,’ and unprejudiced, legal, bureaucratic, market, and organizational norms are institutionalized.\textsuperscript{52} It is important to recognize these potential benefits owed to legal-rational domination: not wishful thinking, they are highly consequential for persons’ well-being. Consider the positive fruits potentially reaped for example, by adhering to legal-rational criteria in those four key COIN lines of effort, i.e. governance, economic development, essential services, and security.

The ethos of bureaucratic organization—“the more it is ‘dehumanized,’ the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation”—is profoundly threatening to those prerogatives upheld by traditional domination.\textsuperscript{53} If ‘who you know’ matters a lot in life even to relatively well-off citizens in western capitalist democracies, how much more so when ‘who you know’ is social survival and mediates any conceivable potential mobility? It is obvious then why legal-rational domination can conjure among a tribally-organized populace in the midst of insurgency, and without enduring traditions of legal-rational domination, deep ambivalence at best; and at worst, anxiety, fear, anger, hostility, resentment, and possible hatred.

Understanding legal-rational domination is crucial; leveraging it is vital. For partially counterintuitive reasons an admittedly conflict-ridden yet essential interdependence between nepotistic (kin-based) and meritocratic (non-kin-based) mechanisms in COIN-relevant traditional societal contexts can indeed be leveraged.

First, tribally-based patriarchal nepotistic networks and dynamics can be leveraged. Prudence counsels recognition and cooperation with this major fact of social structure. Moreover, kin-based allocation embedded in pre-existing trust networks, like the market mechanism, requires no central plan or god-like prescience to ascertain appropriate levels of production, distribution, and consumption.\textsuperscript{54} The information conveyed of existing human needs arising from kinship networks is substantially better than that arising from less-informed plans created by ‘foreigners’ in the fog, friction, and violence of war.

Furthermore, work effort, sacrifice, savings, and investment increases when one’s household and kin are perceived to directly or indirectly benefit. This increased level of motivation and production-related energy expenditure partially offsets, then, inefficiencies that arise in the absence of non-kin-based meritocratic reward structures.\textsuperscript{55}

\textsuperscript{52} Max Weber: “The more complicated and specialized modern culture becomes, the more its external supporting apparatus demands the personally detached and strictly objective expert, in lieu of the lord of older social structures who was moved by personal sympathy and favor, by grace and gratitude. . . In particular, only bureaucracy has established the foundation for the administration of a rational law conceptually systematized on the basis of ‘statutes’” (\textit{Economy and Society}, v.2, p. 975).


\textsuperscript{54} Insurgent-linked charity and social welfare provision, which uses pre-existing and establishes new forms of trust networks, offers substantial challenges to COIN operators. See e.g. MAJ Erik A. Claessen, Belgian Armed Forces, “S.W.E.T. and Blood: Essential Services in the Battle between Insurgents and Counterinsurgents,” (\textit{Military Review}, November-December 2007, pp. 91-98).

Second, a case can be made for using impersonal, objectively-applied rules as a means of securing opportunity and advantage. It is here that the role of intra-, inter-and pan-tribal authority—for example, trusted clan elders, sheiks, imams, the Qur’an and an entire edifice of Islamic jurisprudence—can be leveraged to reinforce and uphold the presumption of justice as fairness in transactions, exchanges, and elementary social interaction. Quranic social justice (Qist), drawing on its Jewish and Christian predecessors, is based in individual-level moral accountability and culpability before Allah, and applies universally to every member of the Muslim community, regardless of tribal affiliation.\(^\text{56}\) In short, there is at least within Islamic sacred law a privileged role for a concept of justice as pan-tribal fairness, regardless of household, kin, clan, and tribal connections.

Third, utilities, essential services, and security are so essential to daily life their presence by whatever means possible is welcomed: sheer availability, let alone timeliness, quality, and efficiency, will trump kin-based criteria. It is the presumption that these vital services are unavailable except through kin, that explains preferential disposition toward kin in the first place.

Fourth, while one prefers to privilege one’s own within economic relations, a nationalist case can be made—presuming that identity has salience—that national power and pride accrue to those nations that in the longer-run privilege norms of efficiency, transparency, objectivity, and are attentive to the requisites of competitive economic endeavor. Also, it can be asserted that as a result of increasing national prosperity, the likelihood of prosperity for one’s household and kin is enhanced.

Fifth, uncorrupt and competent law enforcement; an efficient, accessible, and competent judicial system; effective intelligence; a professional, highly-trained uniformed armed forces; each of these necessary elements of an effective security regime for a functional nation-state are undoubtedly attainable (in the long run, at least) only on the basis of legal-rational authority.

Sixth, the counterinsurgent should maximally leverage the edifice of legal-rational domination authorizing the present COIN campaigns. This applies first, to all legal authority binding on the counterinsurgent campaign, i.e. the authority to assist a foreign government, and to use military force; the rules of engagement (ROE); legal and customary norms of the law of war; the laws specific to internal armed conflict; laws pertinent to detention and interrogation, and to enforcing discipline of U.S. forces; the legal framework governing humanitarian relief and reconstruction; the training and equipping of foreign forces, and of adjudicating and resolving claims that arise from armed operations; and finally, of establishing the rule of law in a host nation.\(^\text{57}\)

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\(^{56}\) For Quranic authority upholding individual-level moral accountability, see Qur’an 17:13-15; 35:18, 39:41; for social justice as fairness in one’s dealings and exchange relationships, see Qur’an 55:9, 60:8; see also Paul Kamolnick, The Just Meritocracy, pp. 88-90.

\(^{57}\) See, COIN Manual, “Appendix D,” Legal Considerations, pp. 347-361. See also COIN Manual (pp. 42-43): “Illegitimate actions are those involving the use of power without authority—whether committed by government officials, security forces, or counterinsurgents. Such actions include unjustified or excessive use of force, unlawful detention, torture, and punishment without trial. Efforts to build a legitimate government through illegitimate actions are self-defeating, even against insurgents who conceal themselves amid noncombatants and flout the law. Moreover, participation in COIN operations by U.S. forces must follow United States law, including domestic laws, treaties to which the United States is party, and certain HN laws. Any human rights abuses or legal violations
ultimate legitimacy of national governance does in fact rest on legal-rational authority, this also is an essential source of legitimacy that can and should be leveraged.58

With respect to this latter goal, counterinsurgents should create, support and establish as quickly as practicable, a host-nation capacity to shift from using the law of war, to prosecuting insurgent violence as acts of illegitimate criminal violence directed against the established legitimate government, its laws, and its civilian population.59 During an insurgency it is essential to understand that insurgents do not “have . . . special status under international law,” and that “U.S. forces conducting COIN should remember that the insurgents are, as a legal matter, criminal suspects within the legal system of the host nation. . . . [E]vidence will be used to process insurgents into the legal system and thus hold them accountable for their crimes while still promoting the rule of law”. 60

Finally, counterinsurgents should become educated in, keep abreast of, and maximally-leverage the vehement conflicts among Islamic jihadists regarding the specifically Islamic legality of al-Qa’ida’s anti-Western global so-called jihad. It is highly likely that Islamic traditions and Islamic legal-rational authority can be leveraged to great effect particularly in relation to the means used by Al-Qa’ida to wage war against the West, western-supported nation-states, and any and all they accuse of ‘infidelity’ and ‘apostacy’. rulings pertaining especially to treachery, suicide, homicide, terrorism, murdering civilians (including women, children, and the elderly); the even more legally-problematic shedding of Muslim blood; and finally, rampant use of the takfir doctrine, i.e. heretification, by declaring another Muslim an apostate and thereby making their lives forfeit).61

committed by U.S. forces quickly become known throughout the local populace and eventually around the world. Illegitimate actions undermine both long- and short-term COIN efforts”.

58 See, COIN Manual, p. 39: “The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore of its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread, enduring societal support. Such government respect for rules—ideally ones recorded in a constitution and in laws adopted through a credible, democratic process—is the essence of the rule of law. As such, it is a powerful potential tool for counterinsurgents”. Where voluntary acceptance of a government’s authority does not rest on such ‘preexisting and impersonal rules,’ or a ‘democratic process,’ however, counterinsurgents can compromise COIN mission objectives by unwittingly privileging such norms.

59 The COIN Manual (p. 42) makes this explicit: “To establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as possible. Using a legal system established in line with local culture and practices to deal with such criminals enhances the HN government’s legitimacy. Soldiers and Marines help establish HN institutions that sustain that legal regime, including police forces, court systems, and penal facilities”. See also, David Galula, Counterinsurgency Warfare, pp. 43-47, p. 88 for a deeply insightful analysis of the very real challenges confronting counterinsurgents in constitutional democratic societies during the period when sabotage and subversion (but not yet violence) is suspected and/or proved.

60 COIN Manual, p. 353; This does not of course apply to ‘foreign fighters’ whose legal classification and status is not determined by the host nation government.

Some key questions are worth pondering as counterinsurgents attempt to leverage this revolutionary legal-rational form of legitimate domination. Is western-style legal-rational domination an essential premise for deflating an insurgency, i.e., does it essentially contribute to separating insurgents from the population, facilitating effective self-defense of the host nation government, and removing its primary causes? Can legal-rational domination be leveraged in ways that complement rather than undermine—via compartmentalization, for example—traditional sources of legitimate domination? Can a nuanced, complex, multi-stage approach be executed so that legal-rational domination is seen as one necessary, but insufficient source of ultimate authority? When is it essential to leverage legal-rational domination at the expense of charismatic and traditional domination, and vice versa, because for example, the longer-term nationalist and constitutionalist project demands it? Deep awareness of the winners and losers—actual, potential, perceived, and contrived—effected by completely deposing all sources of charismatic and legitimate domination linked to age-old traditions, families, tribes, and personages, is demanded at every step.62

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62 The COIN Manual to its credit provides a fairly nuanced treatment in its discussion of “identity-based” insurgency: “Many contemporary insurgencies are identity-based. These insurgencies are often led by traditional authority figures, such as tribal sheiks, local warlords, or religious leaders. . . . [T]raditional authority figures often wield enough power to single-handedly drive an insurgency. This is especially true in rural areas. Identity-focused insurgencies can be defeated in some cases by co-opting the responsible traditional authority figure; in others, the authority figures have to be discredited or eliminated. Accurately determining whether a leader can be co-opted is crucial. Failed attempts to co-opt leaders can backfire if those leaders choose to oppose the counterinsurgency. Their refusal to be co-opted can strengthen their standing as they gain power and influence among insurgents” (COIN Manual, pp. 24-25). An attentive reader will detect a focus on “power” wielded rather than “authority” granted to “traditional authority figures”. In short, the entire concept of traditional legitimacy and its basis in followers’ recognition of and adherence to sanctified custom is absent from consideration.
Conclusion

Utility and legitimacy are two bases counterinsurgents may use to win population allegiance. The importance of legitimacy to COIN success is repeatedly noted in the COIN Manual, and properly re-expanded into its more robust sociological conception, it is a variable of great strategic relevance. As a concept and sociological fact, legitimacy is applicable to all instances in which authority is granted to persons or institutions exercising the power of command. Leveraging these diverse bases of legitimate domination for counterinsurgents and against insurgents is another important tool in competing for population allegiance.\(^6^3\) Attending to the COIN-relevant strategic properties of legitimate domination is therefore worthy of greater attention than it has thus far received.

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\(^6^3\) Despite the modern prevalence of legal-rational domination it is crucial to keep in mind Weber’s admonition: “[T]he three basic types of domination cannot be placed into a simple evolutionary line: they in fact appear together in the most diverse combinations” (Economy and Society, v.2, p. 1133).