

Rebel Law: Insurgents, Courts and Justice in Modern Conflict by Frank Ledwidge, London: C. Hurst & Co. (Publishers) Ltd, 2017, pp. 256, Rs 1,900

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Frank Ledwidge begins *Rebel Law* with a vision to consolidate and derive comprehensive narratives surrounding lawfare—law used as a means of achieving agendas—and to provide recommendations as to how effectively policymakers and practitioners may use it to counter destabilisation in the light of unjust dissent. His experiences from years at the front end of British foreign policy form the backbone on which this book takes shape. Ledwidge acknowledges the immensity of the topics involved—war, law and insurgency in itself—and chooses to highlight only enough to express the dynamics involved in the act of insurgency and its consequences.

Throughout the book, he stresses on the role of legitimacy, or rather the need for ‘perceived’ legitimacy in the functioning of any form of power, be it government or rebel. The requirement for the state, its ability to provide services, resolve disputes and enforce law is briefly explained. On insurgency, he states that ‘complex insurgencies are powered by injustice, corruption and a sense of illegitimacy’ (p. 16). He seems reluctant to delve in detail into the source of such corruption, but provides an overview of reasons that he deems responsible: failure of the state to provide for the needs of its people; people impatient with

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the workings of the state; but mostly insurgents being social nuisances looking to control resources and extend their power. While that may be true for the examples in this book, a fair inspection of the state's assumed legitimacy would have made for a more unbiased reading.

On the factors determining legitimacy, the author quotes the 2006 edition of *Field Manual 3-24* that sets out:

...six 'possible indicators of legitimacy', which include the ability to provide security, the selection of leaders in a manner perceived to be just and fair, a high-level of political participation, a culturally acceptable level of corruption, a culturally acceptable level of social and economic development, and a high level of regime acceptance by major social institutions (p. 17).

He further reinforces the role of 'perceived legitimacy' by correlating it with the Chicago study, conducted by Tom Tyler and Kenneth Rasinski in 1984, who concluded that a significant way in which people assess procedural fairness is strongly linked to their judgements of whether the authority they are dealing with is motivated to be fair. Tyler concludes that 'people obey the law because they believe that it is proper to do so' (p. 17).

Ledwidge states that the idea of the state existing to restrict uncontrolled violence through the exercise of the monopoly use of its own violence is a commonly accepted phenomenon. But with growing incredulity in the actions of the state across the globe, it makes one wonder how much longer will violence as a means of reinforcing laws on the population be viable. In that scenario, the counter-insurgencies deployed by the state will determine the results, as explained in due course by the author. He then discusses one of the major grounds for rebel uprisings—land ownership. He mentions various instances of rebellion, such as the Land Wars in Ireland, the Mau Mau rebellion in Kenya and, in detail, Afghanistan. He calls to attention the film, *My Afghanistan*, which portrays a village *shura* (meeting) where Sher Alizai, the representative of the Government of the Islamic Republic of Afghanistan, stands to address the villagers gathered (in the presence of the United Kingdom militia):

...If you resist them [Taliban], we will support you; and yet no, you let them rule your lives; I am here to tell you that this will not be tolerated. One other thing that you need to understand—the government owns all the land in these parts; land outside the limits

of this town will be expropriated; it is not yours and it never was (p. 36).

For a people whose identity and livelihoods (especially in rural areas) are dependent on the land, the idea of land acquisition by the government stands as a direct threat to their well-being. In very few instances does the book question the authenticity of the claim made by the state of power over these resources. The author goes on to quote Samuel Huntington, who summarised land's importance as a 'driver of rebellion': 'where the conditions of land ownership are equitable and provide a viable living for the peasant, revolution is unlikely. Where they are inequitable and where the peasant lives in poverty and suffering, revolution is likely if not inevitable' (p.41). This ties up with the people's tolerance for the Taliban, which acts as a shadow government to hold and establish itself as the dominating power.

The Taliban's success, the author notes when addressing 'Caliphate of Law', has been through the attack on the weakness of the existing judiciary system, which was known to be highly corrupt and inefficient, by replacing it with insurgent courts (traditional Sharia court hearing)—a tactic used by many rebellions across history, to provide a better alternative for dispute resolution for the common man. The author acknowledges the need for 'better deals' and the success of the same through enforcement; he also recognises the violent nature of the laws in question, which, for the lack of better options and fear of retribution, is accepted by most of the people in rural Afghanistan. Ledwidge suggests that understanding the ground realities of the social, cultural and religious intricacies of the land and its people (which, he rightly notes, is very difficult for an external agency) will help in providing better humanitarian aid when required.

He sums up that for an insurgency, the possession of a working shadow state system, including a courts system, may serve to work in their favour. He posits if an argument can be made that it is really necessary? In order to attempt an answer to this, he turns our attention to the successful insurgencies in recent history. Ledwidge narrates the multilayered and sophisticated military insurgence of the Irish War of Independence (1919–21), and how it influenced insurgent leaders as diverse as Ba Maw in Burma and Menachem Begin in Israel. The fact that the Dáil Courts (insurgent courts formed by Sinn Féin Members of the Parliament [MPs] during that time) acted as—[a]n illegal government has that become the *de facto* government. Its jurisdiction

is recognized. It administers justice promptly and equitably and we are in this curious dilemma that the civil administration of the country is carried on under a system the existence of which the *de iure* government does not and cannot acknowledge and is carried on very well (summed up by a Unionist in *The Times*) (p. 55).

The author then piles evidences of the importance of the court systems in the rise of insurgency in the modern world by narrations of various degrees of investments in legal procedures by prominent insurgencies, like the Algerian insurgents of the Front de Libération Nationale (FLN) in the Algerian War of Independence, Biafra, Marxist Naxalites of India, the Free Aceh Movement, the Sierra Leonean Revolutionary United Front (RUF), the Kosovo Liberation Army, the National Liberation Army (ELN) and Fuerzas Armadas Revolucionarias de Colombia (FARC) of Colombia, the South Sudanese Sudan People's Liberation Movement (SPLM) and the Syrian Civil War.

Ledwidge also sheds light on the instances in history, predominantly the colonial era, where imperial powers sought to maintain effective rule over huge areas through the use of a small number of administrators by such regimes as the British, French and Ottoman Empires. He states that these lessons have been forgotten in recent counter-insurgency campaigns, which have focused more on formal structures, at the expense of more effective 'light touch' informal provisions. This seems quite expected with increasingly less tolerance of the people towards the monopoly of the elite few at the expense of the masses, and is quite unlikely to be revived again without the use of extensive force.

He then turns to how insurgents often use counter-insurgent courts to challenge the legitimacy of the accusers in what is now known as the rupture strategy. It is intimately connected with ensuring that the message of the cause is reinforced, while simultaneously undermining the legitimacy of the state. This is a win-win situation for the insurgency where the independent judiciary has the power to disturb the monopoly of violence exercised by the government and to transcend this disturbed framework by offering a radically different interpretation of security and freedom. This, he says, will not be possible without judicial professionalism and the voice of rupture heard by an audience outside the courtroom, which, in the age of mass media, is becoming increasingly easy.

He notes that the counter-insurgent judicial strategy today acknowledges the rapid evolution of ideas in the course of human advancement as it became clear to many practitioners that simply

transposing apparently successful Western systems does not work all the time; in fact, in many cases, it led to miscarriage of justice. Ledwidge provides a detailed tactical lawfare perspective of the case of Helmand, 2006–14. He lists how when the British arrived in Helmand in 2006, there were at least five different entities providing dispute resolution: the Afghan government's judicial system; Afghan government officials; the tribal elders themselves; the mullahs, in their *de officio* capacity as interpreters of Sharia; and finally, the Taliban. In this kind of a scenario, transposition of Western ideologies can turn counter-productive. He agrees with Graham Woodman who suggests that attempting to impose state law in place of customary law can, in fact, act to increase conflict. Indeed, Woodman suggests that reducing the application of state law will reduce conflict. Should efforts be made to harmonise the two kinds of law, the 'two goods'? This should then be accomplished through community action (that is, it should be bottom-up) (p. 153). Ledwidge then draws parallels to the challenges for developing a counter-insurgent judicial strategy in Helmand, which was hindered by issues such as lack of planning for a judicial strategy, lack of doctrinal coherence, lack of coordination with other activities, failure to engage with the 'facts on the ground', focus on Western priorities and the 'clash of two goods': centralism versus pluralism.

For the future, Ledwidge raises the question of the degree to which the international community will engage with insurgent courts. He quotes Sandesh Sivakumara: 'Rather than ignoring them [courts] or criticizing them without offering concrete suggestions for improvement, the international community needs to grapple with them and consider how best they may be utilized in order to aid enforcement of the law' (p. 63).

Drawing a conclusion on this exercise of information on rebel law, Frank Ledwidge tells us that ultimately, insurgency and counter-insurgency are political acts; they constitute a form of warfare—indeed arguably the dominant form of warfare in the current international strategic environment. As such, he suggests that if they are to succeed, there should be a strategic appreciation made of the objectives, means and methods suited to the conflict. He admits that if the courts of the occupying power lack legitimacy, then they must be attacked. Clearly, as explained by him, this can be done virtually, by setting up insurgent courts. The Irish nationalists showed that it must also be done physically, by ensuring that the courts could not function. He says:

What was and is the message of insurgent courts? It is simple: by these instruments, insurgents demonstrate that they have the legitimacy to exercise one of the key functions of government. They demonstrate that they possess the authority to dispose of disputes, not only among the members of their own groups but among the members of the community they serve.

He admits, again, that the ideas presented in current doctrinal documents are clearly inadequate, and have been shown to be so in Afghanistan. He also argues that:

...seen through the lens of justice, the kind of thinking that is to be found in much military doctrine, written often by people with the haziest notion of how real societies work, is also profoundly conceptually flawed. This problem goes deeper than merely being an update of tired and anachronistic notions...Those templates are irrelevant in places where 'government' is not seen as a solution.

He believes that there is a whole field of academic discourse that is inclined to show that 'the absence of a strong state will necessarily be followed by anarchic conditions' (p. 168), but this is not necessarily so. Equally, while there is most certainly a greatly increased global awareness of the potential for lawfare within the context of state-to-state conflict, the discussion of lawfare has largely been confined to questions surrounding detention and interrogation of terrorist suspects, or the methods available to human rights activists in restraining the use, for example, of drones.

Ledwidge signs off the book with this thought:

To get beyond that paradigm there will need to be a new approach to the planning of operations. A start could be made by including a legal element within 'intelligence preparation of the battlespace'. This idea lives well within advanced conceptions of intelligence. Finally, there must be an increased awareness of the multidimensional nature of war and along with it an increasing awareness of the multidimensional implications of law and war. Potential conventional opponents already have this awareness, and insurgent opponents have been, as this book has sought to demonstrate, aware of it for far longer' (p. 170).