

Political Laws and Ethnic Accommodation: Why Cross-Ethnic Coalitions Have Failed to Institutionalize in Afghanistan

Mohammad Bashir Mobasher

A dissertation

submitted in partial fulfillment of the

requirements for the degree of

Doctor of Philosophy

University of Washington

2017

Reading Committee:

Robert Pekannen, Chair

Jonathan Eddy, Co-Chair

James Long

Scott Radnitz

Leigh Anderson

Program Authorized to Offer Degree:

School of Law

© Copyright 2017

Mohammad Bashir Mobasher

University of Washington

ABSTRACT

Political Laws and Ethnic Accommodation: Why Cross-Ethnic Coalitions Have Failed to Institutionalize in Afghanistan

Mohammad Bashir Mobasher

Chairs of the Supervisory Committee:
Professor Robert Pekannen – Jackson School of International Studies
Professor Jonathan Eddy – School of Law

Afghanistan suffers from an ethnic-based and fragmented party system. Although some cross-ethnic coalitions have emerged, especially during the presidential elections, these coalitions have failed to survive across elections and branches of government. As for what explains the failure of the consolidation of coalitions, some scholars pointed to the SNTV system and others to the presidential system.

This study examines all related institutional designs, including the SNTV system for parliamentary elections, the runoff system for presidential elections, the presidential system, dual vice presidency, and party qualification thresholds. These systems and institutions are designed by three bodies of political laws: the Constitution, electoral laws, and party laws. Analyzing these laws and institutional designs, this study makes three observations. First, the failure of coalitions to institutionalize in Afghanistan is not due to a single political law or institutional design but due to the influence of a number of them. Second, for cross-ethnic coalitions to

institutionalize, all related institutional designs must act cohesively or else they fail to incentivize coalition-building, as is the case in Afghanistan. Finally, the formation of cross-ethnic coalitions does not necessarily engender their institutionalization and by the same token an institutional design may be conducive to the formation of coalitions, but not necessarily to their institutionalization. Afghan political laws and institutions tell a story partly of success and partly of failure.

Table of Contents

| | |
|--|------------|
| Acknowledgments..... | iii |
| List of Figures and Tables | v |
| Introduction | 1 |
| I. Political Practices, Ideals, & Laws in Afghanistan | 35 |
| Chapter One: Ethnic-Electoral Dynamics and the Politics of Coalition-Making in Afghan Presidential Elections..... | 46 |
| Chapter Two: Identity Politics and Parliamentary Elections in Afghanistan | 81 |
| Chapter Three: Centrifugal Practices and Centripetal Tendencies | 99 |
| II. Election Laws, Electoral Systems, and the Failure of Cross-Ethnic Coalitions to Survive Beyond Elections..... | 113 |
| Chapter Four: Runoff System and Cross-Ethnic Coalitions in Presidential Elections | 116 |
| Chapter Five: SNTV System and the Coalition-Free Parliamentary Elections | 139 |
| III. Constitutional Design and the Failure of Parliamentary Coalition-Making | 160 |
| Chapter Six: Constitutional Features of Presidential Elections and the Failure of Cross-Ethnic Coalitions to Institutionalize..... | 166 |
| Chapter Seven: A System of Dual Vice Presidency and the Path to Executive Coalition-Building..... | 190 |
| Chapter Eight: Constitutional Prerogatives of the President and Prospects for Inter-Branch Coalitions | 212 |

| | |
|--|--------------|
| IV. Party Laws and the Failing Coalitions | 245 |
| Chapter Nine: Afghan Political Party Laws: The Laws of Parties, Not Coalitions | 247 |
| V. Redesigning Political Laws and Institutions in Afghanistan | 273 |
| Chapter Ten: Reforming Afghan Electoral Laws | 277 |
| Chapter Eleven: Amending the Afghan Constitution | 310 |
| Chapter Twelve: Re-engineering Afghanistan’s Party Laws..... | 348 |
| Conclusion | 357 |
| Bibliography..... | 367 |
| Appendix I..... | I-1 |
| Appendix II | III-1 |
| Appendix III..... | III-1 |
| Appendix IV | IV-1 |

ACKNOWLEDGEMENTS

This study has explored institutional designs and ethnic accommodation, a topic close to my heart, having suffered from ethnic conflicts and dark regimes. Writing this dissertation has been a step towards fulfilling my commitment to study ethnic conflicts and to explore pathways to peace-building and valuing human lives.

I would like to express my immense gratitude to everyone who has helped and supported me on this journey of learning and becoming. Due to a large number of individuals and organizations supporting me during my research and writing at personal, academic, and institutional levels. I apologize in advance to those whom I may have forgotten.

First and foremost, I would like to thank my parents, Mohammad Ishaq Jallah and Shamim Jallah, for their love, patience and support from afar; to my elder sister and brother, Sina Pazhman and Dr. Nasir Jallah, who taught me primary education and English language; to my younger siblings, Jamil Jallah, Shaima Lutfi, and Samira Jallah. This dissertation would not have come to a successful end without your continuous encouragement and moral support.

Various organizations and individuals provided me with the financial and logistical resources to be able complete my dissertation and I would like to express my appreciation. I received an incredible amount of support from LESPA, who offered me scholarships for both my LLM and Ph.D. degrees at the prestigious University of Washington School of Law. In particular, I would like thank Professor Jon Eddy and Alice Stokke for considering me a good candidate for Ph.D. in Law and supporting me throughout the program. Rebecca Alhadeff and Sara Ayoubi deserve special recognition for helping me with all administrative and procedural issues during the Ph.D. program. In relation to my scholarship, I would also like to express my gratitude to the United States' Department of State. Such scholarship programs have led to

capacity building in Afghanistan as Afghan fellow scholars would return with better knowledge and expertise to help develop Afghanistan in its different legal and political aspects. My Ph.D. would not have been possible without your financial support.

On the academic level, I greatly benefited from my academic advisors, Professor Robert Pekannen and Professor Jon Eddy. Their helpful suggestions, encouragement, and patience have been priceless. Special thanks to Professor Elizabeth Baldwin, who reviewed my dissertation numerous times and provided editorial comments and to Professor Daniel Chirot, who has given me timely feedback when I needed it. I am grateful to you all for challenging me to think deeper and make a more concrete analysis. Additionally, I would like to express my appreciation to my committee members, Professor James Long, Professor Scott Radnitz, and Professor Leigh Anderson for their intellectual support.

I have been fortunate to have surrounded myself with very supportive friends. Here, I would like to appreciate the support of Nasiruddin Nezami, then the Deputy-Dean of Kabul Law School, Sayed Jamaludin Saberi, Dean of Kabul University, School of Public Policy and Administration, Abdullah Dastageer Popalzai, Subghatullah, a member of Electoral Complaint Commission, and Jafar Rezaee, the Legal Advisor of Independent Electoral Commission, who helped me with my interviews and surveys. I also take the opportunity to thank all my interviewees and those who participated in surveys.

At the end, I dedicate this dissertation to all who suffered during ethnic conflict and Taliban regime in Afghanistan.

LIST OF FIGURES AND TABLES

Tables

| | | |
|----------|---|-----|
| Intro-1: | Afghan Political Laws and Adopted Institutions | 2 |
| Intro-2: | Measuring Party Institutionalization in Afghanistan | 28 |
| I-1: | 28 Population Estimates of Ethnic Groups in Afghanistan | 42 |
| I-2: | Estimated Population of Ethnic Groups and seats in Wolesi Jirga | 86 |
| I-3: | Security Incidents Among Ethnic Groups 2010 | 93 |
| I-4: | Pashtun Population and Turnout Rates in 2010 | 96 |
| I-5: | Ethnic Representation of Parties in the Parliament 2007-2017 | 109 |
| II-1: | Coalitions Formed 2002-2003 | 123 |
| II-2: | Coalition Types, Sizes, and Sustainability | 127 |
| II-3: | Votes of Leading and Nonviable Candidates | 130 |
| II-4: | Population of Ethnic Groups and Seats in Wolesi Jirga | 143 |
| II-5: | Candidates' Affiliations in the Parliamentary Elections | 147 |
| II-6: | Political Parties in the Wolesi Jirga | 151 |
| II-7: | Distribution of Populations, Candidates, and Seats | 157 |
| III-1: | Ethnic Representations in Different Cabinet Formations | 173 |
| III-2: | Independent and Party Nominees in Presidential Elections | 177 |
| III-3: | Candidates and their Political Parties | 181 |
| III-4: | Cycle of Presidential and Parliamentary Elections in 12 Countries | 187 |
| III-5: | Ethnic Composition of Presidential Teams | 194 |
| III-6: | Ghani's Votes among Primarily Uzbek and Hazara Provinces | 199 |
| III-7: | Constitutional Privileges of Vice Presidents in 11 Countries | 206 |
| III-8: | Vice Presidential Systems in 12 Countries | 208 |
| III-9: | Shugart and Mainwaring's Index of Legislative Power of President | 217 |
| III-10: | Shugart and Mainwaring's Index of Non-Legislative Power of President | 232 |
| III-11: | Wolesi Jirga's Decisions on Cabinet Nominees | 234 |
| III-12: | Wolesi Jirga's Decisions on Karzai's Lists of Cabinet Nominees | 237 |
| III-13: | President's Proposals of Changes in Administrations | 241 |
| III-14: | Comparison of Afghan Constitution and 12 Constitutions | 242 |
| IV-1: | Dedicated Provisions for Parties and Coalitions in 12 Constitutions | 254 |
| V-1: | Electoral Systems of 12 Countries | 277 |
| V-2: | Last Three Presidential Elections Under a Qualified Majority | 280 |
| V-3: | Population Estimation of Ghazni Districts | 298 |
| V-4: | Proposed Districting for PR and SNTV by the IEC Proposal | 302 |
| V-5: | Number of Afghan MPs Supporting Various Presidential Nominees | 311 |
| V-6: | Vote Shares of Presidential Tickets with MPs as Candidates | 312 |
| V-7: | Possible Coalitions in the Parliament of 2010-2016 | 327 |
| V-8: | Duration of Governments Under Parliamentary System in Afghanistan | 331 |
| V-9: | Proportional Presidential Under an Eight-Year Term | 341 |
| V-10: | Legislative Powers of the President | 346 |
| V-11: | Constitutions Requiring Coalition Parliamentary/Presidential Nominees | 350 |
| V-12: | Direct and Indirect Funding to Parties | 356 |

Figures

| | | |
|----------|---|-----|
| Intro-1: | Role of Institutional Design in Survival of Coalitions | 5 |
| I-1: | Provinces with Ethnic Majorities | 44 |
| I-2: | Votes for Leading Candidates and Ethnic Groups | 54 |
| I-3: | Votes for Karzai 2004 and 2009 | 55 |
| I-4: | Tajik Population & Candidates' Votes, 2004 and 2009 | 64 |
| I-5: | Hazara Population & Candidates' Votes, 2004 and 2009 | 67 |
| I-6: | Uzbek Population & Candidates' Votes, 2004 and 2009 | 70 |
| I-7: | Tajik & Hazara Populations and Abdullah's Votes in 2014 | 74 |
| I-8: | Pashtun & Uzbek Population and Ghani's Votes in 2014 | 77 |
| I-9: | Population of Hazaras and Seats in Wolesi Jirga | 89 |
| I-10: | Security Threats and Turnout Rates | 95 |
| I-11: | Survey Responses Regarding Parties and Coalitions | 106 |
| I-12: | Survey Responses Regarding Types of Party Systems | 107 |
| II-1: | Role of Electoral Systems in Coalitions Survival | 115 |
| III-1: | Role of Presidential Constitution in Coalition Survival | 166 |
| III-2: | Votes for Abdullah vs. Ghani | 198 |
| IV-1: | Role of Political Party Laws in Coalition Survival | 247 |

INTRODUCTION

After the fall of the Taliban in 2001, Afghanistan began transitioning toward democracy. This transition began with the Bonn Agreement, which provided that Afghanistan must establish “broad based, gender sensitive, multi-ethnic and fully representative government.”¹ As a part of this agreement, Afghanistan adopted a new Constitution in 2004, under which sovereignty belonged to the people and citizens exercise their sovereignty through their representatives.² Their representatives include an elected president,³ elected legislators,⁴ elected mayors,⁵ and elected members of provincial, district, village,⁶ and municipality councils.⁷

Recognizing the ethnic plurality in Afghanistan,⁸ the Constitution has forbidden the executives, assemblies, and parties from forming or functioning on the basis of ethnic or other forms of discrimination.⁹ Additionally, the Constitution guarantees that elections be inclusive,

¹ Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, transmitted to the Security Council by the Secretary-General, U.N. Doc. S/2001/1154, 1155 (Dec. 5, 2001) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/678/61/img/N0167861.pdf?OpenElement>.

² See QĀNOON-I ASSĀSI-YE JAMHŪRI-YE ISLĀMI-YE AFGHANISTAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] NO. 818, 1382 [2004], art. 4 [hereinafter, CONSTITUTION] (“National sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives...”).

³ CONSTITUTION, arts. 1, 10, 21, 22, 23, 25.

⁴ CONSTITUTION, art. 141; *see also* QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1226 (2016), art. 1, 10, 25, 26, 27. [hereinafter “Election Law”].

⁵ CONSTITUTION, arts 61, 62, 67; *also*, Election Law, arts. 38-39.

⁶ CONSTITUTION, arts. 138, 140; *also*, Election Law, arts. 1, 10, 29, 32, 35.

⁷ CONSTITUTION, arts 61, 62, 67; *also*, Election Law, arts. 40, 41, 42.

⁸ CONSTITUTION, art. 4. (“The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and other tribes. The word Afghan shall apply to every citizen of Afghanistan. No individual of the nation of Afghanistan shall be deprived of citizenship. The citizenship and asylum related matters shall be regulated by law.”)

⁹ CONSTITUTION, art. 50 (“The citizens of Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law.”); art. 66 (“During the term of office, the Presidential position shall not be used for linguistic, sectarian, tribal, and

fair, and representative of all groups and regions.¹⁰ These and similar rules have rearranged the field for political contestations and paved the way for conflicting groups to renegotiate power in a non-violent manner.¹¹

In addition to the Constitution, the two other Afghan *political laws*¹² this study examines are the election laws and party laws. To reduce the role of ethnicity in the political lives of Afghans, each political law contains a number of institutional designs and thresholds. Table Intro-1 illustrates institutional designs and thresholds set by each of the political laws discussed in this dissertation. These institutional designs and thresholds have affected inter-ethnic relations and cross-ethnic coalitions in Afghanistan although in different scale and directions.

Table Intro-1. Illustrates laws and related institutional designs discussed in Parts II, Part III, and Part IV of this dissertation

| Afghan Political Laws and Adopted Institutions | | Assigned Part |
|--|---|---------------|
| Election Laws | Runoff System | Part II |
| | SNTV System | |
| Constitution | Presidential Electoral Features | Part III |
| | Dual Vice Presidency | |
| | Presidential Powers | |
| Party Laws | Qualification Thresholds for Parties | Part IV |
| | Qualification Thresholds for Parl. Groups | |

Afghan political laws tell a story of partial success and partial failure in Afghanistan. The successes include marginalizing of ethnic parties, encouraging inclusive legislatures and

religious as well as party considerations.”); art. 80 (“During their tour of duty, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.”); art. 81, (“The National Assembly of the Islamic Republic of Afghanistan, as the highest legislative organ, shall manifest the will of its people as well as represent the entire nation. Every member of the Assembly, when voting, shall judge according to the general interests as well as the supreme benefits of the people of Afghanistan.”); art. 83 (“The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.”).

¹⁰ CONSTITUTION, art. 83; *see also*, Election Law, arts. 2, 50, 59, 61.

¹¹ NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE 269 (2013).

¹² For definition of *political laws* (as regulations) and *Political Law* (as a discipline) refer to Appendix I.

executives, and inspiring cross-ethnic voting and coalitions.¹³ The failures involve the inability of laws to institutionalize cross-ethnic coalitions and preclude ethnic tensions, which have ignited in recent elections. Although incorporating these successes and failures of Afghan political laws, this study primarily focuses on the impact of Afghan political laws on the institutionalization of coalitions.

Cross-ethnic coalitions refer to those formal and informal coalitions that involve elites, factions, and parties from different ethnic groups who join forces to win election and/or implement a specific policy agenda. The institutionalization of cross-ethnic coalitions entails a process that involves alliances entrenching themselves across not only elections but also branches of government, and constituencies.¹⁴ This process of institutionalization begins with different ethno-political groups (factions, proto-parties, and/or elites) merging or forming coalitions and ends with coalitions becoming permanent or transforming into broad-based parties. Donald Horowitz explains this dynamic in *Ethnic Groups in Conflict*, where he defines a permanent coalition as the one that tends to sustain even after it loses elections and government.¹⁵ Horowitz distinguishes permanent coalitions from coalitions in convenience¹⁶ and coalitions in commitment,¹⁷ which form for specific purposes and sometimes for specific time periods.

¹³ S. Yaqub Ibrahimi, Political Parties and Political Development in Afghanistan, 3-4 (Apr. 17, 2014) (available online) <http://www.atlantic-community.org/documents/10180/dd2703aa-ff86-4553-a47c-369dcdfeaf>.

¹⁴ MAURICE DUVERGER, POLITICAL PARTIES: THEIR ORGANIZATION AND ACTIVITY IN THE MODERN STATE, 337 (BARBARA & ROBERT NORTH, TRANS., 1954)

¹⁵ DONALD HOROWITZ, ETHNIC GROUP IN CONFLICT, 366 (2nd Edition, 2001).

¹⁶ *Id.* (“Coalition in convenience” is one that is formed for the purpose of winning elections and the government.)

¹⁷ *Id.* (“Coalition in commitment” is one that is formed not only to win elections and government but also to implement a somehow coherent policy, ideologically shared by its members.)

Duverger's illustration of three levels of coalition-making perhaps better explains the process of the institutionalization of coalitions.¹⁸ According to Duverger, coalition-making can occur at the electoral, the parliamentary and the governmental levels: "The first [coalition] occur at the level of the candidate, the second of the deputy, the third of the minister."¹⁹ While he suggests that these alliances can coexist or may occur in isolation,²⁰ the institutionalization of a coalition requires that they not only coexist, but also merge into stable coalitions or parties. Accordingly, a single cycle of institutionalization is complete when electoral coalitions are able to translate into executive and opposition coalitions, who then compete in parliamentary elections or form their political blocs inside the National Assembly in Afghanistan.

This dissertation examines whether Afghan political laws and institutions provide sufficient incentives for coalitions (a) to form in a way that is ethnically inclusive, (b) to compete in the presidential elections, (c) to sustain as executives and oppositions, (d) to compete in the parliamentary elections, and/or (e) to seek parliamentary alliances. Different institutional designs tend to support coalition-building at different levels of institutionalization. Figure Intro-1 illustrates where different institutional designs can help coalition development in a single cycle of institutionalization; by the same token, it indicates where an institutional design may fail to contribute to the institutionalizations of coalitions.

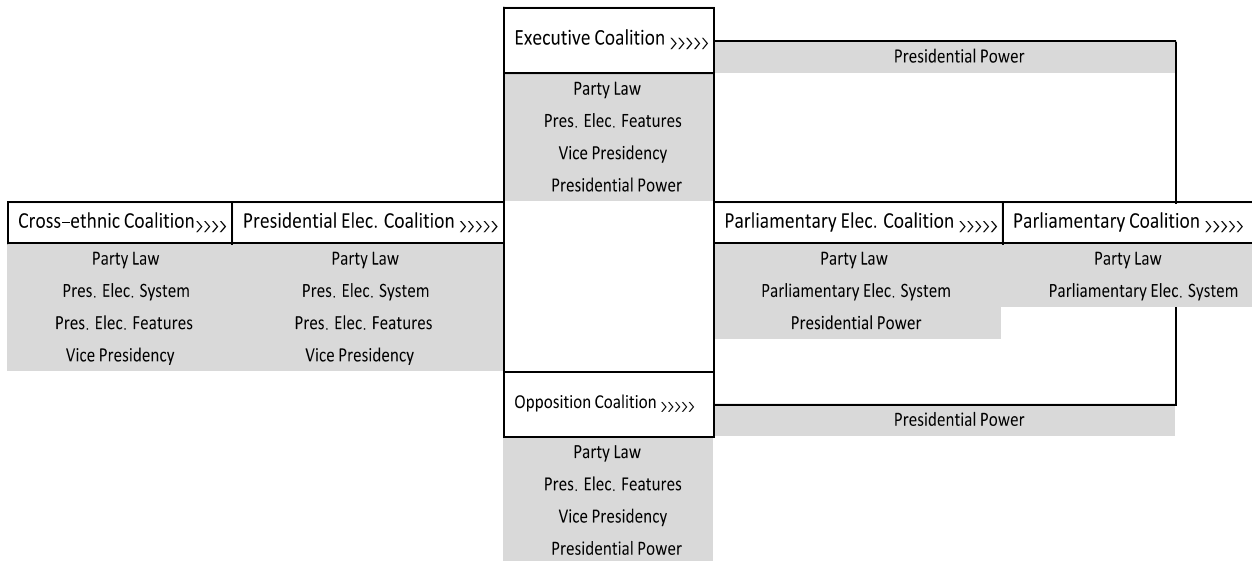
¹⁸ MAURICE DUVERGER, *supra* note 14, at 330-31.

¹⁹ *Id.*

²⁰ *Id.*

Figure Intro-1. To fully institutionalize, a coalition has to survive several presidential and parliamentary elections. This Figure illustrates the process of institutionalization—from one presidential election to the next—and where in the process different institutional design is expected to directly contribute to coalition-building.

Role of Institutional Designs in Survival of Coalitions in a Single Cycle of Institutionalization



An examination of all these institutional designs yields three conclusions: First, the failure of coalition-building has been due not to a single institutional design flaw, but to different institutions that function without cohesion. While some institutions encourage coalition-making at the electoral and executive levels, including the runoff system and dual vice presidency, other institutions such as Single Non-Transferrable Votes (SNTV) discourage any form of coalition-building.

Secondly, no institution produces a unidirectional impact on coalition-building. Instead, each institution comprises a complex set of features, some of which function for and some against coalition-building; and, therefore, the conventional either/or association of an institution with coalition building is not warranted. Distinguishing between the constructive and obstructive features of each institution, this dissertation reveals to what extent each institution has contributed to coalition-building and to what extent each has prevented or impeded the development of coalitions. Therefore, it may be the divergence of not just different institutional

designs, but also different features of a single institution that affects the institutionalization of coalitions. Whether an institutional feature is constructive or obstructive may not be inherent but contextually determined. For example, if the absolute majority feature of the runoff system encourages cross-ethnic coalitions, it is because no single ethnic group can deliver that number of votes on its own. If an ethnic group constituted 60 or 70 percent of the population, the runoff system would not have produced the same centripetalist effect. As such, it is not surprising that the runoff system does not encourage cross-ethnic coalitions in a different social setting.

Third, the role of an institutional feature in coalition-building is evaluated by the level of incentives it creates vis-à-vis other formal and informal institutional features. An institutional feature may not produce an optimal outcome if it does not create enough incentives to outperform rival formal and informal institutions. For example, the blunt banning of ethnic parties by Article 35 of the Constitution has failed to create enough incentives in proto-parties to bear the political and financial cost of transforming. Ethnic parties may automatically lose the support of their constituencies should they decide to transform into cross-ethnic parties.

In addition to examining the impact of institutional designs on coalition-building, this dissertation attempts to explain their treatment of ethnic parties and ethnic politics. It is because generally the institutional designs more favorable to ethnic parties and politics are less likely to encourage cross-ethnic coalitions.²¹ Additionally, the political ideals (as well as the spirit of Afghan political laws) plea for not only the institutionalization of cross-ethnic coalitions and government, but also marginalization of ethnic parties and politics.

²¹ HOROWITZ, *supra* note 15, at 306-311.

A. Organization of Dissertation

This dissertation includes twelve chapters clustered in five Parts. Part I comprises the first three chapters, presenting an empirical analysis of ethnic-electoral dynamics in Afghanistan. Part I studies the electoral practices as well as electoral ideals of Afghan groups and reveals a tremendous gap between the two. Evaluating presidential and parliamentary elections respectively, Chapters One and Two examine electoral behavior of the voters, candidates and elites. These chapters indicate that ethnic-based electoral practices predominate the elections in Afghanistan. However, focusing on electoral ideals in Afghanistan, Chapter Three reveals that ethnic-based electoral practices do not necessarily reflect the aspiration of Afghans in general. On the contrary, the empirical analyses indicate that a supermajority of Afghans favor not only inclusive elections, government, and coalitions, but also non-ethnic, policy-based ones. In other words, the dominant tendencies in the Afghan political culture are centripetal. Therefore, the *political ideals* in Afghanistan are a far cry from the electoral practices in the country.²² Afghan political laws are one way that has been sought to close the gap between the two. Chapter Three indicates that Afghan political laws actually reflect collective political ideals and are set to reshape Afghan political practices.

Part II comprises Chapters Four and Five, discussing the election laws of Afghanistan and their effects on electoral coalitions. This Part specifically analyzes the presidential and parliamentary electoral systems: the runoff system, for the presidential elections, and the SNTV system, for the parliamentary elections. Through this discussion, it reveals that these electoral systems have had diverging effects on coalition-building in Afghanistan. Examining the runoff system, Chapter Four concludes that the runoff system has been conducive to broad-based,

²² For definition of ‘political ideals’, refer to Appendix I.

electoral coalitions during the presidential elections. Focusing on the SNTV system in the parliamentary elections, Chapter Five reveals a negative association between the electoral system and coalition-building. Generally, it finds that SNTV is a candidate-centric electoral system that, with high district magnitude, has discouraged any form of coalition-making in parliamentary elections.

Part III addresses Afghan constitutional design and whether it bears any responsibility for the failure of cross-ethnic coalitions to sustain beyond elections and across branches of government. This Part comprises Chapter Six, Seven and Eight, each examining different features of the Afghan presidential system. Chapter Six mainly discusses the constitutional features of Afghan presidential elections. It reveals that the presidential elections have some constructive features that help electoral coalitions translate into inclusive executive ones. These features, however, have failed to help solidify the incumbent and the opposition coalitions.

Chapter Seven examines Afghanistan's system of dual vice presidency and its impact on coalition building. Generally, the system of dual vice presidency has embodied the core of cross-ethnic coalitions. The core, however, has remained less cohesive, less inclusive, and less stable. This is primarily because of the clientelistic nature of presidential tickets, combined with the constitutionally unprivileged and unaccountable vice presidents. Chapter Eight discusses the constitutional prerogatives of the president vis-à-vis the *Wolesi Jirga*. Although presidential powers are checked by the Assembly's vote of confidence when it comes to the cabinet formation and termination, Afghan presidents are very powerful on legislative and policy implementation matters. Given their broad legislative powers as well as their use of constitutional loopholes in the non-legislative departments, Afghan presidents have been able to bypass the Assembly's decisions. Forming legislative coalitions has been meaningless for the

president and the opposition because the executive is less dependent on legislative majorities to implement its favorable policies and laws.

Part IV consists solely of Chapter Nine, which discusses the political party laws of Afghanistan. Chapter Nine analyzes Article 35 of the Constitution, the Political Party Law, and *Wolesi Jirga's* Rules of Procedure. It concludes that the failure of party laws was due to the lack of incentive-based provisions to vigorously promote the emerging coalitions.

Finally, Part V discusses possible reforms to re-engineer political laws and institutions to remedy their shortcomings. Since the failure of the 2014 presidential election, some efforts have already begun to reform the political laws and reconfigure political institutions. This Part examines which laws and institutions best accommodate different ethnic groups and institutionalize cross-ethnic coalitions. It comprises three chapters, each dealing with institutional failures discussed in the previous chapters. To provide a more comprehensive analysis and to avoid intellectual biases, these sections provide not one but a series of alternatives and adaptations to remedy the identified institutional failures.

B. Literature Review

This dissertation engages extensively with the literature on political laws and institutional designs for divided societies. A large body of literature on institutional designs in plural societies has developed since the 1960s.²³ Within this body of literature, legal and political scholars have offered solutions ranging from accommodation, to assimilation, to partition; from republican, to

²³ Kanamaru, Yuji, *Ethnic Accommodation and Democracy in Multiethnic Countries: Comparative Study of Malaysia and Singapore*, 3 (World Congress of International Political Science Association, Presentation Paper, 2014) (available online) http://paperroom.ipsa.org/papers/paper_33962.pdf.

liberal, to communalism; from majoritarian, to proportional representation, to substantive representation; and from constitutional design, to electoral design, to party regulation.²⁴

In the case of multiethnic Afghanistan, however, the literature suffers in breadth and substance, particularly on the issues of political laws and cross-ethnic coalitions. The studies are scarce, and they are mostly descriptive and historical; very few take an institutionalist approach. Thomas Ruttig,²⁵ Anna Larson,²⁶ Noah Coburn,²⁷ and Andrew Reynolds²⁸ are among the well-

²⁴ See, e.g., Sujit Choudhry, *Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTERGRATION OR ACCOMMODATION, (Sajit Choudhry ed., 2008); HOROWITZ, *supra* note 15; AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* (1977).

²⁵ Thomas Ruttig, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from (1902-2006)*, KONRAD ADENAUER STIFTUNG (2006) http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf; Thomas Ruttig, *Afghanistan Has a Two-Party System*, AFGHANISTAN ANALYSTS NETWORK (Jun. 6, 2010), <https://www.afghanistan-analysts.org/afghanistan-has-a-two-party-system-now/>; Thomas Ruttig, *Narrower Than Expected: Political opposition presents “Electoral Union of Afghanistan*, AFGHANISTAN ANALYSTS NETWORK (Aug. 29, 2013), <https://www.afghanistan-analysts.org/narrower-than-expected-political-opposition-presents-electoral-union-of-afghanistan/>; Thomas Ruttig, *On Your Marks! Alliances And Actors Before The 2014 Presidential Election*, AFGHANISTAN ANALYSTS NETWORK (Sep. 17, 2013) <https://www.afghanistan-analysts.org/on-your-marks-alliances-and-actors-before-the-2014-presidential-election/>; Thomas Ruttig, *Pluralistic within Limits, But Not Democratic: Afghanistan's Political Landscape Before The 2014 Elections*, AFGHANISTAN ANALYSTS NETWORK (Oct. 24, 2013), <https://www.afghanistan-analysts.org/pluralistic-within-limits-but-not-democratic-afghanistans-political-landscape-bfore-the-2014-elections/>.

²⁶ Anna Larson, *Afghanistan's New Democratic Parties: A Means to Organise Democratization?* AFGHANISTAN RESEARCH AND EVALUATION UNIT (Mar. 2009), <http://www.refworld.org/pdfid/49c254a02.pdf>; Ana Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability* (The Afghanistan Research and Evaluation Unit, Discussion Paper, 2010), <http://areu.org.af/EditionDetails.aspx?EditionId=452&ContentId=7&ParentId=7>; ANNA LARSON, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 362: POLITICAL PARTIES IN AFGHANISTAN (2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>.

²⁷ COBURN & LARSON, *supra* note 11. Noah Coburn, *Afghanistan: The 2014 Vote and the Troubled Future of Elections*, CHATHAM HOUSE (Mar. 2014), http://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140200AfghanistanElectionsFraudPerelliSmith.pdf; Noah Coburn & Anna Larson, *Voting Together: Why Afghanistan's 2009 Elections were (And Were Not) a Disaster*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (Nov. 2009), available at

respected international scholars who have produced several analytical studies about elections and parties in Afghanistan. Louis Dupree,²⁹ Thomas Barfield,³⁰ Barnett Rubin,³¹ Sabahuddin Kushkaki,³² and Rasul Bakhsh Rais,³³ are some of the few scholars who have provided some resourceful historical accounts of Afghan parties. The only scholarly study focusing primarily on the institutionalization of parties (not coalitions) in Afghanistan is a short article by S. Yaqub Ibrahimi.³⁴ This literature review discusses the contributions of each of these scholars and others who have developed the theoretical foundations useful to this dissertation's analysis and conclusions.

<http://www.areu.org.af/Uploads/EditionPdfs/937E-Voting%20Together%20Why%20Afghanistans%202009%20Elections%20were%20%28and%20were%20not%29%20a%20Disaster-BP.pdf>.

²⁸ Andrew Reynolds, *Electoral Systems Today: The Curious Case of Afghanistan*, 17/2 JOURNAL OF DEMOCRACY 43 (2006); Andrew Reynolds, Lucy Jones, & Andrew Wilder, *A Guide to Parliamentary Elections in Afghanistan*, AFGHANISTAN RESEARCH EVALUATION UNIT (Aug. 2005), <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN021668.pdf>; Andrew Reynolds & Andrew Wilder, *Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2004), <http://www.areu.org.af/Uploads/EditionPdfs/433E-Free,%20Fair%20or%20Flawed-BP-print.pdf>; Andrew Wilder, *A House Divided? Analyzing the 2005 Afghan Elections*, Afghanistan RESEARCH AND EVALUATION UNIT (Dec. 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>.

²⁹ LOUIS DUPREE, AFGHANISTAN (1980); An Historical Guide to Afghanistan (1972).

³⁰ THOMAS BARFIELD, AFGHANISTAN: A CULTURAL AND POLITICAL HISTORY (2010); Thomas J. Barfield, *Fundamentals of Governances in Afghanistan*, AMERICAN INSTITUTE OF AFGHANISTAN (2009), https://www.bu.edu/aias/reports/governance_short.pdf.

³¹ BARNETT RUBIN, THE FRAGMENTATION OF AFGHANISTAN (2nd Ed., 2002); Barnett R. Rubin, *Crafting a Constitution for Afghanistan*, 15/3 J. DEM. 5-19 (2004).

³² SABAHUDDIN KUSHKAKI, DAHA QANOON-E-ASASI: GHAFLAT AFGHANHA WA FERSAT TALABI RUSHA [THE DECADE OF CONSTITUTIONALISM: THE NEGLIGENCE OF AFGHANS AND THE OPPORTUNISM OF RUSSIANS] 1996 [1375]

³³ RASUL BAKHSH RAIS, WAR WITHOUT WINNERS: AFGHANISTAN'S UNCERTAIN TRANSITION AFTER THE COLD WAR (1994).

³⁴ Ibrahimi, *supra* note 13.

1. Literature on Electoral Laws

It is not uncommon for legal and political scholars to talk of engineering electoral systems to reshape party systems and coalitions. Maurice Duverger,³⁵ Arend Lijphart,³⁶ Bernard Grofman,³⁷ Gary W. Cox,³⁸ Andrew Reynold,³⁹ Jon Carey,⁴⁰ Giovanni Sartori,⁴¹ Scott Mainwaring and Matthew Shugart,⁴² and Peter C. Ordeshook and Olga V. Shvetsova⁴³ have all presented different accounts of how electoral institutions can influence parties and coalitions.

This institutionalist approach, however, has not gone unchallenged. A group of scholars, called modernization theorists, or social determinists, argue that party systems are the products of social cleavages and not electoral systems. This argument was perhaps first made by John Grumm⁴⁴ and Leslie Lipson,⁴⁵ and later by Seymour Martin Lipset and Stein Rokkan.⁴⁶ Refuting institutionalists, they argue that often times it is the parties that determine the electoral system,

³⁵ GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING* 49 (1997).

³⁶ AREND LIJPHART, *PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT* (1992).

³⁷ AREND LIJPHART & BERNARD GROFMAN, *CHOOSING AN ELECTORAL SYSTEM: ISSUES AND ALTERNATIVES*. NEW YORK (1984).

³⁸ GARY W. COX, *MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD'S ELECTORAL SYSTEMS* (1997).

³⁹ Andrew Reynolds & John Carey, *Fixing Afghanistan's Electoral System: Arguments and Options for Reform*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2012),

<http://www.areu.org.af/Uploads/EditionPdfs/1211E-Fixing%20Afghanistans%20Electoral%20System%20BP%202012.pdf>.

⁴⁰ *Id.*

⁴¹ SARTORI, *supra* note 35.

⁴² Scott Mainwaring & Matthew S. Shugart, *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal*, 4/29 *COMPARATIVE POLITICS* (Jul. 1997).

⁴³ Peter C. Ordeshook & Olga V. Shvetsova, *Ethnic Heterogeneity, District Magnitude, and the Number of Parties*, 38/1 *AM. J. POL. SCI.* 102 (Feb. 1994).

⁴⁴ John G. Grumm, *Theories of Electoral Systems*, 2/4 *MIDWEST JOURNAL OF POLITICAL SCIENCE* 357 (1958).

⁴⁵ LESLIE LIPSON, *THE DEMOCRATIC CIVILIZATION* (1964).

⁴⁶ *Id.*; Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures Party Systems and Voter Alignments*, in *PARTY SYSTEM CHANGE: APPROACHES AND INTERPRETATIONS* (PETER MAIR ED., 1967).

not the other way around.⁴⁷ This claim of social determinists seems to reflect electoral-party nexus in consolidated democracies, but not necessarily in democratizing societies with *fluid party systems*.⁴⁸

Generally, in consolidated democracies with strong party systems, changing or preserving electoral systems is usually at the mercy of political parties. Political parties usually preserve electoral systems unless changing the electoral system would maintain their dominance and interest. However, the same is not true in democratizing societies where political parties are too weak and fragmented to manipulate electoral laws. The case of Afghanistan illustrates that electoral systems have more influence on party development rather than the other way around. In fact, despite opposition from the parties, the Afghan government adopted SNTV primarily to disenfranchise political parties.

Afghanistan's case indicates that while the skepticism about the influence of electoral system on parties and coalitions is not warranted, neither is institutionalists' neglect of the presidential electoral systems. In fact, how the literature conceptualizes electoral systems contemplates parliamentary electoral systems only. Books such as *Electoral Systems and Party Systems*,⁴⁹ *Choosing an Electoral System: Issues and Alternatives*,⁵⁰ *Electoral Systems*,⁵¹ *The Politics of Electoral Systems*,⁵² *Electoral Systems for Divided Societies*,⁵³ *Electoral Reform and*

⁴⁷ Grumm, *supra* note 44.

⁴⁸ Staffan I. Lindberg, *Institutionalization of Party Systems? Stability and Fluidity among Legislative Parties in Africa's Democracies*, 42/2 GOV'T. & OPPOSITION 215, 223 (2007) ("fluid party systems...are still in flux, configuration and/or change. If the number of parties in the legislatures changes significantly upward or downward over a series of elections, that is an indication that the party system is still fluid.").

⁴⁹ AREND LIJPHART, *ELECTORAL SYSTEMS AND PARTY SYSTEMS* (1994).

⁵⁰ LIJPHART & GROFMAN, *supra* note 357.

⁵¹ DAVID M. FARREL, *ELECTORAL SYSTEMS* (2010).

⁵² MICHAEL GALLAGHER & PAUL MITCHELL, *THE POLITICS OF ELECTORAL SYSTEMS* (2009).

⁵³ Benjamin Reilly, *Electoral Systems for Divided Societies*, 13/2 J. DEM. 156-170 (Apr. 2002).

Minority Representation,⁵⁴ have analyzed electoral systems in the context of parliamentary elections only, although their titles imply broader analysis.

Additionally, the conventional definition of *electoral system* also tends to sideline presidential electoral systems. Generally, electoral system is defined as the framework for translating votes to seats. For example, Andrew Reynolds, Ben Reilly and Andrew Ellis define electoral system as the rules that “translate the votes cast in a general election into seats won by parties and candidates.”⁵⁵ Michael Gallagher and Paul Mitchell define electoral system as “the set of rules that structure how votes are cast at elections for a representative assembly and how these votes are converted into seats in that assembly.”⁵⁶ These and similar definitions indicate that presidential electoral systems have not found their proper place in the electoral studies.

However, presidential electoral systems are at least as important as parliamentary electoral system. Johannes Freudenreich suggested that “if one want to improve coalition-inducing incentives in presidential system it might be even more important to look at electoral rules for presidential elections that shape incentives for pre-electoral coalitions because these rules might be crucial for government coalitions as well.”⁵⁷ Even so, the literature on presidential electoral systems is scarce and sporadic. Carey Cox,⁵⁸ Maurice Duverger,⁵⁹ Matthew Shugart and

⁵⁴ SHAUN BOWLER, TODD DONOVAN, & DAVID BROCKINGTON, *ELECTORAL REFORM AND MINORITY REPRESENTATION* (2003).

⁵⁵ ANDREW REYNOLDS, BENJAMIN REILLY & ANDREW ELLIS, *ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK* (2008); FARREL, *supra* note 51.

⁵⁶ GALLAGHER & MITCHELL, *supra* note 52, at 3.

⁵⁷ Johannes Freudenreich, *Coalition Building in Presidential Systems* 16 (Aug. 19, 2010) (available online) https://www.academia.edu/461874/Coalition_Building_In_Presidential_Systems.

⁵⁸ COX, *supra* note 38, at 123-179.

⁵⁹ Maurice Duverger, *Which is the Best Electoral System, in CHOOSING AN ELECTORAL SYSTEM: ISSUES AND ALTERNATIVES*, 38 (Arend Lijphart & Bernard Grofman, eds., 1984).

John Carey,⁶⁰ and Andres Blais⁶¹ are among the few scholars who have studied different presidential electoral systems.

Domestic scholarly work on the runoff system is also missing in Afghanistan. Several studies that have been produced about the electoral system in Afghanistan have all focused on the SNTV system, which is used for the country's parliamentary elections.⁶² Articles such as *Fixing Afghanistan's Electoral System*,⁶³ *Special for Elections Quarterly*,⁶⁴ *Afghan Democracy*,⁶⁵ have all focused on reforming the parliamentary electoral system only. Ironically enough, even the report by the designated Special Commission, which was formed because of the political crisis resulting from the 2014 presidential election, addressed reforming the parliamentary electoral system.⁶⁶ The only scholarly article about the presidential electoral system was authored by Jawad Taqi-zada, who descriptively compared Afghan presidential electoral system

⁶⁰ MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS 215-218, 223-224 (1992).

⁶¹ André Blais *et al.*, *One-round vs. Two-round Elections: An Experimental Study*, 5 FRENCH POL. 278 (2007).

⁶² Sayed Mahdi Munadi, *Intekhabat Dar Keshwarhai Pasamunze'a wa Darshai Barai Afghanistan [Elections in Post-Conflict Societies and the Lessons for Afghanistan]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 41-60 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014]; Qasem Ali Sedaqat, *Marzbandi Hawza Hai Intekhabati Dar Afghanistan [Districting Measures in Afghanistan]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 113-134 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014]; ASADULLAH SA'ADATI, ET AL., ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION (ASADULLAH SA'ADATI, ED., 1395) [2016]; Anna Larson, *supra* note 26, at 3.

⁶³ REYNOLDS & CAREY, *supra* note 39.

⁶⁴ ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] (1394) [2015].

⁶⁵ MOHAMMAD NABI AHMADI & MAJID ISMAELZADA, DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] (2014).

⁶⁶ SA'ADATI, IDEA, *supra* note 62.

with that of Iran and France.⁶⁷ Chapter Four presents the first work to examine the role of the presidential runoff system in ethnic accommodation and coalition-building in Afghanistan.

The literature on SNTV is mostly influenced by the experiences of Japan, Korea, and Taiwan, countries that have implemented this system for a long time. Afghanistan's experience of SNTV has also attracted the attention of scholars particularly because of its destructive role on parties and coalitions. There is a growing consensus among scholars that the SNTV system has been harmful to parties and coalitions in Afghanistan. Prominent scholars who have examined this issue include Anna Larson,⁶⁸ Noah Coburn,⁶⁹ Sara T. Ghadiri,⁷⁰ Scott S. Smith,⁷¹ and Andrew Reynolds.⁷² Their findings do not diverge much from the analyses of those, who have studied SNTV in Japan, Taiwan, South Korea, Jordan, and Vanuatu, determining that the SNTV is negatively associated to development of (at least opposition) parties and coalitions.

2. Literature on Constitutional Design

The second body of literature with which this dissertation engages concerns constitutional design of political regimes in divided societies. The literature diverges on whether a presidential system or a parliamentary democracy is conducive to coalition-building. Advocates of a presidential system argue that it encourages coalition-building because presidents

⁶⁷ See Jawad Taqi-Zada, *Intekhabat Riasat Jamhuri Dar Qanoon Asasi Afghanistan [Presidential Elections in the Constitution]*, in SALNAMAH MOTAL' AT HOQUQY AFGHANISTAN [YEARBOOK OF AFGHAN LEGAL STUDIES], 170-182 (1394) [2016].

⁶⁸ Anna Larson, *supra* note 26, at 3.

⁶⁹ COBURN & LARSON, *supra* note 11, at 72.

⁷⁰ Sara T. Ghadiri, *SNTV in Afghanistan: Is There a Better Option?* 5/1 RES PUBLICA JOURNAL OF UNDERGRADUATE RESEARCH 85-91(2010).

⁷¹ Scott S. Smith, *The Future of Afghan Democracy*, 3/1 STABILITY: INTERNATIONAL JOURNAL OF SECURITY & DEVELOPMENT, 1-9, 6 (Mar. 18, 2014).

⁷² REYNOLDS & CAREY, *supra* note 39; REYNOLDS, REILLY & ELLIS, *supra* note 55.

need broad-based coalitions not only to win elections, but also to pass their laws and policies through assemblies.⁷³

Donald Horowitz and Benjamin Reilly, who produced numerous seminal works on democracy in divided societies, argue that a single presidential office encourages cross-ethnic coalition-making.⁷⁴ This effect occurs because no ethnic group wants to be left out from the biggest prize in the nation.⁷⁵ Centripetalists posit that for ethnic groups to get along and exchange votes, it is better that divided societies adopt a presidential constitution.⁷⁶ In their works, they have examined the examples of Nigeria, Sri Lanka, and Indonesia, all of which abandoned the parliamentary system for a presidential constitution primarily for the purpose of nation-building and ethnic accommodation.⁷⁷ Some scholars argue that it was presidential offices rather than anything else that led to a two party system in the U.S.⁷⁸ and two political blocs in

⁷³ SCOTT MAINWARING & MATTEW SOBERG SHUGART, PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA 411 (1997).

⁷⁴ HOROWITZ, *supra* note 15; BENJAMIN REILLY, DEMOCRACY AND DIVERSITY 17-18 (2006); Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13/5 DEMOCRATIZATION 818 (Sep. 2006); Richard Gunther & Larry Diamond, *Types and Functions of Parties*, in POLITICAL PARTIES AND DEMOCRACY, 23-24 (Larry Diamond & Richard Gunther, eds., 2001).

⁷⁵ G. BINGHAM POWELL, JR., CONTEMPORARY DEMOCRACIES: PARTICIPATION, STABILITY, AND VIOLENCE, 57 (1982).

⁷⁶ HOROWITZ, *supra* note 15, at 647.

⁷⁷ HOROWITZ, *supra* note 15, at 576, 635-6, 639 (“we shall soon see that the most significant and carefully planned experiment in ethnic accommodation—Nigeria’s—involved adoption of a presidential system, as did Sri Lanka’s effort to break the cycle of Sinhalese-Tamil conflict... The principal device to encourage multiethnic parties was the presidential electoral formula.”); John Boye Ejibowab, *Integrationist and Accommodationist Measures in Nigeria’s Constitutional Engineering: Successes and Failures*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTERGRATION OR ACCOMMODATION, 239 (Sajit Choudhry ed., 2008).

⁷⁸ COX, *supra* note 38, at 188; Maurice Duverger, *Presidential Elections and Party system in Europe (translated by Herbert H. Rowen)*, in POLITICAL PARTIES AND THE MODERN STATE, 88 (Richard L. McCormick, ed., 1984). Other authors, however, questioned whether presidentialism eased ethnic divide in the US. For example, Sartori suggested that “in the United States the melting pot no longer ‘melts’ and therefore ethnic ‘block voting’ is on the rise.” See e.g., SARTORI, *supra* note 35, at 17.

France.⁷⁹ Even in the discussions of a future constitution for a sovereign European Union, the proposal of a presidential constitution is frequently advocated.⁸⁰

On the opposite end, some very well-known scholars such as Juan J. Linz,⁸¹ Arturo Valenzuela,⁸² Karl Lowenstein,⁸³ Fred Riggs,⁸⁴ Alfred Stepan,⁸⁵ and Cindy Skach marked presidential systems unfit for the institutionalization of coalitions.⁸⁶ They each argue that forming coalitions is difficult under presidential systems.⁸⁷ Linz suggests that even the most

⁷⁹Duverger, *supra* note 78 at 94 (“[Strong political blocs] were strengthened by presidential elections, to which they owed their existence.”); *id.*, at 101 (“these coalitions, which were formed above all to support candidates in the presidential election, profited by the success of a leader who carried it to victory in the parliamentary elections.”); Arend Lijphart, *Presidentialism and Majoritarian Democracy: Theoretical Observations*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY*, 97-8 (Juan J. Linz & Arturo Valenzuela eds., 1992) (“In France, under a two-ballot major time or shortly after the presidential elections, the multiparty system has been maintained but in a two-bloc or bipolar format and with considerably fewer parties than in the parliamentary Third Republic, which used the same electoral system.”); Ezra N. Suleiman, *Presidentialism and Political Stability in France*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY*, 142 (Juan J. Linz & Arturo Valenzuela eds., 1992) (“But believing that a presidential regime circumscribes the role of political parties [in France] suggests that the drafters of the constitution had little understanding of the working of presidential regimes.”).

⁸⁰ AREND LIJPHART, *THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE*, 15 (2008).

⁸¹ Juan J. Linz, *The Perils of Presidentialism*, 1/1 *J. DEMOCRACY* 53 (1990); JUAN J. LINZ & ALFRED STEPAN, *PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE* (1994); JUAN J. LINZ & ARTURO VALENZUELA, *THE FAILURE OF PRESIDENTIAL DEMOCRACY: COMPARATIVE PERSPECTIVES* (1994).

⁸² LINZ & VALENZUELA, *supra* note 81.

⁸³ Karl Lowenstein, *The Presidency Outside the United States: A Study in Comparative Political Institutions*, *J. POL.* 11/3 (1949).

⁸⁴ Fred Riggs, *The Survival of Presidentialism in America: Para Constitutional Practices*, *INT’L POL. SCI. REV.*, 9/4 (1988).

⁸⁵ LINZ & STEPAN, *supra* note 81; Alfred C. Stepan & Cindy Skach, *Presidentialism and Parliamentarism in Comparative Perspective*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY: COMPARATIVE PERSPECTIVES* (Juan J. Linz & Arturo Valenzuela, eds. 1994).

⁸⁶ *See* Stepan & Skach, *supra* note 85.

⁸⁷ Juan J. Linz, *Presidential or Parliamentary: Does it Make a Difference?* 19 (Latin American Program of the Woodrow Wilson International Center for Scholars, Project Paper, 1985); Jose Antonio Cheibub, Adam Przeworski & Sebastian M. Saiegh, *Government Coalitions and Legislative Success Under Presidentialism and Parliamentarism*, *B. J. POL. S.* 34 (2004).

successful presidential systems are linked with undisciplined parties and coalitions.⁸⁸ According to him, presidents are less dependent on parties and coalitions because they are elected by popular votes.⁸⁹ As such, presidents are likely “to govern in a populist and anti-institutionalist fashion,” which is unimaginable in parliamentary systems.⁹⁰ Therefore, presidential systems lack the proper mechanisms for disciplining and institutionalizing coalitions.⁹¹ Arend Lijphart, who opposes presidential systems particularly in divided societies, posits that an elected president is almost inevitably from one ethnic group.⁹² From this view, power-sharing and cross-ethnic coalitions are meaningless in presidential democracies.⁹³

Similar divergence of scholarship exists in Afghanistan. The adoption of a presidential constitution sparked a fierce scholarly debate in Afghanistan. The proponents of a presidential system, including Tahir Hashimi,⁹⁴ Abdul Ali Mohammadi,⁹⁵ Barnett Rubin⁹⁶ and Jawad Sajadi,⁹⁷ have all argued that the presidential system is conducive to political stability, national unity, smooth cooperation between the government and international allies, and quicker socio-

⁸⁸ Linz, *supra* note 81, at 53.

⁸⁹ Mainwaring & Shugart, *supra* note 42, at 450.

⁹⁰ *Id.*

⁹¹ MARK P. JONES, ELECTORAL LAWS AND THE SURVIVAL OF PRESIDENTIAL DEMOCRACIES, 6 (1995)

⁹² LIJPHART, *supra* note 80, at 169.

⁹³ *Id.*

⁹⁴ MOHAMMAD TAHIR HASHEMI, BA SOY DEMOCRACY: QANOON-E-ASASI WA NEZAM NAWIN SIASI [TOWARDS DEMOCRACY: THE CONSTITUTION AND THE NEW POLITICAL SYSTEM OF AFGHANISTAN] (2005).

⁹⁵ ABDUL ALI MOHAMMADI, AFGHANISTAN WA DAWLAT MUDERN [AFGHANISTAN AND A MODERN STATE] 373 (1394) [2015] (“The idea of changing the system from presidentialism to palriamentarism is a political idea and not a scientific/academic one...Afghanistan does not have the preconditions and not the aptitude for a parliamentary system.”).

⁹⁶ RUBIN, *supra* note 31, at 5-19.

⁹⁷ Jawad Sajadi, *Nizam Riyasati, Amel Subat Dar Jawame Ghair Democratic [Presidential System, The Stabilizing Factor in Undemocratic Societies]* BBC PERSIAN, Feb. 12, 2017, <http://www.bbc.com/persian/blog-viewpoints-38950894>.

economic reform in Afghanistan.⁹⁸ The proponents have not attempted to associate the presidential system with the development of parties and coalitions. As to the development of parties, Mohammadi admits that the parties have remained ethnic-based, fragmented, and very unpopular under the presidential system in Afghanistan.⁹⁹

On the opposite end of the spectrum, the skeptics of the presidential system have criticized it for establishing broad presidential powers, arguing that it has ultimately led to hampering party development, and less inclusive government, where all ethnic groups are not truly represented. These kinds of criticisms have repeatedly surfaced in the writings of Mohammad Qasem Hashimzai,¹⁰⁰ Abdul Halim Saqib,¹⁰¹ Mujiburahman Rahimi,¹⁰² Abdul Hamid Mansour,¹⁰³ Nematullah Shahrani,¹⁰⁴ Kenneth Katzman,¹⁰⁵ Scott Worden,¹⁰⁶ Sven

⁹⁸ MOHAMMADI, *supra* note 95, at 150-151.

⁹⁹ *Id.* at 374.

¹⁰⁰ Mohammad Qasim Hashemzai, *Tafkik Quwa Was Masala Tafsir Qanoon-i-Asasi Afghanistan [Separation of Powers and the Issue of the Interpretation of the Constitution]*, in SALNAMAH MOTAL'AT HOQUQY AFGHANISTAN, 91 [YEARBOOK OF AFGHAN LEGAL STUDIES] (1394) [2016] ("The new Constitution has given the power of both the king and prime minister of the 1964 Constitution to the president.").

¹⁰¹ Abdul Halim Saqib, *Yak Negah Ejmali Bar Salahiat Rai Raes Jumhor Wa Amikhtagi Wazhahai Dawlat Wa Hokumat Dar Musaweda Qanoon-e Asasi [A Brief Evaluation of the Power of the President And the Misplacements of State and Government Concepts in the Draft of the Constitution]*, in ESSAYS REGARDING THE DEBATES ON THE DRAFT OF THE CONSTITUTION, 57 (Abdul Shakor Waqif Hakimi, ed., 2003).

¹⁰² MUJIBURAHMAN RAHIMI, NAQDI BAR SAHKTAR NEZAM DAR AFGHANISTAN [A CRITIQUE OF THE STRUCTURE OF THE POLITICAL SYSTEM IN AFGHANISTAN] (2008).

¹⁰³ Abdul Hamid Mansour, *Aqai Karzai Dar Taswid Qanoon-e Asasi Zed Demokrasi Amal Karda Ast [Mr. Karzai Has Acted Anti-Democratic in Drafting the Constitution]*, in ESSAYS REGARDING THE DEBATES ON THE DRAFT OF THE CONSTITUTION, 91 (Abdul Shakor Waqif Hakimi, ed., 2003) ("Institutions and not individuals are important. Institutions should be developed and empowered not individuals. . . . Parliamentary system does that.").

¹⁰⁴ M. N. Shahrani, *Squandering US Credibility in Afghanistan*, 25 AKADEMIK ARASTIRMALAR DERGISI, 103-107 (2005); M. N. Shahrani, *From Failed Modernization and Failed-State to a Post Taliban Militia-State: Afghanistan Since 1919*, in THE ISLAMIC WORLD IN THE AGE OF AGE OF WESTERN DOMINANCE (Francis Robinson, ed., 2006).

¹⁰⁵ KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE 7 (Jul. 28, 2014), available at

Gunnar,¹⁰⁷ Rainer Grote,¹⁰⁸ Astri Suhrke,¹⁰⁹ and Sonali Kohatkar and James Ingalls.¹¹⁰ A number of reports on Afghan parties have also identified the problem of fragmented parties, mainly in the broader constitutional powers of the president.¹¹¹

This dissertation reveals that it is not just the powers of the president that affect parties and coalitions. The constitutional features of Afghan presidential elections, as well as the constitutional system of dual vice presidency, have their own important roles to play. Examining presidential powers, presidential electoral features, and the dual vice presidency, this dissertation reveals a strong association between the presidential system and the formation of cross-ethnic coalitions.¹¹² Over 18 coalitions have been formed in preparation for presidential elections as opposed to one coalition that has formed in association with parliamentary elections in Afghanistan. However, neither incumbent nor the opposition coalitions have been successful at institutionalizing. Therefore, this dissertation concludes that while the Afghan presidential

<https://www.fas.org/sgp/crs/row/RS21922.pdf>; KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT: AFGHANISTAN: PRESIDENTIAL AND PARLIAMENTARY ELECTIONS, 1 (Jul. 7, 2005).

¹⁰⁶ Scott Worden, *Afghanistan: An Election Gone Awry*, 2 JOURNAL OF DEMOCRACY, 11-25, 13 (2010).

¹⁰⁷ Sven Gunnar Simonsen, *25/4 Ethnicising Afghanistan? Inclusion and Exclusion in Post-Bonn Institution Building*, THIRD WORLD QUARTERLY, 707-729, 713 (2004).

¹⁰⁸ Rainer Grote, *Separation of powers in the Afghan New Constitution*, 64 ZAORV, 898-917, 904 (2004).

¹⁰⁹ Astri Suhrke, *The Democratisation of a Dependent State: The Case of Afghanistan*, 9 (Chr. Michelsen Institute, Working Paper 51, 2007) (available online) <https://www.cmi.no/publications/2810-democratization-of-a-dependent-state>.

¹¹⁰ SONALI KOHATKAR & JAMES INGALLS, BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF Silence 141 (2006).

¹¹¹ INTERNATIONAL CRISIS GROUP, POLICY BRIEFING 141: AFGHANISTAN'S PARTIES IN TRANSITION 4 (June, 2013), available at <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>; INTERNATIONAL CRISIS GROUP, ASIA REPORT N°88, AFGHANISTAN: FROM PRESIDENTIAL TO PARLIAMENTARY ELECTIONS, i (Nov. 2004).

¹¹² See *infra* Table II-1 in Chapter IV. The table shows that more coalitions were formed in preparation for presidential elections than for parliamentary elections.

system has been conducive to the formation of cross-ethnic coalitions, it has failed to institutionalize those coalitions.

3. The Literature on Party Law

The third body of literature that this dissertation engages concerns studies on party laws. Party laws were traditionally meant to serve as gatekeepers against party proliferation while promoting party institutionalization.¹¹³ Party laws deal with parties' legal status, definition, registration requirements, finance, and even internal organization.¹¹⁴ Party laws, which are meant to ban ethnic parties, are likely to do so by setting various registration thresholds or conditioning financial subsidies to parties.

The literature on party laws is perhaps the least developed among all studies of political laws and institutions.¹¹⁵ Keneth Janda found that an "internet search for 'party law' or 'parties law' ... in 2005 returned only 26 citations; four of which were to web sites."¹¹⁶ Since then several books and articles have come out that specifically analyze party laws and finance.¹¹⁷ Even so, the literature seems to weigh considerably on party law development in European countries.

¹¹³ Fernando Casal-Bértoa, Daniela Romée Piccio & Ekaterina R. Rashkova, *Party Law in Comparative Perspective*, 1 (Leiden University, Working Paper Series, 2012) available at <http://www.partylaw.leidenuniv.nl/uploads/wp1612.pdf>.

¹¹⁴ Dan Avnon, *Parties Laws in Democratic Systems of Government*, J. OF LEGIS. STUD. 287 (1995).

¹¹⁵ Kenneth Janda, *How Nations Govern Political Parties* 5 (World Congress of the International Political Science Association, Special Session, 2006) http://paperroom.ipsa.org/papers/paper_5034.pdf; Wolfgang C. Müller & Ulrich Sieberer, *Party Law*, in HANDBOOK OF PARTY POLITICS, 435 (Richard S. Katz & William Crotty eds., 2006).

¹¹⁶ Janda, *supra* Note 115, at 5.

¹¹⁷ See e.g., Alefe Abeje, *Party System Institutionalization And The Prospect Of Democratic Consolidation In Ethiopia*, 23/9 EUROPEAN SCIENTIFIC JOURNAL, 315-329 (2013); POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT (Benjamin Reilly & Per Nordlund, eds., 2008); KENNETH JANDA, POLITICAL PARTIES AND DEMOCRACY IN THEORETICAL AND PRACTICAL PERSPECTIVES: ADOPTING PARTY LAW, THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (2005); FRITZ PLASSER AND GUNDA PLASSER, GLOBAL POLITICAL CAMPAIGNING: A WORLDWIDE ANALYSIS OF

Benjamin Reilly is one of the few well-known scholars who initiated methodical analysis of party laws in divided societies, specifically in East and Southeast Asian countries.¹¹⁸ His findings suggest that a well-designed party law can have as much impact on party development in a divided society as electoral laws.¹¹⁹ Some scholars, however, challenged this claim. Among the skeptics are Biezen and Rashkova, who after analyzing party laws in 16 countries, conclude that “in nine out of the 16 states, an increase in regulation does not correspond to a decrease...in the number of political contestants.”¹²⁰ Testing the merits of these competing arguments in Afghanistan’s case, this dissertation concurs with Biezen and Rashkova’s arguments. The most important shortcoming of party laws, for example, is their lack of a provisional framework to promote the emerging cross-ethnic coalitions.

C. Research Methods

This dissertation is a single outcome case study, focusing on the case of Afghanistan. From time to time, Afghan political laws are compared to those of other divided societies only in order to help illustrate the pros and cons of the Afghan institutional designs. These supporting cases include Indonesia, Sri Lanka, Philippines, Kenya, Nigeria, Ghana, Malawi, Burundi, Sierra Leone, and Bolivia, all of which are plural societies—although they do not necessarily represent successful cases of coalition institutionalization. These countries are chosen for their innovations

CAMPAIGN PROFESSIONALS AND THEIR PRACTICES (2002); INSTITUTE FOR DEMOCRATIC ELECTORAL ASSISTANCE (IDEA), FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGN (2003).

¹¹⁸ BENJAMIN REILLY AND PER NORLUND, *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* (2008).

¹¹⁹ Benjamin Reilly, *Political Stability and Party Law in New Democracies*, 12 (International Political Science Association Congress, Seminar Paper, 2009), *available at* http://paperroom.ipsa.org/papers/paper_1084.pdf.

¹²⁰ Ingrid van Biezen & Ekaterina R. Rashkova, *Breaking the Cartel: The Effect of State Regulation on New Party Entry*, 14 (Economic and Social Research Council, Working Paper 12, Aug. 2011), <http://www.partylaw.leidenuniv.nl/uploads/wp1211.pdf>.

in institutional design and their different approaches to ethnic accommodation and coalition-building as reflected in their political laws. These countries are more relevant comparative cases for their experiences of institutional design than consolidated democracies.

Analyzing institutional designs in advanced democracies does not result in a comprehensive understanding of party or coalition development. In advanced democracies, parties had solidified by the 1920s,¹²¹ long before institutional design was considered instrumental to the institutionalization process. Additionally, the available data and historical records do not sufficiently shed light on how different political institutions shaped party development in consolidated democracies.

Examining political laws and institutions in new democracies, however, may resolve this problem because they are purposefully designed to address social cleavages, ethnic accommodation, and the institutionalization of coalitions. Although political laws are undergoing change in most new democracies, counterpart societies have more to learn from innovative approaches and designs of these new democracies than from the century-old institutions of advanced democracies. Institutional designs such as constituency-pooling provisions, ethnic-party banning provisions, multiple vice presidencies, co-presidencies, superlative voting system, political quotas, and merger provisions are either the innovations of democratizing societies or more prevalent in these countries than in consolidated democracies.

In addition, in developing countries, coalitions and parties can be tracked and observed at different points in the institutionalization process: from the inception of proto-parties to fully developed coalitions or parties. Therefore, the empirical application of general theories of

¹²¹ Lipset & Rokkan, *supra* note 46; Erik Allardt, *Party Systems and Voter Alignments in the Tradition of Sociology*, in PARTY SYSTEMS AND VOTER ALIGNMENTS REVISITED, 23 (Lauri Karvonen and Stein Kuhnle, eds., 2001).

political institutionalization is more testable and revealing in new democracies than in well-established democracies. While advanced democracies do present some successful cases, not all successful cases are useful to follow; by the same token, not all failed cases need to be dropped from our analysis. For these very reasons, different chapters offer a quick preview of relevant political laws in new democracies.

This study relies on quantitative and qualitative approaches to analyzing data and information. The first three chapters rely heavily on data analysis, accumulated from websites, surveys, and interviews. Among these data, collecting data about ethnic demographics was the most socially sensitive and logistically challenging.¹²² The Afghan government does not provide a census about ethnic populations, presumably because of the sensitivity and delicacy of this issue in the society. A number of incomplete surveys have been conducted, as well as estimations produced by different domestic and international organizations; however, these are all disputed among elites of different ethnic groups. For estimations about ethnic populations on provincial level, this dissertation relies on the data produced by the Afghanistan Information Management Services,¹²³ the Program for Cultural and Conflict Studies,¹²⁴ and the United States Army Combined Armed Center.¹²⁵

¹²² Emma Graham-Harrison, *Afghan Census Dodges Questions of Ethnicity And Language*, THE GUARDIAN (Jan. 3, 2013) <http://www.theguardian.com/world/2013/jan/03/afghan-census-questions-of-ethnicity>; Bryan Denton, *For Afghans, Name and Birthdate Census Questions Are Not So Simple*, NYTIMES, (Dec. 10, 2014). http://www.nytimes.com/2014/12/11/world/asia/for-afghans-name-and-birthdate-census-questions-are-not-so-simple.html?_r=0; Abubakar Siddique, *Afghanistan's Hazara Minority Outraged By Science Academy Insults*, RADIO FREE EUROPE (Jul.3 2012) <http://www.rferl.org/content/afghanistan-hazaras-ethnic-tensions-academy-of-sciences/24633486.html>.

¹²³ Afghanistan Information Management Services (AIMS) only provided census for districts and not provinces. The data for each province was generated by the accumulation of the census of its districts. From among the 11 provinces, the census for Kabul is the only incomplete provincial data. I was able to gather the census for almost 50% of its districts (7 out of 15). Therefore, it is possible that the sampled census might not represent the population of ethnic groups in Kabul as

A series of surveys and interviews conducted between April to October of 2016 has also been used for the purpose of this dissertation. The survey was given to 650 individuals from 29 of the 34 Afghan provinces. The respondents included males and females of different ethnic groups (see Table App. IV-1 in the Appendix). These individuals were approached in person or through phone calls. The interviewees included 40 elites, such as leaders or spokespersons of parties and coalitions, board members of the Constitutional Commission, and two Electoral Commissions, MPs, and the head of Party Registrar Office.

The method used in the remainder of this dissertation is primarily process-tracing, indicating how constructive and obstructive features of different institutional designs are linked to the institutionalization (or deinstitutionalization) of coalitions. This method also helps explain where different features accumulate to produce an optimal outcome and where those features diverge.

Methodologically, this dissertation diverges from the conventional literature on party institutionalization in two important respects. First, it has a process-oriented approach towards the institutionalization of coalitions, which is different from the more conventional, measure-oriented approach. Conventional studies have evaluated whether and to what extent parties are institutionalized. They have adopted and used a number of metrics to measure the level of party institutionalization in different countries. This study, however, is more interested in why the institutionalization of coalitions failed and where the institutional obstacles are. Second, in the

a whole. However, because of the importance of the province as the center of political distribution, this province was not excluded from data analysis. *See* AFGHANISTAN INFORMATION MANAGEMENT SERVICES <http://www.aims.org.af>.

¹²⁴ PROGRAM FOR CULTURAL AND CONFLICT STUDIES, <http://www.nps.edu/programs/ccs/>.

¹²⁵ CENTER FOR ARMY LESSONS LEARNED, AFGHANISTAN PROVINCIAL RECONSTRUCTION TEAM HANDBOOK: ANNEX A - NATIONAL AND PROVINCIAL DATA, UNITED STATES ARMY COMBINED ARMED CENTER, http://usacac.army.mil/cac2/call/docs/11-16/app_a.asp#a-p1.

conventional literature, it is the parties or party systems that are at the center of institutionalization analyses.¹²⁶ This study, on the other hand, focuses on the institutionalization of coalitions, not parties.

To illustrate the divergence, Huntington, who founded the concept of party institutionalization, suggested that party institutionalization can be measured by analyzing four characteristics of political parties: their adaptability, their coherence, their autonomy, and their complexity.¹²⁷ According to Huntington, the more organizationally complex, ideologically and strategically coherent, functionally and generationally adaptable, and institutionally as well as procedurally autonomous, the more the parties are institutionalized.¹²⁸ Conversely, undeveloped or less developed parties lack the complexity and adaptability of an organization, and they function as less coherent and autonomous entities.¹²⁹ Relying on similar metrics, in his article, *Political Parties and Political Development in Afghanistan*, Yaqub Ibrahimi concluded that parties are not institutionalized in Afghanistan.¹³⁰

¹²⁶ See for example, MOHAMED SALIH & ODA VAN CRANENBURGH, *AFRICAN POLITICAL PARTIES: EVOLUTION, INSTITUTIONALIZATION AND GOVERNANCE* (2003); Aim Sinpeng, *Party Banning and the Impact on Party System Institutionalization in Thailand*, 36/3 CONTEMP. SOUTHEAST ASIA 442–66 (2014); Alefe Abeje, *supra* note 117, at. 315-328; Allen Hicken et al., *Shadows from the Past: Party System Institutionalization in Asia*, 44/5 COMP. POL. STUD. 572-597 (2011); Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, 18/2 PARTY POL. 235-265 (2012); Fernando Casal Bertoa, *Party Systems and Cleavage Structures Revisited: A Sociological Explanation of Party System Institutionalization in East Central Europe*, 20/1 PARTY POL. 16-36 (2013); Johanna Kristin Birnir, *Public Venture Capital and Party Institutionalization*, 38/8 COMP. POL. STUD., 915-938 (2005); Russell J. Dalton & Steven Weldon, *Partisanship and Party System Institutionalization*, 13/2 PARTY POL. 179-196 (2007); Lindberg, *supra* note 48; Vicky Randall & Lars Svasand, *Party Institutionalization in New Democracies*, 8/1 PARTY POL. 5-29 (2002).

¹²⁷ Samuel P. Huntington, *Political Development and Political Decay*, WORLD POL. 14/3, 393-405 (1965) available at <http://www.la.utexas.edu/users/chenry/core/Course%20Materials/SPH1965/0.pdf>.

¹²⁸ *Id.*, at 393-405

¹²⁹ *Id.*, at 393-405

¹³⁰ Ibrahimi, *supra* note 13, at 6

Mainwaring and Scully highlight some external socio-political factors that can help evaluate levels of party development.¹³¹ According to these authors, party institutionalization can be defined by “the regularity of party competition, the extent to which parties have stable roots in society, the extent to which parties and elections are widely accepted as the means of determining who governs, and the extent to which parties are organized internally.”¹³² Under the title, *Measuring Institutionalization as Stability of Party Configuration*, Staffan I. Lindberg listed eight indicators by which he examined the level of party institutionalization in Africa: (1) the number of parties in the legislature; (2) the number of new parties in the legislature; (3) the seat-share of new parties in the legislature; (4) the number of parties voted out of legislature; (5) the seat-share of parties voted out; (6) the seat-share of the largest party; (7) the seat-share of the second largest party; and (8) legislative seat volatility.¹³³ Using this same framework, party institutionalization in Afghanistan can be easily summarized in the following Table.

Table Intro-2. Measures party institutionalization by comparing the 2005 and 2010 parliamentary elections based on eight indicators used by Staffan Lindberg.

| Measuring Party Institutionalization in Afghanistan | | | | | | |
|--|-----------------------|-----------------------|---------------------|---------------------|-----------------|---------------------------------|
| # Parties in Leg. | # New Parties in Leg. | % New Parties in Leg. | # Parties Voted Out | % Parties Voted Out | % Largest Party | % 2 nd Largest Party |
| 15 | 1 | 3.6 | 4 | 2.4 | 7.2 | 4.8 |

This table, however, does not explain the direction of institutionalization or identify where the problems are. Even those studies that examine the link between institutional designs and party-development tend to look at end results, not how they interact during the process of

¹³¹ SCOTT MAINWARING & TIMOTHY SCULLY, *BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA*, 20 (1995).

¹³² *See id.*; Scott Mainwaring & Mariano Torcal, *Party System Institutionalization And Party System Theory After the Third Wave of Democratization*, A HANDBOOK OF PARTY POLITICS 204 (Richard s. Katz & William Crotty, eds., 2006).

¹³³ Lindberg, *supra* note 48, at 222-226.

institutionalization.¹³⁴ This dissertation examines the relation between institutional designs and coalitions at each level of development: electoral, executive, and parliamentary coalition-building.

Furthermore, as suggested earlier, this dissertation is not interested in the institutionalization of parties or party systems. Instead, it focuses on the institutionalization of cross-ethnic coalitions. Indeed, this dissertation reveals that the major challenge of Afghan political laws is that they are designed to transform ethnic parties into cross-ethnic ones. As Mohammad Shafaq Khawati states, it is near to impossible to encourage these ethnic parties to transform because their transformation costs them their constituencies and all political gains that they obtain because of their constituencies.¹³⁵

Even if Afghan ethnic parties try to include more groups, they are less likely to be appealing to those groups, given the distrust that exists among ethnic parties and social groups. This lack of trust mainly stems from residual attitudes that have developed in response to a series of lengthy civil wars that all major Afghan ethnic parties were involved in.¹³⁶ After the adoption of the Party Law in 2009, even though some political parties like the *Jamiat-i-Islami Party* [Islamic Society party] and *Hizb-i-Islami* [Islamic Party] attempted to include members from

¹³⁴ See, e.g., Dan Avnon, *supra note* 114, at 287; Kenneth Janda, *How Nations Govern Political Parties* 5 (World Congress of the International Political Science Association, Special Session, 2006) available at: http://paperroom.ipsa.org/papers/paper_5034.pdf; Wolfgang C. Müller & Ulrich Sieberer, *Party Law*, in HANDBOOK OF PARTY POLITICS, 435 (Richard S. Katz & William Crotty eds., 2006).

¹³⁵ Mohammad Shafaq Khawati, *Qawmcraçy Wa Qabila Salari [Ethnocracy and Tribalism]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES], 13 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014].

¹³⁶ The first civil war began by the collapse of communist regime in Kabul in 1992 and continued until 1996, when the Taliban took over the capital. They engaged in another civil war until 2001. Although most scholars differentiate Taliban's period from the first civil war, the continuous war between Taliban and different ethnic groups at different fronts and different parts of the country does merit the definition of a civil war.

different groups, they could not attract many elites or support from other groups.¹³⁷ Their popularity as ethnic parties and their involvement in civil wars that eventually harmed other groups have made them less appealing to individuals from other groups. Interestingly, Afghanistan is not a unique case in this regard. Many countries have adopted similar laws to Afghanistan, which have equally failed to encourage broad-based parties.¹³⁸ Several studies indicate that the adoption of party regulations did not lead to party institutionalization in Africa,¹³⁹ South America,¹⁴⁰ Eastern Europe,¹⁴¹ and Southeast Asia.¹⁴²

¹³⁷ Mohammad Shafaq Khawati, *Qawmcraçy Wa Qabila Salari [Ethnocracy and Tribalism]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 13 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014].

¹³⁸ Denis K. Kadima, *Party Regulations, Nation-building, and Party Systems in Southern and Eastern Africa*, in POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT, 201 (Benjamin Reilly & Per Nordlund, eds., 2008); Biezen, *supra* note 120, at 14.

¹³⁹ Denis K. Kadima, *Party Regulations, Nation-building, and Party Systems in Southern and Eastern Africa*, in POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT, 201 (Benjamin Reilly & Per Nordlund, eds., 2008).

¹⁴⁰ Marta Lagos, *How People View Democracy: Between Stability and Crisis in Latin America*, J. DEM., Table 3, (Jan, 2001).

¹⁴¹ Richard Rose & Christian Haerpfer, *New Democracies Barometer V: A 12-Nation Survey*, STUDIES IN PUB. POL'Y, 59-62, 206 (1999).

¹⁴² Croissant & Volkel, *supra* note 126, at 248 (Partisanship has a much lower rate in Southeast Asian countries. For example, party roots in the society is 30% in Indonesia, 54% in Philippines, 41% in Thailand, 57% in Taiwan, and 73% in South Korea... "However, "the results of the Asian Barometer Survey (2005–07) show that the percentage of party members is low across most countries: 0.3 percent of respondents in Thailand, 0.5 percent in the Philippines, 1.2 percent in South Korea, 1.6 percent in Taiwan and 2.2 percent in Indonesia. Again Mongolia is the exception here with 24.2 percent.").

Numerous studies have indicated a growing disaffection towards parties in these regions. See e.g., Randall & Svasand *supra* note 126, at 17; Scott Mainwaring, *Political Parties and Democratization in Brazil and the Southern Cone*, 21/1 COMP. POL. 91, 91 (1988) (noting likewise the weakness of parties in Latin America from the 1960s, observed 'This pervasive discrediting of parties had as a side effect the delegitimation of scholarly work on parties. '); Russell J. Dalton & Steven Weldon, *Partisanship and Party System Institutionalization*, 2/13 PARTY POLITICS, 189 (2007); LARRY DIAMOND, *DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION*, ix (1999) (arguing that in the third wave democracies public disaffection with political party is growing substantially).

Given their unpopularity and organizational flaws, these proto-parties are more compatible with the political factions of the advanced democracies of over a century ago than with their established parties today. If anything, it is the genealogy of established parties, and not their current status, which can reveal the process of party development in Afghanistan and other new democracies.

Giovanni Sartori's read of the origin of 'party' is particularly apt on this point.¹⁴³ According to Sartori, in early stages of Western democracies the prevalent concept of "faction" for political groups was not well-received in the public.¹⁴⁴ Both the public as well as elites were suspicious of the then political factions.¹⁴⁵ Factions were understood as evil political organizations that divided societies and weakened governments.¹⁴⁶ Therefore, as Sartori puts it, "the name 'party' came into use, gradually replacing the derogatory term 'faction,' with the acceptance of the idea that a party is not necessarily a faction, that it is not necessarily an evil, and that it does not necessarily disrupt the *bonum commune*, and the common weal."¹⁴⁷ Even then, the concept of party did not become appealing among the masses or the elites. Some well-known scholars of the past such as Bolingbroke, Burke, Danton, Robespierre, and Condorcet in Europe and Madison and Hamilton in the U.S. took anti-party positions.¹⁴⁸

This description of political factions and parties of the advanced democracies may feel very familiar to the observers of Afghan politics. Today, Afghans have the same perception about parties that citizens of advanced democracies had about factions and parties one or two

¹⁴³ GIOVANNI SARTORI, PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS, 3-29 (1976).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 25; also see Robert A. Dahl, POLITICAL OPPOSITIONS IN WESTERN DEMOCRACIES, xv (1966).

¹⁴⁷ SARTORI, *supra* note 143, at 3.

¹⁴⁸ SARTORI, *supra* note 143, at 6-12.

centuries ago. Afghans consider parties to be evil, divisive and perpetrators of war and violence in Afghanistan. The concept of *Hizb* (party) has long lost its appeal due to its use for some political-militia groups that until very recently functioned under the titles “*Harakat, Tehrik, Nohzat, Jonbesh, Ghurdzang*, all standing for ‘Movement’; *Jabha and Mahaz*, standing for ‘Front’; *Tanzim, Sazman or Kanun*, standing for ‘organized group’...”¹⁴⁹ Today, these concepts bear negative connotations relating to war and revolution. Comparatively, the concept of coalition is more appealing to the public than the concept of parties because *Itelaf*, coalition, connotes coming together and unification.

A more important lesson to learn from the history of party development in consolidated democracies is that these parties have emerged out of the coalescence of different factions and socio-political groups. In other words, today’s consolidated parties in advanced democracies are not the same factions of the past, but rather the coalition of several socio-political forces. Explaining the nature of institutionalized political parties, Bradley Richardson posits that political parties are the product of coalitions and will remain coalitions in nature.¹⁵⁰ Social determinists such as Lipset and Rokkan’s *Cleavage Structures Party Systems and Voter Alignments*, also indicate that the existing political parties in Europe are the results of alliance making and shifting in early stages of democratic consolidation on that continent.¹⁵¹ They are emphatic that a “crucial point in the discussion of the translation of the cleavage structures into party systems [concerns] the costs and the pay-offs of mergers, alliances, and coalitions.”¹⁵² Lipset specifically refers to the cases of the United States and Australia to suggest that the two-

¹⁴⁹ Ruttig, *supra* note 25, at 1.

¹⁵⁰ Bradley Richardson, *Japan’s ‘1955 System’ and Beyond*, in *POLITICAL PARTIES AND DEMOCRACY*, 159 (Larry Diamond & Richard Gunther, eds., 2001).

¹⁵¹ Lipset & Rokkan, *supra* note 46, at 5.

¹⁵² Lipset & Rokkan, *supra* note 46, at 17.

party systems are the result of several socio-political groups being “condensed into broad coalitions” over a long period of time.¹⁵³

It is not just social determinists but also their critics that emphasize the saliency of coalition-making in party development. Jacob Zielinski wrote that “coalition-making is a central component” of party development since it may entrench beyond social cleavages.¹⁵⁴

In the past few Afghan elections, a number of coalitions have emerged that have transcended ethnic boundaries. In contrast to the existing *proto-parties*,¹⁵⁵ these emerging coalitions have demonstrated popularity, cross-ethnic appeal, and political accommodation by elites. In fact, they have indicated the prospect for political development as they incentivized cross-ethnic voting. Coalition-making has become the norm for all serious candidates who are seeking to win presidential elections. As a result, the tradition of coalition-building has become firmly entrenched in the elections.

Unlike proto-parties, these coalitions are better equipped to earn the trust and support of different ethnic groups because they are the assemblage of equally important elites and parties from different groups. Ethnic groups understand that their interests will be protected in such coalitions. Additionally, these coalitions provide a constructive environment for inter-ethnic dialogue, especially when all negotiating partners share the goal of winning and governing, for

¹⁵³ *Id.*

¹⁵⁴ Jakub Zielinski, *54/2 Translating Social Cleavages into Party Systems: The Significance of New Democracies*, *WORLD POLITICS*, 178-196, 6 (2002) (“Think of this view as the “weak” interpretation of social cleavage theory. According to this interpretation, coalition-making is a central component of the over-all theory. Information about the structure of social conflict is necessary but not sufficient to account for the axes of political competition. We must also include information about coalition-making.”).

¹⁵⁵ For definition of *proto-parties* refer to Appendix I.

which they need to make concessions and compromises.¹⁵⁶ A process of institutionalization will further engage these partners in inter-ethnic dialogue. Consistent with this premise, Donald Horowitz suggests that inter-ethnic dialogue at the coalition level help depoliticize ethnicity at the national and governmental levels.¹⁵⁷ Coalition-building by its very nature tends to minimize ethnic politics even though ethnic talks may dominate negotiations within coalitions.¹⁵⁸ Above all, it is important to note that if splits and mergers of parties derive largely from the responses that they generate at the popular level, as Peter Mair suggests,¹⁵⁹ then the public opinion in Afghanistan seems to favor the institutionalization of these mergers.

¹⁵⁶ Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 19/5 PARTY POLITICS 736-747, 739 (2011).

¹⁵⁷ HOROWITZ, *supra* note 15, at 419.

¹⁵⁸ Herbert Kitschelt, *The Formation of Party Systems in East-Central Europe*, 20/1 POLITICS AND SOCIETY 7-50, 20 (1992).

¹⁵⁹ Peter Mair, 20/1 *The Electoral Payoffs of Fission and Fusion*, BRITISH J. OF POL. SCI., , 131 (1990).

PART I
POLITICAL PRACTICES, IDEALS, AND LAWS IN
AFGHANISTAN

Analyzing ethnic-electoral dynamics, scholars and practitioners have provided two different interpretations of electoral practices in Afghanistan: an optimist interpretation and a pessimist one. While optimists have pronounced the disappearance of ethnic voting in Afghanistan, pessimists have argued that it is indeed ethnic voting that projects electoral outcomes.

Starting with the optimists, in 2014, just prior to the most recent presidential election, a survey conducted by the Free & Fair Election Foundation of Afghanistan (FEFA) concluded that 64% of voters would not vote on the basis of ethnicity.¹ A separate pre-election poll conducted by Glevum Associates suggested a similar finding: 84% of respondents said that they would not cast ethnic votes.² In some interviews conducted by BBC Persian, Tolonews, and other media, respondents said that they would vote on the account of personality, leadership skills, or policies of the candidates.³ Likewise, Ahmad Yusif Nuristani, the head of Independent Election Commission (IEC) in 2014, once stated that, "...the votes are totally mixed and national."⁴ These pre-election polls and statements were supported by Ashok K. Mehta who, in his article,

¹ See Masood Korosh, *Promising Findings of FEFA Survey*, DAILY OUTLOOK AFGHANISTAN (Mar. 29, 2014), http://outlookafghanistan.net/topics.php?post_id=9754#ixzz35nf7DiQF; Saleha Sadat, *Election Shows Potential for Politics Beyond Ethnicity*, TOLONEWS (Apr. 29, 2014), <http://www.tolonews.com/en/afghanistan/14704-election-shows-potential-for-politics-beyond-ethnicity> (Mohseni, the chairman of FEFA said that, "...the majority of the voters weren't intending to vote on the basis of ethnicity.").

² GLEVUM ASSOCIATES, WAVE 1: AFGHANISTAN PRESIDENTIAL ELECTION 2014 POLL RESULTS, (Sep 2013), <http://glevumassociates.com/doc/GlevumAfghanistanPresidentialElection2014WaveOneSurveyFindings%20.pdf>.

³ Bashir Payman, *Intikhabat-e-Afghanistan: Aya Meyar Hai Madum Taghir Karda? [Afghan Election: Whether People Have Changed the Selection Criteria?]* BBC PERSIAN (Mar. 31, 2014), http://www.bbc.co.uk/persian/afghanistan/2014/03/140330_k03_af2014_bloc_voting_in_afghani stan.shtml?s.

⁴ Sadat, *supra* note 1.

Elections in Afghanistan: The First Democratic Transition, wrote that in 2014 elections “Afghans did not vote along ethnic lines...”⁵

Similar optimism existed in the previous elections also. Before the 2009 election, a report by the International Council on Security and Development concluded that its “field research has ... revealed a remarkable absence of concern over the President’s ethnic background...”⁶ Similarly, in their survey of voters in the district of Dasht-Barchi, the western part of Kabul, Cohen and Larson found that most respondents believed that the 2009 presidential election would be less influenced by ethnicity than the previous elections.⁷ Cohen and Larson suggested that urbanization and the rise of “awareness” among voters prompted this positive social transition.⁸ Likewise, in his 2009 article, *Ethnicity, Space, and Politics in Afghanistan*, Benjamin Dubow surmised that there have been more cross-ethnic votes in 2009 than in 2004.⁹ Although he posited that such cross-ethnic voting may be because of political bargains, his analysis did not go further to substantiate it with evidence.

In contrast, pessimist authors like Kenneth Katzman, Waliullah Rahmani, and Martine Van Biljert pointed to the persistent role of ethnic politics on election outcomes. For instance, Kenneth Katzman, noting ethnic tensions during the 2014 elections, wrote that ethnic and

⁵ Ashok K Mehta, *Elections in Afghanistan: The First Democratic Transition*, FRIDRICH EBERT STIFUNG, 1 (2014) <http://library.fes.de/pdf-files/bueros/indien/10741.pdf>.

⁶ THE INTERNATIONAL COUNCIL ON SECURITY AND DEVELOPMENT, AFGHANISTAN’S PRESIDENTIAL ELECTION: POWER TO THE PEOPLE, OR THE POWERFUL? 5 (Apr. 2009), http://www.icosgroup.net/static/reports/power_to_the_people.pdf [hereinafter “ICOS 2009”].

⁷ Noah Coburn & Anna Larson, *Voting Together: Why Afghanistan’s 2009 Elections were (And Were Not) a Disaster*, AFGHANISTAN RESEARCH AND EVALUATION UNIT 8 (Nov. 2009), [http://www.areu.org.af/Uploads/EditionPdfs/937E-Voting%20Together%20Why%20Afghanistans%202009%20Elections%20were%20\(and%20were%20not\)%20a%20Disaster-BP.pdf](http://www.areu.org.af/Uploads/EditionPdfs/937E-Voting%20Together%20Why%20Afghanistans%202009%20Elections%20were%20(and%20were%20not)%20a%20Disaster-BP.pdf).

⁸ *Id.* at 8.

⁹ Benjamin Dubow, *Ethnicity, Space, and Politics in Afghanistan* 42 (University of Pennsylvania Scholarly Commons, Seminar Paper, Nov. 1, 2009), http://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=senior_seminar.

familial ties often superseded ideological affiliations and political views.¹⁰ Waliullah Rahmani, the director of the Center for Strategic Studies, posited that, “Ethnocentric politics has been a dominant discourse in Afghanistan...[and] in the 2014 election ethnocentric alignments will play a major and important role.”¹¹ Van Biljert, who wrote several seminal articles about Afghan elections, seemed to agree with Katzman and Rahmani.¹² Analyzing the presidential election of 2009 in his article titled, *How to Win an Afghan Election: Perceptions and Practices*, Van Biljert suggested that voters would vote for their elites as long as “it will help position their ethnic group as a force to be reckoned with.”¹³

This study reveals that this divergence of optimist and pessimist interpretations stem from the gap and the confusion between political ideals and political practices in Afghanistan. For example, surveys and interviews, which have shaped the findings of optimists for the most part, have fallen into the trap of response bias. A response bias is the tendency of respondents to censor their answers based on what is socially desirable and morally ideal rather than based on what is really happening.¹⁴ Therefore, it is more likely than not that in surveys conducted by

¹⁰ KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE, 2 (Jul. 28, 2014), <https://www.fas.org/sgp/crs/row/RS21922.pdf>.

¹¹ Frud Bezhan, *Ahead of Presidential Vote, Afghan P A Short Outline political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE (Jul. 28, 2015), <http://www.rferl.org/content/afghan-politics-feature/25101500.html>.

¹² MARTINE VAN BIJLERT, HOW TO WIN AN AFGHAN ELECTION: PERCEPTIONS AND PRACTICES, AFGHANISTAN ANALYSTS NETWORK 17 (Aug 2009), <http://www.afghanistan-analysts.org/wp-content/uploads/2013/07/20090809-how-to-win-an-afghan-election.pdf>.

¹³ *Id.*

¹⁴ See Delroy L. Paulhus, *Measurement and Control of Response Bias*, in MEASURES OF PERSONALITY AND SOCIAL PSYCHOLOGICAL ATTITUDES (John P. Robinson, Phillip R. Shaver & Lawrence S. Wrightsman, eds., 1991) (A response bias is a systematic tendency to respond to a range of questionnaire items on some basis other than the specific item content... For example, a respondent might choose the option that is most extreme or most socially desirable.)

FEFA,¹⁵ Gulvam¹⁶ and the like, the respondents adjusted their answers based on their ideal electoral behavior rather than based what they would actually practice in the elections. Chapter Three reveals that ethnic voting and ethnic parties are not ideal political practices and institutions in Afghanistan.

Similarly, pessimist interpretations, which are mostly based on observations of elections and electoral data, are challenged by the fact that while very influential, ethnic voting has failed to dictate electoral outcomes. The empirical analysis in the first two chapters of this Part reveals that ethnic voting has been under siege by cross-ethnic coalitions from above and intra-ethnic competitions from below. It is indeed the scale of cross-ethnic voting and intra-ethnic competitions that dictate election outcomes. Chapter One indicates that only candidates who can draw a substantial amount of cross-ethnic support can become the president. In effect, a candidate with substantial cross-ethnic support is likely more viable in the eyes of his or her own ethnic group than a candidate with little to no cross-ethnic support. Especially at times of electoral uncertainty, it is cross-ethnic voting that dictates the pattern of ethnic voting. For example, in the election of 2014, Dostum's alliance with Ashraf Ghani, which assured Ghani of Uzbek votes, broke the uncertainty among many Pashtun voters, who until then were unsure which Pashtun candidate to support.

Chapter Two, which focuses on the parliamentary elections, reveals the vulnerability of ethnic politics to intra-ethnic competition. Sub-ethnic mobilization tends to dominate electoral politics in the parliamentary elections in Afghanistan. This chapter reveals that although subethnic voting may remain within the boundaries of ethnic voting, it does, however, influence electoral outcomes. The more intra-ethnic competitions an ethnic group experiences, the fewer

¹⁵ Korosh, *supra* note 1.

¹⁶ GLEVUM ASSOCIATES, *supra* note 2.

seats it can win. Conversely, the fewer intra-ethnic competitions an ethnic group experiences, the more seats it can secure. Since ethnic voting is under siege by cross-ethnic voting and intra-ethnic competitions, so are ethnic parties. Nonetheless, ethnicity has remained salient in all elections.

Chapter Three reveals that even though ethnic voting persists in the elections, it is not the electoral behavior to which Afghans aspire. Neither do Afghans favor ethnic-based parties and politics. Put simply, the Afghan political ideals value banning of ethnic parties, promoting cross-ethnic coalitions and governments, and generally de-ethnicization of politics. Therefore, actual electoral practices in Afghanistan is in a far cry from the political ideals expressed by its citizens. Afghan political laws have been adopted as an instrument to close the gap between the two. Chapter Three indicates that Afghan political laws actually reflect the collective political ideals and are set to reengineer Afghan political practices.

The analysis in Part I is primarily based on empirical data complemented by qualitative analysis. The data used for Chapters One and Two are the product of a long process of gathering and cataloging information from numerous online and printed sources. The most socially sensitive and logistically difficult task in this process has been collecting data about ethnic populations.¹⁷ The Afghan government does not provide a census about ethnic populations because of the sensitivity this matter in the society.¹⁸ Ethnic groups dispute any census that does

¹⁷ Emma Graham-Harrison, *Afghan Census Dodges Questions of Ethnicity And Language*, THE GUARDIAN (Jan. 3, 2013) <http://www.theguardian.com/world/2013/jan/03/afghan-census-questions-of-ethnicity>; Bryan Denton, *For Afghans, Name and Birthdate Census Questions Are Not So Simple*, NYTIMES, (Dec. 10, 2014) http://www.nytimes.com/2014/12/11/world/asia/for-afghans-name-and-birthdate-census-questions-are-not-so-simple.html?_r=0; Abubakar Siddique, *Afghanistan's Hazara Minority Outraged By Science Academy Insults*, RADIO FREE EUROPE (Jul.3 2012) <http://www.rferl.org/content/afghanistan-hazaras-ethnic-tensions-academy-of-sciences/24633486.html>.

¹⁸ BARFIELD, AFGHANISTAN: A HISTORY OF CULTURAL AND POLITICAL STUDIES, 23-25 (2010).

not weigh in their expected estimations. They tend to exaggerate their populations and downgrade the populations of other groups.¹⁹ In his book, *Afghanistan: A History of Cultural and Political Studies*, Thomas Barfield noted the following:

If one were to give equal weight to all of these partisan estimates and offer offense to none, it would be safe to say that the five largest ethnic groups in Afghanistan comprise approximately 85 percent of the country's total population with smaller groups accounting for another 15 percent.²⁰

The polls provided by other domestic and international sources are not helpful either. Domestic polls are likely subject to biases and international polls are subject to local dispute. The following Table I-1 indicates different estimations of ethnic-demographics of Afghanistan.

¹⁹ *Id.*

²⁰ *Id.* at 24.

Table I-1. Shows 28 different estimations of ethnic groups provided by different sources and authors at different points of time since 1955

| No | Source | Author | Date | Pashtun | Tajik | Hazara | Uzbek |
|----|---|--------------------------|-----------|---------|-------|--------|--------------------|
| 1 | Afghanistan | Mohammad Ali | 1955 | 60% | 20% | / | / |
| 2 | Afghanistan | Max Clumborg | 1960 | 60% | 30% | 3% | 3% |
| 3 | The National Languages of Afghanistan | Aslanov | 1964 | 60% | / | / | / |
| 4 | Afghanistan | Lois Dupree | 1973 | 6.5M | 3.5M | 870T | 1M |
| 5 | Afghanistan Under Soviet Domination | Antony Hayman | 1984 | 50% | 35% | / | / |
| 6 | The Politics of Ethnicity in Southeast Asia | Zalmai Khalid | 1985 | 4.8M | 3.6M | 1M | 1.2M |
| 7 | The World of Geoehtnology | Mohd. Mahjub Yarwari | 1987 | 60% | 20% | 5% | 5% |
| 8 | Worlds Largest Languages | McKenzie | 1987 | 55-65% | / | / | / |
| 9 | History and Establishment of Afghanistan | Abdul Azim Walyan | 1987 | 70% | / | / | / |
| 10 | Afghanistan 1978-1987 | Sliwinski M | 1988 | 39% | 26% | 10% | 10% |
| 11 | Afghanistan Keshwar Aqalyatha | Nasim Jawad | 1992 | 40% | 30% | 16% | 16% (+Turkmen) |
| 12 | The Fragmentation of Afghanistan | Barnett Rubin | 1995 | 7M | 3.5M | 1.5M | 1.3M |
| 13 | The Decline of Pashtuns in Afghanistan | Anwarulhaq Ahadi | 1995 | 50% | 28% | 7% | 8% |
| 14 | Fundamentalism Reborn | William Maley | 1998 | 62.73% | 12.4% | 9% | 6% |
| 15 | Afghanistan Federal System | Mohammad Enam Wak | 2000 | 62% | 12% | 9% | 6% |
| 16 | The World Almanac | Primedia | 2000 | 38% | 25% | 16% | 6% |
| 17 | The Struggle for the Afghan State | Gabriele Rasuly-Paleczek | 2001 | 22% | 34% | 14% | 14% |
| 18 | Key Maps, Ethnic Groups | BBC | 2001 | 45% | 25% | / | / |
| 19 | A Critique of the Political System in Afg. | Mujiburahman Rahimi | 2008 | 6-7M | 3-4M | 1-1.5M | 1.M |
| 20 | Afghanistan: A Cultural and Political History | Thomas Barfield | 2010 | 40% | 30% | 15% | 10% (+ Turkmen) |
| 21 | Afghan Embassy | Afg. Embassy in Warsaw* | 2013 | / | 25% | 11% | / |
| 22 | www.revolyv.com | Revolyv | | 42-60% | / | 6-7M | 2M |
| 23 | Factbook Sheet: Afghanistan | CIA | 1982-9 | 50% | 25% | 9% | 9% |
| 24 | Factbook Sheet: Afghanistan | CIA | 1990-1 | 50% | 25% | 12-15% | 9% |
| 25 | WAK Foundation | WAK | 1991-6 | 62.73% | 12.5% | 9% | 6.4% |
| 26 | Factbook Sheet: Afghanistan | CIA | 1993-2001 | 38% | 25% | 19% | 6% |
| 27 | Factbook Sheet: Afghanistan | CIA | 2002-3 | 44% | 27% | 10% | 8% |
| 28 | Factbook Sheet: Afghanistan | CIA | 2006-16 | 42% | 27% | 9% | 9% |

To take this sensitivity into consideration I refer to them as estimations rather than as a census. In this study I use the estimations by CIA Factbook sheet, primarily because these data have been used by some well-known international organizations including the UN Agencies,²¹ NATO,²² and the European Union.²³ However, to approach the estimations more safely, I use a range of CIA Factbook Sheet estimations since 2001, rather than relying on its estimation from a single year. The CIA estimations show that between 2001 and 2016 Pashtuns were estimated between 40 to 44 percent of the population, Tajiks between 25 to 27 percent, Hazaras between 9 to 10 percent, and Uzbeks between 6 to 9 percent.²⁴ These, however, are not the only ethnic groups in Afghanistan. The Afghan Constitution recognizes fourteen ethnic groups in Afghanistan, namely “Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwi and other tribes.”²⁵

Pashtuns mostly live in the South, Southeast, and Southwest areas of Afghanistan. Tajiks mostly live in the North, Northeast, Northwest, and Central regions. Uzbeks live in some northern provinces and Hazaras in the central region called, Hazarajat (see Figure I-1 for ethnic

²¹ MINORITY RIGHTS GROUP INTERNATIONAL, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES – AFGHANISTAN, (Jul. 2012)
<http://www.refworld.org/docid/4954ce5ec.html>.

²² NATO, BRIEFING: HELPING SECURE AFGHANISTAN’S FUTURE, 2 (2008)
http://www.nato.int/nato_static/assets/pdf/TEST-PDF/2008_11_687B00694B0B4918A2143DBD2EB990F5_afghanistan2008-e.pdf.

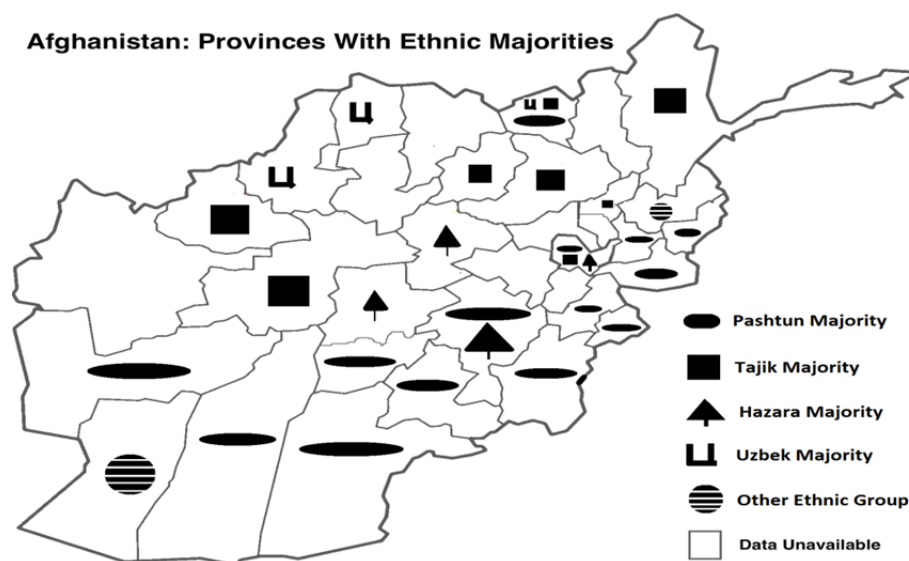
²³ EUROPEAN COMMISSION, EU DEVELOPMENT COOPERATION IN AFGHANISTAN: THE CASE FOR HEALTH, (Oct. 14, 2014) https://ec.europa.eu/europeaid/sites/devco/files/presentation-afghanistan-14-10-2014_en.pdf.

²⁴ *World Factbook: Afghanistan*, CENTRAL INTELLIGENCE AGENCY,
https://www.cia.gov/library/publications/theWorldfactbook/geos/print/country/countrypdf_af
[hereinafter “CIA Factbook”].

²⁵ CONSTITUTION, art 4. Some surveys and authors, however, do not agree with the number of ethnic groups mentioned in the Constitution. Based on how they define ethnic groups, some studies have counted up to 54 ethnicities in Afghanistan while others suggest that there are around 200 ethnicities. See Conrad Schetter, *Ethnicity and the political reconstruction in Afghanistan* 3 (LSE Research Online, Conference Paper, Jun 2010), http://eprints.lse.ac.uk/28376/1/Schetter_LSERO_version.pdf.

majorities in 26 provinces). Nonetheless, the territorial concentration of ethnic groups does not suggest that different regions are home to only one ethnicity.²⁶ One can find small pockets of different groups in different provinces.²⁷

Figure I-1. was developed on the basis of ethnic estimations, provided by the Afghanistan Information Management Services,²⁸ the Program for Cultural and Conflict Studies,²⁹ and the United States Army Combined Armed Center.³⁰ The percentages inside the provinces indicate the estimations of the majority ethnic groups.



Chapters One and Two begin with a nationwide analysis of elections and move on to address ethnic-electoral politics across 26 provinces. The data about the ethnic population of different provinces is collected from three different sources: the Afghanistan Information

²⁶ NOAH COBURN & ANNA LARSON, *DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE* (2013) at 37.

²⁷ Chris Johnson, William Maley, Alexander Thier & Ali Wardak, *Afghanistan's political and constitutional development*, OVERSEAS DEVELOPMENT INSTITUTE, 30 (Jan. 2003) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf>.

²⁸ AFGHANISTAN INFORMATION MANAGEMENT SERVICES, <http://www.aims.org.af> [hereinafter, AIMS]

²⁹ PROGRAM FOR CULTURAL AND CONFLICT STUDIES, <http://www.nps.edu/programs/ccs/> [hereinafter, NPS].

³⁰ *National and Provincial Data*, United States Army Combined Armed Center, CENTER FOR ARMY LESSONS LEARNED, AFGHANISTAN PROVINCIAL RECONSTRUCTION, 56-126 (2008) http://usacac.army.mil/cac2/call/docs/11-16/app_a.asp#a-p1 [hereinafter, CAC].

Management Services (11 provinces),³¹ the Program for Cultural and Conflict Studies (9 provinces),³² and the United States Army Combined Armed Center (6 provinces).³³ These international organizations have been involved with development, security, and research projects in different regions of Afghanistan and provide ethnic and linguistic census only for those regions.

The 26 provinces under study include ethnically diverse as well as ethnically homogenous provinces. For instance, Kunduz, Ghazni, Baghlan and Kabul are the most ethnically heterogeneous provinces of Afghanistan.³⁴ Zabul, Panjshir, and Daykundi are the most ethnically homogenous—or nearly homogenous—provinces, composed of Pashtuns, Tajiks, and Hazaras respectively. No province is exclusively populated by Uzbeks. Nonetheless, the sample includes Faryab, Samangan, and Jauzjan, which represent the largest population of Uzbeks in the region.³⁵ In addition, this study includes Nooristan and Nimroz, in which none of the above groups is the majority.

³¹ Afghanistan Information Management Services (AIMS) only provided census for districts and not provinces. The data for each province was generated by the accumulation of the census of its districts. From among the 11 provinces, the census for Kabul is the only incomplete provincial data. I was able to gather the census for almost 50% of its districts (7 out of 15). Therefore, it is possible that the sampled census might not represent the population of ethnic groups in Kabul as a whole. However, because of the importance of the province as the center of political distribution, this province was not excluded from data analysis. *See AIMS, supra* note 28.

³² NPS, *supra* note 29.

³³ CAC, *supra* note 30.

³⁴ Table App. IV-4 in the Appendix shows that Kunduz, Baghlan, Kabul and Ghazni are very diverse, having considerable number of people from different ethnic groups. In addition to the four major ethnic groups shown in the Appendix, other ethnic groups also live in these provinces. For example, Kunduz has a large number of Turkmen. Kabul has a considerable number of people who identify as Quzelbash, Arab, Sikhs, and Hindus but also pockets of population from other groups. *See AIMS, supra* note 28; CAC, *supra* note 30, at 63, 75, 85, 95.

³⁵ It's based on estimations by AIMS, NPS, and CAC Handbook. For the estimated population of Uzbeks and other ethnic groups in Faryab, Samangan and Jauzjan, *see* Table App. IV- 4 in the Appendix.

Unlike the rest of this dissertation, Part I does not focus on any political law or institutional design. It rather explains electoral practices and electoral ideals in Afghanistan. Focusing on electoral practices, the first two chapters examine how the voters cast their ballots, how candidates campaign, and how powerbrokers join coalitions. Focusing on electoral ideals, Chapter Three explores socially looked-for parties, governments, and voting behavior in Afghanistan. Part I makes two important contributions to the rest of this dissertation. First, it provides a background for how political laws reflect Afghan political ideals to shape electoral practices. The remaining chapters discover whether and to what extent the political laws were successful in aligning the political practices to the political ideals. Second, Part I explains how voters, powerbrokers, and candidates engage in coalition-making. The rest of this dissertation underlines the laws and institutions that shape, allow, or undermine the coalition-making strategies of those electoral participants.

Chapter One: Ethnic-Electoral Dynamics and the Politics of Coalition-Making in Afghan Presidential Elections

This chapter examines the role of identity politics in the last three presidential elections. It makes three arguments: (1) viable candidates are likely to form cross-ethnic alliances to win elections; (2) cross-ethnic voting is more likely to occur in exchange for political patronage rather than because of policy platforms; even so (3) ethnic groups are more likely to vote for a candidate of their own rather than for a candidate from another group, provided they have a viable candidate in the election. Therefore, cross-ethnic voting is not as pervasive as cross-ethnic coalitions in the presidential elections.

Section I of this chapter establishes a theoretical framework to explain the ethno-political strategies of candidates, elites, and voters during the elections. Section II provides an empirical

analysis of ethnic-electoral dynamics, based on electoral and demographic data collected from three presidential elections and 26 provinces of Afghanistan. The analysis includes statistical and qualitative methods. While the statistical analysis mainly examines the relations between ethnicity and election outcomes, the qualitative analysis is used to explain cross-ethnic coalition-making as well as the scale of *vote pooling*.³⁶

A. Electoral Strategies of Candidates, Powerbrokers, Voters

1. Candidates

Candidates often pursue campaign strategies designed mainly to assemble ethnic votes.³⁷ Because no single ethnic group is large enough to deliver 50% of the vote, the viability of candidates depends first on their own ethnic support, and second on their cross-ethnic political bargains. Hence, candidates first engage in strategic coordination with would-be candidates from their own ethnic groups, persuading them to withdraw from the elections.³⁸ Then candidates are likely to pursue the support of co-ethnic powerbrokers, barring the split of votes in their own constituencies.

Next candidates engage in a series of bargaining with elites from other ethnic groups to gain cross-ethnic support. Through these bargains, they not only seek to expand their base of support, but they also try to reorganize “the fields of [their] rivals” within their own constituencies.³⁹ As section II of this chapter will show, one of the first steps candidates take to secure cross-ethnic support is to choose their vice president candidates from two (mainly large)

³⁶ For definition of vote pooling refer to Appendix I.

³⁷ KATZMAN, *supra* note 10, at 2.

³⁸ BIJLERT, *supra* note 12, at 17.

³⁹ *See id.*, at 6, 8.

ethnic groups.⁴⁰ This has been the case for leading candidates in the past three presidential elections. The second step is to draw the support of elites across ethnicities by the promise of portfolio allocation, distribution of public funds, and other social and economic pledges.

Not all presidential candidates enter the fray expecting to win the election.⁴¹ Some candidates merely nominate themselves with the hope of acquiring “long-term payoffs.”⁴² For instance, some candidates enter only as spoilers, splitting the votes of viable candidates for different reasons.⁴³ Many candidates run in the first round hoping to finish as the runner up.⁴⁴ Others simply want to increase their political capital in the first round for bargaining with runner-ups in the second round.⁴⁵ Therefore, it is no wonder why a long list of presidential candidates ran in 2004 (18 candidates)⁴⁶ and 2009 (32 candidates),⁴⁷ and 2014 (11 candidates, initially)⁴⁸ elections.

This large number of candidates clouds *expectations*⁴⁹ about the viability of candidates, which in turn discourages minimum winning coalitions.⁵⁰ According to William H. Riker in his

⁴⁰ Mainly the candidates choose their running mates from the four largest ethnic groups. *See infra* Table III-5 in Chapter Seven.

⁴¹ *See* BIJLERT, *supra* note 12, at 9; *see also* WILLIAM H. RIKER, *THE THEORY OF POLITICAL COALITIONS* 125 (1962)

⁴² GARY W. COX, *MAKING VOTES COUNT STRATEGIC COORDINATION IN THE WORLD’S ELECTORAL SYSTEMS* 152 (1997).

⁴³ *See id.* at 158; *See also* BIJLERT, *supra* note 12, at 9.

⁴⁴ *See* COX, *supra* note 42, at 158.

⁴⁵ BIJLERT, *supra* note 12, at 9.

⁴⁶ *The 2004 Presidential Election*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm [Herein After “IEC 2004”].

⁴⁷ *Afghanistan 2009 Election*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_2009/leadingCandidate.html [hereinafter “IEC 2009”].

⁴⁸ *Afghanistan 2014 Election*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/pdf/finallist13/presidential.pdf> [hereinafter “IEC 2014”].

⁴⁹ Different authors use different terms with slightly different meanings. For example, Cox refers to it “rational expectations.” *See* COX, *supra* note 42, at 123-24; *See also* RIKER, *supra* note 41, at 78 (using four categories of terms such as complete information, systematically complete

book, *The Theory of Political Coalitions*, serious candidates tend to build a minimum winning coalition; however, the lack of perfect information encourages them to form larger coalitions.⁵¹ As such, it is not surprising that most viable coalitions in Afghanistan are of a consociational form rather than a minimal one.

2. Powerbrokers (Tikkadaran)

Ethno-political elites are the real game changers in Afghan elections. They attempt to present themselves as mediators between candidates and their constituencies. These powerbrokers are increasingly referred to as ethnic *Tikkadaran*, a term used generally for those who trade their constituencies' support in exchange for patronage.⁵² In the literature, these elites are also referred to as *commission-kars*,⁵³ *favor-buyers*,⁵⁴ strongmen,⁵⁵ and *political entrepreneurs*.⁵⁶ More interestingly, *kingmaker* is used for some top Afghan leaders who can deliver the largest blocs of votes.⁵⁷

information, perfect information, and systematically perfect information in order to describe different levels of having expectations about candidates).

⁵⁰ See RIKER, *supra* note 41, at 48, 81.

⁵¹ See *id.*, at 47, 81.

⁵² See BIJLERT, *supra* note 12, at 11.

⁵³ *Id.*, at 11.

⁵⁴ DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 88 (1957).

⁵⁵ See Antonio Giustozzi, *Armed Politics and Political Competition In Afghanistan* (Crisis States Research Centre, LSE, Working Paper, 2007), <http://www.cmi.no/file/?306>; also see JOEL S. MIGDAL, STRONG SOCIETIES AND WEAK STATES: STATE-SOCIETY RELATIONS AND STATE CAPABILITIES IN THE THIRD WORLD 33 (1998)

⁵⁶ NIKOLAOS BIZIOURAS, THE POLITICAL ECONOMY OF ETHNIC CONFLICT IN SRI-LANKA: ECONOMIC LIBERALIZATION, MOBILIZATION RESOURCES, AND ETHNIC COLLECTIVE ACTION 20 (2014).

⁵⁷ See Brian Glyn Williams, *The Return of the Kingmaker*, FOREIGN POLICY Aug. 17, 2009, <http://Foreignpolicy.Com/2009/08/17/The-Return-Of-The-Kingmaker/>; Leela Jacinto, *Another election, another cycle of fraud and violence?* FRANCE 24 (Sep. 17, 2009) <http://www.france24.com/en/20100916-afghan-parliamentary-elections-fears-another-cycle-fraud-violence-karzai-taliban>; Kate Clark & Gran Hewad, *Dancing to Power: Getting an Afghan presidential ticket together*, AFGHANISTAN ANALYST NETWORK, 4 (Sep. 30, 2013),

Ethnic *Tikkadaran* mobilize their groups and encourage them to vote collectively for their client candidates, claiming it would best serve their ethnic interests.⁵⁸ These powerbrokers may pursue a strategy of coordination or strategy of clientelism. Some elites—usually lesser-known elites—have been known to hold meetings to reduce the number of ethnic candidates and to coordinate support behind the most viable ones.⁵⁹ This has been the case in the past three presidential elections. However, the most popular case was when Pashtun elites held a council to choose between Qayoom Karzai and Zalmai Rassul as their nominee for the presidential election of 2014.⁶⁰

Stronger elites are likely to follow the strategy of ‘patronage bargain.’ They trade their support even with their own ethnic candidates, knowing that other candidates are willing to pay for their support. Not surprisingly, powerful ethnic *Tikkadaran* appear more open to negotiations with candidates across ethnic lines. In some cases, *Tikkadaran* have gone to the candidates for

<https://www.afghanistan-analysts.org/dancing-to-power-getting-an-afghan-presidential-ticket-together/>.

⁵⁸ Arif Sahar & Aqila Sahar, *Press and Ethnic Polarization in Post-2001 Afghanistan: The 2014 Presidential Election Experience*, 35/1 CENTRAL ASIAN SURVEY 105 (Jul. 17, 2015); Timor Sharan, *The Dynamics of Elite Networks and Patron-Client Relations in Post-Bonn Statebuilding Afghanistan*, 63/6 EUROPE-ASIA STUDIES 1109, 1132 (2011), https://www.ucl.ac.uk/ceelbas/workshops/international_elites_workshops/Sharan_Paper_Lane_Workshop.pdf; Zafar Shah Rouyee, *Tensions rise before Afghan run-off*, AFGHANISTAN TODAY, Oct. 6, 2014, <http://www.afghanistan-today.org/en/articles/politics/716/>; See also Karim Amin, *Uzbek And Turkmen Traitors If They Don't Vote Ghani: Dostum*, TOLONews June 9, 2014, <http://www.tolonews.com/en/election-2014/15161-uzbek-and-turkmen-traitors-if-they-dont-vote-ghani-dostum>; Hamidullah Qeyam, *Ethnicization of Politics in Afghanistan, Degree Requirement Paper* (University of Texas, Degree Requirement Paper, 2012).

⁵⁹ BIJLERT, *supra* note 12, at 9.

⁶⁰ Initially there was an attempt to unite four Pashtun candidates until Gul Agha Sherzai and Muhammad Nader Na'im declined to cooperate with the council. See Thomas Ruttig, *Pluralistic within Limits, But Not Democratic: Afghanistan's Political Landscape Before The 2014 Elections*, AFGHANISTAN ANALYSTS NETWORK, 1-2 (Oct. 24, 2013), <https://www.afghanistan-analysts.org/pluralistic-within-limits-but-not-democratic-afghanistans-political-landscape-before-the-2014-elections/>.

negotiations even before candidates seek their endorsements.⁶¹ In other cases, *Tikkadaran* have publicly outlined their party or personal demands long before the elections.⁶² This has been the case in the election of 2009, when Mohaqiq and Dostum made their demands public before negotiating with candidates.

3. Voters

It's widely accepted in the literature that in plural societies voters vote collectively and along ethnic lines.⁶³ Based on this assumption, voters merely follow instructions of their elites rather than making decisions for themselves.⁶⁴ Hence, *strategic voting*, where voters defect from their ethnic candidates in favor of a more viable candidate from another group, is less likely.⁶⁵ While it may be true, it is a very narrow notion of strategic voting since it disregards other aspects of strategic voting. For instance, voters may defect from one of their ethnic candidates in favor of the other—from the same group. Therefore, this chapter attempts to extend the definition of strategic voting to include intra-ethnic coordination and defection as well as cross-ethnic bargaining and patronage.

⁶¹ BIJLERT, *supra* note 12, at 13.

⁶² *Mohaqiq Outlines Joint Charter of Demands with Junbish*, HAZARISTAN TIMES, (April 24, 2009) <https://hazaristantimes.wordpress.com/2009/04/26/Mohaqiq-Outlines-Joint-Charter-Of-Demands-With-Junbish/>.

⁶³ See Janet Landa, Michael Copeland & Bernard Grofman, *Ethnic Voting Patterns: A Case Study of Toronto Metropolitan*, 14/5 J. POL. GEOGRAPHY, , 435 (1995); COX, *supra* note 42, at 15-16.

⁶⁴ BIJLERT, *supra* note 12, at 2, 15.

⁶⁵ See ROBERT G. MOSER & ETHAN SCHEINER, ELECTORAL SYSTEMS AND POLITICAL CONTEXT: HOW THE EFFECTS OF RULES VARY ACROSS NEW AND ESTABLISHED DEMOCRACIES, 24-25, 30 (2012); also see Robert G. Moser, Caitlin Milazzo, and Ethan Scheiner, *Social Diversity Affects the Number of Parties Even under First-Past-the-Post Rules* (University of Washington, American Political Science Association 2011 Annual Meeting, 2011); COX, *supra* note 42, at 83-85. For the definition of 'strategic voting' refer to THE NEW PALGRAVE DICTIONARY OF ECONOMICS, http://www.dictionarofeconomics.com/article?id=pde2008_S000531.

Voters of different ethnic groups are likely to defect from their non-viable candidates when they are able to recognize their viable candidates. However, in the absence of an apparent viable candidate, ethnic voters may encounter an expectation crisis that may lead to dispersion of their votes to different candidates.⁶⁶ Pashtuns faced this kind of crisis in 2014 when Karzai was no longer running and there were a variety of opinions about who was the most viable Pashtun candidate.⁶⁷ As a result, Pashtuns' votes were split among a number of candidates, which led to a Tajik candidate topping the list of presidential contenders.⁶⁸

Contrary to the notion of instruction and loyalty,⁶⁹ the voters do not always follow the instruction of their elites when voting. Ethnic groups sometimes vote collectively and independently from the instruction of their elites, when they conclude that their best interest is not served by their elites, and particularly when they have a viable candidate of their own. For example, in the election of 2009, some prominent Tajik leaders such as Marshal Fahim and Rabbani endorsed Karzai, but Tajik voters mostly cast their votes for Abdullah.⁷⁰ Therefore, it is

⁶⁶ See COX, *supra* note 42, at 9.

⁶⁷ Nathan Hodge, *Afghan Candidates Discuss Ways to Secure Pashtun Support*, THE WALL STREET JOURNAL Feb. 26, 2014, <http://www.wsj.com/articles/SB100014240527023047.09904579406813606798606>; Thomas Ruttig, *A Joint 'Durrani' Candidate for President? After the Unity Jirga in Kabul*, AFGHANISTAN ANALYSTS NETWORK (Mar 5, 2014), <https://www.afghanistan-analysts.org/a-joint-durrani-candidate-for-president-after-the-unity-jirga-in-kabul/>.

⁶⁸ IEC 2014, *supra* note 48; *Profile: Abdullah Abdullah*, BBC NEWS (Sept. 29, 2014), <http://www.bbc.com/news/world-asia-27138728>.

⁶⁹ See BIJLERT, *supra* note 12, at 15-16. ("When following the principle of instruction voters simply adhere to a leader's lead, based on the assumption that this will somehow further the group's interest or, alternatively, based on a lack of appetite to challenge the leader's authority...[t]he principle of loyalty describes often very personal claims that are made on Afghans to provide support to a certain person or cause, based on ties of friendship, duty, obligation and reciprocity (often amounting to emotional blackmail).")

⁷⁰ Tim Craig & Mohammed Sharif, *The Front-runner In Afghan Election, Picks Up Support From Former Rival*, WASHINGTON POST (May 11, 2014), <http://www.washingtonpost.com/world/abdullah-the-front-runner-in-afghan-election-picks-up->

important to note that the liaison between voters and their elites is a mutual interest relationship that can be breached by either side. However, it should not imply that cross-ethnic voting is unusual in Afghanistan.

In fact, post-electoral surveys reveal that cross-ethnic voting happens frequently in Afghanistan. Benjamin Dubow found that in the 2004 and 2009 elections, cross-ethnic voting did happen in several provinces.⁷¹ Perhaps one reason that Dubow and others considered ethnic voting less significant in Afghanistan is the high level of cross-ethnic voting. Indeed, the scale of cross-ethnic voting in the Afghan election of 2014 was extraordinary. Most Hazaras voted for a Tajik candidate and most Uzbeks voted for a Pashtun.

4. Parties

Afghanistan suffers from an ethnic-based and fragmented party system, which has remained politically incompetent and electorally unsuccessful. Candidates tend to disaffiliate from their parties in both presidential and parliamentary elections and parties tend to split when it comes to endorsement of presidential candidates. It has become normal to witness some members of a proto-party in one coalition and others in a rival coalition. Therefore, coalitions are not the alliance of parties but the alliance of their factions.

With proto-parties remaining pointless, some emerging coalitions with cross-ethnic popularity have indicated the prospect for ethnic accommodation in Afghanistan. Since democratization, the three administrations owe their stability and the absence of ethnic violence to some formal or informal trans-ethnic coalitions, which were built by the incumbents Hamid Karzai, Ashraf Ghani, and Abdullah Abdullah. However, despite their candid prospect to

new-support-from-one-time-rival/2014/05/11/db84abd8-d939-11e3-8009-71de85b9c527_story.html.

⁷¹ Dubow, *supra* note 9, at 26.

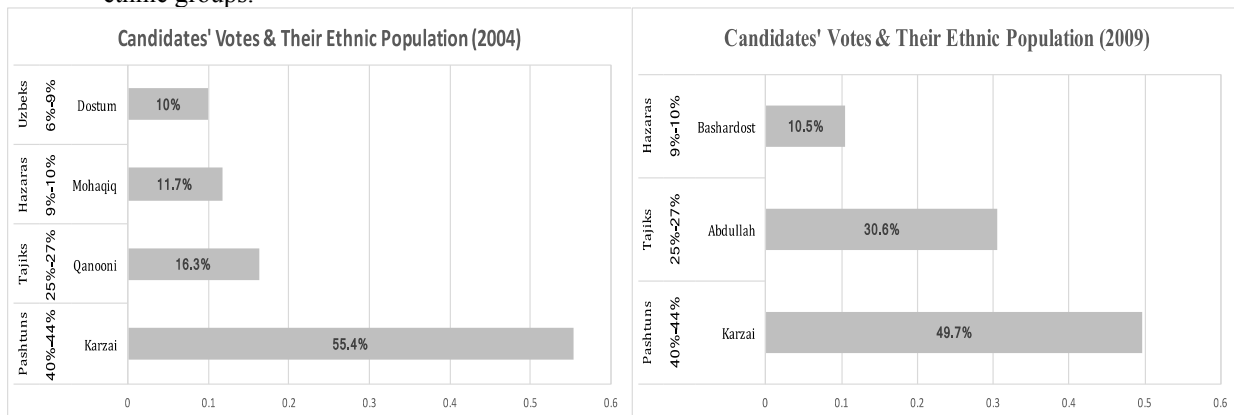
political development, coalitions have remained incohesive, clientelistic, and therefore, prone to dissolution.

B. The Empirics of Ethnic-Electoral Dynamics

1. Voting Patterns and Electoral Strategies in the Presidential Elections of 2004 and 2009

The presidential elections of 2004 and 2009 indicated what Donald Horowitz referred to as “census like elections,”⁷² where Pashtun candidates topped the list, Tajik candidates ranked second, Hazara and Uzbek candidates positioned third and fourth respectively.⁷³ Based on the estimations, Pashtuns are the largest group, followed by Tajiks, Hazaras, and Uzbeks respectively.⁷⁴ Figure I-2 indicates that the estimated population of ethnic groups correlates with the electoral results of their candidates.

Figure I-2. compares the votes of the leading candidates with the population of their ethnic groups.⁷⁵



Although Figure I-2 indicates some discrepancies between the votes of candidates and the estimated population of their ethnic groups, it does not fully reveal the scale of cross-ethnic

⁷² DONALD L. HOROWITZ, A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY, 134 (1991).

⁷³ See IEC 2004, *supra* note 46; IEC 2009, *supra* note 47.

⁷⁴ Refer to Table I-1, *supra*.

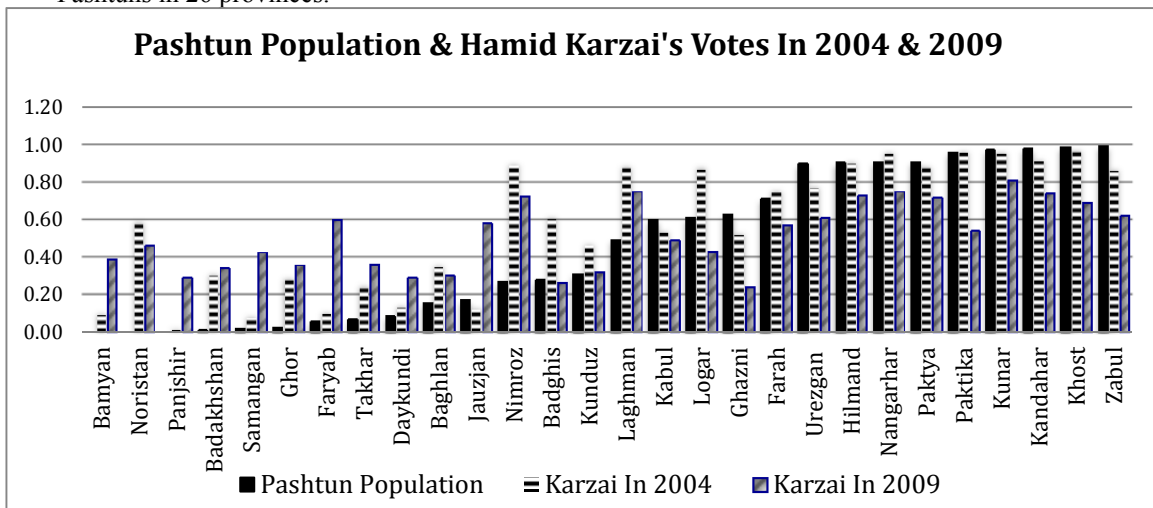
⁷⁵ *Id.*; IEC 2004, *supra* note 46 (for information about the votes of candidates). See also CIA Factbook, *supra* note 24 (for information about the population of ethnic groups).

voting. For instance, Karzai won between six and sixteen percent more votes than the estimated Pashtun population in the 2004 and 2009 elections. This discrepancy indicates only that Karzai won more votes. It does not indicate how many Pashtuns and non-Pashtuns voted across ethnic lines. To explain the scale of cross-ethnic voting vis-à-vis ethnic voting, the following sections provide a cross-province analysis of the elections.

a. Hamid Karzai, The Unparalleled Pashtun Candidate in the 2004 and 2009 Elections

In both 2004 and 2009, Karzai had been the only leading Pashtun candidate in the elections.⁷⁶ As Figure I-3 indicates, in both presidential elections, he won a higher percentage of votes in the provinces that had a Pashtun majority. Conversely, he won fewer votes in those provinces in which Pashtuns were not the majority.

Figure I-3. compares the votes of Karzai from 2004 and 2009 elections with population of Pashtuns in 26 provinces.⁷⁷



Notably, Figure I-3 indicates some gaps between Karzai’s votes and his ethnic population across provinces. Interestingly, these gaps show that on average Karzai secured more votes per capita in Pashtun minority provinces, whereas he gained lower votes per capita in Pashtun-

⁷⁶ IEC 2004, *supra* note 46; IEC 2009, *supra* note 47.

⁷⁷ The data about the estimated population of Pashtuns are collected from: AIMS, *supra* note 28; NPS, *supra* note 29; CAC, *supra* note 30, at 56-126. The data about the votes of candidates are collected from: IEC 2004, *supra* note 46; IEC 2009, *supra* note 47; *also see* Table App. IV-4 in the Appendix.

dominated provinces. The significance of these discrepancies lies in intra-ethnic competitions and cross-ethnic coalitions.

Karzai received fewer votes in Pashtun dominated provinces because of rival Pashtun candidates who competed against him in those constituencies. The Pashtun contenders were more successful in taking larger chunks of votes in 2009 than in 2004. For example, in 2009 they were able to win over 18% of total votes in the Pashtun dominated Helmand.⁷⁸ This split of votes resulted in Karzai winning 73% of the votes, 17% lower than his votes in 2004.⁷⁹ The same was true in Pashtun-dominated Kandahar, his home province. There, Ghani and other Pashtun candidates secured 14.5% of the total votes.⁸⁰ Accordingly, Karzai's votes decreased from 91% in 2004⁸¹ to 73.8% in 2009.⁸² The success of Karzai's Pashtun rivals was due to his diminished popularity by the election of 2009.

The other likely reason was cross-ethnic coalitions that led to some Pashtun constituents voting for non-Pashtun candidates. For example, in 2009, Abdullah secured 9.1% of the votes in Kandahar, 23.6% of the votes in Paktia, and 54% of the votes in Kunduz, even though the population of Tajiks is estimated at 1% in the first two provinces and at 22.5% in the third province.⁸³ Abdullah earned Pashtun votes mainly due to his alliance-making with some prominent Pashtun elites such as Noorul Haq Ulumi, Malalai Ishaqzai,⁸⁴ and Homayon Shah Asefi.⁸⁵

⁷⁸ IEC 2009, *supra* note 47.

⁷⁹ IEC 2004, *supra* note 46.

⁸⁰ IEC 2009, *supra* note 47.

⁸¹ IEC 2004, *supra* note 46.

⁸² IEC 2009, *supra* note 47.

⁸³ AIMS, *supra* note 28; CAC, *supra* note 30.

⁸⁴ Matthieu Aikins, *Losing legitimacy – Kandahar's preliminary winners*, AFGHANISTAN ANALYSTS NETWORK, 2 (Oct. 25, 2010) <https://www.afghanistan-analysts.org/2010-elections-29-losing-legitimacy-kandahars-preliminary-winners/?format=pdf>; Tanya Gousouzian, *Afghan*

Even so, Karzai outbid all Pashtun and non-Pashtun candidates in Pashtun constituencies by pursuing a number of interrelated strategies. For example, in 2009, he first persuaded some strong Pashtun contenders such as Gul Agha Shirzai, then governor of Nangarhar, and Anwar-ul-Haq Ahadi, the head of a Pashtun nationalist party,⁸⁶ not to run against him.⁸⁷ Then, Karzai began offering patronage to *Tikkadaran* of different regions to undermine Pashtun counterparts in those constituencies. He appointed Haji Din Mohammad, a relative to two other candidates, Nasrullah Baryalay and Amin Arsala, as his campaign manager.⁸⁸ In addition, he established an electoral network of local and national powerbrokers like Assadullah Khaled (then acting Minister for Border affairs), Abdulrab Sayyaf (leader of *Dawat Islami* fraction), Sayed Ahmad Gailani (leader of the *Mahaz-i Milli* party), and Sher Mohammad Akhundzada (the former governor of Helmand).⁸⁹ These networks were strong enough to discourage some well-known figures such as Ali Ahmad Jalali and Zalmay Khalilzad from running.⁹⁰ These intra-ethnic coordinations impacted Karzai's winning of Pashtun votes substantially although he had to give away some Pashtun votes to other candidates.

royal eyes poll success: Will former royal emerge as a key player in Afghanistan's presidential election? ALJAZEERA (Aug. 19, 2009)
<http://www.aljazeera.com/focus/afghanistanelections2009/2009/08/20098191075543897.html>.

⁸⁵ *Hamayoon Shah Asefi*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=214&task=view&total=3514&start=424&Itemid=3.

⁸⁶ ICOS 2009, *supra* note 6, at 5.

⁸⁷ Andrew Reynolds & John Carey, *Fixing Afghanistan's Electoral System: Arguments And Options for Reform*, AFGHANISTAN RESEARCH AND EVALUATION UNIT, 9-10 (2012), <http://www.areu.org.af/Uploads/EditionPdfs/1211E-Fixing%20Afghanistans%20Electoral%20System%20BP%202012.pdf>; Haseeb Homayoun, *Afghanistan Report 4: The Reelection of Hamid Karzai*, UNDERSTANDING WAR, 12 (Jan. 2010), <http://www.understandingwar.org/report/re-election-hamid-karzai>; BIJLERT, *supra* note 12, at 9.

⁸⁸ *Id.*

⁸⁹ *Id.* at 10. Reynolds & Carey, *supra* note 87 at 9.

⁹⁰ *Id.* BIJLERT, at 9

While winning relatively fewer votes per capita in Pashtun dominated provinces, Karzai won disproportionately more votes in non-Pashtun constituencies. As Figure I-3 shows, Bamyan, Panjshir, Badakhshan, and Nooristan are provinces with minimal Pashtun population; nonetheless, Karzai's vote count was considerably high in these provinces.⁹¹ This discrepancy is explained by his ability to form coalitions with non-Pashtun *Tikkadarans*. To illustrate this effect, in the election of 2004, Karzai won 9% of the total votes in Bamyan, which has an estimated 1% Pashtun population; in the same province, he garnered 39% of the vote in the presidential election of 2009.⁹² Karzai's higher number of votes in Bamyan is due to his strategic coalitions with the prominent leaders of Hazaras, who dominate this province.

The two Hazara *kingmakers* who claim to have the support of Hazaras nationwide are Karim Khalili and Haji Mohammad Mohaqiq.⁹³ In the 2004 election, Karzai introduced Khalili as his second vice president candidate,⁹⁴ whose endorsement was expected to increase Karzai's vote by 8% in Bamyan. In that race, however, Karzai had to compete with Mohaqiq for Hazara votes, and in the end, Mohaqiq defeated him by claiming 76% of the provincial votes.⁹⁵

Later, in the presidential election of 2009, Karzai gained the endorsement of both Khalili and Mohaqiq. In exchange for their endorsements, Khalili was re-introduced as his second vice president candidate, and Mohaqiq was promised 5 seats in the cabinet and upgrading of two Hazara districts to provinces.⁹⁶ In addition, Karzai secured the support of the most prominent

⁹¹ IEC 2009, *supra* note 47.

⁹² *Id.*

⁹³ ICOS 2009, *supra* note 6, at 26.

⁹⁴ Antonio Giustozzi, *Process of Political Ethnicization in Today's Afghanistan*, in, *AFGHANISTAN: IDENTITY, SOCIETY AND POLITICS SINCE 1980*, 211 (Micheline Centlivres-Demont, ed., 2015).

⁹⁵ IEC 2004, *supra* note 46.

⁹⁶ Renee Montagne, *To Broaden Appeal, Afghan Candidates Make Surprising Choices*, NPR, Apr. 3, 2014), <http://www.npr.org/sections/parallels/2014/04/03/298579270/to-broaden-appeal->

Shiite cleric, Ayatollah Asef Mohseni, reportedly in exchange for signing the controversial Shiite Personal Status Law.⁹⁷ With the endorsements of these three elites, it was not surprising that Karzai topped the votes in Bamyán with almost 40%.⁹⁸

In the 2009 election, Karzai also performed astonishingly well in Panjshir.⁹⁹ Panjshir was the home province of Karzai's leading opponents in both the 2004 and 2009 elections.¹⁰⁰ In order to challenge these opponents in their home province, Karzai choose his first vice president candidates from Panjshir: Ahmadzia Masoud in 2004 and Qasim Fahim in 2009. However, selecting Ahmadzia Masoud as a running mate in 2004 was a miscalculation since Ahmad Zia Masoud was not popular among Tajiks or even Panjshiris.¹⁰¹ Together they earned less than 1% of Panjshir votes in 2004.¹⁰² This was the likely reason that Karzai replaced Masoud with Qasim Fahim in the election of 2009. Fahim's support of Karzai as his running mate in 2009 increased

afghan-candidates-make-surprising-choices; *See also* BIJLERT, *supra* note 12, at 10; *See also* Homayoun, *supra* note 87, at 15.

⁹⁷ Robert Mackey, *Afghan Husbands Win Right to Starve Wives*, N.Y. TIMES (Aug. 17, 2009) <http://thelede.blogs.nytimes.com/2009/08/17/afghan-husbands-win-right-to-starve-wives/>; *See also* BIJLERT, *supra* note 12, at 10.

⁹⁸ IEC 2009, *supra* note 47.

⁹⁹ *Id.*

¹⁰⁰ Abdullah Abdullah, the runner up in both 2009 and 2014, though from a Kandahari father, is predominantly considered a Panjshiri because his mother is from Panjshir province and also because he fought alongside Ahmad Shah Masoud during the Soviet war and resistance against Taliban. Mohammad Yunis Qanooni, the runner up in 2004 election, is also from Panjshir. *See Dr. Abdullah Abdullah*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=14&task=view&total=3509&start=14&Itemid=2; *see also* *Mohammad Yunis Qanuni*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/today/qanuni.html>.

¹⁰¹ His unpopularity is probably because of his absence from the political arena for over 12 years since the fall of Soviet backed government in Afghanistan. Read more at *Afghan biography: Ahmad Zia Massoud*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=1032&task=view&total=3162&start=1680&Itemid=2 (last visited Oct. 4, 2014); ICOS 2009, *supra* note 6, at 21.

¹⁰² IEC 2004, *supra* note 46.

his votes by 29% in Panjshir.¹⁰³ Fahim, a Panjshiri, is one of the influential Tajik ethno-political elites, who is known for fighting against the Soviets and the Taliban.¹⁰⁴

Badakhshan provides another example of cross-ethnic voting, where Karzai garnered 30% votes in 2004¹⁰⁵ and 34% in 2009.¹⁰⁶ The estimated population of Pashtuns in Badakhshan is below 1%, which suggests a magnitude of 29% and 33% difference between Karzai's votes and the estimated Pashtun population in that province.¹⁰⁷ Karzai likely secured this lead due to forming an alliance with Burhanuddin Rabani. Born in Badakhshan, Rabani was the leader of *Jamiat Islami Party* and the president of Afghanistan from 1992-96, during the civil war.¹⁰⁸ Karzai obtained Rabani's endorsement in exchange for cabinet seats and high offices for his party and selected figures in both the 2004 and 2009 elections.¹⁰⁹ Karzai's coalition with prominent Tajik figures like Rabani, Fahim, and Ismael Khan had likely secured him a handful of votes in other Tajik constituencies, such as Takhar, Kunduz, and Ghor as well.

Nooristan presents an interesting case of cross-ethnic voting because it predominantly hosts a minority group called Nuristani, which is ethnically distinct from the four large ethnic

¹⁰³ IEC 2009, *supra* note 47.

¹⁰⁴ *Mohammad Qasim Fahim*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/today/fahim.html>.

¹⁰⁵ IEC 2004, *supra* note 46.

¹⁰⁶ IEC 2009, *supra* note 47.

¹⁰⁷ CAC, *supra* note 30.

¹⁰⁸ *Burhanuddin Rabani* AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/today/brabbani.html>.

¹⁰⁹ *Influential ex-president backs Karzai in election*, Chicago Times (Oct. 4, 2014), http://articles.chicagotribune.com/2004-10-04/news/0410040253_1_president-hamid-karzai-presidential-election-president-burhanuddin-rabbani; Mara Tchalakov, *The Northern Alliance Prepares For Afghan Elections In 2014*, UNDERSTANDING WAR ORGANIZATION, 21, 23 (Aug. 2013), http://understandingwar.org/sites/default/files/NorthernAlliance-2014Elections_1AUG.pdf. However, some authors suggest that Burhanuddin Rabbani endorsed Abdullah, not Karzai in the presidential election of 2009. See Homayoun, *supra* note 87, at 18, 21.

groups discussed in this chapter.¹¹⁰ Nevertheless, this province returned a high percentage of votes for Karzai and his Tajik rivals. Karzai received 57.7% of the votes in 2004¹¹¹ and 46.2% of the votes in 2009.¹¹² He was followed by Yunis Qanooni, with 31% of the vote in 2004,¹¹³ and Abdullah with 41.2% in 2009.¹¹⁴ This split of votes between Karzai and the Tajik candidates is probably a reflection of the fact that Nooristanis are geographically in close contact with Pashtun dominated provinces in the South—Kunar and Laghman— and Tajik dominated provinces in the North—Badakhshan and Panjshir. Nooristanis are, however, geographically distant from Hazaras and Uzbeks, which may also explain why in both elections Hazara and Uzbek candidates received few votes in this province.

Karzai's performance in Faryab, Jauzjan, and Samangan in 2004 demonstrates a normal pattern of association between the Pashtun population and his total votes, with only marginal discrepancies. He won nearly 10% in Faryab, 12% in Jauzjan, and 7% in Samangan in 2004.¹¹⁵ In 2009, however, his votes increased by 60% in Faryab, 58% in Jauzjan, and 43% in Samangan.¹¹⁶ This disparity is likely reflective of Karzai's coalition with Dostum in the absence of a viable Uzbek candidate in 2009. Significant portions of the population in all three provinces are Uzbeks: an estimated population of over 50% in Faryab, 40% in Jauzjan, and 30% in

¹¹⁰ Some suggest that Nuristanis are the descendants of Greek soldiers who came with Alexander to conquer the region. See MOUNT STUART ELPHINSTONE, AN ACCOUNT OF THE KINGDOM OF CAUBUL, Appendix C (1815); NICHOLAS BARRINGTON, JOSEPH T. KENDRICK, REINHARD SCHLAGINTWEIT, A PASSAGE TO NURISTAN: EXPLORING THE MYSTERIOUS AFGHAN HINTERLAND 123-125 (2006).

¹¹¹ IEC 2004, *supra* note 46.

¹¹² IEC 2009, *supra* note 47.

¹¹³ IEC 2004, *supra* note 46.

¹¹⁴ IEC 2009, *supra* note 47.

¹¹⁵ IEC 2004, *supra* note 46.

¹¹⁶ IEC 2009, *supra* note 47.

Samangan.¹¹⁷ Notably, combining Pashtun and Uzbek populations in these provinces produces results that were only slightly different from Karzai's returns in 2009.¹¹⁸

To win the support of some of these Pashtun and non-Pashtun powerbrokers, Karzai went as far as obstructing justice and violating laws. The two most notorious cases were Karzai's release of several drug-traffickers and his pardon of Dostum in a bid for his reelection. Just prior to the 2009 election, Karzai issued a decree ordering the release of five convicted drug traffickers, one of which was the nephew of his campaign manager, Din Mohammad.¹¹⁹ The decree justified their release as "an 'out of respect' to their well-known family."¹²⁰

Karzai's more notorious compromise was his reconciliation with Dostum after Dostum's widely publicized criminal assault of Akbar Bai, Dostum's former ally and a Turkmen elite.¹²¹ When the Attorney General insisted on prosecuting Dostum, he fled to Turkey.¹²² However, just prior to the election, in order to access Uzbek vote bank, Karzai not only pardoned Dostum, he also allowed him back to the country and promised his party, *Junbish-i-Mili*, some cabinet seats

¹¹⁷ *Id.*

¹¹⁸ The slight difference between Karzai's votes in 2009 election and the combined population of Pashtuns and Uzbeks is only 4% in Faryab and 1% Samangan. In Jauzjan, however, the difference is 11%, which is the highest. See Table App. IV-4 in the Appendix.

¹¹⁹ See BIJLERT, *supra* note 12, 11.

¹²⁰ Farah Stockman, *Karzai's Pardons Nullify Drug Court Gains: Well-known traffickers set free ahead of election*, BOSTON GLOBE (Jul. 4, 2009)

<http://www.rawa.org/temp/runews/2009/07/04/karzai-s-pardons-nullify-drug-court-gains-2.phtml>; see also Sayyad Salahuddin, *Karzai Pardons Five Afghan Heroin Traffickers*, REUTERS (Jul. 9, 2009), <http://www.reuters.com/article/2009/07/09/us-afghanistan-pardons-idUSTRE5684FW20090709>.

¹²¹ Brian Glyn Williams, *Dostum: Afghanistan's Embattled Warlord*, 7/8 TERRORISM MONITOR 1, 4 (April 17, 2008),

[http://www.brianglynwilliams.com/pdfs/dostum_embattled_warlord.pdf?tx_ttnews\[tt_news\]=4861&tx_ttnews\[backOid\]=167&no_cache=1](http://www.brianglynwilliams.com/pdfs/dostum_embattled_warlord.pdf?tx_ttnews[tt_news]=4861&tx_ttnews[backOid]=167&no_cache=1).

¹²² *Id.* at 2.

and other high offices.¹²³ Both moves were highly criticized both nationally and internationally.¹²⁴

b. Qanooni and Abdullah, The Tajik Runner-Ups

The population of Tajiks is estimated from 0% in some provinces to nearly 100% in others. According to estimations, Daykundi, Nooristan, and Kunar have the lowest population of Tajiks, while Panjshir has the highest.¹²⁵ In between, there are many provinces with Tajik majorities, and still others with Tajik minorities.

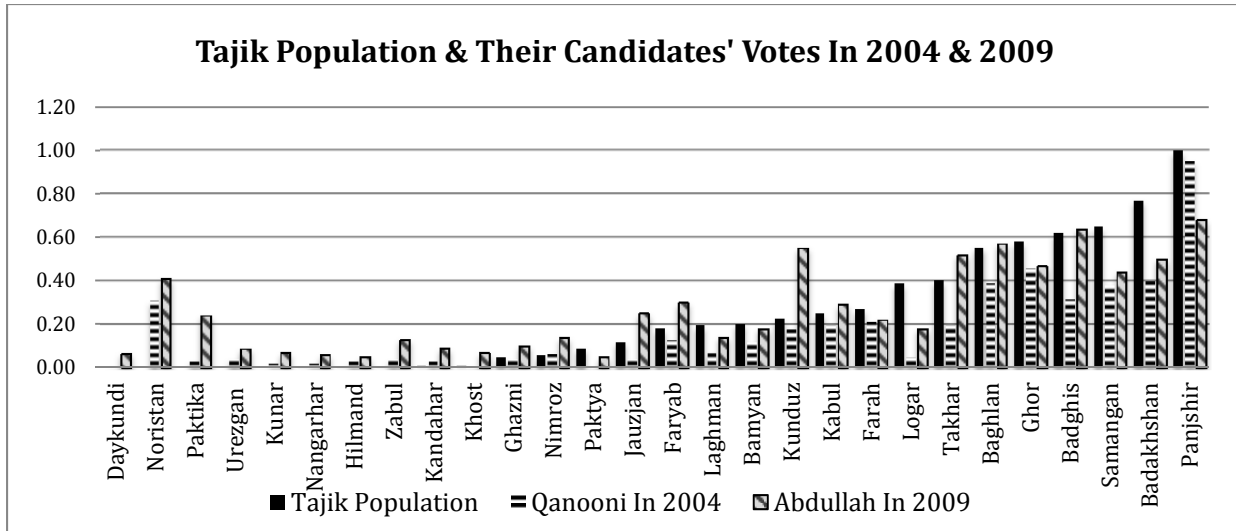
As Figure I-4 below shows, ethnic-electoral politics of Tajiks resemble those of Pashtuns in two important respects. First, there is an association between Tajik populations across provinces and the votes of their leading candidates in the 2004 and 2009 elections. Second, Tajik candidates were likely to win fewer votes per capita in Tajik-dominated provinces, while they were likely to win more votes per capita in provinces with smaller Tajik populations. By the same token, whereas cross-ethnic coalitions and insecurity explain the relatively higher number of votes for candidates in Tajik minority provinces, intra-ethnic competition and lack of coordination indicate the split of votes in Tajik-majority provinces.

¹²³ See Hodayoun, *supra* note 87, at 15.

¹²⁴ Williams, *supra* note 121.

¹²⁵ The population of Tajiks is estimated at less than 1% in Daykundi, Nooristan and Kunar and almost 100% in Panjshir. See Table App. IV-4 in the Appendix.

Figure I-4. compares the votes of Tajik candidates from 2004 and 2009 elections with population of Tajiks in 26 provinces.¹²⁶



The provinces with the highest discrepancies are Nooristan, Kandahar, Kunduz, and Paktika. Kandahar’s population is estimated 1% Tajiks and 98% Pashtuns.¹²⁷ Accordingly, Yunis Qanooni gained 3% votes in Kandahar in 2004.¹²⁸ Abdullah, on the other hand, won 9.1% of the votes in 2009,¹²⁹ which is 8.1% higher than the estimated Tajik population. Several factors probably contributed to this outcome. First, Abdullah’s father was a Pashtun from Kandahar.¹³⁰ Second, Kandahar was one of the first few provinces to which Abdullah traveled during his campaign in 2009.¹³¹ Third, and most importantly, he obtained the support of some Kandahari figures, such as Noorul Haq Ulumi, a prominent former leftist, and Malalai Ishaqzai, a female

¹²⁶ The data about the estimated population of Tajiks are collected from: AIMS, *supra* note 28; NPS, *supra* note 29; CAC, *supra* note 30, at 56-126. The data about the votes of candidates are collected from: IEC 2004, *supra* note 46; IEC 2009, *supra* note 47.

¹²⁷ CAC, *supra* note 30, at 87-88.

¹²⁸ IEC 2004, *supra* note 46.

¹²⁹ IEC 2009, *supra* note 47.

¹³⁰ AFGHAN BIOS, *supra* note 100.

¹³¹ Carlotta Gall & Ruhullah Khapalwak, *As Afghan Vote Nears, Taliban Step Up Intimidation Campaign*, NYTIMES, (Aug. 12, 2009) <http://www.nytimes.com/2009/08/13/world/asia/13kandahar.html>.

MP from Kandahar.¹³² Additionally, he appointed Homayon Shah Asefi, a member of the royal family, as his first vice president candidate.¹³³

Kunduz is one of the most ethnically diverse provinces in Afghanistan. Its population is approximately 31.2% Pashtuns, 22.5% Tajiks, 6.7% Hazaras, 20% Uzbeks, and 19.7% other groups.¹³⁴ In the presidential election of 2009, Abdullah's number of votes surpassed 54%,¹³⁵ which is two and half times the estimated Tajik population and 36% higher than Qanooni's votes in 2004. Abdullah's higher performance was likely due to the support of many local strongmen and Kunduz's high level of insecurity that reduced voter turnout in Pashtun areas.

One of Abdullah's endorsers was Commander Mir Alam, who continued to lead a group of militia even after the Disarmament Demobilization and Reintegration (DRR) from 2003-2006.¹³⁶ Both Mir Alam and Abdullah are from the *Hizb-e-Jamiati Islami* (Islamic Society Party).¹³⁷ During the electoral deadlock in 2014, Mir Alam threatened that he would destabilize Kunduz if he were asked to do so by Abdullah.¹³⁸ In addition to Mir Alam, an ethnic Tajik, Abdullah acquired the support of other local elites including Nazari Turkman, an ethnic Turkman, and Qari Rahmatullah, an ethnic Aimaq, as well as General Malik, Gol Mohammad Pahlawan, and Ahmad Khan, all Uzbek commanders from surrounding provinces.¹³⁹

¹³²AIMS, *supra* note 28.

¹³³ Tanya Goudsouzian, *Afghan Royal Eyes Poll Success: Will former royal emerge as a key player in Afghanistan's presidential election?*. AL JAZEERA, Aug. 19, 2009, <http://www.aljazeera.com/focus/afghanistanelections2009/2009/08/200981910755438497.html>.

¹³⁴ *Id.*

¹³⁵ IEC 2009, *supra* note 47.

¹³⁶ *Mir Alam*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=903&task=view&total=3079&start=1681&Itemid=2 (last visited Aug. 4, 2014).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ This information was gathered through personal interviews with some residents of Kunduz and other northern provinces.

Paktika, a southeastern province, is predominantly populated by Pashtuns.¹⁴⁰ The Tajik population is estimated less than 1% in this province,¹⁴¹ which is reflected in Qanooni's votes, who received just above 3% in 2004.¹⁴² Abdullah, however, netted 23.6%, significantly larger than the size of the Tajik population in Paktika.¹⁴³ The higher vote count for Abdullah was most likely due to the security gap between Pashtun and Tajik areas that influenced the turnout rates in those regions. This relationship between security and voter turnout is better illustrated by examining the votes in the Urgon district of Paktika.

The Urgon district, which has an estimated population of 88,000, is 88% Pashtun and less than 12% Tajik.¹⁴⁴ This difference would normally lead to the expectation that Abdullah would have won only one eighth of Karzai's votes, as was true for Qanooni in the 2004 election. Abdullah, however, secured more than half of Karzai's votes (8,321 to 16,093 votes) in Urgon.¹⁴⁵ Abdullah's unexpectedly higher number of votes in Paktika was likely due to insecurity in the Pashtun areas, leading to a substantial shift of turnout rates in his favor.

Third Place Hazaras: Haji Mohammad Mohaqiq and Ramazan Bashardost

As the third largest ethnic group in Afghanistan, Hazaras mostly live in the central regions of Afghanistan, which is commonly known as Hazarajat.¹⁴⁶ Only a few provinces, like

¹⁴⁰ See CAC, *supra* note 30, at 107-108.

¹⁴¹ *Id.*

¹⁴² IEC 2004, *supra* note 46.

¹⁴³ IEC 2009, *supra* note 47.

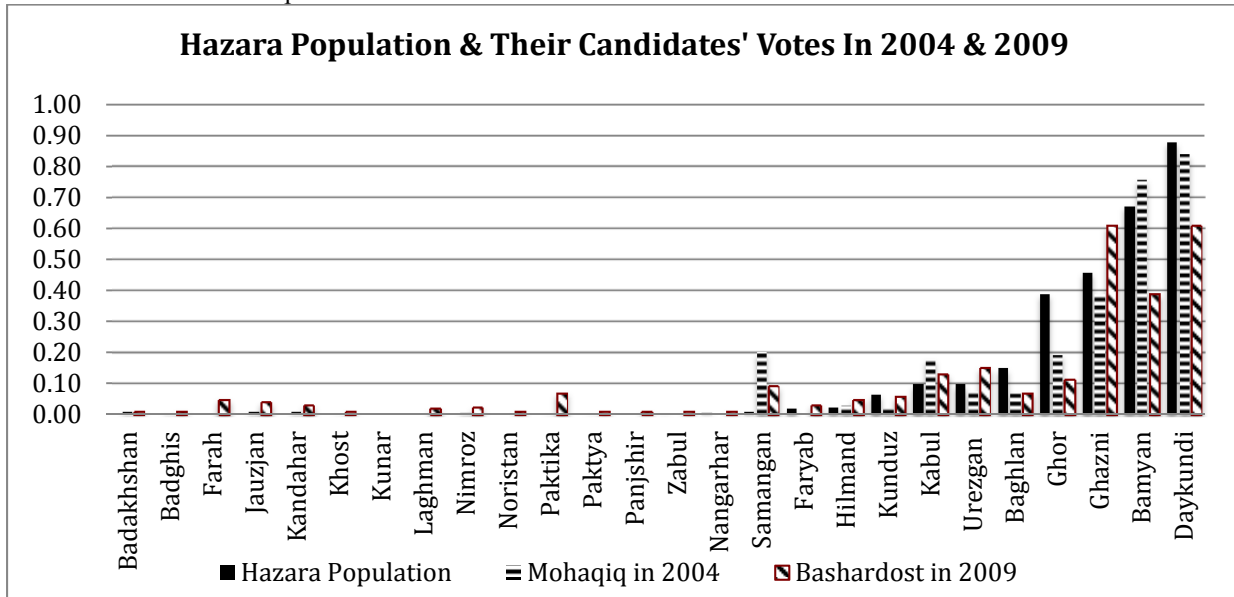
¹⁴⁴ USAID & ALTAI CONSULTING, PRIORITY DISTRICT REPORT: URGON (PAKTIKA) 3 (Oct. 13, 2010), <http://www.altaiconsulting.com/docs/media/2010/15.%20Paktika%20-%20Urgun.pdf>.

¹⁴⁵ *Paktika*, AFGHANISTAN ELECTION DATA, http://afghanistanelectiondata.org/election/2009/province/24#layers=district_map_openlayers_1&baseLayers=afghanistan-grey.

¹⁴⁶ Dubow, *supra* note 9, at 4.

Bamyan and Daykundi, are dominated by Hazaras.¹⁴⁷ A number of provinces have a sizable population of Hazaras, while others have only a few or no Hazaras (see Figure I-5).

Figure I-5 compares the votes of Hazara candidates from 2004 and 2009 elections with population of Hazaras in 26 provinces.¹⁴⁸



Similar to Pashtuns and Tajiks, there appears to be a direct correlation between the size of Hazara populations across provinces and the number of votes cast for Hazara candidates. Both Mohaqiq (2004) and Bashardost (2009) won their greatest number of provincial votes in Bamyan and Daykundi. In Daykundi, which was estimated to be 88% Hazara, Mohaqiq scored 84% in 2004, and Bashardost secured 61% in 2009.¹⁴⁹ Similarly in Bamyan, Mohaqiq dominated the votes, earning 76%, and Bashardost received just over 39%. The relatively lower number of votes Bashardost received in Daykundi and Bamyan was likely due to Karzai’s coalitions with Mohaqiq, Khalili and Mohseni in the election of 2009, as discussed earlier.

¹⁴⁷ According to estimation by NPS, 67% of Bamyan and 86% of Daykundi are Hazaras. See NPS, *supra* note 29, at 67, 69.

¹⁴⁸ The data about the estimated population of Hazaras are collected from: AIMS, *supra* note 28; NPS, *supra* note 29; CAC, *supra* note 30, at 56-126. The data about the votes of candidates are collected from: IEC 2004, *supra* note 46; IEC 2009, *supra* note 47.

¹⁴⁹ IEC 2004, *supra* note 46; IEC 2009, *supra* note 47.

Ghazni and Samangan are the two other provinces that deserve special attention because their numbers suggest some cross-ethnic voting in favor of Bashardost and/or Mohaqiq. In Ghazni, Mohaqiq won 39% votes, which is lower than the estimated 46% of Hazara population.¹⁵⁰ This was likely due to the endorsement of Karzai by Karim Khalili, his second running mate. In the same province, however, Bashardost scored a disproportional vote of 61%, which significantly exceeds the estimated Hazara population.¹⁵¹ There are three likely reasons for Bashardost receiving considerably higher votes. First, his anti-establishment, anti-corruption, and anti-poverty campaigns had cross-ethnic appeal.¹⁵² Second, Ghazni was his home province, invoking provincial identity in addition to ethnic identity.¹⁵³ While this is true, the data suggests that the voting in Ghazni ran along ethnic lines, with Bashardost prevailing in the predominantly Hazara regions in the North and West of Ghazni and Karzai dominating the predominantly Pashtun districts in the South and East.¹⁵⁴ Therefore, the third likely factor contributing to Bashardost's 61% votes was a high level of insecurity in the Pashtun-populated regions of Ghazni.

Mohaqiq and Bashardost both won a considerably higher number of votes in Samangan than the estimated Hazara population in this province. In Samangan, Mohaqiq received 20% of vote in 2004 and Bashardost 9% of votes in 2009.¹⁵⁵ According to estimations provided by NPS,

¹⁵⁰ NPS, *supra* note 29.

¹⁵¹ IEC 2009, *supra* note 47.

¹⁵² *Profile of Ramazan Bashardost*, WAR NEWS RADIO (Jul. 28, 2015) <http://warnewsradio.org/read-more/profile-of-ramazan-bashardost/>.

¹⁵³ *Id.*

¹⁵⁴ *Ghazni*, AFGHANISTAN ELECTION DATA, http://afghanistanelectiondata.org/election/2009/province/11#layers=district_map_openlayers_1&baseLayers=afghanistan-grey.

¹⁵⁵ IEC 2009, *supra* note 47; IEC 2004, *supra* note 46.

Samangan is 65% Tajik and 30% Uzbek.¹⁵⁶ Assuming Hazaras and Pashtuns share the remaining 5%, there is a great difference between the size of the Hazara population and their candidates' number of votes. It may be that the difference stems from an error in the estimation of Hazara population in Samangan. AIMS, which has conducted ethnic census on four (of the seven) districts of Samangan, estimated that 99% of the district of Dara Suf Bala are Hazara.¹⁵⁷ Using the 2004 and 2009 census by Central Statistic Organization (CSO), 17% of the total population of Samangan live in this district.¹⁵⁸ Putting these numbers together, it becomes obvious that the Hazara population is much larger than estimations provided by NPS.¹⁵⁹

c. Abdul Rashid Dostum: The Uzbek Powerbroker

The Uzbeks did not have a candidate in the 2009 election. Examining Dostum's votes in the presidential election of 2004 opens a new window to our understanding of ethnic-electoral dynamics since race is likely to play an intervening role in this election. In 2004, however, Dostum garnered votes not only from Uzbeks but also from Turkmens (Uzbek and Turkmen are racially Turkic, even though they are ethnically distinct groups).¹⁶⁰

Turkmens are one of the minority groups in Afghanistan.¹⁶¹ Together with Uzbeks, they make an estimated 74% of population in Faryab and 75% in Jauzjan.¹⁶² Dostum, during his

¹⁵⁶ NPS, *supra* note 29.

¹⁵⁷ The four districts, where AIMS conducted the survey are Dara Suf Bala, Dara Suf Payan, Aibak, and Ruey Du Ab. According to AIMS, the district of Ruey Du Ab also has around 15% Hazaras. *See* AIMS, *supra* note 28.

¹⁵⁸ According to CSO the population in Dara Suf Bala was 55,000 compared to 321,500 in Samangan in 2004, and 59,800 compared to the 350,400 in 2009. *See* *Population*, CENTRAL STATISTICS OFFICE, <http://cso.gov.af/en/page/demography-and-socile-statistics/demograph-statistics/3897111>.

¹⁵⁹ NPS, *supra* note 29.

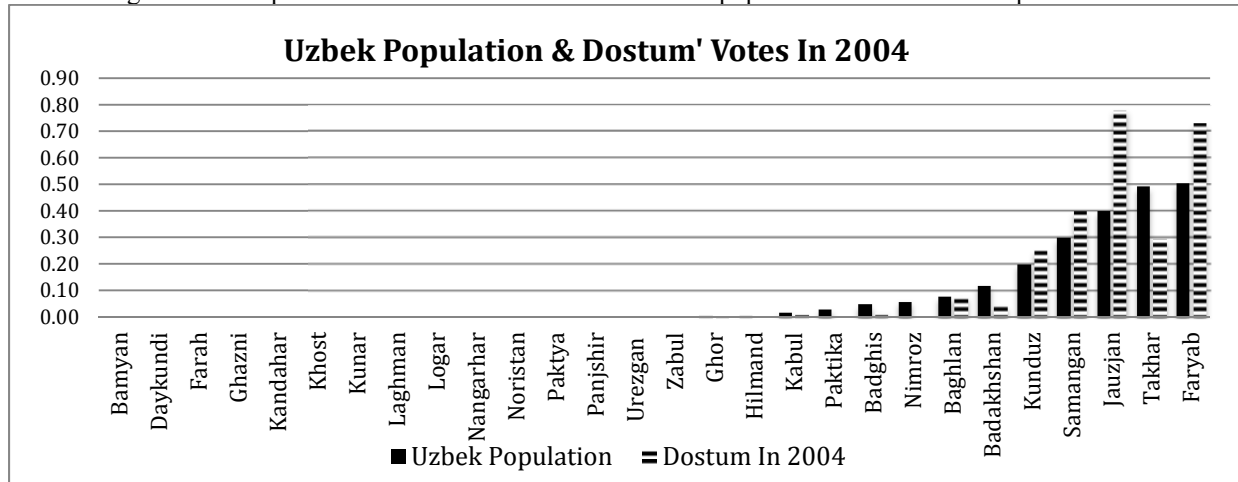
¹⁶⁰ Homyoun, *supra* note 87, at 14.

¹⁶¹ According to some estimation, Turkmens comprise 3% of the population in Afghanistan. *See* CAC, *supra* note 30, at 156.

¹⁶² AIMS, *supra* note 28; CAC, *supra* note 30.

campaign in 2004, successfully played his Turkic race card to win Turkmen vote.¹⁶³ Predictably, Dostum won Faryab by 72.9% and Jauzjan by 77%.¹⁶⁴

Figure I-6. compares the 2004 votes for Dostum with the population of Uzbeks in 26 provinces.¹⁶⁵



In 2009, however, Turkmen did not appear to fully support the alliance of Dostum and Karzai. This change of voting behavior probably stemmed from two incidents. The first was in 2008, when Dostum assaulted Akbar Bai, a Turkmen elite.¹⁶⁶ The other incident was the disqualification of Akbar Bai as a presidential candidate upon the request of Dostum and intervention of Karzai.¹⁶⁷

Noteworthy about the 2004 election was the Uzbeks' desertion of Abdul Satar Sirat, another Uzbek candidate, who won less than 1% of the votes.¹⁶⁸ The defection from Sirat was notable because he was the initial choice of Bonn Conference for leading the transitional

¹⁶³ Williams, *supra* note 57.

¹⁶⁴ IEC 2004, *supra* note 46.

¹⁶⁵ The data about the estimated population of Uzbeks are collected from: AIMS, *supra* note 28; NPS, *supra* note 29; CAC, *supra* note 30, at 56-126. The data about the votes of Dostum is collected from: IEC 2004, *supra* note 108.

¹⁶⁶ Williams, *supra* note 57, 4.

¹⁶⁷ Sayed Yaqub Ibrahim, *Candidates Controversy as Presidential Race Kicks Off*, INSTITUTE FOR WAR & PEACE REPORTING (July 31, 2009); *See also* BIJLERT, *supra* note 12, at 10.

¹⁶⁸ IEC 2004, *supra* note 46.

government after the collapse of the Taliban in 2001.¹⁶⁹ Hence, even though Sirat was not a strong military leader like Dostum, he was one of the well-known Uzbek intellectuals—at least since the Bonn Conference. In fact, Sirat most likely ran for the presidency expecting that his popularity would bring him votes.

2. The Presidential Election of 2014

The presidential election of 2014 broke from the pattern seen in the 2004 and 2009 elections, where a Pashtun candidate led and a Tajik candidate trailed behind. This time, a Tajik candidate, Abdullah, led the race, whereas an ethnic Pashtun, Ghani, came in second.¹⁷⁰ This dramatic change from previous presidential elections raised three important questions: First, if ethnicity influences elections, how could a Pashtun candidate lag behind a Tajik candidate? Second, how could a Tajik candidate win 45% votes while the Tajik population was estimated at a mere 27%? Third, how could a Pashtun candidate obtain only 31.6% votes while the Pashtun population was estimated around 42%? The answer to each of these questions points to the failure of strategic coordination among Pashtun candidates, as well as Abdullah's success in cross-ethnic coalitions.

In the initial list of candidates, 10 out of 11 were Pashtun and only one was an ethnic Tajik.¹⁷¹ Just prior to the election, three Pashtun candidates withdrew, increasing the chances of the other Pashtun candidates.¹⁷² The seven remaining candidates held several meetings behind

¹⁶⁹ *Abdul Satar Sirat*, WHO IS WHO IN AFGHANISTAN? AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=1728&task=view&total=3158&start=2731&Itemid=2.

¹⁷⁰ IEC 2014, *supra* note 48.

¹⁷¹ Salih Doğan, *2014 Afghanistan Presidential Election: An Ethnic Analysis*, 3/4 CAUCASUS INTERNATIONAL 94 (Winter 2014), http://www.academia.edu/7214404/2014_Afghanistan_Presidential_Election_An_Ethnic_Analysis.

¹⁷² Hodge, *supra* note 67.

closed doors to decide whether one would step aside in favor of the other.¹⁷³ None, however, yielded to the other;¹⁷⁴ as a result, Pashtun voters experienced an expectation crisis as to who would be the most viable candidate. The frustration of Pashtun voters became even more obvious when Pashtun tribal elders from 26 provinces held a *Jirga* (council) in Kabul to reduce the number of their candidates and unite them behind one, however even the *Jirga* was inconclusive.¹⁷⁵

Unlike the two previous elections, Hazaras and Uzbeks did not have any candidate in the presidential election of 2014. Perhaps, Hazara and Uzbek leaders likely realized that their interests would be better served by entering into political bargaining rather than by running for election themselves. It is also likely that the requirement of Article 45 of Election Law might have impeded the candidacy of elites from these ethnic groups since they were unlikely to collect the required 2% of the voting cards from 20 provinces, since Hazaras and Uzbeks live in a very limited number of provinces.¹⁷⁶ In addition, as the elite of smaller groups, they were less likely to be able to attract the endorsement of elites from larger groups.

Mohaqiq and Dostum may have also learned from the setbacks of their candidacies in the 2004 election. In the presidential election of 2004, by running for presidency against Karzai, they

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ This expectation crisis fueled the historical contention of Pashtun, Durrani and Ghilzai tribes for ruling Afghanistan. In 2014, each tribe was attempting to win the popular Pashtun support for their candidates. Indeed, as Thomas suggested, this *Jirga* was an attempt by Durrani to persuade four of their candidates namely Shirzai, Rassul, Qayoom Karzai, and Naiim, to unite behind one of them. (See Ruttig, *supra* note 67).

¹⁷⁶ According to article 45 of the Election Law, a presidential candidate has to provide the Independent Election Commission of Afghanistan with “one hundred thousand voters, from a minimum of twenty provinces, two percent from each province.” See QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1226 (2016), art. 3.

eventually sidelined themselves in his resulting government.¹⁷⁷ Having learned from their past experiences, Mohaqiq and Dostum preferred joining viable coalitions rather than running for presidency themselves. Therefore, in the presidential election of 2014, Mohaqiq joined Abdullah, as his second running mate, and Dostum endorsed Ghani, as his first vice president candidate.

a. Abdullah: The Apparent Frontrunner

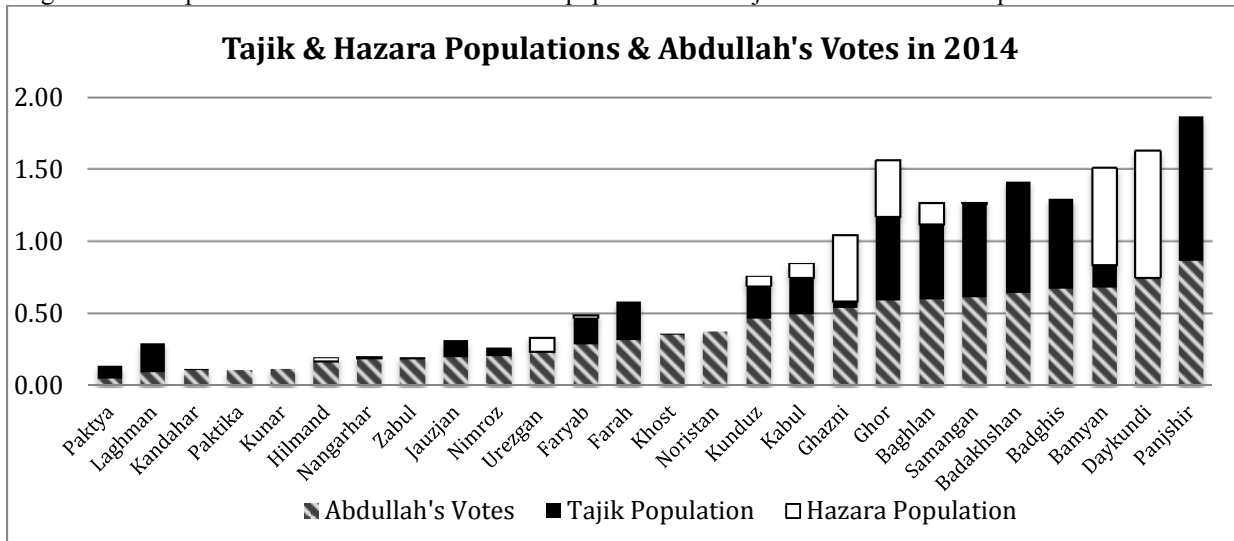
In the first round of the 2014 election, Abdullah's votes reflected the population of either Tajiks or Hazaras or both in provinces. In fact, after Panjshir, his home province, Abdullah obtained his highest proportion of provincial votes in Daykundi (75%) and Bamyan (68%), which are predominantly Hazara provinces.¹⁷⁸ The extraordinary change of voting patterns in favor of Abdullah from the 2009 to 2014 elections in these provinces was likely because Abdullah sealed the endorsement of Mohaqiq by introducing him as his second vice president candidate.¹⁷⁹

¹⁷⁷ HAFIZULLAH EMADI, DYNAMICS OF POLITICAL DEVELOPMENT IN AFGHANISTAN: THE BRITISH, RUSSIAN AND AMERICAN INVASION 214, 216 (2010); Antonio Giustozzi, *Respectable Warlords? The Politics Of State-Building In Post-Taliban Afghanistan*, 1, 16 (Development Research Center, LSE, Sep 2003) <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries1/WP33.pdf>.

¹⁷⁸ IEC 2014, *supra* note 48.

¹⁷⁹ Ghanizada, *Mohaqiq and Hezb-e-Islami Deputy Named Abdullah's vice president*, Khama Press (Oct. 1, 2013), <http://www.khaama.com/mohaqiq-and-hezb-e-islami-deputy-named-dr-abdullahs-vice-president-1918>.

Figure I-7. compares the votes of Abdulla with the populations of Tajiks and Hazaras in 26 provinces.¹⁸⁰



Nonetheless, Abdullah had to share some Hazara votes with his main rivals. For instance, in each of Daykundi and Bamyan provinces, Zalmai Rassul, the third placed candidate, gained nearly 12% of the votes and Ghani received just over 11%.¹⁸¹ Notably, this sharing was not a coincidence as the Second Vice President candidates of Rassul and Ghani were Hazaras from Bamyan and Daykundi: Zalmai Rassul’s second vice president, Habiba Sorabi was the former governor of Bamyan (2005 to 2013)¹⁸² and Ghani’s Second Vice President, Mohammad Sarwar Danish, the former Minister of Justice, was from Daykundi province.¹⁸³

Abdullah performed much better in Pashtun-dominated provinces in 2014 than he did in 2009.¹⁸⁴ He garnered close to 20% of the votes in the provinces of Nangarhar, Helmand, and

¹⁸⁰ See Table App. IV-4 in the Appendix.

¹⁸¹ IEC 2014, *supra* note 48.

¹⁸² *Habiba Sarabi*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=1733&task=view&total=3162&start=2742&Itemid=2.

¹⁸³ *Mohammad Sarwar Danish*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=402&task=view&total=3162&start=672&Itemid=2.

¹⁸⁴ On average Abdullah won 11% in Pashtun majority provinces (provinces with over 50% Pashtun population—this excludes Kunduz, Laghman and Ghazni) in 2009 and around 17.4% votes in 2014. See IEC 2009, *supra* note 47; IEC 2014, *supra* note 48.

Zabul.¹⁸⁵ He also had the lead in Ghazni (54%) and Kunduz (47%), in which Pashtuns are one of the largest ethnic groups.¹⁸⁶ Choosing Mohammad Khan as his running mate, bargaining with Pashtun Jihadi elites, and emphasizing his half-Pashtun identity in Southern provinces, were keen strategies that likely assured him vote blocs from Pashtun communities.

More importantly, Abdullah was pursuing a strategy of establishing a large coalition of opposition to government since 2007. Between 2006 and 2014, Abdullah and his circles attempted several times to create an official opposition coalition.¹⁸⁷ Even though these coalitions were doomed to break apart, some members did stay with Abdullah and endorsed his candidacy in 2014.¹⁸⁸ For instance, some Pashtun elites such as Nurulhaq Ulumi, an elite from Kandahar; Kalimullah Naqibi, Chief of a Pashtun tribe;¹⁸⁹ Shah Wali Karzai, brother of Karzai; as well as, some Hazara and Uzbek elites such as Mohammad Akbari, a Hazara elite; Abdul Malik Pahlawan, the leader of Liberation Party and the main Uzbek rival of Dostum;¹⁹⁰ and, Piram Qul, an influential Uzbek elite from Takhar, upheld their endorsements of Abdullah.¹⁹¹

¹⁸⁵ IEC 2014, *supra* note 48.

¹⁸⁶ *Id.*

¹⁸⁷ For the full account of coalition-making by Abdullah and his cohorts read Tchalakov, *supra* note 109, at 15-29.

¹⁸⁸ Thomas Ruttig, *Narrower Than Expected: Political Opposition Presents 'Electoral Union of Afghanistan'*, AFGHANISTAN ANALYSTS NETWORK 1 (Aug 2013), <https://www.afghanistan-analysts.org/narrower-than-expected-political-opposition-presents-electoral-union-of-afghanistan/>.

¹⁸⁹ *Kalimullah Naqibi*, AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=2900&task=view&total=3096&start=1902&itemid=2.

¹⁹⁰ NATIONAL COALITION OF AFGHANISTAN, <http://www.nca.af/general-malik-dr-abdullahf2014010852.html> (last visited Jun 26, 2015).

¹⁹¹ Ruttig, *supra* note 188, at 1-2.

b. *Ashraf Ghani: The Emerging Elite*

The presidential election of 2009 was the first time that Ghani ran for the presidency.¹⁹² In that election, he was one of many nonviable candidates, receiving just over 2.9% votes nationwide.¹⁹³ At that time, he was considered a western-grown puppet who knew little about the realities of Afghanistan.¹⁹⁴ He was popularly labeled as Zane-Bush (Wife of Bush).¹⁹⁵ Even in Logar, his home province,¹⁹⁶ he received less than 20% of the votes.¹⁹⁷ From across the 26 provinces, Ghani won 1% or less in 11 provinces and 5% or less in 19 provinces.¹⁹⁸

In 2014, however, Pashtun voters viewed him very differently. By then, he had become known as a patriot, and he was labeled the “Gandhi of Afghanistan.”¹⁹⁹ His vote totals rose to more than 10% in all provinces except Panjshir. In more than half of these provinces, he received more than 30% of the votes.²⁰⁰ He scored 50% to 69% in 7 provinces which had either Pashtun or Uzbek majorities (See Figure 1-8). Ghani’s transition from *Zan-e-Bush* in 2009 to *Gandhi of*

¹⁹² Carlotta Gall, *A Technocrat Shakes Up the Afghan Campaign*, NYTimes (Aug. 13, 2009), <http://www.nytimes.com/2009/08/14/world/asia/14ghani.html>; IEC 2009, *supra* note 47.

¹⁹³ IEC 2009, *supra* note 47.

¹⁹⁴ Coburn & Larson, *supra* note 7, at 5.

¹⁹⁵ Rob Crilly, *Ashraf Ghani: From the World Bank to Afghanistan’s next president?* THE TELEGRAPH (Jul. 7, 2014), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10952284/Ashraf-Ghani-From-the-World-Bank-to-Afghanistans-next-president.html>; Jeffery Stern, *The Making of an Afghan Politician*, SLATE (Aug. 19, 2009), http://www.slate.com/articles/news_and_politics/dispatches/2009/08/the_making_of_an_afghan_politician.html

¹⁹⁶ *Biography: Ashraf Ghani*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/ghani.html>.

¹⁹⁷ IEC 2009, *supra* note 47.

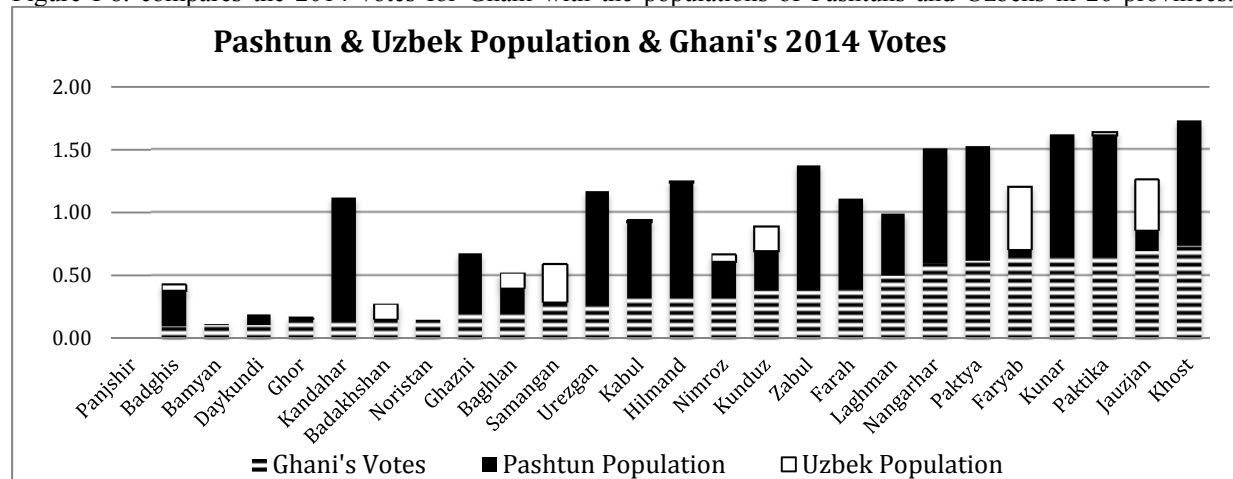
¹⁹⁸ *Id.*

¹⁹⁹ In social media he was popularly called the Gandhi of Afghanistan. For instance, several Facebook pages were created with the title of Gandhi of Afghanistan. See FACEBOOK: GANDHI OF AFGHANISTAN, <https://www.facebook.com/pages/DrAshraf-Ghani-Afghanistans-Gandhi/486382698141057>.

²⁰⁰ IEC 2014, *supra* note 48.

Afghanistan in 2014 is the most telling case about electoral strategy and voting behavior in Afghanistan.²⁰¹

Figure I-8. compares the 2014 votes for Ghani with the populations of Pashtuns and Uzbeks in 26 provinces.²⁰²



²⁰¹ Some argued that Ghani’s emergence from an unpopular candidate in 2009 to a runner up in 2014 was due to his leadership qualities and his vast experience in developmental programs. However, if it was his leadership qualities that earned him votes in 2014 election, it seems likely that he would have garnered the same support in the 2009 election. He was well known for carrying out several reforms successfully while leading Ministry of Finance (2002-2004) and other offices prior to 2009 elections. (See ICOS 2009, *supra* note 6, at 13.)

Others might argue that his policies probably made him more appealing than other candidates. Nonetheless, even though his policies seemed more calculated, he was not distinct from other Pashtun candidates on the major policies. On issues such as peace negotiations with the Taliban, security, relations with Pakistan and other neighboring countries, and signing the Bilateral Security Agreement with the United States, Ghani shared views with the main Pashtun contenders such as Zalmay Rassul and Gul Agha Shirzai, the third and fourth placed candidates respectively. Moreover, his policies barely changed between the 2009 and 2014 elections. Ali M Latifi, *Afghan Presidential Hopefuls Take To TV*, AL JAZEERA (Feb. 5, 2014) <http://blogs.aljazeera.com/blog/asia/afghan-presidential-hopefuls-take-tv>; See also RAFI SEDIQI, *Gul Agha Sherzai Asks for BSA Signature*, TOLONEWS (Feb. 9, 2014) <http://www.afghanistannewscenter.com/news/2014/february/feb102014.html#a12>; See also ToloNews TV, YOUTUBE, <https://www.youtube.com/watch?v=f0r-Vi8y52c>; also ToloNews TV, YOUTUBE, <https://www.youtube.com/watch?v=ALHn0-4uWNw>.

For a comparative analysis of Ghani’s 2009 and 2014 policies, watch his speech in a debate in 2009 (See TOLONEWS TV, YOUTUBE, <https://www.youtube.com/watch?v=GZPvKAuEUhw>.) with his programs in debates in 2014 (TOLONEWS TV, YOUTUBE, <https://www.youtube.com/watch?v=f0r-Vi8y52c>; and, TOLONEWS TV, YOUTUBE, <https://www.youtube.com/watch?v=ALHn0-4uWNw>.)

²⁰² See Table App. IV-4 in the Appendix.

In the absence of an already established candidate, Ghani took the opportunity to portray himself as the only viable candidate, hoping that if everyone in his primary constituency entertained the same expectations about his viability, he would eventually become the winner.²⁰³ To create such an image amongst Pashtun voters, Ghani pursued a series of strategies that closely resembled Karzai's approach in the previous elections.

First, Ghani added to his ticket Rashid Dostum and Sarwar Danish, a Khalili loyalist.²⁰⁴ His coalition with Dostum not only guaranteed Uzbek votes but also sent a strong message to Pashtun voters about his increasing electoral edge over his rivals. Since typically expectations of voters are influenced by the voting decisions of others,²⁰⁵ Uzbeks' support of Ghani had a psychological effect on the Pashtun voters about Ghani's viability. Yet, Ghani also had to deal with the criticisms and setbacks of his coalition with Dostum. In the presidential election of 2009, Dr. Ghani had called Dostum a "known killer" and criticized Karzai for making alliances with him.²⁰⁶ Therefore, his alliance with Dostum was considered hypocritical.²⁰⁷ To address this criticism, Dostum made an unprecedented apology for his role in the past wars that caused "pain

²⁰³ This electoral calculation was extensively explained by Cox suggesting that voters' expectation is crucial for how they vote. *See* COX, *supra* note 42, at 127.

²⁰⁴ In addition to Dostum and Danish, Ghani also won the endorsement of Sayed Mansour Naderi, the leader of Esmailis, a Hazara subgroup. *See* Ghanizada, *Syed Mansoor Naderi supports Ashraf Ghani in presidential elections*, KHAMA PRESS (Feb. 13, 2014), <http://www.khaama.com/syed-mansoor-naderi-supports-ashraf-ghani-in-presidential-elections-2782>.

²⁰⁵ COX, *supra* note 42, at 71.

²⁰⁶ *See* Masoud, *Hypocrite Politician Ashraf Ghani Ahmadzai and Known Killer Abdul Rashid Dostum*, KABUL PRESS (Mar. 7, 2014), <http://kabulpress.org/my/spip.php?article177004>.

²⁰⁷ In the presidential election of 2009, Ghani called Dostum a "known killer" and criticized Karzai for making alliances with Dostum. Choosing Dostum as his own vice president candidate led to his rivals and many others calling him a hypocrite. *See id.*

and suffering of the people.”²⁰⁸ The apology was likely also an attempt to please Ghani’s targeted constituents.

Moreover, among Pashtun candidates, Ghani was quicker to present himself to his primary constituencies as one of them. He replaced his Western-style suits with Afghan traditional dress, including a Southeastern style of “scarf” on the shoulder, and he often wore a Turban on the head,²⁰⁹ which differed slightly from one province to another.²¹⁰ This was exactly what Karzai had been doing during his campaign in the 2004 and 2009 elections. Ghani even went further and criticized the U.S. and Afghan governments for detaining only Pashtuns in prisons.²¹¹ At one point in Kandahar, the base of the Taliban during their regime, Ghani declared that he would release all insurgent suspects.²¹² Despite these efforts, he did not perform as well as Karzai when it came to the election. Unlike Karzai, who was leading Pashtun candidates in all provinces in the 2004 and 2009 elections, Ghani remained behind other candidates in several of the provinces.²¹³

In Kandahar, several local Pashtun candidates did better than Ghani. Zalmai Rassul dominated the ballots with 53.96% votes and Gul Agha Sherzai garnered 16.02%.²¹⁴ Ghani only

²⁰⁸ RUTTIG, *supra* note 60, at 2; Wakil Kohsar, *From Ex-Warlords to Scholars: Who Wants to Rule Afghanistan*, NBC NEWS (Apr. 5, 2014), <http://www.nbcnews.com/storyline/afghanistan-election/ex-warlords-scholars-who-wants-rule-afghanistan-n24756>.

²⁰⁹ Harun Najafizada, *Afghan notebook: Wowing the crowds*, BBC NEWS (Mar. 18, 2009), <http://www.bbc.com/news/world-asia-26576308>; *see also* Montagne, *supra* note 96 and Stern, *supra* note 195.

²¹⁰ *Id.*

²¹¹ Matthew Rosenberg, *Technocrat to Afghan Populist, Ashraf Ghani Is Transformed*, NYTIMES (Jun. 11, 2014) <http://www.nytimes.com/2014/06/12/world/asia/technocrat-to-populist-an-afghan-transformed.html>.

²¹² *Id.*

²¹³ IEC 2009, *supra* note 47; IEC 2014, *supra* note 48.

²¹⁴ IEC 2014, *supra* note 48.

managed to win 13.90% of the votes.²¹⁵ Ghani also underperformed in Wardak where Sayyaf led the Pashtun candidates with 24.64%, followed by Zalmai Rassul with 16.74% votes.²¹⁶ There, Ghani's votes amounted to 15.11%.²¹⁷ In Nooristan, Sayyaf garnered twice as much as Ghani (28.93% to 14.58%).²¹⁸

The two provinces in which Ghani's votes were significantly higher than the population of Pashtuns were Faryab (65%) and Jauzjan (69%).²¹⁹ Not surprisingly, Dostum's presence in Ghani's campaign guaranteed him Uzbek votes in these provinces. Overall, as Figure I-8 illustrates, Ghani's votes are comparable with the combined population of Pashtuns and Uzbeks in most provinces.

C. Conclusion

Afghan presidential elections have demonstrated that the electoral practices are highly influenced by ethnic politics. However, to win elections, viable candidates are likely to make cross-ethnic alliances. Forming a broad-based coalition is the only way to ensure that a viable candidate will win an election. In order to form such a coalition, candidates enter into bargaining, not only with the top leaders of ethnic groups, but also with their lower ranking elites and local powerbrokers. In exchange for this support, candidates are likely to offer patronage such as financial support, power allocation, and development projects.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Ghani also had to follow Sayyaf's lead in some other provinces such as Herat (13.78% to 11.08%), Ghor (16.02% to 13.09%), Parwan (6.14% to 5.61%), Badghis (12.98% to 9.80%), and Kapisa (5.74% to 4.12%). In addition to Sayyaf, Zalmai Rassul also performed better than Ghani in Parwan (10.56% to 5.61%), Herat (11.41% to 11.08), and Kapisa (5.62% to 4.12%). Rassul almost split the votes with Ghani in Urezgan (23.86% to 26.95%), Nimroz (30.46% to 33.59%), and Helmand (27.46% to 32.94%). *See* IEC 2014, *supra* note 48.

²¹⁸ *Id.*

²¹⁹ *Id.*

Therefore, cross-ethnic coalitions are mostly formed based on patronage and political distribution rather than shared policy. Indeed, as this dissertation explains in later chapters, the instability of coalitions is because of political laws and institutions that encourage (or at least fail to discourage) patronage-based alliance-making.

Chapter Two: Identity Politics and Parliamentary Elections in Afghanistan

This chapter provides a systematic analysis of ethnic-electoral dynamics in Afghanistan, examining the last two parliamentary elections: the *Wolesi Jirga* (WJ) election of 2005 and the WJ election of 2010.²²⁰ Afghan parliamentary elections are census-like elections, where ethnic groups are proportionally represented in the WJ, however, this does not suggest that parliamentary elections are dominated solely by ethnic voting. Instead, this chapter establishes that (a) cross-ethnic coalitions and vote pooling are less likely during the parliamentary elections; (b) ethnic mobilization is likely strong when candidates of different ethnic groups compete for the same seat; and (c) in constituencies where seats are sought by different candidates of the same group, ethnic-affiliation is likely to be undermined by sub-ethnic mobilization. In a similar manner, multi-identity communities are likely to mobilize as distinct groups during the parliamentary elections to claim their own share of the legislative pieces.

This chapter comprises two sections and a conclusion. The first section sets out a brief analysis of strategic voting in the parliamentary elections of Afghanistan. The second section provides an empirical analysis of electoral politics in Hazara and Pashtun constituencies,

²²⁰ When discussing parliamentary elections, this dissertation refers to the elections of *Wolesi Jirga* (House of People). Afghanistan has a bicameral National Assembly comprised by the *Wolesi Jirga* (House of People) and the *Meshrano Jirga* (House of Elders).²²⁰ *Wolesi Jirga* is an elected Jirga, having 249 members. *Meshrano Jirga* is only partly elected as the president appoints one-third of its members. The rest of the MJ members are elected by the provincial councils (33%) as well as district councils (33%). See CONSTITUTION, Art. 82,

respectively, and explains (a) the association between the population of these groups and their seats in the WJ; (b) the potential gap between the two; and (c) the factors that instigated the gap.

A. Electoral Strategies in Afghan Parliamentary Elections

Unlike presidential elections, the WJ elections offer 249 seats up for the taking. This large number of seats allows ethnic groups to win a fair share of seats by relying on their own blocs of votes. In effect, cross-ethnic coalitions are less likely to form during the parliamentary elections. Since in some provinces the number of seats is large enough to provide an ethnic group several representatives, intra-ethnic competition becomes inevitable. Therefore, in the parliamentary elections intra-ethnic competition is as prominent as inter-ethnic competition.²²¹

Inter-ethnic competitions are likely to advance in areas where an ethnic group is in close contest with another. A good case in point is voter mobilization in the Qarabagh district of Ghazni in the parliamentary election of 2010. Although elites and elders tried to unite voters behind certain district candidates so that they could win more seats, the voters remained divided along Pashtun and Tajik lines because each group wanted their own candidates elected.²²²

Intra-ethnic competitions are more evident in provinces where a single ethnic group is the dominant constituent or at least large enough to receive several seats.²²³ Intra-ethnic competitions mostly come in the form of *subgroup* politics and mobilization. In this study, *subgroup* refers to smaller communities, which subdivide ethnicities or overlap two distinct

²²¹ COBURN & LARSON, *supra* note 26 at 124 . (“In the more locally contested provincial council and Wolesi Jirga elections, communities split into smaller voting blocs...each [election] organized itself according to different political units.”)

²²² *Id.* at 123.

²²³ ANDREW WILDER, A HOUSE DIVIDED? ANALYSING THE 2005 AFGHAN ELECTIONS, AFGHANISTAN RESEARCH AND EVALUATION UNIT 11 (DEC. 2005), available at <http://www.refworld.org/pdfid/47c3f3c01b.pdf> (“For Pashtuns, especially in Pashtun majority areas where their interests are not threatened, tribal identity is a stronger political mobilizing force than ethnic identity.”)

identities. As such, subgroup identities include tribal affiliation, sectarian identity, local affiliation, and multi-identity minorities.²²⁴ Anna Larson and Noah Coburn, in their book, *Derailing Democracy in Afghanistan*, referred to these groups as *communities*.²²⁵ Explaining different types of communities, they argued this:

Political identity in Afghanistan can perhaps be conceived of as a series of concentric circles, with the individual and the immediate family at the center, extending outwards via the extended family and the village, followed by lineages or subtribes, with ethnicity as the outermost circle...with extended family being important for economic cooperation, such as sharing agricultural labor, but with ethnicity becoming more important when an entire ethnic group faces threat from another.²²⁶

Each of these political circles can be regarded as subgroups except for ethnicity.²²⁷ A 2010 report by the National Democratic Institute (NDI) regularly used the word *tribe* for different subgroups—except religious groups.²²⁸ This report indicated that over 60 percent of the candidates in 2010 relied on tribal endorsements.²²⁹ However, in its narrow meaning, tribe refers

²²⁴ COBURN & LARSON, *supra* note 221, at 1 (Candidates regularly adorn both their campaign and stump speeches with symbolic imagery that has deep cultural resonance in Afghan political history, drawing on religious imagery or idioms of kinship or tribal ties.); *id.*, at 107 (“although elections were taking place at the provincial and national levels, they were intimately bound to local-level politics...district-wide disputes were also a major factor in shaping the election.”); Abubakar Siddique, *Afghanistan’s Ethnic Divides*, BARCELONA CENTRE FOR INTERNATIONAL (Jun., 2012), https://www.cidob.org/en/content/download/35203/567954/file/OK_ABUBAKAR+SIDDIQUE.pdf. (“At the same time, identities and group interests are very local, often associated with a political or regional unit—a village, clan or part of the country—rather than ethnic groups.”)

²²⁵ COBURN & LARSON, *supra* note 221, at 121.

²²⁶ *Id.*

²²⁷ Ethnicity, however, is not the outermost circle. It is outpaced by larger circles of linguist groups, religious groups (Sunnis and Shias), and the nation, which may become activated when threatened by their counterparts.

²²⁸ NATIONAL DEMOCRATIC INSTITUTE, FINAL REPORT: THE 2010 WOLESI JIRGA ELECTIONS IN AFGHANISTAN, 66 (2010), <https://www.ndi.org/sites/default/files/Afghanistan-2010-election-observers-final-report.pdf> [hereinafter, NDI 2010] (“While this was a positive reform, it was of questionable effectiveness considering the extended family and tribal loyalties prevalent in Afghanistan.”)

²²⁹ *Id.*

to only one of the subgroups, *Qabila* (meaning *tribe*, sometimes referred to as *Qawm*, ethnicity), which has strong presence among Pashtuns only.²³⁰

This chapter highlights several cases that demonstrate tribal mobilization in Pashtun-dominated provinces in the South and West.²³¹ Non-Pashtuns are not, however, free from subgroup politics during elections.²³² Non-Pashtun candidates tend to mobilize voters around sectarian differences, local interests, distinct identity, and minority status.²³³ They emphasize the distinctiveness of their communities and suggest that only seats in the WJ can link their communities to the government in Kabul.²³⁴

Subgroup mobilization, however, does not necessarily mean successful coordination on subgroup levels. At times, despite the efforts of subgroup elders and elites, electoral cohesion

²³⁰ WILDER, *supra* note 223, at 18 (“In Pashtun areas tribe is most important. In non-Pashtun areas religious leaders are more important.”); Nasrine Abou-Bakre Gross, *Ethnic Fault Lines in Afghanistan and the Challenge of National Unity*, in THE CHALLENGE OF REBUILDING AFGHANISTAN 85 (Moonis Ahmar, ed., 2006) (“There are two very different types of groups, one tribal and the other non-tribal. The tribal group consists of mainly Pashtuns of Afghanistan. The non-tribal groups are Tajiks, Hazaras, Uzbeks, Turkomans, Pashaiis, Baluchis, Nurestanis, etc. We also have a division of Sunnis, Shias and Ismailis. As well we have Hindus, Sikhs and Jews.”)

²³¹ WILDER, *supra* note 223, at 11 (“Most candidates in these areas viewed political parties as a liability with no added value, and recognized the need to mobilize voters directly along tribal lines.”); COBURN & LARSON, *supra* note 221, at 8 (“In Paktya, strong tribal ties and an emphasis on kinship lead individuals to vote together as a family more frequently than would be expected in Western elections.”)

²³² COBURN & LARSON, *supra* note 26, at 112 (“while the names of these circles might vary across different areas (with subtribe the dominant unit among Pashtuns, and *mantega*, or locality, more common among Tajiks), the pattern remains essentially the same countrywide.”)

²³³ WILDER, *supra* note 223, at 18 (“In Pashtun areas tribe is most important. In non-Pashtun areas religious leaders are more important.”); COBURN & LARSON, *supra* note 221, at 121 (“Local political leaders tended to emphasize the need to maintain community cohesion when voting, in order to be able to extract as many resources as possible from candidates in return for a bloc of votes”); *id.*, at (“In larger, more diverse Qara Bagh, Pashtun tribes dominate certain villages, while in nontribal Tajik communities it is certain lineages that hold sway. In more isolated rural areas such as Kaldar, notions of belonging to a wider community are often less important than ties to extended family living in close proximity.”)

²³⁴ COBURN & LARSON, *supra* note 221, at 113.

failed and numerous candidates from the same community competed.²³⁵ Several factors contribute to subgroup mobilization and its failure. The first is the large number of seats that the WJ elections offer. The next is the SNTV parliamentary electoral system in Afghanistan, described in greater detail below. Espousing a high district magnitude, SNTV offers several seats for the same ethnic group, encouraging intra-ethnic and even intra-subgroup competitions. Finally, the winning threshold under SNTV can be as low as 3% of the total votes in a province, effectively liberating candidates from commitment to any large ethnic or even sub-ethnic coalitions.²³⁶

Although subgroup-voting may slightly alter electoral outcome for different ethnic groups, it does not defy ethnic-voting in principle. For instance, although competing interests between Barakzai and Alokozai tribes may cost Pashtuns some seats as a whole, the voters of both communities still vote for Pashtun candidates. Such is likely the case for all ethnic groups.

B. An Empirical Analysis of Identity Politics and Election Outcomes

The parliamentary elections of 2005 and 2010 indicate a strong association between ethnic populations and election results.²³⁷ In 2005, Pashtuns, the largest ethnic group, won the largest number of seats (47 percent), followed by Tajiks, the second largest ethnic group, winning 21 percent of the WJ seats. Hazaras and Uzbeks, the next two largest ethnic groups, shared respectively 12 percent and 8 percent of the legislative seats. The election reflected the status of Afghanistan as a country of minorities, where none of the ethnic groups controlled over

²³⁵ *Id.* at 121.

²³⁶ COBURN & LARSON, *supra* note 26, at 93.

²³⁷ ABASS HUSSEINI & NURULLAH FAIZI, KABUL CENTER FOR STRATEGIC STUDIES, NEGAHI BA TARKIB JADID MAJLES NUMAYENDAGAN AFGHANISTAN, 18 (1389) [2010].

50 percent of seats in the WJ. It is quite important because none of the groups were able to pursue their narrow ethnic agenda in the legislature.²³⁸

Table I-2. compares the estimated population of ethnic groups to the number of their seats in *Wolesi Jirga*.²³⁹

| Ethnicity | Population | Seats in 2005 | Seats in 2010 |
|------------------|-------------------|----------------------|----------------------|
| Pashtun | (40-44)% | 47% | 38% |
| Tajik | (25-27)% | 21% | 22% |
| Hazara | (9-10)% | 12% | 23% |
| Uzbek | (6-9)% | 8% | 7% |

In the WJ election of 2010, however, one can notice several changes in the seats held by different ethnic groups. Although still winning the largest number of seats, Pashtun seats dropped by almost 10 percent. Hazaras, on the other hand, not only gained over 11 percent more seats, but also replaced Tajiks as the second largest group in the WJ. Even so, Tajiks actually won more seats in 2010 than they did in 2005. Since Uzbeks and Tajiks experienced little fluctuation in their seat shares, this chapter concentrates on Hazara and Pashtun electoral politics and their WJ seats.

1. Electoral Politics in Hazara Constituencies

In 2010, Hazaras had more representatives in the WJ than ever before.²⁴⁰ As shown in Table I-2, their share of legislative seats increased significantly from the 2005 to 2010 election.²⁴¹ More importantly, in both elections, their representation in the WJ was proportionally higher than their estimated population. There are a number of possible reasons for these discrepancies: (a) potential error in the estimation of Hazara population; (b) complexities of

²³⁸ WILDER, *supra* note 223, at 8.

²³⁹ See IEC 2009, (for information about the votes of candidates). See CIA Factbook, *supra* note 37 (for information about the population of ethnic groups); WILDER, *supra* note 223, at 8.

²⁴⁰ HUSSEINI & FAIZI, *supra* note 237, at 18.

²⁴¹ PETER DIMITROFF, NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS, THE SEPTEMBER 2005 PARLIAMENTARY AND PROVINCIAL COUNCIL ELECTIONS IN AFGHANISTAN, 24 (2006); HUSSEINI AND FAIZI, *supra* note 237; WILDER, *supra* note 223, at 8.

subgroup identifications; (c) higher participation rate of Hazara voters in the election; and/or (d) intra-ethnic coordination.²⁴²

The estimations, provided by *CIA Factbook Sheet*, suggest a range of 9 to 10 percent Hazaras between 2001 and 2016. This interval of estimations falls far below the number of seats that Hazaras allegedly won in both the 2005 and 2010 elections. They won 16.4 percent seats in 2005²⁴³ and 23.3 percent seats in 2010 elections.²⁴⁴ These discrepancies cannot be due to cross-ethnic voting considering the fact that cross-ethnic voting is less likely in parliamentary elections and Hazaras, as a relatively small group, are less likely to draw votes from non-Hazara voters. Therefore, some have suggested that the Hazara population has been underestimated.²⁴⁵

Another explanation accounts for the complex ways that voters, as well as representatives, identify themselves—primarily due to their multilayered identities.²⁴⁶ Hazaras are conventionally known to be Shias.²⁴⁷ However, Hazaras are not exclusively Shias; neither are Shias exclusively Hazaras. They overlap with one another (albeit to a large extent) as well as

²⁴² WILDER, *supra* note 223, at 8 (“[In Herat] there was a strong perception from the non-Shi’a that the Shi’a were very well organized politically to contest the elections, well-resourced by Iran, and had reduced the number of candidates and organized which areas would vote for which candidates.”)

²⁴³ *Wolesi Jirga & Provincial Council Elections*, JEMB, <http://www.iec.org.af/jemb.org/> [hereinafter, JEMB].

²⁴⁴ *Parliamentary Election of 2010*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_10/eng/ [hereinafter, “IEC 2010”].

²⁴⁵ HUSSEINI & FAIZI, *supra* note 237.

²⁴⁶ Abubakar Seddique, *Afghanistan’s Ethnic Divides*, BARCELONA CENTER FOR INTERNATIONAL STUDIES, 2 (2012) (“the idea that “ethnic groups are solid cultural units, which are divided by obvious boundaries” and have engaged in conflict for centuries is not applicable to Afghanistan. For example, a sizeable number of Dari speakers consider themselves Pashtuns because of ethnic heritage. Some native-Pashto speakers consider Dari their second language....Bilingualism, intermarriages, religious and political ideologies transcend ethnic boundaries.”)

²⁴⁷ See, for example MUJIBURAHMAN RAHIMI, NAQDI BAR SAHK TAR NEZAM DAR AFGHANISTAN [A CRITIQUE OF THE STRUCTURE OF THE POLITICAL SYSTEM IN AFGHANISTAN] 93 (1387) [2008].

with other identities. Indeed, another considerable percentage of Hazaras is Sunni or Ismaelee.²⁴⁸ Because of their sectarian differences, these communities are at times identified as distinct groups or even as Tajiks.²⁴⁹

This complexity of identification has likely affected surveys and estimations: one survey may identify one or more of these groups as Hazara and another source may identify them as a distinct group or as a subgroup of another ethnic group.²⁵⁰ Combining data from these different sources is likely to cause confusion. For example, Figure I-9 shows a significant gap between Hazara population and their seats in Badghis and neighboring Faryab province in the election of 2010. The data about their population, collected from NPS and AIMS, suggests there are almost zero percent Hazara in Badghis and two percent Hazara in Faryab.²⁵¹ The data about their legislative seats is derived from a study by Kabul Center for Strategy Studies (KCSS), which reports the Hazara share of 50 percent of the seats in the Badghis and 11 percent in the Faryab.²⁵² Looking at the background of successful candidates in these provinces, one finds that they are religiously Sunnis and ethnically Hazaras.²⁵³ The likely explanation for this phenomenon is that while the NPS and AIMS studies considered this group as a non-Hazara group, the KCSS study classified them as Sunni-Hazaras. A similar explanation may account for the discrepancy

²⁴⁸ Kabul Center for Strategy Studies (KCSS) in their studies considers them as Hazaras. See HUSSIENI, *supra* note 237.

²⁴⁹ RAHIMI, *supra* note 247, at 94. Some suggest that the confusion about identities of these groups also come from the fact that these groups in order to avoid subjugation and persecution have used *Naqaba*, which is hiding their true identities in the public. Recently a trend is growing among these groups towards identifying themselves as Hazaras. This finding was based on interviews with some Ismaelies and Sunni Hazaras.

²⁵⁰ Interestingly, while most data about ethnic demographics are from older surveys and estimations (as recent as 2008), the data about elections are new, reflecting two eras of self-identification among these minorities.

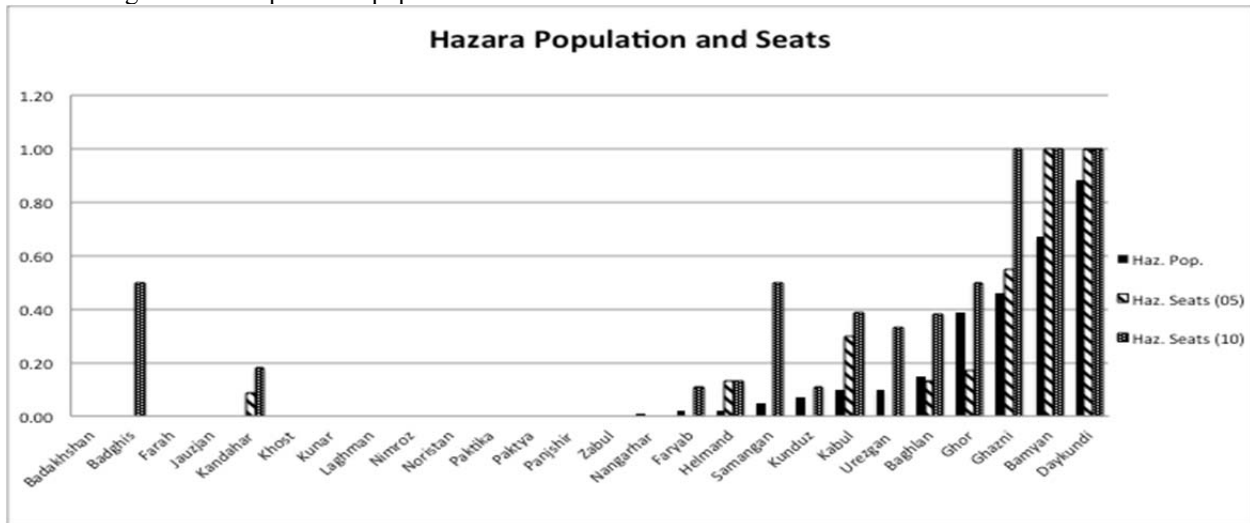
²⁵¹ AIMS, *supra* note 28; NPS, *supra* note 29.

²⁵² HUSSIENI & FAIZI, *supra* note 237.

²⁵³ *Id.*

between the Hazara population (15 percent) and their WJ seats (38 percent) in Baghlan, where Ismaelees won the seats.²⁵⁴ Ismaelees are sometimes identified as Tajiks, sometimes as Hazaras, and other times as a distinct ethnic group.

Figure I-9. compares the population of Hazaras and the number of their seats in the WJ.²⁵⁵



Additionally, KCSS, which has provided data about the ethnic composition of the WJ, has classified Quzelbash and Pashtun-Shias as Hazaras.²⁵⁶ However, AIMS and NPS seemingly excluded them from the Hazara population. This divergence in classification of these overlapping groups can easily confuse a data reader about the discrepancies between the estimated Hazara population in Kandahar and Kabul and their representatives in these provinces.

To classify these groups, it is important to understand how these communities identify themselves. It is highly likely that during the elections the candidates—as well as the voters—emphasize their distinct identity only to return to their broader identity circle after the elections. For example, in 2005, the Shias of Herat held over six meetings to build an electorally strategic

²⁵⁴ *Id*; NPS, *supra* note 29.

²⁵⁵ HUSSEINI & FAIZI, *supra* note 237; WHO IS WHO IN AFGHANISTAN, <http://www.afghan-bios.info/>; JEMB, *supra* note 243.

²⁵⁶ HUSSEINI & FAIZI, *supra* note 237.

coalition bridging the two groups of Hazara and non-Hazara Shias.²⁵⁷ Comprising 5 percent and 10 percent of the Herat population respectively, both groups had many candidates competing for the WJ seats.²⁵⁸ Despite substantial efforts at coordination by the councils, they failed because the candidates refused to submit to their decisions.²⁵⁹ Instead, the candidates further aggravated the distinctions, portraying themselves as the true representatives of their communities. Due to the number of candidates and their inability to coordinate, only one male and one female candidate were able to win seats in WJ.²⁶⁰

In light of this analysis, if we consider their self-identification following elections, most of these subgroups may be regarded as Hazaras, accounting for 23 percent of the WJ seats in 2010. Conversely, if we consider their self-identifications prior to elections, the number of Hazara MPs drops by 11 seats, reducing their share to 20% in 2010. In either case, Hazaras holding 20 percent of the WJ seats is still disproportionately higher than the estimated total Hazara population (9-10 percent). Therefore, the complexity of group identities cannot fully explain the increase in Hazara seats.

An alternative theory suggests that during the elections Hazaras have been more organized than other ethnic groups to effectively take advantage of the complexity of the SNTV system.²⁶¹ Single Non-Transferable Votes (SNTV), discussed in greater detail in Chapter Five, is a unique electoral system that requires a high level of strategic coordination among members of a group in order to win a larger share of seats.²⁶² However, for that to happen in a parliamentary

²⁵⁷ WILDER, *supra* note 223, at 19.

²⁵⁸ *Id.* at 20-21.

²⁵⁹ WILDER, *supra* note 223, at 19 (Even nonviable candidates did not drop because they said they wanted to use the opportunity to become known.)

²⁶⁰ *Id.* at 20

²⁶¹ COBURN & LARSON, *supra* note 26, at 205.

²⁶² Reynolds & Carey, *supra* note 87, at 3-4.

election, voters must have sufficient information about the candidates as well as about the voting behavior of other voters.²⁶³

Assessing voters' information in Afghanistan, it is doubtful that Hazaras were electorally more informed and strategic than other ethnic groups. A survey by The Asia Foundation indicated that the Hazarajat, which is home to the largest concentration of Hazaras, was one of the regions with lowest rate of voting information.²⁶⁴ 54 percent of Hazara voters reported that their desired candidate did not win as opposed to 40 percent of voters in Kabul, East and South of Afghanistan.²⁶⁵ When asked why their candidates lost, the majority of Hazara voters reasoned that their candidates lacked sufficient political support. In contrast, the majority of voters from other groups blamed electoral fraud or intimidation.²⁶⁶ This low rate of information indicates that Hazara voters were not as electorally strategic as conventionally perceived.

Furthermore, reviewing the number of candidates that Hazaras and Pashtuns landed in Ghazni, one can firmly cast doubt that intra-ethnic coordination was the reason behind Hazaras' winning of all seats in that province.²⁶⁷ A total of 84 candidates ran for Ghazni's 11 seats: 55 were Hazaras, 24 Pashtuns, and 5 Tajiks.²⁶⁸ NPS estimated their populations in Ghazni at about

²⁶³ *Id.*

²⁶⁴ THE ASIA FOUNDATION, VOTER BEHAVIOR SURVEY: AFGHANISTAN'S 2010 PARLIAMENTARY ELECTION, 15 (2012), <http://asiafoundation.org/resources/pdfs/VoterBehaviourSurveyBook.pdf>. ("The proportion of respondents who say they had no information about the elections is also highest in the Central/Kabul region (18%) followed by the Central/Hazarajat (10%), where over one third (35%) say they had a lot of information.")

²⁶⁵ *Id.* at 31.

²⁶⁶ *Id.*

²⁶⁷ INTERNATIONAL CRISIS GROUP, ASIA BRIEFING N° 117: AFGHANISTAN'S ELECTIONS STALEMATE, 10 (Feb. 2011), <https://d2071andvip0wj.cloudfront.net/b117-afghanistan-s-elections-stalemate.pdf> [hereinafter "ICG 117"]

²⁶⁸ *Id.*

46 percent Hazaras, 49 percent Pashtuns, and 5 percent Tajiks.²⁶⁹ Comparing these two sets of data suggests that on average Hazaras had more candidates proportional to their population than their counterparts. On average Pashtuns had one candidate for 2 percent of their population, Hazaras for 0.8 percent of their population, and Tajiks for 1 percent of their people. While Hazaras won all 11 seats of Ghazni, they had shown the least level of coordination among candidates.

Ghazni is a case of particular interest in this regard because in this province between the two elections, Pashtuns lost all their seats (5 seats) while Hazaras gained all eleven seats of the province. Since the likelihood of strategic coordination among Hazara candidates is already precluded, insecurity in Pashtun-dominated areas may provide a viable explanation as to how the Pashtuns lost all of their WJ seats to Hazaras. While insecurity in Pashtun areas discouraged Pashtun voters from going to the polls, this was not the case in Hazara-dominated regions.²⁷⁰ In fact, the lower turnout of Pashtuns benefited Hazaras, who went to the polls in large numbers.²⁷¹ Security issues will be further explained in the following section.

²⁶⁹ The estimation used by Anna Larson and Noah Coburn in their research suggests that Hazaras (approximately 50%) is the largest group and Pashtuns are the second largest group in the province. See COBURN & LARSON, *supra* note 2216, at 205.

²⁷⁰ COBURN & LARSON, *supra* note 26 at 205.

²⁷¹ NDI 2010, *supra* note 228, at 34; ASIA FOUNDATION, *supra* note 264, at 3 (“More people voted in Central/Hazarajat than in any other region, indicating that security and gender are still an issue affecting voter turnout.”)

In an effort to compensate for the discrepancy of participation between Hazaras and Pashtuns, the government reduced the number of polling stations in Hazara-dominated constituencies while increasing the stations in Pashtun populated areas. For example, in Jaghori and Malistan district, which are predominantly inhabited by Hazaras, the Electoral Commission—allegedly due to the instruction of government—reduced the number of polling stations by 100 in 2010. In comparison, Ander district, which is predominantly a Pashtun district, was assigned 45 more districts (from 26 in 2009 to 71 in 2010). Even so, insecurity eventually increased by the Election Day so much that most of polling stations in Pashtun constituencies remained closed. See NDI 2010, *supra* note 228, at 33-34.

2. Electoral Politics in Pashtun Constituencies

Table I-2 above shows a large discrepancy between the number of Pashtun seats in the WJ between 2005 and 2010—a decrease from 118 seats to 95. Two primary theories have been posited to explain these discrepancies: (a) in 2010 there was a higher rate of insecurity in Pashtun dominated constituencies;²⁷² and (b) in 2010 there was greater intra-ethnic competition.²⁷³

The 2010 parliamentary election suffered serious security challenges that resulted in the loss of 24 lives.²⁷⁴ An analysis of security incidents across 26 provinces indicates a higher rate of insecurity in Pashtun dominated constituencies than in other constituencies in 2010. Using regression analysis, Table I-3 compares the security incidents in Pashtun dominated constituencies with constituencies dominated by other ethnic groups. It covers security incidents on both the month before the election and the election day.

Table I-3. shows security incidents in different ethnic constituencies in 2010. It covers security incidents on both the month before the election and the election day

| Ethnicity | Security Incidents (Aug.-Sep.) | | Security Incidents (Election Day) | |
|--------------|--------------------------------|------------|-----------------------------------|------------|
| | Coefficiency | Std. Error | Coefficiency | Std. Error |
| Pashtun Pop. | 0.075 | 0.026 | 0.049 | 0.024 |
| Tajik Pop. | -0.004 | 0.029 | 0.000 | 0.027 |
| Hazara Pop. | 0.026 | 0.033 | 0.008 | 0.031 |
| Uzbek Pop. | 0.023 | 0.023 | 0.039 | 0.022 |

The regression analysis indicates a higher rate of security incidents before and during the election in Pashtun dominated constituencies than in any other constituencies. Generally, insecurity discourages voter participation.²⁷⁵ A number of studies have confirmed that in 2010 Pashtun voters were less likely to vote due to a high level of insecurity.²⁷⁶ For example, a report by International Crisis Group suggested, “The threat was most keenly felt in the insurgency-hit Pashtun-majority provinces including Kunar, Wardak and Uruzgan, where candidates were

²⁷² HUSSEINI & FAIZI,, *supra* note 237, at 18-19.

²⁷³ These propositions were found in a study by *Kabul Center for Strategic Studies* though interviewing with some Afghan MPs as well as other politicians. *See id.*

²⁷⁴ ICG 117, *supra* note 267, at 1.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 9.

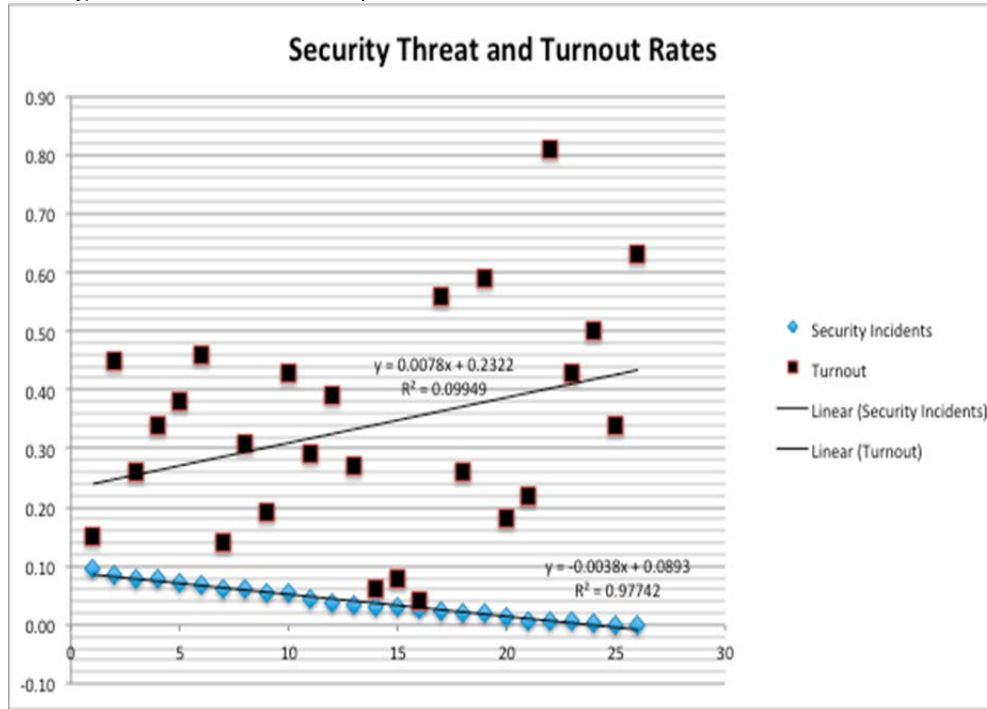
warned not to campaign outside their home districts and voters were warned against casting their ballots.”²⁷⁷ A survey by Free and Fair Election Forum of Afghanistan noted that more voters from the south and west, where the population is predominantly Pashtun, mentioned insecurity and fear of the Taliban as a major barrier to their participations in the election than did voters from other regions.²⁷⁸ Another survey by The Asia Foundation indicated that voters in the south and east feared that participation in the elections might cost their lives or the lives of their families.²⁷⁹ To empirically examine the findings of these surveys, Figure I-10 compares security incidents with turnout rates across 26 provinces. This Figure illustrates a negative relation between the two: the higher the insecurity the lower the turnouts.

²⁷⁷ *Id.*

²⁷⁸ ALAN RENWICK, FREE AND FAIR ELECTION FORUM OF AFGHANISTAN, SURVEY REPORT: AFGHAN PERCEPTIONS OF DEMOCRACY & ELECTIONS, 18 (2014), <http://www.sciencespo.fr/psia/sites/sciencespo.fr/psia/files/Afghan%20Perceptions%20on%20Democracy%20and%20Elections%20final%20report.pdf>.

²⁷⁹ THE ASIA FOUNDATION, AFGHANISTAN IN 2013: A SURVEY OF THE AFGHAN PEOPLE, 32 (2013), <http://asiafoundation.org/resources/pdfs/English2013ExecutiveSummary.pdf>; ICG 117, *supra* note 267, at 9.

Figure I-10. illustrates the link between insecurity and voter participation in Afghanistan by examining both variables across 26 provinces



Nonetheless, insecurity has not produced similar outcomes in all provinces. Here it is important to make a distinction between provinces that are predominantly Pashtun, such as Paktia, Khost, Paktika, and Nangarhar, and provinces which are demographically mixes of Pashtuns and non-Pashtuns.²⁸⁰ In predominantly Pashtun provinces, where Pashtun candidates did not have to compete with non-Pashtuns, Pashtuns were likely to win all seats no matter how critical the insecurity, and how low the turnouts were. Pashtuns, for example, won all seats in Khost, Zabul, Kunar, and Paktika, even though voter turnouts were the lowest in those provinces.²⁸¹

It is, however, in the ethnically diverse provinces where Pashtuns suffered seat losses.²⁸² These losses were primarily due to the fact that insecurity did not have similar effects on other

²⁸⁰ Refer to Figure I-1.

²⁸¹ IEC 2010, *supra* note 244.

²⁸² Shahrzad Akbar & Zubaida Akbar, *Elections and Conflict in Afghanistan*, INTERNATIONAL POLICY ANALYSIS, 6 (2011) <http://library.fes.de/pdf-files/iez/08587.pdf>.

constancies, allowing voters to participate in large numbers in those areas. This fact partially explains why Pashtuns won no seats in Ghazni province in 2010 even though they are estimated at around half of the population.²⁸³ In the 2010 elections, they lost several seats in other provinces as well, including Kabul (4 seats), Ghor (2 seats), and Badghis (2 seats).

Table I-4. compares Pashtun population with their turnout rates in different provinces and whether they gained or lost more seats in 2010²⁸⁴

| Province | Pashtun Pop. | Seats (Gained/Lost) |
|-----------|--------------|---------------------|
| Khost | 0.99 | Same |
| Zabul | 0.99 | Same |
| Kandahar | 0.98 | 1 (Lost) |
| Kunar | 0.97 | Same |
| Paktika | 0.96 | Same |
| Helmand | 0.91 | Same |
| Nangarhar | 0.91 | 1 (Lost) |
| Pakya | 0.91 | Same |
| Urezgan | 0.91 | 1 (Lost) |
| Farah | 0.71 | Same |
| Kabul | 0.60 | 4 (Lost) |
| Ghazni | 0.49 | 5 (Lost) |
| Laghman | 0.49 | 1 Gained |
| Kunduz | 0.31 | 1 Gained |
| Badghis | 0.28 | 2 (Lost) |
| Nimroz | 0.27 | 1 (Lost) |
| Baghlan | 0.20 | 1 (Lost) |
| Jauzjan | 0.17 | 1 (Lost) |
| Faryab | 0.06 | 2 Gained |
| Ghor | 0.03 | 3 (Lost) |
| Samangan | 0.00 | 1 (Lost) |

The Taliban's presence in different constituencies does not always have a similar impact. In some cases their control of the region helped Pashtun candidates win more seats.²⁸⁵ A good case in point is Faryab, where Pashtuns won more seats than their population in 2010.²⁸⁶ In 2005,

²⁸³ NPS, *supra* note 29.

²⁸⁴ AIMS, *supra* note 28; NPS, *supra* note 29; CAC, *supra* note 30; IEC 2010, *supra* note 244.

²⁸⁵ NDI 2010, *supra* note 228, at 21-22.

²⁸⁶ AIMS, *supra* note 28.

they won no seat in that province.²⁸⁷ However, in 2010, Pashtuns won two seats in Faryab even though security concerns increased there.²⁸⁸ One explanation for this outcome was that unlike the Taliban in other regions, the Faryab Taliban not only allowed voters to participate, but also threatened voters to vote for the Taliban's preferred candidates—or their lives would be in danger.²⁸⁹ Similarly, in certain districts of Ghor, Balkh, Baghlan, and Kunduz, the Taliban intimidated voters to vote for certain candidates.²⁹⁰

Like subgroup politics in Hazara constituencies, subgroup mobilization was very real in Pashtun dominated regions. In fact, in Pashtun dominated constituencies, tribal identity has been a much stronger mobilizing force than Pashtun identity.²⁹¹ Mobilizing voters based on tribal affiliations has been particularly successful in the WJ elections, affecting the outcome of elections for Pashtuns as a whole. For example, while according to some estimations Pashtuns make up approximately 40 percent of the population in Herat, they won only 24 percent (4 out of 17) of the seats in 2005.²⁹² Likely this discrepancy was the result of inter-tribal competitions.²⁹³ Each of the Achakzai, Alokozai, Barakzai and Noorzai tribes in Herat engaged in tribal coalition-making: they all held several meetings prior to the election, primarily to reduce their candidates and assign regions and voters to them.²⁹⁴ Due to their effective coordination, the Barakzais were the only tribe that succeeded in their attempts to win two seats, which were proportional to their population.²⁹⁵ Other tribes have failed because they had many candidates, none of whom were

²⁸⁷ WHO IS WHO IN AFGHANISTAN, <http://www.afghan-bios.info/>; JEMB, *supra* note 243.

²⁸⁸ HUSSIENI & FAIZI, *supra* note 237.

²⁸⁹ NDI 2010, *supra* note 228, at 20.

²⁹⁰ *Id.*

²⁹¹ WILDER, *supra* note 223, at 11.

²⁹² WHO IS WHO IN AFGHANISTAN, <http://www.afghan-bios.info/>; JEMB, *supra* note 243.

²⁹³ WILDER, *supra* note 223, at 21.

²⁹⁴ WILDER, *supra* note 223, at 21.

²⁹⁵ *Id.*

ready to withdraw from the election. Each candidate claimed to represent the tribe more than others. Their inability to coordinate led not only to inter-tribal competition but also to intra-tribal competition.

Kandahar province is another example, where tribalism dominated electoral politics.²⁹⁶ In fact, tribal ties were so important that Noorulhaq Ulomi, the leader of *Iqtedar Mili* Party, adopted a tribal campaign strategy.²⁹⁷ Most of his votes came from his tribe in the rural areas.²⁹⁸ In an attempt to win more seats, elites of different tribes of Kandahar, including the Popalzais, engaged in intra-tribal coordination. Each held several tribal councils. However, most tribal councils failed to achieve their goal of increasing their seat-share by reducing the number of candidates.²⁹⁹ The only successful tribe was the Popalzais, whose success was mainly due to President Karzai's intervention rather than their own coordination efforts. Using Karzai's influence, the Popalzais were able to effectively reduce the number of their candidates from 19 to 2.³⁰⁰ As a result, both candidates won election.³⁰¹

C. Conclusion

Afghan parliamentary elections are census-like elections, where all major ethnic groups get some representations in the *Wolesi Jirga*. However, parliamentary elections have been influenced by subgroup and personalistic politics as much as by ethnic politics. Generally, personalistic campaigns and sub-ethnic mobilization dominate electoral politics in

²⁹⁶ *Id.* at 13.

²⁹⁷ *Id.* at 11 (“Sayed Mohammad Gulabzoi in Khost and Noorulhaq Ulomi in Kandahar, who came in first and second respectively in conservative Pashtun areas. For both, tribal support was an important element in their victories, however, it is very likely that these were supplemented by some ideological votes that crossed tribal lines.”)

²⁹⁸ WILDER, *supra* note 223, at 21.

²⁹⁹ *Id.* at 22-25.

³⁰⁰ *Id.* at 23.

³⁰¹ *Id.*

constituencies, where an ethnic group can win more than one seat. Ethnic mobilization is likely stronger in constituencies where ethnic groups are in close contest with other groups to win seats.

Overall, electoral practices in both presidential and parliamentary elections are influenced considerably by ethnic politics. However, the next chapter reveals that the electoral practices are a far cry from the political ideals of Afghans. Both the empirical data as well as historical records indicate that the political ideals in Afghanistan, contrary to general perceptions, favor moderate, inclusive, and non-ethnic based politics and institutions.

Chapter Three: Centrifugal Practices and Centripetal Tendencies

Afghanistan is a multi-ethnic state with a recent past of civil war, which has resulted in trust deficiency among ethnic groups who now demand that their representatives and interests are accounted for in any government formation. Wouldn't it therefore be pragmatic to institutionalize ethnic parties, which tend to represent the will and interest of different ethnic groups?

This question may well be asked by the proponents of consociational democracy. Consociationalists prescribe an ethnic party system, where strong, elitist parties negotiate power-sharing and other ethno-political issues on behalf of their groups—mostly behind closed doors.³⁰² In a situation uncertainty, ethnic groups trust those parties that represent their interest only. Consociationalists' prescription of ethnic parties fits other institutional designs that they propose for divided societies. Institutions such as mutual veto, grand coalition, and proportional representation either require or promote ethnic-based party development.

³⁰² AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* 26 (1977); JOHN MCGARRY & BRENDAN O'LEARY, *THE POLITICS OF ETHNIC CONFLICT REGULATION* (1993).

Centripetalists, however, see ethnic parties as destabilizing forces in divided societies. They argue that divided societies need to move away from an ethnic party system if they hope to establish democratic governance beyond ethnic lines.³⁰³ To stay politically relevant, ethnic parties tend to politicize ethnicity and mobilize groups.³⁰⁴ Therefore, as long as constitutional and electoral institutions allow ethnic parties to dominate the political arena, ethnic division may be sustained and ethnic conflict is likely to rise.³⁰⁵ Therefore, centripetalists recommend that cross-ethnic coalitions and parties be formed in divided societies. Their proposed laws and institutions, such as the Alternative Voting system, presidential system, and non-segmented federalism, either require or encourage cross-ethnic coalition-building.³⁰⁶

Both consociational and centripetal theories find support in different divided societies. However, it is likely that these prescriptions are fit for different social settings: centripetal arrangements suit societies where centripetal forces overpower centrifugal force, whereas the consociational approach may be fit for societies where centrifugal forces are stronger than centripetal forces. By Arend Lijphart's own account, the consociational model may function temporarily until conflicting groups are ready to accommodate under a majoritarian system.³⁰⁷ A careful analysis of Afghanistan's case reveals that despite the prominence of ethnic politics, the political culture is dominated by centripetal tendencies.

³⁰³ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (2ND ED., 2001); BENJAMIN REILLY, *DEMOCRACY AND DIVERSITY* 17-18 (2006); Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13/5 *DEMOCRATIZATION* 818 (2006); RICHARD GUNTHER & LARRY DIAMOND, *POLITICAL PARTIES AND DEMOCRACY*, 23-24 (2001).

³⁰⁴ HOROWITZ, *supra* note 303, at 293-295.

³⁰⁵ Benjamin Reilly, *Introduction*, in *Political Parties in Conflict-Prone Societies: Regulation, Engineering and Democratic Development*, 9 (Benjamin Reilly & Per Nordlund, eds., 2008).

³⁰⁶ HOROWITZ, *supra* note 303, at 196; Benjamin Reilly, *Electoral Systems for Divided Societies*, 13 *J. OF DEMOCRACY* 156 (2002).

³⁰⁷ AREND LIJPHART, *supra* note 302.

Centripetal tendencies refer to a political culture that not only praises and idealizes moderation and ethnic accommodation, but also encourages institutional inclusiveness and ethnic depoliticization through legal and political means. Centripetal tendencies in Afghanistan have been documented by well-known historians, and sociologists, scholars who have accounted for the attitude of Afghan ethnic groups towards national solidarity. In early nineteenth century, Mountstuart Elphinstone, one of the earliest European observers of Afghanistan, wrote:

The Afghans themselves exult in the free spirit of their institutions... They all endeavor to maintain "that all Afghans are equal", which, though it is not, nor never was true, still shows their notions and their wishes.³⁰⁸

This quote from Elphinstone's writing provides the earliest account of the gap between political ideals and political reality in Afghanistan. But it also indicates the general aspiration for integration and equality among Afghans. A similar observation was given by Thomas Barfield in his book, *Afghanistan: A History of Cultural and Political Studies*:

The belief that Afghanistan was an artificial creation doomed to collapse was rooted in confusion between the effectiveness of its state institutions and cohesion of its people. In 2001, Afghanistan was a failed state but not a failed nation... Despite the collapse of central authority and the rise of ethnically based militias during the civil war, Afghans never feared that their country might disintegrate. Understanding that all Afghan factions wished to hold the country together, and not divide it along ethnic lines into ever tinier parts (à la the former Yugoslavia), was an underappreciated Afghan strength that would allow its leaders to rebuild a central government through a process of consensus.³⁰⁹

In 2014, in his article, *The Struggle for the Afghan State*, Gabriele Rasuly-Paleczek wrote:

What is striking...is the fact that, in contrast to recent developments in the Balkans or in the newly independent states of the former Soviet Union, where the creation of independent nation-states became 'the option' per se for the various

³⁰⁸ ELPHINSTONE, *supra* note 110, at 174.

³⁰⁹ BARFIELD, *supra* note 18, at 279-284.

ethno-linguistic minorities, 'opting out' of the nation-state does not seem to present an attractive goal for the minorities of Afghanistan.³¹⁰

The centripetal tendencies of Afghans have also been documented in the writings of numerous other scholars including Michael Scharf and Paul Williams,³¹¹ Abubakar Seddique,³¹² Connard Schetter,³¹³ Darren Atkinson,³¹⁴ Chris Johnson, William Maley, Alexander Thier and Ali Wardak.³¹⁵ What is important is that although ethnic conflicts continue to challenge social integration in Afghanistan, it is indeed the centripetal tendencies that control the political

³¹⁰ Gabriele Rasuly-Paleczek, *The Struggle for the Afghan State: Centralization, Nationalism and their Discontents*, in *IDENTITY POLITICS IN CENTRAL ASIA AND THE MUSLIM WORLD*, 150 (Ilgen Schedel & Van Zurcher, eds., 2014).

³¹¹ Michael Scharf & Paul Williams, *Report of the Committee of Experts on Nation Rebuilding in Afghanistan*, 36/4 *NEW ENGLAND LAW REVIEW*, 709, 711 (Dec. 2001) (“[M]ost governance in Afghanistan occurs at the local level, where ethnic and tribal political structures dominate the political bargaining process... Interestingly, while many outside commentators see this form of decentralized government as a basis for the possible partition or cantonization of Afghanistan, the Afghans themselves express little interest in either option.”)

³¹² See e.g., Seddique, *supra* note 246, at 2 (“[A]s a people, Afghans do have a sense of nationhood despite their lack of a uniform national culture. their shared history together with the country’s unique historical development clearly distinguishes the various ethnic groups living in Afghanistan from those in neighboring countries.”)

³¹³ Schetter, *supra* note 25, at 7-8 (“[D]espite the ethnicization of the conflict, the ethnicization of the Afghan people themselves failed. Although ethnicity became a political-military force to reckon with during the 23 years of ongoing war in Afghanistan, the significance of ethnicity as basis of political articulation and social organization remained very limited... The underlying reason is that Afghans refrain from picking ethnicity out as a central theme. Therefore, it is important to note that parties used the ethnic moment rather in an undercover and strategic way. The reason is that there are serious barriers for a public emphasis of ethnicity.”)

³¹⁴ Darren Atkinson, *The Left Radical of Afghanistan [Chap- e Radikal-e Afghanistan]: Finding Trotsky after Stalin and Mao?* *SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL*3 (2015) (“In fact, it can be argued that the continued focus on ethnicity as a key marker of Afghan identity is symptomatic of the longstanding (and ongoing) colonial imagining of the inhabitants of the geographical space of ‘Afghanistan’ initially implemented by the British Government under the guise of the East India Company in the early nineteenth-century.”)

³¹⁵ Johnson et al., *supra* note 27, at (“Many Afghans assert that the conflict is not ethnic. This, coupled with the fact that in many areas people live together peacefully, suggests that existing tensions can be overcome if active steps are taken to reduce hostilities. It is also notable that, although all the main groups have strong ties to neighboring states, at no time in the conflict has any group suggested breaking up the country.”)

discourse. In fact, even at times of conflict, ethnic parties and elites tend to portray themselves as national entities and figures.

During civil war (1992 through 1996), conflicting factions avoided playing the ethnic card openly.³¹⁶ No conflicting faction claimed affiliation to a specific ethnic group.³¹⁷ On the contrary, the leaders of conflicting groups claimed aspirations for national solidarity and an inclusive government in Afghanistan. For example, in June of 1992, Burhanuddin Rabbani, the second President after the communist regime and the leader of *Jamiat-Islami* [Islamic Society Party], a Tajik dominated party which fought against *Hiz-i-Islami*, *Wahdat-i-Islami*, and later *Jumbish-i-Islami*, stated:

The Government is no longer the property of a party, a particular ethnic group, or a few individuals. It belongs, instead to all the valiant, brave and heroic Afghan Nation... [Islam] repudiates any kind of privilege or discrimination based on racial, ethnic, tribal, or linguistic considerations.³¹⁸

Abdul Ali Mazari, the leader of the Hazara dominated *Hiz-i-Wahdat* [Islamic Unity Party], one of the conflicting parties stated:

As for Hizb-i-Wahdat's stance, we repeatedly declared that we do not see war as the solution... On the contrary we see understanding and approval of each other as the solution... Our problem is that one party does not tolerate another party, one ethnic group does not tolerate another ethnic group.³¹⁹

Gulbudin Hekmatyar, the leader of a Pashtun dominated party, *Hizb-i-Islami* [Islamic Party], in an interview posited that:

Our principal conditions are that ... an interim government should be formed, a government that is acceptable by all groups. And all power should be transferred

³¹⁶ Schetter, *supra* note 25, at 7.

³¹⁷ *Id.*

³¹⁸ Rasuly-Paleczek, *supra* note 310, at 157.

³¹⁹ *Baba Mazari Va Va Hekmatiyar*, YOUTUBE, <https://www.youtube.com/watch?v=fkvSOTr-O2k>.

to the interim government...then the nation should be allowed to hold election and form a government of their choice.³²⁰

In an interview in 1996, the leader of *Jumbish-i-Islami* [Islamic Movement Party], which is predominately a party of Uzbeks, Abdul Rashid Dostum suggested that “considering the interest and demand of all [conflicting] parties and the nation, the power should be transferred to a [politically] independent individual.”³²¹ In almost all open speeches and interviews, the leaders of these conflicting parties talked about the importance of solidarity and unity while denying ethnic-based politics and war.³²²

To further examine the centripetal tendencies of Afghans in the current socio-political context, I conducted a series of surveys and interviews of both common people and elites from April to October of 2016. The survey included 650 individuals from 29 of the 34 provinces. The respondents represented males and females of different ethnic groups (see Table App. IV-1 in the Appendix). Their answers were gathered on hard copy surveys and/or through phone calls. These interviews included 40 elites: leaders or spokesperson of parties (17); leaders or spokesperson of coalitions (10); members of The Independent Commission for Overseeing the Implementation of the Constitution (2); board members and advisors of Electoral Commissions (6); MP’s from the Wolesi Jirga (4); and two officials from the Ministry of Justice, which registers parties (2). The findings reveal centripetal tendencies at both the mass as well as elite levels.

A. Survey Findings

What Afghans think about an ideal government also sheds light on their attitudes towards ethnic politics—as well as the development of parties and coalitions. Over 94 percent of

³²⁰ *Hekmatyar Dar Musahiba by Dawud Junbish Dar Sal 1996 [Heykmatyar in an Interview with Dawud Junbish in 1996]* YOUTUBE, <https://www.youtube.com/watch?v=zilmA9uk2hM>.

³²¹ General Abdul Rashid Dostum, YOUTUBE, <https://www.youtube.com/watch?v=1N8m5xea9Xc>.

³²² Schetter, *supra* note 25, at 7.

respondents preferred a government that is ethnically inclusive as opposed to only 5 percent who were indifferent towards the inclusiveness of government. Of the 94 percent who favored inclusive government, 73 percent insisted that despite being inclusive, the government should be formed based on the merits and policies of individuals and political groups and not their ethnic affiliations. Only 21 percent favored a direct system of ethnic power-sharing. This finding is important because it reveals that Afghans aspire not only to inclusive governments but also to the depoliticization of ethnicity altogether—or, as some would suggest, de-ethnicization of politics.

The centripetal tendencies of Afghans can also be observed in another survey by Afghan Institute of Strategic Studies (AISS).³²³ AISS, which conducted a survey of over 800 individuals in ten different provinces, concluded that most Afghans aspired to a government that was ethnically inclusive; however, they feared that power-sharing merely based on ethnicity was likely to widen the ethnic divide and lead to hierarchical ranking of ethnic groups based on their population.³²⁴ These findings challenge the merits of the argument that because voters cast ethnic votes they desire ethnic parties. In fact, the opposite is true in the case of Afghanistan.

Based on my survey, only 13 percent of respondents had a sympathetic view about the existing ethnic proto-parties.³²⁵ In contrast, 43 percent of respondents favored the institutionalization of the emerging coalitions.³²⁶ The other 42 percent thought that democracy and stability in Afghanistan would be more likely without parties and coalitions. The primary

³²³ *Nimi Az Mardum Afghanistan Khwastar Taghir Nezam Siasi Hاستاند [Half of the Afghan Population Want A Change in Political System]* SHAFQA (2017), <http://polls.shafaqna.com/archives/2431>.

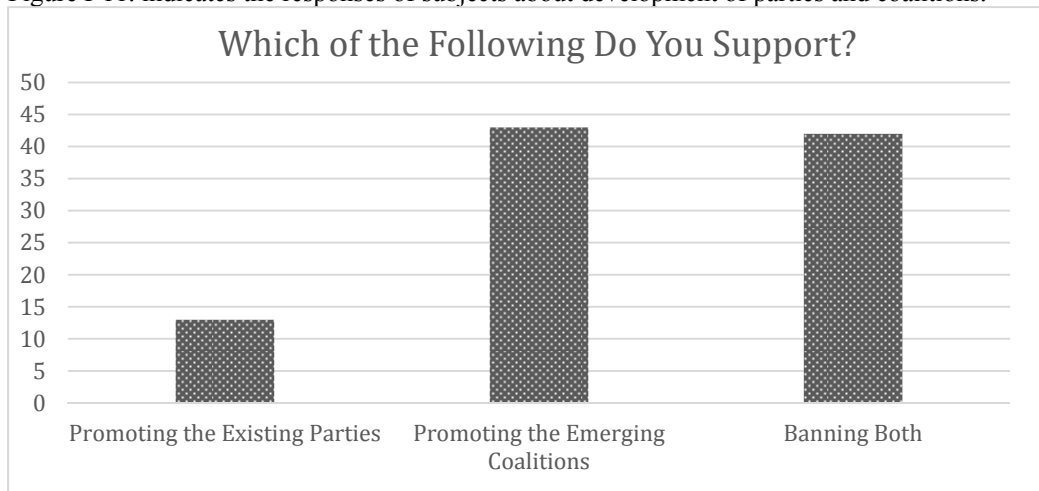
³²⁴ *Natayej Yak Nazar Sanji: Mardum Khwahan Taghir Nezam Hاستاند [The Result of A Survey: People Want A Change in Political System]* DARINEWS, 2016, <http://www.mag.darinews.com>.

³²⁵ Interestingly, 44 percent of those favorable to [favored by?] the proto-parties were party members themselves as opposed to 23 percent of party members who favored the institutionalization of cross-ethnic coalitions. (On file with author).

³²⁶ Only three respondents posited that both the existing proto-parties and promotion of coalition are important for Afghanistan's future democracy. (On file with author).

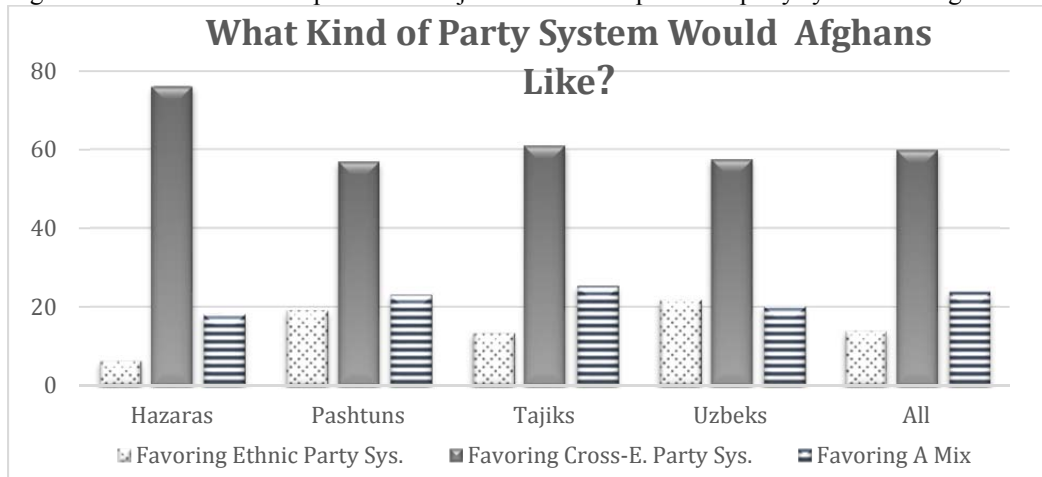
reason for those who propose the abandonment of parties and coalitions altogether has been the ethnic-based and patronage-based features of these political organizations. What is even more revealing is that 44 percent of those who favor ethnic proto-parties were party members themselves.

Figure I-11. indicates the responses of subjects about development of parties and coalitions.



In a different survey question, the option of banning parties was removed so that respondents had to choose between ethnic parties, cross-ethnic parties, or both. The result was consistent with the previous finding. Only 14 percent of respondents favored ethnic parties compared to 60 percent that preferred a cross-ethnic party system. The other 24 percent were open to a party system that included both ethnic and cross-ethnic parties. With relatively small variances, these numbers represent respondents from all ethnic groups, as illustrated in Figure I-12.

Figure I-12. indicates the responses of subjects about their preferred party system for Afghanistan.



Overall, the survey findings indicated that all groups aspired to inclusive governments with reduced or no roles for ethnic politics. By the same logic, a supermajority of respondents preferred a cross-ethnic party system, for which the emerging cross-ethnic coalitions were to be promoted—not the existing ethnic, proto-parties. The findings also suggested that the banning of ethnic parties by the Constitution was not simply a desire of the drafters but a reflection of the preferences of the people.

B. Interview Findings

My interviews with elites gave rise to very similar findings to those in the surveys. What is astonishing is that even the leaders of ethnic parties have shown centripetal tendencies. They mostly preferred inclusive but merit-based governments and cross-ethnic parties. Some suggested that the emerging coalitions have more chances of growth and development than existing parties. Notably, since not all of the elites were asked the same questions, the number of interviewees changed for each question.

Of the 29 interviewees, 28 favored cross-ethnic parties. Interestingly, the interview included 17 representatives of proto-parties, from which the leader of only one party suggested

that ethnic parties could function democratically as well.³²⁷ With the exception of one party, all parties had joined one or several cross-ethnic coalitions in whole or in factions. There was also one case of the merger of four parties into one in 2014.³²⁸ The merging parties were all leftist parties: *Hiz-i-Taraqi* [Party of Development], *Hizb-i-Mili Watan* [Homeland Party], *Hizb-i-Mutahid Mili* [National Unity Party], and *Hizb-i-Mardum Afghanistan* [Afghanistan’s People Party].³²⁹ The emerging party is named *Hizb-i-Mutahid Mili Taraqi Mardum Afghanistan* [The National Unity Party for the Progression of Afghan People].³³⁰

Additionally, 14 of 17 party representatives claimed that their parties represented different groups and gender. Not surprisingly, their claims are also reflected in their titles: 44 of 50 registered parties in 2016 had the word “Afghanistan” or “Afghan” in their title. 23 parties have the word “*Meli*” or “*Melat*,” meaning national or nation, and 7 had “*Mardum*,” (people), in their titles.³³¹ It is also important to note that most parties identify themselves in terms of their social functions rather than ideological distinctions: 10 parties identified themselves as the party of unity, 4 parties of solidarity, 4 parties of social justice, and 5 parties of peace.³³² Other titles included partnership, understanding, and inclusiveness.³³³ The most ideologically identifying

³²⁷ Based on an interview with one of the party leaders.

³²⁸ Based on an interview with Wazir Mohammad, the head of Party Registrar Office, and with Mohammad Dawud Rawish, the leader of *Hizb-i-Mutaraqi Mili Mardum Afghanistan*. (On file with author.)

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ The list of parties obtained from the website of the Ministry of Justice. See MINISTRY OF JUSTICE, *moj.gov.af/en*.

³³² *Id.*

³³³ *Id.*

term is “Islami,” which appears in 15 titles.³³⁴ Other ideological identifying terms include republic, homeland, labor, freedom, revolution, and democracy.³³⁵

However, given the ethnic affiliation of their representatives in the WJ, the inclusiveness of most of these parties is questionable. Revealing the ethnicity of party affiliates in the WJ is the best way to examine whether they truly represent the whole nation. The following Table I-5 compares the claims of 7 parties about their ethnic representation in the interview and their representatives in the Jirga.

Table I-5. Illustrates the composition of proto-parties in the WJ.³³⁶

| Ethnic Representation of Parties in the Parliament (2007-2017) | | | | | | | |
|--|--------------------------------------|-----|----------|--------|---------|--------|-------|
| Title (Persian) | Title (English) | MPs | Pashtuns | Tajiks | Hazaras | Uzbeks | Arabs |
| Hizb-i-Islami Afg. | Islamic Party of Afg. | 24 | 16 | 4 | | 1+1 | 2 |
| Hizb-i-Jamiat Islami | Islamic Peoples Party | 18 | 17 | | | | 1 |
| Hizbi-i-Wahdat Mardom Afg. | Peoples Unity Party of Afg. | 12 | | | 8 | | |
| Hizbi-i-Wahdat Islami Afg. | Islamic Unity Party of Afg. | 5 | | | 5 | | |
| Hizbi-i-Junbesh-e-Milli Afg. | National Movement Party of Afg. | 4 | | | 4 | | |
| Ehzab-i-Chappi | Ulomi, Aryan, Ranjbar, Tanai | 4 | | | | 4 | |
| Hizb-i-Paiwand-e-Milli | National Solidarity Party of Afg. | 4 | 4 | | | | |
| Hizb-i-Afghan Milat | Social Democrat Party | 3 | | | 3 | | |
| Hizb-i-Dawat Islami Afg. | Islamic Mission Party | 3 | 2 | 1 | | | |
| Hizb-i-Eqtedar Islami | Islamic Power Party | 3 | 4 | | | | |
| Hizb-i-Jamhorkhwahan | Republican Party | 3 | | | | | |
| Hizb-i-Mahaz Milli | National Islamic Front | 2 | 2 | | | | |
| Hizb-i-Afghanistan Naween | New Afghanistan Party | 1 | | | 1 | | |
| Hizb-i-Wahdat Milli Islami Afg. | Islamic National Unity Party of Afg. | 1 | | | | | 1 |
| Hizb-i-Harakat Milli Afg. | National Movement Party of Afg. | 1 | | 1 | | | |
| Hizb-i-Hambastagee Milli Afg. | National Solidarity Party | 1 | | 1 | | | |
| Hizb-i-Kangra Milli Afg. | National Congress Party of Afg. | 1 | | | 1 | | |
| Hizb-i-Niyaaz Milli | National Need Party | 1 | | | 1 | | |
| Hizb-i-Musharekat Milli | National Partnership Party | 1 | | | 1 | | |
| Hizb-i-Wahdat Islami Milat | Islamic Unity Party of the Nation | 1 | 1 | | | | |
| Hizb-i-Jama-alda | United Mission Party | 1 | 1 | | | | |

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ NATIONAL DEMOCRATIC INSTITUTE, THE 2010-2015 WOLESI JIRGA DIRECTORY (May 2012), <https://www.ndi.org/files/AFG-2010-2015-Wolesi-Jirga-Directory.pdf>; Reynolds & Carey, *supra* note 87, at 9-10; HUSSIENI & FAIZI,, *supra* note 237.

Table I-5 illustrates that only the *Hizb-i-Islami Afghanistan* [Islamic Party of Afghanistan] has several representatives from different ethnic groups. Even so, 78 percent of its representatives are ethnic Pashtuns, which constitute the main basis of support for this party. *Hizb-i-Jamiat-i-Islami* [Islamic Society Party], and *Hizb-i-Dawat Islami* [Islamic Mission Party] have only one MP from a different ethnic group. Other parties simply represented only one ethnic group in the WJ.

Even if the leaders of these proto-parties make false claims, it is likely that they do so because of the dominant centripetalist tendencies in society. Were centrifugal tendencies more prevalent, the proto-party elites might have been more forthcoming about their ethnic agenda and representation. Not surprisingly, the responses were also consistent on the topic of whether the existing proto-parties or the emerging coalitions have a higher chance of institutionalizing cross-ethnic politics. From 26 respondents, only 5 designated the former; 21 other elites—including, 11 party elites and 9 coalition elites—suggested that the emerging coalitions or possible merger of parties would more likely lead to a strong, broad-based party system in Afghanistan.

C. Where Do Afghan Political Laws Fit In?

While the data analyses in the previous two chapters indicate centrifugal practices, the political ideals in Afghanistan favor centripetal politics. Therefore, there is a gap between the political practices and political ideals in Afghanistan. As an instrument to close the gap, what is essential is that Afghan political laws reflect the political ideals to reshape the political practices.

Article 35 of the 2004 Afghan Constitution banned the formation and activities of ethnic-based parties: “formation and operation of a party based on ethnocentrism, regionalism,

language, as well as religious sectarianism shall not be permitted.”³³⁷ Similar constitutional provisions exist prohibiting ethnic-based state institutions including the executive³³⁸ and the Assembly.³³⁹ Since the draft of the Constitution was open to public consultation and commentaries for nearly two months—although not comprehensively—it can be argued that these provisions represented the will of the people and the elites. The Political Party Law also provided, “political parties shall not incite to ethnic, racial, religious or regional discrimination.”³⁴⁰ Adopting higher thresholds, the Party Law further challenged parties to become cross-ethnic. Therefore, it is safe to argue that the laws and the processes have both reflected the centripetal tendencies in Afghan society.

D. Conclusion

Ethnic voting does not necessarily reflect the desires of Afghan groups. As this chapter has shown, various surveys and interviews have indicated that ethnic proto-parties are unpopular in Afghanistan. This may explain why most members of political parties run as independents in both presidential and parliamentary elections, only to declare their party affiliations after those elections. Even so, parties’ share of seats in the *WJ* decreased from 62.4% in 2005 to 37.6% in 2010.³⁴¹ The number of independent MPs almost doubled in 2010.³⁴² No party secured a sizable

³³⁷ CONSTITUTION, art. 35.

³³⁸ CONSTITUTION, art. 6. (“During the term of office, the Presidential position shall not be used for linguistic, sectarian, tribal, and religious as well as party considerations.”); *id.* Art. 80 (“During their tour of duty, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.”)

³³⁹ CONSTITUTION, art. 81, 83.

³⁴⁰ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW] JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 4259 (2003), art. 5; QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009), art. 6.

³⁴¹ Reynolds & Carey, *supra* note 87, at 9-10.

³⁴² *Id.*

number of seats in the 2010 parliamentary elections.³⁴³ The largest parties in both 2005 and 2010 elections had less than 10 percent votes.³⁴⁴ The largest party in 2005 election, *Hizb-Naween Afghanistan* (The New Afghanistan Party), won only a single seat in 2010.³⁴⁵ Parties are even less relevant in the presidential elections. No one party alone introduced or campaigned for an individual candidate. Candidates are likely to make formal or informal coalitions to indicate their seriousness.

In light of these findings, it can be concluded that the centripetal tendencies in Afghanistan lay the foundation not for promoting the existing ethnic parties, but for institutionalizing the emerging cross-ethnic coalitions. Additionally, the centripetal tendencies seem to favor banning ethnic political parties in the short-run, and de-ethnicization of politics in the long-run. The following chapters explore to what extent the institutional designs align with these centripetal tendencies in Afghanistan, with a special focus on building cross-ethnic coalitions.

³⁴³ *Id.*

³⁴⁴ See Table II-6 in Chapter Five, *infra*.

³⁴⁵ Reynolds & Carey, *supra* note 87, at 9-18

PART II

**ELECTION LAWS, ELECTORAL SYSTEMS, AND THE
FAILURE OF CROSS-ETHNIC COALITIONS TO SURVIVE
BEYOND ELECTIONS**

Election laws constitute the legal framework that governs elections and electoral institutions.¹ As such, election laws include election-related provisions in the Afghan Constitution, Election Law, legislative decrees, and regulations passed by the cabinet as well as by the electoral commissions.

The extensive literature on election laws strongly suggests that these laws have a considerable effect on coalitions and societies. Because they determine the winners and losers, election laws generate enormous incentives to shape electoral behaviors of voters, candidates, and ultimately political coalitions.² Chiefly, election laws determine the winners and losers by setting the electoral systems and thresholds for different national and local elections. It is not uncommon in the literature to talk of reforming the laws and engineering the electoral systems to develop stable coalitions and party systems. Some scholars, such as Arend Lijphart,³ Donald Horowitz,⁴ Benjamin Reilly,⁵ and Pippa Norris⁶ have gone even further and prescribed different electoral systems to encourage ethnic accommodation in divided societies.

The two electoral systems adopted in the election laws of Afghanistan are the runoff system for the presidential elections and the Single Non-Transferable Vote (SNTV) system for the parliamentary elections.⁷ Comprising two Chapters, Part II provides an in-depth analysis of

¹ PIPPA NORRIS, *ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR*, 7 (2004).

² *Id.* at 6.

³ AREND LIJPHART, *PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT* (1992).

⁴ DONALD L. HOROWITZ, *A DEMOCRATIC SOUTH AFRICA: CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY*, 166, 188 (1991).

⁵ Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13/5 *DEMOCRATIZATION* 11-22 (Sep. 2006).

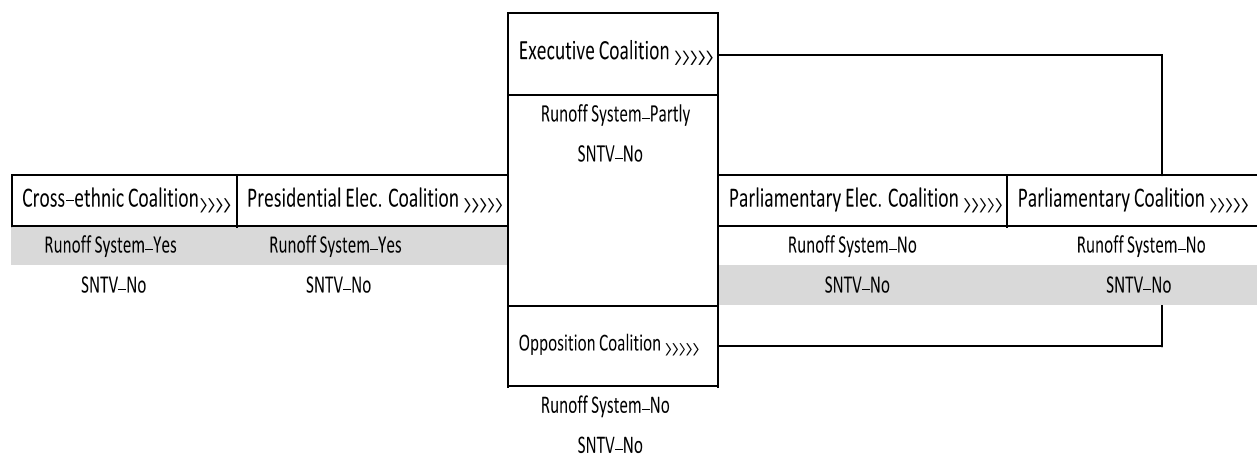
⁶ NORRIS, *supra* note 1.

⁷ Afghan election laws have recognized five national and local elections, for which two electoral systems are assigned: the runoff system for presidential elections and the SNTV system for the WJ, provincial council, district council, and municipal council elections. See QANOON

the role of these electoral systems in coalition-building and ethnic accommodation in Afghanistan: Chapter Four is focused on the runoff system and Chapter Five on the SNTV system. These chapters reveal that both electoral systems have been conducive to inclusive government: the runoff system has encouraged inclusive executives and the SNTV has facilitated inclusive assemblies. However, these electoral systems have parted ways in their influence on coalition-building in Afghanistan. While the runoff system has been conducive to the formation of cross-ethnic coalitions during elections, SNTV has discouraged any form of coalition-making in the parliamentary elections. As a result of this disjuncture between the two electoral systems, the cross-ethnic coalitions that formed in the presidential elections could not continue to compete in the parliamentary elections and neither have new parliamentary coalitions emerged under the SNTV system. Figure II-1 below summarizes the impact of the runoff and SNTV systems on cross-ethnic coalitions in the single cycle of institutionalization.

Figure II-1. illustrates the contribution of the runoff system and the SNTV system in the institutionalization of cross-ethnic coalitions.

Role of Electoral Systems in Survival of Coalitions in A Single Cycle of Institutionalization



INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1226 (2016), art. 45, 50, 58, 61, 89, 92, 94.

Chapter Four: Runoff System and Cross-Ethnic Coalitions in Presidential Elections

This chapter provides a systematic analysis of the runoff clause of Article 61 of the 2004 Afghan Constitution and its impact on the formation and institutionalization of coalitions.⁸ While this chapter agrees with most Afghan scholars and politicians that view the runoff clause as instrumental to developing trans-ethnic coalitions and governments, it posits that the runoff system does not induce sustainable cross-ethnic coalitions.

The dominant literature on the runoff system is premised on an irony: most electoral studies examine the runoff system in the context of parliamentary elections while this system is used in presidential elections over four times more than it is used for parliamentary elections around the world.⁹ The runoff system is used for the parliamentary elections by only twenty countries (7.6%), primarily the French Republic and its dependencies;¹⁰ however, this system is used for presidential elections in over eighty-eight countries (34% of all countries).¹¹ It is apparent that the runoff system functions differently in presidential elections, where there is only one office contested, than in parliamentary elections, where many seats are open for contestation. Even so, very few scholars have studied the runoff system as a presidential electoral system.

⁸ See DAVID M. FARRELL, *ELECTORAL SYSTEMS: A COMPARATIVE INTRODUCTION* 46-47 (2nd ed. 2011) (A runoff clause requires two rounds of elections. Under this system of election, all candidates compete in the first round, some of them wanting to win outright. However, if no candidate wins the required majority (mostly, 50+1), a second-round election will be held, in which only front-runners compete.)

⁹ *Id.* at 45.

¹⁰ *Id.* at 46; *Electoral System (Chamber I)*, THE ELECTORAL KNOWLEDGE NETWORK, <http://aceproject.org/epic-en/CDTable?question=ES005>.

¹¹ If all heads of states are included, the number of countries using TRS increases to 90 (38.2%). See *Head of States*, THE ELECTORAL KNOWLEDGE NETWORK, http://aceproject.org/epic-en/CDTable?question=ES001&set_language=en.

These scholars include Carey Cox,¹² Maurice Duverger,¹³ Andrew Reynolds,¹⁴ Matthew Shugart and John Carey,¹⁵ and Andres Blais.¹⁶

The scant scholarship on the presidential runoff system diverges on how it affects coalition-building. On the one hand, the runoff system is associated with the formation of broad-based coalitions.¹⁷ On the other hand, is also linked with party fragmentation and multifactionalism.¹⁸ For instance, Duverger observed that “in all countries where the second ballot has been working there are more or less clear traces of electoral alliances.”¹⁹ He also, however, associated the runoff system with sincere voting behavior in the first round, which tended to fragment coalitions.²⁰

¹² GARY W. COX, MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD’S ELECTORAL SYSTEMS, 123-179 (1997).

¹³ Maurice Duverger, *Which is the Best Electoral System*, CHOOSING AN ELECTORAL SYSTEM: ISSUES AND ALTERNATIVES, 38 (Arend Lijphart & Bernard Grofman, eds., 1984).

¹⁴ ANDREW REYNOLDS, BENJAMIN REILLY & ANDREW ELLIS, ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK, 130-133 (2008).

¹⁵ MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS 215-218, 223-224 (1992).

¹⁶ Andre’ Blais *et al.*, *One-round vs. Two-round Elections: An Experimental Study*, 5 FRENCH POL. 278, 284 (2007).

¹⁷ *See e.g.*, MAURICE DUVERGER, POLITICAL PARTIES 328 (1954); André Blais and Indridi H. Indridason, *Making Candidates Count: The Logic of Electoral Alliances in Two-Round Legislative Elections*, 69 J. OF POL., 193, 193-94 (2007); Lise Rakner & Nicolas Walle, *Opposition Weakness in Africa: Democratization by Elections?* 20 J. OF DEMOCRACY 108, 116 (2009).

¹⁸ *See e.g.*, V.O. KEY, SOUTHERN POLITICS, 420 (1949); Sarah Birch, *Two-Round Electoral Systems and Democracy*, 36/3 COMP. POL. STUD. 319, 324 (2003); SCOTT MAINWARING & MATTHEW SOBERG SHUGART, PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA, 467 (1997); SHUGART & CAREY, *supra* note 15, at 213-214; B.C. Canon, *Factionalism in the South: A test of theory and a Revisitation of V.O. Key*, 22 AM. J. POL. SCI. 833, 845 (1978); Byron Criddle, *Electoral Systems in France*, 45 PARLIAMENTARY AFFAIRS 108, 109 (1992); Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, 18 PARTY POLITICS 235, 255-256 (2012); Stephen G. Wright & William H. Riker, *Plurality and runoff systems and numbers of candidates*, 60 PUBLIC CHOICE 155, 163 (1989).

¹⁹ DUVERGER, *supra* note 17, at 328.

²⁰ *Id.* at 240.

Popular formulas, such as Cox's M+1²¹ and Bouton's three-candidate runoff equilibria,²² have failed to predict the upper-bounds of presidential candidates and coalitions as several studies have indicated that the average number of candidates under a runoff is five across the nations with consolidated democracies.²³ In Afghanistan, the number of candidates is much larger. Acknowledging the discrepancies between the literature and the reality in their 2015 article, *Majority Runoff Elections: Strategic Voting and Duverger's Hypothesis*, Laurent Bouton and Gabriele Gratton, posited, "part of the problem is that beliefs about the majority runoff system either have not been formally proven or have not been proven robust."²⁴ Sartori in his book, *Comparative Constitutional Engineering*, suggested that the effects of the runoff rule on the development of parties and coalitions cannot be predicted with any precision.²⁵ Damien Bol, Andre Blais, and their colleagues called this complication a "mystery" of the runoff system.

Examining the runoff rule in the last three presidential elections of Afghanistan, this chapter provides two observations about its effect on coalition-building. Section I of this chapter explains how coalitions form under the runoff rule in Afghanistan. Section II discusses how the runoff system hinders the institutionalization of coalitions and depoliticization of ethnic issues. Finally, this chapter concludes that while the runoff system is conducive to the formation of cross-ethnic coalitions, it fails to support the institutionalization of those same coalitions.

²¹ COX, *supra* note 12, at 123.

²² Laurent Bouton, *A Theory of Strategic Voting in Runoff Elections*. 103 AMERICAN ECONOMIC REVIEW, 1248–1288 (2013).

²³ Wright & Riker, *supra* note 18, at 162.

²⁴ Laurent Bouton & Gabriele Gratton, *Majority Runoff Elections: Strategic Voting and Duverger's Hypothesis*, 10 THEORETICAL ECONOMICS 283, 284-5 (2015).

²⁵ GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING*, 67 (1997).

A. Constructive Features of the Runoff System: The Formation of Cross-Ethnic Coalitions

Article 61 of the Afghan Constitution requires a presidential candidate to win an absolute majority of votes in an election.²⁶ It includes a runoff clause, which provides that “[i]f in the first round none of the candidates gets more than fifty percent of the votes, elections for the second round shall be held...and, in this round, only two candidates who have received the highest number of votes in the first round shall participate.”²⁷ In various electoral studies,²⁸ this electoral framework is known by different names: the *run-off*,²⁹ *majority run-off*,³⁰ *delayed runoff*,³¹

²⁶ THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN [QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN] Jan. 26, 2004, <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf> (hereinafter CONSTITUTION), art. 61.

²⁷ *Id.*

²⁸ A runoff rule is commonly classified as a majoritarian rule. *See* DOUGLAS W. RAE, THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS 107 (1967); FARRELL, *supra* note 8, at 45; Giovanni Sartori, *The Party Effects of Electoral Systems*, in POLITICAL PARTIES AND DEMOCRACY 95 (Larry Diamond & Richard Gunther, eds., 2001).

However, not all types of runoff are majoritarian. In fact, constitutional designers have adopted three different variations of the runoff rules in different countries: (a) majority-runoff, which is the most popular runoff system, requires a threshold of 50% in the first round; (b) qualified-runoff, which is adopted for presidential elections in some Southern American countries including Nicaragua and Costa Rica, requires a threshold below 50% for the first round; and, (c) plurality runoff, which is popularly used for parliamentary elections, requires a very low threshold for winning the first round. For details about qualified runoff *see* Chapter Ten, *infra*.

²⁹ Massimo Bordignon, Tommaso Nannicini & Guido Tabellini, *Moderating Political Extremism: Single Round vs. Runoff Elections under Plurality Rule*, 1 (Inst. for the Study of Labor, Discussion Paper No. 7561, 2013) (available online); Karine Van Der Straeten et al., *Sorting Out Mechanical and Psychological Effects in Candidate Elections: An Appraisal with Experimental Data* (Behavioral and Experimental Economics, Working Paper, S. 12-296, 2013) (available online).

³⁰ Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems*, INT’L POL. SCI. REV. 4 (1997); FARRELL, *supra* note 8, at 46-47; John M. Carey, *Constitutional Choices and the Performances of Presidential Regimes*, 11/1 J. OF SOC. SCI. & PHIL. 93, at 95 (1999).

³¹ RACHEL LEWIS, ET AL., MAJORITY RULE IN INTERNATIONAL PRESIDENTIAL ELECTIONS: THE DOMINANT ROLE OF RUNOFFS AROUND THE WORLD, 2 (2006).

contingent runoff,³² *two ballots*,³³ *second ballot*,³⁴ *double-ballot*,³⁵ *double-ballot runoff*,³⁶ or *two-round system*.³⁷

Today the runoff system is a common international electoral design for presidential elections.³⁸ Most countries with elected presidents require a second round of election between the top two candidates.³⁹ Of the seventy-two countries with presidential constitutions, forty countries use the runoff system for electing their presidents.⁴⁰ The main purpose for adopting this electoral system has been to consolidate support behind the most viable candidate and encourage development of broad-based coalitions.⁴¹

It is likely that the drafters of the 2004 Afghan Constitution selected this electoral system because they wanted presidential candidates to appeal to voters across ethnic groups. Assuming election results reflect ethnic headcounts,⁴² the fifty percent threshold encourages cross-ethnic alliances in Afghanistan because none of the ethnic groups alone can deliver fifty percent of the

³² *Id.*

³³ FARRELL, *supra* note 8, at 45.

³⁴ ENID LAKEMAN & JAMES D. LAMBERT, VOTING IN DEMOCRACIES: A STUDY OF MAJORITY AND PROPORTIONAL ELECTORAL SYSTEMS 53 (1959); Pippa Norris, *supra* note 30, at 3.

³⁵ Giovanni Sartori, *supra* note 28, at 95; Thomas Fujiwara, *A Regression Discontinuity Test of Strategic Voting and Duverger's Law*, 6 QUARTERLY J. POL. SCI. 197, 203 (2011).

³⁶ GIOVANNI SARTORI, PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS 139 (1976).

³⁷ John C. Courtney, *Plurality-Majority Electoral Systems: A Review*, 13 (Advisory Comm. of Registered Political Parties, Presentation Paper, 1999), http://www.elections.ca/res/rec/fra/sys/courtney_e.pdf.

³⁸ FARRELL, *supra* note 8, at 45; Bordignon et al., *supra* note 29, at 1; Bouton & Gratton, *supra* note 24, at 284.

³⁹ Juan J. Linz, *The Perils of Presidentialism*, 1 J. DEMOCRACY 51, 57 (1990).

⁴⁰ See *Comparative Data, Electoral Systems: Presidents*, THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/aceen/topics/es/esd/esd01/esd01e/default>.

This system has been preferred for presidential elections because the assumption is that the first person in the country should be chosen by at least majority of the citizens. Some scholars, however, challenge this assumption suggesting that not all citizens turn out to vote in the elections and thus technically this system does not represent majority of citizens. See FARRELL, *supra* note 8, at 48-49.

⁴¹ Norris, *supra* note 30, at 4.

⁴² DONALD L. HOROWITZ, ETHNIC GROUPS IN CONFLICT, 196 (2nd ed., 2001).

votes.⁴³ Based on the most cited estimation, Pashtuns, the largest ethnic group, represent between forty and forty-four percent of the population.⁴⁴ The next three largest groups—Tajiks, Hazaras, and Uzbeks—are estimated to form between six to thirty percent of Afghan population each.⁴⁵ Assuming these disputed estimations are accurate, this ethnic distribution is optimal for ethnic accommodations and continuity of democracy; and, in terms of building cross-ethnic coalitions, it corresponds well with the fifty percent threshold.⁴⁶ As such, the runoff system renders what Donald Horowitz and Benjamin Reilly expect from an electoral system in a divided society: making candidates reciprocally dependent on the votes of ethnic groups other than their own.⁴⁷

This system became appealing to constitutional designers across the world when it transformed the fragmented party system of France into two political blocs.⁴⁸ While explaining the runoff system in France, Robert Elgie posited, “this system punishes stand-alone parties [and] or groups.”⁴⁹ Hence, it is no wonder that in Afghanistan, instead of relying on “proto-parties,” presidential candidates tend to form broader formal or informal coalitions. The fact that most cross-ethnic coalitions are developed in preparation for presidential election and not

⁴³ *See id.*

⁴⁴ *World Factbook: Afghanistan*, CENTRAL INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_af (last visited Jan. 8, 2016). This estimation has been used by UN agencies, NATO forces and many national and international organizations including some working on elections in Afghanistan [hereafter CIA Factbook].

⁴⁵ *See* Table I-1 in Part I.

⁴⁶ For the optimality of ethnic distributions for consolidation of democracy in different societies *refer to* AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION*, 55-61 (1977); *see also* BENJAMIN REILLY, *DEMOCRACY AND DIVERSITY* 64 (2006).

⁴⁷ *See* HOROWITZ, *supra* note 42, at 647-49; BENJAMIN REILLY, *DEMOCRACY IN DIVIDED SOCIETIES: ELECTORAL ENGINEERING FOR CONFLICT MANAGEMENT* 10 (2001).

⁴⁸ SHUGART & CAREY, *supra* note 15, at 213.

⁴⁹ Robert Elgie, *France: Stacking the Deck*, in *THE POLITICS OF ELECTORAL SYSTEMS* 126 (Michael Gallagher & Paul Mitchell, eds., 2009).

parliamentary election indicates the influence of the runoff system in Afghanistan. According to Table II-1, sixteen coalitions were formed before the presidential elections, and only four coalitions before parliamentary elections.⁵⁰

Table II-1. shows the number of coalitions that have been formed prior to elections or other important political events such as the Emergency *Loya Jirga* (Grand Council), which elected a temporary president, and the Constitutional *Loya Jirga*.⁵¹

⁵⁰ Table II-1 includes only those coalitions that have either officially announced their existence and objectives or have been popular information coalitions and have been formed for winning the elections. Otherwise, presumably all candidates form their own small and large (mostly informal) coalitions.

⁵¹ *Who is Who*, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghan_bios&id=3438&task=view&total=3261&start=664&Itemid=2 (last visited Nov. 28, 2015); Thomas Ruttig, *On Your Marks! Alliances and Actors Before The 2014 Presidential Election*, AFGHANISTAN ANALYSTS NETWORK 15 (Sep. 17, 2013), <https://www.afghanistan-analysts.org/on-your-marks-alliances-and-actors-before-the-2014-presidential-election/>; Frud Bezhani, *Ahead of Presidential Vote, Afghan P A Short Outline political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE (Jul. 28, 2015), <http://www.rferl.org/content/afghan-politics-feature/25101500.html>; NATIONAL DEMOCRATIC INSTITUTE, POLITICAL PARTIES IN AFGHANISTAN: A REVIEW OF THE STATE OF POLITICAL PARTIES AFTER 2009 AND 2010 ELECTIONS, 5 (Jun. 2011), <https://www.ndi.org/files/Afghanistan-political-parties-july-2011.pdf>; INT'L CRISIS GROUP, POLICY BRIEFING 141: AFGHANISTAN'S PARTIES IN TRANSITION 5 (June, 2013), <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>; REVIEW TRIBUNAL, *Background Paper: Afghanistan: Political Parties and Insurgent Groups 2001-2013*, 5 (2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf [hereinafter ICG 141]; Jackson Keith, *Background: The Formation Of Electoral Alliances In Afghan Politics In 2014*, INST. FOR THE STUDY OF WAR, 5 (2013); Thomas Ruttig, *Ambiguity Reiterated: The 20-Parties' Democracy Charter*, AFGHANISTAN ANALYST NETWORK (Sep. 26, 2012), <https://www.afghanistan-analysts.org/ambiguity-reiterated-the-20-parties-democracy-charter/>.

| Date Est. | Coalitions |
|--|---|
| Sep. 2001 | United Islamic Front |
| Emergency Loya Jirga: Presidential Election (Jun. 2002) | |
| Summer, 2002 | Kabul Accord |
| Mar. 2003 | National Front for Democracy in Afghanistan (NFDA) |
| Constitutional Loya Jirga (Dec. 2003) | |
| Oct 2003 | National Expediency Council (Shura-ye Maslahat-e Milli) |
| Dec. 2003 | National Movement of Afghanistan |
| Jan. 2004 | 11 th Jadi Coalition |
| Apr. 2004 | National Gathering for Security and Reform |
| Oct. 2004 | Advisory Commission of National and Democratic Parties (AC-NDP) |
| 2001 | Karzai's Informal Coalition |
| Presidential Election (Oct. 2004) | |
| Apr. 2005 | National Understanding Front of Afghanistan (NUF) |
| 2005 | Jabha-i-Democratic Milli Afghanistan (JDM) |
| Parliamentary Election (Sep. 2005) | |
| 2005 | National Democratic Front |
| Apr. 2007 | National United Front of Afghanistan |
| 2004 | Karzai's Informal Coalition |
| Presidential Election (Aug. 2009) | |
| | |
| Parliamentary Election (Sep. 2010) | |
| 2011 | National Coalition of Afghanistan (NCA) |
| 2011 | National Front of Afghanistan (NFA) |
| Sep. 2012 | The Cooperation Council of Political Parties and Coalitions of Afg. |
| Sep. 2013 | Association of National Amity/Understanding of Afghanistan (ANAA) |
| Sep. 2013 | Afghanistan's Eastern People's Alliance (Eastern Unity Alliance) |
| Aug. 2013 | Electoral Alliances of Afghanistan (EUA) |
| 2004 | Informal Coalition Supporting Ghani |
| Presidential Election (Apr. 2014) | |
| Dec. 2015 | The Council for Protection and Stability of Afghanistan (APSC) |
| Jan 2016 | New National Front of Afghanistan (NNF) |
| Parliamentary Election (Possibly 2017) | |

Notably, the runoff system has *centripetal effects*⁵² on both voters and elites.⁵³ On the voter level, since ultimately the voters' freedom of choice will be limited to two front-running candidates in the second round, many constituencies do not have their own candidates to vote for.⁵⁴ In effect, the voters in the second round have another opportunity to make a more politically informed choice, considering the policies and merits of the candidates.⁵⁵

On the elites level, two-round elections create the potential for diverse interests to coalesce behind qualifying candidates in the second round.⁵⁶ Eliminated candidates and parties have an opportunity to rally behind one front-runner or the other.⁵⁷ Since moderate candidates are likely to have more coalitional appeal than their extremist counterparts, they are more likely to win in the second round. Although extremist candidates have been able to advance to the second round in several countries, nowhere has the runoff rule led to the winning of extremist candidates.⁵⁸ Similarly, several experimental elections by Andres Blais and coauthors concluded

⁵² Centripetal effects are the political effects that indicate political moderation and cross-ethnic appealing rather than political or social polarization. See REILLY, *supra* note 47, at 5-7.

⁵³ Elgie, *supra* note 49, at 128; FARRELL, *supra* note 8, at 56, 60; Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?* in THE FAILURE OF PRESIDENTIAL DEMOCRACY 21 (Juan J. Linz & Arturo Valenzuela eds., 1992) (under a runoff system "those [candidates] tending more toward the extremes are aware of the limits of their strength.")

⁵⁴ Sartori, *supra* note 36, at 63; Sartori, *supra* note 28, at 99.

⁵⁵ Sartori, *supra* note 28, at 98 (Highlighting voters' behavior, Giovanni Sartori described the runoff system as a *two-shots system*. With the first shot, a voter shoots pretty much in the dark; on the second shot, however, the voter shoots in full daylight.)

⁵⁶ See REYNOLDS ET AL., *supra* note 14, at 53; Courtney, *supra* note 37, at 13.

⁵⁷ See Courtney, *supra* note 37.

⁵⁸ While extremist candidates have not been able to win elections under a runoff system, this system does not eliminate the possibility that extremist candidates will make it onto the second ballot. The extremist candidates advance to the second round either because there are more moderate candidates, who split centrist votes, or because moderates are squeezed by the left and right candidates, and therefore excluded from the second round. The Fair Vote Report describes how in Peru (2006) and in France (2002) the multiplicity of candidates led to radical candidates getting to the second round. For example, in the first round of 2006 election in Peru, the nationalist Ollanta Humala (30.7%) was far ahead of Alan Garcia (24.3%), a moderate candidate, since the moderate votes were split between Alan Garcia and Lordes Flores as well as others.

that extremist candidates have a zero percent chance of winning under a majority run-off system.⁵⁹ Therefore, radical or anti-system candidates are less likely to win an election under a runoff system than under a plurality system.⁶⁰ For this very reason, the runoff system is known for reducing political extremism and fragmentation.⁶¹

To date, no extremist candidate has made it to the second round in Afghan presidential elections. Hamid Karzai, the winner of the 2004⁶² and 2009 elections,⁶³ Abdullah Abdullah, the runner-up in 2009⁶⁴ and a front-runner in the 2014 election,⁶⁵ and Ashraf Ghani, the current president,⁶⁶ have all demonstrated moderate behavior and strong capabilities for building cross-ethnic alliances. In addition to choosing his vice presidents from two different ethnic groups, Karzai made alliances with a large number of elites from different ethnic groups during the

Also, in the 2002 presidential election of France, Le PEN, an anti-immigration candidate, was able to finish second because the votes of moderates were split between six candidates. Similarly, in the 1996 Russian Presidential election, a communist candidate, Gennadii Zyuganov, finished second to Boris Yeltsin by just a three percent margin (thirty-two percent to thirty-five percent).

Nonetheless, in the second round, the votes mostly move away from the extremist to the moderate candidates and coalitions. In all of the above-mentioned elections, the moderate candidates were able to harbor the support from the backers of eliminated candidates and eventually win the runoff.

⁵⁹ Blais et al., *supra* note 16, at 284.

⁶⁰ See Birch, *supra* note 18, at 325; Fabrice Lehoucq, *Costa Rica: Modifying Majoritarianism with 40 per cent Threshold*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 133 (Josep M. Colomer ed., 2004).

⁶¹ Bordignon et al., *supra* note 29, at 2; Courtney, *supra* note 37, at 14.

⁶² *Afghanistan Presidential Election Results- 2004*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm [hereinafter, IEC 2004]

⁶³ *Afghanistan 2009 Elections*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_2009/resultsprovince.html [hereinafter, IEC 2009].

⁶⁴ See *id.*

⁶⁵ Independent Election Commission of Afghanistan, <http://www.iec.org.af/> [hereinafter, IEC 2014].

⁶⁶ *Id.*

elections.⁶⁷ Abdullah's tickets also represented three ethnic groups in both the 2009 and 2014 presidential elections.⁶⁸ In addition to his tri-ethnic presidential tickets, he established formal coalitions, comprised of elites and parties from diverse ethnic groups.⁶⁹ Similarly, Ghani's presidential ticket represented an alliance of three groups: a Pashtun, an Uzbek, and a Hazara.⁷⁰ To include a Tajik representative at the highest level of his government, Ghani appointed Ahmad Zia Masoud as his Special Envoy for Good Governance with the same level of authority and benefits as his vice presidents.⁷¹

B. Obstructive Features of the Runoff System: Why Electoral Coalitions Fail to Survive

While demonstrating the potential to encourage cross-ethnic alliances, the runoff system continues to deter the institutionalization of these coalitions.⁷² Many coalitions either dissolve or reformulate during elections; others split immediately after elections.⁷³ Most coalitions are built on the basis of patronage and personal politics while lacking titles, structures, and ideologies.⁷⁴ Notably, their number is on the rise, indicating a trend resembling party fragmentation in Afghanistan.

⁶⁷ For details refer to Chapter One.

⁶⁸ See Table III-5 in Chapter Seven.

⁶⁹ For details refer to Chapter One.

⁷⁰ See Table III-5 in Chapter Seven.

⁷¹ Dr. Ghani even promised him to amend the Constitution and appoint him as his third vice president. See Ahmad Qureshi, *Ghani Promises to Make Massoud 3rd VP*, AFGHAN PAZHWAK NEWS (May 26, 2014) <http://www.elections.pajhwok.com/en/2014/05/26/ghani-promises-make-massoud-3rd-vp>.

⁷² The runoff rule has also been associated with (i) being conducive to preference and information revelation and (ii) to ensuring a large mandate to the winner, thereby being more democratic. See Bouton and Gratton, *supra* note 24, at 284; see Blais et al., *supra* note 17, at 193-97; Courtney, *supra* note 37, at 13.

⁷³ A good example of coalitions ceasing to exist after elections is Karzai's team. After almost 14 years in office, no coalition is left from Karzai's team.

⁷⁴ See discussion *supra* Chapter One.

Table II-2 shows how many coalitions survived, partly survived, reformulated or ceased to exist before, during, and after elections. The data was collected from a number of sources cited in the footnote.⁷⁵ This table includes officially established coalitions and a few popular, informal coalitions. Reformulation happens when coalitions renew their members, titles and objectives. ‘Partly Survived’ coalitions occur when a number of elites or party members separate.

| Coalition Types, Sizes, and Sustainability | | | | | |
|--|---|-------------------------|----------------------|---------------------------|-----------------|
| Timeline | Coalitions | Sustaining by Elections | Sustaining by Runoff | Sustaining after Election | Sustaining Now |
| Oct. 2003 | National Expediency Council | Failed | N/A | N/A | N/A |
| Dec. 2003 | National Movement of Afghanistan | Failed | N/A | N/A | N/A |
| Jan. 2004 | 11 th Jadi Coalition | Failed | N/A | N/A | N/A |
| Oct. 2004 | Advisory Com. of Nat'l & Dem. Parties | Failed | N/A | N/A | N/A |
| 2004 | Karzai's Informal Coalition | Succeeded | N/A | Succeeded | Failed |
| Presidential Election (Oct. 2004) | | | | | |
| 2005 | National Democratic Front | Part. Survived | Failed | Failed | N/A |
| Apr. 2007 | National United Front of Afghanistan | Succeeded | Reformulated | Reformulated | N/A |
| 2004 | Karzai's Informal Coalition | Succeeded | Succeeded | Succeeded | |
| Presidential Election (Aug. 2009) | | | | | |
| 2011 | National Coalition of Afghanistan (NCA) | Reformulated | N/A | N/A | N/A |
| 2011 | National Front of Afg. (NFA) | Failed | N/A | N/A | N/A |
| Sep. 2012 | Coop. Council of Parties & Coalitions | Failed | N/A | N/A | N/A |
| Sep. 2013 | Assoc. of Nat'l Understanding of Afg. | Reformulated | Failed | N/A | N/A |
| Sep. 2013 | Afghanistan's Eastern People's Alliance | Succeeded | Failed | N/A | N/A |
| Aug. 2013 | Electoral Alliances of Afghanistan | Succeeded | Reformulated | Succeeded | Succeeded |
| 2004 | Informal Coalition Supporting Ghani | Succeeded | Reformulated | Succeeded | Partly Survived |
| Presidential Election (Apr. 2014) | | | | | |

The runoff system has a very complicated relationship with coalition-building, and despite theoretical advances, the conventional literature does not adequately account for how this system encourages coalition-making and yet coalitions remain unstable and crumbling under this system. In his book, *Comparative Constitutional Engineering*, Sartori posits that the effects of the runoff rule on the development of parties and coalitions cannot be predicted with any precision.⁷⁶ Similarly, Damien Bol, Andre Blais, and their colleagues called this complication a “mystery” of the runoff system. After conducting some experimental elections under the runoff

⁷⁵ The data is collected from a number of sources. *See supra* note 51.

⁷⁶ SARTORI, *supra* note 25, at 67.

rule, they emphasized that while this rule presumably should reduce the number of candidates (parties and coalitions), in reality it does not.⁷⁷

One explanation for this puzzle focuses on the first round of elections, analyzing *voting behaviors*⁷⁸ in this round.⁷⁹ For instance, Maurice Duverger,⁸⁰ Garry Cox,⁸¹ William Riker,⁸² and César Martinelli⁸³ all observe that in the first round, the voters tend to vote sincerely since they have the chance to make strategic decisions in the second round.⁸⁴ This theory is based on the assumption that candidates react to voters' behavior, implying that candidates make their entry

⁷⁷ Damien Bol et al., *Electoral System and Number of Candidates: Candidate Entry under Plurality and Majority Runoff*, 20 (Paris School of Economics, Working Paper No. 2015-20, 2015), <https://halshs.archives-ouvertes.fr/halshs-01168722/document>.

A great number of scholars including Bol and Blais imply that the number of candidates is equivalent to number of parties or coalitions in presidential elections and so they focus their analysis on the number of candidates. See Bol et al. at 1; Jakub Zielinski, *Translating Social Cleavages into Party Systems: The Significance of New Democracies*, 54 WORLD POL., 184, 197-98 (2002); Wright & Riker, *supra* note 18, at 160, 176; Matt Golder, *Presidential coattails and legislative fragmentation*, 1/50 AM. J. OF POL. SCI. 34, 34-48 (2006); Matthew Shugart & Rein Taagepera, *Plurality Versus Majority Election of Presidents: A Proposal for a "Double Complement Rule"*, 27 COMP. POL. STUD. 323 (1994); Peter Buisseret, *Entry Deterrence Under Run-Off Rules 1* (Games and Economic Behavior, Working Paper, 2015); Courtney, *supra* note 37, at 15.

⁷⁸ Voting behavior indicates an individual's voting choices based on that person's interests, values, as well as "judgment[s] about the various candidates' chances of winning." See André Blais et al., *Strategic Vote Choice in One-round and Two-round Elections: An Experimental Study*, 64 POL. RES. Q. 637, 637 (2011). If a voter cast his or her vote merely on the basis of his or her preference, it is called sincere voting. However, if a voter casts his or her vote on the basis of the viability of candidates, it is regarded as strategic voting. Virtually, in every formal model the assumption is that the voter votes either sincerely or strategically. See Fujiwara, *supra* note 30, at 198.

⁷⁹ Fujiwara, *supra* note 35, at 200; COX, *supra* note 12, at 124; Bordignon et al., *supra* note 29, at 1.

⁸⁰ DUVERGER, *supra* note 17, at 240.

⁸¹ COX, *supra* note 12, at 124.

⁸² William H. Riker, *The Two-Party System and Duverger's Law: An Essay on the History of Political Science*, 76 AM. J. OF POL. SCI. REV. 753 (1982).

⁸³ César Martinelli, *Simple plurality versus plurality runoff with privately informed voters*, 19 SOC. CHOICE AND WELFARE 901 (2002).

⁸⁴ See also MAINWARING & SHUGART, *supra* note 18, at 123; Thomas Piketty, *Voting As Communicating*, 67 REV. OF ECON. STUD. 169, 169–191 (2000).

decisions on the basis of the electoral tendencies of voters.⁸⁵ Since there are no (or few) *bandwagon voters*⁸⁶ under the runoff system, more candidates are likely to run.⁸⁷ In effect, the runoff system discourages fewer candidates and fusion of their supporters into larger coalitions.⁸⁸ However, Afghan presidential elections challenge this theory because the results of these elections have indicated that the tendency for strategic voting is considerably higher among voters.⁸⁹

Indeed, all three Afghan presidential elections have demonstrated that a runoff system has as much *bandwagon effect* as a plurality system does.⁹⁰ For example, in the 2004 election, of the initial eighteen candidates, only four dominated the polls, leaving each of their counterparts with less than one percent of the vote.⁹¹ In 2009, the three leading candidates won almost ninety-one percent of the votes; the other twenty-nine candidates shared the remaining nine percent.⁹² Similarly, in the first round of the 2014 elections, the three leading candidates won nearly eighty-eight percent of the votes, while the rest shared the remaining twelve percent.⁹³ The following Table II-3 shows the difference between the average votes of each leading candidate and those of non-viable candidates in all three presidential elections.

⁸⁵ See Fujiwara, *supra* note 35, at 199, 228; see also Bol et al., *supra* note 77, at 6; Van Der Straeten et al., *supra* note 29, 1-2.

⁸⁶ ‘Bandwagon voter’ as opposed to ‘sincere voter’ refers to the voter who votes strategically, deserting the preferred candidate in favor of a more viable one. See Fujiwara, *supra* note 35, at 202.

⁸⁷ Riker, *supra* note 82.

⁸⁸ A. LAWRENCE LOWELL, GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE, 110 (1896).

⁸⁹ See Table II-3. For details see *supra* Chapter One.

⁹⁰ *Bandwagon effect*, in an electoral context, refers to the situation where the electorates prefer to vote for the most viable candidates in order to make their votes count. See Fujiwara, *supra* note 35, at 203.

⁹¹ See IEC 2004, *supra* note 62.

⁹² See IEC 2009, *supra* note 63.

⁹³ See IEC 2014, *supra* note 65.

Table II-3 compares the average votes received by leading candidates with the remaining candidates. The average votes are calculated on the basis of election results reported on Electoral Commission website.⁹⁴

| Votes of Leading and Nonviable Candidates | | | |
|---|-------------------|---------------------------------|-------------------------------|
| Elections | No. of Candidates | Leading Candidates Avg. Votes % | Other Candidates Avg. Votes % |
| 2004 | 18 | 23.4 | 0.5 |
| 2009 | 32 | 30.2 | 0.3 |
| 2014 | 8 | 29.3 | 2.4 |

On average, each leading candidate shared between 23% to 30% of the votes, while the shares of other candidates ranged from 0.3% to 2.4% in the last three presidential elections. This huge gap between the vote share of leading candidates and others indicates that voters do vote strategically in the first round. This finding is consistent with the observations of Laurent Bouton,⁹⁵ Gabriele Gratton,⁹⁶ Daniel Prinz,⁹⁷ Blais,⁹⁸ and Damien Bol,⁹⁹ who also dispelled the assumption of the absence of strategic voting under the runoff system.¹⁰⁰ Andre Blais and his colleagues conducted an experiment comparing strategic voting under plurality and runoff rules.¹⁰¹ Their experiment indicated that the voters had as much incentive to vote strategically in

⁹⁴ IEC 2004, *supra* note 62; IEC 2009, *supra* note 63; IEC 2014, *supra* note 65.

⁹⁵ Bouton & Gratton, *supra* note 24.

⁹⁶ *Id.*, at 283.

⁹⁷ Daniel Prinz, *Strategic Voting, Mixed and Runoff Elections: Evidence from Hungary*, 4 (Brown University, Working Paper, Mar. 30 2013).

<https://www.brown.edu/academics/economics/sites/brown.edu.academics.economics/files/uploads/Daniel%20Prinz%20thesis.pdf>.

⁹⁸ Blais et al., *supra* note 16, at 278-286.

⁹⁹ Bol et al., *supra* note 77, at 12.

¹⁰⁰ Under the runoff rule, the voters have the incentive to vote strategically because they fear that voting sincerely might end up with two candidates in the second round that do not represent their interest and preferences at all; or a rival candidate wins the first round straight up. *See id.* at 7.

¹⁰¹ The purpose for Blais and his colleagues' experiment was to determine whether voters behave differently in the two voting systems, given the same set of options, and whether these behaviors yield different outcomes as Duverger indicated. The same group of people voted in both elections. They had exactly the same set of options, five candidates with the same positions. Their conclusion was that voters voted strategically under both electoral systems. *See* Blais et al., *supra* note 16, at 278-289.

a two-round election as in a one-round election.¹⁰² By this analysis, it is not likely that unstable coalitions are due to the lack of strategic voting under the runoff system.¹⁰³

Some scholars draw attention to the influence of the runoff system on candidate strategies.¹⁰⁴ Blais and Indridason criticize the literature for the lack of attention to candidates' electoral strategies,¹⁰⁵ since an electoral system influences not only voters' behavior but also candidates' and parties' behavior.¹⁰⁶ Indeed the candidates (and their political allies) have more at stake in elections than voters—specifically, winning or losing political power. Accordingly, candidates are more invested in influencing elections and alliances than voters. As such, candidates' strategies are more instrumental than voters' strategies for shaping parties and coalitions.¹⁰⁷ As such, analyzing candidates' coalition-building strategies may better explain why the runoff system thwarts the institutionalization of coalitions.

Ensuring a possible second round, the runoff system incentivizes not just one but three categories of candidates to enter the competition: the first group is the “office seekers” who need to follow a winning strategy for making alliances across ethnic groups. The largest coalitions in the first round are formed by this category of candidates. The second category of candidates that the runoff system encourages is what I call “patronage-seekers” who enter the fray for some benefits other than winning. Indeed, in Afghanistan, many candidates run to raise enough votes to increase their political capital for bargaining with runners-ups in the second round.¹⁰⁸ The

¹⁰² See Blais et al., *supra* note 16, at 278-289.

¹⁰³ Blais & Indridason, *supra* note 17, at 193.

¹⁰⁴ See *id.*; Blais et al., *supra* note 16, at 280.

¹⁰⁵ Blais & Indridason, *supra* note 17, at 193.

¹⁰⁶ Blais et al., *supra* note 16, at 280.

¹⁰⁷ Blais & Indridason, *supra* note 17, at 193.

¹⁰⁸ Martine van Bijlert, *How to Win an Afghan Election: Perceptions and Practices*, AFGHANISTAN ANALYSTS NETWORK, 9 (Aug. 2009) <http://www.afghanistan-analysts.org/wp-content/uploads/2013/07/20090809-how-to-win-an-afghan-election.pdf>. Some scholars found

more votes they receive, the better bargaining power they gain for patronage with front-running coalitions. Some candidates enter the race only as spoilers, splitting the votes of viable candidates¹⁰⁹ for different reasons, including forcing a second round election.¹¹⁰ For these opportunistic reasons, this category of candidates has little incentive to withdraw in favor of more viable candidates in the first round.¹¹¹ Indeed, they may follow a blackmail strategy in the first round to gain higher leverage in negotiations in the second round.¹¹² In that effort, they tend to form their own coalitions and distinguishable constituencies, although their coalitions may remain informal, personalistic, and small.¹¹³

The third category of candidates that the runoff system incentivizes is the “runoff-seekers”.¹¹⁴ These are serious, but not necessarily the most viable, candidates who run in the

similar tendencies in candidates in other countries. See SHUGART, *supra* note 15, at 210, 225; Bol er al, *supra* note 77, at 22-23; Mark P. Jones, *Electoral Laws and the Effective Number of Candidates in Presidential Elections*, 1/61 THE J. OF POLITICS 172, 176 (1999).

¹⁰⁹ See Bijlert, *supra* note 108, at 9. Some scholars found similar tendencies in candidates in other countries. See COX, *supra* note 12, at 158; MAINWARING & SHUGART, *supra* note 18, at 467.

¹¹⁰ SHUGART & CAREY, *supra* note 15, at 216.

¹¹¹ They tend to establish themselves as the main figures in their constituencies. See *id.* 255; Bol et al., *supra* note 77, at 23.

¹¹² MAINWARING & SHUGART, *supra* note 18, at 467.

¹¹³ Most of these coalitions do not have any objectives other than competing in the elections. Many are so small—merely the alliance of president and vice president candidates—that their formation remain unknown to the media and public. As mentioned earlier, this study does not include those coalitions.

¹¹⁴ Here, runoff in the context of “runoff seekers” means the second round. Therefore, runoff seekers are the candidates who would like to force a second round, in which they are one of the front-runners.

Thomas Fujiwara notes in his article, *A Regression Discontinuity Test of Strategic Voting and Duverger’s Law*, that some parties and candidates enter the race in order to finish third. He, however, does not explain why a party or candidate would bear the cost of finishing third in an election, where only two candidates can qualify in the second round. It seems to be his version of the interpretation of Duverger’s hypothesis. See Fujiwara, *supra* note 35, at 215. Finishing third, however, does not seem to benefit a candidate unless either a second round allows three candidates to compete or the candidate wants to raise his political capital for bargaining against

first round with a hope that they may be able to finish as the runner-up.¹¹⁵ Their strategy is forcing a second round while finishing as a runner-up.¹¹⁶ Finishing as a runner-up allows them to compete with the front-runner, having the chance to win the alliance and vote shares of the losing candidates.¹¹⁷ The success of the second place candidate is more probable when a majority of voters dislike the top finisher, or when, in a divided society, the top finisher is from a minority group, assuming votes are ethnic-based.¹¹⁸ Indeed, one of the reasons Abdullah led the candidates in 2014's first round was the split of Pashtun votes among seven different Pashtun candidates. A survey before the second round of the 2014 Afghan election indicated that Ghani's

the front runners in the second round, which in that case the candidate is categorized as *opportunist* in this article.

¹¹⁵ COX, *supra* note 12 at 158; SHUGART & CAREY, *supra* note 15, at 210; MAINWARING & SHUGART, *supra* note 18, at 467.

¹¹⁶ MAINWARING & SHUGART, *supra* note 18, at 467.

¹¹⁷ Carey, *supra* note 30, at 95.

¹¹⁸ SHUGART & CAREY, *supra* note 15, at 216.

In this situation, some also argue that political *outsiders* might gain the chance of prevailing over the first round frontrunner. See Birch, *supra* note 18, at 325; SHUGART & CAREY, *supra* note 15, at 215. Political outsiders are primarily referred to as candidates who distinguish themselves from party politics. It is not, however, a clear-cut definition since some candidates might run as a party nominee but prefer to establish themselves as political outsiders and are regarded as such by voters and politicians. A very recent example of that is President Donald Trump, who while running as a Republican in the 2016 presidential election in the US, preferred to portray himself as an outsider. Political outsiders are likely to run a populist and anti-establishment campaign. See ANDREW E. BUSCH, *OUTSIDERS AND OPENNESS: IN THE PRESIDENTIAL NOMINATING SYSTEM* 22-26, 154, 170-171 (1997).

There have been some cases where political outsiders became the eventual winner in the second round. As recently as May 2017, Macron, a total outsider, was elected President of France. His rival, Le Pen, was also an outsider and an extremist. Twice in Peru, political outsiders were able to force a second round, in which they eventually won against frontrunners. Also in Poland, a political outsider succeeded in his strategy of finishing at second, though he lost the second round to the top finisher. SHUGART & CAREY, *supra* note 15, at 33, 215. Encouraging a political outsider as a main contender is in itself a fragmenting characteristic of the runoff rule because they join the contest as a new contender challenging the established coalitions, either as a leader of a new movement and alliance or as a populist independent. More importantly, political outsiders generally have less experience and less ability to build coalitions in the assembly. See SHUGART, *supra* note 15 at 22-33, 170-71, 215.

votes among Pashtuns would increase from forty-nine percent in the first round to seventy-five percent in the second round.¹¹⁹

The conventional literature has under-predicted the upper bounds of parties and coalitions because it has generally failed to account for one or two of the above categories of candidate. For instance, the formula M+1, designed by Garry Cox and other political scientists, has fallen short of predicting the upper bounds of parties and coalitions because it does not account for patronage-seeking candidates.¹²⁰ In this formula, where M refers to the number of candidates that face off in the second round,¹²¹ political scientists hypothesize that the runoff system should reduce the number of candidates to three parties in the long run.¹²² In Afghanistan this upper bound does not even come close to reflecting the long lists of presidential candidates that ran in 2004 (18),¹²³ 2009 (initially 32),¹²⁴ and 2014 (initially 11)¹²⁵

Examining elections in countries with longer experiences with runoff elections, different studies have also indicated that the runoff system is associated with far more than three

¹¹⁹ The same survey also demonstrated that most supporters of losing candidates would vote for Ghani in the second round. *See Afghan's Future Survey: Afghanistan's Ethnic, Regional Divisions Produce a Dead Heat in its Presidential Race*, LANGER RESEARCH ASSOCIATES 1, 5 (2014), http://www.langerresearch.com/wp-content/uploads/Afghanistan-Election_ACSOR-Langer.pdf.

¹²⁰ M+1 is an extension of Duverger's Law to the runoff system. M+1 indicates that eventually strategic coordination would lead to first round elections, where one additional candidate would compete with the M number of candidates—which is usually two candidates—that qualify for the second-round election. *See COX, supra* note 12 at 123; MAINWARING & SHUGART, *supra* note 18, at 406; SHUGART & CAREY, *supra* note 15, at 300; Wright & Riker, *supra* note 18, at 159-160.

¹²¹ *See COX, supra* note 12 at 123; MAINWARING & SHUGART, *supra* note 18, at 406; SHUGART & CAREY, *supra* note 15, at 300; Wright & Riker, *supra* note 18, at 159-160.

¹²² *See COX, supra* note 12 at 123-124; MAINWARING & SHUGART, *supra* note 18, at 406; Bouton & Gratton, *supra* note 24, at 283; Straeten et al., *supra* note 29, at 9.

¹²³ IEC 2004, *supra* note 62.

¹²⁴ The initial list of candidates for the 2009 presidential election is available at KABUL PRESS, <http://kabulpress.org/my/IMG/pdf/presidential.pdf>.

¹²⁵ IEC 2014, *supra* note 65.

candidates.¹²⁶ In many countries, the average number of candidates under the runoff is over five candidates (coalitions).¹²⁷ The greater the number of candidates in an election, the more fragmented coalitions will be in that election.¹²⁸

By ensuring the possibility of a second round election, the runoff system postpones much of the bargaining and coalition-making to the second round.¹²⁹ In fact, the runoff system invokes two rounds of coalition-making: proactive coalition-making and second round coalition-making.¹³⁰ The former strikes before the first round elections and the latter when eliminated candidates join the competing ones in a runoff.¹³¹ In general, proactive coalitions are a combination of oversized coalitions supporting serious candidates and fragmented coalitions supporting opportunist candidates. Hence, a large number of coalitions tend to form in the first round of elections. Notably, the presence of a large number of coalitions further compels serious candidates to form oversized—and therefore less cohesive—coalitions in order to win.

The second-round coalitions, which are common under runoff rules, are even more disruptive to coalition-building because these coalitions stem from the dissolution of some proactive coalitions and reconfiguration of others.¹³² In the second round, the losing coalitions

¹²⁶ See Bol et al., *supra* note 77, at 20; Wright & Riker, *supra* note 18, at 161-2; Birch, *supra* note 18, at 323-4; MAINWARING & SHUGART, *supra* note 18, at 467; SHUGART & CAREY, *supra* note 15, at 212-214; Courtney, *supra* note 37, at 15; Croissant & Volkel, *supra* note 18, at 255-256.

¹²⁷ Wright & Riker, *supra* note 18, at 162.

¹²⁸ Carey, *supra* note 30, at 95-96.

¹²⁹ See Kaare Strom, Ian Budge, & Michael J. Laver, *Constraints on Cabinet Formation in Parliamentary Democracies*, 38 AM. J. POL. SCI. 303, 316 (May 1994); SHUGART & CAREY, *supra* note 15, at 216; Linz, *supra* note 39, at 57.

¹³⁰ SARTORI, *supra* note 25, at 166; Blais & Indridason, *supra* note 17, at 194.

¹³¹ See Blais & Indridason, *supra* note 17, at 193.

¹³² SARTORI, *supra* note 25, at 166; Blais & Indridason, *supra* note 17, at 194.

dissolve and/or regroup with front-running coalitions, which suggests that no one coalition remains intact within a given presidential election.¹³³

The fact that runoff systems provide a secondary benefit for candidates, normally patronage, leaves coalitions even more vulnerable to instability. Patronage coalitions are not *coalitions of commitment*¹³⁴ or *permanent coalitions*,¹³⁵ but *coalitions of convenience*¹³⁶—where an alliance survives as long as all parties benefit from their coalescence. It is not surprising that immediately after the first round of the 2014 election, four out of six presidential tickets split, with some members joining Abdullah’s campaign and others endorsing Ghani. This constant formulation and reformulation of coalitions in the first and second rounds does not allow coalitions to grow and institutionalize.

One other flaw that the runoff system has been charged with, particularly in divided societies, is that it prevents smaller groups from winning presidential office.¹³⁷ As for the case of Afghanistan, Kenneth Katzman has concluded that the “electoral system...strongly favors the

¹³³ Courtney, *supra* note 37, at 14; Bordignon et al., *supra* note 29, at at 14; Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 19/5 PARTY POL. 735, 739 (2011).

¹³⁴ Following Donald Horowitz’s taxonomy, coalition in commitment is the one that is formed not only to win elections and government but also to implement a somehow coherent policy, ideologically shared by its members. *See* HOROWITZ, *supra* note 42, at 366.

¹³⁵ A permanent coalition is the one that tends to sustain, even it loses elections and government. *See id.*

¹³⁶ A coalition in convenience is the one that is formed for a particular purpose, mostly that of winning elections and the government. *See id.*

¹³⁷ AREND LIJPHART, THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE 184, 186 (2008); STEIN ROKKAN, CITIZENS, ELECTION, PARTIES: APPROACHES TO THE COMPARATIVE STUDY OF THE PROCESSES OF DEVELOPMENT 157 (1970); Sven Gunnar Simonsen, *Ethnicising Afghanistan?: Inclusion and Exclusion in Post-Bonn Institution Building*, 25/4 Third WORLD QUARTERLY, 707-729, 714 (2004).

likelihood that the president will always be an ethnic Pashtun.”¹³⁸ The three presidential elections (2004, 2009, and 2014) in Afghanistan have led to Pashtun candidates becoming presidents, although the results of the 2014 elections were too unsettled to confirm a legitimate winner. Notably, in the first round of the 2014 election, Abdullah, a Tajik candidate, was the front-runner.¹³⁹

The runoff system has also been criticized for being prone to ethnic tensions and even political violence. For example, in countries such as Angola (1992), Algeria (1992), Congo (1993), Macedonia (1994), Togo (1994), and Haiti (1995), the losing candidates canceled the elections and resorted to violence against the potential winners in the second round.¹⁴⁰ To this effect, some scholars argue that the runoff system creates a culture of *wait and see*, where the losing parties might resort to violence.¹⁴¹ In Afghanistan too, the boycott of the runoff elections by Abdullah in both 2009 and 2014 led to ethnic tensions.¹⁴² Particularly in the 2014 runoff, the ethnic tensions brought Afghanistan to the brink of a civil war.¹⁴³ Two round elections, therefore, create the potential for electoral boycott and ethnic tensions.

¹³⁸ KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE, 7 (Jul. 28, 2014), <https://www.fas.org/sgp/crs/row/RS21922.pdf>.

¹³⁹ IEC 2014, *supra* note 65.

¹⁴⁰ See REYNOLDS ET AL., *supra* note 14, at 53; also see, Birch, *supra* note 18, at 327.

¹⁴¹ *Id.*

¹⁴² Shamshad Pasarlay et al., *Reforming the Afghan Electoral System: The Current Debate and its Implications for the Plans to Amend the Afghan Constitution*, Int’l J. Const. L. Blog (May 8, 2015) at <http://www.iconnectblog.com/2015/05/reforming-the-afghan-electoral-system-the-current-debate-and-its-implications-for-the-plans-to-amend-the-afghan-constitution/#more-4123>.

¹⁴³ *Id.*

C. Conclusion

This chapter comports with most studies that associate the runoff system with the formation of broad-based coalitions.¹⁴⁴ It also holds the somewhat conventional view that given the ethnic distribution in Afghanistan, the runoff clause, with a fifty percent threshold, has been instrumental to the formation of cross-ethnic coalitions in all three presidential elections.

It departs from conventional wisdom, however, in several key respects. Most importantly, it suggests that the formation of coalitions does not necessarily result in the survival of coalitions. Further, it observes that while encouraging the formation of cross-ethnic coalitions, the runoff system has consistently hindered the perpetuation of these coalitions. It also reveals that by ensuring a second round, the runoff system turns the first round into an investment juncture for patronage and runoff seeker elites, who would eventually bargain with (or in the case of runoff seekers, challenge) a front-runner in the second round. These candidates form their own small and large alliances in the first round only to join the front-running coalitions in the second rounds, apparently after some serious patronage bargaining. What this suggests is that under the runoff system, no coalition remains intact, either in structures or in policies. This process of coalition formation, dissolution or reconfiguration under the runoff system, has been an obstacle to the institutionalization of coalitions.

This chapter timely engages with the recent efforts on reforming the Constitution and electoral laws in Afghanistan. Since the failure of the 2014 presidential election, these efforts have escalated in an effort to end ethnic tensions that have tended to ensue during and after Afghan elections. However, most of the ongoing legal and political discourse on reforming the electoral laws in Afghanistan has centered on changing only the parliamentary electoral system.

¹⁴⁴ DUVERGER, *supra* note 17, at 328; Blais & Indridason, *supra* note 17, at 193-4; Courtney, *supra* note 37, at 13; Rakner & Walle, *supra* note 17, at 116.

This study attempts to extend the discourse to reforming the presidential electoral rules, as presidential elections have failed to institutionalize cross-ethnic coalitions.

Chapter Five: SNTV System and Coalition-Free Parliamentary Elections

Unlike the presidential elections that sparked the formation of broad and inclusive coalitions in Afghanistan, parliamentary elections have barely witnessed coalition-making of any kind. In fact, even ethnic parties fractured and fragmented during the parliamentary elections. No party has secured a sizable number of seats in the WJ.¹⁴⁵ It raises questions about why parliamentary elections did not witness cross-ethnic coalescence like presidential elections did and why even ethnic parties failed to solidify during parliamentary elections. Several studies have associated these failures to the Single Non-Transferrable Votes (SNTV) system.¹⁴⁶

Andrew Reynolds, in his article, *Fixing Afghanistan's Electoral System*, argues that among all electoral systems, SNTV has created the greatest obstacles to party development.¹⁴⁷ According to Reynolds, parties and coalitions fail because “under SNTV, any inclinations toward collective action among candidates must swim against an overwhelming tide.”¹⁴⁸ Scott Smith, in his article, *The Future of Afghan Democracy*, suggests that SNTV “encouraged fragmentation

¹⁴⁵ Andrew Reynolds & John Carey, *Fixing Afghanistan's Electoral System: Arguments and Options For Reform*, AFGHANISTAN RESEARCH AND EVALUATION UNIT, 9 (2012), <http://sites.dartmouth.edu/jcarey/files/2013/02/RC-Fixing-Afghanistans-Electoral-System-AREU-2012-FINAL.pdf>.

¹⁴⁶ Anna Larson, *Deconstructing Democracy in Afghanistan*, AFGHANISTAN RESEARCH EVALUATION UNIT 45 (May, 2011) http://www.afghandata.org:8080/xmlui/bitstream/handle/azu/15224/azu_acku_pamphlet_ds371_412_137_2011_w.pdf?sequence=1&isAllowed=y; ICG 141 *supra* note 51; NATIONAL DEMOCRATIC INSTITUTE, *supra* note 51, at 14.

¹⁴⁷ Reynolds & Carey, *supra* note 145, at 3.

¹⁴⁸ *Id.*

and discouraged national party formation.”¹⁴⁹ Sara T. Ghadiri notes, “it is clear that SNTV sets back the formation of political parties.”¹⁵⁰ Anna Larson, in an article, *Political Parties in Afghanistan*, posits, “The selection of the SNTV electoral system by Afghan and international actors was a deliberate choice intended to exclude parties, partly because of the violent reputation parties had acquired in war years and partly to stymie opposition to the new government.”¹⁵¹

Afghanistan is one of the few countries in the world that use this system, joined only by Vanuatu, Kuwait, and the Pitcairn Islands.¹⁵² Notably, Jordan recently switched from SNTV to a mixed member system.¹⁵³ Even countries like Japan (using SNTV from 1945 to 1993), South Korea (SNTV, 1973-1988), and Taiwan (SNTV, 1960-2006) eventually found this system disruptive to their party systems, replacing it with mixed member systems.¹⁵⁴

Afghanistan adopted an SNTV system for parliamentary elections with the first election law in 2004.¹⁵⁵ Although the law did not specifically refer to SNTV as the electoral system for parliamentary elections, Articles 19 and 22 detailed parliamentary electoral mechanisms that

¹⁴⁹ Scott S. Smith, *The Future of Afghan Democracy*, 3/1 STABILITY: INTERNATIONAL JOURNAL OF SECURITY & DEVELOPMENT, 1, 6 (Mar. 18, 2014).

¹⁵⁰ Sara T. Ghadiri, *SNTV in Afghanistan: Is There a Better Option?* 5/1 RES PUBLICA JOURNAL OF UNDERGRADUATE RESEARCH 85-91, 91 (2010).

¹⁵¹ ANNA LARSON, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 362: POLITICAL PARTIES IN AFGHANISTAN, 3 (Mar. 2015), available at <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>.

¹⁵² Ghadiri, *supra* note 150, at 85; REYNOLDS ET AL., *supra* note 14, at 113.

¹⁵³ *Jordan Profile*, QUOTA PROJECT, <Http://Www.Quotaproject.Org/Uid/Countryview.Cfm?Countrycode=Jo>.

¹⁵⁴ Karen Cox, *Japan: Adapting to A New Electoral System*, in ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK, 114-6 (Andrew Reynolds, Benjamin Reilly & Andrew Ellis, eds., 2008).

¹⁵⁵ QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 4231, 1383 [2004].

constitute characteristics of the SNTV system.¹⁵⁶ Based on these provisions, each province is a multi-member constituency with the number of seats assigned based on population; each province is assigned at least two seats in the WJ. Candidates with the most votes win seats.¹⁵⁷ Voters have only one vote to cast no matter how many seats there are in a constituency.¹⁵⁸ Most importantly, voters choose candidates and not parties or coalitions.¹⁵⁹ In addition, given the distribution of 249 legislative seats among 34 provinces, the district magnitude is as high as 7 seats.¹⁶⁰ However, considering their populations, the assigned seats vary substantially among the provinces (ranging from a minimum of 2 seats to a maximum of 33 seats). Combined, these features have encouraged a large number of candidates, mostly running as independents, enabling them to win seats with as few as 3% of the total votes.

A. Constructive Features of SNTV

SNTV needs to be credited for two important contributions: (a) promoting proportional representation, and (b) marginalizing ethnic parties.¹⁶¹ These contributions are consistent with

¹⁵⁶ *Id.* art. 19, 20, 21, and 22.

¹⁵⁷ ELECTIONS IN JAPAN, KOREA, AND TAIWAN UNDER THE SINGLE NON-TRANSFERABLE VOTE: THE COMPARATIVE STUDY OF AN EMBEDDED INSTITUTION (Bernard Grofman, Sung-Chull Lee, Edwin A. Winckler, & Brian Woodall eds. 1999), 385.

¹⁵⁸ Peter Dimitroff, *The September 2005 Parliamentary and Provincial Council Elections In Afghanistan*, NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI), 5 (2006), https://www.ndi.org/sites/default/files/2004_af_report_041006.pdf.

¹⁵⁹ QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 4231, 1383 [2004], art. 22.

¹⁶⁰ *Id.* art. 19.

¹⁶¹ Some have also credited SNTV for the simplicity of its process that can easily be understood by Afghan voters, which are mostly uneducated. See Andrew Reynolds, Lucy Jones, & Andrew Wilder, *A Guide to Parliamentary Elections in Afghanistan*, AFGHANISTAN RESEARCH EVALUATION UNIT (Aug. 2005), <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN021668.pdf>; Andrew Reynolds, *Electoral Systems Today: The Curious Case of Afghanistan*, 17/2 JOURNAL OF DEMOCRACY 43 (2006) (“It is simple both for voters and administrators, in that voters have to select only one candidate and there are no complex mathematics necessary to determine the winner.”); Dimitroff, *supra* note 158, at 6 (“SNTV proponents—including the United States

the two main objectives of the new constitutionalism in Afghanistan—forming an inclusive government and marginalizing ethnic parties.¹⁶²

The 2001 Bonn Conference, which sets the first concrete framework for a new democratic Afghanistan following the Taliban regime, mandated that the upcoming Afghan government should represent all groups of the nation.¹⁶³ Subsequently, the Constitution (2004) also provided that the government should structurally represent the whole nation.¹⁶⁴ To its credit, SNTV has promoted proportional representation of ethnic groups in the WJ.¹⁶⁵ As Table II-4 indicates, in both the 2005 and 2010 elections, the number of seats that each ethnic group won reflected just slightly less or slightly more than the estimated population of these ethnic groups.

government, electoral authorities, and President Karzai—unofficially provided a number of additional reasons for choosing SNTV: ease of voter education and of voting; promotion of women by encouraging them to run as independents; and decreasing the power of parties dominated by warlords.”)

¹⁶² Chris Johnson, William Maley, Alexander Thier & Ali Wardak, *Afghanistan’s Political and Constitutional Development*, OVERSEAS DEVELOPMENT INSTITUTE (Jan. 2003) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf> (In this report, which was produced prior to the constitution drafting, Johnson and co-authors wrote: “Discussing the electoral system with Afghan experts and citizens throughout the country, certain basic principles emerged. First, given the factionalised nature of Afghan politics, the primary goal should be to produce proportionality – in that each party gets a proportion of seats in accordance with the proportion of votes received. Second, most Afghans want an opportunity to vote for candidates from their own area. The distrust of political parties also means that voters should be given the chance to vote for individuals, rather than solely parties. Third, the voting procedure must be simple and transparent.”)

¹⁶³ Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, transmitted to the Security Council by the Secretary-General, U.N. Doc. S/2001/1154, 1155 (Dec. 5, 2001) [hereinafter Bonn Agreement], <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/678/61/img/N0167861.pdf?OpenElement>. [hereinafter “Bonn Agreement”].

¹⁶⁴ CONSTITUTION, art. 4 (“National sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives...”).

¹⁶⁵ Ghadiri, *supra* note 150, at 13 (“The overall conclusion for Afghanistan is that SNTV adequately addresses only gender inequality and partly ethnic cleavages.”)

Table II-4 compares the population of ethnic groups to the number of their seats in the *Wolesi Jirga*.¹⁶⁶

| Ethnicity | Population | Seats in 2005 | Seats in 2010 |
|-----------|------------|---------------|---------------|
| Pashtun | (40-44)% | 47% | 38% |
| Tajik | (25-27)% | 21% | 22% |
| Hazara | (9-10)% | 12% | 23% |
| Uzbek | (6-9)% | 8% | 7% |

After a long period of civil war, it has been important that all ethnic groups send a proportional number of representatives to the National Assembly to voice their concerns and make their demands through peaceful means such as bargaining, negotiations, and legislative voting.¹⁶⁷ In this way, and through facilitating proportional representation, SNTV has contributed to stability in Afghanistan. In fact, one time that the election did not produce proportional representation in Ghazni, mainly due to insecurity in certain districts, the election led to political turmoil.¹⁶⁸ Pashtuns of Ghazni, who were particularly disadvantaged in the election of 2010, challenged the election result and forced the government and electoral commissions to reevaluate the tallies (see Chapter Two).¹⁶⁹

¹⁶⁶ See IEC 2009, *supra* note 63 (for information about the votes of candidates). See also CIA Factbook, *supra* note 44 (for information about the population of ethnic groups).

¹⁶⁷ INTERNATIONAL CRISIS GROUP, ASIA REPORT N°88, AFGHANISTAN: FROM PRESIDENTIAL TO PARLIAMENTARY ELECTIONS, 1 (2004), <https://d2071andvip0wj.cloudfront.net/88-afghanistan-from-presidential-to-parliamentary-elections.pdf>. [hereinafter ICG 88] (“Given the deep ethnic polarization, it is essential that the multi-ethnic, multiregional population has pluralistic and participatory avenues to express its demands and articulate its grievances through parliamentary elections.”)

¹⁶⁸ See Reynolds & Carey, *supra* note 145, at 11-14.

¹⁶⁹ By providing proportional representation, SNTV has benefitted smaller groups as well. Unlike most proportional systems, this electoral system does not require any electoral thresholds. The only threshold required by law has been that the individual candidates should be able to present at least 300 voting ID cards at the time of registration. In effect, this electoral system sets the lowest bar possible for individuals from any group to register and to win seats. Of the fourteen ethnic groups that are mentioned in the Constitution, eleven have won at least one seat in the National Assembly in 2010. Some ethnic groups like Hindus and Sikhs are too dispersed across constituencies to win seats without a quota. Others, like Kuchis, are too mobile to have territorially defined constituencies to elect their representatives.

A second contribution of SNTV is more controversial: SNTV has tended to fragment ethnic parties and thereby marginalize them. Due to their notorious past in Afghanistan, the so-called parties have long been disliked by both the people and the government.¹⁷⁰ Communist and *Jihadi* parties have historically both split along ethnic lines and perpetuated war, violence, and mass killings in their own eras (1979-1991 and 1992-1996 respectively).¹⁷¹

Communist parties transformed into ethnic parties, when they diverged into *Khalq*, representing mostly Pashtuns, *Parcham*, representing mainly Tajiks, and *Shola' Jawid*, representing Hazaras, plotting against one another.¹⁷² Similarly, *Jihadi* parties engaged in an ethnic conflict, which was even more violent.¹⁷³ The major *Jihadi* parties involved in civil war were the *Hizb-i-Islami* [Islamic Party], composed of mainly Pashtuns, *Hizb-i-Jamiat Islami*

¹⁷⁰ Andrew Wilder, *A House Divided? Analysing the 2005 Afghan Elections*, Afghanistan RESEARCH AND EVALUATION UNIT, 9 (Dec. 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>. (“But by far the biggest challenge confronting political parties in Afghanistan is their major image problem among Afghans, who associate them with the various communist or jihad-era political parties that have played such a negative role in Afghanistan’s tragic history.”); also see ALTAI CONSULTAING, FORMATIVE RESEARCH FOR CIVIC EDUCATION PROGRAMS ON ELECTIONS: FOCUS GROUP DISCUSSIONS IN THE NORTH, WEST, SOUTHEAST, AND SOUTH OF AFGHANISTAN, 25 (2005), http://pdf.usaid.gov/pdf_docs/pnadz213.pdf (“The most common definition in the north was that parties were groups of people aligned on an ethnic basis in order to conspire against others. In the Pashtun areas of the south and southeast, the most common answer was that parties were groups of self-interested individuals organized to serve their own interests.”)

¹⁷¹ Reynolds & Carey, *supra* note 145, at 6; see also, ZEKRIA BARAKZAI, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 338: 2014 PRESIDENTIAL & PROVINCIAL COUNCIL ELECTIONS, 6 (Nov 2013), <https://www.usip.org/sites/default/files/SR338-2014%20Presidential%20and%20Provincial%20Council%20Elections%20in%20Afghanistan.pdf>; Gretchen Birkle, Michael O’Hanlon, Hassina Sherjan, *Afghanistan should be divided or that autonomous regions with unusually strong powers of their own are necessary*, BROOKINGS INSTITUTE, 4-6 (May. 2011); KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT: AFGHANISTAN: PRESIDENTIAL AND PARLIAMENTARY ELECTIONS, 5 (Jul. 7, 2005).

¹⁷² Abubakar Siddique, *Afghanistan's Hazara Minority Outraged by Science Academy Insults*, RADIO FREE EUROPE, 3-4 (Jul.3 2012), <http://www.rferl.org/content/afghanistan-hazaras-ethnic-tensions-academy-of-sciences/24633486.html>; Frishta Ali, *Afghanistan: the rise of ethnic consciousness through history; a comprehensive overview of the origin of the Afghan conflict* 9 (SSOAR, Working Paper, 2015).

¹⁷³ *Id.* at 10.

[Islamic Society Party], a Tajik party, *Hizb-i-Wahdat Islami Afghanistan* [Islamic Unity of Afghanistan Party], representing Hazaras, and *Hizb-i-Jumbesh Milli* [National Movement Party of Afghanistan], a communist defecting party proclaiming Uzbeks' interests.¹⁷⁴ After the Bonn Conference, the *Jihadi* parties again gained significant political grounds in Afghanistan, generating panic among the mass population.¹⁷⁵ In an effort to disenfranchise these parties, the government adopted the SNTV system.¹⁷⁶

Fearing that these proto-parties would further polarize the ethnic divide in Afghanistan, all proposals of party-friendly electoral systems were rejected by the government.¹⁷⁷ Although ethnic parties have continued to exist in Afghanistan, they have failed to consolidate as prominent political actors. During elections, they have remained unorganized, deinstitutionalized and susceptible to alternative modes of campaigns—including personalistic, clientalistic, centripetal, and tribal politics. Chiefly, SNTV has succeeded in deinstitutionalizing ethnic parties

¹⁷⁴ See RAGHAV SHARMA, *NATION, ETHNICITY AND THE CONFLICT IN AFGHANISTAN: POLITICAL ISLAM AND THE RISE OF ETHNO-POLITICS 1992–1996* (2016).

¹⁷⁵ See SONALI KOHATKAR & JAMES INGALLS, *BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF Silence* (2006)

¹⁷⁶ ICG 141, *supra* note 51 at 3. In addition, there were other reasons for the government to adopt SNTV. Particularly, some believed that this move by the government was aimed at preventing the emergence of a strong opposition so that the power could remain overwhelmingly in the hands of Karzai. See NATIONAL DEMOCRATIC INSTITUTE, *supra* note 51, at 14; Wahabuddin Ra'ees, *Democratizing Afghanistan: An Analysis of the 2005 Parliamentary Elections*, 1/14 INTELLECTUAL DISCOURSE 33-46, 36 (2006).

Some suggested that international representatives had diverged on the adoption of SNTV. “While other international representatives were active in the discussion and aligned in favor of a party-based proportional representation, US officials were not. [Khalilzad] reportedly intervened brusquely at a meeting with UN officials and diplomats in Kabul to declare that he had just spoken to President Bush, who said “SNTV is the choice.” Arthur Kent, *Cashing in on Karzai & Co.* POLICY OPTIONS, 11 (2007); See Astri Suhrke, *The Democratization of a Dependent State: The Case of Afghanistan*, 11 (Chr. Michelsen Institute, Working Paper 51, 2007).

¹⁷⁷ *Id.* Some studies suggest that while the diplomats and scholars of the European Union supported the adoption of a party-friendly electoral system, United States diplomats promoted the SNTV system. See NOAH COBURN & ANNA LARSON, *DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE* 72 (2013).

by encouraging (1) personalistic politics, (2) intra-party rivalry, and (3) a large number of candidates.

1. SNTV Encourages Personalistic Politics

SNTV is a candidate-centric electoral system. It does not require individual candidates to be party nominees. On the contrary, this system encourages personalistic politics, where candidates must rely on their own agendas and self-promotion.¹⁷⁸

In 2005, only 12.8 percent of candidates ran with party affiliations.¹⁷⁹ In 2010, the number of candidates registered as party affiliates further decreased to 1.2 percent.¹⁸⁰ Table II-5 indicates that the number of independent candidates are considerably higher than the number of party-affiliate candidates. The independent candidates, however, included many party members that disassociated themselves from their parties during elections.¹⁸¹

¹⁷⁸ Grofman et al., *supra* note 157, at 390; Dimitroff, *supra* note 158, at 13.

For this very reason, candidates have to establish strong personal connections with the locals. To make such connections, most MPs in Afghanistan are often away from legislative sessions, dealing with local issues which are mostly not related to the legislature. For example, they attend local ceremonies and individual weddings, or even make contacts to help individuals with employment or other issues in government bureaucracy. In order to solve those issues they may even cross legal bounds. For instance, in 2013, after his 10th month in the office, the Minister of Interior stated that the Ministry received 15,000 request letters from MPs. The requests included hiring, firing, replacement, or promotion of an individual in the Ministry. *An Afghan Minister Fires Back At Impeachment Attempt*, NPR (2013), [Http://Www.Npr.Org/Blogs/Parallels/2013/07/23/204766731/An-Afghan-Minister-Fires-Back-At-Impeachment-Attempt.](http://www.Npr.Org/Blogs/Parallels/2013/07/23/204766731/An-Afghan-Minister-Fires-Back-At-Impeachment-Attempt.); COBURN & LARSON, *supra* note 177, at 115.

¹⁷⁹ NATIONAL DEMOCRATIC INSTITUTE, THE 2010 WOLESI JIRGA ELECTION IN AFGHANISTAN, 66 (2010), <https://www.ndi.org/sites/default/files/Afghanistan-2010-election-observers-final-report.pdf> [hereinafter NDI]; Andrew Wilder, *supra* note 170, at 9.

¹⁸⁰ Shahrzad Akbar & Zubaida Akbar, *Elections and Conflict in Afghanistan*, INTERNATIONAL POLICY ANALYSIS, 5 (2011) <http://library.fes.de/pdf-files/iez/08587.pdf>.

¹⁸¹ *Supra* note 179.

Table II-5. compares the number of party-affiliate candidates in the parliamentary election of 2005 with those in the parliamentary election of 2010.¹⁸²

| Candidates Affiliations in the Parliamentary Elections | | | | |
|---|---------------|------------|---------------|------------|
| Candidates | 2005 Election | | 2010 Election | |
| | Number | Percentage | Number | Percentage |
| Independent Candidates | 2422 | 87% | 2513 | 98.75% |
| Final Party Affiliated | 356 | 13% | 32 | 1.25% |
| Total Candidates | 2778 | 100% | 2545 | 100% |

Many candidates confirmed their party allegiances only after winning elections.¹⁸³ Even then, parties had small number of seats in the WJ. Based on a survey, parties' share of seats decreased from 153 in 2005 to 94 seats in 2010.¹⁸⁴ Having no control over the nomination of candidates and their party allegiances, ethnic parties lack institutional and electoral discipline.¹⁸⁵ For example, in an interview just prior to the 2010 election, the leader of National Solidarity Movement Party predicted that only 6 out of the 16 candidates from his party had a chance of winning.¹⁸⁶ This statement indicates that although the party leadership knew that some of its

¹⁸² *Id.*

¹⁸³ Andrew Wilder, *supra* note 170, at 9; Reynolds & Carey, *supra* note 145, at 9.

¹⁸⁴ Reynolds & Carey, *supra* note 145, at 9; ICG 141, *supra* note 51 at 5; ADAM CARR'S ELECTION ARCHIVE, [Http://Psephos.Adam.Carr.Net/Countries/A/Afghanistan/Afghanistan2010.Txt](http://Psephos.Adam.Carr.Net/Countries/A/Afghanistan/Afghanistan2010.Txt); *Results Of Parliamentary Election 2010*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, [Http://Www.Iec.Org.Af/Results_10/Eng/Winning_Candidates.Html](http://Www.Iec.Org.Af/Results_10/Eng/Winning_Candidates.Html) [IEC 2010]; AFGHANISTAN ELECTION DATA, [Http://2010.AfghanistanelectionData.Org/Candidates/Province_1](http://2010.AfghanistanelectionData.Org/Candidates/Province_1).

¹⁸⁵ Thomas Ruttig, *Afghanistan Election: Political Parties at The Fringes Again*, FOREIGN POLICY (Dec 2010), [Http://Southasia.Foreignpolicy.Com/Posts/2010/09/13/Afghanistans_Elections_Political_Parties_At_The_Fringes_Again](http://Southasia.Foreignpolicy.Com/Posts/2010/09/13/Afghanistans_Elections_Political_Parties_At_The_Fringes_Again); NDI, *supra* note 179, at 68 (“Political party leaders interviewed by NDI were vague about the support they were giving their candidates. Some said that there were paying for posters to be printed and publicizing their candidates on their television stations. The parties had difficulty selecting which candidates to support, because if they limited their endorsement to a few candidates, those not endorsed will run anyway and may get elected. Because of the weak position of many parties, they did not want to be in the position of alienating any candidates or potential members of the National Assembly.”)

¹⁸⁶ *Id.* Ruttig, *supra* note 185.

candidates had no chance of winning, they lacked the ability to stop those candidates from running and splitting votes.¹⁸⁷

2. SNTV Encourages Intraparty Rivalry and Factionalism

SNTV encourages intraparty rivalry because candidates of the same parties are likely to compete for the votes of the same constituencies.¹⁸⁸ This phenomenon is even stronger when party constituencies and ethnic constituencies coincide. In effect, to win large enough votes in a party-ethnic constituency, candidates are likely to compete with co-party counterparts rather than with candidates from other groups and parties.¹⁸⁹ For example, *Wahdat-i-Islami*, a Hazara dominated party, fielded 9 candidates in Kabul.¹⁹⁰ All of its candidates competed in Dasht-e-Barchi and other predominantly Hazara areas.¹⁹¹ As a result of the vote distribution between these candidates, only two-party members were able to win seats in the WJ.

Under SNTV, even popular candidates are unlikely to coordinate with their cohorts to effectively distribute their extra votes. This lack of coordination occurs because the fine line between losing and winning is never predictable under SNTV.¹⁹² If popular candidates encourage their supporters to vote for their cohorts instead, it is likely that enough supporters may defect from them so that they lose their own guaranteed seats.¹⁹³ Therefore, the electoral

¹⁸⁷ According to the statements of several party leaders, they fielded tens of candidates but the candidates mostly preferred to campaign as independent candidates. For example, according to a statement, 47 members of *Hizb-i-Wahdat Afghanistan* ran as independent candidates and *Hizb-i-Wahdat Mardum Afghanistan* landed 37 candidates, many of who did not sport their party affiliation. The candidates of *Jamiat-e-Islami Party* almost exclusively ran as independent candidates while still receiving support from the party. *Junbesh-e-Islami* candidates did the same. See Ruttig, *supra* note 185; Dimitroff, *supra* note 158, at 21.

¹⁸⁸ Reynolds & Carey, *supra* note 145, at 4.

¹⁸⁹ Ruttig, *supra* note 185.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² COX, *supra* note 12, at 102.

¹⁹³ *Id.*

complexity that SNTV creates effectively excludes the likelihood of a collective campaign.¹⁹⁴ For instance, going back to the example of *Wahdat-e-Islami*, which had nine candidates in Kabul, only two candidates were able to win seats with a total of 21,246 votes—the leader of the party won 16,233 votes and an affiliate scored 5,013 votes.¹⁹⁵ This number of votes alone was nearly five times the average number of votes (4431 votes) needed to win a seat in Kabul, let alone the considerable number of votes that were wasted on the party’s other losing candidates. Therefore, if the party had been able to manage the number of candidates and distribution of votes, it would likely have won at least four seats instead of two in the WJ.

3. SNTV with High District Magnitude Encourages Party Fragmentation

Expanding “Duverger’s Law,” Reed and Cox have suggested that SNTV should follow a similar tendency to First Past the Post’ (FPTP), when it comes to the number of effective parties: it should produce one more party than the number of seats it offers per district ($m+1$).¹⁹⁶ For example, in Japan with an average of four seats per district and variation of two seats across districts, five major parties emerged.¹⁹⁷ In Korea, with a fixed number of two seats per district, three major parties emerged in the legislature.¹⁹⁸ Highlighting the limits of this formula, however, Gary Cox has suggested that the electoral system loses its effectiveness when the

¹⁹⁴ Reynolds & Carey, *supra* note 145, at 3.

¹⁹⁵ ABASS HUSSEINI & NURULLAH FAIZI, KABUL CENTER FOR STRATEGIC STUDIES, NEGAHI BA TARKIB JADID MAJLES NUMAYENDAGAN AFGHANISTAN, 32-33 (1389) [2010].

¹⁹⁶ Grofman et al., *supra* note 157, at 387; *also see* COX, *supra* note 12, at 101.

¹⁹⁷ The Parties were namely, LDP, JSP (Socialist), Komeito (Clean Government), DSP (Democratic Socialist), and JCP (Communist); *see* Grofman, *supra* note 157, at 387; *see also* GIOVANNI SARTORI, *supra* note 25, at 20.

¹⁹⁸ The opposition parties were fragmented, however, due to the government intervention in eleventh and twelfth election. Grofman et al., *supra* note 157, at 387.

district magnitude is above five seats.¹⁹⁹ District magnitude refers to the average number of seats allocated for an electoral constituency (district).²⁰⁰

In Afghanistan, the district magnitude is 7 and the variation of district seats ranges from 2 to 33 seats. As predicted by Cox, this high district magnitude with a wide range of seat variations across districts has failed to produce an effective number of parties in the WJ.²⁰¹ Table II-6 below indicates that indeed the WJ lacks any effective party at all since the largest parties share only 10% of the WJ seats in 2005 and 7% in 2010.

¹⁹⁹ COX, *supra* note 12, at 100.

²⁰⁰ Keneth Benoit, *District Magnitude, Electoral Formula, and the Number of Parties*, 39 EUROPEAN JOURNAL OF POLITICAL RESEARCH 203–224, 204 (2001).

²⁰¹ In addition to that, the variation in the number of seats across constituencies is so high that makes the (average) district magnitude hopeless to predict the number of parties: The number of seats ranges from 2 seats for sparsely populated provinces (Panjshir, Nimroz and Nooristan) to 33 seats for densely populated Kabul. In between are numerous provinces with various numbers of seats.

Table II-6. demonstrates the seat-share of each political party in the WJ after the 2005 and 2010 parliamentary elections.²⁰²

| Political Parties in the Wolesi Jirga | | WJ Election of 2005 | | WJ Election of 2010 | |
|---|--------------------------------------|---------------------|---------|---------------------|---------|
| Title (Persian) | Title (English) | # Seats | % Seats | # Seats | % Seats |
| Hizb-i-Afghanistan Naween | New Afghanistan Party | 25 | 10% | 1 | 0% |
| Hizb-i-Jamiat Islami | Islamic Peoples Party | 23 | 9% | 18 | 7% |
| Hizbi-i-Junbesh-e-Milli Afg. | National Movement Party of Afg. | 20 | 8% | 4 | 2% |
| Hizbi-i-Wahdat Mardom Afg. | Peoples Unity Party of Afg. | 18 | 7% | 12 | 5% |
| Hizb-i-Islami Afg. | Islamic Party of Afg. | 12 | 5% | 24 | 10% |
| Hizb-i-Wahdat Milli Islami Afg. | Islamic National Unity Party of Afg. | 10 | 4% | 1 | 0% |
| Hizb-i-Afghan Milat | Social Democrat Party | 7 | 3% | 3 | 1% |
| Hizb-i-Dawat Islami Afg. | Islamic Mission Party | 7 | 2% | 3 | 1% |
| Hizb-i-Eqtedar Islami | Islamic Power Party | 7 | 3% | 3 | 1% |
| Ehزاب-i-Chappi | Ulomi, Aryan, Ranjbar, Tanai | 6 | 2% | 4 | 2% |
| Hizbi-i-Wahdat Islami Afg. | Islamic Unity Party of Afg. | 5 | 2% | 5 | 2% |
| Hizb-i-Harakat Milli Afg. | National Movement Party of Afg. | 4 | 2% | 1 | 0% |
| Hizb-i-Nijat-e Afghanistan | Afghanistan's Rescue Front | 4 | 2% | 0 | 0% |
| Hizb-i-Hambastagee Milli Afg. | National Solidarity Party | 3 | 1% | 1 | 0% |
| Hizb-i-Paiwand-e-Milli | National Solidarity Party of Afg. | 2 | 1% | 4 | 2% |
| Hizb-i-Hambastagee Milli Jawana-ye Afg. | Nat'l Youth Solidarity Party of Afg. | 1 | 0% | 0 | 0% |
| Hizb-i-Jamhorkhwahan | Republican Party | 0 | 0% | 3 | 1% |
| Hizb-i-Kangra Milli Afg. | National Congress Party of Afg. | 0 | 0% | 1 | 0% |
| Hizb-i-Mahaz Milli | National Purity Party | 0 | 0% | 2 | 1% |
| Hizb-i-Niyaz Milli | National Need Party | 0 | 0% | 1 | 0% |
| Hizb-i-Musharekat Milli | National Partnership Party | 0 | 0% | 1 | 0% |
| Hizb-i-Wahdat Islami Milat | Islamic Unity Party of the Nation | 0 | 0% | 1 | 0% |
| Hizb-i-Jama-alda | United Mission Party | 0 | 0% | 1 | 0% |

B. SNTV and the Failure of Coalition-Making in the Parliamentary Elections

Afghan laws and public demand favor the marginalization of ethnic parties. SNTV has been very successful in meeting this demand. Under the SNTV system, ethnic parties were not able to grow and institutionalize as formidable political organizations.²⁰³ On the contrary, these proto-parties remained organizationally factionalized, politically incompetent, and electorally disenfranchised. None has secured a sizable number of seats in the Assembly.²⁰⁴

²⁰² Andrew Wilder, *supra* note 170; also see NATIONAL DEMOCRATIC INSTITUTE, *supra* note 51, at 5.

²⁰³ S. Yaqub Ibrahim, *Political Parties and Political Development in Afghanistan*, 1 (Apr. 17, 2014).

²⁰⁴ The largest party in the parliament, *Hizb-Naween Afghanistan* (The New Afghanistan Party), won 25 of 248 seats in 2005. The same party won only 1 seat in 2010. In 2010, the largest share

As for the development of cross-ethnic coalitions, SNTV rendered the same disenfranchising effect as it had on ethnic parties. In such an electoral context, coalition-building is even more at a disadvantage because unlike ethnic parties, which already existed, the coalitions had to be built from scratch. As discussed earlier, SNTV has several features that encourage disengagement among candidates. SNTV offers seats for individual candidates, not lists, parties, or coalitions. Due to high district magnitude, it encourages a higher number of candidates to run. The variation in district seats is so wide that it discourages coalitional coordination across a large number of provinces. To put it simply, SNTV possesses all of the electoral features that discourage collective action.

Consequently, for a parliamentary coalition to form and win a large number of seats, four embedded steps are needed to be taken to basically undermine the disenfranchising effects of the SNTV system:²⁰⁵ (1) an alliance should be able to gauge an accurate number of its supporters in a constituency,²⁰⁶ (2) it should be able to predict an accurate number of candidates that rival

of seats by a party was 24. The same party, *Hizb-i-Islami*, had won only 12 seats in 2005. Overall, parties' share of seats decreased from 156 seats in 2005 to 93 seats in 2010. *See* Reynolds & Carey, *supra* note 145, at 9-10.

In the presidential elections, parties appear mostly in the form of endorsers rather than as major electoral players with their own presidential nominees. Even as endorsers, in order to make their endorsement publicly effective, they tend to declare their support in larger coalitions than individually.

²⁰⁵ Reynolds & Carey, *supra* note 145, at 3; Gary W Cox & Emerson Niou analyze the reverse of these conditions under three errors of nomination: under-nomination, over-nomination, and failure to equalize the vote. Under-nominations occur if a party could win more seats if it nominated more candidates; (2) over-nomination occurs when a party could win more seats if it landed fewer candidates. (3) failure to equalize the vote occurs when a party is not able to persuade voters to distribute their votes strategically to all its member candidates and as a result some candidates get win more than enough votes while others lose the seat. *For further information see* ED. ROLAND RICH, LUKE HAMBLY, MICHAEL G. MORGAN, ET AL., *POLITICAL PARTIES IN THE PACIFIC ISLANDS*, 357, 365 (Ed. Roland Rich, Luke Hambly, Michael G. Morgan, 2006); *See also* SARTORI, *supra* note 25, at 27.

²⁰⁶ Dimitroff, *supra* note 158, at 5.

party/coalitions may land in that constituency;²⁰⁷ (3) it must be able to control member nominations and stand an accurate number of them to avoid wasting votes;²⁰⁸ and (4) it should be able to control the distribution of votes among member candidates.²⁰⁹ While these guidelines seem plausible, their fulfillment is unlikely by even a small and cohesive ethnic party—let alone a newly formed, large coalition.

It is next to impossible for a newly formed coalition to estimate the number of its supporters. Even if a coalition could make this estimation, the coalition would not likely be able to control the voting distributions or member nominations. This is because any potential coalition under SNTV is effectively an alliance of individual candidates who seek to raise their chances of winning through the coalition. Therefore, any attempt by the coalition to reduce the number of candidates or an attempt to distribute the votes of its members is likely to disintegrate the coalition. In other words, under an SNTV system, the interests of a coalition are not likely to be in alignment with those of individual candidates.

Moreover, by offering several seats to a constituency, SNTV allows individual candidates to win seats with a very small number of votes. Studies have shown that candidates have been able to win seats with less than 3 percent of the votes.²¹⁰ In order to obtain that small percentage of votes, candidates do not need to appeal to different communities. In fact, there were rare cases where candidates campaigned throughout an entire constituency (province) since they can easily score a minimum of 3 percent of the votes by appealing to their kinship, tribal groups, towns, or

²⁰⁷ Reynolds, Jones & Wilder, *supra* note 161, at 7.

²⁰⁸ *Id.*; Dimitroff, *supra* note 158, at 5.

²⁰⁹ ICG 88, *supra* note 167, at 17; Dimitroff, *supra* note 158, at 5; Reynolds, Jones, & Wilder, *supra* note 161, at 7.

²¹⁰ According to a study by the Special Electoral Reform Commission, over 30 percent of votes were wasted on losing candidates in both the 2005 and 2010 parliamentary elections. See ASADULLAH SA'ADATI, ET AL., ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION, 98 (1395) [2016].

neighborhoods.²¹¹ With this low threshold of winning that SNTV offers to candidates, they are less likely to engage in a rather costly formation of cross-ethnic coalitions.²¹² Not surprisingly, parliamentary elections in Afghanistan have been races between individuals and not coalitions.

From 20 considerably large coalitions that were formed in the past five elections, only 3 coalitions came into being prior to the parliamentary elections. Astonishingly enough, not all of these three coalitions came to prepare for parliamentary elections. On the contrary, the New National Front of Afghanistan (NNF), which was formed in 2016, declared its intention of replacing the incumbents in the government.²¹³ Likewise, the Council for Protection and Stability of Afghanistan (APSC) has demanded convening a *Constitutional Loya Jirga*²¹⁴ and the resignation of the National Unity Government.²¹⁵ The National Unity Government, discussed in greater detail in Part V below, was formed after the 2014 election, when based on an agreement, the front-runner of the second round became the president and the runner up became CEO.²¹⁶

²¹¹ Dimitroff, *supra* note 158, at 13; Akbar, *supra* note 180, at 4.

²¹² Reynolds, Jones, & Wilder, *supra* note 161, at 7 (“SNTV can also have a negative impact on the development of effective parliamentary politics by encouraging candidates to push local, ethnic or tribal issues, rather than promoting a national agenda and encouraging coalition building and cooperation between ethnic or regional groupings.”)

²¹³ “Afghanistan’s New National Front” Announces Existence, ATN NEWS (Jan. 14, 2016), <http://ariananews.af/latest-news/afghanistans-new-national-front-announces-existence/>.

²¹⁴ Constitutional Loya Jirga [*Loya Jirga Qanon-e-Asasi*] is the grand council that amends the Constitution. This council includes members of the parliament as well as the presidents of provincial and district councils. See CONSTITUTION, art.111, 110.

²¹⁵ See Mir Abed Joenda, *Elam Amadaqi Shurai Herasat wa Subat Afghanistan Bar Barguzari Loya Jirga [The Council for Protection and Stability of Afghanistan Declares Readiness for Holding Loya Jirga]* TOLONNEWS, 1394 [2016] <http://www.tolonews.com/fa/afghanistan/23253-new-council-pushes-government-to-convene-jirga-before-august>; also see *Daudzai: Namitawan Hukumat Maslahati Ra Madamul-Umur Qabol Kard [Daudzai: We Cannot Accept A Compromised Government to Stay Forever]* RADIO AZADI, Sar. 8, 1395 [2016], <http://da.azadiradio.com/a/27825262.html>.

²¹⁶ Agreement Between the Two Campaign Teams Regarding the Structure of the National Unity Government (Sep. 20, 2014), Sec. B, <https://www.afghanistan-analysts.org/miscellaneous/aan-resources/the-government-of-national-unity-deal-full-text/>.

Only the National Understanding Front, led by Yunis Qanooni and Mohammad Mohaqiq, was forged to win a larger share of seats in the Assembly in the 2005 election.²¹⁷ However, the coalition remained electorally irrelevant as it could not coordinate the 11 member parties, who themselves suffered fractionalization under the SNTV system.²¹⁸ The coalition dissolved as soon as Yunis Qanooni reached an agreement with the *Jamiat-e-Islami* party to become the Speaker of the House in exchange for returning his loyalty to them.²¹⁹

What is notable is that even ethnic and tribal councils have encountered collective action problems under the SNTV. A study by Andrew Reynolds and collaborators examined several coalition-making attempts at ethnic and tribal levels in the Afghan parliamentary election of 2005. Their findings suggested that most of these coalition-making attempts have failed as individual candidates refused to submit to the tribal councils' decisions to withdraw.²²⁰ For example, several meetings were held by the elders of Achackzai, Alokozai, Barakzai, Popalzai, and Noorzai tribes in Herat and Kandahar for the sole purpose of reducing the number of their candidates.²²¹ Many candidates avoided attending the meetings; others refused to submit to their decisions.²²² As a result, most of these councils failed to minimize intra-tribal competition and maximize their seat-shares.²²³ Only Barakzai in Herat and Popalzai in Kandahar were able to form effective tribal coalitions. The success of the Popalzais in Kandahar was mainly due to the

²¹⁷ Dimitroff, *supra* note 158, at 21.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Andrew Wilder, *supra* note 170, at 21-22.

²²¹ *Id.*

²²² *Id.* at 21

²²³ *Id.*

intervention of President Karzai, who is from the same tribe.²²⁴

Similarly, the Shias of Herat have attempted to form a coalition to coordinate between candidates, but have failed in their attempts.²²⁵ The two groups of Shias in Herat are Hazara (estimated 5%) and non-Hazara Shias (estimated 10%).²²⁶ They held over six meetings prior to the 2005 election to encourage electoral coordination among candidates.²²⁷ The meetings, however, failed as the candidates refused to attend in order to avoid any decision against their candidacies.²²⁸ Due to the multiplicity of Shia candidates, only one male and one female from this group were able to win seats in the *WJ*.²²⁹

In the 2010 election in Ghazni province, different tribes and ethnic groups held councils to form a winning coalition by reducing the number of their candidates. However, these attempts failed as a total of 84 candidates ran for Ghazni's eleven seats, from which 24 were Pashtuns, 55 were Hazaras, and the remaining 5 were Tajiks.²³⁰ Ghazni's population is estimated to be about 44-49 percent Pashtun, 46-50 percent Hazaras, and 5 percent Tajiks.²³¹ Table II-7 indicates the huge discrepancies between the number of seats per population and the number of candidates.

²²⁴ *Id.* at 23 (due to Karzai's influence, Popalzais were able to coordinate effectively, reducing the number of their candidates from 19 to 2 nominees. Both nominees were able to win seats in the *WJ*.)

²²⁵ *Id.* AT 21.

²²⁶ *Id.* at 20-21.

²²⁷ *Id.* at 19.

²²⁸ *Id.* (Even nonviable candidates did not drop out because they said they wanted to use the opportunity to become known.)

²²⁹ *Id.* at 20.

²³⁰ INTERNATIONAL CRISIS GROUP, ASIA BRIEFING N° 117: AFGHANISTAN'S ELECTIONS STALEMATE, 10 (Feb. 2011), http://www.observatori.org/paises/pais_87/documentos/B117%20Afghanistans%20Elections%20Stalemate.pdf.

²³¹ NAVAL POST GRADUATE SCHOOL, <http://www.nps.edu/About/index.html> (suggesting that Pashtuns comprise 49% of the populations and Hazaras 46%); COBURN & LARSON, *supra* note 177, at 205 (suggesting that Hazaras, with around 50%, are the largest group and Pashtuns are the second largest group in the province).

Comparing the population data and the electoral data suggests that on average Pashtuns had one candidate for 2 percent of their population, Hazaras for 0.8 percent of their population, and Tajiks for 1 percent of their people.

Table II-7. illustrates the discrepancy between population of each ethnic group and the number of their candidates.

| Distribution of Populations, Candidates, and Seats | | | |
|---|--------------------------|-------------------------------|----------------------|
| Ethnic Groups | Pop. Per Seat (%) | Pop. Per Candidate (%) | Seats Won (#) |
| Pashtuns | 4.5 | 2 | 0 |
| Hazaras | 4.2 | 0.8 | 11 |
| Tajiks | 0.5 | 1 | 0 |

Looking at the examples of Japan, Korea, and Taiwan, where SNTV was implemented extensively, some may question how large parties and coalitions were able to sustain themselves, especially when this system is not favorable to coalition-building. Going into the details of the system's influence over parties and coalitions in those countries is beyond the scope of this dissertation. Nonetheless, a simple response would be that only the governing parties or coalitions could sustain and expand under the SNTV system in those countries.²³² Opposition groups have continued to struggle and repeatedly failed to succeed in winning the elections. The reason that only incumbent parties were able to survive and even flourish under SNTV was that they were largely able to fulfill all four electoral strands mentioned earlier: they were able to control their nominations, manage voter distribution, and predict their opposition's policies and candidates. Their success was because of their access to resources in the government and the patronage that they could provide. Most importantly, they used the institutional cohesion that existed in the government to enhance their party discipline (even though they continued to have

²³² Sarwar Danish, *Anwa Nezam-Hai Intekhabati [The Typology of Electoral Systems: Advantages and Disadvantages]*, in ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] 77 (1394) [2015]; REYNOLDS, *supra* note 14, at 113 (“Over 45 years of SNTV experience, Japan demonstrated quite a robust ‘one party dominant’ system.”)

different distinctive and even competing factions).

In Afghanistan, however, since the incumbents have been against party institutionalization in general, let alone building their own parties or formal coalitions, there is little chance for any party or coalition to grow.²³³ The Afghan incumbents, instead of seizing the opportunity and forming strong formal coalitions, have succeeded through political networking and informal alliance-building to run as independents.²³⁴ As such, one could argue that SNTV leads to either the institutionalization of a single dominant party system or no party system at all. In the case of Afghanistan, the latter is true since the incumbents are not invested in coalition institutionalization.

In summary, Afghan parliamentary elections have shown that SNTV favors neither ethnic parties nor cross-ethnic coalitions. Instead, this study concludes that SNTV incentivizes personalistic politics the most and regionally concentrated, politically fragmented, and institutionally disorganized parties the least.²³⁵

C. Conclusion

SNTV is a rarely adopted electoral system. Indeed, Afghanistan is one of the few countries, namely Vanuatu, Kuwait, and Pitcairn Islands, that use this system.²³⁶ Some countries such as Jordan, Japan, South Korea, and Taiwan have replaced this electoral system with a different parliamentary electoral system. The desertion of this electoral system has primarily been because of its negative impacts on party systems and coalitions. It is therefore not surprising that, unlike presidential elections that have sparked the formation of broad and inclusive coalitions, parliamentary elections have barely witnessed coalition-making of any kind

²³³ Dimitroff, *supra* note 158, at 22.

²³⁴ *Id.*

²³⁵ *Id.* at 5

²³⁶ Ghadiri, *supra* note 150, at 113.

in Afghanistan. In fact, even ethnic parties have fractured and fragmented in parliamentary elections.²³⁷

SNTV has had a disenfranchising effect on ethnic parties and cross-ethnic coalitions because of several distinct features: First, this is a candidate-centric electoral system. Second, SNTV is a multimember constituency system, where individual candidates are able to win seats with just over 3 percent votes. Third, the district magnitude is considerably high (7 seats) and the variation of district seats ranges from 2 to 33 seats, which make the system un conducive to party or coalition development. Therefore, in order to develop, a party or coalition has to overcome SNTV on all these features. To do that, the parties and coalitions need to be able to gauge an accurate number of their supporters in a constituency; they should be able to predict an accurate number of candidates that rival parties/coalitions may land in that constituency; they must control the nomination of their members and stand an accurate number of them to avoid wasting any votes; and they should be able to control the distribution of votes among their candidates.²³⁸ While these guidelines seem plausible, their fulfillment is unlikely for even a small and cohesive ethnic party, let alone for newer, large coalitions.

²³⁷ Ibrahimi, *supra* note 203.

²³⁸ ICG 88, *supra* note 167, at 17; Dimitroff, *supra* note 158, at 5; Reynolds, Jones, & Wilder, *supra* note 161, at 7.

PART III

**CONSTITUTIONAL DESIGN AND THE FAILURE OF
PARLIAMENTARY COALITION-MAKING**

The Constitution is the most important law governing politics since it aims to “define the various *institutions* through which power is to be exercised, specifying the roles which they are to perform, and establishing workable *rules of priority* for resolving conflicts which may emerge between different institutions.”¹ The most significant political framework that a constitution sets for a country is the type of political regime. A political regime not only determines the relationship between different state institutions, but also the relationship between the citizens and the government, as well as between different groups. Political regimes thereby influence political coalitions, which also serve as a bridge between citizens and government, as well as different ethnic groups.

Although the Afghan Constitution does not explicitly name the type of political system in Afghanistan, Articles 60, 61, 64 and 71 design a presidential government. Based on these Articles, the president is the head of the state and the executive branch² and s/he is the Commander-in-Chief of the Nation.³ The presidential office is an elected body based on popular votes.⁴ This implicit adoption of a presidential system by the Constitution has not gone unchallenged, however.

Since the inception of the constitutional draft following the Bonn Conference, the feasibility of a presidential system for an ethnically divided Afghanistan has been subject to

¹ William Maley, Executive, Legislative, and Electoral Options for Afghanistan, 1 (2003) (unpublished manuscript)

<http://cic.nyu.edu/sites/default/files/e9execlegiselectoraloptionsmaley.pdf>.

² THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN [QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN] Jan. 26, 2004,

<http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf> (hereinafter CONSTITUTION), art. 60.

³ CONSTITUTION, art. 64.

⁴ CONSTITUTION, art. 61.

dispute.⁵ The two main criticisms against the presidential system are that (a) this system is not inclusive to all ethnic groups, and that (b) this system is not conducive to party development.⁶ The critics have been mainly ethnic Tajiks, Hazaras, Uzbeks and other minorities, who advocate for a parliamentary or a semi-parliamentary system.⁷ The proponents of the presidential system have been primarily ethnic Pashtuns, who advocate for a strong executive to overcome challenges coming from the warlords, and to unite the country.⁸

The struggle against the presidential system first intensified with the convening of the *Constitutional Loya Jirga*,⁹ the Grand Council that adopted the Constitution.¹⁰ The Tajik-dominated Northern Alliances attempted to set up a parliamentary constitution; however, the resistance primarily came from Pashtun representatives, with Hamid Karzai as the leading

⁵ Conrad Schetter, *Ethnicity and the political reconstruction in Afghanistan 3* (LSE Research Online, Conference Paper, No. 3, 2005)

http://eprints.lse.ac.uk/28376/1/Schetter_LSERO_version.pdf.

⁶ Ali Maisam Nazari, *Nizam Parliamani: Nizami Barai Hukumrani Khob*, [*Parliamentary System: A System of Good Governance*] BBC PERSIAN (Feb. 12, 2017)

<http://www.bbc.com/persian/blog-viewpoints-38950895>; MUJIBURAHMAN RAHIMI, NAQDI BAR SAHKTAR NEZAM DAR AFGHANISTAN [A CRITIQUE OF THE STRUCTURE OF THE POLITICAL SYSTEM IN AFGHANISTAN] 152-9, 193-206 (2008); INTERNATIONAL CRISIS GROUP, POLICY BRIEFING 141: AFGHANISTAN'S PARTIES IN TRANSITION 4 (June, 2013), <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>; INTERNATIONAL CRISIS GROUP, ASIA REPORT N°88: FROM PRESIDENTIAL TO PARLIAMENTARY ELECTIONS, 7 (Nov. 2004), <http://reliefweb.int/report/afghanistan/afghanistan-presidential-parliamentary-elections> [hereinafter, "ICG 88"]; KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE, 1,7 (Jan. 12, 2015), <https://www.fas.org/sgp/crs/row/RS21922.pdf>.

⁷ RAHIMI, *supra* note 6 at 155; Astri Suhrke, *The Democratisation of a Dependent State: The Case of Afghanistan*, 8 (Chr. Michelsen Institute, Working Paper 51, 2007), <https://www.cmi.no/publications/2810-democratization-of-a-dependent-state>.

⁸ RAHIMI, *supra* note 6, at 155; Suhrke, *supra* note 7, at 8.

⁹ See CONSTITUTION, art. 111 (*Constitutional Loya Jirga* is the only constitutionally legitimate council that can amend the Constitution.)

¹⁰ RAHIMI, *supra* note 6, at 159; Thomas Ruttig, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from, (1902-2006)*, 1, 20 KONRAD STIFTUNG ADENAUER (2006) http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf.

figure.¹¹ At the end, a presidential system was adopted with a concession that the WJ would have the power to oversee the executive.¹² This concession, however, has not quieted proponents of a parliamentary system. Since the adoption of the Constitution, several presidential coalitions have declared their objectives to amend the Constitution and replace the presidential system with a parliamentary or a semi-parliamentary system. These coalitions include the National United Front of Afghanistan (2007),¹³ National Front of Afghanistan (2011),¹⁴ the National Coalition of Afghanistan (2013),¹⁵ and Electoral Alliances of Afghanistan (2013).¹⁶

Interestingly, the divide over whether to adopt a presidential constitution was not merely a domestic one. International allies of Afghanistan picked sides during the drafting of the Constitution, often recommending the political system that resembled their own.¹⁷ For example,

¹¹Ruttig, *supra* note 10, at 20-21; Barnett R. Rubin, *Crafting a Constitution for Afghanistan*, 3/15 JOURNAL OF DEMOCRACY 5-19 (2004) at 11-12; SONALI KOHATKAR & JAMES INGALLS, BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF SILENCE 142 (2006); KATZMAN, *supra* note 6, at 7; Rainer Grote, *Separation of powers in the Afghan New Constitution*, 64 ZAORV, 898, 904 (2004).

¹² PETER DIMITROFF, NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS, REPORT: THE SEPTEMBER 2005 PARLIAMENTARY AND PROVINCIAL COUNCIL ELECTIONS IN AFGHANISTAN, 3 (2006); Suhrke, *supra* note 7, at 8.

¹³ THE INTERNATIONAL COUNCIL ON SECURITY AND DEVELOPMENT, DECISION POINT 2009: AFGHANISTAN'S PRESIDENTIAL ELECTION: POWER TO THE PEOPLE, OR THE POWERFUL? 44 (Mar. 2009), http://www.nps.edu/programs/ccs/Elections/ICOS_elections.pdf [hereinafter, ICOS].

¹⁴ Grand Hewad, *The New National Front: A Dark Horse Returns – with Three Riders*, AFGHANISTAN ANALYST NETWORK (Dec. 1, 2011) <https://www.afghanistan-analysts.org/the-new-national-front-a-dark-horse-returns-with-three-riders/>.

¹⁵ MIGRATION REVIEW TRIBUNAL, BACKGROUND PAPER: AFGHANISTAN: POLITICAL PARTIES AND INSURGENT GROUPS 2001-2013 5 (Mar. 7, 2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf.

¹⁶ JACKSON KEITH, INSTITUTE FOR THE STUDY OF WAR, BACKGROUNDER: THE FORMATION OF ELECTORAL ALLIANCES IN AFGHAN POLITICS IN 2014 5 (Oct. 2, 2013) http://www.understandingwar.org/sites/default/files/Backgrounder_AFGElectoralAlliances_0.pdf.

¹⁷ ABDUL ALI MOHAMMADI, AFGHANISTAN WA DAWLAT MUDERN [AFGHANISTAN AND A MODERN STATE] 151 (1394) [2015]; The divide between U.S. experts and diplomats and those from the European Union was also confirmed by Professor Birol A. Yesilada, who was involved in constitution-drafting of Afghanistan (On file with Author).

experts and diplomats from the United States including Barnet Rubin and Zalmay Khalilzad advocated for a presidential constitution, whereas the European Union experts and diplomats pushed for parliamentary system.¹⁸

Generally, the critics of the presidential system argue that this system is not conducive to party discipline, coalition development and power-sharing.¹⁹ Advocates of the presidential system make the opposite argument, suggesting that it is more conducive to inclusive coalitions and stable government than parliamentary systems.²⁰ A careful analysis of Afghanistan's presidential system through the lens of proponents and opponents reveals that each argument may have merits concerning different aspects of coalition-making: the first on the formation of cross-ethnic coalitions, and the second on their consolidation.

The ratio of presidential election coalitions to parliamentary election coalitions is eighteen to two.²¹ Additionally, the winning electoral coalitions have translated into multi-ethnic executive coalitions. Therefore, it is fair to suggest that the presidential system has contributed to the formation of cross-ethnic coalitions that even extended to the executive. However, neither the president nor the oppositions have attempted to form parliamentary blocs and to sustain their coalitions. In fact, no opposition coalition has successfully survived and engaged in opposition

¹⁸ *Id.*; Suhrke, *supra* note 7, at 8-9; RAHIMI, *supra* note 6, 158; Rubin, *supra* note 18; *see also* Maley, *supra* note 1, 4 (There is no 'perfect' executive form, but a pure presidential system should be avoided. The Executive Government should be based in a parliament, and accountable to it.); CHRIS JOHNSON, WILLIAM MALEY, ALEXANDER THIER & ALI WARDAK, UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, REPORT: AFGHANISTAN'S POLITICAL AND CONSTITUTIONAL DEVELOPMENT, 22-24 (2003), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf>; CHRIS JOHNSON, JOLYON LESLIE, AFGHANISTAN: THE MIRAGE OF PEACE, 171-2 (2004).

¹⁹ Rubin, *supra* note 11, at 11-13; RAHIMI, *supra* note 6.

²⁰ Rubin, *supra* note 11, at 11-13; MOHAMMAD TAHIR HASHEMI, BA SOY DEMOCRACY: QANOON-E-ASASI WA NEZAM NAWIN SIASI [TOWARDS DEMOCRACY: THE CONSTITUTION AND THE NEW POLITICAL SYSTEM OF AFGHANISTAN] (2005).

²¹ For more information about presidential and parliamentary electoral coalitions refer to Table II-1 in Chapter Four.

politics until the next election. On these latter aspects of coalition-building, Afghanistan's case seems to weigh-in on the opponents' proposition. Demonstrating that the formation of coalitions does not necessarily lead to their institutionalization, Part III concludes that Afghan presidential features are conducive to inter-ethnic coalition making but not necessarily to institutionalization of those coalitions.

To examine the role of presidential system in coalition-building, Part III examines three aspects of the Afghan presidential system: presidential electoral features (Chapter Six); dual vice presidency (Chapter Seven); and presidential powers (Chapter Eight). This Part reveals that the two aspects of the presidential system that have contributed to the formation of electoral and executive coalitions are the constitutional features of Afghan presidential elections and dual vice presidency. However, the failure of political coalitions to extend to parliamentary elections can primarily be attributed to broad legislative powers of the president and some constitutional loopholes that Afghan presidents have used to bypass the *Wolesi Jirga*. The following Figure III-1 summarizes the impact of different features of the Afghan presidential system on coalition-building in the single cycle of institutionalization.

Figure III-1. illustrates the contribution of the presidential electoral features, dual vice presidency, and presidential powers in the institutionalization of cross-ethnic coalitions.

Role of Presidential Constitution in Survival of Coalitions in A Single Cycle of Institutionalization

| | | | | | |
|--|--|--|--|--|---|
| | | Executive Coalition >>>> | | Presidential Power -No | |
| | | Pres. Elec. Features- Yes Dual VP-Yes Pres. Power- Yes | | | |
| Cross-ethnic Coalition>>>> | Presidential Elec. Coalition >>>> | | | Parliamentary Elec. Coalition >>>> | Parliamentary Coalition >>>> |
| Pres. Elec. Features-Yes Dual VP-Yes Pres. Power-Yes | Pres. Elec. Features-Yes Dual VP-Partly Pres. Power- Yes | | | Pres. Elec. Features- No Dual VP- No Pres. Power- No | Pres. Elec. Features- No Dual VP- No |
| | | Opposition Coalition >>>> | | Presidential Power -No | |
| | | Pres. Elec. Features- No Dual VP- No Pres. Power- No | | | |

Chapter Six: Constitutional Features of Presidential Elections and the Failure of Cross-Ethnic Coalitions to Institutionalize

Presidential elections have some constitutional features, which are different from premier elections as well as presidential electoral systems. These distinct features of presidential elections, however, have barely attracted scholarly attentions. Often times, these features are explained in the margins of plurality and runoff systems, and sometimes the literature tends to draw conclusions based on an evaluation of just one or a few features in isolation, and therefore misses some of the important effects that can be caught only with a wider lens that includes analysis of all features.²² For example, Juan Linz, Arend Lijphart, and Alfred Stepan point to the zero-sum game and candidate-driven features of presidential elections as evidence that

²² See, for example, Juan J. Linz, *Presidential or Parliamentary Democracy, in THE FAILURE OF PRESIDENTIAL DEMOCRACY*, 21-23, 42-46 (Juan J. Linz & Arturo Valenzuela eds., 1994).

presidential systems are unfit for coalition-building.²³ In contrast, Donald Horowitz and others have emphasized that presidential elections, being one-seat elections and prone to pre-electoral coalitions, are conducive to coalition-building.²⁴ This chapter reveals that these scholars come to different conclusions because they have chosen to emphasize different isolated features of presidential elections.

This chapter suggests that no one feature alone can explain the conduciveness (or lack thereof) of presidential systems to build coalitions. To understand how these features influence coalition building in a particular social setting, they must be studied simultaneously. In case of Afghanistan, the presidential electoral features include the elections being unipersonal-seat, candidate-driven (as opposed to party-centric), open to political outsiders, prone to pre-electoral bargaining, zero-sum games, and constrained by electoral timelines as well as presidential term limits.²⁵ These presidential electoral features tend to have their own unique effects on coalition-building, which need not be subsumed by studies of the runoff system.²⁶

²³ *Id.* at 19, 21; AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES* 178, 187, 210 (1977); JUAN J. LINZ, ALFRED STEPAN, *PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION*, 181 (1996).

²⁴ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT*, 631 (2ND ED., 2001); GARY W. COX, *MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD'S ELECTORAL SYSTEMS* 188 (1997); Jose Antonio Cheibub, Adam Przeworski & Sebastian M. Saiegh, *Government Coalitions and Legislative Success Under Presidentialism and Parliamentarism*, *JOURNAL OF POLITICAL SCIENCE*, 565, 570 (2004); Maurice Duverger, *Presidential Elections and Party system in Europe (translated by Herbert H. Rowen)*, in *POLITICAL PARTIES AND THE MODERN STATE*, 88 (Richard L. McCormick, ed., 1984).

²⁵ Not all these features of presidential elections are recognized by Afghan Constitution explicitly. Some features are merely implied from different constitutional provisions as well as from electoral practices. *See* CONSTITUTION, Art. 61 (implying unipersonal office of presidency); *id.* art. 62 (implying the candidate-centered feature of presidential elections); art. 61 (implying that presidential elections are zero-sum games and provide popular mandates for presidents); art. 61 “The presidential term shall expire on 1st of Jawza of the fifth year after elections. Elections for the new President shall be held within thirty to sixty days prior to the end of the presidential term.”; art. 62 “No individual shall be elected for more than two terms as President. The provision of this article shall also apply to Vice-Presidents.”

Additionally, these presidential electoral features do not have unidirectional impacts on coalition building: while some function as constructive features of presidential elections, others are obstructive to coalition-building. Examining the multidirectional effects of presidential electoral features explains how and why several cross-ethnic coalitions had auspicious starts, but ultimately were short lived.

Section I of this chapter examines the constructive features of presidential elections that favor the formation of cross-ethnic coalitions. Section II analyzes the obstructive features of presidential elections and how those features hinder the institutionalization of coalitions.

A. Constructive Features of Afghan Presidential Elections and the Birth of Cross-Ethnic Coalitions

1. Presidential Elections are One-Seat Elections

The most salient feature of the Afghan presidential election system is that it is a one-seat election—as in most other presidential democracies.²⁷ Some skeptics of the presidential system, scholars like Arend Lijphart and Juan Linz, have criticized this unipersonal nature of the presidential office, suggesting that different ethnic groups cannot effectively share it.²⁸ As noted previously, Katzman has suggested that in Afghanistan, only Pashtuns could win the office.²⁹

²⁶ The role of the runoff of system in coalition-building and ethnic accommodation is explained in Chapter Four.

²⁷ Switzerland and Uruguay (1952-1967) have been among the few countries with collegial presidential system. Cyprus at one point (1960-1963) adopted a system of co-presidency, where the president and vice president had equal powers. For more information about these systems refer to Chapter Eleven.

²⁸ Linz, *supra* note 22, at 44 (“One might object that whatever procedure is used in the election, ultimately unipersonal executive will have to come from one of the ethnic groups and will be perceived as identified with that group.”).

²⁹ KATZMAN, *supra* note 6, at 7 (“The president will always be an ethnic Pashtun.”) Although in 2004 and 2009 the presidential elections were won by a Pashtun, the result of the runoff election in 2014 was too ambiguous to suggest that a Pashtun was the winner. In the first round of 2014 election, Abdullah Abdullah with 45% votes was way ahead of Ashraf Ghani, who had only 32% of the votes.

While it may be true that a unipersonal office of the president cannot be distributed among different groups, this office does have a unifying force as it encourages vote pooling and inter-ethnic accommodation.³⁰ In other words, unlike a multi-seat assembly, where ethnic votes are easily translated to ethnic share of seats,³¹ the unipersonal nature of the presidential office forces ethnic groups to form alliances in order to share the resources that come with that office.³² This is particularly true in case of Afghanistan, where as head of the state³³ and the government,³⁴ the office of the president is the highest office in the country, raising the stakes for any ethnic group.

Comparing parliamentary and presidential elections, it has become evident that while parliamentary elections have distributed seats among ethnic groups,³⁵ presidential elections have led to the cooperation of ethnic groups in the form of formal and informal coalitions. To date, most cross-ethnic coalitions have been formed to compete in presidential elections than in parliamentary ones: a ratio of eighteen to two (see Chapter Four).

³⁰ COX, *supra* note 24, 190; Sajid Choudhry, *Introduction*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTERGRATION OR ACCOMMODATION, 22 (Sajid Choudhry ed., 2008) (“presidential election is likely to instigate vote pooling across ethnic divides.”); Linz, *supra* note 22, at 44 (“Advocates of presidentialism argue that a president who is elected by a statewide electorate can serve as a symbol of integration in spite of ethnic divisions.”); *also see* John McGarry, Brenden O’Leary, & Richard Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTERGRATION OR ACCOMMODATION, 55 (Sajid Choudhry ed., 2008) (“A single-person presidential executive seems particularly pointed in this direction, as it is difficult to see how such a person can fully represent distinct communities as opposed to representing what they share in common.”).

³¹ HOROWITZ, *supra* note 24, 631.

³² COX, *supra* note 24, 190; Linz, *supra* note 22, at 44.

³³ CONSTITUTION, art. 60 (“The President shall be the head of state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judiciary fields in accordance with the provisions of this Constitution.”)

³⁴ CONSTITUTION, art. 71 (“The Government shall be comprised of Ministers who work under the chairmanship of the President.”)

³⁵ ABASS HUSSIENI & NURULLAH FAIZI, KABUL CENTER FOR STRATEGIC STUDIES, NEGAHI BA TARKIB JADID MAJLES NUMAYENDAGAN AFGHANISTAN (1389) [2010].

The vote pooling effect of a one-seat election is reinforced by Article 61 of the Constitution, as well as by ethnic distribution in Afghanistan. Under Article 61, the threshold for winning an election is over 50 percent of the total vote.³⁶ At the same time, the ethnic distribution in Afghanistan indicates that no single ethnic group can deliver an absolute majority of votes in presidential elections.³⁷ This tripartite interaction between one-seat elections, a threshold of exclusion, and population distribution produces two ultimate outcomes. First, ethno-political elites and voters alike are forced to strategically coordinate across ethnic lines. The second outcome, which stems from the first, is that moderate politics dominate the arena since extremist political forces and candidates are unable to run viable campaigns.³⁸ As such, it should not be surprising that candidates affiliated with well-known extremist parties and groups such as the Taliban and Hizb-Islami [Islamic Party, Military Faction] have won only a handful of votes in presidential races.³⁹ For example, Mulla Abdul Salam Rakity, a former leader of that Taliban who continued to show solidarity with Taliban ideologies,⁴⁰ won less than 0.5% votes in 2009.⁴¹

³⁶ CONSTITUTION, art. 61 (“The President shall be elected by receiving more than fifty percent of votes cast by voters through free, general, secret and direct voting.”)

³⁷ *World Factbook: Afghanistan*, CENTRAL INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/theWorldfactbook/geos/print/country/countrypdf_af [hereinafter “CIA Factbook”].

³⁸ HEATHER STOLL, *CHANGING SOCIETIES, CHANGING PARTY SYSTEMS*, 172 (2013) (“the presidential coattail should reduce the entry and success of sectarian parties whose groups are not large enough to amount a viable campaign for the presidency, such as the Sephardim and Russians.”)

³⁹ *The 2004 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm [hereinafter, “IEC 2004”]; *The 2009 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_2009/leadingCandidate.html [hereinafter “IEC 2009”].

⁴⁰ *Mulla Abdul Salam Rakity*, AFGHAN BIOGRAPHY, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=1460&task=view&total=3396&start=2537&Itemid=2.

⁴¹ IEC 2009, *supra* note 39.

Even in his home province of Zabul, his votes amounted to merely 4.4%.⁴² Similarly, in a bid for presidential election in 2014, Qutbuddin Hilal, loyal to Gulbuddin Hekmatyar (an internationally wanted leader of a militant group), won less than 2.8% of the votes.⁴³ This was despite the fact that Hekmatyar endorsed Hilal through media.⁴⁴

2. Presidential Elections are Prone to Pre-Electoral Coalitions

Another feature of Afghan presidential elections is that they encourage pre-electoral coalitions. Afghanistan is not a unique case in this regard as studies have shown that most presidential democracies, unlike parliamentary systems, inspire pre-electoral (proactive) coalition-building.⁴⁵ The advantage that pre-electoral coalitions have in a multiethnic society is that they are more amenable to cross-ethnic votes and alliances.⁴⁶ This is primarily because candidates and voters do not have perfect information about the viability of candidates and the optimal size of winning coalitions.⁴⁷ Not knowing the size of coalitions necessary to win, the serious candidates are more likely to form maximally inclusive coalitions. Similarly, the absence

⁴² *Id.*

⁴³ Even in his home provinces, his votes were just over than 11%. *See* IEC 2004, *supra* note 39.

⁴⁴ Ghanizada, *Gulbuddin Hekmatyar Supports Qotbuddin Hilal In Presidential Election*, KHAMA PRESS (Feb. 15, 2014), <http://www.khaama.com/gulbuddin-hekmatyar-supports-qotbuddin-hilal-in-presidential-election-2800>.

⁴⁵ Scott Mainwaring & Matthew S. Shugart, *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal*, 4/29 COMP. POL., 449, 466 (1997).

⁴⁶ Donald Horowitz, *Constitutional Design: Proposals versus Processes*, in *THE ARCHITECTURE OF DEMOCRACY: CONSTITUTIONAL DESIGN, CONFLICT MANAGEMENT, AND DEMOCRACY* (Andrew Reynolds, ed., 2002).

Another advantage of pre-electoral coalition-building in the long run is that it, “by definition, reflects a choice to air strong political differences at the stage of party formation, rather than allowing those differences to invade the electoral and policymaking processes.” *See* Gregory P. Magarian, *Regulating Political Parties under a "Public Rights" First Amendment*, 44 WM. & MARY L. REV. 1939, 1964 (2003).

⁴⁷ This reality in Afghanistan indeed challenges the dominant wisdom in the literature, which suggests that the existence of perfect information is important for strategic coordination. *See* COX, *supra* note 24, 79; DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY*, at 7 (1957); *also see* JOHN VON NEUMANN & OSKAR MORGENSTERN, *THE THEORY OF GAMES AND ECONOMIC BEHAVIOR* 8-9 (3rd ed. 1953).

of such information compels voters and elites to cross identity lines in order to join winning coalitions and ultimately to gain access to government resources.⁴⁸

The other advantage of pre-electoral coalitions concerns their tendency to produce ethnically inclusive cabinets—since one way to compensate pre-electoral allies has been through portfolio allocation.⁴⁹ In fact, political distribution has been the main bargaining chip for pre-electoral coalitions.⁵⁰ As a result, for the first time in history, Afghans have witnessed a fully inclusive and consociational form of government (see Table III-1). In addition to portfolio allocation on the cabinet-level, presidents have used secondary posts to satisfy their coalitions at the lower level, especially the elites from smaller groups.⁵¹ The secondary governmental posts include governorship of provinces, ambassadorial positions, and positions in other ministerial and non-ministerial agencies.⁵²

⁴⁸ Nonviable parties and elites have learned that their chances of inclusion in the government are higher when they join viable coalitions rather than running for office on their own. For example, in the presidential election of 2004, by running for presidency against Hamid Karzai, Haji Mohaqiq, and Abdul Rashid Dostum eventually sidelined themselves in his forthcoming government. Having learned from this election, they changed their electoral strategies in the next two elections by putting their endorsements for bid with viable candidates instead of running for the office themselves. Eventually, due to their endorsements of winning candidates, Dostum and Haji Mohaqiq's parties gained several seats in the Cabinet after both 2009 and 2014 elections. INTERNATIONAL CRISIS GROUP, ASIA BRIEFING N°117: AFGHANISTAN'S ELECTIONS STALEMATE, 4 (Feb. 2011) [hereinafter ICG 117].

⁴⁹ Timor Sharan, *Dynamic Qudrat Shabaka Hai Seyasi Dar Intekhabat Ryasat Jamhuri 2009* [The Dynamics of Political Networks in the Presidential Election of 2009], in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) 142-145 [2014].

⁵⁰ *Id.* at 144-145.

⁵¹ Sharan, *supra* note 49, 146-7.

⁵² *Id.* Indeed satisfying pre-electoral coalitions is one likely reason that governments were not able to dissolve parallel agencies, even when shrinking the government had been their pre-electoral promise. See Inaugural Speech by Dr. Ashraf Ghani Ahmadzai as the President of Afghanistan, OFFICE OF THE PRESIDENT (Sep. 29, 2014) <http://president.gov.af/en/news/36954>.

Table III-1: shows ethnic representations in different cabinet formations as well as after cabinet reshuffling.⁵³

| Cabinet Reshuffles | Portfolio Allocations | | | | | | | | | |
|-------------------------------|-----------------------|-----|-------|-----|--------|-----|-------|-----|-------|----|
| | Pashtun | | Tajik | | Hazara | | Uzbek | | Other | |
| The 2004 Government | 8 | 30% | 10 | 19% | 5 | 19% | 2 | 7% | 2 | 7% |
| - Cabinet Reshuffle (2005) | 9 | 36% | 9 | 12% | 3 | 12% | 3 | 12% | 1 | 4% |
| - Cabinet Reshuffle (2008-09) | 10 | 40% | 7 | 12% | 3 | 12% | 4 | 16% | 1 | 4% |
| The 2009 Government | 9 | 35% | 9 | 15% | 4 | 15% | 4 | 15% | 0 | 0% |
| - Cabinet Reshuffle (2010) | 9 | 35% | 9 | 12% | 3 | 12% | 4 | 15% | 1 | 4% |
| - Cabinet Reshuffle (2012) | 9 | 35% | 9 | 12% | 3 | 12% | 4 | 15% | 1 | 4% |
| - Cabinet Reshuffle (2013) | 10 | 38% | 8 | 12% | 3 | 12% | 4 | 15% | 1 | 4% |
| The 2014 Government | 10 | 38% | 8 | 19% | 5 | 19% | 2 | 8% | 1 | 4% |

Nonetheless, pre-electoral bargains may not always translate to post electoral seats because pre-electoral coalitions are not as binding as post-electoral ones are.⁵⁴ Specifically, once

⁵³ U.S. Welcomes Afghan President Karzai's Cabinet Appointments, GLOBAL SECURITY (Dec. 27, 2004) <http://www.globalsecurity.org/military/library/news/2004/12/mil-041227-usia04.htm>; Karzai To Replace Foreign Minister, DAWN (Mar. 23, 2006) <http://www.dawn.com/news/184473/karzai-to-replace-foreign-minister>; Chris Hawke, Karzai's Cabinet Picks Get Green Light, ASSOCIATE PRESS (Aug. 8, 2006) http://archive.boston.com/news/world/articles/2006/08/08/karzais_cabinet_picks_get_green_light/?camp=pm; Cabinet List 2005-2009, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=364&task=view&total=2455&start=455&Itemid=2; Martine van Bijlert, The Cabinet Vote: Fourteen In, Eleven To Go, AFGHANISTAN ANALYST NETWORK (Jan. 16, 2010) <https://www.afghanistan-analysts.org/the-cabinet-vote-fourteen-in-eleven-to-go/>; Cabinet List No.4 20100628, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=367&task=view&total=2467&start=468&Itemid=2; Cabinet List No.1 20100102, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=364&task=view&total=3405&start=657&Itemid=2; Cabinet List No.2 20100109, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=365&task=view&total=3405&start=658&Itemid=2; Cabinet List No.3 2010, AFGHAN BIO, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=366&task=view&total=3405&start=659&Itemid=2; Kate Clark, The Cabinet and the Parliament: Afghanistan's Government In Trouble Before It Is Formed, AFGHANISTAN ANALYST NETWORK, <https://www.afghanistan-analysts.org/the-cabinet-and-the-parliament-afghanistans-government-in-trouble-before-it-is-formed/>; WHO IS WHO IN AFGHANISTAN: AFGHANISTAN BIOGRAPHY, <http://www.afghan-bios.info/database.html>.

⁵⁴ SCOTT MAINWARING & MATTEW SOBERG SHUGART, PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA, 396-7 (1997); Joe Foweraker, *Institutional Design, Party Systems and*

elected, the president is no longer dependent on pre-electoral coalitions and can sustain his or her government even without the endorsement of his or her allies. Therefore, it is possible for a president to bring changes to the cabinet, changes that even disfavor his or her allies. This is perhaps better illustrated by the shifts in the ethnic composition of cabinets during cabinet reshuffles. As Table III-1 shows, after both the 2004 and 2009 elections, cabinet reshuffles have led to an increase in Pashtun seats and a decrease in the seats of the next two largest ethnic groups. This was the case in Karzai's first and second terms in office as the President. In both of his terms, Tajiks and Hazaras lost several seats in the cabinet while Pashtuns gained more seats.⁵⁵ Therefore, although the pre-electoral coalitions led to inclusive executives throughout presidential terms, later, however, the President brought changes to the cabinet composition that his pre-election allies considered to be a betrayal of their alliances.

B. Constraining Features of Afghan Presidential Elections and the Failure of Coalitions to Survive

Although presidential elections in Afghanistan have generally been conducive to forming inclusive coalitions and governments, they have not been helpful at consolidating them. In fact, these presidential coalitions have consistently been unstable and prone to dissolution. Particularly, opposition coalitions have failed to sustain across elections or to coordinate a strong parliamentary opposition.⁵⁶ Similarly, the presidents have lacked incentive to reach out to the WJ and form cross-branch coalitions.

Governability - Differentiating the Presidential Regimes of Latin America, 4/28 BRITISH JOURNAL OF POLITICAL SCIENCE, 651-676, 666 (1998).

⁵⁵ Other ethnic groups also lost seats. Only Uzbeks gained more seats by the end of first administration; however, in the second administration (2009-2014), their seat total remained the same.

⁵⁶ See Table II-2 in Chapter Four.

In this regard, several features of Afghan presidential elections are likely to come into play: (a) they are open to political outsiders; (b) they are candidate-centric elections; (c) they are zero-sum games; (d) presidential reelections are bound by term limits; (e) they are not conducted concurrent with parliamentary elections; and (f) they instigate the problem of dual legitimacy.

1. Presidential Elections are Open to Political Outsiders

The Regulation on the Registration of Candidates, which was issued by the Independent Electoral Commission for the 2014 election, allows presidential candidates to run as independent or party/coalition nominees.⁵⁷ This regulation is in compliance with Article 62 of the Constitution, which does not even refer to political parties or coalitions.⁵⁸ Article 62, which lists the required qualifications of presidential candidates, refers to the candidates merely as “individuals.”⁵⁹ Given this passive endorsement of independent candidates by Afghan laws, political outsiders can easily enter the presidential fray. Not surprisingly, Afghan presidential

⁵⁷ LAYEHA SABBAT NAM KANDIDAN [THE CODE OF CANDIDATE REGISTRATION] (1393) [2014] http://www.iec.org.af/pdf/legalframework/2013-regulations/eng/reg_candidate_registration_eng.pdf

⁵⁸ CONSTITUTION, art. 62.

⁵⁹ *Id.* (“The individual who becomes a presidential candidate shall have the following qualifications: 1. Shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country; 2. Shall not be less than forty years old the day of candidacy; 3. Shall not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by court. No individual shall be elected for more than two terms as President. The provision of this article shall also apply to Vice-Presidents.”)

elections have become party-less elections due to the large number of political outsiders running for the presidency.⁶⁰

⁶⁰ The two other contributing factors to party-less elections are the fragmented party system and the revolutionary increase of free and independent media. Free media has effectively replaced parties and coalitions as mediating factor that directly passes on the messages of candidates to the mass population. By 2014, Afghanistan had 68 TV stations, 174 radio stations, and hundreds of newspapers and weeklies. See *Afghanistan Profile – Media*, BBC, Mar. 3, 2015, <http://www.bbc.com/news/world-south-asia-12013942>.

A survey by The Asia Foundation found that radio was the most common source of information about the 2010 parliamentary elections for both men (77%) and women (59%). Slightly more men (45%) than women (37%) identified television as their source of information. Newspaper and internet, respectively, were the source of information for approximately 12% and 4% of respondents. None, however, mentioned political parties as an important source of information although 28% of respondents said they received information from candidates' campaigns. See *VOTER BEHAVIOR SURVEY: AFGHANISTAN'S 2010 PARLIAMENTARY ELECTION*, THE ASIA FOUNDATION, 17 (2012).

Some political parties were able to establish TV and radio channels. For example, Farda TV belongs to *Hizb-i-Wahdat Islami Mardum Afghanistan*. *Hizb-i-Dawat Islami Afghanistan* sponsors Dawat TV; *Hizb-i-Junbish Islami* runs Aina TV; *Hizb-i-Harakat Islami Afghanistan* owns Tamadon TV; and *Hizb-i-Jamiat Islami Afghanistan* owns Noor TV. See NATIONAL DEMOCRATIC INSTITUTE, *THE 2010 WOLESI JIRGA ELECTIONS IN AFGHANISTAN*, 61 (2010). However, the ranking of TV channels indicate that party channels are much less influential than their independent and commercial counterparts. Since most of these parties are ethnic-based, the impact of their media seems to take effect only in their ethnic circles, which certainly does not afford them presidential office single handedly. In fact, in interviews conducted by the author of this article with over 20 party elites, the author found that most political parties halted their weekly or monthly papers due to limited budget or lack of public interest in reading their papers. Therefore, independent media is doing all of what political parties can do for presidential candidates during the election. The media have shown more effectiveness and efficiency than political parties and coalitions in spreading the messages and policies of candidates. In this situation, voters do not need a party to tell them whom to vote for.

Table III-2: compares the number of independent candidates versus party or coalition nominees in the past three presidential elections.⁶¹

| Presidential Elections | All Candidates | Party Candidates | Independent Candidates |
|------------------------|----------------|------------------|------------------------|
| 2004 Election | 18 | 4 (22%) | 14 (78%) |
| 2009 Election | 32 | 5 (16%) | 27 (84%) |
| 2014 Election | 11 | 1 (9%) | 10 (91%) |

Table III-2 shows that in the past three Afghan presidential elections, on average, the number of independent candidates was five times greater than the number of party candidates. Although most presidential candidates formed formal or informal coalitions, no candidate registered their coalitions.

It bears mentioning that independent candidates are not necessarily political outsiders. In fact, some of the independent contenders might have well been party members who, because of public disaffection towards parties, disassociated themselves from them. Political outsiders are described as populist candidates who are not active members of any political party or coalition,⁶² who likely lack governmental or political experience, and who mostly launch antiestablishment campaigns.⁶³ These candidates are particularly favorable when the voters are frustrated with the performances of the establishment and look for a new “savior.”⁶⁴ Indeed, for this very reason, political outsiders have had the upper hand in Afghan presidential elections. Ex-president Hamid Karzai, and the current president, Ashraf Ghani, have both run as political outsiders,

⁶¹ *Presidential Election, Afghanistan 2004: Notice of Provisional Nomination list of Candidates*, JOINT ELECTORAL MANAGEMENT BODY [hereinafter, “Fehrest 2004”] (A copy of the list was acquired from the Electoral Commission); *Fehrest Kandida Ryasat Jamhuri 1388 [The List of Candidates of the 2009 Presidential Election]*, INDEPENDENT ELECTORAL COMMISSION OF AFGHANISTAN [hereinafter, “Fehrest 2009”] (A copy of the list was acquired from the Electoral Commission); *Fehrest Nehayee Kandida [The Final List of Candidates]*, INDEPENDENT ELECTORAL COMMISSION OF AFGHANISTAN [hereinafter, “Fehrest 2014”] <http://www.iec.org.af/pdf/finallist13/presidential.pdf> (last visited Sep. 2016).

⁶² ANDREW E. BUSCH, OUTSIDERS AND OPENNESS: IN THE PRESIDENTIAL NOMINATING SYSTEM, 22-26, 170-171 (1997).

⁶³ Linz, *supra* note 22, at 26.

⁶⁴ *Id.* at 26-27.

campaigning against the traditional parties and elites.⁶⁵ They reminded people about past atrocities committed by the established proto-parties and warned voters of returning to those atrocities should these parties win.⁶⁶ No doubt, Hamid Karzai and Ashraf Ghani, in large part, owe their presidencies to their platforms as outsiders.

Notably, political outsiders are likely to remain committed to opposing the institutionalization of coalitions, either because they would like to maintain their public image as political outsiders or they lack the experience to create a fully institutionalized coalition of their own.⁶⁷ When running for presidential elections, neither Karzai nor Ghani has shown any interest in forming formal political coalitions. Instead, they have relied on informal and clientelistic coalitions with anti-establishment campaigns.⁶⁸ They even successfully attempted to undermine opposition coalitions by offering patronage to their key figures. For instance, in 2009, Karzai was able to weaken the United National Front of Afghanistan, an opposition group, by offering the post of vice presidency to Qasim Fahim and some cabinet seats to other leading figures of the coalition.⁶⁹

After elections, Hamid Karzai also attempted to block any effort that would help the institutionalization of coalitions and parties. Karzai, in particular, regarded party development as

⁶⁵ Sharan, *supra* note 49, at 142-145; George Packer, *Afghanistan's Theorist-In-Chief*, THE NEW YORKER (Jul. 4, 2014) <http://www.newyorker.com/magazine/2016/07/04/ashraf-ghani-afghanistans-theorist-in-chief>.

⁶⁶ *Id.*; Ahmed Rashid, *A Vote Is Cast Against the Warlords*, FAR EASTERN ECONOMIC REVIEW (Jul. 22, 2004) ("Warlord militias are a bigger problem than the Taliban because militias are undermining the institutional build-up of Afghanistan. Militia armies are posing a great threat to that and we have to address and resolve it."); ICG 88, *supra* note 6, at 7.

⁶⁷ Linz, *supra* note 22, at 26.

⁶⁸ Sardar Ahmad, *Karzai's New Cabinet Seen As Return To Patronage Politics*, THE TELEGRAPH (Jan. 11, 2010) <http://www.telegraph.co.uk/expat/expatnews/6966562/Karzais-new-cabinet-seen-as-return-to-patronage-politics.html>; Sharan, *supra* note 49, at 142-145; Packer, *supra* note 65.

⁶⁹ Jon Boone, *Afghan president Hamid Karzai picks ex-warlord as election running mate*, THE GUARDIAN (May 4, 2009), <http://www.theguardian.com/world/2009/may/04/afghanistan-president-hamid-karzai-election>.

a threat to stability.⁷⁰ On two occasions, he publicly persuaded voters not to vote for party-affiliated candidates.⁷¹ In the Parliamentary election of 2005, Karzai did not allow candidates to use their party labels on ballots.⁷² In fact, his support of the SNTV system for parliamentary elections was an attempt to disenfranchise political parties.⁷³ Although the National Assembly has repeatedly challenged both Karzai and Ghani on their cabinet picks and policy implementations, they have shown no interest in developing a loyal coalition in the Assembly to smoothly pass their political agenda.⁷⁴

2. Presidential Elections are Candidate-Centric Elections

Like many presidential constitutions, the Afghanistan Constitution established candidate-centric presidential elections. In other words, it is individual candidates, not political parties and coalitions, that lie at the center of electoral politics, including electoral campaigns and media coverage. As such, winning a presidential election depends on an individual candidate's popularity, political bargains, and policies, which need not be similar to those of his or her party

⁷⁰ *Have Your Say: President Hamid Karzai of Afghanistan*, BBC (Oct. 1, 2003), http://news.bbc.co.uk/2/hi/talking_point/3139680.stm.

⁷¹ MIGRATION REVIEW TRIBUNAL, *supra* note 15, 7.

⁷² THOMAS J. BARFIELD, FUNDAMENTALS OF GOVERNANCES IN AFGHANISTAN, THE AMERICAN INSTITUTE OF AFGHANISTAN, 4 (2009).

⁷³ ANNA LARSON, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 362: POLITICAL PARTIES IN AFGHANISTAN 3 (Mar. 2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>.

⁷⁴ Karzai was particularly invested in preserving disunity in the parliament, especially among his oppositions. He made several indirect attempts to foster divisions within the parliament. For example, he indirectly intervened in the election of the chair of the parliament, generating huge divisions within the parliament. In 2010, this led to a political deadlock in the parliament that lasted for months until a Speaker was selected through a compromise between a few elites, violating the Assembly's Rules of Procedures. In the same year, Karzai rejected the results of the parliamentary elections allegedly because Pashtuns lost a large number of seats. His attempt to alter the election result led to the division of parliamentarians along ethnic lines. See NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE 94 (2013).

or coalition.⁷⁵ Particularly, in a fragmented party system like that in Afghanistan, where parties are distrusted by society, there are more incentives for candidates to differentiate themselves from their parties. In past elections, for example, numerous well-known presidential candidates disassociated themselves with their parties in order to win votes as independent candidates. As Table III-3 shows, some prominent party leaders, such as Haji Mohammad Mohaqiq, Abdul Rashid Dostum, Abdullah Abdullah and Abdul Rab Rasul Sayyaf ran as independent candidates, disaffiliating themselves from the parties and coalitions that they themselves led.⁷⁶ The number of party members who disaffiliated from their parties during their campaigns was also considerably higher than those who ran as party candidates. In 2004, for example, only half of the candidates who belonged to political parties registered as party candidates.⁷⁷ Subsequent elections indicated even less willingness to register as a party candidate: only one-third (38%) of party-affiliated candidates registered as party candidates in 2009,⁷⁸ and that fraction dropped to one-fifth (20%) in 2014.⁷⁹

⁷⁵ See Scott Mainwaring, *Presidentialism in Latin America*, 25/1 LATIN AMERICAN RES. REV., 157-179, 165 (1990) (Under the presidential system (and subtypes), since presidents are elected by popular vote, they enjoy independence from even their own political parties.)

⁷⁶ Haji Mohammad Mohaqiq is the leader of *Hizb-i-Wahdat-e-Islami Mardom Afghanistan*, Abdul Rashid Dostum leads *Hizb-i-Jumbesh Mili-e-Islami*, and Abdul Rab Rasul Sayyaf leads *Hizb-i-Dawat-e-Islami*. While Abdullah Abdullah has not been the leader of *Jamiat-e-Islami Afghanistan*, he was a prominent elite in the party. See *Registered Political Parties*, THE MINISTRY OF JUSTICE, <http://moj.gov.af/en/page/7966/registration-of-political-party-and-civil-organization>.

⁷⁷ Thomas Ruttig, *The 2004 Afghan Presidential Elections and Challenges for the Forthcoming Parliamentary Election*, in THE CHALLENGE OF REBUILDING AFGHANISTAN 58 (Moonis Ahmar, ed., 2006).

⁷⁸ Fehrest 2009, *supra* note 61.

⁷⁹ Fehrest 2014, *supra* note 61.

Table III-3: reflects all candidates who belonged to political parties including those who registered as party candidates and those who did not.

| Elections | Candidate | Registered As | Affiliated Party |
|-----------|-------------------------------|-----------------|---|
| 2004 | Sayed Ishaq Gilani | Party Candidate | Hizb-i-Hambastagee Milli Afg. |
| | Yunis Qanooni | Party Candidate | Nahzat-e-Milli Afghanistan |
| | Abdul Latif Pedram | Party Candidate | Hizb-i-Kangra Milli Afg. |
| | Ghulam Farooq Nejrabi | Party Candidate | Hizb-i-Isteqlal Afghanistan |
| | Haji Mohammad Mohaqiq | Independent | Hizbi-i-Wahdat Mardom Afg. |
| | Abdul Rashid Dostum | Independent | Hizbi-i-Junbesh-e-Milli Afg. |
| | Ahmad Shah Ahmadzai | Independent | Hizb-i-Eqtedar Islami |
| | Abdul Hafiz Mansoor | Independent | Hizb-i-Jamiat Islami |
| 2009 | Dr. Habib Mangal | Party Candidate | Hizb-i-Nahzat Faragir Democracy wa Taraqi |
| | Abdul Latif Pedram | Party Candidate | Hizb-i-Kangra Milli Afg. |
| | Dr. Ghulam Farooq Nijrabi | Party Candidate | Hizb-i-Isteqlal Afghanistan |
| | Shahnawaz Tanai | Party Candidate | Da Sole Ghorzang |
| | Mahbob-u-lah Koshani | Party Candidate | Hizb-i-Azadagan Afghanistan |
| | Dr. Abdullah Abdullah | Independent | Hizb-i-Jamiat Islami |
| | Bismillah Shir | Independent | Hizb-i-Wafaq-e-Milli |
| | Bashir Ahmad Bizhan | Independent | Hizb-i-Kangra Milli Afg. |
| 2014 | Dr. Abdullah Abdullah | Party Candidate | Hizb-i-Jamiat Islami |
| | Prof. Abdo Rabe Rasool Sayyaf | Independent | Hizb-i-Dawat Islami Afg. |
| | Eng. Outbuddin Hilal | Independent | Hizb-i-Islami Afg. |
| | Mohd. Shafiq Gul Agha Sherzai | Independent | Hizb-i-Mahaz Milli |
| | Abdul Rahim Wardak | Independent | Hizb-i-Mahaz Milli |

The personalization of elections undermines the power of parties over the nomination of candidates.⁸⁰ Unlike parliamentary systems, where prime minister nominees have to retain the confidence of their parties,⁸¹ candidate-centered presidential elections liberate candidates from

⁸⁰ Scott Mainwaring & Timothy R. Scully, *Introduction: Party Systems in Latin America*, BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA, 22 (Scott Mainwaring & Timothy R. Scully, eds., 1995). (“Personalism is more pronounced with inchoate party systems—especially in presidential systems, since candidates appeal directly to the masses and do not need to be elected head of a party in order to become the head of government.”)

⁸¹ Linz, *supra* note 22, at 11.

this obligation.⁸² This liberation at times has led to multiple candidates from the same party running in the same election; and at times, it has even led to the split of parties. In 2004, Yunis Qanooni and Abdul Hafiz Mansour, both from the *Hizb-i-Jamiat Islami* [Islamic Society Party], ran for presidential office.⁸³ Although Hafiz Mansour ran as an independent candidate, Yunis Qanooni formed his own party, *Nazat-e-Mili Afghanistan* [National Movement of Afghanistan].⁸⁴ Ahmad Zia Masoud, another member of Jamiat-e-Islami Party, joined Karzai's ticket as his first vice president.⁸⁵ Likewise, in the presidential election of 2009, Bashir Ahmad Bezhan left the *Kangra-e-Mili Afghanistan* party to run as an independent candidate while the leader of the party, Abdul Latif Pedram, was also running a campaign in the same election.⁸⁶

Although almost all presidential candidates formed some type of formal or informal, large or small, ethnic or cross-ethnic, patronage or policy-based coalitions, none registered as nominees of their coalitions.⁸⁷ Even those candidates who formed broad and formal coalitions like Abdullah Abdullah, ran as independent or party nominees.⁸⁸ In fact, Abdullah was the only candidate who registered as a coalition nominee on the preliminary list of candidates in 2014, but he later changed his status to a party nominee.⁸⁹ In such candidate-centric elections, where coalitions have no official role to play except for facilitating exchange of votes to patronage, coalitions are likely to remain clientelistic and short-lived.

⁸² Mainwaring & Scully, *supra* note 80, at 22.

⁸³ Fehrest 2004, *supra* note 61.

⁸⁴ *Id.*

⁸⁵ Amin Tarzi, *Dispute Within Political Party Ranks Over Support For Afghan Leader, As Claims of Support Are Conflicting*, AFGHANISTAN NEWS CENTER (Oct. 8, 2004) <http://www.afghanistannewscenter.com/news/2004/october/oct92004.html>.

⁸⁶ Fehrest 2009, *supra* note 61.

⁸⁷ *Supra* note 47.

⁸⁸ Fehrest 2014, *supra* note 61.

⁸⁹ *Id.*; *Fehrest Ibtedayee Kandidan Riyasat Jamhuri [The Preliminary List of Candidates]*, INDEPENDENT ELECTORAL COMMISSION OF AFGHANISTAN (2014) (A copy is on file with author).

3. Presidential Races are Constrained by Scheduled Elections and Term Limits

Article 61 of the Afghan Constitution sets a timeline of every five years for presidential elections.⁹⁰ Once elected, a president will remain in office for five years until the next election no matter whether he or she has the confidence of his or her coalition—it is very different from a parliamentary system where the survival of the executive depends on his parliamentary coalition holding together. In addition, Article 62 of the Constitution states, “No individual shall be elected for more than two terms as President.”⁹¹ These provisions combined are understood to undermine the accountability of a presidential incumbent who no longer can run for the office and who cannot be removed from the office by vote of no-confidence during the presidential term.⁹²

While analyzing a president’s accountability to the nation is beyond the scope of this study,⁹³ examination of some events during Karzai’s second term do provide some insight into the issue of whether a president remains accountable to his coalition. In his second term, Karzai began to distance himself from his allies. He even pursued policies that contradicted his past promises to his allies, and thereby belied the demands and expectations of his allies.⁹⁴

For instance, although prior to the 2009 election Karzai promised to Mohaqiq to upgrade two Hazara dominated districts into provinces, he never delivered on that promise.⁹⁵ Additionally, Karzai failed to keep his promise to appoint Mohaqiq’s five designated individuals

⁹⁰ CONSTITUTION, art. 61 (“The presidential term shall expire on 1st of Jawza (21st of May) of the fifth year after elections. Elections for the new President shall be held within thirty to sixty days (between March 22 and April 21) prior to the end of the presidential term.”)

⁹¹ CONSTITUTION, art. 62.

⁹² RAHIMI, *supra* note 6, at 61.

⁹³ Some authors, however, argue that a direct election of the president actually makes him or her more accountable. *See* RAHIMI, *supra* note 6, at 59.

⁹⁴ ICG 117, *supra* note 48, at 3.

⁹⁵ *Id.*

as his cabinet members.⁹⁶ Some suggested that this failure was because of the WJ's repeated a vote of no confidence⁹⁷ since the WJ regarded the alliance of the two as unholy.⁹⁸ In reality, however, Karzai could have appointed them as acting ministers as he did for other ministers throughout his two administrations.⁹⁹

In his second term, Karzai was at odds even with his close international allies.¹⁰⁰ His relationship with the United States government—his original backer—was at its worst during his final years in the office.¹⁰¹ In 2013, for example, Karzai declined to sign the Mutual Security Agreement between the United States and Afghanistan despite the fact that it was approved by supermajority in the *Loya Jirga* and endorsed by his domestic and international allies.¹⁰²

4. Presidential Elections are Zero-Sum Games

Formal coalitions in Afghanistan have always come in the form of opposition coalitions, however these coalitions have not been sustainable through Afghan presidential elections for several reasons. Most importantly, they have lacked the resources that the incumbents usually

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* (“By the third round of voting [of approval for cabinet nominees] in late June, not a single Hazara had been confirmed to the cabinet.”); Ana Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability*, AFGHANISTAN RESEARCH AND EVALUATION UNIT, 6 (2010), <http://areu.org.af/EditionDetails.aspx?EditionId=452&ContentId=7&ParentId=7> (It was widely assumed by MPs that Karzai had promised cabinet positions to members of large ethnic blocs, in return for their support in the presidential race, as pre-arranged with the party or bloc leaders.)

⁹⁹ *Sarparastha Wa Masalai Qanoon Wa Karamadi [The Acting Ministers and the Efficacy of Law]*, ROZNAMA AFGHANISTAN (2013), http://dailyafghanistan.com/remark_detail.php?post_id=128572.

¹⁰⁰ Heat Druzin, *Karzai not only at odds with US, but his countrymen, too*, STAR AND STRIPES (Nov. 27, 2013), <http://www.stripes.com/karzai-not-only-at-odds-with-us-but-his-countrymen-too-1.254874>.

¹⁰¹ *Id.*

¹⁰² *Id.*

have in order to bring cohesion and efficiency to the coalition.¹⁰³ In contrast, incumbents have access to resources and patronage within the government. Most importantly, they can use the institutional cohesion that exists within the executive branch to enhance their party discipline.¹⁰⁴ In this way, they gain a distinct advantage over oppositions.

The zero-sum game feature of presidential elections can partly explain why the opposition coalitions lack the instruments to stabilize their coalitions. It reflects an electoral pattern where the winner-takes-all and the loser-loses-all.¹⁰⁵ Unlike parliamentary systems, where the losing coalitions typically gain at least a few legislative seats, and therefore, a critical platform for advancing their agendas,¹⁰⁶ in presidential elections in Afghanistan the losing candidates remain empty-handed after the election.¹⁰⁷ This misfortune of the losers continues until the end of the presidential term because there are no opportunities for alliance-shifting in the government.¹⁰⁸ Under a situation where the losing coalitions have few resources and no platforms to voice their agendas, opposition coalitions are less motivated to endure the cost of sustaining the alliance until the next election.¹⁰⁹ Indeed, as Chapter Four indicated, only winning

¹⁰³ Lise Rakner & Nicolas van de Walle, *Opposition Weakness in Africa*, 3/20 JOURNAL OF DEMOCRACY 108-121, 112 (2009).

¹⁰⁴ *Id.*, at 114 (“[In Africa] incumbent parties’ strength is often due to their access to public funds and their effective exploitation of state instruments. Thus, the key to an opposition party’s ability to compete is the degree to which it can sustain itself without access to such resources.”)

¹⁰⁵ See, Juan J. Linz, *Democracy: Presidential or Parliamentary Does it Make a Difference?* 6, (Latin American Program of the Woodrow Wilson International Center for Scholars, Project Paper, 1985); RAHIMI, *supra* note 6, at 70.

¹⁰⁶ Linz, *supra* note 22, at 15.

¹⁰⁷ RAHIMI, *supra* note 6, at 202.

¹⁰⁸ Juan J. Linz, *The Perils of Presidentialism*, 1/1 JOURNAL OF DEMOCRACY, 56 (1990); Linz, *supra* note 105, at 7.

¹⁰⁹ The conventional literature typically defines the opposition as a group of legislators who do not belong to the government coalition. See for example, Scott Morgenstern, Juan Javier Negri, and Ani’bal Perez-Lin’An, *Parliamentary Opposition in Non-Parliamentary Regimes: Latin America*, 14 THE JOURNAL OF LEGISLATIVE STUDIES, 160, 163 (2008). Accordingly, it assumes that the size of the opposition in Congress is the share of those not controlled by the president’s

coalitions have survived (partially or fully); eliminated coalitions have either dissolved or remained in the shadows until the next election.

5. Presidential Elections are Nonconcurrent to Parliamentary Elections

A coalition is not stable unless it prevails not only across elections but also across branches of government. Coalitions in Afghanistan have neither survived across elections nor entrenched themselves in the Assembly. This failure is partly explained by the time lapse between presidential and parliamentary elections: in Afghanistan, these elections are held over a year apart.¹¹⁰

As a practical matter, nonconcurrent elections are less likely to encourage cross-branch coalitions than concurrent elections.¹¹¹ In fact, numerous studies have shown that only those presidential democracies such as Colombia, Costa Rica, United States, Venezuela, Chile, and Korea that hold at least partly concurrent elections have entertained stable party systems and coalitions.¹¹² Not surprisingly, holding concurrent election has become a trend in new democracies. The following Table III-4 indicates that of the thirteen plural societies, including Afghanistan, seven countries have adopted concurrent general elections for their presidential

coalition. (*See id.* at 164) This definition is murky, particularly in presidential systems, for several reasons. First, this conventional view lumps all opposition parties together despite their very different policies. Second, presidential elections in Afghanistan have illustrated that some of the elites from the opposition group indeed resign from their parliamentary seats to join the opposition camp against the incumbent. Third, it is very likely that while some political parties have representatives in the cabinet, they still act against the government as oppositions. Factions of *Hizb-i-Jamiat Islami* has done this in all three governments.

¹¹⁰ The next parliamentary election seems to be held at least over two years after the last presidential election (2014).

¹¹¹ John M. Carey, *Constitutional Choices and the Performances of Presidential Regimes*, 11/1 J. OF SOC. SCI. & PHIL. 93 (1999); COX, *supra* note 24, at 204 (suggesting that presidential candidates may indeed affect the effective number of legislative coalitions, depending on the proximity of presidential and parliamentary elections.)

¹¹² MARK P. JONES, *ELECTORAL LAWS AND THE SURVIVAL OF PRESIDENTIAL DEMOCRACIES*, 5, 75-77 (1995).

and parliamentary elections. Indonesia has recently planned to hold presidential and parliamentary elections simultaneously.¹¹³

Table III-4 shows cycles of presidential and parliamentary elections in 12 presidential systems including Afghanistan.

| Country | Pres. & Parl. Elec. Cycles |
|--------------|----------------------------|
| Bolivia | Concurrent |
| Ghana | Concurrent |
| Kenya | Concurrent |
| Malawi | Concurrent |
| Nigeria | Concurrent |
| Philippines | Concurrent |
| Sierra Leone | Concurrent |
| Indonesia | Concurrent (2019) |
| Burundi | Near Concurrent (30 Diff.) |
| Afghanistan | Nonconcurrent |
| Cyprus | Nonconcurrent |
| Sri Lanka | Nonconcurrent |

The important difference between concurrent elections and nonconcurrent elections is that while concurrent elections promote mutual campaign support, nonconcurrent elections encourage clientelistic coalitions. It is well established that both presidential and parliamentary candidates need alliances to endorse their campaigns. Under a concurrent election, the immediate interest of both the presidential and parliamentary candidates is to win the election; and therefore, the most likely term of agreement would be mutual campaign support. A mutual campaign support, unlike a clientelistic partnership, is likely to hold the coalition together primarily because candidates are likely to choose an ally who is closest to them in policy. Under noncurrent elections, where only presidential candidates need endorsements, MPs are likely to endorse them only in exchange for patronage. As a result, nonconcurrent elections lead to clientelistic, temporary, and even unreliable coalitions. In the 2014 presidential election, some

¹¹³ Ina Parlina & Nurfika Osman, *Court rules one voting day in 2019*, THE JAKARTA NEWS (Jan. 24, 2014), <http://www.thejakartapost.com/news/2014/01/24/court-rules-one-voting-day-2019.html>.

reports have shown that many MPs secretly vowed allegiance to multiple presidential candidates in exchange for patronage.¹¹⁴

Perhaps for the above reasons, several attempts have been made to hold presidential and parliamentary elections concurrently in Afghanistan. The first attempt was made as early as the first presidential election in 2004, however the responsible electoral commission decided not to hold the elections simultaneously because under the shadow of the presidential election, warlords could have been able to hijack the parliamentary polls.¹¹⁵ In 2008, the issue arose again as to whether presidential and parliamentary elections must be held together.¹¹⁶ As to this issue, Karzai arranged a meeting with Yunis Qanooni, Speaker of the WJ, and two other prominent parliamentarians: Haji Mohaqiq, the leader of Hazaras, and Rasul Sayyaf, the leader of *Hizb-i-Dawat-e-Islami* [Islamic Mission Party].¹¹⁷ In this meeting, Karzai emphasized that in order for elections to be held concurrently, the legislators would have to sacrifice one year of their terms. Because these leaders rejected his proposal, the elections were held separately.¹¹⁸

In 2015, another attempt was made by the Special Electoral Reform Commission, which suggested amending the Constitution and holding simultaneous elections for presidential and parliamentary seats.¹¹⁹ The National Unity Government, however, seemed determined to hold the next parliamentary election separately as it was reflected in the recent presidential decree.¹²⁰ The

¹¹⁴ Saleha Sadat, *Candidates Exaggerate Parliamentarians' Support*, TOLONews (Feb. 19, 2014) <http://elections.tolonews.com/candidates-exaggerate-parliamentarians-support>.

¹¹⁵ ICG 88, *supra* note 6, at 15.

¹¹⁶ COBURN & LARSON, *supra* note 74, 201.

¹¹⁷ *Id.* at 201

¹¹⁸ *Id.*

¹¹⁹ ASADULLAH SA'ADATI, ET AL. ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION 187-213 (2016).

¹²⁰ *Id.*

decree required the Commission to make an assessment of electoral reform for the next parliamentary election before studying electoral reform for other national and local elections.¹²¹

6. Presidential Elections Grant Parallel Legitimacy for Presidents vis-à-vis the Assemblies

Article 61 of the Afghan Constitution provides for popular election of presidents, stating that “[t]he President shall be elected...through free, general, secret and direct voting.”¹²² The Office of the President derives legitimacy from a nationwide election, and as such, presidents are likely to claim that they represent the will of the nation better than MPs who are elected by separate and smaller constituencies.¹²³ As such, incumbents tend to claim that their policy positions are superior to those of the Assembly, demonstrating little willingness to compromise with the legislature or form legislative coalitions.¹²⁴

For example, in 2013, Karzai and his inner circle questioned the legitimacy of the Assembly when he decided to refer the Afghanistan-US Bilateral Security Agreement to a *Loya Jirga* instead of the Assembly for approval.¹²⁵ Under Article 90 of the Constitution, international treaties and agreements must be ratified by the Assembly.¹²⁶ However, Karzai’s spokespersons argued that due to electoral fraud and non-patriotic MPs, the Assembly did not have the legitimacy to approve the agreement.¹²⁷ In addition, the MPs confronted Karzai’s administration

¹²¹ FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 40, (2015) (Afg.), art. 3 (Amendment).

¹²² CONSTITUTION, art.160, 161, and 162.

¹²³ RAHIMI, *supra* note 6, at 198 (Dual legitimacy will deteriorate the relationship between the president and the legislature as both claim their legitimacy from the public.)

¹²⁴ *Id.* at 60; JONES, *supra* note 112, at 6.

¹²⁵ Maiwand Safi, *Azai Parliaman Salahiat Karzai Dar Emzai Tawafuqnama-i-Strategic Ba Amrica Ra Ba Jalish Kashidand [MPs Challenged Karzai for His Authority to Sign the Bileteral Strategic Agreement with the United States]* GLOBAL VOICES, (Jul. 25, 2011), <https://goo.gl/jo4uO4>.

¹²⁶ CONSTITUTION, art. 90.

¹²⁷ Safi, *supra* note 125.

by pointing to the electoral fraud in the presidential election that led to his Presidency.¹²⁸ Even so, the government appealed to the *Loya Jirga* for a decision about the Bilateral Agreement.

C. Conclusion

Although presidential elections in Afghanistan have led to the creation of inclusive coalitions, they have failed to lead to the institutionalization of these coalitions. Despite initial intentions for consolidation, these coalitions have remained weak and prone to dissolution. They have generally failed to endure beyond single presidential elections or, at most, have been limited to the executive branch.¹²⁹ While Chapter Four credited the runoff system for the formation of these unstable but inclusive coalitions, this chapter has focused on the constitutional features of presidential elections. While some of these features encourage the formation of cross-ethnic coalitions, they are similarly not conducive to the institutionalization of these coalitions.

Chapter Seven: A System of Dual Vice Presidency and the Path to Executive Coalition-Building

The extant literature on presidential constitutions has generally focused on the powers of the President vis-à-vis the assemblies. At times, it has extended as far as presidential electoral formulas.¹³⁰ However, the legal and political scholarship, particularly the literature on the Afghan presidential system, has mostly overlooked some important aspects of presidential constitutions, such as the electoral features discussed in Chapter Six and the vice presidency. This chapter reveals that the office of the vice president has played an important role in ethnic accommodation and cross-ethnic coalition-making, although there is room for improvement to

¹²⁸ *Id.*

¹²⁹ From 22 large coalitions, only 4 coalitions were able to sustain at least partly after elections. See Table II-1 in Chapter Four.

¹³⁰ See Introduction of Part II, *supra*.

institutionalize coalitions.

The Constitution of Afghanistan prescribes a presidential system, in which there are two vice-presidents: The First Vice President and the Second Vice President.¹³¹ In this dissertation, this system is referred to as a *dual vice presidency*. This chapter shows that the dual vice presidency has encouraged tri-ethnic presidential tickets that have constituted the origins of most cross-ethnic coalitions in Afghan presidential elections. Tri-ethnic tickets occur when the president and vice-president candidates are from three different ethnic groups. In the past three presidential elections, all viable candidates initiated coalition-making by first choosing each of their VP nominees from different ethnic groups.¹³²

However, although they form the core of cross-ethnic coalitions, the tri-ethnic tickets have remained superfluous, breakable, and clientelistic. The incumbent tickets have not been strong or disciplined either. At times, vice-presidents (hereinafter VPs) have acted more as opposition leaders than as deputies of the President. This has been the case in all three elected administrations. In Karzai's first elected government, VP Ahmadzia Masoud repeatedly attended the oppositions' meetings and criticized President Karzai's administration.¹³³ In Karzai's second term, while serving as First VP, Qasim Fahim declared his disapproval of the government's policies at numerous times.¹³⁴ In 2013, he accused Karzai of marginalizing the Jihadi groups from the government and warned that it could lead to another civil war.¹³⁵ Fahim's replacement, Yunis Qanooni, also criticized the government for letting members of the Taliban free without

¹³¹ CONSTITUTION, art. 60.

¹³² See Table III-5 in Chapter Seven.

¹³³ Fahim Rasa, *Che Kasi Dast Neshanda Hast, Karzai Ya Masoud? [Who Is the Puppet? Karzai or Masoud?]* KABUL PRESS (Feb. 23, 2009), <http://www.kabulpress.org/article3041.html>.

¹³⁴ *Hushdar Kam Sabeqa Mawen Raees Jamhur [The Unprecedented Warn of Vice-President]*, RADIO SADAYE HAQIQAT, May 1, 2013, <https://pl-pl.facebook.com/Radio.Haqiqat/posts/432872753486742:0>.

¹³⁵ *Id.*

proper judicial process.¹³⁶ In Ghani's administration, his First VP, Abdul Rashid Dostum, has blatantly accused the administration of ethnic discrimination on several occasions.¹³⁷ On two occasions, he waged military operations against the Taliban in the north, allegedly without any authorization from the government.¹³⁸

This chapter shows that the dual vice presidency has three major shortfalls: (a) it does not form a fully inclusive ticket, as it does not include the representative of at least one large ethnic group; (b) presidential tickets are not formed based on shared policy priorities; and (c) the vice presidency is merely an honorary position with trivial constitutional powers.

A. Constructive Features of Dual Vice Presidency and Ethnic Accommodation

Article 60 of the Afghan Constitution provides, "The President shall have two Vice Presidents... The Presidential candidate shall declare to the nation names of both vice presidential running mates."¹³⁹ This provision has produced three constructive effects in Afghanistan: First, by establishing a dual vice presidency, it has induced cross-ethnic coalitions in the elections. Second, this dual vice presidency has been conducive to vote pooling in the elections. Third, tri-ethnic presidential tickets have eventually led to inclusive executives at the highest level of government. Each of these contributions is addressed in detail in the following separate sections.

¹³⁶ *Mawen Awal Raees Jamhur: Rehayee Taliban As Zindan Siyasat Namunaseb Ast [The First Vice-President: Releasing Taliban Is a Bad Politics]*, AFGHAN IRCA, 2014, <http://www.afghanirca.com/newsIn.php?id=21179>.

¹³⁷ Abdul Hamid Shalizi, *Open Criticism, Unruly Militias Add To Afghan Government Woes*, REUTERS (Jul. 5, 2015), <http://www.reuters.com/article/us-afghanistan-politics-dostum-idUSKCN0ZL2SC>.

¹³⁸ Sune Engel, *Afghanistan's Warlord Vice-President Spoiling For A Fight With The Taliban*, THE GUARDIANS, Aug. 4, 2015, <https://www.theguardian.com/world/2015/aug/04/afghan-vice-president-militia-taliban-general-dostum>.

¹³⁹ CONSTITUTION, art. 60.

1. Dual Vice Presidency and the Core Coalitions

Although Article 60 does not explicitly require that the President and Vice Presidents be from different ethnic groups, most presidential candidates are likely to form cross-ethnic presidential tickets for reasons discussed previously. In particular, the leading candidates have great incentive to choose their first and second running mates from two different ethnic groups.

Table III-5. shows the composition of presidential tickets in the 2004, 2009 and 2014 elections¹⁴⁰

¹⁴⁰ IEC 2004 and IEC 2006, *supra* note 39; *The 2014 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/pdf/finallist13/presidential.pdf> (last visited Jan 15, 2016) [hereinafter “IEC 2014”]; *Biographies Of Afghan Personalities Of Yesterday And Today*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/>; ICOS, *supra* note 13, at 11-17; *Tarkib Mawenan Namzedhai Intekhabat [The Composition of Vice President Candidate]* BBC, http://www.bbc.com/persian/afghanistan/2009/07/090630_a-af-election-vice-president-candidates.shtml; *Asia: Afghanistan Presidential Candidates 2014*, GLOBAL VOICE, <https://iwpr.net/global-voices/afghan-presidential-candidates-2014>.

| Ethnic Composition of Presidential Teams | | | | |
|---|--|--|--------------|-------------|
| The Presidential Election of 2004: Leading Candidates | | | | |
| Candidate | 1 st Vice President | 2 nd Vice President | Affiliations | Total Votes |
| Hamid Karzai <i>Pashtun</i> | Ahmad Zia Masoud <i>Tajik</i> | Mohd. Karim Khalili <i>Hazara</i> | Independent | 55.40% |
| Mohd. Yunos Qanuni <i>Tajik</i> | Taj Mohd. Wardak <i>Pashtun</i> | S. Hussain Alemi Balkhi <i>Hazara</i> | | |
| Mohammad Mohaqiq <i>Hazara</i> | Nasir Ahmad Ensaf <i>Pashtun</i> | Abdul Fayaz Mehrayin <i>Tajik</i> | Independent | 11.70% |
| Abd. Rashid Dostum <i>Uzbek</i> | Shafiq Habibi <i>Pashtun</i> | Mustafa Kamal Makhdom <i>Tajik</i> | | |
| Party | | | | |
| 10.00% | | | | |
| The Presidential Election of 2009: Leading Candidates | | | | |
| Candidate | 1 st Vice President | 2 nd Vice President | Affiliations | Total Votes |
| Hamid Karzai <i>Pashtun</i> | Mohd. Qasim Fahim <i>Tajik</i> | Mohd. Karim Khalili <i>Hazara</i> | Independent | 49.67% |
| Dr. Abdullah Abdullah <i>Tajik (Mixed)</i> | Homayon Shah Asefi <i>Pashtun</i> | Churagh Ali Ghuragh <i>Hazara</i> | | |
| Ramazan Bashardost <i>Hazara</i> | Mohd. Mosa Barezai <i>Pashtun</i> | Afifa Marof <i>Tajik</i> | Independent | 10.46% |
| The Presidential Election of 2014: All Candidates | | | | |
| Candidate | 1 st Vice President | 2 nd Vice President | Affiliations | Total Votes |
| Dr. Abdullah Abdullah <i>Tajik (Mixed)</i> | Eng. Muhammad Khan <i>Pashtun</i> | Mohammad Mohaqiq <i>Hazara</i> | Party | 45.00% |
| Ashraf Ghani <i>Pashtun</i> | Abd. Rashid Dostum <i>Uzbek</i> | Mohd. Sarwar Danish <i>Hazara</i> | | |
| Zalmai Rasoul <i>Pashtun</i> | Ahmad Zia Masoud <i>Tajik</i> | Habiba Sorabi <i>Hazara</i> | Independent | 11.37% |
| Abdulrab Rasul Sayaf <i>Pashtun</i> | Ismail Khan <i>Tajik</i> | Abdul Wahab Erfan <i>Uzbek</i> | | |
| Qutbuddin Helal <i>Pashtun</i> | Enayatullah Enayat <i>Uzbek</i> | Mohd. Ali Nabizada <i>Tajik</i> | Independent | 2.75% |
| Gul Agha Sherzai <i>Pashtun</i> | S. Hussain Alemi Balkhi <i>Hazara</i> | Mohd. Hashem Zare <i>Uzbek</i> | | |
| Daud Sultanzoy <i>Pashtun</i> | Farid Ahmad Fazli <i>Tajik</i> | Ms. Kazima Mohaqeq <i>Hazara</i> | Independent | 0.46% |
| Hedayat Ahmin Arsala <i>Pashtun</i> | General Khodaidad <i>Hazara</i> | Ms. Safia Sediqi <i>Pashtun</i> | | |
| Abdul Rahim Wardak <i>Pashtun</i> | Shah Abd. Ahad Afzali <i>Tajik</i> | Sayed Hussain Anwari <i>Hazara</i> | Independent | Withdrew |
| Abdul Qayom Karzai <i>Pashtun</i> | Wahidullah Shahani <i>Uzbek</i> | Mohd. Noor Akbari <i>Hazara</i> | | |
| Sardar Mohd. Naeem <i>Pashtun</i> | Taj Mohammad Akbar <i>Tajik</i> | Azizullah Puya <i>Pashtun</i> | Independent | Withdrew |
| | | | | |

Notably, Table III-5 does not include all presidential tickets in the 2004 and 2009 presidential elections due to the absence of information on the composition of most non-viable presidential tickets, although there have been some non-viable tickets that represented only two ethnic groups.¹⁴¹ As generally discussed previously, it is not accidental that most presidential tickets have represented three ethnic groups. Across countries, it is conventionally known that presidential candidates nominate VP nominees mainly to balance their tickets to win votes from different constituencies.¹⁴² Additionally, although Article 60 is silent on the ethnic composition of presidential tickets, the intention for adopting a dual vice presidency was to include more ethnic groups in presidential tickets.¹⁴³ In fact, the initial draft of the provision was rejected because it contained only one VP.¹⁴⁴ To make the ticket more inclusive, an additional vice presidential office was added.¹⁴⁵ It begs the question, however, that if the intention was to make the government more ethnically inclusive, why does Article 60 not explicitly refer to the ethnic composition of the presidential teams?

Indeed, some countries have incorporated explicit terms to this effect in their constitutions.¹⁴⁶ For example, Article 124 of Burundi's Constitution explicitly provides that the

¹⁴¹ A well-known example is Ashraf Ghani's ticket in the presidential election of 2009. In 2009, his ticket represented only two ethnic groups: two Pashtuns and a Tajik. This was one likely reason that he won few votes in 2009 and that he won close to one percent or less in most provinces that had considerable population of Hazaras and/or Uzbeks. See Ayob Aryan, *Tarkib Mawenan Namzedhai Intekhabat: Numad Kasrat Garayee? [The Composition of Vice-President Candidate: A Sign of Pluralism?]* BBC (Jun. 4, 2009), http://www.bbc.com/persian/afghanistan/2009/07/090630_a-af-election-vice-president-candidates.shtml.

¹⁴² Linz, *supra* note 108, at 66-67.

¹⁴³ MOHAMMAD NABI AHMADI & MAJID ISMAELZADA, *DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES]* (2014) at 1393.

¹⁴⁴ MOHAMMADI, *supra* note 17, at 315.

¹⁴⁵ *Id.*

¹⁴⁶ Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 THE U. CHI. L. REV. 769, 774 (2013).

two VPs should represent different ethnic groups.¹⁴⁷ Given the fact that both Article 60 of the Afghan Constitution and Article 124 of Burundi's Constitution have produced similar effects, the Afghan Constitution does not necessarily need to be amended. More importantly, due to their centripetal tendencies, Afghans are suspicious of laws and institutions that explicitly link power to ethnicity. Article 60 reflects the centripetal tendencies in Afghanistan as it encourages cross-ethnic coalitions without explicitly requiring the tickets to represent different groups. Such rules must be credited for not instigating ethnic politicization while still ensuring that democratic institutions are inclusive.¹⁴⁸

Nevertheless, whether a constitutional provision with an implicit approach to ethnic inclusivity will have an optimal outcome depends on how that provision interacts with other institutional and social settings. The inclusive effect of the dual vice presidency in Afghanistan is apparently due to its interaction with the right social and political settings and the political system. Considering the ethnic distribution in Afghanistan, it is a country of minorities, where each ethnic group makes up less than 50 percent population.¹⁴⁹ Article 61 of the Constitution, however, institutes a majority runoff system that requires over 50 percent of the votes for a

¹⁴⁷ LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] (Feb. 2005), art. 124 ("The Vice-Presidents belong to different ethnic groups and political parties. Without prejudice to the preceding paragraph, the predominant character of their ethnic affiliation within [au sein] their respective political parties is taken into account, in their appointment.") art. 128 ("In the case of resignation, death or of any other cause of definitive cessation of the functions of a Vice-President of the Republic, a new Vice-President of the Republic[,] originating from the same ethnicity and of the same political party as their predecessor[,] is appointed, following the same procedure, within a time period not exceeding thirty days, counting from the definitive cessation of the functions of the Vice-President to be replaced.")

¹⁴⁸ Stephanopoulos, *supra* note 146, at 842 ("They [implicit techniques] do not racialize the electoral system (at least not to the same extent) while still making possible substantial levels of minority representation.") Paul L. McKaskle, *Of Wasted Votes and No Influence: An Essay on Voting Systems In The United States*, 35 HOUS. L. REV. 1119, 1126 (1999) ([implicit rule] eliminates the need to use race-conscious criteria in creating legislative districts.)

¹⁴⁹ See Introduction to Part II, *supra*.

nominee to win the presidency. As a result, a presidential nominee needs the votes of more than one ethnic group to become the president. The tendency to create pre-electoral coalitions further pushes the candidates to form tickets than two ethnic coalitions to win the presidential race.¹⁵⁰

All of these social and institutional settings have paved the way for a dual vice presidency to encourage tri-ethnic tickets. To further illustrate this phenomenon, the dual vice presidency might not have the same effect, for example, if the largest ethnic group constituted over 60 percent population. If that were the case, one group could have delivered over 50 percent vote single handedly. As such, it would have been possible for an extremist candidate from the largest group to win with his or her running-mates from the same ethnic group.

2. Dual Vice Presidency and Vote Pooling

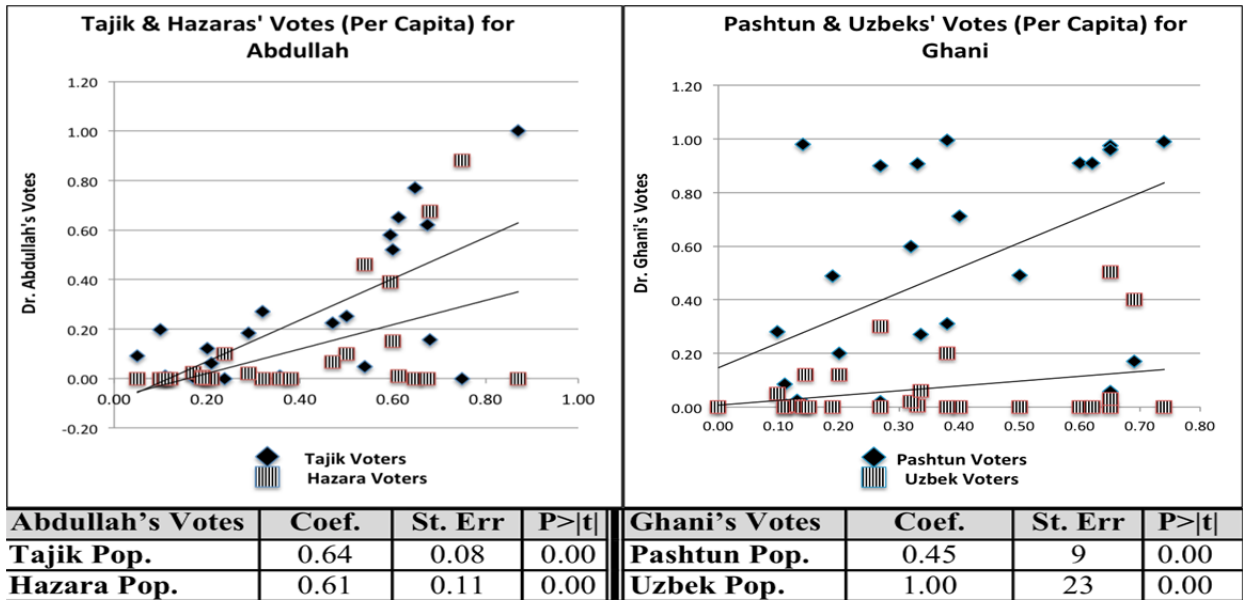
Tri-ethnic presidential tickets have been conducive to vote pooling. In fact, the primary reason why presidential nominees tend to choose their running-mates from different ethnic groups is that a tri-ethnic presidential ticket is more likely to attract cross-ethnic votes than a single or bi-ethnic presidential ticket.

At times, VP candidates have contributed more votes per capita—or an equal proportion of votes—from their constituencies to their ticket rather than presidential candidates.¹⁵¹ This was indeed the case in the presidential election of 2014, when Mohammad Mohaqiq, the leader of a Hazara party, ran as the Second VP of Abdullah and Abdul Rashid Dostum, an ethnic Uzbek, ran as the First VP of Ahsraf Ghani. Due to their inclusion, Abdullah's ticket received as many votes from Hazaras as from Tajiks per capita and Ghani's ticket secured even more votes from Uzbeks than from Pashtuns per capita.

¹⁵⁰ See Chapter Six, *infra*.

¹⁵¹ See *e.g.*, Figure III-2.

Figure III-2. A comparative illustration of votes for Abdullah (on the left) and Ghani (on the right) in 2014. Both the graph and the regression show that Dr. Abdullah won more votes from Tajiks than Dr. Ghani from Pashtuns. However, more Uzbeks voted for Ghani than Hazaras for Abdullah.



To illustrate the vote pooling effect of the cross-ethnic presidential ticket, it is helpful to compare Ghani's votes in Hazara and Uzbek dominated provinces in 2009 with his votes in those provinces in 2014. This example helps because in the presidential election of 2009, Ghani's ticket did not include representatives of Hazaras and Uzbeks. In the presidential election of 2014, however, he picked an Uzbek and a Hazara as his running mates. As Table III-6 shows, Ghani's votes in the Uzbek- and Hazara-dominated constituencies mostly ranged between zero and one percent in the presidential election of 2009. In 2014, Ghani's votes increased considerably in those provinces.

Table III-6. compares Ghani's votes in 2009 and in 2014 in the provinces which are populated mostly by Hazaras and/or Uzbeks.¹⁵²

| Province | Largest Eth. Grp. | Uzbek & Hazara Pop. | Ghani Votes 2009 | Ghani Votes 2014 |
|----------|--------------------|---------------------|------------------|------------------|
| Jauzjan | Uzbeks | 40% | 1% | 69% |
| Ghor | Hazaras | 40% | 2% | 13% |
| Ghazni | Hazaras (Disputed) | 46% | 1% | 19% |
| Faryab | Uzbeks | 52% | 1% | 65% |
| Daykundi | Hazaras | 88% | 0% | 11% |
| Bamyan | Hazaras | 67% | 1% | 11% |

Nonetheless, two points are important to keep in mind. First, not all VPs attract a considerable number of votes. The prominence of individual nominees inside the tickets is quite important to draw votes since one tri-ethnic ticket is competing against several other tri-ethnic tickets. In effect, presidential nominees, before anything else, are in the search of the most prominent figures of ethnic groups to add to their tickets.¹⁵³ If unable to lock-in the top elites, the candidates seek running mates among second and third ranking ethno-political elites.¹⁵⁴ Second, the position of VPs does not necessarily reflect their voting contributions to the ticket.¹⁵⁵ For example, in the 2004 elections, Karim Khalili drew more votes to Karzai's ticket than Ahmadzia Masoud, his First VP; similarly, in the 2014 election, Haji Mohaqiq, the second of Abdullah's VP nominees, contributed more votes to the ticket than Ahmad Khan, Abdullah's First VP nominee.¹⁵⁶

¹⁵² IEC 2009, *supra* note 39; IEC 2014, *supra* note 140.

¹⁵³ For example, elites such as Mohaqiq and Dostum, known as kingmakers, are the biggest prizes that all serious candidates want in their tickets. Brian Glyn Williams, *The Return of the Kingmaker*, FOREIGN POLICY (Aug. 17, 2009), <http://Foreignpolicy.Com/2009/08/17/The-Return-Of-The-Kingmaker/>; Leela Jacinto, *Another election, another cycle of fraud and violence?* FRANCE 24 (Sep. 17, 2009) available at <http://www.france24.com/en/20100916-afghan-parliamentary-elections-fears-another-cycle-fraud-violence-karzai-taliban>; KATE CLARK, DANCING TO POWER: GETTING AN AFGHAN PRESIDENTIAL TICKET TOGETHER, AFGHANISTAN ANALYST NETWORK 4 (Sep. 30, 2013); ICOS, *supra* note 13, at 5.

¹⁵⁴ For details refer to Chapter One, *supra*.

¹⁵⁵ MOHAMMADI, *supra* note 17, at 320.

¹⁵⁶ *Id.*

3. Dual Vice Presidency and Inclusive Government

Tri-ethnic tickets not only form the foundation of cross-ethnic coalitions, but they also help those cross-ethnic coalitions entrench in the executive branch. The winning ticket is the most sustainable alliance since the President does not have the constitutional authority to dismiss the VPs.¹⁵⁷ The political circumstances in 2014 indicated that a tri-ethnic presidential team can sustain even when a VP dies.

In 2014, just prior to the election, Mohammad Qasim Fahim, Karzai's First VP, passed away due to health issues.¹⁵⁸ Since he was an ethnic Tajik, the Tajiks demanded that his replacement must also be from the same group since Tajiks voted for Karzai because Fahim was his running mate.¹⁵⁹ Some have gone even further and suggested that someone from his party, the *Jamiat-i-Islami Party*, should fill the vacancy.¹⁶⁰ Karzai yielded to their demands and appointed Yunis Qanooni, a Tajik leader and an affiliate to *Jamiat-i-Islami Party*.¹⁶¹

Additionally, adding VPs to a ticket is not a unilateral decision. A presidential nominee has to negotiate with the VP candidates and make whatever additional concessions they require or face the risk that they may join forces with another candidate. Naturally, potential running mates are likely to demand more seats for their allies in the cabinet and other institutions, distribution of public funds for their constituencies, and other social and economic pledges from

¹⁵⁷ Although the Constitution is silent on the issue of whether a VP can be dismissed by the president, this silence can appropriately be interpreted as precluding dismissal since the VPs are in electoral tickets. In other words, even if the VPs are not elected separately from the President, their presence or absence does make a difference in the electoral outcome of a presidential ticket as mentioned earlier. Additionally, it is mostly because of their constituencies that a presidential nominee includes them in their tickets.

¹⁵⁸ MOHAMMADI, *supra* note 17, at 318.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

the candidates. Therefore, the negotiation between the candidate and the potential running-mates is merely the beginning of broader alliances that eventually form the executive branch.

Considering these coalitional arrangements, it is not surprising that some legal and political scholars have considered the presidential system of Afghanistan to be a non-majoritarian system.¹⁶² For example, Sven Gunnar Simonsen has suggested that presidential elections in Afghanistan do not lead to “winner-takes-all” because normally his or her teammates represent the interests of at least two other ethnic groups.¹⁶³ Arend Lijphart, who conventionally advocates for parliamentary systems for consociational democracies, has referred to Afghanistan’s political system as a consociational model.¹⁶⁴

B. Obstructive Features of Dual Vice Presidency and the Failure of Executive Coalitions

Despite encouraging cross-ethnic coalitions, a dual vice presidency falls short in several important respects: (a) it does not lead to a fully inclusive presidential team; (b) it does not require that policy priorities be shared between the President and VPs, leading to incohesive presidential tickets; and (c) VP offices lack basic constitutional powers and, therefore, fail to satisfy ethnic groups.

1. A Tri-Ethnic Presidential Team is Not Descriptively Consociational

One of the reasons the drafters of the Constitution designed a tri-ethnic presidential ticket was to make the highest executive office ethnically inclusive.¹⁶⁵ However, given the ethnic distribution in Afghanistan, a tri-ethnic presidential team does not qualify as consociational. Afghanistan has four large ethnic groups and several smaller groups. A consociational ticket

¹⁶² See, e.g., Sven Gunnar Simonsen, *Ethnicising Afghanistan?: Inclusion and Exclusion in Post-Bonn Institution Building*, 25/4 *THIRD WORLD QUARTERLY*, 707-729, 713 (2004).

¹⁶³ *Id.*

¹⁶⁴ AREND LIJPHART, *THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE*, 3 (2008).

¹⁶⁵ AHMADI & ISMAELZADA *supra* note 143, at 15.

must therefore include at least all four large ethnic groups—not because it is fair, but because it is stabilizing. Ethnic groups with no representation in a presidential team are likely to panic and challenge the presidential ticket (or the President).¹⁶⁶ To address this concern of the unrepresented group as well as to win their votes, the winning presidential candidates have either used a third post or created a new one to include representatives of these minority groups. In this way, indeed the presidents have created a *de facto* office of the VP.

There are several examples of this in Afghanistan. In 2009, Karzai did not have an Uzbek VP on his ticket. In order to win Uzbek votes and address their concerns, he appointed Dostum as the Joint Chief of Staff.¹⁶⁷ In a more heated case in 2014, the absence of a Tajik VP nominee from Ghani's ticket caused anxiety among Tajiks.¹⁶⁸ In order to address Tajik's concerns and obtain their support, Ghani created a new post, Special Envoy for Good Governance, which he declared to have the same level of authority and benefits as VPs.¹⁶⁹ Then he filled that position with Ahmad Zia Masoud, a Tajik elite, who was Karzai's VP between 2004 and 2009.¹⁷⁰ Three years after the election, however, Ghani dismissed Masoud, suggesting that he was not useful for the administration.¹⁷¹ In response, Masoud warned that his removal from the government might trigger an ethnic conflict since his supporters were not willing to forgo betraying President

¹⁶⁶ MOHAMMADI, *supra* note 17, at 318.

¹⁶⁷ *As Karzai Ta Ahmadzai [From Karzai to Ahmadzai]*, AZADI RAW, (Jan. 12, 2017), http://www.azadi.ru/index.php?option=com_content&view=article&id=2087:2017-01-20-14-13-00&catid=36:azadi

¹⁶⁸ MOHAMMADI, *supra* note 17, at 318.

¹⁶⁹ See Ahmad Qureshi, *Ghani promises to make Massoud 3rd VP*, AFGHAN PAZHWAK NEWS, (Apr. 2014) <http://www.elections.pajhwok.com/en/2014/05/26/ghani-promises-make-massoud-3rd-vp>.

¹⁷⁰ Dr. Ghani even promised to amend the Constitution and appoint him as his third VP. *See Id.*

¹⁷¹ *Hushdar Ahmad Zia Masoud Ba Ashraf Ghani Wa Wakunish Riyasat Jamhuri Afghanistan [The Warning of Ashraf Ghani by Ahmad Zia Masoud and the Reaction from the Urg]*, BBC PERSIAN, Apr. 18, 2017, <http://www.bbc.com/persian/afghanistan-39626650>.

Ghani.¹⁷² Unlike the elected VPs, *de facto* VPs can be dismissed, which can give rise to ethnic tensions.

2. The Tri-Ethnic Presidential Ticket Does Not Capture the Principle of Least Distance Policies

While forming a cross-ethnic presidential ticket is necessary for ethnic accommodation, it does not lead to the consolidation of electoral coalitions or shared policy platforms. As explained earlier, tri-ethnic tickets did help the winning coalitions to sustain beyond elections and in the executive branch. But this has not been the case for losing coalitions. Neither have the incumbent teams been cohesive or cooperative in their political agendas.

To effectively consolidate, a coalition should be formed on the basis of policy proximities between its members—a basis that has not existed in Afghanistan. Candidates have usually picked VP nominees merely to win the votes of different ethnic groups.¹⁷³ At times, presidential candidates have been very different from their VP nominees in terms of policies and personalities. A good case in point is the alliance of Ashraf Ghani and Abdul Rashid Dostum in the presidential election of 2014. Ghani, as a technocrat trained in the West, was a loud advocate for reducing the role of Jihadi leaders and their presence in the government.¹⁷⁴ In the presidential election of 2009, Dr. Ghani called Dostum a “known killer” and criticized Karzai for forming alliances with him.¹⁷⁵ When Ghani joined forces with Dostum as his own VP nominee in the 2014 election, it was a 180 degree turn away from his previous political position.¹⁷⁶ Ghani and

¹⁷² *Id.*

¹⁷³ AHMADI & ISMAELZADA, *supra* note 143, at 15.

¹⁷⁴ See Masoud, *Hypocrite Politician Ashraf Ghani Ahmadzai and Known Killer Abdul Rashid Dostum*, Kabul Press (Mar. 7, 2014), <http://kabulpress.org/my/spip.php?article177004>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

Dostum tried to normalize their alliance through several confession and concession attempts. For example, soon after joining Dr. Ghani's campaign, Dostum made an unprecedented apology for his role in the past wars that caused "pain and suffering of the people" and promised that those days would never come back in their government.¹⁷⁷

However, not long after the establishment of their administration, Dostum criticized the government for pursuing an ethnic agenda and excluding minorities, especially Uzbeks, in the hiring system and policies of the government.¹⁷⁸ Later, he personally—some suggest without the permission of the government—waged several wars against Taliban in the North. This triggered criticism among Pashtun communities who alleged that his war against the Taliban led to the killings of Pashtun civilians.¹⁷⁹ Later in 2016, Dostum and his guards allegedly raped and tortured a Turkmen leader and kept him captive for weeks.¹⁸⁰ After that event, Dostum was put in house arrest although he remained a VP.¹⁸¹

Policy-free coalescence has also been the reason that some VPs were dropped and others were picked between the elections. For example, after two years of transitional government, Karzai dropped Qasim Fahim and chose Ahmad Zia Masoud as his First VP nominee in the presidential election of 2004. Karzai dropped Fahim because he wanted to marginalize Jihadi

¹⁷⁷ Thomas Ruttig, *Pluralistic Within Limits, But Not Democratic: Afghanistan's Political Landscape Before The 2014 Elections*, AFGHAN ANALYST NETWORK, 2 (Oct 2013); Wakil Kohsar, *From Ex-Warlords to Scholars: Who Wants to Rule Afghanistan*, NBC NEWS (Apr. 5, 2014), <http://www.nbcnews.com/storyline/afghanistan-election/ex-warlords-scholars-who-wants-rule-afghanistan-n24756>.

¹⁷⁸ Shalizi, *supra* note 137.

¹⁷⁹ Engel, *supra* note 138.

¹⁸⁰ Rod Nordland & Jawad Sukhanyar, *Afghanistan Police Surrounds Vice-President's House*, NY TIMES, (Feb. 21, 2017), https://www.nytimes.com/2017/02/21/world/asia/abdul-rashid-dostum-afghanistan.html?_r=0.

¹⁸¹ *Id.*

groups and Fahim was a well-known Jihadi leader.¹⁸² Fahim's replacement, Ahmad Zia Masoud, however, was unable to draw large enough support to the ticket from Tajiks.¹⁸³ Unsatisfied with his electoral performance, in the presidential election of 2009, Karzai returned to Fahim to replace Ahmad Zia as his First VP. Eventually, Fahim helped him win a considerable number of votes from Tajiks in that election.¹⁸⁴

3. The Tri-Ethnic Presidential Team is Not Substantively Consociational

Afghanistan, like many presidential democracies, has followed the U.S. model of vice presidency where the VP has little constitutional power and has famously been described as “a warm bucket of spit.”¹⁸⁵ Even so, as Table III-7 shows, unlike some constitutions that have given advising, assisting, and even counter-balancing roles for their VPs, the Afghan Constitution is silent about the power of the VPs.¹⁸⁶

¹⁸² Aziz Ahmad Bariz, *Afghanistan: Digargoni-Hai Siasi Wa Hukumat Karzai*, KHURSHID <http://www.bariz.org/?p=187> (last visited November 2016).

¹⁸³ *Id.*

¹⁸⁴ For more information, refer to Chapter One, *supra*.

¹⁸⁵ JULES WITCOVER, *RULING THE DICE ON THE VICE PRESIDENCY: FROM ADAMS AND JEFFERSON TO TRUMAN AND QUAYLE*, 8-9 (1992).

¹⁸⁶ CONSTITUTION; THE CONSTITUTION OF NIGERIA, May 29, 1999, http://www.worldstatesmen.org/nigeria_const1960.pdf (hereafter “NIGERIA CONSTITUTION”); OF (PLURINATIONAL) STATE [CONSTITUCIÓN POLÍTICA DEL ESTADO] Feb. 7, 2009, https://www.constituteproject.org/constitution/Bolivia_2009.pdf (hereafter BOLIVIA'S CONSTITUTION; THE CONSTITUTION OF SIERRA LEONE, (1991) <http://www.sierra-leone.org/Laws/constitution1991.pdf>; THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, Sep. 7, 1978, <https://www.parliament.lk/files/pdf/constitution.pdf>; THE CONSTITUTION OF KENYA, May 6, 2010, <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>; THE CONSTITUTION OF GHANA (Apr. 28, 1992) https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en; THE CONSTITUTION OF BURUNDI [LA CONSTITUTION DU BURUNDI] Feb. 2005, https://www.constituteproject.org/constitution/Burundi_2005.pdf; UNDANG-UNDANG DASAR REPUBLIK INDONESIA 1945 [THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA] Aug. 1945, <https://thevideobee.to/vqeslih6vci9.html>; THE CONSTITUTION OF MALAWI, May 16, 1994,

Table III-7 shows the constitutional privileges of VPs in eleven plural societies.¹⁸⁷ In this Table ‘No’ does not necessarily mean that the VP does not have the respective power. It only means that the power is not explicitly given by the Constitution.

| Country | Function | As Minister | Countersign Power | Consulting on Minis. Appoint. | Sectoral VP | Issue Orders |
|--------------|----------|-------------|-------------------|-------------------------------|-------------|--------------|
| Afghanistan | Nothing | Yes | No | No | No | No |
| Bolivia | Assist | / | / | / | Yes | No |
| Burundi | Advice | Yes | Yes | Yes | Yes | Yes |
| Cyprus | Decision | No | Yes | Yes | No | Yes |
| Ghana | Nothing | Yes | No | No | No | No |
| Indonesia | Assist | Yes | No | No | No | No |
| Kenya | Advice | Yes | No | No | No | No |
| Malawi | Assist | / | No | No | No | No |
| Nigeria | Advice | Yes | No | No | No | No |
| Philippines | Nothing | Yes | No | No | No | No |
| Sierra Leone | Assist | Yes | No | No | No | No |
| Sri Lanka | Advice | Yes | No | Yes | No | No |

Apparently, the drafters of the Afghan Constitution failed to recognize the particularities of Afghan social and political context and how the office of vice presidency should have responded to that as the constitutional designers in Burundi, Sri-Lanka, and Cyprus did (see Table III-7). To address their ethnic divides, these countries have been very innovative about the power and functions of their VPs. As Table III-7 shows, the Constitution of Burundi and Cyprus have even provided their VPs with some veto power against the president’s decisions. Although these innovations might not have been successful, they do show that their constitutional drafters looked beyond conventional designs to address their own social issues.

What is even more notable is that based on the Afghan Constitution, VPs are not part of the executive branch. Article 71 states, “The Government shall be comprised of Ministers who work under the chairmanship of the President. The number of Ministers as well as their duties

https://www.constituteproject.org/constitution/Malawi_1999.pdf; Saligang Batas ng Pilipinas [CONSTITUTION of the PHILIPPINES] Feb. 2, 1987, https://www.constituteproject.org/constitution/Philippines_1987.pdf?lang=en; CONSTITUTION OF CYPRUS, Aug. 16, 1960 https://www.constituteproject.org/constitution/Cyprus_2013.pdf.

¹⁸⁷ *Id.*

shall be regulated by law.”¹⁸⁸ Article 71 thereby excludes VP offices as important components of the executive branch. Based on this description, the President has the constitutional authority to keep VPs out of the government’s business. This is unlike most of the presidential constitutions analyzed in Table III-7. In ten out of twelve countries in Table III-7, VPs are active members of the executive branch.

According to the Afghan Constitution the VPs’ duty and power depend merely on the presence and absence of the President and whether the President assigns some authority to them.¹⁸⁹ Chiefly, the constitutional function of a VP—mostly the First VP—is merely to fill the President’s position temporarily in case of his travel abroad, impeachment, resignation, death or a serious illness.¹⁹⁰ Even then, he or she will operate not as the President but as an Interim President.¹⁹¹ Especially when the President travels abroad, “the duties of the First Vice President shall be determined by the President.”¹⁹² The law is even more ambiguous about powers and duties of the Second VP.¹⁹³ Mainly, his function is to act as a substitute for the President in case of the absence of both the President and the First VP.¹⁹⁴

Even when the President permanently vacates the office, the power of a VP as an Interim

¹⁸⁸ CONSTITUTION, art. 71.

¹⁸⁹ CONSTITUTION, art. 60.

¹⁹⁰ *Id.*; CONSTITUTION, art. 67 (“In case of resignation, impeachment or death of the President, as well as an incurable illness impeding performance of duty, the First Vice-President shall assume authorities and duties of the President.”)

¹⁹¹ Mohammad Qasim Hashemzai, *Tafkik Quwa Was Masala Tafsir Qanoon-i-Asasi Afghanistan [Separation of Powers and the Issue of the Interpretation of the Constitution]*, in SALNAMAH MOTAL’AT HOQUQY AFGHANISTAN, 92 [YEARBOOK OF AFGHAN LEGAL STUDIES] (1394) [2016].

¹⁹² CONSTITUTION, art. 67.

¹⁹³ MOHAMMADI, *supra* note 17, at 315.

¹⁹⁴ CONSTITUTION, art. 68.

President is limited by Article 67 in two ways.¹⁹⁵ First, the VP can run the administration for only three months, by the end of which time a new presidential election must be held.¹⁹⁶ As Table III-8 shows, Afghanistan is one of the few presidential democracies, where the elected VP cannot refill the vacant position of the president for the remainder of the presidential term. Second, the Interim President cannot propose an amendment in the Constitution, dismiss ministers, or call for a referendum.¹⁹⁷

Table III-8. illustrates vice presidential systems in twelve countries including Afghanistan¹⁹⁸

| Country | VP No. | Elected VP | Ethnic Threshold | Executive Member | Succession of the President |
|--------------|--------------------|--------------------|-----------------------------------|------------------|-----------------------------|
| Afghanistan | 2 | Yes | No | No | Three Months |
| Bolivia | 1 | Yes | No | Yes | Three Months |
| Burundi | 2 | Yes | Yes | Yes | Remainder of Term |
| Cyprus | 1 | Yes | Yes | Yes | Forty-Five Days |
| Ghana | 1 | Yes | No | Yes | Remainder of Term |
| Indonesia | 1 | Yes | No | Yes | Remainder of Term |
| Kenya | 1 | Yes | Yes | No | Remainder of Term |
| Malawi | 2 (Provisional) | Yes (1 VP Only) | 2 nd VP Diff. Party | Yes | Remainder of Term |
| Nigeria | 1 | Yes | No | Yes | Remainder of Term |
| Philippines | 1 | Yes | No | Yes | Remainder of Term |
| Sierra Leone | 1 | Yes | No | Yes | Remainder of Term |
| Sri Lanka | 1 (PM) | No | No | Yes | No |

The fact that the Afghan VPs have limited constitutional power challenges the notion that the presidential system in Afghanistan is at least substantively consociational. Substantive consociationalism requires consociational government, where the representatives of ethnic groups exercise some real constitutional powers. The primary reason that non-Pashtun ethnic groups are not satisfied with the presidential system in Afghanistan is that their highest

¹⁹⁵ CONSTITUTION, art. 67 (“In case of resignation, impeachment or death of the President, as well as an incurable illness impeding performance of duty, the First Vice President shall assume authorities and duties of the President.”)

¹⁹⁶ CONSTITUTION, art. 67.

¹⁹⁷ *Id.*

¹⁹⁸ *Supra*, note 186.

representatives in the government have almost no constitutional powers. Generally, unaware of alternative models of the presidential system with different levels of VP powers, many reject the presidential constitution altogether and propose either a parliamentary constitution or a federal state.¹⁹⁹

Another issue created by limited VP power is that it makes the VPs less accountable for the failures of the government, although it is reasonable to ask why they should be accountable for the performance of a government, in which they have close to zero control and power. As earlier discussed, there have been numerous times that VPs have criticized government actions instead of supporting them.²⁰⁰ VPs have even attended opposition gatherings and coalitions while holding offices.²⁰¹ The President does not have the power to dismiss them because they are not appointed officers of the executive. Therefore, the Afghan Constitution has created an inconsistent presidential ticket, where, on the one hand, VPs are not accountable because they lack constitutional power, and on the other hand they cannot be removed because they serve as elected individuals, like the President.

Despite being deprived of constitutional power, Afghan VPs have demonstrated some privileges. For example, it has become a tradition that VPs introduce the cabinet nominees to the Assembly. Additionally, the President may appoint a VP as a minister or head of a government body. This has occurred in the Interim and Transitional governments, when Karzai appointed several VPs as ministers.²⁰² In addition, in his second term as elected President, Karzai appointed

¹⁹⁹ Suhrke, *supra* note 7, at 8; RAHIMI, *supra* note 6, 155.

²⁰⁰ Rasa, *supra* note 133.

²⁰⁰ RADIO SADAYE HAQIQAT, *supra* note 134; AFGHAN IRCA, *supra* note 136; Shalizi, *supra* note 137.

²⁰¹ *Id.*

²⁰² Thomas H. Johnson, *The Prospect for Post-Conflict Afghanistan*, CENTER FOR CONTEMPORARY CONFLICT, 4-6 (2006)

the Second VP, Karim Khalili, as the head of Afghanistan National Disaster Management.²⁰³

At times VPs have claimed authority against other branches of the government that neither the President nor the Constitution have assigned to them. For example, in 2012 the National Assembly decided to question Vice President Karim Khalili about his other role as the head of Afghanistan National Disaster Management.²⁰⁴ He refused to appear before WJ, arguing that as a VP he is not constitutionally required to appear in the Lower House for questions.²⁰⁵ This way, he used his vice-presidential card to trump the Assembly's constitutional power to summon him as the head of the Afghanistan National Disaster Management.

In a different case in 2016, First VP Dostum, and his associates allegedly raped and tortured a Turkmen leader and kept him in captive for weeks.²⁰⁶ Although the Attorney General subpoenaed him and his guards several times, Dostum refused to cooperate.²⁰⁷ He argued that as a VP he should be treated like the President and, therefore, he cannot be prosecuted by the Attorney General.²⁰⁸ Although the Afghan Constitution provides a specific procedure for the impeachment of the President, it is silent on investigating a VP's criminal activities.²⁰⁹ Neither

<http://www.nps.edu/Academics/centers/ccc/publications/OnlineJournal/2006/Feb/johnsonFeb06.pdf>

²⁰³ *Mohammad Karim Khalili, WHO IS WHO*, http://www.afghanbios.info/index.php?option=com_afghanbios&id=880&task=view&total=2090&start=917&Itemid=2.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Nordland & Sukhanyar, *supra* note 180.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ CONSTITUTION, art. 69 (“The President shall be responsible to the nation as well as the House of People in accordance with the provisions of this Article. Accusations of crimes against humanity, national treason as well as a crime against the President shall be demanded by one third of all members of the House of People. If this demand is approved by two thirds of the House of People, the House of People shall convene the Loya Jirga within one month. If the Loya Jirga, by two-thirds majority, approves the accusation, the President shall be released from duty and the issue shall be referred to a special court, which shall be comprised of the

the Assembly nor the President brought this constitutional issue to the Supreme Court or The Independent Commission for Overseeing the Implementation of Constitution for official opinion or interpretation. Unable to bring him to court, the government put him under house arrest until he went in exile to Turkey.²¹⁰ Although both Khalili and Dostum claimed constitutional immunity against the summons by the Assembly and the Attorney General, the Constitution has not given them any such privileges.

C. Conclusion

This chapter has shown that the dual vice presidency structure has encouraged tri-ethnic presidential tickets that have been the origins of most cross-ethnic coalitions in the presidential elections. In the past three presidential elections, all viable candidates were likely to initiate coalition-making by choosing their vice-presidential nominees from different ethnic groups.²¹¹ However, although they have represented the core of cross-ethnic coalitions, these tri-ethnic tickets have remained superfluous, breakable, and clientelistic. Almost always the losing tickets splintered. Winning tickets, however, have often failed to act with strength and discipline; at times VPs have acted more as opposition leaders than as deputies of the president. Structurally, Afghanistan's dual vice presidency system has had three major shortfalls: (a) it does not form a fully inclusive ticket because it does not require the inclusion of a representative from at least one large ethnic group; (b) presidential tickets are not formed based on shared policy priorities; and (c) the vice presidency is merely an honorary position with trivial constitutional powers.

President of the House of Elders, three members of the House of People, and three members of the Supreme Court appointed by the Loya Jirga. The case shall be presented by the individual appointed by the Loya Jirga. In such a situation, the provisions of Article Sixty-Seven of this Constitution shall be applied.”)

²¹⁰ *IOPM News*, TOLONews (May 20, 2017),

<https://www.youtube.com/watch?v=aHXOiSwMxos&feature=youtu.be>.

²¹¹ See Table III-5 *infra*.

Chapter Eight: Constitutional Prerogatives of the President and the Prospect for Inter-Branch Coalitions

One factor that contributes to the institutionalization of cross-branch coalitions is the extent to which the president is dependent on the WJ for a vote of confidence in both policy implementation as well as cabinet appointments.²¹² Therefore, to examine why the presidents have failed to form parliamentary coalitions, this chapter analyzes the constitutional balance of power between the president and the National Assembly. One way to measure who the balance of power favors is to examine each legislative and non-legislative power of the president vis-à-vis the WJ.

In Afghanistan, the President has various legislative powers including, but not limited to, the initiation of laws, decree authority, veto authority, and budget policies. The non-legislative powers of the President chiefly include the appointment and dismissal of cabinet members, appointment and dismissal of other high governmental officials, and shrinking or restructuring of the administration. The more the president has legislative and non-legislative authorities, the less the President is dependent on the WJ's approval. The less the President is dependent on the WJ's approval, the less the president needs a parliamentary coalition to rely on. Therefore, the

²¹² Mariana Llanos, *Explaining Coalition Performance in Presidential Systems: The Importance of (a Parliamentary-style) Coalition Management*, 12-13 (European Consortium of Political Research, Presentation Paper, 2006) (“In particular, the organisation of the legislative work (centralised or decentralised), the president’s legislative powers, especially his/her powers over the budget (to what extent they allow the president to decide discretionary on the implementation of local projects), and the president’s capacity to distribute posts in the federal government are usually used to explain different coalition types and the performance of coalitions in delivering congressional party discipline.”); Cecilia Martínez-Gallardo, *Out of the Cabinet : What Drives Defections From the Government in Presidential Systems?* 45 *COMPARATIVE POLITICAL STUDIES*, 64 (2011); Eduardo Alemán and George Tsebelis, *Political Parties and Government Coalitions in the Americas*, 3/1 *JOURNAL OF POLITICS IN LATIN AMERICA*, 3, 11-12 (2011) (“Shugart & Carey’s (1992) seminal work differentiated presidential systems according to executive authority, and argued that high legislative powers gave presidents opportunities to sidestep congress, opening the door to regime instability.”)

constitutional distribution of legislative and non-legislative powers between the executive and the assembly is intricately linked to the propensity and often the longevity of coalitions.²¹³

The Afghan Constitution has given the President broad legislative powers but has subjected his non-legislative powers to the mercy of WJ. In effect, Afghan presidents have easily and repeatedly bypassed the WJ on making laws but they have struggled in non-legislative matters such as forming their cabinets and restructuring their administrations. However, even though the Constitution has favored the WJ on non-legislative powers, the loopholes in the related constitutional provisions have kept the window open enough for the presidents to undermine the WJ's decisions. Therefore, the President's lack of incentive to forge cross-branch coalitions is due to broad legislative powers and the use of constitutional loopholes to dodge the WJ on non-legislative matters.

²¹³ Gallardo, *supra* note 212, at 70; ("All else equal, strong presidents have fewer incentives to compromise with other parties in exchange for legislative support, and so we should observe coalition instability where political or institutional conditions enhance a president's authority vis-a-vis other political institutions."); Aurel Croissant and Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, PARTY POLITICS, 2/18, 255 (2012) ("it is true that strong presidential executives have hampered the development of stable and well-institutionalized party systems in Asia."); Alemán & Tsebelis, *supra* note 212, at 11 ("According to Cox and Morgenstern (2002),... if presidents lack sufficient authority to control the legislative agenda, they have high incentives to build lasting coalitions."); Sona N. Golder, *Government Formation and Cabinets*, 7 (Emerging Trends in the Social and Behavioral Sciences, Presentation Paper, 2015) ("In countries where the president needs legislative majorities to make policy changes and where the president's party controls only a minority of the seats, the president is likely to form coalition governments that look much like those found in parliamentary democracies."); Carey, *supra* note 111, at 93.

Some scholars, however, disagree. They argue that a strong presidential office encourages broad and inclusive coalitions. According to Gary Cox, in a divided society, the presidential office must be a big prize to attract broader and stronger coalitions. Thus, the more powerful presidential office, the more incentives there are for cross-ethnic political groupings. Cox, *supra* note 24, at 188-190. However, as discussed in this part, while strong presidential office has encouraged the formation of cross-ethnic coalitions in Afghanistan, it has failed to encourage presidents to value institutionalization of their coalitions.

Additionally, even when dependent on the approval of the WJ, forming a parliamentary coalition is not the only option for a president; he can also offer patronage and make compromises. These options are particularly attractive for presidents who have indicated anti-establishment and anti-party stands in their campaigns. In fact, forming a formal parliamentary coalition is costlier for a president who would like to maintain his or her image as a political outsider, or who is loyal to his or her anti-coalition stance. Therefore, which option a president chooses partly depends on his or her electoral stance, which in turn reflects the interaction between the electoral law and the constitutional prerogatives of the president.²¹⁴

Since Afghanistan's electoral law encourages outsiders to run for the presidency (see Chapter Six), a winning outsider is likely to use patronage or compromises instead of forming a formal parliamentary coalition when dependent on the WJ to endorse his or her decisions. However, in the long run, and in terms of policy implementation, coordinating a legislative coalition is preferable to relying on patronage and compromises. The advantage of a legislative coalition is that having a majority alliance in the WJ allows the president to win support from the WJ for almost all his or her policies and appointees, whereas in the case of offering patronage and compromise, the president must acquiesce to some demands of the contending WJ and retreat from some of his or her own.

Examining the legislative and non-legislative prerogatives of the president in separate sections, Chapter Eight explains to what extent constitutional powers of the president have served to deinstitutionalize cross-ethnic coalitions in the executive and in the legislature. The first section deals with the legislative powers of the president and the WJ, suggesting that the

²¹⁴ Larson, *supra* note 98, at 4 (“these alliances between the lower house and the executive are fragile and subject to a great deal of instability. Moreover, this instability is heightened by elections, which in their most basic definition are designed to promote change and uncertainty of outcomes in the short term.”)

Constitution favors the president. The second section focuses on the non-legislative powers of the president. It concludes that while the president is constitutionally depended on the WJ's affirmation on issues such as cabinet formation, cabinet termination, and organizational changes, the related constitutional provisions have enough loopholes to allow presidents to ignore the Assembly's decisions. As a result, Afghan presidents have placed little value on building parliamentary coalitions. The first and second sections also reveal some *de facto* powers of the President and explore the possibility that some of those powers may be unconstitutional. The analysis concludes that the *de facto* powers of Afghan presidents, similar to their *de jure* powers, do not favor the institutionalization of cross-branch coalitions.

A. Legislative Powers of the Executive and the Unlikely Formation of Cross-branch Coalitions

In most countries, whether a president has strong or weak legislative powers has a direct correlation to whether he or she forms coalitions in the Assembly.²¹⁵ A balance of powers, where an effective legislature endows the approval authority over the executive's policies, contributes significantly to the development of cross-branch coalitions.²¹⁶ This is because a president with less autonomy on policy implementation and legislation is more inclined to seek alliances in the legislature.²¹⁷ For example, a strong pattern of coalition development in Costa Rica has emerged because the president lacks decree power, strong veto power, the authority to appoint the Supreme Court justices, and even the authority to travel abroad without the approval of the

²¹⁵ Gallardo, *supra* note 212, at 64; Llanos, *supra* note 212, at 12-13; Alemán & Tsebelis, *supra* note 212, at 11-12.

²¹⁶ Gallardo, *supra* note 212, at 62.

²¹⁷ *Id.* at 65 (“[Presidents] still have incentives to include other parties in the cabinet to ensure a smooth passage of their political agenda through congress as well as to move policy closer to their own preferences.”); Alemán & Tsebelis, *supra* note 212, at 12.

Assembly.²¹⁸ Conversely, when a president is vested with equal or stronger legislative powers, the president is less inclined to form a parliamentary coalition.²¹⁹ This has been the case in Afghanistan.

The legislative powers of a president include (a) initiation of laws, (b) veto authority, (c) decree authority, (d) budget plan initiation, and (e) and certain reserved constitutional powers.²²⁰ Analyzing these powers of the President, this section reveals that although the Afghan Constitution calls the National Assembly the “highest legislative organ” of Afghanistan,²²¹ in practice, its legislative powers have been severely curtailed by the powers of the President, effectively reducing the National Assembly’s function to merely supervision of the executive.²²²

This chapter uses Shugart and Mainwaring’s index to measure these powers of the Afghan president (Table III-9). This useful index provides several indicators for each of these powers to measure the extent, to which these powers of the president are restricted by the legislature. They assigned numbers for each indicator on the scale of 0 (low) to 4 (high), indicating the power of the president relative to the legislature. The discussion that follows applies Shugart and Mainwaring’s index to the Afghan government structure.

²¹⁸ Deborah J. Yashar, *Civil War and Social Welfare: The Origins of Costa Rica’s Competitive Party System*, in BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA (Scott Mainwaring & Timothy R. Scully, eds., 1995), 92.

²¹⁹ Gallardo, *supra* note 212, at 71-72.

²²⁰ MAINWARING & SHUGART, *supra* note 54, at 119-126.

²²¹ CONSTITUTION, art. 81.

²²² MOHAMMADI, *supra* note 17, at 227.

Table III-9. Shugart and Mainwaring's index of the legislative power of the president²²³

| Legislative Powers of the President | | | |
|---|--------------|---|--------------|
| Package Veto / Override | Score | Partial Veto / Override | Score |
| Veto with no override | 4 | No override | 4 |
| Veto with override requiring greater than 2/3 of quorum | 3 | Override by extraordinary majority | 3 |
| Veto with override requiring absolute majority or less than 2/3 | 2 | Override by absolute majority of whole membership | 2 |
| No veto; or veto requires only simple majority override | 0 | Override by simple majority of quorum | 1 |
| | | No partial veto | 0 |
| Decree Power | Score | Exclusive Introduction of Legislation | Score |
| Reserved powers, no recession | 4 | No amendment by assembly | 4 |
| President has temporary decree authority with few restrictions | 2 | Restricted amendment by assembly | 2 |
| Authority to enact decrees limited | 1 | Unrestricted amendment by assembly | 1 |
| No decree powers; or only as delegated by assembly | 0 | No exclusive powers | 0 |
| Budgetary Power | Score | Proposal of Referenda | Score |
| President prepares budget; no amendment | 4 | Unrestricted | 4 |
| Assembly may reduce but not increase amount of budgetary items | 3 | Restricted | 2 |
| President sets upper limit on total spending, assembly may amend | 2 | No presidential authority to propose referenda | 0 |
| Assembly may increase expenditures only if it designates new revenues | 1 | | |
| Unrestricted authority of assembly to prepare or amend budget | 0 | | |

1. Initiation of Laws and Regulations

Afghanistan's Index Score: 0

The Constitution has provided the president and the Assembly somewhat equal powers to initiate new laws. Article 95 states, "The proposal for drafting laws shall be made by the government or members of the National Assembly..."²²⁴ Since this authority is not exclusively presidential, some may suggest that this power of the president is balanced by the same power of the Assembly. In fact, for the same reason, Shugart and Mainwaring would give a score of zero to the President's legislative authority.

²²³ MAINWARING & SHUGART, *supra* note 54, at 53.

²²⁴ CONSTITUTION, art. 95.

However, a close study of different constitutional provisions indicates that the president has some advantages over the Assembly in several important respects. First, the Constitution has imposed some restrictions on the Assembly's ability to initiate new laws, but it has not done the same with respect to the executive. For example, Article 97 requires that the introduction of a new law in the Assembly shall be made by at least ten members of either the WJ or MJ and approved by one-fifth of that House.²²⁵ A similar requirement does not exist for processing government's proposals in the Assembly. The Constitution requires that the WJ should give priority to the executive's draft proposals and that it "shall not delay executive's draft proposals for over a month."²²⁶ Therefore, the Constitution prioritizes drafts initiated by the executive over those initiated by the WJ's. It

Finally, under Article 76 of the Constitution, the executive has the full discretion to make regulations to implement "the fundamental lines of policy..."²²⁷ For these regulations, the President does not need the approval of the WJ. The Constitution is, however, unclear about what "fundamental lines of policy" means. This phrase could easily comprise issues such as independence, sovereignty, national unity, social justice, balanced development, foreign policies, economic and currency policies, education improvement, and individual rights and liberties.²²⁸ Given the scope of this broad interpretation, the executive has used these regulations to bypass the WJ for controversial policy initiatives.²²⁹

This phenomenon is best illustrated by examining how the Afghan government has

²²⁵ CONSTITUTION, art. 97.

²²⁶ CONSTITUTION, art. 97.

²²⁷ CONSTITUTION, art. 76.

²²⁸ MOHAMMADI, *supra* note 17, at 223.

²²⁹ MOHAMMADI, *supra* note 17, at 223 (It can easily comprise issues such as independence, sovereignty, national unity, social justice, balanced development, foreign policies, economic and currency policies, education improvement, and individual rights and liberties.)

regulated higher education. There has been substantial gridlock in the WJ due to the controversy between Pashtu speaking (mainly Pashtuns) and Persian speaking (mainly Tajik and Hazara) MPs about which word for university to use in the statute on higher education.²³⁰ Pashtun MPs wanted *Pohantoon* (a Pashtu term for university) to be used in the Persian (Dari) version of the law.²³¹ Persian speakers, mainly Tajiks and Hazaras, wanted to adopt *Danishgah* (the Persian term for university) instead.²³² Due to this controversy, no statute on higher education was able pass through the legislature for several years.²³³ To deal with the issue of higher education, the executive adopted a regulation that had almost similar provisions to the draft statute.²³⁴ Although the regulation helped loosen the gridlock, it subjugated the voice of many MPs who wanted to include the term *Danishgah* in the legislation.²³⁵ In this regard, the Constitution essentially removes initiative power from the WJ and grants it to the executive.

2. Veto Authority

Afghanistan's Index Score: 3

The Constitution has levelled put the President on the same level as the WJ when it comes to approving laws. Article 94 defines laws as the rules that are passed by both Houses of the Assembly and issued by the President.²³⁶ This approval power is conceptualized through the almost irreversible veto power of the President.²³⁷

Article 94 provides the following:

²³⁰ *Wording Debate Delays Approval of Higher Education Law*, TOLO NEWS (Jul. 3, 2013), <http://www.tolonews.com/node/6206>.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ CONSTITUTION, art. 94.

²³⁷ *Id.*

In case the President vetoes what the National Assembly has approved, the President shall send it back, within fifteen days from the date it was presented, to the *Wolesi Jirga* mentioning the reasons for rejection. If the vetoing period expires or if *Wolesi Jirga* re-approves it with two-thirds of all the votes, the draft shall be considered endorsed and enforceable.²³⁸

Using a broad interpretation of this constitutional provision, Afghan presidents have utilized both package and item vetoes against the Assembly's legislations. A package veto takes place when a President rejects an entire law; an item veto occurs when the President endorses a law but removes or amends one or several undesirable provisions of that law.²³⁹

Item vetoes give Afghan presidents extra authority that presidents in some countries like the United States do not have.²⁴⁰ Having an item veto provides fewer incentives for a president to compromise with the Assembly or form a parliamentary alliance since the president can use this power to retain favorable items in each law while vetoing the unfavorable ones.²⁴¹ In addition, since Afghan presidents have been able to use the item veto, they have not had to compromise or coordinate a legislative majority.

As is clear from the words of Article 94, there are two restrictions on the veto power of the President: the vetoing period and the overriding power of the WJ.²⁴² Based on the first restriction, Afghan presidents do not have a 'pocket veto', where they can effectively reject the law by not responding to the Assembly until its adjournment.²⁴³ The President must respond within fifteen days or else the draft automatically becomes law.²⁴⁴ Whether this provision constrains the President's ability to thwart legislation is subject to skepticism, however, since the

²³⁸ *Id.*

²³⁹ Carey, *supra* note 111, at 116.

²⁴⁰ Mainwaring, *supra* note 75, at 157-179, 160.

²⁴¹ Carey, *supra* note 111, at 116; Gabriel L Negretto, *Minority Presidents and Democratic Performance in Latin America*, 48/3 LATIN AMERICAN POLITICS AND SOCIETY, 63-80, 66 (2006).

²⁴² CONSTITUTION, art. 94.

²⁴³ BLACKS LAW DICTIONARY, <http://blacks.worldfreemansociety.org/2/V/v1205.jpg>.

²⁴⁴ CONSTITUTION, art. 94.

President has the power to issue a package or item veto against that same legislation. Therefore, the President does not necessarily need a pocket veto to override legislation.

The second restriction does not actually bind the President to the decisions of the WJ either. Based on Article 94, overriding a veto of the President requires the votes of over two-third of all the WJ's members.²⁴⁵ This threshold is very high and effectively unattainable for the fragmented WJ; a presidential veto therefore almost always equates it with the death of the proposed legislation. Afghan presidents frequently use this power against WJ legislation. For example, in 2009 the WJ was able to pass just 43 legal documents, including only 13 statutes. Of this number, the President vetoed 9 laws in that year.²⁴⁶ Entertaining such power, the presidents have not been inclined to form parliamentary coalitions. By the same token, the infeasibility of forming a supermajority to counterbalance the presidential veto power discourages opposition elements from even trying to form such a coalition.

3. Decree Authority

Afghanistan's Index Score: 2

John M. Carey defines decree “as the authority of the executive to establish law in lieu of action by the assembly.”²⁴⁷ Numerous studies including the ones by Clark and Golder (2009),²⁴⁸ N. Golder (2005),²⁴⁹ John M. Carey (1998)²⁵⁰ have shown that a president's strong or weak legislative decree authority affects whether the president has the incentive to form a cross-branch

²⁴⁵ CONSTITUTION, art. 94.

²⁴⁶ *Hukumat Wa Parlaman Dar Sal 1388 [The Government and the Assembly in 2009]* DEUTSCH XXL (Mar. 19, 2010), <http://p.dw.com/p/MXPn>. A list of all laws and decrees obtained from the Ministry of Justice. (on file with author).

²⁴⁷ Carey, *supra* note 111, at 106.

²⁴⁸“WILLIAM CLARK, MATT GOLDER, SONA GOLDER, *PRINCIPLES OF COMPARATIVE POLITICS*, 446 (2009) (“[p]residents who have relatively weak decree power [...] will have an incentive to form coalitions.”)

²⁴⁹ Golder, *supra* note 213, at 7.

²⁵⁰ Carey, *supra* note 111, at 111.

coalition. If a president can use his or her or her legislative decree authority to process his or her preferable policy unilaterally or with a symbolic approval of the assembly, the president is less likely to build a parliamentary coalition.²⁵¹ The president is even less inclined to form parliamentary alliances when the legislature is fragmented and ineffective.²⁵²

Article 79 of the Constitution provides the president with provisional decree authority,²⁵³ although it places several limitations on that power. First, the president can only issue a legislative decree when the Assembly is in recess.²⁵⁴ Next, there should be an “immediate need” for issuing the decree.²⁵⁵ Third, the president cannot issue legislative decrees on budget and financial issues.²⁵⁶ Finally, the president must refer the decree to the Assembly within 30 days of its first session.²⁵⁷ The Assembly is not assigned a timeframe as to approve or disapprove the legislative decree, liberating it from any time pressure that might favor the executive’s position.

Although these provisions seem to have constrained the president’s decree authority in several important respects, the illusiveness of what constitutes “immediate need” to issue a decree has created a constitutional loophole, thereby broadening the scope of the presidential legislative power. Except on the issue of budget, Afghan presidents have issued decrees for any matter they deemed necessary. As of mid-2017, Afghan presidents had issued over 109

²⁵¹ Golder, *supra* note 213, at 7.

²⁵² Carey, *supra* note 111, at 111. (Studies have shown that where the constitutions provide presidents with strong decree authority and the legislatures are less effective the presidents are more inclined to use those decrees to avoid negotiation with legislation.)

²⁵³ Carey, *supra* note 111, at 107-109 (Provisional decrees do not need the prior concession of assembly but lapse after some designated period unless ratified by the legislature. Prototypical decrees are the presidential decrees that become law without necessarily needing any legislative action. Delayed decrees require assembly’s approval but they become law if the assembly fails to act on it within a designated time frame.)

²⁵⁴ CONSTITUTION, art. 79.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

legislative decrees compared to 38 pieces of legislation passed by the assemblies since 2006.²⁵⁸ The boundaries of “immediate need” for issuing legislative decrees have not yet been determined by the Afghan Supreme Court. The WJ cannot directly request the Supreme Court to interpret the law since Article 121 of the Constitution provides that only the executive can submit a constitutional question to the Supreme Court.²⁵⁹ Since an ambiguous interpretation of “immediate need” is favorable to the executive, the president is not likely to request the Supreme Court to interpret it.

Afghan presidents have even used their decree authority to trump already approved legislations. To illustrate this, in 2013 the WJ approved the Population Census Law, which facilitated the distribution of ID cards to citizens.²⁶⁰ This law prevented the inclusion of both national and ethnic identities in the ID card in order to respond to the concerns of different ethnic groups.²⁶¹ Pashtun representatives preferred the inclusion of “Afghan” as a national identity to the exclusion of ethnic identity; non-Pashtuns, however, supported the inclusion of ethnic identity and the removal of “Afghan” as national identity.²⁶² The government was also caught in the controversy as it took two years until President Ghani signed the law.²⁶³ However, due to pressure from Pashtun hardliners and reaction from non-Pashtun protestors, President Ghani,

²⁵⁸ The information was retrieved from documents obtained from the Ministry of Justice and Wolesi Jirga. (On file with author).

²⁵⁹ CONSTITUTION, art. 121 (“At the request of the Government, or courts, the Supreme Court shall review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law.”)

²⁶⁰ This law was indeed proposed by the Ministry of Communication in 2008. See Farzad Majidpor, *Bar Digar Janjal Qanun Sabt Ahwal Nefos Wa Tawzi Shenasa-nama Bala Grift*, KHURASAN ZAMIN (2016), <http://www.khorasanzameen.net/php/read.php?id=3834>.

²⁶¹ *Mushakhasat Shunasnama Barqi Afghanistan Nehayee Shud [The Features of Afghan Electoranic Cards Finalized]* BBC PERSIAN (May 29, 2013), http://www.bbc.com/persian/afghanistan/2013/05/130529_k05_afghan_e_idcard.

²⁶² *Id.*

²⁶³ Majidpor, *supra* note 260.

during a recess of the Assembly, issued a decree that amended the already enacted legislation to include both “Afghan” and ethnic identity in the ID cards.²⁶⁴ While it reduced ethnic tension, the decree undermined the legislation, which had been approved by both Houses of Assembly and issued by the President himself.²⁶⁵

4. Initiation of Budget Plans

Index Score: 4

Based on the Constitution, any budget must be approved by the WJ,²⁶⁶ and the WJ has to approve any grants or loans obtained by the executive, as well as any reports submitted about the expenditures of ministries at the end of each fiscal year.²⁶⁷ When it comes to the initiation of budget plans, however, Article 95 of the Constitution has granted that power exclusively to the executive only. As such, the WJ cannot initiate laws related to budget or financial matters.

Additionally, the Constitution has prevented the WJ from amending or bringing any changes to budgetary proposals.²⁶⁸ Article 97 provides that the WJ can “either approve or reject” budget proposals introduced by the executive.²⁶⁹ Therefore, the WJ’s budget authority is considerably limited. This restriction has taken away any budgetary leverage that the WJ could

²⁶⁴ *Ashraf Ghani Ba Darj Kalema ‘Afghan’ Wa Qaumiat Dar Shenan-nama Hai Electronici Mawafeqat Kard [Ashraf Ghani Accepted the Inclusion of Afghan and Ethnic Identity in the Electronic ID Cards]* BBC PERSIAN, (Mar. 2, 2017), <http://www.bbc.com/persian/afghanistan-39117888>.

²⁶⁵ *Abdul Latif Pedram: Ashraf Ghani Qanun Ra Ashkara Naqz Mekonad [Abdul Latif Pedram: Ashraf Ghani Openly Violates the Laws]*, SPUTNIC, Mar. 16, 2017, <https://dari.sputniknews.com/afghan/201703161205542/>.

²⁶⁶ CONSTITUTION, art. 98 (*Meshrano Jirga* having only “advisory” role.)

²⁶⁷ CONSTITUTION, art. 75 (6) (“the government shall “report to the National Assembly, at the end of the fiscal year, about the tasks achieved as well as important programs for the new fiscal year.”)

²⁶⁸ CONSTITUTION, art. 97.

²⁶⁹ CONSTITUTION, art. 97 (“The House of People shall consider the draft laws, including budgetary and financial affairs as well as the proposal for obtaining or granting loans, and, after debate, either approve or reject as a whole.”)

have had. The executive can always propose its desired budget plans despite parliamentary opposition, knowing that the Assembly must eventually approve its budget plan. Historically, although the WJ has rejected the executive's budget plans several times, the presidents have yet to engage the WJ on this issue or form reliable parliamentary coalitions to ensure budget passage.²⁷⁰

5. Reserved Presidential Authorities

Index Score: 3-4

In addition to the more frequently used powers mentioned earlier, Afghan presidents also have some constitutional powers that they have not yet exercised. These constitutional prerogatives are referred to as reserved authority because constitutionally Afghan presidents have these powers at their disposal, but they have not yet used them. Additionally, except in the case of a rogue president or unusual situation, these powers are not the type to be used frequently by any president. These reserved presidential authorities include calling for referenda,²⁷¹ declaring war,²⁷² and declaring a state of emergency.²⁷³ Article 65 endows the president with an unrestricted power of calling for referenda since the president's decision to call a referendum is

²⁷⁰ Hassan Sirat, *Parlemani Afghanistan Budega Sal 1396 Ra Taswib Kard [Afghanistan Parliament Approved the 2017 Budget Plan]*, DEUTSCH XXL (Jan. 16, 2017), <http://p.dw.com/p/2VrOH>.

²⁷¹ CONSTITUTION, art. 65.

²⁷² CONSTITUTION, art. 64 (The president has the duty and responsibility to “Declare war and peace with the endorsement of the National Assembly.”)

²⁷³ CONSTITUTION, art. 143 (“If because of war, threat of war, serious rebellion, natural disasters or similar conditions, protection of independence and national life become impossible through the channels specified in this Constitution, the state of emergency shall be proclaimed by the President, throughout the country or part thereof, with endorsement of the National Assembly. If the state of emergency continues for more than two months, the consent of the National Assembly shall be required for its extension.”); art. 144 (“During the state of emergency, the President can, in consultation with the presidents of the National Assembly as well as the Chief Justice of the Supreme Court, transfer some powers of the National Assembly to the government.”)

not subject to any procedural or parliamentary constraints.²⁷⁴ As such, it has the potential to be another instrument for Afghan presidents to shut down even a strong majority opposition in the Assembly.²⁷⁵

Article 64 provides the president with the power to declare war and peace, although the president needs the approval of the Assembly.²⁷⁶ Similarly, the president is invested with the power to declare a state of emergency, however the declaration as well as any extension of a state of emergency (longer than two months) must be confirmed by the National Assembly.²⁷⁷ During a state of emergency, Article 144 allows the transfer of power from the Assembly to the president.²⁷⁸ The Article is, however, silent about which powers of the Assembly may be transferred to the President.²⁷⁹

Since these reserved constitutional prerogatives have not been used, they have so far had no detectable impact on coalition-building in Afghanistan. However, the fact that none of these powers has been used to date does not suggest that these prerogatives will never be used in the future. Some scholars have suggested that given the repeated political deadlock between the legislature and the president, as well as the deterioration of security, the likelihood of the use of

²⁷⁴ CONSTITUTION, art. 65 (“On important national, political, social as well as economic issues the President can call for a referendum of the people of Afghanistan. The referendum shall not be contrary to the provisions of this Constitution or require its amendment.”)

²⁷⁵ Grote, *supra* note 11, at 909.

²⁷⁶ CONSTITUTION, art. 64.

²⁷⁷ CONSTITUTION, art. 143 (“If because of war, threat of war, serious rebellion, natural disasters or similar conditions, protection of independence and national life become impossible through the channels specified in this Constitution, the state of emergency shall be proclaimed by the President, throughout the country or part thereof, with endorsement of the National Assembly. If the state of emergency continues for more than two months, the consent of the National Assembly shall be required for its extension.”)

²⁷⁸ CONSTITUTION, art. 144 (“During the state of emergency, the President can, in consultation with the presidents of the National Assembly as well as the Chief Justice of the Supreme Court, transfer some powers of the National Assembly to the government.”)

²⁷⁹ CONSTITUTION, art. 144

any of these powers has become more than just a theoretical possibility.²⁸⁰ The fact remains that unless they are used frequently, however, they will not have an impact on coalition development.

6. Reserved Prerogatives of the Assembly

The Afghan Constitution grants some special prerogatives to the National Assembly, some of which are ambiguous, rarely used, or less influential. One such prerogative is the impeachment of the president. Article 69 starts with a seemingly broader responsibility of the president to the Assembly: “The President shall be responsible to the nation as well as the *Wolesi Jirga* in accordance with the provisions of this Article.”²⁸¹ However, this Article places two limits on the Assembly’s impeachment authority: substantive and procedural. Substantively, the Article limits impeachment to “accusations of crimes against humanity, national treason as well as felonies.”²⁸² Procedurally, the Article limits the Assembly’s authority only to decide whether the president should be impeached or not, giving the impeachment authority to the *Loya Jirga* (National Council).²⁸³ Based on the Constitution, in addition to members of Assembly, the *Loya Jirga* includes presidents of provincial and district councils as well as the attorney general, ministers, Chief Justice and members of Supreme Court, although the latter individuals are observers without voting rights.²⁸⁴ Studying these limitations, some scholars have questioned whether the WJ is ever able to use this constitutional power against a president.²⁸⁵

²⁸⁰ Grote, *supra* note 11, 904.

²⁸¹ CONSTITUTION, art. 69.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ CONSTITUTION, art.110.

²⁸⁵ Wahid Muzhda, *Zarorat Muhar Kardan Qudrat Zemamdar Dar Musaweda Qanooni Asasi [The Need for Check on Power of the Leader in the Draft of the Constitution]*, in ESSAYS REGARDING THE DEBATES ON THE DRAFT OF THE CONSTITUTION, 13 (Abdul Shakor Waqif Hakimi, ed., 2003).

Another reserved prerogative is set by Article 64, which requires the government to earn the approval of the Assembly for determining “the fundamental lines of policy.”²⁸⁶ The Article remains vague on what those “fundamental lines of policy” are. Therefore, the government can easily subjugate this Article by relying on Article 76: “To implement the fundamental lines of the policy of the country and regulate its duties, the government shall devise as well as approve regulations, which shall not be contrary to the body or spirit of any law.”²⁸⁷ A more concretely established prerogative is granted in Article 89, which reinforces the supervisory role of the WJ over government performances.²⁸⁸ Based on this Article, the WJ has the power to set up a special commission to inquire about and study the performances of the executive.²⁸⁹

7. De Facto Powers of the President

It is important to distinguish between *de jure* and *de facto* presidential powers.²⁹⁰ *De jure* presidential powers refer to the constitutionally guaranteed prerogatives of a president. Any power or command of a president, which is beyond the terms of the Constitution, is called *de facto* power.

The literature indicates that constitutions are not always followed closely by presidents.²⁹¹ As such, it is likely that under the same constitution, one president appears strong and another appears weak.²⁹² In fact, in some cases, while powerful on paper, some presidents are quite weak in practice; in other cases, presidents with few constitutional powers are observed

²⁸⁶ CONSTITUTION, art. 64.

²⁸⁷ CONSTITUTION, art. 76.

²⁸⁸ CONSTITUTION, art. 89.

²⁸⁹ *Id.*

²⁹⁰ STOLL, *supra* note 38, at 104.

²⁹¹ JONES, *supra* note 112, at 72.

²⁹² Matthew Søberg Shugart, *Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns*, FRENCH POL., 323, 333 (2005).

to exercise enormous political influence in their societies.²⁹³ Therefore, the *de facto* powers of a president could be the result of his or her popularity or his or her extra-constitutional or unconstitutional practices.

In Afghanistan, offering patronage is not restricted by the Constitution or other related laws. By offering patronage to MPs, from time to time, Afghan presidents have exercised significant influence in the Assemblies. The patronage offers have included “policy concessions or amendments...local investment projects, budgetary transfers, public employment, and governmental contracts.”²⁹⁴ As a result of this patronage, presidents have been able to get their policies passed in the Assembly without needing to take the time to form stable, cross-branch coalitions.

At times, Afghan presidents have made unconstitutional decisions, subverting the Assembly entirely. A good case in point is the legislative decree on taxing phone use in 2015.²⁹⁵ Although Article 79 provides that any legislative decree on financial matters is void, Ashraf Ghani issued a decree to implement a tax on the use of mobile phones.²⁹⁶ When the WJ rejected the decree, the government sent the decree back to the Assembly, this time to the *Meshrano Jirga* (House of Elders), for vote of approval.²⁹⁷ *Meshrano Jirga* (MJ) approved the decree even though the Constitution has given the MJ only an advisory role in financial matters.²⁹⁸

²⁹³ *Id.*

²⁹⁴ Llanos, *supra* note 212, at 13.

²⁹⁵ *Qanun Mahsol Khedamat Mukhaberati Az Soi Raees Jamhur Tawshih Shud [The President Signed the Law on Call Tax]* ITALA-AT RUZ, (2016), <http://www.etilaatroz.com/27453>.

²⁹⁶ *Id.*; *Do Farman Janjali Raee Jamhur Afghanistan Az Soi Sana Taeed Shud [Two Controversial Decrees of the President Were Confirmed by the Senate]* AFGHANISTAN RAW (Dec. 6, 2015), <http://www.farsi.ru/doc/11708.html>.

²⁹⁷ *Id.*

²⁹⁸ CONSTITUTION, art.98.

The ability of a president to use *de facto* powers to implement his or her policies offers little incentive for the president to establish a stable cross-branch coalition. The more the *de facto* powers of a president are rejected/challenged by an effective WJ—as well as an independent judiciary system—the more it is likely that the president may seek to establish a coalition-building policy in the WJ.

B. Non-Legislative Powers of the President and Cross-Branch Coalitions

One factor that influences coalition politics in a presidential system is the extent to which the executive is dependent on the assembly for approval.²⁹⁹ This includes cabinet formation, cabinet endurance, and structural changes.³⁰⁰ It is more important for the government and the opposition to establish legislative majorities when the ministers are subject to the assembly's approval than when they are not.³⁰¹

Presidential constitutions vary considerably on whether and to what extent the president has the autonomy to appoint his or her cabinet members. In most (pure) presidential democracies, presidents have full discretion to appoint and dismiss their cabinet members.³⁰² Afghanistan, however, is on the other extreme of the spectrum, where the president needs the approval of the assembly for cabinet formation, cabinet endurance, and structural changes.³⁰³ In

²⁹⁹ JONES, *supra* note 112, at 71.

³⁰⁰ Kaare Strgm, Ian Budge, Michael J. Laver, 2/38, *Constraints on Cabinet Formation in Parliamentary Democracies*, AM. J. POL. SCI., 303-335, 307 (May 1994); Bernard Grofman & Peter Van Roozendaal, *Review Article: Modelling Cabinet Durability and Termination*, 3/27 B. J. POL. S., 419, 419 (Jul. 1997).

³⁰¹ JONES, *supra* note 112, at 71.

³⁰² Linz, *supra* note 22, at 30 (“In the vast majority of the presidential systems the president appoints his cabinet without congressional input, and the same is true for the dismissal of cabinet members.”); *id.*, at 61 (“as long as the president is free to appoint a successor to a dismissed minister who does not need the confidence of the chamber the system is still basically presidential.”).

³⁰³ CONSTITUTION, art. 91, 92.

this respect Afghanistan's political regime resembles a parliamentary system.³⁰⁴ In fact, some scholars, such as Tahir Hashimi³⁰⁵ and Anna Larson,³⁰⁶ have referred to the Afghan political regime as a "mixed" system. If Afghan presidents are so reliant on the WJ's approval for their administration, one wonders why they have failed to recognize the need for a parliamentary coalition.

To explain this theoretical dilemma, this section not only analyzes the balance of power between the executive and legislature as set out by the Constitution, but also examines whether the WJ's powers have been drowned by (a) constitutional loopholes, or (b) the unconstitutional practices of the presidents. This section observes that Afghan presidents have benefited from both. To put it simply, if one were to ask whether the Assembly has the power to approve or disapprove cabinet ministers, the answer is yes. But the answer to the question of whether in reality the rejected ministers were ousted from office is less likely to be yes. This paradoxical power play favoring presidents has led to presidents showing little interest in forming parliamentary coalitions.

To measure non-legislative powers of presidents, Shugart and Mainwaring set out indicators that include: a) the Assembly's approval over cabinet formation; b) the Assembly's ability to censure cabinet members; c) the Assembly's role in the dissolution of the cabinet; and d) whether the president can dissolve the Assembly. They assigned each of these indicators numbers on the scale of 0 (low presidential power) to 4 (high presidential power), as detailed in

³⁰⁴ Linz, *supra* note 22, at 5 ("In parliamentary systems the only democratically legitimated institutions it the parliament and the government deriving its authority from the confidence of the parliament, either from parliamentary majorities or parliamentary tolerance of minority governments.")

³⁰⁵ HASHEMI, *supra* note 20.

³⁰⁶ ANNA LARSON, AFGHANISTAN'S NEW DEMOCRATIC PARTIES: A MEANS TO ORGANIZE DEMOCRATIZATION? AFGHANISTAN RESEARCH AND EVALUATION UNIT, 2 (Mar. 2009)

Table III-10.³⁰⁷ They found that presidential systems with the lowest scores on these scales were likely to forge stronger parliamentary coalitions.³⁰⁸

Table III-10. Shugart and Mainwaring's index of non-legislative powers of the president.³⁰⁹

| Non-legislative Powers of the President | | | |
|---|--------------|--|--------------|
| Cabinet Formation | Score | Cabinet Dismissal | Score |
| President names cabinet without need for investiture | 4 | President dismisses cabinet ministers at will | 4 |
| President names ministers subject to investiture | 3 | Restricted powers of dismissal | 2 |
| President names premier, who then names ministers | 1 | President may dismiss only upon acceptance by assembly | 1 |
| President names ministers upon recommendation of assembly | 0 | Cabinet ministers may be removed by assembly | 0 |
| Censure | Score | Dissolution of Assembly | Score |
| Assembly may not censure and remove cabinet or ministers | 4 | Unrestricted | 4 |
| Assembly may censure but president may dissolve assembly | 2 | Restricted by frequency or point within term | 3 |
| Constructive vote of no confidence | 1 | Requires new presidential election | 2 |
| Unrestricted censure | 0 | Restricted: only as response to censures | 1 |
| | | No provision | 0 |

1. Cabinet Formation

Index Score: 3

Based on Article 64 of the Constitution, it is the president who normally appoints cabinet members.³¹⁰ However, the president needs the vote of confidence from the WJ for his or her appointees. Article 91 of the Afghan Constitution has endowed the WJ with authority to approve or reject cabinet nominees introduced by the President.³¹¹ In addition, the President needs the endorsement of the WJ for appointing the Attorney General, the Head of the Central Bank, the

³⁰⁷ MAINWARING & SHUGART, *supra* note 54, at 53.

³⁰⁸ *Id.* at 419.

³⁰⁹ *Id.* at 53.

³¹⁰ CONSTITUTION, art. 61 (11).

³¹¹ CONSTITUTION, art 91 (“[Wolesi Jirga may] approve or reject appointments according to provisions of this Constitution.”)

National Security Director, the Head of the Red Cross³¹² as well as the Justices of the Supreme Court.³¹³

The process of the confirmation or rejection of cabinet nominees is described by Article 72 and 73 of Assembly's Rules of Procedures: The President introduces cabinet nominees to WJ for approval.³¹⁴ Four days prior to that, however, the government should present the Jirga with documents that include biographies, copies of citizenship papers, educational background and work experiences of cabinet nominees.³¹⁵ The appointees shall personally appear in the WJ to explain their work plan,³¹⁶ after which they need to respond to questions asked by MPs.³¹⁷ Then the MPs vote on the appointment of each minister unless the quorum is not complete.³¹⁸ The votes are "direct, secret, and individual."³¹⁹

This constitutionally granted prerogative has given the WJ significant leverage over the executive. The WJ has used the no-confidence vote against the Presidents' appointees on several

³¹² *Id.* art. 64.

³¹³ *Id.* art. 117.

³¹⁴ RULES OF PROCEDURES, art. 72 (1), ("The President of the Republic or one of his or her Vice Presidents officially introduces members of the cabinet to the Jirga.")

³¹⁵ RULES OF PROCEDURES, art. 72 (2), ("Biographies, copies of citizenship papers, and evaluated educational documents and work experiences of proposed members shall be submitted to the Jirga at least 4 days in advance by the Minister of State for Parliamentary Affairs.")

³¹⁶ CONSTITUTION, art. 72 (3), ("Each Minister and each of the officials enumerated in items 11 and 12 of article 64 of the Constitution shall come to the session and explain their work plan.")

³¹⁷ CONSTITUTION, art. 75, ("1. One Member from each Standing Commission and one Member from each Parliamentary Group, after being registered by the Administrative Board, may deliver brief professional questions to, and get answers from, Ministers and other officials enumerated in items 11 and 12 of article 64 of the Constitution. 2. After questioning Ministers and other officials enumerated in items 11 and 12 of article 64 of the Constitution, voting shall begin and the result is announced on the same day. 3. Each question shall not exceed 2 minutes and the total time of answers shall not exceed 30 minutes.")

³¹⁸ CONSTITUTION, art. 106 ("The quorum for voting of each House of the National Assembly shall be complete with the majority presence of members and decisions shall be taken with the majority of votes of members present, unless this Constitution states otherwise.")

³¹⁹ CONSTITUTION, art. 72 (3), ("The vote on the appointment of Ministers and other officials enumerated in items 11 and 12 of article 64 of the Constitution shall be direct, secret, and individual.")

occasions. In fact, Table III-11 shows that WJ repeatedly rejected a large number of appointees in all three governments. Overall, by mid-2017, thirty percent of cabinet appointees since 2004 were rejected by the WJ. As Table III-11 shows below, on several occasions, over half of the appointees of the presidents were rejected by the Assembly.

Table III-11. illustrates the WJ’s decisions about cabinet nominees of the Presidents from three administrations.³²⁰

| WJ Decisions on Cabinet Appointees | | | | | |
|------------------------------------|--|------------------|-----------------|-----------|----------|
| Date | Administration | List of Nominees | No. of Nominees | Approved | Rejected |
| 2004 | First Administration (2004-09) | First List | 27 | N/A | N/A |
| Apr-06 | | Second List | 25 | 20 (80%) | 5 (20%) |
| Aug-06 | | Third List | 5 | 5 (100%) | 0 |
| 2-Jan-10 | Second Administration (2009-14) | First List | 24 | 7 (29%) | 17 (71%) |
| 9-Jan-10 | | Second List | 16 | 7 (44%) | 9 (56%) |
| 26-Jul-10 | | Third List | 7 | 5 (71%) | 2 (29%) |
| 15-Feb-12 | | Fourth List | 7 | 7 (100%) | 0 |
| 28-Jan-15 | Third Administration (2014-Present) | First List | 18 | 8 (44%) | 10 (56%) |
| 28-Apr-15 | | Second List | 16 | 16 (100%) | 0 |

Table III-11 shows that the Presidents have introduced several lists before they have received the approval of the WJ for all of their cabinet nominees. The most notorious case of disapproval of nominees occurred in the second elected administration, when Karzai had to introduce four lists of nominees between 2009 and mid 2012. The rejection of 17 of his 24 nominees was only his first encounter with the WJ right after he began his second term.³²¹ Following that he received repeated rejections for several of his appointees until he introduced his fourth list in June of 2012.³²² For over two and half years his cabinet was not officially

³²⁰ Mohammad Hashim Kamali, *Rabeta Meyan Quwa Mujria wa Majless wa Masala Tafsir Qanoon-e-Assassi Dar Dawran Karzai [The Relationship Between Executive and Legislature and the Issue of the Interpretation of the Constitution Under President Karzai]*, in SALNAMAH MOTAL’ AT HOQUY AFGHANISTAN, 116 [YEARBOOK OF AFGHAN LEGAL STUDIES] (1394) [2016].

³²¹ ICG 117, *supra* note 48, at 3.

³²² Fabrizio Foschini, *Parliament Completes the Cabinet—After Two Years*, AFGHANISTAN RESEARCH EVALUATION UNIT (Mar. 6, 2012) <http://www.afghanistan-analysts.org/parliament-completes-the-cabinet-after-two-years/>.

complete.³²³ By the middle of 2012, Karzai introduced a total of 54 appointees for 26 cabinet seats to the WJ.

Looking at these cases of rejections, one wonders why Afghan presidents have failed to recognize the need to forge parliamentary coalitions to smoothly form their cabinets. There have been several intervening factors that have counterbalanced the effects of the WJ's vote of no-confidence. One factor has been the tendency of the presidents to reintroduce rejected nominees for different cabinet seats. Based on Article 76 of the Rules of Procedures, the president cannot re-nominate a rejected nominee for the same cabinet post;³²⁴ however, the law is silent on whether the president can renominate them for a different cabinet office. Therefore, presidents have repeatedly used this legislative loophole to send their rejected nominees back to the WJ for confirmation.³²⁵ For example, in August of 2012, the WJ voted to remove Bismillah Khan Mohammadi as Minister of the Interior.³²⁶ However, in September of the same year, Karzai introduced him to the WJ as the Minister of Defense.³²⁷ Similarly, in 2017, President Ghani named Faizullah Zaki as the Minister of Social and Labor Affairs; Zaki had failed to win the WJ's votes as the Minister of Transport over a year before.³²⁸

³²³ *Id.*

³²⁴ CONSTITUTION, art. 76, (“If a proposed Minister or any official mentioned in items 11 or 12 of article 64 of the Constitution is rejected by the Jirga, the same person cannot be re-appointed to the same post.”)

³²⁵ Kamali, *supra* note 320, at 150.

³²⁶ Fabrizio Foschini, *Parliament Sacks Two Key Ministers: Two Birds with One Stone?* AFGHANISTAN RESEARCH EVALUATION UNIT, 1 (Aug. 6, 2012) <https://www.afghanistan-analysts.org/parliament-sacks-key-ministers-two-birds-with-one-stone/>.

³²⁷ *Afghan Parliament Approves Candidates for The Posts of Power-Wielding Ministers*, ASIA-PLUS (Sep. 17, 2012), <http://news.tj/en/news/afghan-parliament-approves-candidates-posts-power-wielding-ministers>.

³²⁸ *Ghani Chan Muqam Buland Paya, As Jumla Namzad Yak Wuzarat Jadid, Ra Marfi Kard [Ghani Introduced Several High Ranking Officials Include the Minister for a New Ministry*, BBC PERSIAN (Apr. 19, 2017), <http://www.bbc.com/persian/afghanistan-39648446>.

Astonishingly enough, some of these rejected ministers were able to get the confirmation of the WJ in their second or third nominations. For instance, after he was reintroduced by Karzai in 2012, Bismillah Khan won the approval of the Jirga as the Minister of Defense only a month after he was voted out as the Minister of Interior by the same WJ.³²⁹ Since both the Ministry of the Interior and the Defense are security sectors by nature, the dismissal and approval of Bismillah Khan from one to the other sector can be based on no reason but patronage distribution. Therefore, clientalism is the second tool presidents have used to get the approval of the WJ for their cabinet nominees.³³⁰ Afghan presidents have used patronage repeatedly in order to fill their cabinet seats with their preferred nominees. However, relying on endless bargaining and politics of distribution on a vote-by-vote basis has proven costly and unmanageable for presidents.³³¹

Another mechanism that has been used to counterbalance the WJ's vote of no-confidence has been reinstatement or continuation by the President of the rejected nominees in the same offices as 'acting' ministers. The Constitution has not clarified whether a president can reinstate

³²⁹ Bismillah Khan received 124 yea votes against 98 nay votes. See ASIA-PLUS, *supra* note 327.

³³⁰ Some argue that it is a common policy in presidential constitutions where coalitions and parties are weak, which in turn it does not allow institutionalization of coalitions. MAINWARING, *supra* note 54, at 419 ("where the coalition is weak....it encourages the widespread use of clientalism and patronage to secure the support of individual legislators."); Gallardo, *supra* note 212, at 64 ("Presidents with only minority support might also decide to exclude other parties from the government if they expect that, given the configuration of political forces in congress and their institutional powers, they will be able to build ad hoc legislative coalitions on an issue-by-issue basis").

³³¹ Andrew Wilder, *A House Divided? Analysing The 2005 Afghan Elections*, AFGHANISTAN RESEARCH AND EVALUATION UNIT, 4-5 (Dec. 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf> ("The fragmented nature of the National Assembly will make forming and maintaining a legislative majority a challenging and time-consuming task, not to mention a potentially expensive one in an environment with high levels of graft and patronage expectations... Furthermore, an environment of constant deal making and horse-trading could diminish the image and reputation of the NA in the eyes of many Afghans").

a dismissed nominee in the same seat as acting minister or reintroduce him or her for a different cabinet position. Nor has the Constitution provided a time limit on when the president should present the next list of nominees. These loopholes have been greatly taken advantage of by presidents to neutralize the WJ's disapproval authority. Once rejected, these nominees were likely to be acting ministers for months and even years.³³² This occurred under Karzai when the WJ rejected nine of his nominees in January of 2010; he did not introduce a third list of nominees until almost seven months later.³³³ Even after that, seven seats of his cabinet were occupied by acting ministers until February of 2012, when he introduced his fourth list of nominees (See Table III-12).³³⁴

Table III-12 illustrates the four lists of nominees introduced by President Karzai to the WJ and the WJ's decision about the nominees.³³⁵

| Date | Lists | No. of Nominees | Approved | Rejected |
|-----------------------|--------------------------|-----------------|----------|----------|
| 2-Jan-10 | First List of Nominees | 24 | 7 | 17 |
| 9-Jan-10 | Second List of Nominees | 16 | 7 | 9 |
| 26-Jul-10 | Third List of Candidates | 7 | 5 | 2 |
| 15-Feb-12 | Fourth List of Nominees | 7 | 7 | 0 |
| Total No. of Nominees | | 54 | 26 | 28 |

Even though the Assembly passed a law that explicitly prevented the rejected nominees from serving as acting ministers for more than two months, the law has failed to exert impact.³³⁶ Until the president appoints new ministers, they are likely to keep the rejected appointees in their posts as acting ministers.³³⁷

³³² Mahdi Mudabir, *Sarnawisht Na Malum Wuzarai Sarparast*, THE AFGHANISTAN DAILY (2016), http://www.dailyafghanistan.com/editorial_detail.php?post_id=138724.

³³³ *Karzai Picks New Cabinet Nominees*, ISLAM WEB (Jun. 26, 2010) <http://www.islamweb.net/en/article/159194/>.

³³⁴ Basir Zaheer, *All Cabinet Nominees Won Votes*, PAJHWOK AFGHANISTAN NEWS (Mar. 5, 2012), <http://www.pajhwok.com/en/2012/03/05/all-cabinet-nominees-win-vote-confidence>.

³³⁵ *Id.*; ISLAM WEB, *supra* note 333. Hawke, *supra* note 53; Ahmad, *supra* note 68.

³³⁶ Breshnan Nazari, *Qanun Sarparasti Wuzarat Ha Tawasit Wulesi Jirga Taswib Shud [The Law of Acting Ministers was Approved by the WJ]* RADIO AZADI, 2009, <https://da.azadiradio.com/a/1914584.html>.

2. Cabinet Endurance and Termination in Afghanistan

President's Dismissal of a Minister Score: 4

Assembly's Dismissal of a Minister Score: 0

Based on Article 64, the president can dismiss or accept the resignation of cabinet members.³³⁸ To do so, the President does not need the approval of the legislature.³³⁹ However, cabinet members are as accountable to the WJ as they are to the president.³⁴⁰ Article 91 of the Afghan Constitution reserves the right for the Jirga to question and/or impeach any of the ministers any time and remove them from the cabinet.³⁴¹ Article 92 details the process: “The Wolesi Jirga, on the proposal of twenty percent of all its members, shall make inquiries from each Minister. If the explanations given are not satisfactory, the Wolesi Jirga shall consider the issue of a no confidence vote. The no-confidence vote on a Minister shall be explicit, direct, as well as based on convincing reasons. The vote shall be approved by the majority of all members of the Wolesi Jirga.”³⁴²

Having a lower threshold for unseating a minister has allowed the WJ to challenge the President by censuring cabinet ministers. There have been countless cases of interpellations of ministers by both Houses of the Assembly and numerous cases of censuring ministers by the WJ. The question that rises here is why the presidents were not motivated by these parliamentary challenges to reach out to MPs and seek to form a legislative coalition. The answer to this

³³⁷ Muhib Habibi, *The Parliament Anger Over Karzai Cabinet Choices*, CNN, Jan. 19, 2010 <http://www.cnn.com/2010/WORLD/asiapcf/01/19/afghanistan.parliament/>.

³³⁸ CONSTITUTION, art. 64 (11)

³³⁹ *Id.* (“The President shall have the following authorities and duties: ... 11. Appoint the Ministers, the Attorney General, the Head of the Central Bank, the National Security Director as well as the Head of the Red Cross with the endorsement of the House of People, and their dismissal and acceptance of resignation...”)

³⁴⁰ CONSTITUTION, art. 77.

³⁴¹ CONSTITUTION, art 91.

³⁴² CONSTITUTION, art. 92.

question lies in the ambiguity of Article 92 that seems to have diminished the WJ's power in favor of the president.

This Article requires that the no-confidence vote must be based on “convincing reasons.”³⁴³ What constitutes “convincing reasons” has been subject to heated inter-branch controversy. This ambiguous concept has created enough of a constitutional loophole that the President can push back on the WJ's dismissal of cabinet members. Since the WJ's decisions are subject to judicial review,³⁴⁴ the presidents are increasingly likely to challenge those decisions based on “convincing reason” clause in the Supreme Court. There are at least three documented cases where the president has disputed the WJ's dismissal of his cabinet members in the Supreme Court.³⁴⁵

The most popular case was the WJ's dismissal of Dadfar Spanta, the Minister of Foreign Affairs. The WJ decided that the failure of the Minister to prevent Iran from returning refugees was convincing enough to unseat him.³⁴⁶ Karzai took the issue to the Supreme Court.³⁴⁷ The Court decided that Iran's policies on refugees was outside the control of the Minister, and so the vote-of-no-confidence did not meet the “convincing reason” requirement of the Constitution.³⁴⁸

³⁴³ *Id.*

³⁴⁴ *Id.* art. 121 (“The Supreme Court upon request of the Government or the Courts can review compliance with the Constitution of laws, legislative decrees, international treaties, and international conventions, and interpret them, in accordance with the law.”)

³⁴⁵ The third case being the one for Mujtaba Patang, who was disconfirmed as the minister of interior.

³⁴⁶ *See* Kamali, *supra* note 320, at 132.

³⁴⁷ Kamali, *supra* note 320, at 137 (This was the first seed of executive-legislative confrontation that Karzai cultivated.)

³⁴⁸ Hashemzai, *supra* note 191, at 112.

In a recent instance (late 2016), the Assembly decided to question each minister who was not able to spend over seventy percent of their fiscal budget.³⁴⁹ They summoned sixteen ministers and dismissed seven of them.³⁵⁰ President Ghani called this censuring unconstitutional and brought the issue to the Supreme Court.³⁵¹ This time, however, the Court decided in favor of the WJ's, holding that the WJ had convincing enough reason to reject the ministers.³⁵² After several months, the replacement of these acting ministers is yet to take place.

In addition to challenging the WJ's decision through the Supreme Court, presidents have also undermined the WJ's rejections by reinstating ministers in the same post as 'acting' ministers or reintroducing them to the WJ for another ministerial post, as explained in earlier in this chapter.

3. Structural Changes in the Government

Index Score: Undetermined

One important prerogative of the Assembly, which has been overlooked by most of the literature, is the Assembly's influential role in structural changes normally proposed by the government. Based on Article 90 of the Constitution, the Assembly has the power of "creation, modification and or abrogation of administrative units."³⁵³ The WJ seems to have confirmed this power through Article 73 of its Rules of Procedures: "Wolesi Jirga approves the number,

³⁴⁹ *Seven Ministers Dismissed After No-Confidence Votes*, THE ECONOMIST, (Nov. 6, 2016) <http://country.eiu.com/article.aspx?articleid=924818276&Country=Afghanistan&topic=Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=1485164132&oid=1485164132&uid=1>.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Navid Ahmad Barakzai, *Voted Out Ministers: SC Rules in Wolesi Jirga's Favor*, PAJHWOK AFGHANISTAN NEWS (Dec. 24, 2016), <http://www.pajhwok.com/en/2016/12/24/voted-out-ministers-sc-rules-wolesi-jirga-favor>.

³⁵³ CONSTITUTION, art. 90.

powers, and duties of ministers.”³⁵⁴ Although it remains controversial as to whether the ministers are merely administrative actors, given their regulatory powers (making regulations³⁵⁵ and proposing legislative decrees).³⁵⁶

The WJ has been able to showcase its power over the President’s decisions on structural changes. For example, in 2010, when Karzai proposed a new post as senior minister to the Assembly, the WJ was not convinced that such a post was needed and so the Jirga easily rejected the proposal.³⁵⁷ Overall, the Assembly accepted four proposed changes in the cabinet and rejected three others.

Table III-13. illustrates the President’s proposal to add or new administrative agencies and the WJ’s votes on the proposals.³⁵⁸

| Presidents’ Proposals of Changes in Administrations | | |
|--|---|-----------------|
| Proposing Date | Addition/Changes/Removal of Offices/Institutions | Assembly’s Vote |
| 2005 | Proposing Senior Minister | Rejected |
| | Merging Ministry of Youth Affairs with Ministry of Info. & Culture | Accepted |
| | Merging Ministry of Disabled & Martyrs with Ministry of Social Aff. | Accepted |
| | Ministry of Mines losing Portfolio of Industries | Accepted |
| 2009-10 | Ministry of Commerce becoming Ministry of Comm. & Industries | Accepted |
| | A New Ministry of Martyred & Disabled Affairs | Rejected |
| | A New Ministry of Fighting Illiteracy | Rejected |
| 2014 | A New Post of Chief Executive Office | Accepted |
| 2017 | A New Ministry of Tourism | Not Yet Decided |

³⁵⁴ THE RULES OF PROCEDURE, WOLESI JIRGA, art. 72 (3) (“ the Wolesi Jirga approves the number, powers, and duties of ministers.”) <http://wj.parliament.af/english.aspx>.

³⁵⁵ CONSTITUTION, art. 76.

³⁵⁶ CONSTITUTION, art. 79.

³⁵⁷ *Zindagi Nama Namzad-Ha: Hedayat Amin Arsala [Biography of Candidates: Hedayate Amin Arsala]*, BBC PERSIAN, (Jun. 12, 2009),

http://www.bbc.com/persian/afghanistan/2009/07/090718_a-af-election-profile-arsala.shtml.

³⁵⁸ *Id*; BBC PERSIAN, *supra* note 328; Alissa J. Rubin, *The Cabinet List*, AFGHANISTAN ANALYST NETWORK (Dec. 20, 2009). *Amid Scrutiny, Karzai Defends Cabinet Picks*, NY TIMES (Jan. 13, 2012), <http://www.nytimes.com/2009/12/21/world/asia/21afghan.html>; Thomas Ruttig, *The President’s CEO Decree*, AFGHANISTAN ANALYST NETWORK (Feb. 13, 2015), <https://www.afghanistan-analysts.org/the-presidents-ceo-decree-managing-rather-then-executive-powers/>; G. Friedrich, *Karzai Proposes New Cabinet*, OFTENPOSTEN (Jan. 17, 2011), <http://www.aftenposten.no/norge/23032006-KARZAI-PROPOSES-NEW-CABINET-195514b.html>.

C. Constitutional Powers of Afghan Presidents from a Comparative Perspective

Using Shugart and Mainwaring's index of presidential power, Afghan presidents have strong legislative powers and weak non-legislative powers. As to the non-legislative powers of the president, the Afghan Constitution is ranked eight among the twelve divided societies with presidential democracies.

Table III-14. compares the Afghan Constitution with constitutions of eleven other countries in relation to the legislative and non-legislative powers of the president.³⁵⁹

| Legislative Powers of the President | | | | | | |
|--|--------------|-------------------|-----------------|--------------------|--------------|-------|
| Country | Package Veto | Partial Veto | Decree | Legis. Initiation | Budget Power | Total |
| Bolivia | 2 | 0 | 0 | 0 | 0 | 2 |
| Nigeria | 3 | 0 | | 0 | 0 | 3 |
| Indonesia | 0 | 0 | 0 | 0 | 1 | 3 |
| Sri Lanka | 0 | 0 | 2 | 0 | 2 | 3 |
| Cyprus | 2 | 2 | 1 | 0 | 0 | 4 |
| Philippines | 2 | 3 | 0 | 0 | 0 | 5 |
| Sierra Leone | 3 | 3 | 0 | 0 | 0 | 6 |
| Malawi | 2 | 0 | 0 | 0 | 4 | 6 |
| Afghanistan | 3 | 0 | 2 | 0 | 2 | 7 |
| Kenya | 3 | 4 | 0 | 0 | 0 | 7 |
| Burundi | 4 | 4 | 0 | 0 | 0 | 8 |
| Ghana | 3 | 3 | 0 | 0 | 3 | 9 |
| Non-Legislative Powers of the President | | | | | | |
| Country | Cabinet Form | Cabinet Dismissal | Cabinet Censure | Legis. Dissolution | Total | |
| Kenya | 3 | 1 | 0 | 0 | 4 | |
| Afghanistan | 3 | 4 | 0 | 0 | 7 | |
| Ghana | 3 | 4 | 0 | 0 | 7 | |
| Sri Lanka | 4 | 0 | 2 | 3 | 9 | |
| Burundi | 3 | 4 | 2 | 1 | 10 | |
| Nigeria | 3 | 4 | 4 | 0 | 11 | |
| Sierra Leone | 3 | 4 | 4 | 0 | 11 | |
| Philippines | 3 | 4 | 4 | 0 | 11 | |
| Indonesia | 4 | 4 | 4 | 0 | 12 | |
| Malawi | 4 | 4 | 4 | 0 | 12 | |
| Bolivia | 4 | 4 | 4 | 0 | 12 | |
| Cyprus | 4 | 4 | 4 | 0 | 12 | |

³⁵⁹ *Supra*, note 186.

This Table shows that the Afghan Constitution has granted more legislative powers to the President than the other eight constitutions in the Table. Only Burundi and Ghana's presidents have more legislative power than the Afghan presidents. As for non-legislative powers, Afghan presidents stand second to the Kenyan's as the weakest. Therefore, on this measure, Afghan presidents are more dependent on the WJ's approval in non-legislative matters.

However, two caveats are in order with regard to Table III-14. First, the Table does not incorporate a few powers that were included in the full Shugart and Mainwaring index. These powers, which were referred to as reserved constitutional powers earlier in this chapter, were removed because of the infrequency in their use. These powers are indeed reserved for peculiar circumstances, and therefore, their impact on coalition-building is not as significant as other presidential powers. Additionally, different leaders of different societies are likely to have different attitudes towards these powers. In effect, even if the constitutions of different countries provide their presidents with the same reserved constitutional powers, the presidents may use them in different frequencies. Therefore, the same constitutional power may not have similar effects in different societies.

Additionally, Shugart and Mainwaring's index does not account for constitutional loopholes as well as the de facto powers of the presidents. For example, although based on their index Afghan presidents have weaker non-legislative powers, as revealed earlier, there are some significant loopholes in the Constitution that have allowed Afghan presidents to bypass the WJ.

D. Conclusion

In Afghanistan, the balance of power between the president and the WJ takes two forms: the institutional balance of power and the extra-institutional balance of power. The institutional balance of power, which is set by the Constitution and related laws, partly favors the legislature

and partly the president. The extra-institutional balance of power, which is set by constitutional loopholes as well as the president's use of extra-constitutional power, favors the president over the WJ. Executive-legislative relations in Afghanistan on the issue of cabinet formation, termination and structure indicate that presidents have not had reliable coalitions in the Assembly to smoothly process their governmental agendas; and therefore, presidents have tried to use constitutional loopholes to undermine the WJ's decisions instead of reaching out to MPs and forging reliable coalitions. Moreover, presidents have been able to use extra-constitutional power as well as fragmentation of the WJ to circumvent its decisions. Presidents have also utilized patronage rather than coalitions to encourage MP support.

PART IV
PARTY LAWS AND THE FAILING COALITIONS

Political party laws were traditionally meant to gatekeep party proliferation while promoting party institutionalization.¹ Party laws deal with parties' legal status, definition, registration requirements, finance, and even internal organization.² As such, some scholars have suggested that party laws have an important influence on party development in a divided society.³ However, this contribution of the party law has yet to be seen in divided societies which, despite adopting party laws, are still struggling to build a functional party system. After analyzing party laws in 16 countries, Biezen and Rashkova concluded that, "in nine out of the 16 states, an increase in regulation does not correspond to a decrease...in the number of political contestants."⁴ Chapter Nine reaches a similar conclusion, suggesting that party laws have failed to encourage inclusive parties and coalitions. Figure IV-1 illustrates the role of party laws in coalition development at different stages of the institutionalization process in Afghanistan.

¹ Fernando Casal-Bértoa, Daniela Romée Piccio & Ekaterina R. Rashkova, *Party Law in Comparative Perspective*, 1 (The Legal Regulation of Political Parties, Working Paper No. 16, 2012) <http://www.partylaw.leidenuniv.nl/uploads/wp1612.pdf>.

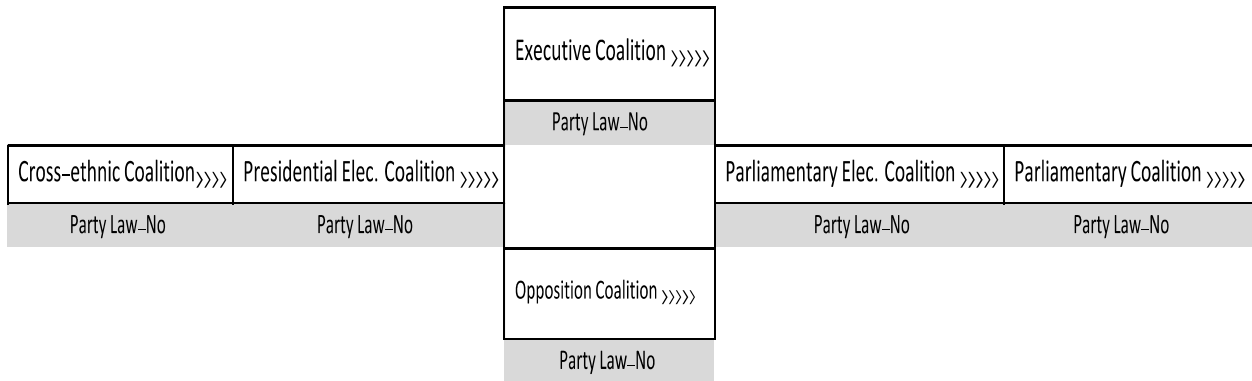
² Dan Avnon, *Parties Laws in Democratic Systems of Government*, J. OF LEGIS. STUD. 287 (1995).

³ Benjamin Reilly, *Political Stability and Party Law in New Democracies*, 12 (International Political Science Association Congress, Seminar Paper, 2009), http://paperroom.ipsa.org/papers/paper_1084.pdf.

⁴ Ingrid van Biezen & Ekaterina R. Rashkova, *Breaking the Cartel: The Effect of State Regulation on New Party Entry*, 14 (Economic and Social Research Council, Working Paper 12, Aug. 2011), <http://www.partylaw.leidenuniv.nl/uploads/wp1211.pdf>.

Figure IV-1. illustrates the contribution of party law to the institutionalization of cross-ethnic coalitions in Afghanistan.

Role of Political Party Laws in Survival of Coalitions in A Single Cycle of Institutionalization



Chapter Nine: Afghan Political Party Laws: The Laws of Parties, Not Coalitions

As an integral part of political laws, Afghan party laws have invoked banning of ethnic parties and politics.⁵ By providing that the “formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted,” Article 35 of the Constitution set a principal framework, within which party laws regulate political parties.⁶ Accordingly, Article 6 of the Political Party Law provided, “political parties shall not incite to ethnic, racial, religious or regional discrimination.”⁷ Similarly, the House’s Rules of Procedure have prevented parliamentary groups from pursuing an ethnic agenda.⁸

⁵ See e.g., QĀNOON-I ASSĀSI-YE JAMHŪRI-YE ISLĀMI-YE AFGHANISTAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] NO. 818, 1382 [2004] <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>. [hereinafter, CONSTITUTION], art. 35.

⁶ *Id.*

⁷ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW] JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 4259 (2003), art. 5; QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 996 (2009), art. 6.

⁸ NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE 85 (2013).

Despite these laws and efforts, however, the so-called “parties” have remained fragmented, personalized and ethnic-based in Afghanistan.⁹ No inclusive and programmatic party has grown out of the existing fluid party system.¹⁰ Most of these parties have been one-man shows, where they function as the properties of their leaders, serving their interests only.¹¹ Characterizing these parties, Thomas Ruttig stated that they lacked “cohesion and structure, a distinguishable program, and internal democracy.”¹² Since they failed to constitute parties in the conventional sense, some scholars referred to them as *proto-parties*¹³ and others preferred to call them *factions*¹⁴ or *cliques* (grohak).¹⁵

Interestingly, Afghanistan is not a unique case, in which party laws have failed to discourage ethnic parties.¹⁶ Similar laws exist in many other divided societies, the laws that have

⁹ *Id.* at 73.

¹⁰ Mohammad Shafaq Khawati, *Qawmcracy Wa Qabila Salari [Ethnocracy and Tribalism]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES], 27 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014].

¹¹ S. Yaqub Ibrahimi, Political Parties and Political Development in Afghanistan 10 (Apr. 17, 2014) <http://www.atlantic-community.org/documents/10180/dd2703aa-ff86-4553-a47c-369dcdfebfcaf>.

¹² Thomas Ruttig, Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from (1902-2006), 1 (2006), http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf.

¹³ *Id.* at 1; ANNA LARSON, AFGHANISTAN'S NEW DEMOCRATIC PARTIES: A MEANS TO ORGANIZE DEMOCRATIZATION? 5 (Mar. 2009) available at <http://www.refworld.org/pdfid/49c254a02.pdf>.

Anna Larson, describing political parties, writes that “[t]hey do not resemble parties in established and/or Western democracies, in that they are largely based on the ethnic ex military factions that fought in the civil war.” See Ana Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability*, THE AFGHANISTAN RESEARCH AND EVALUATION UNIT, 5 (2010), <http://areu.org.af/EditionDetails.aspx?EditionId=452&ContentId=7&ParentId=7>.

¹⁴ Antonio Giustozzi, *The Ethnicisation Of An Afghan Faction: Junbesh-I-Milli From Its Origins To The Presidential Elections* (Crisis States Program, Working Paper, No. 67, 2005), <http://eprints.lse.ac.uk/13315/1/WP67.pdf>.

¹⁵ Khawati, *supra* note 10, at 27.

¹⁶ See, e.g., Aim Sinpeng, *Party Banning and the Impact on Party System Institutionalization in Thailand*, 3/36 CONTEMPORARY SOUTHEAST ASIA, 442, 447 (2014). (“Party banning and

failed to break the ethnic-party link.¹⁷ Analyzing party regulations in five African countries, Denis D. Kadima finds that despite the abundance of laws encouraging the nationalization of parties, ethnic parties tend to exist and even flourish.¹⁸ Similar findings came to light through various studies that have examined party institutionalization in South America,¹⁹ Eastern Europe,²⁰ Southeast Asia,²¹ and various African countries,²² where popular and broad-based party systems have failed to emerge.²³ In his book, *Political Parties in Conflict-Prone Societies*,

dissolution on the basis of regulations and laws tend to affect small, insignificant parties and thus are unlikely to have a meaningful impact on party system institutionalization as a whole.”)

¹⁷ Benjamin Reilly, *Introduction*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT*, 12 (Benjamin Reilly & Per Nordlund, eds., 2008); Alefe Abeje, *Party System Institutionalization And The Prospect Of Democratic Consolidation In Ethiopia*, 23/9 *EUROPEAN SCIENTIFIC JOURNAL*, 315, 316 (2013); M. A. Mohamed Salih & Per Nordlund, *Political Parties in Africa: Challenges for Sustained Multiparty Democracy*, INTERNATIONAL IDEA RESEARCH AND DIALOGUE COORDINATION (2007) <http://www.idea.int/sites/default/files/publications/political-parties-in-africa-challenges-for-sustained-multiparty-democracy.pdf>.

¹⁸ Denis K. Kadima, *Party Regulations, Nation-building, and Party Systems in Southern and Eastern Africa*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 201 (Benjamin Reilly & Per Nordlund, eds., 2008).

¹⁹ Marta Lagos, *How People View Democracy: Between Stability and Crisis in Latin America*, J. DEM., Table 3, (Jan. 2001).

²⁰ Richard Rose & Christian Haerpfer, *New Democracies Barometer V: A 12-Nation Survey*, *STUDIES IN PUB. POL’Y* 59-62, 206 (1999).

²¹ Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, 2/18 *PARTY POLITICS* 248 (2012) (Partisanship has a much lower rate in Southeast Asian countries. For example, party roots in the society is 30% in Indonesia, 54% in Philippines, 41% in Thailand, 57% in Taiwan, and 73% in South Korea... “the results of the Asian Barometer Survey (2005–07) show that the percentage of party members is low across most countries: 0.3 percent of respondents in Thailand, 0.5 percent in the Philippines, 1.2 percent in South Korea, 1.6 percent in Taiwan and 2.2 percent in Indonesia. Again, Mongolia is the exception here with 24.2 percent.”)

²² Anika Moroff, *Party Bans in Africa: An Empirical Overview*, 17 *DEMOCRATIZATION* 618–41 (2011).

²³ Numerous studies have indicated a growing disaffection towards parties in these regions. See e.g., Vicky Randall & Lars Svasand, *Party Institutionalization in New Democracies*, 1/8 *PARTY POLITICS* 17 (2002); WILLIAM TORDOFF, *GOVERNMENT AND POLITICS IN AFRICA*, 120-1 (1984) (revealed the decline of parties in Tropical Africa.); Russell J. Dalton & Steven Weldon, *Partisanship and Party System Institutionalization*, 2/13 *PARTY POLITICS* 189 (2007).

Benjamin Reilly concludes that in most cases party laws function as aspirational provisions, lacking real enforcement measures.²⁴

In an attempt to explain this failure of the party laws, Keneth Janda proposed five approaches to regulating parties: proscribing, permitting, promoting, protecting, and prescribing:

In general, nations that *proscribe* parties by law forbid them from operating entirely; nations that *permit* parties allow them [by legal means] to operate freely; nations that *promote* parties actively [through laws] support them; nations that *protect* parties favor certain ones over others; and nations that *prescribe* for parties seek to mold them to fit an ideal.”²⁵

This typology is helpful for a better understanding of how parties and party systems are perceived by the public and government, and consequently, how they are treated by laws. In this typology, Afghan party laws fall within the prescriptive framework since the party laws require proto-parties to grow and become inclusive. However, this framework (or Janda’s typology in general) does not explain why party laws have failed to encourage cross-ethnic parties when they are enacted to do so.

To answer the question, this chapter examines three important features of the party laws: First, whether the party laws have ethnicizing or de-ethnicizing approach to nationalization of parties and coalitions. Second, whether the party laws were incentive-based or merely command-and-control rules. Third, whether the laws recognized and regulated the emerging cross-ethnic coalitions. As to the case of Afghanistan, this chapter concludes that the failure of party laws has been due to their command-and-control nature (vis-à-vis incentive-based rules) and their failure to regulate the emerging cross-ethnic coalitions. Afghan party laws prevail only on the first feature, which is espousing a de-ethnicizing approach to party nationalization.

²⁴ Reilly, *supra* note 17, at 12.

²⁵ Kenneth Janda, *Political Parties and Democracy in Theoretical and Practical Perspectives: Adopting Party Law*, THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS 8 (2005).

In the first section, this chapter discusses the three bodies of party laws and specifically their provisions about ethnic-party relation. These laws include the Constitution, the Political Party Law, and the WJ's Rules of Procedure. Next, it examines three features of the party laws. First, Afghan party laws take an implicit approach to encouraging cross-ethnic parties. In other words, it explains how the laws compel parties to be ethnically inclusive without explicitly requiring them to do so. This feature of the party law is explained as a constructive feature as opposed to the two other features, which are obstructive. As for the second feature, Afghan party laws lack the necessary institutional incentives to influence parties and coalitions. The third feature of Afghan party laws indicate that these regulations have over-emphasized on the transformation of ethnic parties while neglecting the emerging cross-ethnic coalitions. The third section of this chapter is assigned to examining alternative regulations and designs that would help develop cross-ethnic coalitions and parties.

A. Political Party Laws & Regulations

Including a variety of regulations that tend to encapsulate different forms and functions of political associations, party laws are not easy to define. Largely, in the literature, party laws are defined either in a narrow sense or in a general sense. In the narrow sense, as Richard Katz defines it, "*Party Law* refers to statutes regulating political parties and codified under a comparably descriptive title *Political Party Law*" or *Qanun-i-Ahزاب Siassi* in case of Afghanistan.²⁶ Following discussion of Keneth Janda, this chapter uses the term *Political Party Law*, with capitals, to refer to *Qanun-i-Ahزاب Siassi*.²⁷

²⁶ Richard S. Katz, *Democracy and the Legal Regulation of Political Parties*, 2 (USAID Conference on Changes in Political Parties, Conference Paper, Oct. 1, 2004), <https://www.scribd.com/document/190180368/Democracy-and-the-Legal-Regulation-of-Political-Parties>.

²⁷ JANDA, *supra* note 25, at 4.

In a more general sense, party laws consist of any formal regulations and rules that regulate the structure, activities, and finance of political parties and coalitions.²⁸ In this way, party laws typically include the Political Party Law, political finance law, and related case laws, as well as party related provisions in the Constitution, campaign laws, and election laws.²⁹ Some of these laws, such as political finance law, do not exist in Afghanistan, and others like election laws are discussed in other chapters. Therefore, this chapter narrows the analysis to only party related provisions of the Constitution and the Political Party Law.

In addition, this chapter suggests that the Lower House's Rules of Procedures should also be included in the analyses as a potentially important body of law on political parties and coalitions. Discounting parliamentary rules of procedure from party law discipline is curious because students of party studies have given special consideration to parliamentary parties and coalitions. For example, the analyses of party systems, party institutionalization, and effective number of parties and coalitions are primarily based on measuring parliamentary parties and coalitions.³⁰ If carefully designed, the Rules of Procedure can effectively shape parliamentary parties and coalitions. However, not only in the literature but also in practice, few have advocated for a well-designed Rules of Procedure to foster parliamentary parties and coalitions. In the case of Afghanistan, the Rules of Procedure do not refer to parties or coalitions at all.

1. The Constitutional Provisions

The Afghan Constitution is one of a small number of recent constitutions to include few

²⁸ Katz, *supra* note 26, at 2; Abeje, *supra* note 17, at 315.

²⁹ Katz, *supra* note 26, at 2; Abeje, *supra* note 17, at 322.

³⁰ See e.g., AREND LIJPHART, *ELECTORAL SYSTEMS AND PARTY SYSTEMS* (1994); Randall, *supra* note 23; Staffan I. Lindberg, *Institutionalization of Party Systems? Stability and Fluidity among Legislative Parties in Africa's Democracies*, 2/42 *GOVERNMENT AND OPPOSITION* (2007); GARY W. COX, *MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD'S ELECTORAL SYSTEMS* (1997).

provisions about political parties. Notably, the Afghan Constitution has fewer references to political parties than most of the plural societies that are included in Table IV-1.³¹ In fact, Article 35 is the only constitutional provision that specifically pertains to political parties. Under Article 35, individuals are entitled to form or join political parties, provided that parties cannot be ethnic-based.³²

While recognizing the importance of developing a cross-ethnic party system, the constitutional designers neglected how coalition-building is vital for fostering one. The Constitution has no reference to political coalitions or merger of political parties. This is unlike most constitutions, as illustrated in Table IV-1 below, that recognize the need for political coalitions and/or merger of parties.

³¹ The Indonesian Constitution, which appears to have fewer references to political parties, was initially adopted in 1945, which was over half a century prior to the adoption of Afghan Constitution. Additionally, the Indonesian Constitution has two references to merger of political parties. Therefore, the Bolivian Constitution is the only recent constitution with fewer reference to political parties than the Afghan Constitution.

³² CONSTITUTION, art. 35.

Table IV-1. compares the Constitution of Afghanistan with that of eleven other divided societies in relation to their reference to parties and coalitions.³³

| Dedicated Provisions for Parties and Coalitions in the Constitutions | | | | | | |
|---|----------------------------|--------------------------------|-------------------|----------|------------------------------|--------------|
| Country | Constitution Adoption Year | Dedicated Sections for Parties | Political Parties | | Political Coalitions/Mergers | |
| | | | References | Articles | References | Articles |
| Kenya | 2010 | Part | 81 | 26 | 4 | 4 |
| Sri Lanka | 1978 | Articles | 70 | 11 | 0 | 0 |
| Nigeria | 1999 | Section | 53 | 20 | 2 (2 Merger) | 2 (2 Merger) |
| Malawi | 1994 | Articles | 44 | 8 | 0 | 0 |
| Sierra Leone | 1991 | Articles | 40 | 10 | 0 | 0 |
| Ghana | 1992 | Part | 38 | 11 | 2 (1 Merger) | 1 |
| Burundi | 2005 | Chapter | 38 | 22 | 2 | 2 |
| Philippines | 1987 | Chapter | 17 | Sec. 8 | 4 | 3 |
| Afghanistan | 2004 | Articles | 7 | 4 | 0 | 0 |
| Indonesia | 1945 | Articles | 6 | 4 | 2 | 2 |
| Bolivia | 2009 | Articles | 5 | 4 | 0 | 0 |
| Cyprus | 1960 | Articles | 5 | 1 | 0 | 0 |

Additionally, the two other references of the Afghan Constitution to political parties created some ambiguity that led to a dominant anti-party interpretation in the government.³⁴

Article 66 of the Constitution provides, “During the term of office, the Presidential position shall

³³ CONSTITUTION; THE CONSTITUTION OF NIGERIA, May 29, 1999, http://www.worldstatesmen.org/nigeria_const1960.pdf (hereafter “NIGERIA CONSTITUTION”); OF (PLURINATIONAL) STATE [CONSTITUCIÓN POLÍTICA DEL ESTADO] Feb. 7, 2009, https://www.constituteproject.org/constitution/Bolivia_2009.pdf (hereafter BOLIVIA’S CONSTITUTION; THE CONSTITUTION OF SIERRA LEONE, (1991) <http://www.sierra-leone.org/Laws/constitution1991.pdf>; THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, Sep. 7, 1978, <https://www.parliament.lk/files/pdf/constitution.pdf>; THE CONSTITUTION OF KENYA, May 6, 2010, <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>; THE CONSTITUTION OF GHANA (Apr. 28, 1992) https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en; THE CONSTITUTION OF BURUNDI [LA CONSTITUTION DU BURUNDI] Feb. 2005, https://www.constituteproject.org/constitution/Burundi_2005.pdf; UNDANG-UNDANG DASAR REPUBLIK INDONESIA 1945 [THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA] Aug. 1945, <https://thevideobee.to/vqeslih6vci9.html>; THE CONSTITUTION OF MALAWI, May 16, 1994, https://www.constituteproject.org/constitution/Malawi_1999.pdf; Saligang Batas ng Pilipinas [CONSTITUTION OF THE PHILIPPINES] Feb. 2, 1987, https://www.constituteproject.org/constitution/Philippines_1987.pdf?lang=en; CONSTITUTION OF CYPRUS, Aug. 16, 1960 https://www.constituteproject.org/constitution/Cyprus_2013.pdf.

³⁴ CONSTITUTION, art. 66, 80.

not be used for linguistic, sectarian, tribal, and religious as well as party considerations.”³⁵ A similar article exists with regard to the cabinet ministers: “During their terms in office, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.”³⁶ These constitutional provisions had significant effects on how the executives were formed. In his presidency, Hamid Karzai used these constitutional provisions to form a party-free executive as he encouraged his cabinet members to drop their party affiliations.³⁷ In a separate case, after running as a party member in the presidential election of 2014 and becoming the Chief Executive Officer,—equivalent to prime minister—Abdullah disassociated himself from Jamiat-i-Islami Party, suggesting that it was due to “his political post [in the government].”³⁸

2. Qanun-i-Ahزاب Siassi and the Registration Thresholds

The first Political Party Law was adopted in 2003, prior to the adoption of the Constitution in 2004.³⁹ Under the 2003 Political Party Law, any party with over 700 members was able to register in the Ministry of Justice (MoJ).⁴⁰ This low threshold led to the fragmentation of political parties and the registration of over 100 parties by 2009.⁴¹

To reduce party fragmentation and encourage their nationalization, higher thresholds were adopted in the new Political Party Law in 2009. The new law increased the membership

³⁵ CONSTITUTION, art. 66.

³⁶ CONSTITUTION, art. 80.

³⁷ RADIO FREE EUROPE, AFGHAN REPORT (Dec. 30, 2004) <http://www.rferl.org/a/1340603.html>

³⁸ *Jamiat Split As Supporters Defy New Interim Council*, TOLO NEWS, May 25, 2017, <http://www.tolonews.com/afghanistan/jamiat-split-supporters-defy-new-interim-council>.

³⁹ COBURN, *supra* note 8, at 72.

⁴⁰ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW] JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 4259 (2003), art. 9.

⁴¹ *Fehrest-i-Kamel Ahزاب Siassi Afghanistan [The Complete List of Political Parties of Afghanistan]* BBC PERSIAN, Jun. 12, 2009, http://www.bbc.com/persian/afghanistan/2009/07/090718_a-af-election-political-parties.shtml.

threshold to 10,000 members.⁴² Subsequent amendments and regulations set two additional qualification thresholds: for example, each registering party had to have a minimum of 35 founders, who represented at least 20 provinces of Afghanistan.⁴³ Additionally, the party had to open offices in over 20 provinces within a year of their registration, or else their status as parties would be terminated.⁴⁴

The 2009 Political Party Law and its amendments were moderately successful in reducing party fragmentation. Since the adoption of the new party law, over half of parties were not able to re-register.⁴⁵ In other words, their numbers reduced from over 100 parties to just over 50 parties after the new law was enforced. In 2016, their number was further reduced to around 40, when the MoJ suspended 11 parties and warned 20 others for not meeting the thresholds.⁴⁶ Even so, the impact of law remained limited to only partially reducing the number of parties. The law failed to encourage cross-ethnic parties. Several studies and investigations indicated that indeed none of the political parties perfectly entertain all the qualification thresholds.⁴⁷ According to an investigation by members of the *Wolesi Jirga* [House of People] only one party,

⁴² QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009), art. 9.

⁴³ MUQARERA TARZ TASIS WA SABT AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION & REGISTRATION OF POLITICAL PARTIES] S. 1026 (Jun. 14, 2010), art. 9 (1).

⁴⁴ *Id.* art. 9 (2, amended, 2012).

⁴⁵ Interestingly, the number of registered parties is different from English version (50 parties) to Dari and Pashtu lists of parties (57 parties) in the Ministry of Justice Website. *Compare* Ministry of Justice [Parties' List in English] <http://moj.gov.af/en/page/registered-political-parties-and-social-organizations/1700> (Last visited May. 4, 2016); Ministry of Justice [Parties' List in Pashtu] <http://moj.gov.af/ps/page/registered-political-parties-and-social-organizations/1700>; Ministry of Justice [Parties' List in Persian] <http://moj.gov.af/fa/page/registered-political-parties-and-social-organizations/1700> (Last visited May. 4, 2016).

⁴⁶ Mukhtar Wafayee, *Ministry of Justice: 11 Suspensions and 20 Alerts [Wuzarat Adlia: 11 Taliq Wa 20 Hushdar]*, HASHT SUBH NEWS, Feb. 27, 2016 [12/8/1394] http://www.elonat.com/jantari_converter.php.

⁴⁷ *See e.g., id.* Additionally, in my interview with the head of the Party Registrar Office, Wazir Mohammad, he confirmed that most parties do not entertain the thresholds set by law (on file with author).

Hizb-i-Islami [Islamic Party] has met all thresholds required by law.⁴⁸ The following sections examine how and why these party laws and regulations failed to have material impacts on parties and coalitions.

3. The Wolesi Jirga's Rules of Procedure

Given the fragmented nature of the Assembly, the Rules of Procedure introduced the concept of parliamentary groups to encourage forming political blocs in the Assembly.⁴⁹ Under these rules, a parliamentary group must have a minimum of 23 members.⁵⁰ These rules banned the formation of any parliamentary group that pursues ethnic interests or an ethnic agenda.⁵¹ In their book, *Derailing Democracy in Afghanistan*, Anna Larson and Noah Coburn suggested that the Rules of Procedure were designed to prevent the re-emergence of ethnic parties in the Assembly.⁵²

When the Assemblies were formed after the 2005 and 2010 elections, a number of scholars optimistically categorized members of the Assembly into conservatives, liberals and moderate-traditionalists; others divided the MPs into pro-government, pro-opposition, and independents.⁵³ However, these categorizations were misleading since such parliamentary groups were never formed.⁵⁴ MPs stayed in ethnic boxes and alliances shifted on issue-by-issue bases.⁵⁵

⁴⁸ *Id.*

⁴⁹ COBURN, *supra* note 8, at 85.

⁵⁰ THE RULES OF PROCEDURE, WOLESI JIRGA, art. 18 *available at* <http://wj.parliament.af/english.aspx>.

⁵¹ *Id.* (No group may be formed for the purpose of representing personal, regional, professional, religious, ethnic, tribal or linguist interests.”)

⁵² COBURN, *supra* note 8, at 89.

⁵³ ANDREW WILDER, A HOUSE DIVIDED? ANALYSING THE 2005 AFGHAN ELECTIONS, AFGHANISTAN RESEARCH AND EVALUATION UNIT, 4 (Dec. 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>.

⁵⁴ *Id.*

⁵⁵ *Id.*; Wahabuddin Ra'ees, *Democratizing Afghanistan: An Analysis of the 2005 Parliamentary Elections*, 14/1 INTELLECTUAL DISCOURSE 33, 42 (2006) (“Despite their strong presence in the

The Rules of Procedure did not create enough incentives in MPs to form or sustain parliamentary groups. Although initially four parliamentary groups registered by 2007, forming parliamentary groups gradually became unpopular.⁵⁶ Members of the existing groups have failed again and again to vote in blocs.⁵⁷ Today, only one registered parliamentary group is listed on the website of the National Assembly.⁵⁸

Notably, even political parties have failed to form their own parliamentary groups.⁵⁹ One reason for this has been that the Rules of Procedure have no reference to parliamentary parties and their functions in the Assembly.⁶⁰ Likewise, the Rules have failed to regulate coalitions, merger of parties, or their splits in the parliament. Therefore, parliamentary groups have seemingly appeared as a third group of political organizations, specific to the Assembly—the other two being political parties and coalitions.

C. Three Features of Afghan Party Laws

1. Implicit Rules: A Constructive Feature

Laws differ in how they approach ethnic politics. Their difference is based on whether the laws acknowledge and recognize ethnicity's role in politics. The acknowledgement of ethnic politics suggests that the laws are designed in response to the political role of ethnicity. The

Wolesi Jirga, observers of government and politics of Afghanistan believe that the Islamist right will not speak with one voice. Ethnic and regional divisions and even differences over adoption of a specific strategy will keep them divided.”); VOTER BEHAVIOR SURVEY: AFGHANISTAN’S 2010 PARLIAMENTARY ELECTION, THE ASIA FOUNDATION (2012).

⁵⁶ COBURN, *supra* note 8, at 85.

⁵⁷ This information was obtained from interviews with four MPs. All interviewees confirmed that members of parliamentary groups were not able to vote collectively.

⁵⁸ *Parliamentary Groups*, WOLESI JIRGA, <http://wj.parliament.af/english.aspx>.

⁵⁹ There is no evidence that the party members in the Assembly have even attempted to form their own parliamentary groups.

⁶⁰ The Rules of Procedure has no reference to political parties or coalitions at all while the regulation has 28 references to parliamentary groups. Chapter five of the Rules of Procedure is about parliamentary groups with four articles. See THE RULES OF PROCEDURE, WOLESI JIRGA, art. 18 *available at* <http://wj.parliament.af/english.aspx>.

recognition of ethnic politics suggests that the laws are designed to officially recognize and regulate its political role. Based on these approaches, laws can be *ethnicizing*, *de-ethnicizing*, or *indifferent*.

Ethnicizing laws both acknowledge and recognize the role of ethnicity in politics. *Ethnicizing laws* can be exemplified by the Constitution of Burundi, National Covenant of Lebanon, and National Pact of Iraq. In recognition of the critical role of ethnicity in politics, Burundi's constitution compels presidential candidates to choose their first and second vice presidents from different ethnic groups.⁶¹ Likewise, in Lebanon, a consociational system was arranged by a National Covenant in 1943, under which the presidency was allocated to a Christian Maronite, the premiership to a Sunni, and the Speakership to a Shi'ite.⁶² Similarly, based on Iraqi National Pact, which was endorsed by ethnic groups in 2005, Kurds would have the presidency, Shi'ites the premiership, and the Sunni Speaker of the House.⁶³ I refer to them as *ethnicizing laws* because these laws tend to institutionalize ethnic politics by explicitly giving a role to ethnicity in political distributions.

De-ethnicizing laws acknowledge the political role of ethnicity but do not recognize them. For instance, in the Afghan Constitution, dual vice-presidency is adopted to make the highest office ethnically more inclusive.⁶⁴ The Constitution does not, however, require that the Vice-Presidents must be from different ethnic groups although, in practice, this has always been

⁶¹ LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] (Feb. 2005), https://www.constituteproject.org/constitution/Burundi_2005.pdf.

⁶² Imad Salamey, *Failing Consociationalism In Lebanon And Integrative Options*, 2/4 INTERNATIONAL JOURNAL OF PEACE STUDIES 83-105, 83 (2009).

⁶³ Eduardo Abu Ltaif, *The Limitations of the Consociational Arrangements in Iraq*, 38 ETHNOPOLITICS PAPERS 6-7 (2015).

⁶⁴ ABDUL ALI MOHAMMADI, AFGHANISTAN AND A MODERN STATE [AFGHANISTAN WA DAWLAT MUDERN] 315 (2015)

the case.⁶⁵ I refer to them as *de-ethnicizing laws* because they tend to minimize the political role of ethnicity by not recognizing it while provisionally dealing with it through institutional designs and political distributions. *Indifferent laws* neither acknowledge nor recognize the political role of ethnicity. Designing such laws is problematic in divided societies, where ethnic politics and ethnic tensions are real and need to be addressed by laws and institutions. The fact that the initial draft of Article 60 included only one Vice-President can be viewed as an indifferent approach to ethnic divide in Afghanistan because it did not take into account the significance of ethnic divide and so the necessity for political distribution.⁶⁶

In light of this analysis, Afghan party laws should be categorized as *de-ethnicizing laws*. It is because the Afghan party laws encourage ethnic pluralism of parties, but to do so, they espouse an indirect or implicit approach. For instance, the three qualification thresholds set by Political Party Law were intended to encourage cross-ethnic parties, without explicitly requiring them to do so. These thresholds include *the threshold of party membership*, *the threshold of party founders*, and *the threshold of party branches*.⁶⁷ The *membership threshold* requires that a registering party must have at least 10,000 members.⁶⁸ The *threshold of party founders* requires that a party must have a minimum of 35 founders who represent at least 20 provinces.⁶⁹ Finally,

⁶⁵ CONSTITUTION, art. 60 (“The President shall be the head of state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judiciary fields in accordance with the provisions of this Constitution. The President shall have 2 Vice-President”).

⁶⁶ MOHAMMADI, *supra* note 64, at 315.

⁶⁷ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009), art. 9 (The MoJ can reject the registration of parties that have fewer than 10000 members.); MUQARERA TARZ TASIS WA SABT AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION & REGISTRATION OF POLITICAL PARTIES] S. 1026 (Jun. 14, 2010) art. 9 (1) (2), amended 2012).

⁶⁸ *Id.*

⁶⁹ MUQARERA TARZ TASIS WA SABT AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION & REGISTRATION OF POLITICAL PARTIES] S. 1026 (Jun. 14, 2010) art. 9 (1).

the *threshold of party offices* requires a registering party to open offices in at least 20 provinces within a year of registration.⁷⁰

None of the three thresholds used ethnic composition as the baseline for party qualification. However, especially *the threshold of offices* and *founders* were intended to have an aggregating effect since ethnic groups are regionally concentrated. Because ethnic groups do not have substantial populations in at least 20 provinces, a political party has to draw support from different ethnic groups to satisfy these thresholds. Therefore, while the threshold of party founders implicitly requires ethnic representation at the highest level of political parties, the office threshold commands parties' presence in more than one ethnic constituency.

This indirect approach to party nationalization has two advantages. First, at least on the surface, the laws have taken away the political prominence of ethnic divide. This is important because whether a threshold explicitly or implicitly addresses ethnic composition of parties has long-term social and psychological impacts.⁷¹ In Afghanistan, where centripetal tendencies are overwhelming, the implicit approach to encouraging inclusive parties and coalitions is a viable approach. Even though they engage in ethnic-based political practices, numerous surveys found that most Afghans prefer ethnicity's role to be reduced or eliminated in the political arena in the long run.⁷² In addition, unlike explicit thresholds, implicit thresholds trigger less controversy.⁷³

⁷⁰ *Id.* art. 9 (2, amended 2012).

⁷¹ Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 THE U. CHI. L. REV. 769, 842 (2013) (“[countries] need to decide whether to allocate seats explicitly or implicitly.”)

⁷² This was concluded after a survey was conducted by the author of this chapter that included over 500 respondents from 26 of 34 provinces. According to the findings, 97% of respondents wanted an inclusive government. 91% of the respondents want the government built on the basis of merits and policies of individuals and not their ethnicity.

⁷³ YASH GHAI, PUBLIC PARTICIPATION AND MINORITIES, MINORITY RIGHTS GROUP INTERNATIONAL 16–17 (Apr. 2001) <http://burmalibrary.org/docs/MRG-Yash%20Gai%20report.pdf> (Noting that reserved seats remain controversial in India); Alistair McMillan, *Delimitation in India*, in REDISTRICTING IN COMPARATIVE PERSPECTIVE 75, 76 (cited

Explicit ethnic thresholds trigger controversies and conflict because they tend to engage hardliners and entice various interpretations of the thresholds. Not mentioning ethnicity, laws are likely to minimize the role of ethnicity in the electoral process in particular, and the in political process in general in the long run. As such, these rules allow for devaluation of ethnic differences as the society relaxes on ethnic issues and trust is built among communities.

The other advantage of these implicit thresholds is their advancement of multidimensional identities to challenge the dominance of ethnic identity. By requiring provincial representation of parties, the thresholds bring provincial affiliations into the political equation. In fact, by recognizing provincial affiliation, but not ethnic affiliation, the party laws leave ethnic identity in a comparatively disadvantaged position in the long-run. Given the fact that many provinces cut-across ethnic groups, provincial affiliations that have institutional recognition have the advantage of accommodating the inner groups and challenging the political saliency of ethnic affiliation.⁷⁴ By legally recognizing the multidimensional identities and cross-cutting cleavages, party laws are likely to reduce the heat of ethnic divide.⁷⁵

It bears mentioning, however, that unlike the three registration thresholds, which are set to meet the mandate of Article 35 of the Constitution, the Article itself has a rather explicit approach to forbid ethnic parties from the “formation and operation of a party on the basis of

in note 10) (Bernard Grofman & Lisa Handley eds., 2008); Andrew Geddis, A Dual Track Democracy? The Symbolic Role of the Māori Seats in New Zealand’s Electoral System, 5 Election L. J. 347, 360–66 (2006).

⁷⁴ Kanchan Chandra, *Ethnic Parties and Democratic Stability*, 3/2 PERSPECTIVES ON POLITICS 235-252, 241 (Jun., 2005) (“Politicians who encourage institutionalized cleavages can credibly promise voters concrete rewards within the existing rules of the game. However, politicians who seek to activate cleavages that exist at the social level but are not institutionally recognized must first promise to transform the existing rules of the game before they can credibly promise rewards. Consequently, institutionally recognized cleavages are advantaged as mobilization strategies, while cleavages that are not so recognized are disadvantaged.”)

⁷⁵ *Id.* at 239.

ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted.”⁷⁶ Although explicit, Article 35 does not institutionalize ethnic politics because the Article has a *negative explicit approach* rather than *positive* one. A negative explicit approach denies ethnicity a role in party politics by preventing parties from being ethnic-based. By contrast, a positive explicit approach recognizes ethnicity’s role in party politics by requiring parties to satisfy certain ethnic thresholds to indicate their inclusiveness. To put it another way, a negative explicit rule denies legal recognition of ethnicity in party politics, while a positive explicit rule not only recognizes the role of ethnicity, but also makes it an integral part of party politics.

A good example of a *positive explicit rule* is Article 168 of the Burundi Constitution, which by setting an ethnic threshold, explicitly determines what accounts for a cross-ethnic list/party:

The elections of the Deputies (MPs) takes place following the ballot for the bloc lists by proportional representation. These lists must have a multi-ethnic character and take into account the equilibrium between men and women. Of three candidates registered together on a list, only two may belong to the same ethnic group, and at least one in four must be a woman.⁷⁷

By setting an ethnic threshold in this way, a positive explicit approach institutionalizes ethnic politics. Such rules openly and permanently bring ethnic divisions into the political equation.⁷⁸ More importantly, these rules “lock in” a political environment, where civil and political actors are ethnically conscious and ethnic affiliation is politically salient. Even if cross-ethnic coalitions grow out of these rules, their inclusiveness is considered a legally compelled

⁷⁶ Additionally, this provision of the law forbids parties from forming or using arm groups. This provision is really important because particularly Jihadi parties were mostly militia groups with illegal arms, and some of these parties still are affiliated with military organizations.

⁷⁷ LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] Feb. 2005, art. 168 available at https://www.constituteproject.org/constitution/Burundi_2005.pdf.

⁷⁸ Stephanopoulos, *supra* note 71, at 842 (“such techniques [explicit rules] are often controversial because they openly take race into account and deviate from the ideal of the color-blind state.”)

coalescence rather than a voluntary alliance of different ethnic elites. As such, as long as ethnicizing laws exist, ethnic thresholds tend to supplant and subvert other political qualifications such as merits, policies and leadership skills.

In light of this analysis, arguably the adoption of *de-ethnicizing* party laws was necessary for marginalizing the role of ethnicity in politics in the long-run. But a question remains about whether these laws have been successful at creating functional, cross-ethnic coalitions in the first place. Undoubtedly, the answer is no. There are two major issues with political party laws that counterbalance their constructive impacts. First, party laws are merely command-and-control rules, failing to provide sufficient incentives to alter political and institutional behavior favoring inclusiveness. Second, Afghan law makers neglected the emerging political coalitions (and merger of parties), which are more popular and cross-ethnic than the existing proto-parties.

2. Command and Control Rules: An Impeding Feature

Afghan party laws are what is conventionally known as command and control rules. Command-and-control rules, also known as blunt rules, are the rules that define and prohibit certain types of activity or force certain types of action without invoking sufficient rewards or sanctions.⁷⁹ All party registration thresholds set by political party laws are command and control rules as they merely require what parties should do and what they should not do. The only consequence for violating these laws is deregistration of the parties, which can easily be

⁷⁹ UNITED NATION INDUSTRIAL DEVELOPMENT ORGANIZATION, MODULE 5: REGULATION TYPES AND OPTIONS, 5.5 (Unknown) http://www.unido.org/fileadmin/import/83247_Module5.pdf [hereinafter, UNID].

followed by reregistration.⁸⁰ Many scholars concur that such flat ban is likely to be futile or self-defeating⁸¹ since they may invite efforts at circumvention when they offer no incentives.⁸²

Unlike command-and-control rules, incentive-based rules seek to modify the behavior of targeted groups by inducing marginal costs or benefits associated with their decisions and activities.⁸³ In other words, the incentive-based rules offer prizes for or impose sanctions on parties and coalitions to lead their actions toward an optimal outcome. For example, under Indonesia's Election Law, only those parties can attend and compete in the national elections for legislature that have permanent offices in all 33 provinces including permanent offices in at least 75 percent of the regencies or municipalities in each province, and in at least 50 percent of the sub-districts within each of the regencies or municipalities.⁸⁴ With this kind of provision, any party that neglects the importance of cross-ethnic support, automatically loses the chance of entry into the parliament even though the party has substantial support within particular constituencies. Since parties mostly exist to win seats in the government, an Indonesian type of

⁸⁰ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009) 12 (7).

⁸¹ Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 U. Chi. L. Rev. 407, 413-29 (1990) [hereinafter Sunstein 1]; Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1391 (1994) [hereinafter Sunstein 2] (“My basic claim here is that we might attempt to avoid rigid command-and-control strategies for restricting expenditures, and experiment with more flexible, incentive-based approaches.”); John M. Akerman, *Towards an Ontology of Election Law* 10 (National Autonomous University of Mexico, Working Paper, 2010) (“Since unlike other laws the costs are low for violating election law, parties and candidates have higher incentives to break the law.”)

⁸² Bruce Ackerman & Richard Stewart, *Reforming Environmental Law: The Democratic Case for Market Incentives*, 13 COLUM. J. ENVTL. L. 182 (1988).
at 182; Sunstein 1, *supra* note 81, at 413-29; Sunstein 2, *supra* note 81, at 1411.

⁸³ UNID, *supra* note 79, at 5.7.

⁸⁴ INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS, ELECTIONS IN INDONESIA: 2014 NATIONAL LEGISLATIVE ELECTIONS, 2 (Apr. 2, 2014).
https://www.ifes.org/sites/default/files/indonesia_2014_national_legislative_election_faq.pdf.

threshold compels them to become inclusive or die in the process. Afghan party laws lack these features and therefore are less influential in nationalizing parties.

Afghan party laws impose more costs on the Ministry of Justice (MoJ) to enforce the laws than on parties to abide by the law. For example, the MoJ has to gather and use a tremendous amount of resources in order to investigate or monitor whether the parties' have over 10000 members and over 20 offices across different provinces of Afghanistan. Failing to do so allows small parties to exist by simply claiming to have surpassed all the thresholds. In fact, most parties claim to have met all the requirements of the laws, although they were quick to suggest that no other party has been able to do so.⁸⁵ According to an investigation by members of legislature, only one party, *Hizb-i-Islami* [Islamic Party], has met all thresholds required by law.⁸⁶ This was indeed confirmed by the head of party registrar office (of the MoJ) in an interview with the author.⁸⁷

The only sanction that a party bears for not meeting the threshold is deregistration.⁸⁸ Even then, parties can reregister under a new or old title. When compared to the benefits that most parties gain because of their ethnic base, the sanction of deregistration is so insignificant that parties have little incentive to change. It is particularly unlikely that an ethnic party, which has had access to patronage because of its ethnic affiliation, decides to open unwittingly to other group.

⁸⁵ The information was obtained from interview with the representatives of 17 political parties. See Table App. IV-2 in the Appendix.

⁸⁶ Wafayee, *supra* note 46.

⁸⁷ *Id.*

⁸⁸ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009)

To sum up, these command and control rules turn to what Ostrom referred to as rules-in-form.⁸⁹ Rules-in-form are merely rules on paper, unlike rules-in-use, which are actually followed by regulated groups and institutions.⁹⁰ A rule becomes a rule-in-use when it is well designed to prevail over all rival formal and informal rules. That can only happen if the rule is sufficiently incentive-based and when the costs it imposes on regulated groups for violating the rule are greater than benefits offered by other formal or informal rules, and when the costs of violating the law are greater than the costs the same rule imposes on the government to enforce it. Afghan party laws lack all of these important features and, therefore, they have little impact on party elites to institutionalize broader parties.⁹¹

3. The Laws of Not the Emerging Coalitions

The major problem of Afghan party laws is that they are set to reshape ethnic, proto-parties and transform them into cross-ethnic parties. As Mohammad Shafaq Khawati explains, it is nearly impossible to encourage these ethnic parties to transform.⁹² Their transformation costs them their constituencies and all political gains that they obtain because of their constituencies. Therefore, even an incentive-based law may encounter obstacles to encourage change in these ethnic parties.

Afghan proto-parties were mostly born with an ethnic agenda and guided by an ethnic leader.⁹³ They have had access to political distributions and patronage because of their ethnic-affiliations. By the same token, the survival of ethnic parties depends on their ethnic affiliations

⁸⁹ Christopher Kingston & Gonzalo Caballero, *Comparing theories of institutional change*, 5/2 JOURNAL OF INSTITUTIONAL ECONOMICS 151–180, 158 (2009).

⁹⁰ *Id.*

⁹¹ Afghan party laws are not unique in this case as Akerman complains that party laws generally fail to impose considerable costs on parties and candidates for violations and that is the reason that they are easily breached. Akerman, *supra* note 82, at 10.

⁹² Khawati, *supra* note 10, at 13.

⁹³ *Id.*

and mobilization. Even if these ethnic parties try to include more groups, they are less likely to appeal to other groups, given the distrust that exists among ethnic parties and social groups. This dynamic is mainly due to a series of lengthy civil wars that all major ethnic parties were involved in.⁹⁴ After the adoption of the Party Law, even though some political parties like the *Hizb-i-Jamiat Islami Party* [Islamic Society Party] and *Hizb-i-Islami* [Islamic Party] have attempted to draw members from other groups, few individuals from other groups joined these parties.⁹⁵ It has been because of their popularity as ethnic parties and their involvement in civil wars that eventually harmed other groups.

Unlike proto-parties, the emerging coalitions have indicated that they are better equipped to earn the support and votes of different ethnic groups. This is primarily because they are the assemblage of equally important elites and parties from different groups. Since their interests are likely to be protected in such cross-ethnic coalitions, different ethnic groups are likely to endorse them. Additionally, these coalitions provide a constructive environment for inter-ethnic dialogue, especially when all negotiating partners share the goal of winning and governing, for which they need to make concessions and compromises.⁹⁶ A process of institutionalization will further engage these partners in inter-ethnic dialogue. In his seminal work, *Ethnic Groups in Conflict*, Donald Horowitz suggested that inter-ethnic dialogue at the coalition level helps depoliticize ethnicity at the national and governmental levels.⁹⁷ Coalition-building by its very nature tends to

⁹⁴ The first civil war began by the collapse of communist regime in Kabul in 1992 and continued until 1996, when the Taliban took over the capital. They engaged in another war against different groups of the Center and North until 2001. Although most scholars differentiate Taliban's period from the first civil war, the continuous war between Taliban and different ethnic groups at different fronts and different parts of the country does merit the definition of a civil war.

⁹⁵ Khawati, *supra* note 10, at 13.

⁹⁶ Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 5/19 PARTY POLITICS 736-747, 739 (2011); Salih, *supra* note 17.

⁹⁷ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 419 (2ND ED., 2001).

minimize ethnic politics even though ethnic-talks may dominate negotiations within coalitions.⁹⁸ An important point to bear is that if splits and mergers of parties derive largely from the responses that they generate at the popular level,⁹⁹ then public opinion in Afghanistan seems to favor the institutionalization of the mergers and coalesce.

Additionally, the existing proto-parties are not any more institutionalized than the emerging coalitions. Analyzing party institutionalization in Afghanistan, Yaqub Ibrahimi concluded that Afghan parties have traditional structure and bureaucracies, centered around single leaders.¹⁰⁰ They do not hold general assembly regularly—or even once in most cases.¹⁰¹ They lack modern institutional and functional features, and most importantly, they are isolated from the electoral and political scene.¹⁰² Most members of political parties run as independents in both presidential and parliamentary elections, only to declare their party affiliations after elections. Even then, share of parties' seats in the *Wolesi Jirga* decreased from 62.4% in 2005 to 37.6% in 2010.¹⁰³ The number of independent MPs almost doubled in 2010.¹⁰⁴

Parties are even less relevant to presidential elections. No party engaged in a solo campaign in any of the last three presidential elections. Instead of relying on parties, candidates tended to make formal or informal coalitions to indicate their seriousness as candidates. It is true

⁹⁸ Herbert Kitschelt, *The Formation of Party Systems in East-Central Europe*, 20/1 POLITICS AND SOCIETY 7-50, 20 (1992).

⁹⁹ Peter Mair, *The Electoral Payoffs of Fission and Fusion*, 20/1 BRITISH J. OF POL. SCI., 131 (1990).

¹⁰⁰ Ibrahimi, *supra note* 11, at 10.

¹⁰¹ *Id.*

¹⁰² *Id.* at 5.

¹⁰³ ANDREW REYNOLDS & JOHN CAREY, FIXING AFGHANISTAN'S ELECTORAL SYSTEM: ARGUMENTS AND OPTIONS FOR REFORM, AFGHANISTAN RESEARCH AND EVALUATION UNIT 9 (2012); INTERNATIONAL CRISIS GROUP, POLICY BRIEFING 141: AFGHANISTAN'S PARTIES IN TRANSITION 5 (June, 2013) [https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-](https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf)

[8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf](https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf).

¹⁰⁴ *Id.*

that the emerging coalitions are unstable and clientalistic, but so are the proto-parties. The difference is that the emerging coalitions are structurally closer to the objective of Article 35 of the Constitution than proto-parties.¹⁰⁵ Therefore, one of the more troubling issues with Afghan party laws is that they have ignored emerging cross-ethnic coalitions. The only provision about political coalitions to be found is in Article 12 of the Political Party Law, which states, “A registered political party shall enjoy [to join or form a]...[p]ermanent or temporary political alliance or coalition with other political parties.”¹⁰⁶

Based on party laws and on the practices of parties and coalition, political coalitions do not need to register in the MoJ. Neither have coalitions gained legal status that would allow them to have any form, activity, or funding procedures. Not surprisingly, while some coalitions were formed officially with titles, symbols, and constitutions, others functioned merely as political networks and clientalistic groups. Ironically, unlike the proto-parties that have to grow formal, cross-ethnic, and ideologue according to the law, the larger coalitions have the option of being either formal or informal, ethnic or cross-ethnic, ideologue or clientalistic, financially independent or puppet organizations. Therefore, the absence of a legal framework has clearly undermined the proper functioning of already emerging cross-ethnic coalitions and their institutionalization.

Neglected by party laws, coalitions have been treated and conceptualized as temporary and personal political-networks. Especially when the coalitions have no threshold to meet, no registration to make and no legal status to stand on, their existence has become irrelevant except during the elections and for patronage. It is not surprising that while almost all presidential

¹⁰⁵ CONSTITUTION, art. 35 (the “formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted.”)

¹⁰⁶ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S.996 (2009), art. 12.

candidates formed some type of coalitions for the sole purpose of competing in the elections, they did not register as the coalition nominees. In other words, they did not feel compelled to register as the nominees of the coalitions that they formed to win cross-ethnic votes.

D. Conclusion

Afghan party laws have consistently discouraged ethnic parties and politics. For this very reason, the laws set three qualification thresholds for parties: Thresholds of membership, founders, and offices. Although these thresholds do not explicitly refer to the ethnic composition of political parties, they were indeed designed to encourage broad-based parties given the regional concentration of ethnic groups. Even so, these laws have failed to encourage cross-ethnic parties or coalitions.

Political parties in Afghanistan remain fragmented, personalized, and ethnic-based.¹⁰⁷ In fact, no cross-ethnic party has grown.¹⁰⁸ Since they failed to constitute parties in the conventional sense some scholars referred to them as *proto-parties*¹⁰⁹ and others preferred to call them *factions*¹¹⁰ or *cliques* (grohak).¹¹¹ Although some cross-ethnic coalitions have emerged—especially during presidential elections—they have failed to survive and institutionalize as major political actors.

This chapter has shown that the failure of laws in encouraging cross-ethnic parties and coalitions was due to their command-and control nature (vis-à-vis incentive based) and their lack of recognition of the emerging cross-ethnic coalitions. To put it differently, the party laws did not generate enough incentives to discourage ethnic parties. Additionally, the laws failed to

¹⁰⁷ COBURN & LARSON, *supra* note 8, at 73.

¹⁰⁸ Khawati, *supra* note 10, at 27.

¹⁰⁹ Ruttig, *supra* note 12, at 1; LARSON, *supra* note 13, at 5.

¹¹⁰ Giustozzi, *supra* note 14.

¹¹¹ Khawati, *supra* note 10, at 27.

promote the cross-ethnic coalitions that have been emerging particularly during the presidential elections. Although this chapter is focused on party laws in Afghanistan, it does analyze some general features of party laws that perhaps explain why party laws failed to nationalize parties and coalitions in other parts of the world.

PART V
REDESIGNING POLITICAL LAWS AND INSTITUTIONS IN
AFGHANISTAN

Since the failure of 2014 presidential election,¹ there have been numerous efforts to reform the Constitution and electoral laws in order to put an end to the ethnic tensions that tend to develop during and after elections.² However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing the parliamentary electoral system and the presidential system.³ This dissertation has established that cross-ethnic coalitions have

¹ As mentioned earlier, the second round of election in 2014 failed to produce an accurate and acceptable result due to overwhelming electoral fraud and irregularities. As a result, the two competing candidates agreed to form a National Unity Government instead of relying on the election result.

² The last three elections, including the presidential elections of 2009 and 2014 as well as the parliamentary election of 2010, instigated ethnic tensions. The runoff of the 2014 presidential election almost brought about a civil war, if it was not for international intervention. *See* INTERNATIONAL CRISIS GROUP, ASIA REPORT N°260: AFGHANISTAN'S POLITICAL TRANSITION 2 (2014), [http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/260-afghanistan-s-political-transition.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/260-afghanistan-s-political-transition.pdf); NATIONAL DEMOCRATIC INSTITUTE, POLITICAL PARTIES IN AFGHANISTAN: A REVIEW OF THE STATE OF POLITICAL PARTIES AFTER 2009 AND 2010 ELECTIONS 28 (Jun. 2011), <https://www.ndi.org/files/Afghanistan-political-parties-july-2011.pdf>; BEN SMITH, HOUSE OF COMMONS LIBRARY, POLITICAL DEVELOPMENTS IN AFGHANISTAN 3 (2011), http://www.operationspaix.net/DATA/DOCUMENT/5~v~Political_developments_in_Afghanistan.pdf; Frud Bezhani, *Ahead of Presidential Vote, Afghan P A Short Outline political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE (Jul. 28, 2015), <http://www.rferl.org/content/afghan-politics-feature/25101500.html>.

³ *See* FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 40, (2015) (Afg.); FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 80, (2015) (Afg.); ASADULLAH SA'ADATI, ET AL., ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION 187, 213 (2016). NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE (2013); ANDREW REYNOLDS, BENJAMIN REILLY & ANDREW ELLIS, ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK 6 (2008); ANNA LARSON, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 362: POLITICAL PARTIES IN AFGHANISTAN (2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>; Kenneth Katzman, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE 5 (Jul. 28, 2014), available at <https://www.fas.org/sgp/crs/row/RS21922.pdf>.

The few writings about the runoff rule in Afghanistan are merely for description of the system and have no reform objectives. *See* MOHAMMAD ASHRAF RASULI, TAHLIL WA NAQD QANOON-E-ASASI AFGHANISTAN [A CRITIQUE OF THE CONSTITUTION OF AFGHANISTAN] 75 (2009); MOHAMMAD TAHIR HASHEMI, BA SOY DEMOCRACY: QANOON-E-ASASI WA NEZAM NAWIN SIASI [TOWARDS DEMOCRACY: THE CONSTITUTION AND THE NEW POLITICAL SYSTEM OF

successfully evolved in Afghan presidential elections, however they have failed to institutionalize. This Part seeks to extend that discourse to reforming the presidential electoral rule, presidential constitutional features, and the political party laws.

Having exposed some failures of Afghan political laws and institutions in the previous six chapters (Chapter Four to Chapter Nine), Part V explores a number of alternative rules and designs, using the experiences of select countries that have adopted those alternatives, including Indonesia, Sri Lanka, Philippines, Kenya, Nigeria, Ghana, Malawi, Burundi, Sierra Leone, and Bolivia. All of these countries are plural societies.

Although political laws are undergoing change in most of these new democracies, their innovative approaches and designs offer more to learn for their counterpart societies than the centuries old laws and institutions in advanced democracies. Institutions such as constituency-pooling provisions, ethnic-party banning provisions, multiple vice presidencies, co-presidencies, the superlative voting system, political quotas, and merger provisions are either the innovations of democratizing societies or more prevalent in these countries. Additionally, in these countries, coalitions and parties can be tracked and observed at different points in the process of institutionalization: from the inception of proto-parties and coalitions to their full maturity. Therefore, the empirical application of general theories of political institutionalization is more testable and revealing in new democracies than in already established democracies.

To further illustrate the successes and the failures of each institutional design in the case of Afghanistan, this study adopts a counterfactual simulation model, using existing Afghan institutional, social, and behavioral settings. Envisioning such scenarios reveals what would have

AFGHANISTAN] 143 (2005); Jawad Taqi-Zada, *Presidential Elections in the Constitution [Intekhabat Riasat Jamhuri Dar Qanoon Asasi Afghanistan]*, in YEARBOOK OF AFGHAN LEGAL STUDIES [SALNAMAH MOTAL'AT HOQUQY AFGHANISTAN] 170-82 (2016).

happened if a political law or institution were adjusted or replaced with an alternative one.⁴ Each alternative is examined to see if it could help cross-ethnic coalitions institutionalize. Subtly, however, Part V also examines whether each alternative institutional design would be able to (a) disrupt ethnic voting and parties; (b) induce moderation and ethnic accommodation; and (c) promote representation of minority groups.⁵ This Part explains the potential advantages and disadvantages of each design when brought into the context of Afghanistan.⁶ Ultimately, it finds no silver bullet in any one design, but suggests that a combination of designs may work better than anyone in isolation.

⁴ Perhaps one weakness of this model is that it may not be able to take into account all of the variables and changes that might result from replacing majority-runoff with alternatives. For example, it is a common knowledge that electoral systems have their own mechanical and psychological effects on voters as well as candidates. See PIPPA NORRIS, *ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR* 5–6 (2004); AREND LIJPHART, *ELECTORAL SYSTEMS AND PARTY SYSTEMS: A STUDY OF TWENTY-SEVEN DEMOCRACIES 1945–1990* (1994); William R. Clark & Matt Golder, *Rehabilitating Duverger’s Theory: Testing the Mechanical and Strategic Modifying Effects of Electoral Laws*, 39 *COMP. POL. STUD.* 679, 679, 685, 694 (2006). Hence, Ghani and Abdullah’s votes, for example, might not have been the same under different electoral systems, even though social cleavages played a determinant role; although coalition building and ethnic politics can be well predicted under this model. When necessary, these shortcomings are highlighted in this part.

⁵ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT*, 632 (2ND ed. 2000).

⁶ It bears mentioning that coalition institutionalization is a time-consuming process and a change in electoral law does not instantaneously lead to party or coalition development. See Allen Hicken, *Political Engineering and Party Regulation in Southeast Asia*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 80, 85 (Benjamin Reilly & Per Nordlund, eds., 2008); Margit Tavits, *The Development of Stable Party Support: Electoral Dynamics in Post-Communist Europe*, 49 *AM. J. POL. SCI.* 283, 283–298 (2005); Noam Lupu & Susan Stokes, *Democracy, Interrupted: Regime Change and Partisanship in Twentieth-Century Argentina*, 29 *ELECTORAL STUD.* 91, 91 (2010); Fernando C. Bértoa, *Party Systems and Cleavage Structures Revisited: A Sociological Explanation of Party System Institutionalization in East Central Europe*, 20 *PARTY POL.* 16, 18 (2013).

Chapter Ten: Reforming Afghan Electoral Laws

A. Examining Alternatives to the Presidential Runoff System (referring to Chapter Four)

This section offers a first attempt at reforming the presidential electoral rule, as presidential elections have failed to encourage coalition stability. Having exposed some failures of the runoff system in Chapter Four, this section explores a number of alternative electoral designs using the experiences of select countries that have adopted those alternatives. Some examined reforms are merely adaptations of the runoff system and others are alternative electoral designs. The following Table V-1 illustrates some adaptations of and alternatives to the Afghanistan's runoff system.

Table V-1. illustrates different electoral systems used for presidential elections in twelve divided societies including Afghanistan.

| Country | Electoral System |
|----------------|-----------------------------|
| Afghanistan | Majority Runoff (50+) |
| Bolivia | Qualified Runoff (40+) |
| Burundi | Majority Runoff (50+) |
| Cyprus | Majority Runoff (50+) |
| Ghana | Majority Runoff (50+) |
| Indonesia | Majority Runoff (50+) |
| Kenya | Majority Runoff (50+) |
| Malawi | Simple Plurality |
| Nigeria | Concurrent Plurality |
| Philippines | Simple Plurality |
| Sierra Leone | Super Majority Runoff (55+) |
| Sri Lanka | Surplus Voting (50+) |

1. Adaptations of the Runoff System

Studying constitutions and electoral laws of countries illustrates that the runoff system is no longer a rigid system with fixed features. Lawmakers have found ways to manipulate different aspects of this system in order to make it work properly in their societies based on their political environment.

a. Lowering the Threshold: Adopting a Qualified Runoff

In some countries that have adopted a runoff system, lawmakers have lowered the bar for winning the election in the first round. For instance, Costa Rica and Nicaragua have adopted a threshold of forty percent for winning in the first round.⁷ In Argentina, the threshold is forty-five percent.⁸

These runoff adaptations are referred to as *qualified runoff*,⁹ *qualified majority*,¹⁰ *plurality with minimum threshold*,¹¹ and *non-majoritarian runoff*.¹² Qualified majority is a variation of the runoff system where the law requires a threshold below fifty percent for winning outright.¹³ If no candidate wins the required threshold, which is known as the *threshold of exclusion*,¹⁴ the top two finishers compete in the second round to win the election.¹⁵

⁷ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [CONSTITUTION OF COSTA RICA] Nov 7, 1949, art.139; THE CONSTITUTION OF NICARAGUA, Jan. 1, 1987, art. 147 (1).

⁸ CONSTITUTION DE L'ARGENTINE [CONSTITUTION OF ARGENTINA] May 1, 1853, Sec 97.

⁹ See NORRIS, *supra* note 4, 4 (2004); Rachel Lewis, Rob Richie, & Jack Santucci, *Majority Rule in International Presidential Elections: The Dominant Role of Runoffs Around the World*, FAIR VOTE RESEARCH, 2-3 (Jun. 2006).

¹⁰ Matthias Catón & Fernando Tuesta Soldevilla, *Political Parties in Conflict-Prone Societies in Latin America*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 129 (Benjamin Reilly & Per Nordlund, eds., 2008). However, Rachel Lewis and her colleagues are skeptical to use the term majority for a threshold lower than 50%. They argue that, “[a] true majority requirement in fact means having to win more than half of the votes.” Hence, a 40 or 45 percent threshold does not qualify as majority system. *Id.* Lewis et al., at 2-3

¹¹ *Id.* Lewis et al., at 3.

¹² Peter Buisseret, *Entry Deterrence Under Run-Off Rules*, 3 (Games and Economic Behavior, Working Paper, 2015) .

¹³ Catón & Soldevilla, *supra* note 10, at 129.

¹⁴ The threshold of exclusion is the minimum possible proportion of the vote, which a winning candidate must obtain. See Douglas Rae et al., *Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems*, 3 COMP. POL. STUD. 479, 480 (1971); Peter Buisseret, *supra* note 12, at 1.

¹⁵ Rachel Lewis, *supra* note 9, at 3.

A qualified-runoff might include a combination of (a) a threshold that is less than fifty percent, and (b) a minimum gap of votes (generally ten percent) between the top two finishers.¹⁶ For instance, the constitutions of Argentina,¹⁷ Bolivia,¹⁸ and Ecuador¹⁹ allow a candidate to become a president if the candidate receives over forty percent of the votes with a distance of over ten percent of the votes from the second-place finisher. In Nicaragua, a candidate can win with either forty percent or thirty-five percent of the votes plus a margin of five percent more votes than the second-place finisher.²⁰

By any of these measures, as Table V-2 indicates, none of the three presidential elections in Afghanistan would have needed a second-round race. Assuming that the candidates received the same votes under a qualified majority, in the 2004 and 2009 presidential elections, Karzai would have still been the winner.²¹ In 2004, he scored a decisive 55.4% with a margin of 39.1% from the second place finishers.²² In 2009, he won 49.7% with a gap of 19.1% from Abdullah.²³ In 2014, Abdullah would have been declared the president with forty-five percent of votes and a

¹⁶ Scott Mainwaring & Matthew S. Shugart, 29/4 *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal*, COM. POL., 450, 468 (Jul. 1997).

¹⁷ CONSTITUTION OF ARGENTINA, May 1, 1853, Sec 98.

¹⁸ CONSTITUCIÓN POLÍTICA DEL ESTADO [BOLIVIA'S CONSTITUTION OF (PLURINATIONAL) STATE] Feb. 7, 2009, art. 166(1), https://www.constituteproject.org/constitution/Bolivia_2009.pdf.

¹⁹ CONSTITUCIÓN DE LA REPUBLICA DEL ECUADOR [THE CONSTITUTION OF THE REPUBLIC OF ECUADOR], Sep. 2008, art. 143, <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

²⁰ THE CONSTITUTION OF NICARAGUA, Jan. 1, 1987, art. 147 (1).

²¹ INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, THE 2004 PRESIDENTIAL ELECTION http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm (last visited March 2017) [Hereinafter "IEC 2004"]; INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, AFGHANISTAN 2009 ELECTION, http://www.iec.org.af/results_2009/leadingCandidate.html (last visited March 22, 2017) [hereinafter "IEC 2009"].

²² *Id.* IEC 2004.

²³ IEC 2009, *supra* note 21.

difference of 13.4% from Ghani, who finished second.²⁴ In this scenario, ethnic tensions were less likely to arise in the 2009 and 2014 elections since the winning candidates had the indisputable forty percent of votes in both elections.²⁵

Table V-2. illustrates the difference between the first and second place candidates in the 2004, 2009, and 2014 Afghan elections.²⁶

| Last Three Presidential Elections Under A Qualified Majority (40% Threshold & 10% Vote Diff.) | | | | | |
|---|-------------------|--------------------------------------|--|--------|--------------------------------|
| Election Year | Leading Candidate | 1 st Threshold: 40% Votes | Vote Diff. from 2 nd Finisher | Result | Need for 2 nd Round |
| 2004 | Karzai | 55.4% | 39.1% | Win | No |
| 2009 | Karzai | 49.7% | 19.1% | Win | No |
| 2014 | Abdullah | 45.0% | 13.4% | Win | No |

A qualified runoff is a compromise between plurality and majoritarian systems,²⁷ and it seems to provide three advantages: First, it guards against the main flaw of a plurality system, which is allowing candidates to win with a small proportion of votes.²⁸ Second, like a plurality system, it encourages broad coalitions.²⁹ With a forty percent threshold, small parties and nonviable candidates see a lesser chance of a second round taking place.³⁰ This gives them more incentive to join winning coalitions than enter the race themselves.³¹ The more candidates and parties have incentives to strategically coordinate, the higher the chances are for

²⁴ INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, AFGHANISTAN 2014 ELECTION, [hereinafter “IEC 2014”] <http://www.iec.org.af/pdf/finallist13/presidential.pdf> (last visited Jan 15, 2017).

²⁵ In the 2014 elections ethnic tensions escalated due to irregularities in the second-round election. Although in 2009, it was the first-round results that instigated ethnic tensions, a 40% threshold, which did not seem unobtainable for Hamid Karzai, would have discouraged ethnic tension in this election also.

²⁶ IEC 2004, *supra* note 21; IEC 2009, *supra* note 21; IEC 2014, *supra* note 24.

²⁷ MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES, CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS, 217 (1992); Laurent Bouton & Gabriele Gratton, *Majority Runoff Elections: Strategic Voting and Duverger’s Hypothesis*, 10 THEORETICAL ECON. 283, 286 (2015).

²⁸ *See id.* SHUGART & CAREY, at 217.

²⁹ *Id.*

³⁰ *See id.* at 210.

³¹ *Id.*

institutionalization of coalitions. Peter Buisseret, analyzing qualified majority through a formal model, concluded that a qualified majority reduces party fragmentation, as it only benefits major parties.³² Gabriel Negretto³³ and Fabrice Lehoucq³⁴ in their respective studies of the qualified majority in Argentina and Costa Rica, claimed that this system was adopted by these nations to sustain a two-party system.

Third, a lower threshold increases the chances for more than one ethnic group to win the election. For instance, assuming the election results remain the same, in the presidential election of 2014, Abdullah would have been the first Tajik candidate declared as the president under a qualified majority. His tally was forty-five percent, nearly fourteen percent higher than the votes of the runner up.³⁵

There are some weaknesses associated with lowering thresholds, however. Most importantly, the lower the bar, the less incentive there is for forming cross-ethnic coalitions. It is likely under qualified runoff that coalitions reduce to one or two ethnic groups, as candidates might see a higher chance with forming a minimal coalition. Particularly, a forty percent bar is lower than the estimated Pashtun population, which might encourage some ethno-nationalists to rally their campaign around mainly mobilizing Pashtun voters. Other ethnic groups would also be able to form a winning coalition with the coordination of mainly two or three groups.

The other issue with this adaptation is that it does not address some important shortcomings of the runoff system. Many opportunists and runoff seekers with considerable support have even more incentives to attend the contest. Grouping and regrouping of the

³² Buisseret, *supra* note 12, at 2.

³³ Gabriel L. Negretto, *Government Capacities and Policy Making by Decree in Latin America The Cases of Brazil and Argentina*, 37 COMP. POL. STUD. 531, 540 (2004).

³⁴ Fabrice Lehoucq, *Costa Rica: Maodifying Majoritarianism with 40 Per cent Threshold*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 142 (Josep M. Colomer ed., 2004).

³⁵ IEC 2014, *supra* note 24.

coalition might still exist, though to a lesser extent, since the chances for serious candidates to win the election in the first round are higher.

Some criticize lower thresholds for decreasing the chances of a Condorcet winner.³⁶ A Condorcet winner is the candidate who can win against each of the other candidates if the election is held one-on-one between candidates.³⁷ Most scholars concur that an election that ensures the winning of a Condorcet candidate is the fairest of all, other things being equal.³⁸ However, one problem with Condorcet logic is that it has not taken social diversity into account. Considering ethnic voting in Afghanistan, Abdullah was simply a Condorcet loser to all seven candidates in 2014. Hence, based on Condorcet logic, Abdullah and other minority candidates will always remain losers as long as there is a candidate from the largest group. However, there is a serious question about the fairness of an electoral system if some groups are permanent losers under that system.³⁹ A system cannot lead to a stable democracy unless it includes and satisfies all major social forces.⁴⁰

³⁶ Laurent Bouton, *A Theory of Strategic Voting in Runoff Elections*, 103 Am. Econ. Rev. 1248, 1249 (2013).

³⁷ Victoria Powers, *How to Choose a Winner: The Mathematics Of Social Choice 5* (Mathematisches Forschungsinstitut Oberwolfach, Snapshot, 2015).

³⁸ See Bouton, *supra* note 36.

³⁹ See Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077, 1080, 1135 (1991) (questioning the fairness of the winner-takes-all rule, where blacks are the permanent losers in many districts although they have sizeable population. She further suggests that, “as a matter of broader democratic theory, voting rights activists and litigators should begin to worry more about the fundamental fairness of permanent majority hegemony in a political system whose legitimacy is based solely on the consent of a simple, racially homogenous majority.”); see also DENNIS F. THOMPSON, JOHN STUART MILL AND REPRESENTATIVE GOVERNMENT (2015) (“It is an essential part of democracy that minorities should be represented. No real democracy, nothing but a false show of democracy, is possible without it.”)

⁴⁰ See JOSEP M. COLOMER, POLITICAL INSTITUTIONS: DEMOCRACY AND SOCIAL CHOICE, 58 (2001); SOFIE DREEF & WOLFGANG WAGNER, PEACE RESEARCH INSTITUTE FRANKFURT, DESIGNING ELECTIONS IN CONFLICT-PRONE DIVIDED SOCIETIES: THE CASE OF SOUTH SUDAN 4 (2013), http://www.hsfk.de/fileadmin/HSFK/hsfk_

Another criticism against the forty percent threshold advanced by Scott Mainwaring and Matthew Shugart is that under this system a candidate might win with a questionable margin of difference.⁴¹ For example, a candidate may win with forty-five percent of the votes against a runner-up's forty-four percent.⁴² This criticism is warranted in cases where the threshold of distance between the votes of the first and the second finisher is not accounted for. However, this criticism is resolved when the first finisher is required to win at least ten percent more votes than the second finisher to avoid a runoff. Additionally, marginal difference of votes is possible under any electoral system. For instance, fifty-one percent versus forty-nine percent under a majority runoff system or thirty-four percent versus thirty-three percent under plurality are possible, but have been conventionally satisfying outcomes to recognize the winners.

b. Constituency Pooling

One way to promote cross-ethnic coalitions would be to require presidential candidates to garner a certain level of support across regions.⁴³ Drawing support simultaneously from different regions, which are geographically non-contiguous, is called *constituency pooling*.⁴⁴ Some countries have adopted such an electoral system, which requires that in order to win an election, a candidate has to receive votes from different regions inhabited by different ethnic groups.⁴⁵ For instance, in Indonesia, a candidate can win an election only by receiving not only

downloads/prif122.pdf; Lars-Erik Cederman, et al., *Why Do Ethnic Groups Rebel? New Data and Analysis*, 62 *WORLD POLITICS* 87, 88, 99–105 (2010).

⁴¹ SHUGART & CAREY, *supra* note 27, at 217.

⁴² *See id.*

⁴³ Benjamin Reilly, *Introduction*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT*, 14 (Benjamin Reilly & Per Nordlund, eds., 2008).

⁴⁴ Matthijs Bogaards, *Strategies of Political Party Regulation*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 52 (Benjamin Reilly & Per Nordlund, eds., 2008).

⁴⁵ *Id.* at 53.

an absolute majority of votes nationwide but also at least twenty percent of the votes in half of all provinces.⁴⁶ Similarly, in Kenya, a winning candidate, in addition to winning majority votes nationwide, has to garner twenty-five percent of the votes in more than half of the counties.⁴⁷

Another variation of constituency pooling is *concurrent pluralities*.⁴⁸ This involves a plurality system in which a presidential candidate must win pluralities concurrently in several regions of the country.⁴⁹ The concurrent pluralities system is the invention of Nigerian constitution makers.⁵⁰ According to this system, in addition to winning a nationwide plurality, a presidential candidate must win a minimum of twenty-five percent of votes in at least two-third of the states.⁵¹ If no candidate meets these requirements, only the top two candidates from the first round compete in the second round.⁵² Since states are drawn mainly along ethnic lines,⁵³ the first round election automatically requires candidates to make broader coalitions in order to appeal to voters across ethnic lines.⁵⁴

This vote pooling formula works best when ethnic groups are territorially concentrated;⁵⁵ as such, vote pooling may be an ideal rule for Afghanistan, which generally has geographically

⁴⁶ Hicken, *supra* note 6, at 88; Reilly, *supra* note 43, at 14.

⁴⁷ THE CONSTITUTION OF KENYA, May 6, 2010, art. 138 (4), <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>.

⁴⁸ See SHUGART & CAREY, *supra* note 27, at 217.

⁴⁹ *Id.*

⁵⁰ Reilly, *supra* note 43, at 14; John B. Ejobowah, *Integrationist and Accommodationist Measures in Nigeria's Constitutional Engineering: Successes and Failures*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION, 234 (Sajit Choudhry ed., 2008).

⁵¹ THE CONSTITUTION OF THE FEDERATION OF NIGERIA, May 29, 1999, art. 126, http://www.worldstatesmen.org/nigeria_const1960.pdf.

⁵² *Id.*

⁵³ SHUGART & CAREY, *supra* note 27, at 217.

⁵⁴ *Id.* Although this electoral system takes place in two rounds, Shugart and Carey suggest that it is a subset of plurality system perhaps because there is no threshold of exclusion based on nationwide votes.

⁵⁵ Bogaards, *supra* note 44, at 52.

concerted ethnic groups.⁵⁶ Given the regional concentration of ethnic groups, Article 45 of the Election Law seems to have a vote pooling effect to some extent. This Article requires presidential nominees to collect signatures of “one hundred thousand voters, from a minimum of twenty provinces, two percent from each province.”⁵⁷ On the surface, this “threshold of nomination” seems to suggest that presidential nominees need support from more than one ethnic group in order to qualify for candidacy. In reality, however, this threshold is much lower to have a constituency-pooling effect. It appears weaker in scope and scale than the vote pooling rule in Nigeria and Indonesia.

In fact, this threshold of nomination may be criticized for favoring only the two largest ethnic groups in Afghanistan. Pashtuns and Tajiks are the only ethnic groups that are estimated to have a minimum of two percent population in at least twenty provinces of Afghanistan; the next two largest ethnic groups, Hazaras and Uzbeks, are present in fewer than fifteen provinces.⁵⁸ Therefore, while having little vote pooling effect, this threshold seems to qualify candidates from only the two largest ethnic groups. In the 2004 and 2009 presidential elections, when this threshold did not exist, there were some Uzbek and Hazara candidates who eventually won a large number of votes.⁵⁹ After the adoption of this rule, however, the candidates in the 2014 presidential election were exclusively Pashtuns plus one Tajik.⁶⁰

⁵⁶ See Wiebke Lamer & Erin Foster, *Afghan Ethnic Groups: A Brief Investigation*, CIVIL MILITARY FUSION CENTER, 2–5 (2011) http://www.operationspaix.net/DATA/DOCUMENT/6393~v~Afghan_Ethnic_Groups__A_Brief_Investigation.pdf.

⁵⁷ ELECTION LAW, Jun. 8, 2014, S. 1112, art. 45.

⁵⁸ See Table App. IV-4 in the Appendix.

⁵⁹ IEC 2004, *supra* note 21.

⁶⁰ Salih Doğan, *2014 Afghanistan Presidential Election: An Ethnic Analysis*, 4 CAUCASUS INT’L 93, 94 (2014).

c. *The Legislative-Runoff*⁶¹

Many scholars argue that one of disadvantages of a presidential constitution is its susceptibility to political deadlock, which results from confrontation between the president and the legislature.⁶² Lawmakers in some countries have tried to get around this issue by requiring the second round to take place in the legislature.⁶³ In these countries, if no candidate wins an absolute majority in the first popular election, the top two or three candidates would have to compete for majority votes in the legislature.⁶⁴ This system was used in Chile before 1973 and in Bolivia from 1967 to 2009.⁶⁵

In Bolivia's version of the legislative-runoff election, if no candidate won an absolute majority in the first round, the congress had to elect a candidate from the top two finishers.⁶⁶ This system encouraged sustainable coalition-making in Bolivia, as the legislative parties earned due influence in government formation.⁶⁷ Edward Gamarra argues that after Bolivia adopted this system, the "Bolivian politicians appeared to have achieved an equilibrium that could not have existed were the system purely presidential, especially if the president were elected by a majority runoff."⁶⁸ Three broad coalitions were formed in Bolivia⁶⁹ as parliamentarians showed political

⁶¹ If no candidate wins a required majority through a popular vote, the frontrunners will compete in the legislature in the second round. This runoff subtype differs from the other subtype where both elections are held in the congress. The latter electoral system was used by Brazil until 1926. See Lehoucq, *supra* note 34, at 137.

⁶² See Juan J. Linz, *The Perils of Presidentialism*, 1 J. OF DEM. 51, 52-54 (1990); Mainwaring & Shugart, *supra* note 16, at 450-54.

⁶³ Eduardo A. Gamarra, *Hybrid Presidentialism and Democratization: The Case of Bolivia*, in PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA 364 (Scott Mainwaring & Matthew Soberg Shugart, eds., 1997).

⁶⁴ See SCOTT MAINWARING & MATTEW SOBERG SHUGART, PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA, 17 (1997).

⁶⁵ *Id.* at 32; SHUGART & CAREY, *supra* note 27, at 82-86.

⁶⁶ BOLIVIA'S CONSTITUTION OF (PLURINATIONAL) STATE, at art. 166.

⁶⁷ Gamarra, *supra* note 63, at 379.

⁶⁸ *Id.*

maturity by entering into long-term pacts.⁷⁰ Shugart and Carey argue that a purely presidential constitution in Bolivia would not have been capable of holding these coalitions together.⁷¹ Notably, some scholars have referred to the Bolivian political system as a hybrid presidential system⁷² for the reason that the president was elected by the legislature in the second round.⁷³

The legislative-runoff election of presidents offers some advantages that neither purely presidential nor parliamentary systems can offer.⁷⁴ One advantage of a legislative-runoff election is that it reduces the number of candidates by discouraging opportunist candidates and coalitions since in the second round front-runners no longer need the support of different constituencies in order to win the second round; hence, the patronage-seekers have nothing to offer for bargaining in the second round. In addition, once coalitions are established, political outsiders have little chance to win the second round in the parliament and so they have little incentive to run.⁷⁵ Consequently, this system prevents fragmentation and regrouping of coalitions in the second round. In addition, while the executive power originates from parliament, it does not depend on the parliamentary vote of confidence for its survival.⁷⁶ This independence from the parliamentary's vote of no confidence ensures that the stability of the government is not put at risk, a risk that executive power faces in fragmented parliamentary systems.⁷⁷

⁶⁹ *Id.* at 391.

⁷⁰ *Id.* at 392.

⁷¹ SHUGART & CAREY, *supra* note 27, at 84.

⁷² Gamarra, *supra* note 63, at 365.

⁷³ *Id.* at 363.

⁷⁴ SHUGART & CAREY, *supra* note 27, at 77.

⁷⁵ *Id.* at 85. In Chile, the Congress sought to appease a political outsider's protesting supporters by electing him as President, while blocking the implementation of his policies through legislation.

⁷⁶ *Id.* at 77.

⁷⁷ *Id.*

Despite these attributes, legislative-runoff systems have some weaknesses worth highlighting. For instance, legislative-runoff systems have strong potential to encourage electoral corruption. Candidates may find it easier and even cheaper to buy the support of MPs rather than trying to build coalitions with them based on some policy platform. Hence, it encourages patronage-based coalitions. Some studies have shown that political coalitions in Bolivia, for instance, were more driven by access to patronage than by policy platforms.⁷⁸ MPs formed coalitions to elect the president but once the president was elected, the coalition weakened.⁷⁹ These issues were perhaps the reason that the legislative-runoff was replaced with the direct runoff system when Bolivia adopted its new constitution in 2009.⁸⁰

It may also be a weakness that under the legislative-runoff system, there is a chance that a second-place finisher may win in the legislature.⁸¹ This can lead to tensions since the candidate with the popular vote may lose to the candidate with the legislative majority. In case of Afghanistan, this outcome becomes more problematic if votes are cast on ethnic bases in the parliament, considering the fact that ethnic voting is more visible in the legislature.

In addition, the development of cross-ethnic coalitions is not ensured under this system because it is possible to build a minimal coalition due to the presence of perfect information about the ethnic composition of the parliament. Knowing the number of ethnic representatives in the parliament, hardliner candidates may establish a minimum coalition of two or three groups, excluding others. One factor that is likely to balance this flaw of the legislative-runoff system is the formation of proactive coalitions. Since serious candidates want to win in the first round

⁷⁸ Gamarra, *supra* note 63, at 399.

⁷⁹ *Id.* at 370.

⁸⁰ BOLIVIA'S CONSTITUTION OF (PLURINATIONAL) STATE, *supra* note 18, at art. 166.

⁸¹ For example, in Chile in 1925 the second candidate in the parliament outran the first-round frontrunner. See SHUGART & CAREY, *supra* note 27 at 85.

outright, they tend to form pre-electoral coalitions, which are cross ethnic. In effect, these proactive coalitions are likely to cut across ethnic lines in the parliament, should a second round take place.

d. Alternative Vote

One alternative to the runoff system that reformers should consider for Afghan presidential elections is Alternative Vote (AV). This electoral system is also called *Preference Voting*,⁸² *Preferential Voting System*,⁸³ *Ranked Choice Voting (RCV)*,⁸⁴ and *Instant Runoff Voting (IRV)*.⁸⁵ Under an AV system, voters rank candidates in order of their preferences by putting one, two, etc., beside each candidate's name.⁸⁶ This is a majoritarian system⁸⁷ since the winning candidate must be able to secure an absolute majority.⁸⁸ If no candidate wins over fifty percent of the vote, the candidate with the lowest number of votes is eliminated and their ballots are redistributed to the candidates, who were ranked second to the eliminated candidates.⁸⁹ This process continues until a candidate wins the majority.⁹⁰ Surplus Vote (SV) is a subtype of AV,

⁸² See, e.g., Steven Mulroy, *The Way Out: Toward A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies*, 33 HARV. CIV. RTS. & CIV. LIBERTIES L. REV. 333, 341 (1998).

⁸³ See, e.g., Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 835 (2013).

⁸⁴ See, e.g., FAIR VOTE, <http://www.fairvote.org/rcv>.

⁸⁵ See e.g., LEWIS ET AL., *supra* note 9, at 2.

⁸⁶ Mulroy, *supra* note 82, at 342; Stephanopoulos, *supra* note 83; Benjamin Reilly, *Electoral Systems for Divided Societies*, 13 J. OF DEM. 156, 158 (2002).

⁸⁷ NORRIS, *supra* note 4, at 4.

⁸⁸ Richard Rose, *Elections and Electoral Systems*, in DEMOCRACY AND ELECTIONS: SYSTEMS AND THEIR POLITICAL CONSEQUENCES, 32 (Vernon Bogdanor & David Butler eds., 1983). Although, there is no reason this threshold cannot be lowered in an AV system.

⁸⁹ *Id.* at 32; Alan Renwick, *Political Studies Ass'n, The Alternative Vote* (A Briefing Paper, 2011), <https://www.psa.ac.uk/sites/default/files/TheAlternativeVoteBriefingPaper.pdf>.

⁹⁰ See LEWIS ET AL., *supra* note 9, at 3; Mulroy, *supra* note 82, at 342.

in which all candidates but the top two finishers are eliminated at once.⁹¹ Then the votes of the eliminated candidates are distributed to the top two finishers based on the next preferences of the voters.⁹² This system is used for presidential elections in Sri Lanka⁹³ and mayoral elections in London.⁹⁴ The Constitution of Sri Lanka restricts the voters' choices to three candidates,⁹⁵ while in London the voters can choose from only two candidates.⁹⁶

Considering the presidential election of 2014 in Afghanistan, using SV could have led to any outcome. Indeed a poll by Langer Research Associates indicated that Ghani was the second choice for twenty-one percent of respondents while Abdullah was the second choice for twelve percent.⁹⁷ If we add these numbers to the actual number of the votes that Ghani and Abdullah won in the first round, Abdullah would have been the president with nearly fifty-seven percent of the votes. However, considering only the first and the second choices of the respondents, Ashraf Ghani would have been the president with fifty-seven percent, since thirty-six percent of respondents—including unlikely voters—replied that they would cast their first choices for Ghani compared to forty percent of respondents whose first choices were Abdullah.⁹⁸ In fact, using SV in 2014 would have led to fewer candidates in the first place. Under this change, not

⁹¹ See BENJAMIN REILLY, *DEMOCRACY IN DIVIDED SOCIETIES: ELECTORAL ENGINEERING FOR CONFLICT MANAGEMENT* 16 (2001).

⁹² *Id.*

⁹³ THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, Sep. 7, 1978, art. 94, <https://www.parliament.lk/files/pdf/constitution.pdf>.

⁹⁴ Renwick, *supra* note 89, at 4; ROGER MORTIMORE & IPSOS MORI, *A GUIDE TO THE ALTERNATIVE VOTE* (2011), <https://www.ipsos-mori.com/Assets/Docs/Polls/RM-AVarticle.pdf>.

⁹⁵ THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, art. 94.

⁹⁶ ROGER, *supra* note 94, at 2.

⁹⁷ LANGER RESEARCH ASSOCIATION, *AFGHAN'S FUTURE SURVEY: AFGHANISTAN'S ETHNIC, REGIONAL DIVISIONS PRODUCE A DEAD HEAT IN ITS PRESIDENTIAL RACE 4* (2014), http://www.langerresearch.com/wp-content/uploads/Afghanistan-Election_ACSOR-Langer.pdf.

⁹⁸ *Id.*

only would Ghani and Abdullah have a different number of votes, the coalitions would also have been fewer and less susceptible to patronage bargaining and dissolution.

AV has similarities to both plurality and runoff rules. Some argue that it is designed to remedy the flaws of plurality and runoff systems while keeping their advantages intact.⁹⁹ It is similar to plurality systems in the sense that it is only a one-round election.¹⁰⁰ Therefore, it has the advantage of a plurality system because it encourages only serious candidates to run in the election. Opportunist candidates see fewer benefits to running and obviously there is no space for runoff seekers. This way, both plurality and AV systems reduce the number of candidates, which in turn leads to broader and stronger coalitions. However, unlike plurality systems, an AV system does not allow a candidate with a small number of votes to win elections.¹⁰¹ This difference indeed gives AV an edge over the plurality system.¹⁰²

AV, and particularly SV, is similar to the runoff system because they both prevent candidates from being elected with only a minority vote.¹⁰³ As such, both systems make it impossible for a single ethnic coalition in Afghanistan to win an election. Therefore, like the runoff system, AV offers the advantage of encouraging cross-ethnic coalitions.¹⁰⁴ Both systems require voters to have more than one preference should their first choice candidate lose.¹⁰⁵ And the AV system, like the runoff system, tends to shift the preferences from extremist candidates to

⁹⁹ LEWIS ET AL., *supra* note 9, at 3; AREND LIJPHART, *PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT* 20 (1992).

¹⁰⁰ DAVID M. FARRELL, *ELECTORAL SYSTEMS* 61 (2010).

¹⁰¹ John C. Courtney, *Plurality-Majority Electoral Systems: A Review* 10 (Advisory Committee of Registered Political Parties, Presentation Paper, 1999).

¹⁰² FARRELL, *supra* note 100, at 61; Renwick, *supra* note 89, at 9–10.

¹⁰³ Vernon Bogdanor, *Introduction*, in *DEMOCRACY AND ELECTIONS: SYSTEMS AND THEIR POLITICAL CONSEQUENCES* 5 (Vernon Bogdanor and David Butler eds., 1983).

Some also argue that AV creates only a manufactured majority since in the initial tally candidates may not win over 50% votes. See e.g., Courtney, *supra* note 101, at 9.

¹⁰⁴ Bogdanor, *supra* note 103, at 5.

¹⁰⁵ Rose, *supra* note 88, at 33.

moderate ones.¹⁰⁶ Nonetheless, unlike runoff systems, AV allows voters to make all of their choices in a single ballot, as opposed to requiring a second-round election,¹⁰⁷ preventing coalition fragmentation and regrouping that are the normal course of coalition-making under the runoff system.

Furthermore, the AV system has an edge over plurality and runoff rules for the fact that it gives more choices to the voters. As Reilly posits, this system allows voters to reconcile their two conflicting aims: “the need to vote for their own ‘local’ ethnic candidate...and the desire to vote, using secondary preferences, for the candidate [with merits].”¹⁰⁸ More importantly, the AV system not only makes the candidates dependent on cross ethnic votes,¹⁰⁹ it also encourages vote pooling among voters.¹¹⁰ However, the vote pooling effect of AV is conditioned by an ethnic distribution when no ethnic group exceeds fifty percent of the population.¹¹¹ By most estimations, ethnic distribution in Afghanistan perfectly meets this condition.¹¹²

Nevertheless, some scholars have criticized AV, identifying some of its main shortcomings. They have been particularly skeptical about the adoption of the AV system in countries with a lower level of literacy,¹¹³ which surely includes Afghanistan.¹¹⁴ For some

¹⁰⁶ See Ben Reilly, *Preferential Voting and Its Political Consequences*, in FULL, FREE AND FAIR ELECTIONS 78–9 (Marian Sawer, ed. 2001); Renwick, *supra* note 89, at 15.

¹⁰⁷ See Renwick, *supra* note 89, at 32–33; Enid Lakeman & James D. Lambert, VOTING IN DEMOCRACIES: A STUDY OF MAJORITY AND PROPORTIONAL ELECTORAL SYSTEMS, 54-55 (1959).

¹⁰⁸ REILLY, *supra* note 91, at 67.

¹⁰⁹ DONALD L. HOROWITZ, A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY (1991).

¹¹⁰ See TIMOTHY D. SISK, DEMOCRATIZATION IN SOUTH AFRICA: THE ELUSIVE SOCIAL CONTRACT, 38 (1995); REILLY, *supra* note 91, at 22.

¹¹¹ Sofie Dreef & Wolfgang Wagner, *Electing to Fight or to Make Peace? Electoral Systems and Ethnic Violence in Post-Conflict Societies* 7 (Presentation Paper, 2011)

http://home.fsw.vu.nl/wm.wagner/dreef_wagner_etmaal_paper.pdf.

¹¹² REILLY, *supra* note 91.

¹¹³ *Id.* at 157.

voters, making several preferences and ranking candidates accordingly is not an easy task.¹¹⁵ Also, the complexity of the tallying process might make the politicized but uneducated voters doubt the results.¹¹⁶ Furthermore, some suggest that the AV system, like the runoff system, gives edges for larger groups over smaller groups since larger groups have more chances of winning intercommunal preferences.¹¹⁷

In addition, intra-communal ranking of candidates is likely to favor larger ethnic groups. For example, AV in the 2000 presidential elections of Republika Srpska favored a hardline Serb candidate because the Bosnian voters cast their second preferences to minor Bosnian parties rather than voting for moderate Serb candidates.¹¹⁸

One other issue with the AV system is that voters are likely to *plump* (cast all)¹¹⁹ their votes for a single candidate rather than making a number of choices.¹²⁰ This tendency effectively turns the AV system into a plurality system.¹²¹ Making further choices compulsory is also problematic since it would encourage voters to make uncalculated and random choices that may affect the result very badly.¹²² Or take the case of the 2014 Afghan elections, in which under an

¹¹⁴ Based on the data provided by World Bank, the rate of literacy in Afghanistan was 32% in 2010. See WORLD BANK, <http://data.worldbank.org/indicator/SE.ADT.LITR.ZS>.

¹¹⁵ See Courtney, *supra* note 101, at 9; Stephanopoulos, *supra* note 83, at 852; see also DOUGLAS W. RAE, THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS 128 (1971) (arguing that voters lack “rather complex cognitive arrangements” necessary for preferential voting).

¹¹⁶ See Paul L. Mckaskle, *Of Wasted Votes And No Influence: An Essay On Voting Systems In The United States*, 35 HOUS. L. REV. 1119, 1126 (1999) (Counting the vote [under SNV, which is a cousin of AV, used for parliamentary elections], however, is complex and difficult to explain, and many voters may not be able to understand the procedure fully).

¹¹⁷ See REILLY, *supra* note 91, at 23; see Courtney, *supra* note 101, at 11.

¹¹⁸ Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 CHI. J. OF INT’L L. 663, 678 (2006).

¹¹⁹ Plump refers to a situation where a voter casts all her votes to a single candidate—or eschews from making a second and third choices. See e.g., Mulroy, *supra* note 82, at 340.

¹²⁰ See REILLY, *supra* note 91, at 156.

¹²¹ See *id.*

¹²² See *id.* at 157.

AV rule, all Tajik voters would have had to cast their second and third preferences for a Pashtun candidate since there was only one Tajik candidate. Pashtun voters, however, could cast their second and third preferences for several other Pashtun candidates. Here, compulsory ranking gives an undue privilege to one ethnic group over the other.

B. Examining Alternatives to SNTV for WJ Elections (In Reference to Chapter Five)

This section examines alternative electoral designs to SNTV for parliamentary elections, drawing on the discussion in Chapter Five of this dissertation. The Special Electoral Reform Commission (SERC), which was established by a presidential decree in 2015¹²³, set a range of primary goals for adopting a new electoral system. These goals reflected their analysis of public expectations:¹²⁴ (1) preserving provincial and geographical representation; (2) preserving proportional representation of ethnic groups in the Assembly; (3) ensuring a fair competition for independent candidates; and (4) establishing a legal ground for a fair party competition in the elections.¹²⁵ This chapter is written with a focus on goals 2 and 4 specifically.

This section first examines alternative electoral systems including those that have been proposed by different institutions and agencies in Afghanistan. These systems include First Past the Post (FPTP), and Mixed Electoral System (SNTV-PR). Next, it prescribes a dynamic

¹²³ SA'ADATI ET AL., *supra* note 3, at 137, 146. (“[FPTF] is recommended for consolidated democracies [not for democratizing societies].”)

¹²⁴ Farman-e-Taqini [Legis. Decree] No. 40, 1394 [2015] [hereinafter “Farman 40”]

¹²⁵ SA'ADATI ET AL., *supra* note 3, 112.

The complete set of goals for electoral reform included (a) reducing electoral irregularities; (b) paving the ground for participation of political parties as well as independent candidates; (c) ensuring fair geographic and ethnic representations; (d) promoting political stability; (d) facilitating a smooth process of elections; (e) ensuring the participation of women and other vulnerable communities; (f) reducing waste of votes; (g) ensuring a functioning and strong Assembly; (h) reducing electoral expenditures; and (i) avoiding a radical change. *See id.* at 99-100.

electoral regulation, which gradually increases a number of electoral thresholds to favor stronger and more inclusive coalitions in the long run.

1. Alternative Electoral Systems for WJ Elections

a. *First-Past-the-Post (FPTP)*

FPTP is examined in this section not because it is identified as an ideal electoral system, but because the Afghan government has shown a unique attachment to it. FPTP is not a new concept in Afghanistan as this electoral system was previously adopted for parliamentary elections between 1964 and 1973, which is known as ‘Decade of Democracy’,¹²⁶ or ‘Decade of Constitution’.¹²⁷ The use of this electoral system in the Decade of Democracy demonstrates that FPTP is a disproportional electoral system, favoring larger groups while disenfranchising smaller ones.¹²⁸

Apart from the government, no other institution, scholar, and activist who is involved in the elections has proposed FPTP for parliamentary elections. If anything, they have criticized this electoral system.¹²⁹ For example, even the Special Electoral Reform Commission (SERC),

¹²⁶ Bahar Jalali, *Afghanistan: 1963-1973*, ii (2005) (Unpublished Dissertation, University of California, Berkeley) (“The term, Decade of Democracy, is a translation from the Persian *Daha-yi Dimukrasi*. After 1973, the emergence of publications such as *Daha-yi Dimukrasi* by Sabah al-Din Kushkaki and *Afghanistan: Da Dimukrasi o Jamuriyat Pa Kulunu Ki 1963-1978* (The Era of Democracy and Republic in Afghanistan 1963-1978) by ‘Abdul Ghaffar Farahi have served to affix the title Decade of Democracy to the period in Afghanistan from 1963-1973.”)

¹²⁷ See SABAHUDDIN KUSHKAKI, *DAHA QANOON-E-ASASI: GHAFLAT AFGHANHA WA FERSAT TALABI RUSHA* [THE DECADE OF CONSTITUTIONALISM: THE NEGLIGENCE OF AFGHANS AND THE OPPORTUNISM OF RUSSIANS], 32-110 1996 [1375].

¹²⁸ Qasem Ali Sedaqat, *Marzbandi Hawza Hai Intekhabati Dar Afghanistan [Districting Measures in Afghanistan]*, in *DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA* [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 121-124 (Mohammad Nabi Ahmadi & Majid Ismaelzada, eds., 1393) [2014].

¹²⁹ E.g., see SA’ADATI, *supra* note 3, at 136-7; Chris Johnson, William Maley, Alexander Thier & Ali Wardak, *Afghanistan’s political and constitutional development*, OVERSEAS DEVELOPMENT INSTITUTE, 37 (Jan. 2003) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf>.

which was assigned by the President to study alternative electoral systems for parliamentary elections, did not endorse government's proposal of FPTP system. In its report, SERC enunciated that FPTP would likely result in disproportional representation of ethnic groups.¹³⁰ The report further suggested that FPTP would not lead to the institutionalization of broad-based and programmatic parties.¹³¹ On the contrary, it would increase ethnic politics and may even cause ethnic conflict.¹³²

Additionally, FPTP does not comport with the objectives behind the 2014 National Unity Government Agreement. The Agreement specifically mandated reforming the electoral system to enhance the development of political parties and coalitions.¹³³ For that purpose, however, FPTP is not an ideal electoral system since it is primarily a candidate-centric electoral system. Under FPTP, electors vote for individual candidates, not their parties. Therefore, similar to SNTV, FPTP is likely to have a disenfranchising effect on parties and coalitions because candidates are likely to part ways from parties to avoid voters' defection.¹³⁴

¹³⁰ SA'ADATI, *supra* note 3, at 137.

¹³¹ *Id.*

¹³² *Id.*; Johnson et al., *supra* note 129, 37.

¹³³ *Agreement between the Two Campaign Teams Regarding the Structure of the National Unity Government* [hereinafter *Agreement*], L.A. TIMES, Sep. 21, 2014, <http://documents.latimes.com/agreement-between-two-campaign-teams-regarding-structure-national-unity-government/>.

¹³⁴ This tendency of FPTP in the case of Afghanistan challenges the conventional literature that associates FPTP with broad-based parties or coalitions (known as two party system). The problem with conventional literature is that it has focused on consolidated democracies and adopted the assumption that the public do not have grudges against parties. As a result, candidates have incentives to join parties and use their resources for their campaigns. However, as mentioned earlier, this is not the case in Afghanistan, where both candidates and voters are likely to distance themselves from the parties. As such, FPTP is not likely to encourage broad-based coalitions and parties in Afghanistan.

The government and proponents of this electoral system argue that FPTP leads to proportional representation of ethnic groups in insecure provinces.¹³⁵ For example, although Pashtuns had a large population in Ghazni, they were not able to win a single seat (out of eleven seats) in 2010 primarily due to a high level of insecurity in Pashtun-dominated areas.¹³⁶ Even though there is some merit to this concern, it does not justify the adoption of FPTP. This concern can be resolved through a different type of districting that allows Pashtun representation but also reserves proportional representation for other groups as well. For example, Ghazni can be divided into smaller multimember constituencies rather than into several single-member constituencies. In fact, SERC proposed dividing all provinces that have over 10 seats.¹³⁷ Dividing Ghazni into two districts of five and six MPs can effectively respond to the concerns of Pashtuns and at the same time maintain the proportional representation of all ethnic groups.¹³⁸

Moreover, a switch to FPTP would require ethnically sensitive and contentious redistricting,¹³⁹ which raises concerns over what metrics would be used for this process. In the Decade of Democracy, the electoral constituencies were defined by the boundaries of administrative districts.¹⁴⁰ In effect, regardless of the population of different administrative

¹³⁵ TOLO NEWS, Farakhabar, <http://www.tolonews.com/farakhabar/farakhabar-iec-scraps-idea-single-seat-constituencies>.

¹³⁶ *Id.*

¹³⁷ SA'ADATI ET AL., *supra* note 3, at 102.

¹³⁸ *Id.*

¹³⁹ Andrew Reynolds, *Fixing Afghanistan's Electoral System: Arguments and Options for Reform*, AFGHANISTAN RESEARCH AND EVALUATION UNIT 18 (2012), <http://www.areu.org.af/Uploads/EditionPdfs/1211E-Fixing%20Afghanistans%20Electoral%20System%20BP%202012.pdf>; SA'ADATI ET AL., *supra* note 3, at 137.

¹⁴⁰ QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 25 (1965), art. 2, 3. Only for big cities of Kabul, Kandahar and Herat, multiple seats were reserved.

districts, each district was to introduce only a single winner.¹⁴¹ This led to geographic gerrymandering because some administrative districts had much larger populations than others.¹⁴² Some suggested that this was ethnic and political gerrymandering because some ethnic groups were allocated more districts with fewer populations than others.¹⁴³ There were cases where a district with a population of 200,000 would elect only a single candidate, while a neighboring district with less than 10,000 would do the same.¹⁴⁴ Today, similar issues can arise since the populations of different districts vary considerably. For example, in the case of Ghazni, Table V-3 shows that several districts have populations exceeding ten times the population of other districts in addition to the fact that no two districts are the same population-wise.¹⁴⁵

Table V-3. compares populations of different districts of Ghazni province

| Population Estimation of Ghazni Districts (1990) | | |
|---|------------|-------------------|
| District | Population | Population in (%) |
| Jaghori | 127,587 | 16.6 |
| Qarabagh | 92,541 | 12.0 |
| Jaghathu | 86,040 | 11.2 |
| Nawor | 82,213 | 10.7 |
| Ghazni | 77,199 | 10.0 |
| Andar | 72,378 | 9.4 |
| Malestan | 66,177 | 8.6 |
| Gelan | 35,448 | 4.6 |
| Moqor | 29,650 | 3.8 |
| Deh Yak | 27,513 | 3.6 |
| Nawa | 20,316 | 2.6 |
| Kiro | 18,911 | 2.5 |
| Ab Band | 17,361 | 2.3 |
| Kh. Omari | 9,481 | 1.2 |
| Zenakhan | 7,869 | 1.0 |
| Total | 770,684 | 100 |

¹⁴¹ Mohammad Naser Yusofzai, *Parleman Afghanistan: As Intekhab Shah ta Intekhab Sarasari [the Parliament of Afghanistan: From Selecting the King to Nationwide Election]* TOLA AFGHAN (2005), <http://www.tolafghan.com/posts/20670>.

¹⁴² *Id.*

¹⁴³ Sedaqat, *supra* note 128, at 121.

¹⁴⁴ *Id.*

¹⁴⁵ *Afghanistan, Ghazni Province: A Socio-Economics Profile*, UNIDATA (Feb. 1, 1992).

If the metrics for districting is based on population and not administrative districts, the problem of gerrymandering still holds. If the constituencies are created along ethnic lines, it perpetuates ethnic division permanently.¹⁴⁶ If the Independent Election Commission (IEC) decides to draw ethnically mixed constituencies, ethnic gerrymandering is the likely outcome. Given the failure of the members of IEC to remain ethnically and politically neutral in the past and the fact that IEC is ethnically charged because of its hiring methods, it is very well expected that the ethnically dominant group in any election commission will likely favor some groups over others when districting.¹⁴⁷

Even if IEC tries to conduct districting fairly, ensuring proportional representation is still unlikely due to the absence of a credible ethnic census.¹⁴⁸ Although there are some estimations of ethnic populations, these estimations differ from one to another and they are all disputed by different ethnic groups. In fact, the adoption of FPTP has already triggered ethnic tensions, as some ethnic groups have claimed to have larger populations than others.¹⁴⁹ For example, Pashtuns have argued that over 70% of the population in Ghazni are Pashtun while Hazaras maintain that they constitute the largest group there.¹⁵⁰ In this situation, even an accidentally fair distribution of constituencies among ethnic groups is unlikely to satisfy all ethnic groups. Therefore, it is reasonable to predict that the use of this electoral system would, at the very least, perpetuate social division if not ethnic conflict.¹⁵¹

¹⁴⁶ Johnson et al., *supra* note 129, at 37.

¹⁴⁷ Sedaqat, *supra* note 128, at 28.

¹⁴⁸ Johnson et al., *supra* note 129, at 37.

¹⁴⁹ THOMAS BARFIELD, *AFGHANISTAN: A HISTORY OF CULTURAL AND POLITICAL STUDIES* 24 (2010).

¹⁵⁰ *Itv*, AMAJ, <https://www.youtube.com/watch?v>.

¹⁵¹ Sayed Mahdi Munadi, *Intekhabat Dar Keshwarhai Pasamunze'a wa Darshai Barai Afghanistan [Elections in Post-Conflict Societies and the Lessons for Afghanistan]*, in *DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND*

b. A Mixed (SNTV-PR) System

A mixed system has been proposed for parliamentary elections in Afghanistan several times and by different institutions and authors.¹⁵² This system was first proposed to the Assembly in the form of government initiation.¹⁵³ It was rejected primarily because most MPs wanted to be reelected and SNTV would serve that purpose better than the mixed system.¹⁵⁴ Subsequently, in June of 2012, the Independent Electoral Commission (IEC) proposed a mixed system of SNTV and PR, which was turned down by the cabinet.¹⁵⁵ A, somehow, similar electoral system was proposed by SERC in 2015.¹⁵⁶ The Commission, which was authorized by a presidential decree to bring reforms to electoral laws, recommended this system to pave the ground for party development in Afghanistan.¹⁵⁷ Turning down this proposal, the President proposed a new Election Law with ambiguous provisions about the electoral system, allowing the IEC to decide about districting.¹⁵⁸

Both the 2012 and 2015 draft proposals included a mix of list-PR and SNTV, where individuals would get to cast two votes: one vote for a party (or a list) and one for an

OPPORTUNITIES] 46 (MOHAMMAD NABI AHMADI & MAJID ISMAELZADA, EDS., 1393) [2014];

SA'ADATI, *supra* note 3, at 137.

¹⁵² See e.g., Johnson et al., *supra* note 129, at 38; REYNOLDS *supra* note 139; SA'ADATI, *supra* note 3, at 100-111.

¹⁵³ COBURN & LARSON, *supra* note 3, at 194.

¹⁵⁴ *Id.* at 195.

¹⁵⁵ Reynolds, *supra* note 139.

¹⁵⁶ SA'ADATI ET AL., *supra* note 3, 100-111.

The Special Electoral Reform Committee proposed a second alternative, Multi-Dimensional Representation, which is very similar to SNTV. It was proposed on the ground that it may be more appealing to the government and the Assembly because it does not disenfranchise independent candidates. However, the Commission admits that this system does not influence the development of national and cross-ethnic political parties. For this reason, this section avoids analyzing this electoral system. See SA'ADATI ET AL., *supra* note 3, at 114-126.

¹⁵⁷ *Id.* at 105.

¹⁵⁸ QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1226 (2016), art. 35.

independent. In this way, the system would enhance improvement as it keeps SNTV to elect individual candidates and adds the PR system for party lists.¹⁵⁹ Keeping SNTV would be beneficial because the voters are familiar with it.¹⁶⁰ Adding a partial PR may also be better than a pure PR system since it would take into consideration public opinions about parties while at the same time set the stage for party/coalition development.

However, the 2012 and 2015 draft proposals differed in allocation of seats and in electoral districting. In the 2012 draft proposal, 80 seats were allocated for parties and 159 seats for independent candidates.¹⁶¹ In the 2012 draft the electoral constituencies for both PR and SNTV were the provinces.¹⁶² The major problem with this type of districting was that it neutralized the impact of PR on party development.¹⁶³ As Table V-4 indicates, in some provinces as few as one seat was allocated for parties, which was unlikely to help party development at all.¹⁶⁴

¹⁵⁹ Reynolds, *supra* note 139, at 19.

¹⁶⁰ *Id.* at 18-21.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Table V-4. illustrates proposed districting for PR and SNTV by the IEC proposal of 2012.¹⁶⁵

| Province | Population | Total Seats | PR Seats | SNTV Seats |
|------------|------------|-------------|----------|------------|
| Kabul | 4,086,500 | 33 | 11 | 22 |
| Herat | 1,816,100 | 17 | 6 | 11 |
| Nangarhar | 1,462,600 | 14 | 5 | 9 |
| Balkh | 1,271,300 | 11 | 4 | 7 |
| Ghazni | 1,188,600 | 11 | 4 | 7 |
| Kandahar | 1,175,800 | 11 | 4 | 7 |
| Badakhshan | 919,900 | 9 | 3 | 6 |
| Faryab | 964,600 | 9 | 3 | 6 |
| Kunduz | 972,200 | 9 | 3 | 6 |
| Takhar | 950,100 | 9 | 3 | 6 |
| Baghlan | 879,000 | 8 | 3 | 5 |
| Helmand | 894,200 | 8 | 3 | 5 |
| Ghor | 668,000 | 6 | 2 | 4 |
| Parwan | 642,300 | 6 | 2 | 4 |
| Farah | 690,600 | 5 | 2 | 3 |
| Jawzjan | 521,400 | 5 | 2 | 3 |
| Khost | 556,000 | 5 | 2 | 3 |
| Paktia | 534,000 | 5 | 2 | 3 |
| Sari Pul | 541,000 | 5 | 2 | 3 |
| Wardak | 577,100 | 5 | 2 | 3 |
| Badghis | 479,800 | 5 | 1 | 3 |
| Bamyan | 432,700 | 4 | 1 | 3 |
| Daikundi | 410,800 | 4 | 1 | 3 |
| Kapisa | 426,800 | 4 | 1 | 3 |
| Kunar | 436,000 | 4 | 1 | 3 |
| Laghman | 431,200 | 4 | 1 | 3 |
| Logar | 379,400 | 4 | 1 | 3 |
| Paktika | 420,700 | 4 | 1 | 3 |
| Samangan | 375,100 | 4 | 1 | 2 |
| Uruzgan | 374,100 | 3 | 1 | 2 |
| Zabul | 294,100 | 3 | 1 | 1 |
| Nimroz | 159,300 | 2 | 1 | 1 |
| Nuristan | 143,200 | 2 | 1 | 1 |
| Panjshir | 148,600 | 2 | 1 | 1 |

¹⁶⁵ *Seat Allocations*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/eng/content.php?id=4&cnid=47> (accessed 11 July 2011); IEC DRAFT ELECTORAL LAW (Jun. 2012), INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/eng/content.php?id=4&cnid=47>; CENTRAL STATISTICS OFFICE, Population <http://cso.gov.af/en/page/demography-and-socile-statistics/demograph-statistics/3897111>.

To address some of the problems of the 2012 draft, in 2015 SERC proposed making the whole country a single constituency for PR elections.¹⁶⁶ It also brought some changes to the allocation of seats: 83 seats for PR and 156 seats for SNTV.¹⁶⁷ The quotas for Kochis (10 seats) and Hindu and Sikhs (1 seat, combined) was to remain the same.¹⁶⁸ The electoral threshold for a political party to win seats in the Assembly was 2 percent.¹⁶⁹

Nonetheless, there are still some issues with SERC's 2015 proposal of a mixed system. The impact of this electoral system on the institutionalization of cross-ethnic coalitions would likely be too limited. Allocating only 33 percent of seats to the parties is not likely to improve parties' positions in the Assembly. Although some party candidates may also win seats through the SNTV portion of the system, even a consociational form of coalition, where all parties in WJ join the coalition, would be less likely to be able to form a majority in the Assembly. Even if it such a coalition does form, it would not likely be sustainable through legislative votes without other institutional incentives. More importantly, this electoral system would not offer a threshold that would encourage building cross-ethnic coalitions. Like most other electoral systems, it is focused on parties, which are mostly ethnic-based in Afghanistan, and not coalitions, which tend to be cross-ethnic. All major ethnic parties could fulfill the 2 percent threshold.¹⁷⁰ Therefore, under this system, there would be very little incentive for vote pooling as well as cross-ethnic coalitions.

As shown by the above example of Ghazni, Pashtuns may be able to get representation through party lists in nationwide PR elections. However, under the existing form of districting,

¹⁶⁶ SA'ADATI ET AL., *supra* note 3, at 101.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See Table I-5 in Chapter Three; Table App. IV-3 in the Appendix.

they may not be able to get a fair share of seats in SNTV elections since due to insecurity, Pashtuns may not be able to vote freely and in sufficient numbers. Understanding this issue, SERC suggested that the provinces with large number of seats should be divided into smaller constituencies.¹⁷¹ Under this approach of districting, Pashtuns of Ghazni are likely to have a constituency where they can win some seats even with fewer votes.

2. A Dynamic Electoral Law: Predicting the Rise and the Outcomes

I would describe a dynamic law as one that changes in requirements and standards through a timeline or sequence of events, gradually shaping behaviors by injecting new incentives without encountering strong resistance. Assuming that a mixed (SNTV-PR) system is adopted, a dynamic electoral law installs several moving features in this system. First, the allocation of seats gradually shifts in favor of PR so that in the long run more seats are competed under PR election and fewer under SNTV. Second, the threshold of exclusion gradually increases from a minimum share of votes to a maximum, where few broad-based coalitions can win seats in the WJ. Finally, an added quota for minority groups on party lists gradually rises so that losing SNTV seats does not disadvantage these groups. Each new parliamentary election should trigger new standards, in which thresholds in all three respects increase.

To illustrate this dynamic law through an example, I use the draft proposal of 2015. In a dynamic electoral law the standards set by the proposed draft are merely the starting point or the standards for the first WJ election. The draft allocated two-thirds of seats (156) for SNTV and one third (83) for PR elections. Under a dynamic law, for instance, 11 percent of seats will be shifted from SNTV to PR elections in each subsequent election. Given that in each election

¹⁷¹ SA'ADATI ET AL., *supra* note 3.

SNTV will lose about 27 seats in favor of PR, in four elections, two-thirds of the seats will be elected under PR and only one-third under SNTV.

The primary advantage of this dynamism is that it does not initially make a radical change. As such, this kind of law is less likely to generate resistance in the government and MPs in the legislature, most of whom earned their offices through the existing SNTV system. Even a president that opposes coalition development is less likely to reject the law since by the time that coalitions enhance their consolidation through this law, the president may no longer be in office due to term limits. Similarly, a majority of MPs might consider themselves and the country better off with coalitions that seemingly present little danger to their reelection in the immediate elections. In effect, this law is more likely to get the approval of the government and the WJ than a proposal that sets a higher but static share of seats for party/coalition competitions.

It will be challenging to determine the proper percentage for the shifts in seat allocations to provide enough incentive to both the government and MPs to approve the law. (A shift of 11% seats mentioned in the above paragraphs was just an example and not a proposed change.) It will be important to bring a balance between the objective of a quick change in favor of party institutionalization and the short-term goal of getting the law approved. In other words, the shifts in seat allocations should include as many seats as possible to allow for a quicker institutionalization of coalitions but as few seats as necessary so that the law is approved by the government and the WJ.

As for the threshold of exclusion, the 2 percent threshold of the proposed draft may be a starting point for a dynamic electoral law. However, the law should require an increase in each following parliamentary election. If the increase is 2 percent, in four elections, the threshold would have risen to 8 percent, which can be identified as a cap. This gradual increase not only

sets the threshold for each election but also sets a timeline for coalitions to either expand, dissolve, or merge with another coalition. Clearly, this timeline provides enough incentives for coalitions to prepare not just for the next election but for future elections since very few coalitions are going to survive when the thresholds reach the cap. The sooner they prepare, the more likely they are to survive. Therefore, a dynamic electoral law is likely to institutionalize cross-ethnic coalitions sooner than a static electoral law.

To further ensure diversity and inclusiveness in the composition of competing coalitions and parties, an additional threshold must be adopted. For example, no coalition or party should be able to exclusively introduce nominees from the same ethnic group. A similar provision exists in the Constitution of Burundi. Article 168 of the Burundi Constitution provides that “The elections of the Deputies (MPs) takes place following the ballot for the bloc lists by proportional representation. These lists must have a multi-ethnic character and take into account the equilibrium between men and women. For three candidates registered together on a list, only two may belong to the same ethnic group, and at least one in four must be a woman.”¹⁷²

In Afghanistan, too, it should be possible to eliminate coalitions and parties with single-ethnic list of candidates since the Constitution clearly requires that a party should not form or function based on ethnicity.¹⁷³ Introducing all nominees from the same ethnic group clearly indicates that the party (or coalition) has failed to comply with Article 35 of the Constitution. While seemingly plausible, however, this type of threshold can easily be manipulated, as a coalition may add some weak nominees from other ethnic group to its list of candidates knowing

¹⁷² LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] Feb. 2005, art. 168 *available at* https://www.constituteproject.org/constitution/Burundi_2005.pdf.

¹⁷³ QĀNOON-I ASSĀSI-YE JAMHŪRI-YE ISLĀMI-YE AFGHANISTAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] NO. 818, 1382 [2004], <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>. [hereinafter, CONSTITUTION], art. 35.

that they will not win seats. In effect, even if the list of nominees satisfies the threshold, it may not effectively include smaller ethnic groups or comply with Article 35 of the Constitution.

Alternatively, the second threshold could instead be based upon the composition of the winners of each coalition (or party). In this approach, the IEC would evaluate if a party or coalition's seat winners are as diverse as their candidates. In effect, coalitions have no escape from this rule but to form (or enter) a rather broader alliance that is not only inclusive but also attractive to cross-ethnic voting. One problem with these alternatives is their emphasis on ethnic affiliations, which is not good for a law that intends to depoliticize ethnicity (or some would say de-ethnicize politics).

A third alternative threshold would be a vote-based or office-based threshold that shifts the standards for minimum winning votes or minimum winning offices across different regions. In Indonesia, for example, only those parties can attend and compete in the national elections for legislature that have permanent offices in all 33 provinces including permanent offices in at least 75 percent of the regencies/municipalities in each province, and in at least 50 percent of the sub-districts within each regency/municipality.¹⁷⁴ Under such a provision, any party that neglects the importance of cross-ethnic support automatically loses the chance of entry in the parliament even if the party has a large number of supporters within particular constituencies. Since ethnic groups in Afghanistan tend to be geographically concentrated, a requirement of minimum votes or number of offices across different regions might encourage vote pooling without necessarily explicitly referring to the ethnic composition of coalitions.

¹⁷⁴ INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS, ELECTIONS IN INDONESIA: 2014 NATIONAL LEGISLATIVE ELECTIONS 2 (Apr. 2, 2014), https://www.ifes.org/sites/default/files/indonesia_2014_national_legislative_election_faq.pdf.

One issue remains unresolved in this paradigm of depoliticization of ethnicity and increasing minority representation: the likelihood of minority groups to lose seats because of the increase in the threshold of exclusion. Therefore, a reservation must be considered when it comes to the representation of small ethnic groups. In other words, an additional threshold that requires special quotas for minority candidates in coalitions' list of nominees or winners should be adopted and enforced. And based on a dynamic electoral law, the quota should increase as long as the seats for coalitions under PR election increases.

Anticipating some potential concerns, I posit that this dynamic electoral law does not generate unpredictability, uncertainty, and instability. If anything, this law generates the opposite. A dynamic law can produce predictability because any changes in requirements and standards are pre-determined. As a result, all stakeholders including the government, MPs, coalitions, as well as the voters, know about the shifts and increases long before these changes take place in the later elections. The expectation is that they will adapt their electoral behaviors to what is coming in the next election. The voters will learn about the need for these political organizations for the consolidation of democracy and the coalitions will prepare themselves to compete for a larger share of seats in the Assembly.

This law also promotes certainty because the coalitions will have full knowledge and advance notice about the thresholds and seat allocations in future elections; they will quickly understand that the only way to survive over rivals is to become more inclusive and institutionalized. Ethnic groups and elites will come to understand that the elections are moving toward centrism and moderation and it will cause them to adapt their behavior accordingly to survive politically.

The law also fosters stability because it will eliminate the need to adopt a new law preceding each election as the case appears to be now. A dynamic law can sustain several elections, shaping as well as adapting to the new level of coalition development. In fact, in order to prevent the repealing of the law or reversing its effects, it is better if some principal provisions of this law are implemented by constitutional amendments with the reservation that only a supermajority in the Assembly can repeal this law. Such a provision also deals with the problems of the continued rapid change in electoral law which has been taking place in Afghanistan. (Since 2003, four electoral laws have been passed and implemented in Afghanistan, all of them presidential decrees.) This rapid change of electoral laws indicates that static electoral laws are effectively less stable than a dynamic electoral law and hence they generate less predictability. For the same reason, static laws are less able to create incentives for the consolidation of coalitions.

On the other hand, to ensure public interest is at the center of party/coalition politics in the long run, assuming coalitions come to dominate electoral politics, it is better if the dynamic law certifies the reverse of the shift in favor of independent candidates when the shift reaches the cap of two-thirds in favor of coalition/party competition—and stays there for several elections before the shift is reversed. This will serve to keep the coalitions and parties incentivized to always have public interest in their policies and agenda to maintain their electoral dominance. Otherwise, they risk that the public may defect from them in favor of independents or new coalitions.

Chapter Eleven: Amending the Afghan Constitution

A. Fixing the Problem of Presidential Electoral Features (In Reference to Chapter Six)

A well-designed institution is likely to alter the structure of a democracy's parties and coalitions.¹⁷⁵ This section sets out some regulatory designs that remedy some of the negative impacts that the current structure of Afghanistan's presidential elections exerts on coalition-building.

1. Holding Concurrent Elections

In a multi-ethnic society, coalition development is the product not only of interactions between social and electoral settings,¹⁷⁶ but also cycles of presidential and parliamentary elections.¹⁷⁷ The timing of elections is vital to the development and number of coalitions and parties in the assembly.¹⁷⁸ Timing of elections can hinder or enhance the mutual needs of presidential and legislative candidates for the support of one another. Generally, presidential candidates have the incentive to gain endorsements from among the legislators;¹⁷⁹ at the same time, the legislators have incentives "to ride presidential coattails."¹⁸⁰

The Afghan presidential election of 2014 illustrates how serious the presidential candidates take the endorsements of MPs. During the campaign for the first-round election, presidential candidates in order to attract more votes, exaggerated the number of MPs that endorsed their campaigns. For example, five (out of eight) candidates claimed endorsements

¹⁷⁵ MARK P. JONES, ELECTORAL LAWS AND THE SURVIVAL OF PRESIDENTIAL DEMOCRACIES 9 (1995).

¹⁷⁶ GARY W. COX, MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD'S ELECTORAL SYSTEMS, 33 (1997).

¹⁷⁷ MAINWARING & SHUGART, *supra* note 64, at 406.

¹⁷⁸ JONES, *supra* note 175 at 103 (1995).

¹⁷⁹ COX, *supra* note 176 at 193.

¹⁸⁰ *Id.* at 191; David Samuels, *Concurrent Elections, Discordant Results Presidentialism, Federalism, and Governance in Brazil*, 4 COMPARATIVE POLITICS 1, 4 (2000).

from a total of 425 MPs, while the exact total number of MPs in both houses of parliament was only 346.¹⁸¹

Table V-5. shows the number of Afghan MPs that presidential hopefuls claimed to have the support from.¹⁸²

| Candidate | No. of Claimed Supporting Senators | No. of Claimed Supporting Representatives | No. of Claimed MPs from both Houses |
|----------------|------------------------------------|---|-------------------------------------|
| Ab. Abdullah | Not Determined | Not Determined | 150 |
| Ashraf Ghani | Not Determined | Not Determined | 100 |
| Zalmai Rassul | 15 | 68 | 83 |
| Rassul Sayyaf | 30 | 32 | 62 |
| Gul A. Shirzai | Not Determined | Not Determined | 30 |
| Claimed Total | | | 425 |
| Actual Total | 100 | 246 | 346 |

Meanwhile, Afghan presidential elections have shown what Cox has noted that even in a fragmented and diverse parliament, legislators sort themselves out in large coalitions behind one presidential candidate or another.¹⁸³ During presidential elections, MPs have shown a tendency to attend presidential campaigns rather than legislative sessions. In fact, during the campaign seasons, sometimes less than 10% of MPs were present in the WJ.¹⁸⁴ In the presidential election of 2009, the consistent absence of the MPs during the campaigns led to the recess of the WJ until the end of the presidential election.¹⁸⁵

This mutual need of endorsements suggests that if the presidential election was moved to be held in conjunction with a parliamentary election, it is highly likely that there will be relatively stable coalitions in the parliament that reflect those of government and opposition

¹⁸¹ Saleha Sadat, *Candidates Exaggerate Parliamentarians' Support*, TOLONews (Feb. 19, 2014) <http://elections.tolonews.com/candidates-exaggerate-parliamentarians-support>.

¹⁸² *See id.*

¹⁸³ COX, *supra* note 176 at 193.

¹⁸⁴ *Inteqad Barkhi Azai Wolesi Jirga Ba Khater Ghair Haziri Wukalai Parlman, [The Complains About the Absence of Lawmakers]* AZADI RADIO, 1393 [2014] <http://da.azadiradio.org/content/article/25315578.html>.

¹⁸⁵ *Chura Parlaman Ra Ta'til Kardid? [Why You Recessed the Parliament?]* AFGHAN PAPER (1388) [2009] <http://www.afghanpaper.com/nbody.php?id=2405>.

outside of the parliament.¹⁸⁶ It is primarily due to the fact that the focus of campaign revolves around the presidential candidates, thereby tying the fate of legislative candidates to presidential hopefuls.¹⁸⁷

Moreover, holding concurrent elections is likely to reduce the number of presidential candidates (coalitions) since many candidates might find themselves more viable for legislative elections than for presidential elections. In nonconcurrent elections, however, candidates see the chance of entering the upcoming parliamentary election should they not win the presidential race. In fact, in 2014, two presidential candidates and five vice presidential candidates were MPs who resigned with perhaps aiming to enter in the next parliamentary election, were they not able to win the presidential race.¹⁸⁸ The presidential election results indicate that they mostly lacked qualifications or electoral support to help win the race.

Table V-6. shows the vote shares of the presidential tickets, in which MPs were running mates.

| MPs | Running For | Election Results |
|-------------------|--------------------------------|------------------|
| Mohd. Mohaqia | 2 nd Vice President | 45% Votes |
| Rassul Sayyaf | President | 7% Votes |
| S. Hussain Alemi | 1 st Vice President | 2% Votes |
| Ab. Ahad Afzali | 1 st Vice President | Withdrew |
| S. Hussain Anwari | 2 nd Vice President | Withdrew |
| S. Is-haq Gilani | President | Disqualified |
| Ebrahim Qasimi | 2 nd Vice President | Disqualified |

The most important advantage of concurrent elections—and also the most neglected one—is that they replace the mission of coalitions from patronage to mutual campaign

¹⁸⁶ Hicken, *supra* note 6, at 85.

This finding about mutual need for campaign support challenges the presidential coattail theory, which suggests that there is only one way of support where the parliamentary candidates benefit from executive candidates under concurrent elections. *See* Samuels, *supra* note 180 at 4-7.

¹⁸⁷ JONES, *supra* note 178, at 4, 95-96.

¹⁸⁸ *Replacements for Resigning MPs Introduced*, AFGHANISTAN OUTLOOK (Oct. 20, 2013), http://outlookafghanistan.net/national_detail.php?post_id=8491.

support.¹⁸⁹ Under noncurrent electoral cycles, MPs support presidential candidates in exchange for patronage. In contrast, under a concurrent election, the immediate interest of both the presidential and parliamentary candidates is to win the election; and, therefore, they are incentivized to mutually support each other's campaign. Mutual campaign support, unlike a clientelistic partnership, is more likely to hold the coalition together because it encourages candidates to choose allies who are closest to them in policy.

In addition, mutual campaign support fosters transparency as well as accountability of allies following the election. It leads to transparency because publicly declaring allegiances is the culprit of mutual campaign support. Such is not the case under non-concurrent elections. During the 2014 Afghan presidential election, some reports have shown that MPs secretly vowed allegiance to multiple presidential candidates.¹⁹⁰ The more transparent the support of parliamentary coalitions from presidential candidates becomes, the more accountable the coalitions become—and therefore, the more disciplined and sustainable coalitions can be.

This mutual campaign support is best illustrated by the 2009 election. The 2009 election featured a concurrent election of the president and members of provincial councils.¹⁹¹ Some studies have shown that this concurrent election established a close link between presidential and

¹⁸⁹ The other advantage of holding elections concurrently is that it deals with the problem of presidential-legislative deadlock. See MAINWARING & SHUGART, *supra* note 64, at 436. Presidential-legislative deadlock is indeed one pitfall of presidential systems. LIJPHART, *supra* note 99, at 17. Presidential-legislative deadlock occurs when the majority in the parliament opposes a president's decisions either because of a fragmented legislature or because the opposition party dominates the parliament. In this context, the presidents are caught between power abuse and power deficiency. Combining presidential and legislative elections deals with this problem by encouraging the election of the same party in the executive and legislative branches. See MAINWARING & SHUGART, *supra* note 64, at 411; V. O. KEY, *POLITICS, PARTIES AND PRESSURE GROUPS* 688 (1964).

¹⁹⁰ Saleha Sadat, *Election Shows Potential for Politics Beyond Ethnicity*, TOLO NEWS (Apr. 29, 2014), <http://www.tolonews.com/en/afghanistan/14704-election-shows-potential-for-politics-beyond-ethnicity>

¹⁹¹ IEC 2009, *supra* note 21.

provincial council campaigns at the local level.¹⁹² Provincial council candidates were most likely to publicly affiliate themselves with presidential candidates.¹⁹³ In return, campaign officers of presidential candidates were likely to endorse specific local candidates for provincial councils.¹⁹⁴ As a result, the same events were held to promote both candidates under the same platform.¹⁹⁵ The expectation was that this mutual campaign support was also to be followed by the flow of government resources at the local level if the allied presidential candidate were to win.¹⁹⁶

Generally, voters tend to vote for presidential and legislative candidates from the same coalitions¹⁹⁷ because their alliances provide a useful cue to voters—especially less informed and less interested voters—who have to choose from a long list of parliamentary candidates.¹⁹⁸ Knowing this voting behavior, legislative candidates have more incentive to align themselves with one of the leading presidential coalitions under concurrent elections.¹⁹⁹ Studies have shown that this presidential coattail effect has indeed led to the winning presidential coalitions also winning the majority (or near majority) of seats in the parliament.²⁰⁰ More importantly, studies

¹⁹² COBURN & LARSON *supra* note 3, at 105.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*, at 119.

¹⁹⁶ *Id.*, at 105-110.

¹⁹⁷ MAINWARING & SHUGART, *supra* note 64, at 467; Hicken, *supra* note 6, 858; JONES, *supra* note 178, 108 (1995).

¹⁹⁸ D. J. SAMUELS, CAREERISM AND ITS CONSEQUENCES: FEDERALISM, ELECTIONS, AND POLICY MAKING IN BRAZIL (2003); Hicken, *supra* note 6, at 857; David J. Andersen, *Concurrent Elections And Voter Attention: How Voters Search For Political Information In Crowded Campaign Environments* 4-6 (Rutgers, The State University of New Jersey, Working Paper, 20) available at http://www.eagleton.rutgers.edu/research/documents/Andersen_ConcurrentElections2011.pdf; also see Richard L. Hasen, *Do the Parties or the People Own the Electoral Process?*, 149 U. PA. L. REV. 815 (2000) (“Voters do not need to know anything about candidates besides their partisan affiliation in order to make a rough-cut guess about each candidate’s politics.”)

¹⁹⁹ See Samuels, *supra* note 180, at 4; also see Hicken, *supra* note 6, at 857-8.

²⁰⁰ JONES, *supra* note 178, at 96; John M. Carey, *The Impact of Constitutional Choices on the Performance of Presidential Regimes*, J. OF SOC. SCI. & PHIL. 102 (1999).

indicated that coalition-building in the parliament tends to mirror coalition fragmentation in the presidential contest under concurrent elections.²⁰¹ Therefore, it is not surprising that by 1995, fifteen Latin American countries adopted concurrent elections.²⁰² Countries like Bolivia²⁰³ and Uruguay²⁰⁴ went further and required the voters to vote for presidential and parliamentary candidates from the same party.

Strangely, the 2004 Afghan Constitution merely encouraged rather than mandating concurrent elections.²⁰⁵ Article 160 of the Constitution states, “Multilateral efforts shall be made to hold presidential and National Assembly elections concurrently.”²⁰⁶ As mentioned earlier, several attempts have been made to hold elections concurrently under the terms of this provision. However, from a constitutional perspective, the implementation of this Article is almost impossible, considering the different timelines set for presidential and parliamentary elections by the same Constitution. Article 61 of the Constitution sets the date for presidential elections between March 22 and April 21.²⁰⁷ Article 83 of the Constitution sets the date for parliamentary elections between April 22 and May 22.²⁰⁸ By any interpretation, these timelines do not overlap,

²⁰¹ *Id.* Carey, at 97.

²⁰² *Id.* at 104.

²⁰³ SHUGART AND MAINWARING, *supra* note 64.

²⁰⁴ Scott Mainwaring, *Presidentialism, Multiparty Systems, and Democracy: The Difficult Equation* 11 (Kellogg Institute, Working Paper #144, 1990).

²⁰⁵ CONSTITUTION, art.160.

²⁰⁶ *Id.*

²⁰⁷ *Id.* art 61 (“The presidential term shall expire on 1st of Jawza (21st of May) of the fifth year after elections. Elections for the new President shall be held within thirty to sixty days (between March 22 and April 21) prior to the end of the presidential term.”)

²⁰⁸ *Id.* art. 83 (“[t]he work period of the House of People shall terminate, after the disclosure of the results of the elections, on the 1st of Saratan (21st of June) of the fifth year and the new parliament shall commence work. The elections for members of the House of People shall be held 30-60 days prior to the expiration of the term of the House of People.”)

although they could come as close as one day apart, putting the presidential election on April 21 and the parliamentary election on April 22.²⁰⁹

2. Setting Nomination Gatekeeping

a. *Party/Coalition Nomination Requirement*

In order to limit the number of candidates, coalitions and parties, some countries have adopted nomination gatekeeping regulations. In some countries, nomination gatekeeping allows only coalition or party members to stand for elections.²¹⁰ For example, the Constitution of Nigeria makes party affiliation and sponsorship compulsory for a presidential candidate.²¹¹ Similarly, the Constitution of Indonesia requires that not only candidates should be party members but also the respective parties should have at least 5% votes or 3% seats in the parliamentary elections.²¹² The importance of this threshold is that it benefits large parties and coalitions while discouraging party fragmentation.²¹³ In Kenya, although non-party affiliates can

²⁰⁹ However, the irony is that none of the presidential nor the parliamentary elections has been held within the constitutional timelines; even so the government has failed to hold elections concurrently. Even worse, until recently the electoral cycles fell one year apart. *See* Taqi-Zada, *supra* note 3 at 167.

²¹⁰ The prevention of independent candidates from running, however, does not have the favor of some international regulations. *See* U.N. Human Rights Council, G. Comment 25, 57th Sess., *The Right To Participate In Public Affairs, Voting Rights And The Right Of Equal Access To Public Service*, Jul. 12, 1996, Par. 5, <http://www.osce.org/odihr/elections/19154?download=true> (“Persons who are otherwise eligible to stand for election should not be excluded ... by reason of political affiliation”, and “The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, Para. 7.5 (“to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”).

²¹¹ NIGERIA CONSTITUTION, May 29, 1999, art.131(c).

²¹² Reilly, *supra* note 43, at 14.

²¹³ *See id.*

be nominated for an election, party members cannot run as independent candidates; in addition, party members cannot resign to run as an independent within three months prior to an election.²¹⁴

A nomination threshold eliminates the chance of political outsiders to enter the presidential race. It also offsets the candidate-centered feature of presidential election by bringing the coalitions/parties to the forefront of the competition by requiring the candidates to gain their confidence. If this requirement had existed in the past three elections, it would have forced Karzai and Ghani to form formal coalitions rather than relying on clientelistic ones.

b. Legislative Nomination Requirement

Some countries, like Albania, require that a presidential nominee must be proposed by at least 20 MPs.²¹⁵ Although in Albania the president is elected by the legislature,²¹⁶ the same threshold can be adopted for popular presidential elections. Some scholars argue that the root of the two-party system in the United States dates back to the early nineteenth century, when the legislative caucus normally nominated presidential candidates.²¹⁷ This arrangement reinforced strong parliamentary coalitions and later promoted party cohesion.²¹⁸ Political independents were not able to run until the legislative caucus was abandoned in 1824.²¹⁹

Imposing a threshold of minimum legislative support reduces the number of presidential candidates to a considerable extent. The higher the threshold of legislators' support, the fewer the number of candidates. The following formula predicts the number of candidates based on this threshold:

²¹⁴ KENYA CONSTITUTION, May 6, 2010, art 85(a); Election Act, (2011) Chap. 7, art 29(2).

²¹⁵ REPUBLIKA ESHQIPËRISË KUVENDIPOPULLOR [CONSTITUTION OF THE REPUBLIC OF ALBANIA], Nov. 28, 1998, art. 87(1) *available at* <http://www.osce.org/albania/41888?download=true>.

²¹⁶ *Id.* art. 87(2).

²¹⁷ ANDREW E. BUSCH, *OUTSIDERS AND OPENNESS: IN THE PRESIDENTIAL NOMINATING SYSTEM* 4 (1997).

²¹⁸ *See id.*

²¹⁹ *See id.*

$$\text{No. of Presidential Candidates} = \frac{\text{Total number of parliamentary seats}}{\text{Minimum threshold of MPs support}}$$

For instance, in Afghanistan the *Wolesi Jirga* has a total of 249 seats.²²⁰ Hence, if the threshold were set to a minimum of 10 MPs' support, fewer than 25 candidates could qualify for election. If the threshold were set to 20 MPs, there would only be a maximum of 12 candidates (coalitions). This mathematical outcome would only occur when MPs do not make strategic decisions about supporting presidential candidates; however, in the real world, MPs do engage in strategic coordination (as well as desertion) and these strategies reduce the number of candidates to just the viable ones; hence, with this threshold, fewer candidates with large coalitions are predictable. This rule also serves as a check on popular passion by requiring a peer review that ultimately introduces good candidates.²²¹

An important advantage of this threshold is that it forces transparency of MPs support of presidential candidates. MPs can no longer make secret deals with multiple candidates. The more transparent the coalition formation is, the more accountable and sustainable it will be. This requirement would also deal with the issue of parallel (or dual) legitimacy between the president and the legislature since through this requirement the president depends on gaining legislative support for nomination as well as popular support to win the election. In effect, this requirement encourages the formation of cross-branch coalitions, which has not happened yet in Afghanistan.

B. Examining Alternative Vice Presidential Arrangements (referring to Chapter Seven)

Although constituting the core of cross-ethnic coalitions, Afghanistan's dual vice presidency has not led to stable, policy-based, or cohesive coalitions. Opposition tickets have particularly been subject to splinter following elections. At times, even incumbent VPs have

²²⁰ See CONSTITUTION, art. 84 (3).

²²¹ BUSCH, *supra* note 217 at 4.

acted more as opposition leaders than as deputies of the President. This has been the case in all three elected administrations since 2004.

Chapter Seven revealed that the dual vice presidency in Afghanistan has had three major shortcomings: (a) it does not form a fully inclusive ticket because it is not required to include the representative of at least one large ethnic group; (b) presidential tickets are not formed based on shared policy priorities; and (c) the vice presidency is merely an honorary position with trivial constitutional powers. Using a counterfactual simulation, this section provides some alternatives to Afghanistan's current dual vice presidency system. These alternatives include quad-ethnic presidential tickets, sectoral vice presidentialism, and a rotation of heirs apparent.

1. Adopting a Quad-Ethnic Ticket

As discussed in Chapter Seven, although a tri-ethnic ticket is likely to be cross-ethnic, it is not fully consociational because at least one large group remains excluded. Winning presidential candidates have come up with a creative way to form an additional *de facto* office of VP, thereby including a representative of the fourth ethnic group in their tickets (see Chapter Seven).

A codified quad-ethnic ticket, where all VPs are constitutionally recognized, is likely to be more consociational. Here, the term quad-ethnic ticket refers to a presidential ticket that includes a president and three vice presidents, representing four different ethnic groups. A quad-ethnic ticket encourages a relatively higher level of cross-ethnic voting as voters from all major groups have representatives in all viable coalitions. Some skeptics may suggest that unless it is explicitly required by law, it is likely that a candidate will not choose his or her third vice president to be from a fourth group. However, in reality, serious presidential candidates have already formed their *de facto* quad-ethnic tickets to win more votes. To win votes from the fourth

ethnic group and address their concerns, both Ghani and Karzai, created new offices for their representatives with the equivalent “privileges” to VPs’.²²² Therefore, including a third VP in the ticket is not only consociational but also pragmatic.

Abdul Ali Mohammadi in his book, *Afghanistan and A Modern State*, suggests that a presidential ticket with three VPs is more inclusive than one with two VPs—although he argues that it is better if the president appoints the VPs after the elections.²²³ Mohammadi posits that introducing VPs before the elections makes vice presidential office political and presidential elections even more contentious.²²⁴ Conversely, the post-electoral appointment of the VPs is likely to be more meritocratic and policy-based.²²⁵ Mohammadi also recommends a constitutional provision that explicitly requires candidates to choose their VP nominees from three different ethnic groups.²²⁶

There are some issues with Mohammadi’s proposal. First, even if the president is empowered to choose his vice presidents after the elections, it is very likely that they will make their bargains and choices prior to the elections because they want to win the support of different ethnic groups. This cannot be very different from the candidates’ bargains on cabinet seats prior to the election, although they formally make their appointments after the election.

²²² Although the term “privilege” was used in Ghani’s executive order when describing the new office with similar “privileges” to the VPs. The “privileges” basically refers to the salary and some other Presidential-assigned powers...The individual in these new offices cannot have the same constitutional functions as the VPs. For example, they cannot stand-in as the president since the Constitution clearly states who takes over the office of the presidency in case of the absence of the President and both VPs. *See* CONSTITUTION, art. 67, 68.

²²³ ABDUL ALI MOHAMMADI, *AFGHANISTAN WA DAWLAT MUDERN* [AFGHANISTAN AND A MODERN STATE] 377 (1394) [2015].

²²⁴ *Id.* at 376.

²²⁵ *Id.* at 380.

²²⁶ *Id.* at 377.

Moreover, the existence of a provision in the Constitution that sets an ethnic threshold explicitly is both rudimentary and problematic. It is rudimentary because even in the absence of such a provision presidents have already shown the tendency to choose their VP nominees from different ethnic groups. It is problematic because such a provision practically locks-in ethnic division and ethnic politics. This is against the public demand that ethnicity's roles should be reduced in social and political life.²²⁷ Therefore, I stand with the proposition that the vice presidency should be an elected office, and there should be no explicit thresholds about the ethnic composition of the presidential tickets.

2. Designing a Sectoral Vice Presidential System

A VP should not be equal to the President, but he or she should not be a palace pet either. Given the importance of ethnic power-sharing (although implicitly) to the political stability, it is essential that the VPs also have some constitutional powers. As discussed in Chapter Seven, powerless vice-presidential offices has led to dissatisfaction of different ethnic groups in Afghanistan. Additionally, for the sake of coalition consolidation, it is important that the VPs' powers are clearly defined by the Constitution so that the President, the VPs, as well as the voters have a clear understanding about privileges and responsibilities of these offices. To serve this purpose a presidential system with sectoral vice presidency would be well equipped to satisfy ethnic groups and to help institutionalize cross-ethnic coalitions.

Sectoral vice presidency is the system where the first, second, and third VP offices are assigned to supervise or assist different sectors of government under the direct leadership of the President. For example, each VP would be assigned to supervise (and assist the President with) a constitutionally-defined sector of the government (e.g., security, foreign affairs, economics, etc.)

²²⁷ For more details, see Chapter Three, *supra*.

under the chairmanship of the President. Some presidential democracies have already adopted sectoral vice presidency with various level of authorities. The first of these countries is the oldest presidential democracy, the United States. In the United States, the VP is the President *Pro Tempore* of the Senate.²²⁸ Although U.S. VPs are not regularly involved—and at times not even welcomed—in the Senate’s business, they have the constitutional authority to preside over Senate meetings and even vote when the votes of the Senate are equally divided.²²⁹ U.S. VPs have used their votes of this kind on several occasions.²³⁰ The most recent case is the vote of VP Mike Pence in 2017 to confirm Betsy Devos as the Secretary of Education.²³¹

Similarly, Burundi, Iran and Bolivia have adopted sectoral vice presidencies. Article 122 of the Constitution of Burundi provides, “In the exercise of his functions, the President of the Republic is assisted by two Vice Presidents. The First Vice President assures the coordination of the political and administrative domain. The Second Vice President assures the coordination of the economic and social domain.”²³² Likewise, Article 124 of Iran’s Constitution states, “With the approval of the President, the first deputy of the President shall be vested with the responsibilities of administering the affairs of the Council of Ministers and coordination of

²²⁸ MARIE D. NATOLI, *AMERICAN PRINCE, AMERICAN PAPAUPER: THE CONTEMPORARY VICE PRESIDENCY IN PERSPECTIVE*, 8 (1985).

²²⁹ *Id.* at 8-9; JULES WITCOVER, *RULING THE DICE ON THE VICE PRESIDENCY: FROM ADAMS AND JEFFERSON TO TRUMAN AND QUAYLE* 15 (1992).

²³⁰ *Id.*

²³¹ Betsy Devos Confirmed as the Secretary of Education, Pence Breaks Tie, N.Y. TIMES, Feb. 7, 2017, <https://www.nytimes.com/2017/02/07/us/politics/betsy-devos-education-secretary-confirmed.html>.

²³² LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] Feb. 2005, art. 122 https://www.constituteproject.org/constitution/Burundi_2005.pdf.

functions of other deputies.”²³³ In its Constitution of 2009, Bolivia has given the authority to its VP to preside over its plurinational assembly, and to engage in formulation of foreign policy.²³⁴

A system of sectoral vice presidency, where the VPs are second to the President but supervise the relevant administrations, is likely to be more publicly acceptable and politically consociational in Afghanistan. This system compels candidates to choose not just the popular VPs but also the ones whose policy views are closest to them in those particular sectors. Winning elections would no longer be the only reason behind choosing VP nominees but the candidates would think how they could run an administration with those nominees. Therefore, sectoral vice presidency encourages the formation of coalitions based on policies and agendas, which is important for the survival of coalitions. In addition, this system may encourage policy-based competition, as the issue of the competency of the VP nominees for specific sectors will be raised by different stakeholders and contenders.

3. Heirs Apparent

Article 60 of the Afghan Constitution provides that the First Vice President takes over the office of the President “in case of absence, resignation or death.”²³⁵ This raises several concerns. First, one reason for the adoption of a three-month limit on VPs taking over the vacant office of the President was the concern that the VP may attempt to assassinate the President.²³⁶ Second,

²³³ QANUN-I-ASSASI JUMHURI ISLAMI IRAN [THE CONSTITUTION OF ISLAMIC REPUBLIC OF IRAN] (1989) art. 124

²³⁴ CONSTITUCIÓN POLÍTICA DEL ESTADO [BOLIVIA’S CONSTITUTION OF (PLURINATIONAL) STATE] (Feb. 7, 2009), art. 153 (“I. The Vice President of the State shall preside over the Pluri-National Legislative Assembly.”) Art. 174 (“The attributes of the Vice President of the State, in addition to those established in this Constitution and the laws, are as follows: 2. To coordinate the relations between the Executive Organ, the Pluri-National Legislative Assembly, and the autonomous governments; 5. To participate jointly with the President of the State in the formulation of foreign policy, as well as to carry out diplomatic missions.”)

²³⁵ CONSTITUTION, art. 60, 67.

²³⁶ This concern was very real, especially at the beginning of democracy in Afghanistan.

the VPs are elected individuals and, therefore, like in most presidential democracies, they should be able to take over the office of the President until the end of the presidential term Third, since all VPs are elected, and more importantly their order does not necessarily indicate the proportion of their constituency support, ostensibly each deserves to become the President.

A proposal that effectively responds to all these concerns could involve prescribing a system in which when the office of the President becomes vacant, each of the first, second, and third VPs would become the President for one-third of the remainder of the presidential term. Such a provision would respond to all the concerns discussed here: first, there would be less concern that the President would become the target of an assassination plot by a VP.²³⁷ Second, the elected VPs would become the president, as is the case in almost all presidential democracies.

Third, since all VPs would be elected, they would all get to become the president in the case of a vacancy, except if the remainder of term were too limited. In cases, where the remainder term is too limited—a time frame that constitutional drafters would have to determine, assembly would have to vote for one of the VPs to take over the office. Additionally, the existence of such a provision could be satisfying for all ethnic groups, even though in practice a presidential vacancy rarely happens.

C. Restructuring Afghanistan's Political Regime (In Reference to Chapter Eight)

In its two short periods of democratization, Afghanistan has experienced three different political regimes: a parliamentary system, a presidential constitution, and a *de facto* semi-presidential system. In its first wave of democracy (1963-1973), Afghanistan adopted a

²³⁷ Some might suggest that it is possible that the three VPs plot against the president. However, the Chance of all three VPs agreeing to plot against the president is much lower than chance of a single VP to plot and execute.

parliamentary system in the Constitution of 1964.²³⁸ The parliamentary system, as well as the Constitution, lasted only for a decade, followed by communist regimes, civil war and Taliban. By the fall of Taliban in 2001, Afghanistan began to experience a presidential democracy, which was also adopted in the Constitution of 2004. However, since the presidential election of 2014, due to the resulting political crisis, the two front-running candidates decided to form a National Unity Government, in the form of a de facto semi-presidential system. Therefore, these experiences of Afghanistan can well be used to examine the role of alternative political systems in the institutionalization of cross-ethnic coalitions.

The issue with current legal and political discourse is that the politicians as well as scholars have only focused on alternatives to the presidential system rather than reforming the system. Chapter Eight revealed that the Afghan presidential model has had some weaknesses. However, failures of the system do not necessarily require adopting an alternative. More often than not, reforming the presidential system may be more feasible than switching to a parliamentary government.²³⁹ In addition to examining the alternative systems, this section explores the adaptations of the presidential system, ranging from small reforms to radical changes in the system.

1. Parliamentary System

As the proponents of the parliamentary system suggest, there are some merits to this system that current Afghan presidential system lacks. Generally, coalitions tend to be more binding in parliamentary systems than in the presidential systems. This happens because in parliamentary systems, the survival of a government is bound by the coalitions holding

²³⁸ QĀNOON-I ASSĀSI-YE AFGHANISTAN [CONSTITUTION OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] NO. 12, 1343 [1964], art. 65, 66, 67, 89, <http://www.afghanpaper.com/info/ghavanin/ghanonasasi1343.htm>.

²³⁹ MAINWARING & SHUGART, *supra* note 16, at 469.

together.²⁴⁰ In presidential systems, a president does not necessarily need his or her coalition to stay in office.²⁴¹ Neither a coalition needs to stick with an unpopular president after elections.²⁴² Additionally, in Afghanistan, like in most other presidential systems with fragmented parties, presidents tend to begin with the support of absolute majority of the parliament but lose their support dramatically later on.²⁴³ In a parliamentary system, losing the endorsement of a majority in parliament would lead to the oust of the prime minister (PM) from office.

A parliamentary system in Afghanistan may require the support of more than one ethnic group, in the same way that the current presidential elections require. This effect would likely occur because in the parliamentary system, the formation and survival of the executive is based on the approval of majority of the assembly. Therefore, if ethnic groups are proportionally represented in the assembly, one ethnic representatives cannot alone form a majority coalition.

There are some issues with the parliamentary system that need to be addressed here as well. First, unless the constitution explicitly requires it, parliamentary systems are not conducive to consociational governments. Certainly, parliamentary systems encourage coalitions of more than one ethnic group; however, a coalition of more than one ethnic group is not necessarily inclusive. The simple reason is that parliamentary systems have the tendency for post-electoral coalitions,²⁴⁴ especially with electoral systems like SNTV.²⁴⁵ Since after the elections parties and

²⁴⁰ MAINWARING & SHUGART,, *supra* note 64, at 396-397; Mainwaring, *supra* note 16, at 466; LIJPHART, *supra* note 4; SCOTT MAINWARING, *PRESIDENTIALISM, MULTIPARTISM, AND DEMOCRACY: THE DIFFICULT COMBINATION* (1993).

²⁴¹ MAINWARING & SHUGART,, *supra* note 16, at 466.

²⁴² *Id.*

²⁴³ MAINWARING & SHUGART, *supra* note 64, at 46.

²⁴⁴ Mainwaring & Shugart, *supra* note 16, at 466.

²⁴⁵ The post-electoral tendencies of parliamentary regimes can be counterbalanced by some electoral systems. *See* Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 19/5 PARTY POLITICS 735, 740 (2011); Kaare Strgm, Ian Budge,

elites have perfect information about winning seats, and so about the viability of any coalitions, they tend to form minimum winning coalitions.²⁴⁶ Indeed, many African countries—e.g., Nigeria, Congo, Sierra Leone, and Togo—experienced a breakdown of their democracies because when an ethnic-based coalition or party wins the majority, leaving others in perpetual oppositions.²⁴⁷ In much of Africa, a single ethnic party dominated the parliament, replacing ruling multiethnic parties who lost their clientele.²⁴⁸ Experiencing civil war due to takeover of its parliament by one ethnic group, Nigeria decided to abandon the parliamentary system in favor of presidential system.²⁴⁹

A change in the political system to a parliamentary regime may give rise to a similar risk in Afghanistan, where a minimal coalition of two ethnic parties may result in total marginalization of other ethnic groups. Given the current composition of Afghan legislature, a parliamentary system would have led to a number of possible minimal coalitions in the government.

Table V-7. illustrates the possibility of minimal, oversized, and grand coalitions, considering the current composition of *Wolesi Jirga*.²⁵⁰

| Possible Coalitions in the Parliament of 2010-2016 | | |
|---|---------------------|--------------------------|
| Coalition | Coalition Size by % | Coalition Size by Groups |
| Pashtun, Uzbek | 51.985 | Minimum |
| Tajik, Hazara, Uzbek | 52.4 | Minimum |
| Pashtun, Hazara | 62.42 | Minimum |
| Pashtun, Tajik | 65.72 | Minimum |
| Pashtun, Hazara, Uzbek | 71.83 | Oversized |
| Pashtun, Tajik, Uzbek | 75.13 | Oversized |
| Pashtun, Tajik, Hazara | 85.565 | Oversized |
| Pashtun, Tajik, Hazara, Uzbek | 94.975 | Grand |

Michael J. Laver, *Constraints on Cabinet Formation in Parliamentary Democracies*, 38/2 AM. J. POL. SCI. 303-335, 315-316 (May 1994).

²⁴⁶ WILLIAM H. RIKER, *THE THEORY OF POLITICAL COALITIONS* 47 (1962).

²⁴⁷ HOROWITZ, *supra* note 109, 205.

²⁴⁸ *Id.* at 247.

²⁴⁹ *Id.* at 210.

²⁵⁰ *Id.*

Under post-election situations, minimal winning coalitions are more desirable because the fewer the coalition partners, the fewer the seats they share with others.²⁵¹ Furthermore, minimal coalitions are more coherent in terms of policy and organization since the principle in coalition making is to choose partners who are closest in policy preferences in order to implement policies and win the next election.²⁵² Minimal winning coalitions (exclusionary coalitions) can also be a response to heated ethnic tension (or dealing) during the election, which may be normal in conflict-prone societies.

Interestingly, the assemblies in the current regime of Afghanistan have shown some tendencies towards excluding some ethnic groups from the executive. This tendency surfaced after 2009 and 2014 elections, when the Assembly had to confirm presidential appointees for cabinet positions. After the presidential election of 2009, Pashtun and Tajik parliamentarians jointly and persistently casted votes of no confidence for Hazara and Uzbek nominees for cabinet seats. Their vote of no confidence enraged Hazara and Uzbek representatives in the parliament.²⁵³ Hazara and Uzbek MPs boycotted the Assembly sessions for months. Mohaqiq and Dostum, Hazara and Uzbek leaders, also threatened that they would withdraw all their support from the government if their ethnic nominees were not approved by the Assembly.²⁵⁴ If anything can be learned from this case, it is that minimal and exclusive coalitions would be very likely under a parliamentary system in Afghanistan, and it can lead to chaos and political destabilization.²⁵⁵

²⁵¹ G. BINGHAM POWELL, JR., CONTEMPORARY DEMOCRACIES: PARTICIPATION, STABILITY, AND VIOLENCE 134 (1982).

²⁵² *Id.*

²⁵³ *Afghanistan Parliamentary Assistance Project*, LEGISLATIVE NEWSLETTER (Jan. 18, 2010), http://www.cid.suny.edu/APAP_Newsletter/2010/APAP_Newsletter_January.18.10.pdf.

²⁵⁴ *Id.*

²⁵⁵ RIKER, *supra* note 246 at 48, 53.

Additionally, in circumstances where parliamentary parties are fragmented or when parties are too polarized, government formation is likely to take months and even years. For example, in Iraq, after the election of 2010 it took 8 months for the parliament to form a government.²⁵⁶ In the same year in Belgium, government formation took an astounding 18 months in the assembly.²⁵⁷ The Assembly of Afghanistan had a similar experience in 2010 when it had to elect the Speaker of the House. Repeated elections for Speaker in the WJ failed for several months until the elites decided to set the election aside to compromise on the Speaker.²⁵⁸ The result of several weeks of talking finally resulted in the selection of an Uzbek elite to chair the House.²⁵⁹ This interesting experience of Afghan Assembly indicates that a parliamentary system would have led to months and years of political deadlock at times of government formation. Since it is very unlikely that larger groups would not have approved the governmentship of an Uzbek the way they approved the Speaker of Wolesi Jirga, the political crisis would have been much larger.

Furthermore, there is no consensus over whether a parliamentary system automatically strengthens parties or coalitions. For example, Giovanni Sartori has argued that a stable parliamentary system needs to be preceded by party development.²⁶⁰ He has suggested that, “[p]arliamentary democracy cannot perform...unless it is served by parliamentary fit parties, that is to say, parties that have been socialized into being relatively cohesive and/or disciplined

²⁵⁶ Sona N. Golder, *Government Formation and Cabinets*, 8 (Emerging Trends in the Social and Behavioral Sciences, Presentation Paper 2015).

²⁵⁷ *Id.*

²⁵⁸ *Abdul Rauf Ibrahim Ba Hais Rayees Wolesi Jirga Intekhab Shud [Abdul Rauf Ibrahim, Elected As the Speaker of Wolesi Jirga]*, DEUTSCH XXL, Feb. 27, 2011, <http://p.dw.com/p/R4ea>.

²⁵⁹ *Id.*

²⁶⁰ GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING* 94 (1997) (“Indeed, disciplined parties are a necessary condition for the working of parliamentary systems.”)

bodies.”²⁶¹ Even Linz, who advocates a parliamentary system, concurs with Donald Horowitz that parliamentary systems with fragmented, ethnic parties may fail.²⁶² Indeed, Afghanistan’s experience with a parliamentary system during the Decade of Democracy seems to confirm this effect.

Ideologically, parties were more formidable in Afghanistan’s Decade of Democracy than are the proto-parties of today.²⁶³ Unlike today’s parties, parties of the 1960s and 70s could more easily be classified as left or right, based on their ideological and political approaches to government and economics. Moreover, Afghanistan’s right-wing parties, comprising Islamist-traditionalists, were pro-king and pro-government, while leftist parties functioned as opposition groups inside and outside the Assembly. Almost all political parties were cross-ethnic and all of them emphasized equal rights and equal opportunities to all citizens regardless of ethnicity.²⁶⁴ Although the government refused to pass a party law throughout the decade, based on Article 32 of the 1964 Afghan Constitution parties were allowed to engage in political activities so they began recruiting members, publishing articles and even holding demonstrations.²⁶⁵ Even so, only a handful of party members were able to win seats in the elections of 1965 and 1969. Candidates tended to disassociate from their parties during the elections as party-affiliates do today. The

²⁶¹ *Id.*

²⁶² LIJPHART, *supra* note 99, at 212 (“The Nigerian system represents a unique method of presidential multi-ethnic ones, but I doubt very much that one could justify it in more homogeneous societies, even in the federal states of Latin America.”)

²⁶³ See Faridullah Bezhan, *The Emergence of Political Parties and Political Dynamics in Afghanistan, 1964–73*, IRANIAN STUDIES 924 (2013)

<http://www.tandfonline.com/doi/abs/10.1080/00210862.2013.810074>.

²⁶⁴ *Id.*

²⁶⁵ CONSTITUTION art. 32 (“Afghan citizens have the right to form political parties, in accordance with the terms of the law, provided that: (1) The aims and activities of the party and the ideas on which the organization is based are not opposed to the values embodied in this Constitution. (2) The organization and financial resources of the party are open. A party formed in accordance with the provision of the law cannot be dissolved without due process of the law and the order of the Supreme Court.”)

result of the fragmented, and party-less assemblies was a decade of unstable governments.²⁶⁶ The governments would hastily rise and fall based on the confidence of Wolesi Jirga. Under the parliamentary system, Afghanistan experienced five governments in less than a decade; however, under the current presidential system Afghanistan has experienced two relatively stable governments in the first ten years of its current presidential system.²⁶⁷

Table V-8. shows the duration of each government under a parliamentary system during Afghanistan's Decade of Democracy (1964-1973)²⁶⁸

| Prime Ministers | Beginning | End | Duration by Days |
|---|-------------|-------------|------------------|
| Dr. Mohammad Yusef | 25-Oct-1965 | 29-Oct-1965 | 4 |
| Mohammad Hashim Maiwandwal | 2-Nov-1965 | 12-Oct-1967 | 709 |
| Nor Mohd. Etemadi (1 st Round) | 15-Nov-1967 | 2-Dec-1969 | 747 |
| Nor Mohd. Etemadi (2 nd Round) | 2-Dec-1969 | 16-May-1971 | 562 |
| Dr. Abdul Zahir | 26-Jul-1971 | | 389 |
| Average by Days | | | 484.2 |
| Average by Years | | | 1.33 |

As Table V-8 shows, on average, parliamentary executives lasted for less than a year and half each in Decade of Democracy. In fact, the first government could sustain itself for only four days.²⁶⁹ Although most governments resigned for different reasons and excuses, the historical records indicate that they resigned in anticipation of receiving vote of no-confidence in the Wolesi Jirga.²⁷⁰ Indeed most prime ministers recognized the importance of having a parliamentary alliance to keep their governments stable, and they even formed parties such as *Wahdat Mili* (National Unity Party) and *Afghanistan-i-Mutaraqi Party* (Progressive Afghanistan Party), however, the unaccountable King dismantled their efforts repeatedly.²⁷¹

²⁶⁶ BARFIELD, *supra* note 149.

²⁶⁷ See KUSHKAKI, *supra* note 127, at 32-110.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Marvin G. Weinbaum, *Afghanistan: Nonparty Parliamentary Democracy*, 7/1 J. DEVELOPING AREAS 57-74 (Oct. 1972).

²⁷¹ Bezhan, *supra* note 263.

To draw a conclusion, since today's Afghan proto-parties are as fragmented as the parties in the Decade of Democracy, and since no cross-ethnic parliamentary coalitions have developed, it can be safely argued that the adoption of a parliamentary system may lead to unstable governments and chaotic society. Therefore, a parliamentary system does not seem to be a better alternative to the presidential system in Afghanistan.

2. Semi-Presidential or Dual Executive System?

In Afghanistan, the common perception is that non-Pashtuns have little chance to gain the highest executive seat in the presidential system.²⁷² It is assumed that if the post of prime minister is created, it will reduce the power of the president and allow other ethnic groups to share the power at the highest executive office in Afghanistan.²⁷³ It is not surprising that most Tajik, Hazara, and Uzbek elites support a semi-presidential system while most Pashtun elites resist changing the presidential system.²⁷⁴ But would a semi-presidential system allow non-Pashtuns to win the prime minister office?

Under a semi-presidential system, it is likely that a non-Pashtun candidate would become the MP. However, since the prime-minister is typically elected by the legislature under a semi-presidential system,²⁷⁵ it is also likely that the prime minister would be from the same ethnic group as the President. Therefore, there is no guarantee that the president and the prime minister would be elected from two different ethnic groups. Perhaps, the election of the WJ Speaker in the current regime can better illustrate how a prime-minister would be elected under a semi-presidential system.

²⁷² SONALI KOHATKAR & JAMES INGALLS, BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF SILENCE 142 (2006).

²⁷³ Barnett R. Rubin, *Crafting a Constitution for Afghanistan*, 15/3 J. DEM. 5, 11(2004); KATZMAN, *supra* note 3, at 7.

²⁷⁴ KOHATKAR & INGALLS, *supra* note 272, at 143.

²⁷⁵ MAINWARING & SHUGART, *supra* note 64, at 16.

After first parliamentary election in 2005, Yunis Qanooni became the Speaker of the House by a difference of only five votes from Rasul Sayyaf.²⁷⁶ After two rounds of elections, Qanooni, a Tajik elite, won 122 votes while Sayyaf, a Pashtun candidate, won 117 votes.²⁷⁷ Had Sayyaf won three of the five votes, Afghanistan would have a Pashtun President and a Pashtun Speaker of the House. After the 2010, parliamentary election, the WJ struggled over a month and half to elect a Speaker.²⁷⁸ Again Qanooni and Sayyaf were the leading candidates.²⁷⁹ Four rounds of elections were held but no candidate won the required votes.²⁸⁰ Finding that they were unable to elect a Speaker, the MP's compromised by selecting a Speaker from the Uzbek community outside of a proper electoral procedure as provided for by the Rules of Procedure.²⁸¹ Had this been an election for prime-ministership, WJ members would have been less likely to compromise on a Prime Minister from an Uzbek minority.²⁸² On the other hand, the Pashtun and Tajik candidates had equal opportunity to win the election. Therefore, including a post of Prime Minister in the political system does not ensure that a non-Pashtun candidate share the second highest office with Pashtuns.

An alternative to an elected prime-minister is one appointed by the President. In fact, the first draft of the Afghan Constitution provided for a prime minister appointed by the President.²⁸³

²⁷⁶ Ramin Anwari, *Yunis Qanooni Rayes Majlis Numayendagan Afghanistan Shud [Yunis Qanooni Became the Speaker of the Wolesi Jirga]*, BBC PERSIAN, Dec. 21, 2005, http://www.bbc.com/persian/afghanistan/story/2005/12/051221_s-qanooni-lowerhouse.shtml

²⁷⁷ *Id.*

²⁷⁸ DEUTSCH XXL, *supra* note 258.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Uzbeks are a relatively smaller group than Pashtuns, Tajiks and Hazaras. *See* CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: AFGHANISTAN, https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_af.pdf.

²⁸³ MOHAMMAD ASHRAF RASULI, A REVIEW OF THE CONSTITUTIONS OF AFGHANISTAN [MORURI BAR QAWANIN-E-ASASI AFGHANISTAN] 183-4 (2009).

In one proposal the prime-minister had to be approved by the WJ and in another he or she had not.²⁸⁴ Given that a presidential candidate needs cross-ethnic votes, it is likely that viable presidential candidates appoint their PMs from different ethnic groups in exchange for their endorsement during elections. Indeed, this system is to some extent similar to the current National Unity Government (NUG) in Afghanistan.

Based on an agreement, which eventually led to the establishment of NUG, a post of Chief Executive Officer (CEO) was created.²⁸⁵ The front-runner of the second round became the president and the runner up became CEO.²⁸⁶ Procedurally the President appointed the CEO,²⁸⁷ although based on the agreement, each office had the right to appoint half of the cabinet members.²⁸⁸

Whether a political system with an appointed prime minister (or CEO) is a *Sedarati* (semi-presidential system) is subject to dispute. In fact, according to Mainwaring, in a real semi-presidential system “the cabinet is responsible to parliament and not the president and cannot be resolved by president.”²⁸⁹ Therefore, what was proposed in the draft constitution cannot be considered a semi-presidential system. As such, I refer to it as a *dual executive system* rather than a semi-presidential system.

Such a political system has proven problematic for several reasons. The first and most significant of all issues is the problem of cohabitation. Cohabitation is narrowly described as the

²⁸⁴ *Id.*

²⁸⁵ The Agreement, *supra* note 133, sec. B.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* sec. C

²⁸⁹ MAINWARING *supra* note 64, at 16.

situation where the president and the prime minister are from two opposing parties.²⁹⁰ Broadly, it is described as the situation where the president and the prime minister diverge on who is the legitimate source of constitutional authority.²⁹¹ By this definition, cohabitation does exist in the NUG. The president and the CEO are from two opposing coalitions. Additionally, after the establishment of the unity government, the president and the CEO have continuously made conflicting statements and challenged the constitutional authority of each other.²⁹² Particularly, CEO Abdullah Abdullah has long accused President Ghani of marginalizing him and making appointment decisions without his counsel.²⁹³ Once Abdullah angrily denounced Ghani as unfit to govern and warned against his unilateral decisions.²⁹⁴ In response, Ghani repeatedly claimed that constitutionally he had the sole authority as the President.²⁹⁵

Their confrontation and counter-challenges have led to political stalemate and halt of policy implementation.²⁹⁶ For example, it took the president and CEO over seven months to agree on cabinet nominees.²⁹⁷ Yet, their cabinet was not completed for almost two years until

²⁹⁰ Robert Elgie & Iain McMenamin, *Explaining the Onset of Cohabitation under Semi-Presidentialism*, POLITICAL STUDIES, 1-20, 1 (2001).

²⁹¹ *Id.*

²⁹² Frud Bezhan, *Crisis Looms as Clock Winds Down On Afghan 'Unity Government' Deal*, RADIO FREE EUROPE, Sep. 4, 2016, <https://www.rferl.org/a/afghanistan-crisis-looms-expiring-unity-government-deal/27966465.html>.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Ikhtelafat Miyan Ghani Wa Abdullah Subat Afghanistan Ra Mutazalzil Karda Ast [The Conflict Between Ghani and Abdullah Is Destablizing Afghanistan]*, SPUTNIK, Apr. 11, 2017, <https://sptnkne.ws/eyTD>.

²⁹⁶ Bezhan, *supra* note 292.

²⁹⁷ *Shanzda Wazir Jadid Kabina Afghanistan Sawgand Khordand [The New Sixteen Minister of Afghanistan Take the Oath of Allegiance]*, BBC PERSIAN, Apr. 27, 2015 http://www.bbc.com/persian/afghanistan/2015/04/150421_k03_afghan_cabinet_memebers_sowrn.

finally they confirmed an individual as the minister of defense.²⁹⁸ Given the conflict with the Taliban, appointing the minister of defense was indeed the most important appointment decision. A similar stalemate has existed with regard to the appointment of other administrative officials including governors, deputy ministers, and ambassadors.

The problem of cohabitation is not peculiar to Afghanistan's NUG. All political systems with dual executive offices tend to encounter cohabitation.²⁹⁹ In their article, *Explaining the Onset of Cohabitation under Semi-presidentialism*, Robert Elgie and Iain McMenamin describe cohabitation as "[o]ne of the most recognizable features of semi-presidentialism."³⁰⁰ France, which has been the original model of semi-presidentialism have also been known as a "cohabitation model."³⁰¹ Nonetheless, studies have indicated that cohabitation is more likely to happen in young democracies than in advanced democracies; meanwhile cohabitation is more damaging for vulnerable, younger democracies than in old ones.³⁰²

The problem of cohabitation stems from the fact that both the president and the prime minister tend to interpret constitutional provisions the way that enhances their own power vis-à-vis the other. The idea of adopting a dual executive system in Afghanistan would encourage Pashtuns to insist on more power for the president as much as it would encourage non-Pashtuns to insist on more power for the PM.

²⁹⁸ *Namzudan Wuzarat Dufa Wa Riyasat Amniat Mili Afghanistan Muarfi Shudand [The Nominees of the Ministry of Defense and National Security Council Were Introduced [to Wolesi Jirga]]*, BBC PERSIAN, May 5, 2016, http://www.bbc.com/persian/afghanistan/2016/05/160504_zs_ghani_introducing_defence_intelligence_heads.

²⁹⁹ Chun-Hao Chang, *Cohabitation In Semi-Presidential Countries*, 2/3 SOCIAL SCIENCES, 31-43 (2014).

³⁰⁰ Elgie, *supra* note 290.

³⁰¹ Chang, *supra* note 299 at 32.

³⁰² L. Kirschke, *Semi-presidentialism and the Perils of Power-Sharing in Neopatrimonial States*, 11/40 COMPARATIVE POLITICAL STUDIES, 1372-94 (2007); Robert Elgie, *supra* note 290 at 2.

An additional problem with the dual executive is the fact that it does not include all major groups. This will raise concern among Hazaras and Uzbeks, who would then demand some guaranteed highest offices for themselves. Indeed, advocating for this kind of power-sharing in his book, *Afghanistan and A Modern State*, Abdul Ali Mohammadi proposed that a political system should be designed where the Pashtuns get to elect the President and Tajiks the Speaker of the House.³⁰³ Hazaras should elect the Chief Justice of the Supreme Court and Uzbeks the only VP of the President.³⁰⁴ This proposal resembles the consociational model of government in Lebanon and Iraq.

In Lebanon, a consociational system was arranged in 1943, under which the presidency was allocated to a Christian Maronite, the premiership to a Sunni, and the Speakership to a Shi'ite.³⁰⁵ In 2005, different Iraqi communal groups reached an agreement, the Iraqi National Pact, reserving the presidency for the Kurds, the premiership to a Shi'ite, and the Speakership to a Sunni.³⁰⁶ A number of scholars propose a presidential system like the one in Lebanon and Iraq.³⁰⁷

There is some value to this power-sharing model. First, this system arranges the most consociational form of government that Afghans can ever have. All major ethnic groups are guaranteed a special high office in the state. Additionally, this system reduces the likelihood of ethnic conflict during elections to a significant degree since ethnic groups will not be competing

³⁰³ MOHAMMADI, *supra* note 223 at 375.

³⁰⁴ *Id.*

³⁰⁵ Imad Salamey, *Failing Consociationalism In Lebanon And Integrative Options*, 2/4 INTERNATIONAL JOURNAL OF PEACE STUDIES, 83-105, 83 (2009).

³⁰⁶ Eduardo Abu Ltaif, *The Limitations of the Consociational Arrangements in Iraq*, 38 ETHNOPOLITICS PAPERS, 6-7 (2015).

³⁰⁷ e.g., *see* MOHAMMADI, *supra* note 223 at 316-7.

for the same office. By the same token, ethno-political elites are likely to form stable coalitions based on policy rather than on winning elections.

Nonetheless, there are also some shortcomings with this type of constitutional arrangement. First, such an arrangement would not likely be appreciated by the public, given the dominance of centripetal tendencies in Afghanistan. Second, such a constitutional arrangement effectively leads to the ranking of ethnic groups to first, second, and third, based on which ethnic group is provided what office. It is also an exclusive arrangement, where aspirants of other groups cannot compete for an office that is assigned to a specific group. Additionally, this system leads to polarization when an extremist individual from an ethnic group attains any of the offices. If one government institution is ethnicized, so will other government institutions.³⁰⁸ As a result, instead of bridging the communities, the government will be divided among different ethnic groups.

This model of power-sharing government failed in both Lebanon and Iraq. In Lebanon, it led to immobility in the state where the state was unable to implement its policies.³⁰⁹ More importantly, the officials were unable to solve minor ethnic tensions given the rise and importance of chauvinism due to divisions among government offices.³¹⁰ In Iraq, ethnic distribution of the highest offices did not lead to proportional representation of groups across government institutions.³¹¹ The absence of equal distribution of power at the lower level was due to political extremism of office holders. For example, by inciting fear among Shi'ites against the Iraqia Party, dominated mostly by Sunnis, Maliki gained their support to become the Prime

³⁰⁸ HOROWITZ, *supra* note 5, 302-305 (If one ethnic group moves towards the extreme, other ethnic groups will follow.)

³⁰⁹ Malcolm Kerr, *Political Decision Making in a Confessional Democracy*, in *POLITICS IN LEBANON* (Leonard Binder, ed., 1966) p. 187-212.

³¹⁰ Salamey, *supra* note 305, 85-6.

³¹¹ Ltaif, *supra* note 306, 7-9.

Minister.³¹² After becoming the Prime-Minister, Maliki retreated from his commitment to other groups and dropped their nominees from the cabinet list.³¹³ This led to political crisis and eventually to destabilization of the state.

Therefore, as discussed here as well as in Chapter Nine, any explicit distribution of power based on ethnicity is an ethnicizing arrangement. Such ethnicizing laws and arrangements tend to favor ethnic extremists, deepen ethnic division, and sustain ethnic consciousness as long as the law exists—and sometimes beyond. Such a law tends to switch the political culture from political centripetalism to centrifugalism.

3. Alternative Presidential Systems: Collegial and Proportional Presidentialism

Linz criticizes presidential elections as zero-sum games, where the winner wins the office and losers have to step aside with empty hands.³¹⁴ This effect of presidential elections becomes particularly problematic when candidates from a single group win the election every time.³¹⁵ This leads to frustrations in other ethnic groups,³¹⁶ which in turn hinders *depoliticization* of ethnic identities.³¹⁷

Even with just three past presidential elections,³¹⁸ frustrations have already grown among different ethnic groups in Afghanistan as Pashtun candidates have consistently won the office.³¹⁹ These concerns have been reflected in the writings of Kenneth Katzman, who posited that the

³¹² *Id.* at 7.

³¹³ *Id.*

³¹⁴ Mainwaring, *supra* note 16, at 450.

³¹⁵ *See id.*

³¹⁶ KOHATKAR & INGALLS, *supra* note 272, at 142.

³¹⁷ For understanding the concept and process of politicization and depoliticization as well as participation and de-participation of ethnic groups *refer to* HEATHER STOLL, CHANGING SOCIETIES, CHANGING PARTY SYSTEMS 23, 37–45 (2013).

³¹⁸ In fact, four presidential elections have been held since 2001. The first election was held in an *Emergency Loya Jirga* for choosing the head of a temporary government. This election has not been studied in article since it was not a direct popular election.

³¹⁹ KOHATKAR & INGALLS, *supra* note 272, at 142.

“electoral system...strongly favors the likelihood that the president will always be an ethnic Pashtun.”³²⁰ Indeed, one of the main reasons the Northern Alliance³²¹ proposed a parliamentary and a semi-presidential system instead of a presidential constitution³²² is that smaller ethnic groups wanted to make the highest executive office accessible to their candidates.³²³ Constitution designers in different countries have tried different paths to ensure that major ethnic groups are entrusted with the government. For example, Switzerland’s Constitution introduced *collegial presidentialism*,³²⁴ which is a federal council of seven members where the presidency is rotated annually among its members.³²⁵ This collegial executive was created to reflect the socio-political heterogeneity of Switzerland at the highest level of government.³²⁶ A similar system was tried twice in Uruguay but did not work.³²⁷

³²⁰ KATZMAN, *supra* note 3, at 7.

³²¹ The Northern Alliance consisted mainly of Tajik, Hazara, and Uzbeks parties.

³²² See MIGRATION REVIEW TRIBUNAL, BACKGROUND PAPER: AFGHANISTAN: POLITICAL PARTIES AND INSURGENT GROUPS 2001-2013, 5 (Mar. 7, 2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf; INTERNATIONAL COUNCIL ON SECURITY AND DEVELOPMENT, DECISION POINT 2009: AFGHANISTAN’S PRESIDENTIAL ELECTION: POWER TO THE PEOPLE, OR THE POWERFUL? (2009), http://www.nps.edu/programs/ccs/Elections/ICOS_elections.pdf; Gran Hewad, *The New National Front: A Dark Horse Returns with Three Riders*, AFGHANISTAN ANALYST NETWORK 1 (Dec. 2011) <https://www.afghanistan-analysts.org/the-new-national-front-a-dark-horse-returns-with-three-riders/>; JACKSON KEITH, INSTITUTE FOR THE STUDY OF WAR, BACKGROUNDER: THE FORMATION OF ELECTORAL ALLIANCES IN AFGHAN POLITICS IN 2014, 5 (2013), <http://www.understandingwar.org/>.

³²³ *Id.*; see also Hether K. Gerken, *Keynote Address: What Election Law Has to Say About Constitutional Law*, 44 IND. L. REV. 9 (2010) (“It is not difficult to imagine why... minorities would desire a chance to be in charge for reasons that have nothing to do with political outcomes or the distribution of tangible goods.”).

³²⁴ David Altman, *Collegiate Executives and Direct Democracy in Switzerland and Uruguay: Similar Institutions, Opposite Political Goals, Distinct Results*, 14 SWISS POL. SCI. REV. 483, 484 (2008).

³²⁵ See BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 174–176 (Switz.).

³²⁶ See ALTMAN, *supra* note 324, 484; AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION*, 31 (1977).

³²⁷ See LIJPHART, *supra* note 326, at 212–13.

An alternative presidential system is what I refer to as a *proportional presidency*. A proportional presidency enables the top two finishers to share the same presidential term, although with their own administrations in a sequence. I call it *proportional presidency* since the span of each presidents' administration must be proportional to the votes s/he receives. In order to have an optimal outcome, this system must have certain characteristics. First, under this system, one presidential term should be at least eight years to allow each administration to have a life span of at least three years. Second, a presidential term should be equal to two four-year parliamentary terms, allowing concurrent elections after each presidential term. Third, the life span of each administration should be proportional to the votes each president receives, provided that each administration should have a duration of at least three years. Fourth, if the vote share of the second finisher falls short of providing him or her a three-year term, the first finisher gets to be the president for a full parliamentary term (four years), after which another concurrent election should be held. Fifth, the president with a higher percentage of vote runs the first administration and the one with lower percentage of votes runs the second.

With these characteristics, a proportional presidency would have led to a single round of elections in 2014 in Afghanistan. Under an eight-year presidential term, Abdullah Abdullah would have taken the office for 4.7 years, proportional to his forty-five percent votes. Subsequently, Ashraf Ghani would have been the president for 3.3 years (see Table V-9). Electoral fraud and ethnic tension would have been less likely since all stakeholders would have been sure about the presidency of their candidates.

Table V-9. shows the duration of Abdullah and Ghani's presidencies (in accordance with their votes) under an eight-year proportional presidency model.

| Proportional Presidential Under an Eight-Year Term | | |
|---|-------|-----------------|
| Candidates | Votes | Years in Office |
| Dr. Abdullah | 45% | 4.7 years |
| Dr. Ghani | 31% | 3.3 years |

The proportional presidency I propose here is different from the *collegial presidentialism* seen in countries like Switzerland³²⁸ In Switzerland, there is a council of seven-members who rotationally lead the country as the president every year.³²⁹ Proportionality in collegial presidentialism indicates that the number of the presidents is proportional to the social cleavages and respective political parties.³³⁰ In proportional presidency, however, proportionality determines the longevity of each administration by the share of votes that each president wins.

Proportional presidency is also different from co-presidency, which was implemented to some extent in Cyprus (1960-1963).³³¹ Under a co-presidency, as proposed by Matthew Shugart and John Carey, the president and vice president are elected on the same ticket by voters.³³² They form the same administration, although they represent different ethnic groups and clearly have equal powers.³³³ Proportional presidency, however, suggests separate administrations on the basis of vote shares of two presidential candidates who have their own vice president nominees. In this way, a proportional presidency avoids the *cohabitation*³³⁴ that exists in co-presidency, as Shugart and Carey willingly admit.³³⁵

³²⁸ SHUGART & CAREY, *supra* note 27, at 96.

³²⁹ LIJPHART, *supra* note 326, at 76.

³³⁰ See WOLF LINDER & ISABELLE STEFFEN, FORUM OF FEDERATION, SWISS CONFEDERATION 7 (2006), <http://www.thomasfleiner.ch/files/categories/IntensivkursII/Switzerlandg3.pdf>.

³³¹ SHUGART & CAREY, *supra* note 27, at 99–100.

³³² However, in Cyprus, the president and vice president were elected separately and by different constituents. See SHUGART & CAREY, *supra* note 27, at 99.

³³³ *Id.* at 99–100, 103–105.

³³⁴ Cohabitation refers to situation where a political confrontation occurs between the president and prime minister and/or parliament. See Jayadeva Uyangoda, *The Dynamics of Coalition Politics and Democracy in Sri Lanka*, in COALITION POLITICS AND DEMOCRATIC INSTITUTIONALIZATION IN ASIA 211 (E. Sridharan eds., 2012); TERRENCE E. COOK, NESTED POLITICAL COALITIONS: NATIONS, REGIME, PROGRAM, CABINET 166 (2002).

³³⁵ SHUGART & CAREY, *supra* note 27, at 104.

Proportional presidency has some strengths and weaknesses, like the other alternatives discussed here.³³⁶ The major advantage of proportional presidency is the fact that it properly responds to the frustration of ethnic groups by allowing their candidates to possibly run an administration in different presidential terms. Knowing their candidates can win elections, voters have little incentive to stay in their ethnic box and elites have little justification to mobilize their ethnic groups.³³⁷ However, this advantage does not equally apply to all ethnic groups; for instance, Hazaras, Uzbeks, and other minorities still have little chance to win elections.³³⁸

One criticism of this system would be the discontinuity of administrations. An incumbent coalition is eventually replaced by an opposition coalition, which may undo all of (or most of) its policies. In addition, a concurrent election may help one administration obtain a majority in the parliament, but not the other. Therefore, political deadlock is always a possibility under this system.

A possible solution to this problem could be a slate-proportional presidency, where each coalition would introduce a slate of two presidential candidates rather than a single candidate. In this type of system, the voters would first vote for a slate of candidates and then for individual candidates within each slate. This way, although candidates' votes would determine the length of their presidencies, both presidents would be from the same coalition. Since both presidents would presumably follow the same political agenda, there would be no need for the minimum

³³⁶ OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORG. FOR SECURITY AND CO-OPERATION IN EUROPE, GUIDELINES FOR REVIEWING A LEGAL FRAMEWORK FOR ELECTIONS 14 (Jan. 2001), <http://www.osce.org/odihr/elections/13960?download=true>.

³³⁷ T. Clark Durant & Michael Weintraub, *An Institutional Solution for Ethnic Patronage Politics*, 26 JOURNAL OF THEORETICAL POLITICS 59 (2014) (“insofar as a citizen expects to spend some time “in” and some time “out,” then it is easier to come to a time-consistent consensus to create a socially productive scope of office.”)

³³⁸ Sven Gunnar Simonsen, *Ethnicising Afghanistan? Inclusion and Exclusion in Post-Bonn Institution Building*, 25 THIRD WORLD QUARTERLY 707, 714 (2006) (“In a deeply divided society it is difficult for someone from a small group to be elected president.”)

threshold of three years of the presidency for the second president. In fact, the presidential term could be reduced to five years.

Including two VPs in the slate would allow each presidential ticket to represent all four large ethnic groups. Allowing the two vice presidents to remain in the office for a full presidential term, regardless of president alternations, would have three positive outcomes. First, it would help with the continuity of policy implementation when the new president came to office. Second, the supporters of vice presidents would likely cast merit-based votes when their vice president candidates were members of the slate rather than nominees of individual candidates. Third, the ethnic groups represented by the VPs would be satisfied with the fact that although their representatives in the executive do not have as much power as the presidents, their terms in office would exceed that of the presidents.

A somewhat similar experience to slate-proportional presidency can be seen in Mauritius. In this country, one executive term was divided equally between two prime ministers, although through an agreement between the coalition partners rather than through some constitutional provisions.³³⁹ Thanks to this agreement, for the first time in Mauritius, an elite from a minority group—a non-Hindu—was able to become the prime minister.³⁴⁰ Colombia is another country that followed a similar approach. In 1958, in order to put an end to the civil war, the two dominant parties of Colombia agreed on a consociational form of government.³⁴¹ Under this consociational arrangement, they rotated the presidency every four years and split seats in the

³³⁹ DENIS KADIMA & ROUKAYA KASENALLY, *The Formation, Collapse and Revival of Political Party Coalitions in Mauritius: Ethnic Logic and Calculation at Play*, in *The Politics of Party Coalitions in Africa* 82 (Denis Kadima ed., 2006).

³⁴⁰ *Id.*

³⁴¹ AREND LIJPHART, *THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE* 29–30 (2008).

Congress, as well as other government agencies, evenly for over sixteen years.³⁴² Nonetheless, one major difference between these arrangements and the slate-proportional presidency is that the latter is a constitutional design and not a temporary arrangement between rival parties. In effect, the latter is likely to generate incentives for long-lasting coalitions.

4. Taming the President

As explained in Chapter Eight, Afghan presidents have strong legislative powers. Studies have indicated that the presidents with fewer legislative powers are more prone to parliamentary coalition-making than the presidents with more legislative powers.³⁴³ Managing this issue would require amending the Constitution and reducing or abolishing some legislative powers of the President. For instance, Afghan presidents have item veto power, which is not common in presidential democracies. A study by Shugart and Mainwaring indicates that among 23 Latin American countries, 15 constitutions do not provide the president with item vetoes. Additionally, of the 12 countries analyzed in the following Table V-10, the presidents of half do not have item vetoes. Item veto provides a president with leverage over the assembly, enabling the president to keep his or her favored items in the law while removing the unfavorable items without needing

³⁴² *Id.*; Scott Mainwaring, *Presidentialism, Multiparty Systems, and Democracy: The Difficult Equation 7* (Kellogg Institute, Working Paper No. 144, 1990).

³⁴³ Mariana Llanos, *Explaining Coalition Performance in Presidential Systems: The Importance of (a Parliamentary-style) Coalition Management*, 12-13 (European Consortium of Political Research, Presentation Paper, 2006) (“In particular, the organisation of the legislative work (centralised or decentralised), the president’s legislative powers, especially his or her powers over the budget (to what extent they allow the president to decide discretionary on the implementation of local projects), and the president’s capacity to distribute posts in the federal government are usually used to explain different coalition types and the performance of coalitions in delivering congressional party discipline.”); Cecilia Martínez-Gallardo, *Out of the Cabinet : What Drives Defections From the Government in Presidential Systems?* 45 *COMPARATIVE POLITICAL STUDIES*, 64 (2011); Eduardo Alemán & George Tsebelis, *Political Parties and Government Coalitions in the Americas*, 1/3 *JOURNAL OF POLITICS IN LATIN AMERICA*, 3-28, 11-12 (2011) (“Shugart and Carey’s (1992) seminal work differentiated presidential systems according to executive authority, and argued that high legislative powers gave presidents opportunities to sidestep congress, opening the door to regime instability.”)

to compromise with the assembly.³⁴⁴ Following the majority of presidential constitutions, a coalition-friendly reform in the Afghan Constitution would abolish the item veto power of the President.

Table V-10. shows the legislative powers of the president in 12 plural societies.³⁴⁵

| Legislative Powers of the President | | | | | | |
|-------------------------------------|--------------|--------------|--------|-------------------|--------------|-------|
| Country | Package Veto | Partial Veto | Decree | Legis. Initiation | Budget Power | Total |
| Bolivia | 2 | 0 | 0 | 0 | 0 | 2 |
| Nigeria | 3 | 0 | 0 | 0 | 0 | 3 |
| Indonesia | 0 | 0 | 0 | 0 | 1 | 3 |
| Sri Lanka | 0 | 0 | 2 | 0 | 2 | 3 |
| Cyprus | 2 | 2 | 1 | 0 | 0 | 4 |
| Philippines | 2 | 3 | 0 | 0 | 0 | 5 |
| Sierra Leone | 3 | 3 | 0 | 0 | 0 | 6 |
| Malawi | 2 | 0 | 0 | 0 | 4 | 6 |
| Afghanistan | 3 | 0 | 2 | 0 | 2 | 7 |
| Kenya | 3 | 4 | 0 | 0 | 0 | 7 |
| Burundi | 4 | 4 | 0 | 0 | 0 | 8 |
| Ghana | 3 | 3 | 0 | 0 | 3 | 9 |

Additionally, requiring a quorum of two-thirds of the WJ to override a presidential veto is a high bar for the WJ to fulfill.³⁴⁶ Afghanistan is one of the very few presidential democracies

³⁴⁴ Carey, *supra* note 200, 116 (1998); Negretto, *supra* note 33.

³⁴⁵ CONSTITUTION; THE CONSTITUTION OF NIGERIA, May 29, 1999, http://www.worldstatesmen.org/nigeria_const1960.pdf (hereafter “NIGERIA CONSTITUTION”); OF (PLURINATIONAL) STATE [CONSTITUCIÓN POLÍTICA DEL ESTADO] Feb. 7, 2009, https://www.constituteproject.org/constitution/Bolivia_2009.pdf (hereafter BOLIVIA’S CONSTITUTION; THE CONSTITUTION OF SIERRA LEONE, (1991) <http://www.sierra-leone.org/Laws/constitution1991.pdf>; THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, Sep. 7, 1978, <https://www.parliament.lk/files/pdf/constitution.pdf>; THE CONSTITUTION OF KENYA, May 6, 2010, <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>; THE CONSTITUTION OF GHANA (Apr. 28, 1992) https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en; THE CONSTITUTION OF BURUNDI [LA CONSTITUTION DU BURUNDI] Feb. 2005, https://www.constituteproject.org/constitution/Burundi_2005.pdf; UNDANG-UNDANG DASAR REPUBLIK INDONESIA 1945 [THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA] Aug. 1945, <https://thevideobee.to/vqeslih6vci9.html>; THE CONSTITUTION OF MALAWI, May 16, 1994, https://www.constituteproject.org/constitution/Malawi_1999.pdf; Saligang Batas ng Pilipinas [CONSTITUTION OF THE PHILIPPINES] Feb. 2, 1987, https://www.constituteproject.org/constitution/Philippines_1987.pdf?lang=en; CONSTITUTION OF CYPRUS, Aug. 16, 1960 https://www.constituteproject.org/constitution/Cyprus_2013.pdf.

where the constitution requires a supermajority of the Assembly to repeal a presidential veto. The threshold for veto repealing is a simple majority in Venezuela, absolute majority in Nicaragua, absolute majority of joined houses in Brazil, absolute majority of both houses in Colombia, and absolute majority of present members in Uruguay.³⁴⁷ Perhaps not coincidentally, with the exception of Brazil, all these countries have stable coalitions or party systems.

Similarly, as Table V-10 shows, the threshold for veto overriding is absolute majority in Bolivia, Cyprus, Philippines, and Malawi. In Indonesia and Sri Lanka, the presidents have no veto power or their veto power can be reversed by only a simple majority of their legislatures. Comparatively, Afghan presidents have strong legislative decree authority. Using this authority, Afghan presidents have been able to bypass assemblies to make laws on their own. To reduce this power, the Afghan Constitution should reduce the veto override threshold to a simple majority to limit the legislative power of the president. A further constitutional reform should reduce the items, on which the President would have legislative decree authority.

In addition to curtailing some of the legislative powers of the president, constitutional amendments in Afghanistan must bring clarity to existing constitutional provisions and block loopholes. As Chapter Eight highlighted, constitutional loopholes have been used by presidents to bypass the legislature, particularly non-legislative power where presidents are more constrained. Constraining presidential powers and closing constitutional loopholes would likely encourage future Afghan presidents to form parliamentary coalitions.

³⁴⁶ CONSTITUTION, art. 79.

³⁴⁷ John M Carey, *Presidential versus Parliamentary Government*, in HANDBOOK OF NEW INSTITUTIONAL ECONOMICS 91, 107 (Claude Menard & Mary M. Shirley, eds., 2008).

Chapter Twelve: Re-Engineering Afghanistan's Party Laws (In Reference to Chapter Nine)

If we accept that the institutionalization of the emerging cross-ethnic coalitions is desirable, the next question concerns how these coalitions can be encouraged to develop. This section is a response to institutional failures in party laws in the previous sections. Previous sections already established that the conventional notion that party laws generally influence party development is not warranted at least in the context of Afghanistan.³⁴⁸

The influence of party laws depends on some important features: (a) they must recognize and promote cross-ethnic coalitions and merger of parties rather than focusing merely on transforming ethnic parties; (b) they must have implicit approach towards encouraging cross-ethnic coalitions/parties; and (c) they must be incentive-based—in other words, they must raise the cost for ethnic politics and the prize for ethnic inclusion. The reason that electoral laws are generally more successful than party laws in shaping parties and coalitions is that electoral laws determine the winners and losers. By defining winners and losers, the electoral laws generate tremendous incentives to alter the behavior of parties and coalitions.

1. Recognizing and Promoting the Emerging Coalitions

It is more effective and efficient for the laws to regulate the emerging cross-ethnic coalitions rather than to transform ethnic parties or to encourage new broad-based parties to develop from scratch. In the former approach, the laws would merely regulate the emerging coalitions, which is in a sense, promoting what already exists. In the latter approach, the laws would reengineer political parties, which would be an attempt to change the status quo.

³⁴⁸ Alefe Abeje, *Party System Institutionalization And The Prospect Of Democratic Consolidation In Ethiopia*, 23/9 EUROPEAN SCIENTIFIC JOURNAL, 315-329, 315 (2013); KENNETH JANDA, POLITICAL PARTIES AND DEMOCRACY IN THEORETICAL AND PRACTICAL PERSPECTIVES: ADOPTING PARTY LAW, THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS, 6 (2005).

It is well-known that any political law that attempts to alter the status quo is likely to encounter challenges from those who benefit from the status quo. Therefore, ethnic parties would likely find ways to maneuver around the laws rather than to submit to them.³⁴⁹ By the same logic, laws that recognize and promote the emerging coalitions are likely to be welcomed by the coalitions and even more so by the public.

In addition, emerging cross-ethnic coalitions are more aligned with the objective of political party laws than the existing proto-parties. The objective of Article 35 and subsequent regulations was to encourage ethnically inclusive parties, an objective that is better met by the emerging coalitions but not by existing parties.³⁵⁰ Cross-ethnic coalitions are formed primarily to aggregate broad-based support to win elections. Ethnic parties, however, exist to serve rather different purposes and interests: representing ethnic groups, mobilizing them, encouraging collective action, and gaining power or patronage on behalf of their groups.³⁵¹ Adopting a legal framework for the emerging coalition is a step forward to the objective of Article 35.³⁵²

Adopting a legal framework that primarily entails registering cross-ethnic coalitions, and for that matter, requires some registry thresholds would likely encourage coalitions to become something more than just a gentlemen's agreement. In addition to registration thresholds, the political laws should include an electoral threshold, where only registered coalitions can compete in the elections (presidential and parliamentary). In many countries, party affiliation has become the requirement for candidates to enter a presidential or parliamentary election (see Table V-11). As Table V-11 shows, countries such as Sri-Lanka, Nigeria, and Indonesia require party or

³⁴⁹ Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 U. CHI. L. REV. 407, 413-29 (1990).

³⁵⁰ CONSTITUTION, art. 35 (the "formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted.")

³⁵¹ Horowitz, *supra* note 15, at 291-295.

³⁵² CONSTITUTION, art. 35 (the "formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted.").

coalition nomination for both parliamentary and presidential elections, although they have adopted different electoral systems. Other countries like Sierra Leone require party nomination only for presidential elections. Similar law can be adopted where coalition nomination is required to institutionalize cross-ethnic coalitions.

Table V-11. shows whether countries require candidates to be party/coalition nominees and whether a party/coalition associate can defect his or her party once elected.³⁵³

| Constitutions Requiring Party/Coalition Parliamentary and Presidential Nominees | | | | | |
|--|-------------------|---|--|----------------------|--------------------------|
| Country | Constitution Year | Only Party Candidates in Legis. Elections | Only Party Candidates in Pres. Elections | Prevent Ethnic Party | Anti-Switching Provision |
| Indonesia | 1945 | Yes | Party/Coalition | Yes | Yes |
| Sri Lanka | 1978 | Yes (or Independent Group) | Yes | Yes | Yes |
| Cyprus | 1979 | / | Yes | No | No |
| Philippines | 1987 | No | No | Yes | Yes |
| Sierra Leone | 1991 | No | Yes | Yes | Yes |
| Ghana | 1992 | No | No | Yes | Yes |
| Malawi | 1994 | No | No | Yes | Yes |
| Nigeria | 1999 | Yes | Yes | Yes | Yes |
| Afghanistan | 2004 | No | No | Yes | No |
| Burundi | 2005 | No | No | Yes | Silent |
| Bolivia | 2009 | No | No | No | No |
| Kenya | 2010 | Yes | No | Yes | Yes |

Had Afghan party laws required coalition nomination in the past elections, it would have compelled the incumbents—Hamid Karzai and Ashraf Ghani—to form formal and longstanding coalitions. They would have been less likely to pursue anti-party and anti-coalition policies. In fact, the electoral threshold would have compelled all candidates to register as the nominees of the coalitions that they indeed already gathered to win the elections. To put it differently, both thresholds treat coalitions as institutions, to which the candidates depend on, rather than political networks that pursue the interest of individual candidates and the elites who join hands with them, as is currently the case in Afghanistan.

³⁵³ *Supra*, note 345.

Additionally, it is very important that the House's Rules of Procedure not only should recognize the presence of parties and coalitions in the Assembly but also encourage discipline in these organizations. For example, the Rules of Procedure should restrict parliamentary groups only for the independent candidates and small parties, encouraging larger parties and coalitions to sustain their forms in the Assembly. Moreover, the Rules of Procedure should allow for and even require a public record of MPs' votes on laws and policies so that MPs of the same coalition or party is compelled to vote along the same line of policies.

2. Anti-Switching Provisions

To institutionalize, it is important that coalitions sustain beyond elections—and extend beyond a single branch of government. Therefore, for cross-ethnic coalitions to sustain themselves, an effective political law should provide incentives beyond electoral stakes. Anti-switching provisions can achieve this end by encouraging discipline in parties and coalitions, mandating the removal of their members from an office as soon as those members decide to disassociate from their parties or coalitions. Many new democracies adopted anti-switching laws to promote party discipline in their legislature. As Table V-11 indicates, in eight out of ten countries, an MP may lose his or her seat as soon as he disaffiliates from his party or coalition. Similar provisions exist in other diverse societies such as South Africa,³⁵⁴ Mozambique,³⁵⁵

³⁵⁴ Denis Kadima, *Party Coalitions in Post-Apartheid South Africa and their Impact on National Cohesion and Ideological Rapprochement*, in *THE POLITICS OF PARTY COALITIONS IN AFRICA*, 69 (Denis Kadima, ed., 2006).

³⁵⁵ Denis Kadima & Zefanias Matsimbe, *Understanding the Longevity and Challenges of an Opposition Party Coalition in Mozambique*, in *THE POLITICS OF PARTY COALITIONS IN AFRICA*, 131 (ed., Denis Kadima, 2006) (“The amendment of 65 of the Constitution to provide for the expulsion from Parliament of any MP who associates with any party or grouping other than that which sponsored his or her parliamentary campaign.”)

Brazil, Fiji, India, Papua New Guinea, Thailand,³⁵⁶ Belize, Namibia, Nepal, Singapore, and Zimbabwe.³⁵⁷

Some scholars have had concerns that anti-switching provisions may encourage independent MPs, which in turn discourage party/coalition development.³⁵⁸ For instance, in Malawi the existence of a similar provision³⁵⁹ incentivized more candidates to run as independents.³⁶⁰ Although true, anti-switching provisions may discourage party/coalition development only when individual candidates have the option of running as independent candidates under the election law. Why would a candidate have to run as a party nominee if she or she later lose his or her seat because of voluntary party disaffiliation? In Malawi, the law does not require party nominations for parliamentary elections.³⁶¹ Therefore, it is no wonder that anti-switching provisions have indeed favored personalistic politics rather than party discipline in there.

A similar effect could result in Afghanistan if an anti-switching provision were adopted with the existing Election Law since neither the law nor SNTV requires party nomination for parliamentary elections. However, the law could have a different impact if a mixed system were adopted (SNTV-PR), where for the PR elections, only parties could land candidates. Therefore,

³⁵⁶ Reilly, *supra* note 43, at 15.

³⁵⁷ JANDA, *supra* note 348, 17.

³⁵⁸ Lise Rakner & Nicolas van de Walle, *Opposition Weakness In Africa*, 3/20 JOURNAL OF DEMOCRACY 108-121 (2009).

³⁵⁹ THE CONSTITUTION OF MALAWI (1994) art. 40 (2) (“The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.”)

³⁶⁰ Rakner & van de Walle, *supra* note 358.

³⁶¹ Denis Kadima & Samson Lembani, *Making, Unmaking and Remaking Political Party Coalitions in Malawi: Explaining the Prevalence of Office-Seeking Behaviour*, in THE POLITICS OF PARTY COALITIONS IN AFRICA (ed., Denis Kadima, 2006).

the adoption of an anti-switching along with a mixed system (SNTV-PR), which has been proposed by a number of scholars and organizations, would be expected to bring some discipline within parties and coalitions.³⁶²

Additionally, this chapter suggests that an anti-switching provision should be adopted for portfolio allocation in the executive as well. Such a provision would unseat cabinet members who joins oppositions. It is vital because an anti-switching provision would draw a line between the incumbent and the opposition coalitions. Currently, it has become conventional that the executive officers act in opposition to one another in Afghanistan.³⁶³ The criticism of government by the officials of the government has clouded the conception of who is incumbent and who is the opposition. Perhaps for a similar reason, the Constitution of Nigeria requires that the president and vice president be from the same party.³⁶⁴ With the adoption of an anti-

³⁶² REYNOLDS, *supra* note 139, at 18-21; INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN <http://www.iec.org.af/eng/content.php?id=4&cnid=47> (Accessible, Jul. 11, 2011); SA'ADATI, *supra* note 3, at 100-111.

³⁶³ See e.g., Hamid Shalizi, *Open Criticism, Unruly Militias Add To Afghan Government Woes*, REUTERS, Jul. 5, 2016, <http://www.reuters.com/article/us-afghanistan-politics-dostum-idUSKCN0ZL2SC>; Ghanizada, *Dostum Criticizes President Ghani Following A Deadlock In Unity Government*, KHAMA PRESS, Sep. 1, 2016, <http://www.khaama.com/dostum-criticizes-president-ghani-following-a-deadlock-in-unity-govt-01818>; Sajad, *Deputy Afghan President Criticize Afghan Judiciary System*, KHAMA PRESS, Nov. 3, 2012, <http://www.khaama.com/deputy-afghan-president-criticize-afghan-judiciary-system-866>; Erin Cunningham, *A Wave Of Political Defections Spells New Trouble For Afghanistan*, THE WASHINGTON POST, Mar. 8, 2016 https://www.washingtonpost.com/world/a-wave-of-political-defections-spells-new-trouble-for-afghanistan/2016/03/29/91c94682-f108-11e5-a2a3-d4e9697917d1_story.html?utm_term=.06eabde6a22a.

³⁶⁴ THE CONSTITUTION OF NIGERIA (May 29, 1999) art. 142 (1), http://www.worldstatesmen.org/nigeria_const1960.pdf. (“In any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.”)

switching provision for the executive seats, cabinet members who voice as an opposition to the government would lose her or his seat in the government. As such, this provision would bring a discipline and cohesion in the executive coalition and draw a line between the incumbents and the oppositions.

3. Public Funding of Coalitions

Public funding of political coalitions is vital to their survival. One reason that the coalitions have not been able to sustain is because of the lack of financial support. It is particularly true in the case of opposition coalitions, who have lost presidential elections but who have not won seats in the parliamentary elections either because the elections are not held concurrently. They have no resources or platforms to survive—let alone institutionalize—as coalitions need public funding in order to sustain themselves. As of now, the only provision about public funding is article 15 of the Political Party Law. Article 15 vaguely states that parties can use “[s]ubsidies by the government in connection with elections.”³⁶⁵ The law seems to have excluded coalitions from public funding, limited public funds to elections, and did not set any standards for receiving funds. In practice, neither the coalitions nor the parties have received any public funds.³⁶⁶

Afghanistan is not the only case, where party laws neglected financing political coalitions. Although most countries provide public funds to political parties, they are reluctant to do the same for political coalitions. In 2002, a study by International IDEA on public funding of parties indicated that of all countries considered *free or partly free democracies* by Freedom

³⁶⁵ QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW] JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 4259 (2003), art. 15.

³⁶⁶ This information was obtained through interviews with leaders of political parties and coalitions.

House Index,³⁶⁷ 59 percent provided direct public funding for political parties.³⁶⁸ Of 111 sampled countries, 71 percent provided indirect funding, which mainly included free access to media to political parties.³⁶⁹ Another study by Ingrid van Biezen in 2007 indicated that the governments provide subsidies to parties in over 77 percent of consolidated democracies and 73 percent of the new democracies.³⁷⁰ For the most part, these public funds were aimed at levelling playing field and creating equality of opportunity for all parties.³⁷¹ However, this cannot be the aim in Afghanistan, where the attempt is to reduce party fragmentation and encourage broad-based coalitions. The latter goal requires the use of public funding to marginalize ethnic, proto-parties while strengthening broad-based and inclusive coalitions. For this very reason, the laws need to set some high thresholds so that only large and broad-based coalitions can receive funds. These thresholds should include (a) longevity of coalitions to encourage their stability, (b) their seats in the Assembly to strengthen their discipline, (c) and their diversity to promote their inclusiveness.

³⁶⁷ INSTITUTE FOR DEMOCRATIC ELECTORAL ASSISTANCE (IDEA), FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGN, 181 (2003).

³⁶⁸ *Id.* at 209-213.

³⁶⁹ *Id.* at 218.

³⁷⁰ Ingrid van Biezen, *Party Regulation and Constitutionalization: A Comparative Overview*, in POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT, 34 (Benjamin Reilly & Per Nordlund, eds., 2008).

³⁷¹ IDEA, *supra* note 367, at 14; Cass R. Sunstein, *Political Equality And Unintended Consequences*, 94 COLUM. L. REV. 1390, 1412 (1994).

Table V-12. shows the direct and indirect funds that parties receive in twelve countries including Afghanistan.³⁷²

| Direct and Indirect Funding to Parties | | | | | |
|--|-------------------------|-----------------------------|----------------------------|-----------------------|-------------------|
| Country | Direct/Indirect Funding | When Receive Public Funding | Why Receive Public Funding | Threshold for Funding | Free Media Access |
| Indonesia | Direct | Elections | Campaigns | Prev. Performance | No |
| Bolivia | Direct & Indirect | Elections/ Btw Elections | Campaigns, Other | Prev. Performance | Yes |
| Malawi | Direct & Indirect | Elections | Campaigns | # Candidates (Now) | Yes |
| Sri Lanka | Direct & Indirect | Elections | Campaigns | Equal Funding | Yes |
| Cyprus | Direct & Indirect | Btw Elections | N/A | N/A | N/A |
| Burundi | Direct & Indirect | Btw Elections | Campaigns, Other | # Candidates (Now) | No |
| Kenya | Direct & Indirect | Elections | Campaigns, Other | Equal Funding | No |
| Sierra Leone | Indirect | N/A | N/A | Equal Time | Yes |
| Ghana | Indirect | N/A | N/A | Equal Time | Yes |
| Nigeria | Indirect | N/A | N/A | N/A | No |
| Philippines | None | N/A | N/A | N/A | No |
| Afghanistan | None | N/A | N/A | N/A | No |

Some of these thresholds have been used in different countries although with regard to parties and not coalitions. For instance, in Malawi, any political party that can win over one-tenth of the votes nationwide can receive public funds from the government.³⁷³ In Burundi the government is required to provide public funds proportional to parties' seats in the legislature.³⁷⁴ Similarly, public funding in Germany, Austria, Sweden, and Nordic countries depends on the presence of parties in the legislatures.³⁷⁵

³⁷² IDEA, *supra* note 367, at 209-215.

³⁷³ THE CONSTITUTION OF MALAWI, MAY 16, 1994, art. 40 (2) (“The State shall provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency.”)

³⁷⁴ THE CONSTITUTION OF BURUNDI [LA CONSTITUTION DU BURUNDI] Feb. 2005, art. 84 *available at* https://www.constituteproject.org/constitution/Burundi_2005.pdf (“To the end of promoting democracy, the law may authorize the financing of the political parties in an equitable manner, proportionally to the number of seats that they hold at the National Assembly. This financing may apply both to the functioning of the political parties and to the electoral campaigns, and must be transparent. The types of subventions, advantages and facilities that the State may grant to the political parties are established by the law.”)

³⁷⁵ FRITZ PLASSER & GUNDA PLASSER, *GLOBAL POLITICAL CAMPAIGNING: A WORLDWIDE ANALYSIS OF CAMPAIGN PROFESSIONALS AND THEIR PRACTICES*, 159 (2002)

CONCLUSION

This study has explored institutional designs and ethnic accommodation. Surviving a long period of civil war (1992-1996) followed by the dark regime of Taliban (1996-2001), I have been deeply committed to the study of ethnic conflicts and to explore pathways to peace-building. This dissertation is a step towards fulfilling my commitment. Moreover, it is my intention and hope that this study will contribute to both theory and practice of institutional design and ethnic accommodation not only in Afghanistan, but also in other divided societies.

Generally, this study has revealed that coalitions in Afghanistan have remained weak and prone to dissolution, often failing to endure beyond a single presidential election. It has also shown that cross-branch coalitions have never taken root in Afghanistan because no institutional design has encouraged parliamentary coalitions.

Even so, for the first time in history, Afghanistan has seen the emergence of large coalitions that have led to more inclusive governments. Because of the current institutional designs, only the largest and the most inclusive of these coalitions have ensured the viability of candidates in the presidential elections. Ethnic coalitions have been marginalized, and ethnic “parties” even more so. Of the four large, ethnic parties, only *Hizb-i-Jumbesh Mili* [National Movement Party] has remained somewhat intact. The three others namely, *Hizb-i-Jamiat Islami* [Islamic Society Party], *Hizb-i-Islami* [Islamic Party], and *Hizb-i-Wahdat Islami* [Islamic Unity Party] split into several factions, each joining one or another cross-ethnic coalition.¹

Since all this development has taken place within 16 years of democratization, it raises questions about whether the continuation of present laws and institutional designs will eventually lead to the institutionalization of cross-ethnic coalitions. In fact, of all the presidential

¹ Although some of these factions registered as new parties, they remained even less influential.

democracies that entertain strong party systems or stable coalitions—including the United States, Korea, Colombia, Costa Rica, Venezuela, Chile, and Uruguay (prior to 1973)—none have done so as quickly as 16 years. As such, one might wonder why we should not let coalition development take its course under the current laws and institutions in Afghanistan.

The risk of this “wait and see” approach is that it may allow democratization to reverse course. Democratization is a fragile process, vulnerable to social, political and institutional challenges.² In addition, this approach of “wait and see” may allow the culture of patronage politics to become entrenched in society, which, unlike democratization, is not easily reversed. In today’s democratizing societies, the engineering and reengineering of political laws is essential to strengthening democratic institutions including cross-ethnic parties and coalitions within a shorter period.

Given the immediate necessity, this dissertation sought to explain the impact of Afghan political laws on the institutionalization of coalitions. Examining three political laws—the election laws, the Constitution, and the party laws of Afghanistan—it has explored whether these laws provide sufficient incentive for coalitions (a) to be ethnically inclusive, (c) to compete in elections, (d) to sustain executive and oppositions, (e) to compete in parliamentary elections, and/or (d) to seek parliamentary alliances.

To determine the impact of these laws, this dissertation has focused on the specific institutional designs and thresholds that each law incorporates to shape inter-ethnic relations and cross-ethnic coalitions. For example, the electoral laws of Afghanistan set two electoral systems for two national elections: the runoff system and the SNTV system. This dissertation concluded that while the runoff system encouraged the formation of cross-ethnic coalitions, it has not been

² GEOFFREY PRIDHAM & PAUL G. LEWIS, INTRODUCTION: STABILIZING FRAGILE DEMOCRACIES AND PARTY SYSTEM DEVELOPMENT, IN STABILIZING FRAGILE DEMOCRACIES, 1 (1996).

useful for the consolidation of cross-ethnic coalitions. Further, SNTV has had a rather destructive impact on coalition-building in the parliamentary elections.

The Afghan Constitution provides for a presidential system, with specific electoral features, a dual vice-presidency, and enormous legislative powers for the President. Generally, these features have enabled electoral coalitions to translate into executive coalitions, but they have failed to encourage incumbents or their opponents to engage in parliamentary alliance-making or to form long-lasting coalitions. Finally, the party laws of Afghanistan have set several thresholds to encourage the nationalization of parties. The thresholds have pushed for inclusiveness of parties at three levels: the founders, members, and offices.³ These thresholds, however, have failed to produce the expected outcome since they have lacked incentivizing tools as well as a framework to promote the emerging cross-ethnic coalitions.

In light of these observations, this study has attempted to contribute to the general literature in three respects: by challenging the particularization of causal institutions, by problematizing the one solution for all, and by emphasizing the gaps between political ideals and political practices and the role of political laws as the bridge between the two.

The extant literature more typically has focused on one institutional design or another to explain coalition-building in different countries. Many scholars have narrowed their studies to only electoral systems as a way to examine party systems and coalition-building. Others have concentrated only on what political regime (presidential or parliamentary or semi-presidential systems) is conducive to coalition-building. Still others have examined only the role of thresholds in party laws to explain the development of parties and coalitions. Examining a combination of the constitutional, electoral, and party designs in Afghanistan, this study has

³ See Chapter Nine.

shown that all three are relevant institutions. However, they have disparate impacts on coalition-building and ethnic accommodation. It is very likely that some institutions contribute to coalition-building but others do not. The takeaway is that cross-ethnic coalitions can institutionalize when the institutional designs function cohesively, cooperating at different level of institutionalization.

This study also challenges the panacea approach to institutional design for divided societies. Understanding the important role of institutional regulations in ethnic accommodation, many studies were encouraged to look for that one institutional design that could offer a cure for all divided societies. For example, many scholars—including Arend Lijphart and other consociationalists, as well as Donald Horowitz and his centripetalist fellows—have engaged in prescribing a number of institutions for all divided societies. Consociationalists have proposed the PR system, a parliamentary regime, an ethnic-based federalism, and mutual veto power as optimal institutions for divided societies;⁴ on the other hand, Donald Horowitz and his disciples have prescribed an Alternative Voting system, a presidential constitution, and non-ethnic federalism.⁵ Given the success of their proposed institutions in certain countries, both consociationalists and centripetalists have claimed that their prescriptions may duly address ethnic tensions in all societies.

Turning to the case of Afghanistan, this study urges the need to understand the particularities and specificities of social and political settings that distinguish one plural society

⁴ See e.g., AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* (1977); AREND LIJPHART, *PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT* (1992).

⁵ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (2ND ED. 2000); DONALD L. HOROWITZ, *A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY* (1991); Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13/5 *DEMOCRATIZATION* 811-827 (Sep. 2006); BENJAMIN REILLY & PER NORDLUND, *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* (2008).

from another. Whether an institution succeeds or fails may not be inherent but contextually determined. For example, if the absolute majority feature of the runoff system encourages cross-ethnic coalitions in Afghanistan, it is because no one ethnic group can deliver the requisite number of votes. The same electoral system may not induce cross-ethnic voting and coalitions in Cyprus, where Greek Cypriots alone comprise around 70 percent of the population and where both the political practices and political ideals of ethnic groups are centrifugal.⁶ Therefore, while engineering political laws and institutions is important for ethnic accommodation, different institutional designs require different socio-political settings for success.

This study also adds to the literature by revealing the distinctions and the gap between political ideals and political practices, showing how the political laws bridge the gap between the two. Conventional studies of divided societies and institutional designs are currently too fixated on political practices. Most studies assume that, for example, if people vote on the basis of ethnicity, they should want ethnic parties. Other studies exclude political ideals from the analyses, suggesting these ideals are far from the reality, inaccessible, and therefore irrelevant.⁷

This study has revealed that the political ideals are a far cry from the political practices. In the case of Afghanistan, political ideals have urged solidarity and national integration while the elections have indicated that political practices are preoccupied with ethnic strategies and calculations. The primary reason for this gap is that political practices are mostly based on immediate interests of individuals and groups, and political ideals are informed by common interests—as well as by higher moral and political standards.⁸ Trust deficiency among ethnic

⁶ VINCENT L. MORELLI, CONGRESSIONAL RESEARCH SERVICE, CYPRUS: REUNIFICATION PROVING ELUSIVE (Apr. 2017).

⁷ Robert E. Goodin, *Political Ideals and Political Practice*, 1/25 BRITISH JOURNAL OF POLITICAL SCIENCE, 37-56, 37-40 (1995).

⁸ *Id.* at 37-56, 39.

groups compels them to sideline their ideals to protect themselves and their interests in immediate events such as elections.

Political ideals are not, however, irrelevant as many have suggested. On the contrary, political ideals have real political consequences. The most important influence of political ideals is their embodiment in the constitutions of countries. The Afghan Constitution and other political laws have indeed reflected the common political ideals of Afghans. The laws have avoided giving prominence to ethnicity in politics. At the same time, the laws have attempted to nationalize government and other political institutions, including parties.

This observation is not meant to suggest that the Constitution and other political laws are influenced by political ideals only. Constitution-drafting is the process where collective political ideals and immediate interests of different groups wrestle with each other. Although the combination of a non-ethnic based political system, inclusive parties, government, and a legislature do represent collective ideals, ethnic representatives have been divided on issues such as recognizing a national language or adopting presidential or parliamentary systems—as well as the issue of whether to adopt a centralized or decentralized government. Most likely, the hardliners have pushed forward an ethnic agenda rather than collective political ideals.

Perhaps, the most important contribution of this dissertation is the timeliness of its examination of Afghan political laws and its recommendations. Since the failure of the 2014 presidential election, there have been numerous efforts to reform the Constitution and electoral laws in order to put an end to the ethnic tensions that tend to develop during and after elections. However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing the parliamentary electoral system and the presidential system. This study has sought to extend that discourse to reforming the presidential electoral rule, presidential

constitutional features, and the political party laws. Furthermore, by examining the role of political laws in ethnic accommodation and particularly cross-ethnic coalition-building, this study intends to lay the ground for other researchers to adventure in this realm.

Bibliography

Laws and Regulations

- Agreement Between the Two Campaign Teams Regarding the Structure of the National Unity Government, September 20, 2014, <https://www.afghanistan-analysts.org/miscellaneous/aan-resources/the-government-of-national-unity-deal-full-text/>.
- CONSTITUCIÓN DE LA REPUBLICA DEL ECUADOR [THE CONSTITUTION OF THE REPUBLIC OF ECUADOR] (Sep. 2008), <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.
- CONSTITUTION OF CYPRUS (Aug. 16, 1960) https://www.constituteproject.org/constitution/Cyprus_2013.pdf.
- CONSTITUTION DE L'ARGENTINE [CONSTITUTION OF ARGENTINA] (May 1, 1853).
- CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [THE CONSTITUTION OF THE REPUBLIC OF COSTA RICA] (2011), <http://www.parliament.am/library/sahmanadrutyunner/kostarika.pdf>.
- CONSTITUCIÓN POLÍTICA DEL ESTADO [BOLIVIA'S CONSTITUTION OF (PLURINATIONAL) STATE] (Feb. 7, 2009), https://www.constituteproject.org/constitution/Bolivia_2009.pdf.
- FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 40, (2015) (Afg.).
- FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 80, (2015) (Afg.).
- FARMAN-I-TAQNINI [LEGISLATIVE DECREE], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 105, (2015) (Afg.).
- FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION (Apr. 18, 1999) https://en.wikipedia.org/wiki/Swiss_Federal_Constitution.
- GUIDELINES FOR REVIEWING A LEGAL FRAMEWORK FOR ELECTIONS Warsaw: OSCE Office for Democratic Institutions and Human Rights (2012), <http://www.osce.org/odihr/elections/13960>.
- LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI] (Feb. 2005), https://www.constituteproject.org/constitution/Burundi_2005.pdf.

- LAS CONSTITUCIONES DE NICARAGUA [THE CONSTITUTION OF NICARAGUA] (1987), https://www.constituteproject.org/constitution/Nicaragua_2005.pdf.
- LAYEHA SABT NAM KANDIDAN [THE CODE OF CANDIDATE REGISTRATION], (1393) [2014], http://www.iec.org.af/pdf/legalframework/2013-regulations/eng/reg_candidate_registration_eng.pdf
- MUQARERA TARZ TASIS WA SABT AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION & REGISTRATION OF POLITICAL PARTIES] S. 1026 (Jun. 14, 2010)
- QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW] JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 4259 (2003)
- QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], JAREEDA-YE RASMI [OFFICIAL GAZETTE] S. 996 (2009)
- QĀNOON-I ASSĀSI-YE AFGHANISTAN [CONSTITUTION OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 12, 1343 [1964] <http://www.afghanpaper.com/info/ghavanin/ghanonasasi1343.htm>
- QĀNOON-I ASSĀSI-YE JAMHŪRI-YE ISLĀMI-YE AFGHANISTAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 818, 1382 [2004] <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.
- QANUN-I-ASSASI JAMHURI ISLAMI IRAN [THE CONSTITUTION OF ISLAMIC REPUBLIC OF AFGHANISTAN] (Dec. 1979), https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en.
- QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 25 (1965).
- QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 4231, 1383 [2004].
- QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1112 (2014).
- QANOON INTIKHABAT [LAW OF ELECTIONS], JAREEDA-YE RASMI [OFFICIAL GAZETTE] No. 1226 (2016).
- QANUN-I-TANZIM SARPARASTI WUZARAT-KHANA HA WA EDARAT-I-DAWLATI [THE REGULATION ON ACTING HEADS OF MINISTRIES AND ADMINISTRATIONS] 12/25/1993 [Mar. 16, 2015] S. 1168.
- SALIGANG BATAS NG PILIPINAS [PHILIPPINE'S CONSTITUTION] (Feb. 2, 1987), https://www.constituteproject.org/constitution/Philippines_1987.pdf?lang=en.

- Special Representative of the Secretary-General for Afghanistan, Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, transmitted to the Security Council by the Secretary-General, U.N. Doc. S/2001/1154, 1155 (Dec. 5, 2001) [hereinafter Bonn Agreement], <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/678/61/img/N0167861.pdf?OpenElement>.
- THE CONSTITUTION OF GHANA (Apr. 28, 1992) https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en.
- THE CONSTITUTION OF KENYA (May 6, 2010), <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>.
- THE CONSTITUTION OF MALAWI (May 16, 1994) https://www.constituteproject.org/constitution/Malawi_1999.pdf.
- THE CONSTITUTION OF NIGERIA (May 29, 1999) http://www.worldstatesmen.org/nigeria_const1960.pdf.
- THE CONSTITUTION OF SIERRA LEONE (1991) <http://www.sierra-leone.org/Laws/constitution1991.pdf>.
- THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA (Sep. 7, 1978), <https://www.parliament.lk/files/pdf/constitution.pdf>.
- THE RULES OF PROCEDURE, WOLESI JIRGA, <http://wj.parliament.af/english.aspx>
- UNDANG-UNDANG DASAR REPUBLIK INDONESIA 1945 [THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA] (Aug. 1945), <https://thevideobee.to/vqeslih6vci9.html>.

Books

- ABDUL ALI MOHAMMADI, *AFGHANISTAN WA DAWLAT MUDERN* [AFGHANISTAN AND A MODERN STATE] (1394) [2015].
- ABDUL SHAKOR WAQIF, *ESSAYS REGARDING THE DEBATES ON THE DRAFT OF THE CONSTITUTION*, (2003).
- ABUZAR PIRZADA GHAZNAWI, *TARIKH SIYASI AFGHANISTAN MUASER: NAHZAT ISLAMI AFGHANISTAN* [THE HISTORY OF THE CONTEMPORARY AFGHANISTAN: THE ISLAMIC MOVEMENTS OF AFGHANISTAN] (2015).
- ADEED DAWISHA, *ARAB NATIONALISM IN THE TWENTIETH CENTURY: FROM TRIUMPH TO DESPAIR* (2005).

- AFGHANISTAN JUSTICE PROJECT, THE LEGACY OF WAR CRIMES AND THE POLITICAL TRANSITION IN AFGHANISTAN (2ND ED. 2006).
- AFGHANISTAN RESEARCH EVALUATION UNIT, ALIF TA YA [A TO Z] (2005).
- AHMAD NAQIBZADA, AHZAB SIASI WA GRO HAI ZINEFOZ [POLITICAL PARTIES AND INTEREST GROUPS] (2009).
- AHMAD SHAYEQ QASSEM, AFGHANISTAN'S POLITICAL STABILITY: A DREAM UNREALIZED (2009).
- ALICE HADDAD, BUILDING DEMOCRACY IN JAPAN (2012).
- ALLEN HICKEN, BUILDING PARTY SYSTEMS IN DEVELOPING DEMOCRACIES (2009).
- ALVIN RABUSHKA & KENNETH A. SHEPSLE, POLITICS IN PLURAL SOCIETIES: A THEORY OF DEMOCRATIC INSTABILITY (1972).
- ANDERSON BENEDICT, IMAGINED COMMUNITIES (2006).
- ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] (1394) [2015].
- ANDREAS WIMMER, ETHNIC BOUNDARY MAKING: INSTITUTIONS, POWER, NETWORKS (2013)
- ANDREW E. BUSCH, OUTSIDERS AND OPENNESS: IN THE PRESIDENTIAL NOMINATING SYSTEM (1997).
- ANDREW GEDDIS, ELECTORAL LAW IN NEW ZEALAND: PRACTICE AND POLICY (2ND ED. 2013).
- ANDREW REYNOLDS, BENJAMIN REILLY & ANDREW ELLIS, ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK (2008).
- ANIKA GUAJA, POLITICAL PARTIES AND ELECTIONS: LEGISLATING FOR REPRESENTATIVE DEMOCRACY (2010).
- ANIRBAN KASHYAP, COMMUNALISM AND CONSTITUTION (1988).
- ANTHONY D. SMITH, NATIONALISM (2010).
- ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1957).
- ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1985).

- AREND LIJPHART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION (1977).
- AREND LIJPHART, ELECTORAL SYSTEMS AND PARTY SYSTEMS (1994).
- AREND LIJPHART, PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT (1992).
- AREND LIJPHART, THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE (2008).
- AREND LIJPHART & BERNARD GROFMAN, CHOOSING AN ELECTORAL SYSTEM: ISSUES AND ALTERNATIVES (1984).
- ASHUTOSH VARSHNEY, ETHNIC CONFLICT AND CIVIC LIFE: HINDUS AND MUSLIMS IN INDIA (2002).
- BARNETT R. RUBIN, THE FRAGMENTATION OF AFGHANISTAN (2002).
- BARRINGTON MOORE, JR., SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY: LORD AND PEASANT IN THE MAKING OF THE MODERN WORLD (1967).
- BASHIR AHMAD ANSARI, AFGHANISTAN DAR ATASH NAFT [AFGHANISTAN IN THE FIRE OF FUEL] (2003).
- BASHIR AHMAD DAWLATABADI, SHENASNAMAI EHZAB WA JIRYANAT SEYASI AFGHANISTAN [AN INTRODUCTION TO AFGHANISTAN'S POLITICAL MOVEMENTS AND PARTIES] (1992).
- BENJAMIN REILLY, DEMOCRACY AND DIVERSITY: POLITICAL ENGINEERING IN THE ASIA-PACIFIC (2006).
- BENJAMIN REILLY, DEMOCRACY IN DIVIDED SOCIETIES: ELECTORAL ENGINEERING FOR CONFLICT MANAGEMENT (2001).
- BERTUS DE VILLIERS & FRANK DELMARTINO, INSTITUTIONAL DEVELOPMENT IN DIVIDED SOCIETIES (1998).
- BESMULLAH SHIR, TASUB, AMEL INFESAL RAWABIT INSANI [PREJUDICE, THE BREAKER OF HUMAN RELATIONS] (2008).
- CAROL MERSHON & OLGA SHVETSOVA, PARTY SYSTEM CHANGE IN LEGISLATURES WORLDWIDE: MOVING OUTSIDE THE ELECTORAL ARENA (2013).

- CHARLES TILLY, *DEMOCRACY* (2007).
- COLIN HARVEY, ALEX SCHWARTZ & ALEXANDER SCHWARTZ, *RIGHTS IN DIVIDED SOCIETIES* (2012).
- CQ PRESS, *PRESIDENTIAL ELECTIONS 1989-2008* (2010).
- DAI FULADI, *WHAT TO DO? [CHE BAYAD KARD?]* (2005).
- DANIEL HAYS LOWENSTEIN & RICHARD L. HASEN, *ELECTION LAW: CASES AND MATERIALS* (2004).
- DAVID M. FARRELL, *ELECTORAL SYSTEMS* (2010).
- DENIS KADIMA, *THE POLITICS OF PARTY COALITIONS IN AFRICA* (2006).
- DONALD L. HOROWITZ, *A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY* (1991).
- DONALD L. HOROWITZ, *CONSTITUTIONAL CHANGE AND DEMOCRACY IN INDONESIA* (2013).
- DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (2ND ED. 2000).
- DOUGLAS GREENBERG, STANLEY N. KATZ, MELANIE BETH OLIVIERO & STEVEN C. WHEATLEY, *CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD* (1993).
- DOUGLAS W. RAE, *THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS* (1967). E. SRIDHARAN, *COALITION POLITICS AND DEMOCRATIC CONSOLIDATION IN ASIA* (2012).
- ENID LAKEMAN & JAMES D. LAMBERT, *VOTING IN DEMOCRACIES: A STUDY OF MAJORITY AND PROPORTIONAL ELECTORAL SYSTEMS* (1959).
- *ELECTION LAW STORIES* (Joshua A. Douglas & Eugene D. Mazo, eds., 2016).
- *ELECTIONS IN JAPAN, KOREA, AND TAIWAN UNDER THE SINGLE NON-TRANSFERABLE VOTE: THE COMPARATIVE STUDY OF AN EMBEDDED INSTITUTION* (Bernard Grofman, Sung-Chull Lee, Edwin A. Winckler, & Brian Woodall eds. 1999).
- ERNEST GELLNER, *NATION & NATIONALISM* (1993).
- *FACTION POLITICS: POLITICAL PARTIES AND FACTIONALISM IN COMPARATIVE PERSPECTIVE* (Frank P. Belloni & Dennis C. Beller eds., 2011).

- FRANCIS M. DENG, *IDENTITY, DIVERSITY, AND CONSTITUTIONALISM IN AFRICA* (2008).
- FRITZ PLASSER & GUNDA PLASSER, *GLOBAL POLITICAL CAMPAIGNING: A WORLDWIDE ANALYSIS OF CAMPAIGN PROFESSIONALS AND THEIR PRACTICES* (2002).
- G. BINGHAM POWELL, JR., *CONTEMPORARY DEMOCRACIES: PARTICIPATION, STABILITY, AND VIOLENCE* (1982).
- GALE A. MATTOX & STEPHEN M. GRENIER, *COALITION CHALLENGES IN AFGHANISTAN: THE POLITICS OF ALLIANCE* (2015).
- GARY W. COX, *MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD'S ELECTORAL SYSTEMS* (1997).
- Gabriele Rasuly-Paleczek, *The Struggle for the Afghan State: Centralization, Nationalism and Their Discontent*, in *IDENTITY POLITICS IN CENTRAL ASIA AND THE MUSLIM WORLD: NATIONALISM, ETHNICITY AND LABOUR IN THE TWENTIETH CENTURY* (Willem van Schendel and Erik J. Zürcher, 2001).
- GEOFFREY PRIDHAM & PAUL G. LEWIS, *STABILIZING FRAGILE DEMOCRACIES*, 1 (1996).
- GILLS KEPEL, *THE WAR FOR MUSLIM MIND* (2004).
- GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING* (1997).
- GIOVANNI SARTORI, *PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS* (1976).
- GISELA SIN, *SEPARATION OF POWERS AND LEGISLATIVE ORGANIZATION: THE PRESIDENT, THE SENATE, AND POLITICAL PARTIES IN THE MAKING OF HOUSE RULES* (2015).
- Giustozzi, Antonio, *Armed politics and political competition in Afghanistan*, in *THE PEACE IN BETWEEN: POST-WAR VIOLENCE AND PEACEBUILDING. STUDIES IN CONFLICT, DEVELOPMENT AND PEACEBUILDING* (Berdal, Mats , Astri & Suhrke eds., 2011).
- Fabrice Lehoucq, *Costa Rica: Modifying Majoritarianism with 40 Per cent Threshold*, in *HANDBOOK OF ELECTORAL SYSTEM CHOICE* 133 (Josep M. Colomer ed., 2004)
- HAFIZULLAH EHMAD, *DYNAMICS OF POLITICAL DEVELOPMENT IN AFGHANISTAN: THE BRITISH, RUSSIAN, AND AMERICAN INVASION* 221 (2010).
- HANNU NURMI, *VOTING PARADOXES AND HOW TO DEAL WITH THEM* (1999). JACK A. GOLDSTONE, *STATES, PARTIES, AND SOCIAL MOVEMENTS* (2003).
- HEATHER STOLL, *CHANGING SOCIETIES, CHANGING PARTY SYSTEMS* (2013).

- HENC VAN MAARSEVEEN & GER VAN DER TANG, WRITTEN CONSTITUTIONS: A COMPUTERIZED COMPARATIVE STUDY (1978).
- INSTITUTE FOR DEMOCRATIC ELECTORAL ASSISTANCE (IDEA), FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGN (2003).
- JACK SNYDER, FROM VOTING TO VIOLENCE (2000).
- JASON BRENNAN, THE ETHICS OF VOTING (2011).
- Jawad Taqi-Zada, *Presidential Elections in the Constitution [Intekhabat Riasat Jamhuri Dar Qanoon Asasi Afghanistan]*, in YEARBOOK OF AFGHAN LEGAL STUDIES [SALNAMAH MOTAL' AT HOQUQY AFGHANISTAN] (2016).
- JEFF HAYNES, TOWARDS SUSTAINABLE DEMOCRACY IN THE THIRD WORLD (2001).
- JENNIFER BRICK MURTAZASHVILI, INFORMAL ORDER AND THE STATE IN AFGHANISTAN, (2016).
- JOEL S. MIGDAL, STRONG SOCIETIES AND WEAK STATES: STATE-SOCIETY RELATIONS AND STATE CAPABILITIES IN THE THIRD WORLD (1998).
- John M. Carey, *Presidential Versus Parliamentary Government*, in HANDBOOK OF NEW INSTITUTIONAL ECONOMICS (Claude Ménard, Mary M. Shirley ed. 2005).
- JOHN MCGARRY & BRENDAN O'LEARY, THE POLITICS OF ETHNIC CONFLICT REGULATION (1993).
- JOHN J. MEARSHEIMER, WHY LEADERS LIE: THE TRUTH ABOUT LYING IN INTERNATIONAL POLITICS (2011).
- JOHN RAWLS, THE LAW OF PEOPLES (2002).
- John Stuart Mill, *Representative Government*, in THREE ESSAYS BY JOHN STUART MILL (Millicent Garret Fawcett, ed., 1960).
- JOO-CHEONG THAM, BRIAN J. COSTAR, GRAEME ORR, ELECTORAL DEMOCRACY: AUSTRALIAN PROSPECT (2011).
- JOSEP M. COLOMER, HANDBOOK OF ELECTORAL SYSTEM CHOICE (2004).
- JOSEPH V. MONTVILLE, CONFLICT AND PEACEMAKING IN MULTIETHNIC SOCIETIES (1990).

- JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE (1994).
- JUAN J. LINZ & ARTURO VALENZUELA, THE FAILURE OF PRESIDENTIAL DEMOCRACY: COMPARATIVE PERSPECTIVES (1994).
- JULES WITCOVER, RULING THE DICE ON THE VICE PRESIDENCY: FROM ADAMS AND JEFFERSON TO TRUMAN AND QUAYLE (1992).
- KLAUS DETTERBECK, MULTI-LEVEL PARTY POLITICS IN WESTERN EUROPE (2012).
- Kristian Berg Harpviken, *Afghanistan: From Buffer State to Battleground—to Bridge between Regions*, in NEW AND CRITICAL SECURITY AND REGIONALISM: BEYOND NATION STATES (Hanes H. Hentz and Morten Boas, eds., 2003).
- Matthias Catón & Fernando Tuesta Soldevilla, *Political Parties in Conflict-Prone Societies in Latin America*, in POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT 129 (Benjamin Reilly & Per Nordlund, eds., 2008)
- KURT RICHARD LUTHER & KRIS DESCHOUWER, PARTY ELITES IN DIVIDED SOCIETIES: POLITICAL PARTIES IN CONSOCIATIONAL DEMOCRACY (1999).
- LATIF KARIMI, YAGHMAI DOWUM-E-MANGALI [THE SECOND LOOT OF MANGALIS] (2005).
- LARRY DIAMOND, DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION (1999).
- LARRY DIAMOND & RICHARD GUNTHER, POLITICAL PARTIES AND DEMOCRACY (2001).
- LAURI KARVONEN & STEIN KUHNLE, PARTY SYSTEMS AND VOTER ALIGNMENTS REVISITED (2001).
- LINDA TUHIWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES (2nd ed. 2012)
- LISA BLAYDES, ELECTIONS AND DISTRIBUTIVE POLITICS IN MUBARAK'S EGYPT (2011).
- LOUIS DUPREE, AFGHANISTAN (1980).
- M. AOKI, TOWARDS A COMPARATIVE INSTITUTIONAL ANALYSIS (2001).
- M. N. Shahrani, *From Failed Modernization and Failed-State to a Post-Taliban Militia-State: Afghanistan Since 1919*, in THE ISLAMIC WORLD IN THE AGE OF AGE OF WESTERN DOMINANCE (Francis Robinson, ed., 2006).

- M. STEVEN FISH, *THE E-PARLIAMENT ELECTION INDEX: A GLOBAL SURVEY ON THE QUALITY OF PRACTICES IN PARLIAMENTARY ELECTIONS* (2009).
- M. STEVEN FISH & MATHEW KROENIG, *THE HANDBOOK OF NATIONAL LEGISLATURES: A GLOBAL SURVEY* (2009).
- Malcolm Kerr, *Political Decision Making in a Confessional Democracy*, in *POLITICS IN LEBANON* (Leonard Binder, ed., 1966).
- MARIE D. NATOLI, *AMERICAN PRINCE, AMERICAN PAUPER: THE CONTEMPORARY VICE PRESIDENCY IN PERSPECTIVE* (1985).
- MARK P. JONES, *ELECTORAL LAWS AND THE SURVIVAL OF PRESIDENTIAL DEMOCRACIES* (1995).
- MATTHEW SOBERG SHUGART & JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES, CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* (1992).
- Maurice Duverger, *Presidential Elections and Party system in Europe* (translated by Herbert H. Rowen), in *POLITICAL PARTIES AND THE MODERN STATE* (Richard L. McCormick, ed., 1984).
- MAURICE DUVERGER, *POLITICAL PARTIES: THEIR ORGANIZATION AND ACTIVITY IN THE MODERN STATE* (Barbara and Robert North, trans., 1954).
- MICHAEL GALLAGHER & PAUL MITCHELL, *THE POLITICS OF ELECTORAL SYSTEMS* (2009).
- MICHAEL R. ALVAREZ, *IMPROVING THE ELECTION DAY SURVEY* (2006).
- MICHELINE CENTLIVRES-DEMONT, *AFGHANISTAN: IDENTITY, SOCIETY AND POLITICS SINCE 1980* (2015).
- MIJTA ZAGAR, BORIS JESIH, & ROMANA BESTER, *THE CONSTITUTIONAL AND POLITICAL REGULATION OF ETHNIC RELATIONS AND CONFLICTS* (1999).
- MOHAMMAD AKRAM ANDISHMAND, *NAHZAT ISLAMI AFGHANISTAN [THE ISLAMIC MOVEMENTS OF AFGHANISTAN]* (2013).
- MOHAMMAD ASHRAF RASULI, *A REVIEW OF THE CONSTITUTIONS OF AFGHANISTAN [MORURI BAR QAWANIN-E-ASASI AFGHANISTAN]* (2009).
- MOHAMMAD ASHRAF RASULY, *TAHLIL WA NAQD QANOON-E-ASASI AFGHANISTAN [A CRITIQUE OF THE CONSTITUTION OF AFGHANISTAN]* (2009).

- Mohammad Hashim Kamali, *Rabeta Meyan Quwa Mujria wa Majless wa Masala Tafsir Qanoon-e-Assasi Dar Dawran Karzai [The Relationship Between Executive and Legislature and the Issue of the Interpretation of the Constitution Under President Karzai]*, in SALNAMAH MOTAL'AT HOQUQY AFGHANISTAN, 150 [YEARBOOK OF AFGHAN LEGAL STUDIES] (1394) [2016].
- MOHAMMAD JAWAD SALEHI, MAWANI TAHKIM DEMOCRACY DAR AFGHANISTAN [OBSTRUCTS TO DEMOCRATIC CONSOLIDATION IN AFGHANISTAN] (2015).
- MOHAMMAD NABI AHMADI & MAJID ISMAELZADA, DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] (2014).
- MOHAMED SALIH & ODA VAN CRANENBURGH, AFRICAN POLITICAL PARTIES: EVOLUTION, INSTITUTIONALIZATION AND GOVERNANCE (2003).
- MOHAMMAD TAHIR HASHEMI, BA SOY DEMOCRACY: QANOON-E-ASASI WA NEZAM NAWIN SIASI [TOWARDS DEMOCRACY: THE CONSTITUTION AND THE NEW POLITICAL SYSTEM OF AFGHANISTAN] (2005).
- MOHAMMAD YASIN NASIMI, RAWABET PARLIMAN BA HOKUMATHAI AFGHANISTAN DAR DAHA DEMOCRACY [THE RELATIONSHIPS OF THE PARLIAMENT WITH THE GOVERNMENTS IN AFGHANISTAN IN DEMOCRACY DECADE] (2005).
- MOONIS AHMAR, THE CHALLENGE OF REBUILDING AFGHANISTAN 86 (2006). MOUNTSTUART ELPHINSTONE, AN ACCOUNT OF THE KINGDOM OF CAUBUL (1815).
- MUJIBURAHMAN RAHIMI, NAQDI BAR SAHK TAR NEZAM DAR AFGHANISTAN [A CRITIQUE OF THE STRUCTURE OF THE POLITICAL SYSTEM IN AFGHANISTAN] (1387) [2008].
- NAJIB MAYEL HURAWI, TARIKH WA ZABAN DAR AFGHANISTAN [HISTORY AND LANGUAGE IN AFGHANISTAN] (1992).
- NICHOLAS BARRINGTON, JOSEPH T. KENDRICK & REINHARD SCHLAGINTWEIT, A PASSAGE TO NURISTAN: EXPLORING THE MYSTERIOUS AFGHAN HINTERLAND (2006).
- NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE (2013).
- NIKOLAOS BIZIOURAS, THE POLITICAL ECONOMY OF ETHNIC CONFLICT IN SRI-LANKA: ECONOMIC LIBERALIZATION, MOBILIZATIONAL RESOURCES, AND ETHNIC COLLECTIVE ACTION (2014).
- ONGOYA, Z. ELISHA & WILLIS E. OTIENO, A HANDBOOK ON KENYA'S ELECTORAL LAWS AND SYSTEM: HIGHLIGHTS OF THE ELECTORAL LAWS AND SYSTEM ESTABLISHED BY AND UNDER THE CONSTITUTION OF KENYA 2010 AND OTHER STATUTES (2012).

- PAUL C. LIGHT, *VICE-PRESIDENTIAL POWER: ADVICE AND INFLUENCE IN THE WHITE HOUSE* (1984).
- PAUL LEWIS, *POLITICAL PARTIES IN POST-COMMUNIST EASTERN EUROPE* (2001).
- PAULOS MILIAS, *ETHIOPIA: AFRICA IN FOCUS* (2011).
- PIPPA NORRIS, *ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR* (2004).
- *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* (Benjamin Reilly & Per Nordlund eds., 2008).
- PRADEEP K. CHHIBBER & KEN KOLLMAN, *THE FORMATION OF NATIONAL PARTY SYSTEM: FEDERALISM AND PARTY COMPETITION IN CANADA, GREAT BRITAIN, INDIA, AND THE UNITED STATES* (2011).
- RASUL BAKHSH RAIS, *WAR WITHOUT WINNERS: AFGHANISTAN'S UNCERTAIN TRANSITION AFTER THE COLD WAR* (1994).
- REUVEN Y. HAZAN & GIDEON REHAT, *DEMOCRACY WITHIN PARTIES: CANDIDATE SELECTION METHODS AND THEIR POLITICAL CONSEQUENCES* (2010).
- RICHARD H. PILDES, *THE CONSTITUTIONALIZATION OF DEMOCRATIC POLITICS - THE SUPREME COURT, 2003 TERM* (2004).
- RICHARD S. KATZ, *A THEORY OF PARTIES AND ELECTORAL SYSTEMS* (2007).
- RICHARD S. KATZ & PETER MAIR, *PARTY ORGANIZATIONS: A DATA HANDBOOK* (1992).
- RICHARD S. KATZ & WILLIAM CROTTY, *A HANDBOOK OF PARTY POLITICS* (2006).
- ROBERT A. DAHL, *POLITICAL OPPOSITIONS IN WESTERN DEMOCRACIES* (1966).
- ROBERT A. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* (1971).
- ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (1992).
- Robert G. Moser, *Electoral Engineering in New Democracies: Can Preferred Electoral Outcomes Be Engineered?*, in *IS DEMOCRACY EXPORTABLE?* (Zoltan Barany & Robert G. Moser eds. 2009).

- ROBERT G. MOSER & ETHAN SCHEINER, *ELECTORAL SYSTEMS AND POLITICAL CONTEXT: HOW THE EFFECTS OF RULES VARY ACROSS NEW AND ESTABLISHED DEMOCRACIES* (2012).
- ROGERS BRUBAKER, *ETHNICITY WITHOUT GROUPS* (2006).
- SAJIT CHOUDHRY, *CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION* (2008).
- RUDOLF HRBEK, *POLITICAL PARTIES AND FEDERALISM* (2004).
- SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 89 (2004).
- SAMUEL P. HUNTINGTON, *THE THIRD WAVE, DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991).
- SCOTT MAINWARING & MATTEW SOBERG SHUGART, *PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA* (1997).
- SCOTT MAINWARING & TIMOTHY R. SCULLY, *BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA* (1995).
- SCOTT RADNITZ, *WEAPONS OF THE WEALTHY: PREDATORY REGIMES AND ELITE-LED PROTESTS IN CENTRAL ASIA* (2010).
- SCOTT S. SMITH, *AFGHANISTAN'S TROUBLED TRANSITION: POLITICS, PEACEKEEPING AND THE 2004 PRESIDENTIAL ELECTION* (2011).
- SABAHUDDIN KUSHKAKI, *THE DECADE OF CONSTITUTIONALISM: THE NEGLIGENCE OF AFGHANS AND THE OPPORTUNISM OF RUSSIANS [DAHA QANOON-E-ASASI: GHAFLAT AFGHANHA WA FERSAT TALABI RUSHA]* (1996).
- SAMSOR AFGHAN, *SAQAWI DOWUM [SECOND WATER CARRIER]* (1998).
- Samuel Issacharoff, *Managing Conflict Through Democracy, in* *RIGHTS IN DIVIDED SOCIETY* (Colin Harvey & Alex Schwartz eds. 2012).
- SAYED AMIN MUJAHID & DIN MOHAMMAD JAWID, *EMERGENCY LOYA JIRGA* (2002).
- Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures Party Systems and Voter Alignments, in* *PARTY SYSTEM CHANGE: APPROACHES AND INTERPRETATIONS* (Peter Mair ed. 1990).
- SONALI KOHATKAR & JAMES INGALLS, *BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF SILENCE* (2006).

- STATE, CONFLICT, AND DEMOCRACY IN AFRICA (Richard Joseph ed., 1999).
- STEFAN WOLFF & CHRISTALLA YAKINTHOU, CONFLICT MANAGEMENT IN DIVIDED SOCIETIES (2012).
- STEVEN B. WOLINETZ, PARTIES AND PARTY SYSTEMS IN LIBERAL DEMOCRACIES (2011).
- STEVEN LEVITSKY & LUCAS A. WAY, COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR (2010).
- STEVEN SHAVELL, FOUNDATION OF ECONOMIC ANALYSIS OF LAW (2004).
- SUSAN STREGA & LESLIE BROWN, RESEARCH AS RESISTANCE: REVISITING CRITICAL, INDIGENOUS, AND ANTI-OPPRESSIVE APPROACHES (2015).
- TERRENCE E. COOK, NESTED POLITICAL COALITIONS: NATIONS, REGIME, PROGRAM, CABINET (2002).
- THEDA SKOCPOL, STATES AND SOCIAL REVOLUTIONS: A COMPARATIVE ANALYSIS OF FRANCE, RUSSIA, AND CHINA (2013).
- THOMAS BARFIELD, AFGHANISTAN: A CULTURAL AND POLITICAL HISTORY (2010).
- TIMOTHY D. SISK, DEMOCRATIZATION IN SOUTH AFRICA: THE ELUSIVE SOCIAL CONTRACT (1995).
- TIMOTHY WALCH, AT THE PRESIDENT'S SIDE: THE VICE PRESIDENCY IN THE TWENTIETH CENTURY (1997).
- THOMAS ERTMAN, BIRTH OF THE LEVIATHAN: BUILDING STATES AND REGIMES IN MEDIEVAL AND EARLY MODERN EUROPE (1999).
- TUKUMBI LUMUMBA-KASONGO, THE RISE OF MULTIPARTISM AND DEMOCRACY IN THE CONTEXT OF GLOBAL CHANGE: THE CASE OF AFRICA (1998).
- VANCE R. KINCADE, JR., HEIRS APPARENT: SOLVING THE VICE PRESIDENTIAL DILEMMA (2000).
- VERNON BOGDANOR & DAVID BUTLER, DEMOCRACY AND ELECTIONS: ELECTORAL SYSTEMS AND THEIR POLITICAL CONSEQUENCES (1983).
- WILLIAM A. CALLAHAN, CHINA DREAMS: 20 VISIONS OF THE FUTURE (2013).

- WILHELM HOFMEISTER & KARSTEN GRABOW, *POLITICAL PARTIES: FUNCTIONS AND ORGANIZATION IN DEMOCRATIC SOCIETIES* (2011).
- WILLIAM MALEY, *THE AFGHANISTAN WAR* (2002).
- WILLIAM H. RIKER, *THE THEORY OF POLITICAL COALITIONS* (1962).
- WILLIAM TORDOFF, *GOVERNMENT AND POLITICS IN AFRICA* (1984).
- ZALMAY KHALILZAD, *THE ENVOY: FROM KABUL TO THE WHITE HOUSE* (2016).

Journals

- Abigail Carter, *Promoting Democracy in Ethnically Divided Societies: The Benefits of Combining Partition and Power-Sharing*, 1/18 RES PUBLICA - J. UNDERGRADUATE RES. 62-84 (2013).
- Abraham Korir Sing'Oei & Laura A. Young, *Left Behind: Minority Rights, Transitional Justice and Lessons for Kenya*, 5 INTERDISC. J. HUM. RTS. L. 49-76 (2010-2011).
- Aim Sinpeng, *Party Banning and the Impact on Party System Institutionalization in Thailand*, 3/36 CONTEMP. SOUTHEAST ASIA 442–66 (2014).
- Alefe Abeje, *Party System Institutionalization and the Prospect of Democratic Consolidation in Ethiopia*, 23/9 EUROPEAN SCI. J. 315-328 (2013).
- Alfred Stepan & Cindy Skach, *Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism*, 1/46 WORLD POL. 1-22 (1993).
- Allen Hicken et al., *Shadows from the Past: Party System Institutionalization in Asia*, 5/44 COMP. POL. STUD. 572-597 (2011).
- Allen Hicken & Heather Stoll, *Presidents and Parties: How Presidential Elections Shape Coordination in Legislative Elections*, 7/44 COMP. POL. STUD. 854-883 (2011).
- André Blais, Jean-François Laslier, Annie Laurent, Nicolas Sauger, and Karine Van der Straeten, *One-round vs. Two-round Elections: An Experimental Study*, 5 FRENCH POL. 278–286 (2007).
- André Blais, Simon Labbé St-Vincent, Jean-François Laslier, Nicolas Sauger, et Karine van der Straeten, *Strategic Vote Choice in One-round and Two-round Elections: An Experimental Study*, 64/3 POL. RES. Q. 637-645 (2011).
- André Blais & Indridi H. Indridason, *Making Candidates Count: The Logic of Electoral Alliances in Two-Round Legislative Elections*, 69/1 J. POL. 193-205 (2007).

- Andrew Reynolds, *Electoral Systems Today: The Curious Case of Afghanistan*, 2/17 JOURNAL OF DEMOCRACY 43 (2006)
- Angela Bourne, *Democratization and the Illegalization of Political Parties in Europe*, 19 DEMOCRATIZATION 1065–85 (2012).
- Anika Moroff, *Party Bans in Africa: An Empirical Overview*, 17 DEMOCRATIZATION 618–41 (2011).
- Arend Lijphart, *Majority Rule Versus Democracy In Deeply Divided Societies*, 3/1 POLITIKON 113-126 (1976).
- Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, 18/2 PARTY POL. 235-265 (2012).
- Barnett R. Rubin, *Crafting a Constitution for Afghanistan*, 15/3 J. DEM. 5-19 (2004).
- Benjamin Reilly, *Electoral Systems for Divided Societies*, 13/2 J. DEM. 156-170 (Apr. 2002).
- Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13/5 DEMOCRATIZATION 811-827 (Sep. 2006).
- Bernard Grofman & Peter Van Roozendaal, *Review Article: Modelling Cabinet Durability and Termination*, 27/3 B. J. POL. S. 419-451 (Jul. 1997).
- Brandon Kendhammer, *Talking Ethnic But Hearing Multiethnic: the Peoples' Democratic Party (PDP) in Nigeria & Durable Multi-Ethnic Parties In the Midst of Violence*, 48/1 COMMONWEALTH & COMP. POL. 48-71 (Feb. 2010).
- Brian Glyn Williams, *Dostum: Afghanistan's Embattled Warlord*, 7/8 TERRORISM MONITOR 1 (April 17, 2008).
- Bruce Ackerman & Richard Stewart, *Reforming Environmental Law: The Democratic Case for Market Incentives*, 13 COLUM. J. ENVTL. L. 171, 182-3 (1988).
- Bruce E. Cain, *Election Law as a Field: A Political Scientist's Perspective*, 32 LOY. L. A. L. REV. 1105-1119 (1999).
- Bruce E. Cain, *Teaching Election Law to Political Scientists*, 56 ST. LOUIS U. L.J. 725-733 (2012).
- Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 U. Chi. L. Rev. 407, 413-29 (1990).

- Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390-1414 (1994).
- Cecilia Martínez-Gallardo, *Out of the Cabinet: What Drives Defections From the Government in Presidential Systems?*, 45/1 COMP. POL. STUD. 62-90 (2012).
- Cesar Zucco, Jr., *Legislative Coalitions in Presidential Systems: The Case of Uruguay*, 5/1 LATIN AM. POL. & SOC. 96–118 (2013).
- Chad Flanders, *Election Law: Too Big To Fail?* 56 ST. LOUIS U. L.J. 775-787 (2012).
- Christopher J. Devine & Kyle C. Kopko, *Presidential Versus Vice Presidential Home State Advantage: A Comparative Analysis of Electoral Significance, Causes, and Processes, 1884-2008*, 43/4 PRES. STUDIES Q. 814–838 (2013).
- Christopher Kingston And Gonzalo Caballero, *Comparing Theories Of Institutional Change*, 5/2 J. INST. ECON. 151–180 (2009).
- Chun-Hao Chang, *Cohabitation In Semi-Presidential Countries*, 2/3 SOCIAL SCIENCES, 31-43 (2014)
- Daniel H. Lowenstein, *Election Law as a Subject—A Subjective Account*, 32 LOY. L.A. L. REV. 1199-1215 (1999)
- Daniel P. Tokaji, *Teaching Election Administration*, 56 ST. LOUIS U. L.J. 675-687 (2012).
- Daniel P. Tokaji & Allison R. Hayward, *The Role of Judges in Election Law*, 159 U. PA. L. REV. 273-292 (2011).
- Daniel R. Ortiz, *From Rights to Arrangements*, 32 LOY. L.A. L. REV. 1217-1226 (1999).
- Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 19/5 PARTY POL. 735-757 (2011).
- Darren Atkinson, *The Left Radical of Afghanistan [Chap- e Radikal-e Afghanistan]: Finding Trotsky after Stalin and Mao?* SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL (2015).
- David Collier, *Understanding Process Tracing*, 40/4 POL. SCI. & POLITICS 823-830 (2011).
- David J. Samuels, *Concurrent Elections, Discordant Results Presidentialism, Federalism, and Governance in Brazil*, 33/1 COMP. POL. 1-20 (2000).

- David J. Samuels & Matthew Soberg Shugart, *Presidentialism, Elections, and Representations*, 15/1 J. THEORETICAL POL. 33-60 (2003).
- David W. Romero, *Requiem for a Lightweight: Vice Presidential Candidate Evaluations and the Presidential Vote*, 31/3 PRES. STUD. Q. 454-465 (2013).
- Dennis Shoosmith, *Timor-Leste: Divided Leadership in a Semi-Presidential System*, 43/2 ASIAN SURVEY 231-252 (Apr. 2003).
- Derrick Purdue, *Community Leadership Cycles and the Consolidation of Neighborhood Coalitions in the New Local Governance*, 7/2 PUB. MANAGEMENT REV. 247-266 (2005).
- Donald Horowitz, *Three Dimensions of Ethnic Politics*, 23/2 J. WORLD POL. 232-244 (Jan. 1971).
- Douglass C. North, John Joseph Wallis, & Barry R. Weingast, *Violence and the Rise of Open-Access Orders*, 20/1 J. OF DEM. 55-68 (2009).
- Douglas Rae, Victor Hanby & John Loosemore, *Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems*, 3 COMP. POL. STUD. 479, 480 (1971)
- Eduardo Abul Taif, *The Limitations of the Consociational Arrangements in Iraq*, 38 ETHNO-POLITICS PAPERS, 6-7 (2015).
- Eduardo Alemán & George Tsebelis, *Political Parties and Government Coalitions in the Americas*, 3/1 J. POL. IN LATIN AM. 3-28 (2011).
- Faridullah Bezhani, *The Emergence of Political Parties and Political Dynamics in Afghanistan, 1964–73* IRANIAN STUDIES 921-941 (2013).
- Fernando Casal Bertoa, *Party Systems and Cleavage Structures Revisited: A Sociological Explanation of Party System Institutionalization in East Central Europe*, 20/1 PARTY POL. 16-36 (2013).
- Fred Riggs, *The Survival of Presidentialism in America: Para Constitutional Practices*, 9/4 INT'L POL. SCI. REV. 247-278 (Oct. 1988).
- G. Bingham Powell Jr., *Election Laws and Representative Governments: Beyond Votes and Seats*, 2/36 B. J. POL. SCI. 291-315 (Apr. 2006).
- Gabriel L. Negretto, *Minority Presidents and Democratic Performance in Latin America*, 48/3 LATIN AM. POL. & SOC. 63-92 (2006).
- Graeme Orr, Bryan Mercurio, & George Williams, *Electoral Law Symposium: An Introduction*, 32/3 FED. L. REV. 357-363 (2004).

- Gary W. Cox, *Strategic Voting Equilibria Under the Single Nontransferable Vote*, 88/3 AM. POL. SCI. REV. 608-621 (Sep. 1994)
- Gregory P. Magarian, *Regulating Political Parties under a "Public Rights" First Amendment*, 44/5 WM. & MARY L. REV. 1939-2061 (2003).
- Gretchen Helmke & Steven Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, 4/2 PERSP. ON POL. 725-741 (2004).
- Heather K. Gerken, *Keynote Address: What Election Law Has To Say To Constitutional Law*, 44 IND. L. REV. 7-22 (2010).
- Heather K. Gerken & Michael S. Kang, *Déjà Vu All Over Again: Courts, Corporate Law, and Election Law*, 128 HARV. L. REV. FORUM 86-90 (2013).
- Herbert Kitschelt, *The Formation of Party Systems in East-Central Europe*, 20/1 POL. & SOC. 7-50 (1992).
- Imad Salamey, *Failing Consociationalism In Lebanon And Integrative Options*, 2/4 INTERNATIONAL JOURNAL OF PEACE STUDIES, 83-105 (2009).
- Imke Harbers, *Decentralization and the Development of Nationalized Party Systems in New Democracies: Evidence from Latin America*, 43 COMP. POL. STUD. 606-627 (2010).
- Jakub Zielinski, *Translating Social Cleavages into Party Systems: The Significance of New Democracies*, 54/2 WORLD POL. 184-211 (2002).
- James A. Gardner, *Election Law as Applied Democratic Theory*, 56 ST. LOUIS U. L.J. 689-699 (2012).
- James A. Gardner, *Stop Me Before I Quantify Again: The Role Of Political Science In The Study Of Election Law*, 32 LOY. L.A. L. REV. 1141-1171 (1999).
- James D. Fearon & David D. Laitin, *Explaining Interethnic Cooperation*, 90/4 AM. POL. SCI. REV. 715-735 (1996).
- Janet Landa, Michael Copeland & Bernard Grofman, *Ethnic Voting Patterns: A Case Study of Toronto Metropolitan*, 14/5 J. POL. GEOGRAPHY 435-449 (1995).
- Jeffrey A. Karp, *Electoral Systems, Party Mobilisation, and Political Engagement*, 47/1 AUSTRALIAN J. POL. SCI. 71-89 (2012).
- Joe Foweraker, *Institutional Design, Party Systems and Governability - Differentiating the Presidential Regimes of Latin America*, 28/4 B. J. POL. SCI. 651-676 (1998).

- Johanna Kristin Birnir, *Public Venture Capital and Party Institutionalization*, 38/8 COMP. POL. STUD. 915-938 (2005).
- John M. Carey, *The Impact of Constitutional Choices on the Performance of Presidential Regimes*, 11/1 J. OF SOC. SCI. & PHIL. 93-122 (1999).
- Jose Antonio Cheibub, Adam Przeworski & Sebastian M. Saiegh, *Government Coalitions and Legislative Success under Presidentialism and Parliamentarism*, 34/4 B. J. POL. S. 565–587 (2004).
- Juan J. Linz, *The Perils of Presidentialism*, 1 J. OF DEM., 51 (1990).
- Kaare Strgm, Ian Budge, & Michael J. Laver, *Constraints on Cabinet Formation in Parliamentary Democracies*, 38/2 AM. J. POL. SCI. 303-335 (May, 1994).
- Kanchan Chandra, *Elite Incorporation in Multiethnic Societies*, 40/5 ASIAN SURVEY 836-865 (Oct. 2000).
- Kanchan Chandra, *Ethnic Parties and Democratic Stability*, 3/2 PERSP. ON POL. 235-252 (Jun. 2005).
- Kaare Strgm, Ian Budge & Michael J. Laver, *Constraints on Cabinet Formation in Parliamentary Democracies*, 38/2 AM. J. POL. SCI. 303-335, 307 (May 1994).
- Karl Lowenstein, *The Presidency Outside the United States: A Study in Comparative Political Institutions*, 11/3 J. POL. 447-496 (1949).
- Kathleen Bawn & Frances Rosenbluth, *Short versus Long Coalitions: Electoral Accountability and the Size of the Public Sector*, 50/2 AM. J. POL. SCI. 251-265 (2006).
- Kathleen Thelen, *Historical Institutionalism in Comparative Politics*, 2 ANNU. REV. POLIT. SCI. 369–404 (1999).
- Keneth Benoit, *District Magnitude, Electoral Formula, and the Number of Parties*, 39 EUR. J. POL. RES. 203–224 (2001).
- Kirsten Nussbaumer, *Election Law as Elective of Choice*, 56 ST. LOUIS U. L.J. 747-761 (2012).
- Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6/2 CHI. J. OF INT’L. L. 1-20 (2006)
- L. Kirschke, *Semi-presidentialism and the Perils of Power-Sharing in Neopatrimonial States*, 11/40 COMPARATIVE POLITICAL STUDIES, 1372–94 (2007).

- Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89/5 MICH. L. REV. 1077, 1080, 1135 (1991).
- Lars-Erik Cederman, Andreas Wimmer and Brian Min, *Why Do Ethnic Groups Rebel? New Data and Analysis*, 62/1 WORLD POL. 87-119 (2010).
- Laurence H. Tribe, *The Puzzling Persistence of Process-Based Constitutional Theories*, 89/6 YALE L. J. 1063-1080 (1980).
- Laurent Bouton & Gabriele Gratton, *Majority Runoff Elections: Strategic Voting and Duverger's Hypothesis*, 10 THEORETICAL ECON. 283–314 (2015).
- Lauri Karvonen, *Legislation on Political Parties: A Global Comparison*, 13/4 PARTY POL. 437–455 (2007),
- Lisa Marshall Manheim, *The Nudging Ballot? A Response to Professor Foley*, 89 N.Y.U. L. REV. ONLINE 65-69 (2014).
- Lise Rakner & Nicolas van de Walle, *Opposition Weakness in Africa*, 20/3 J. OF DEM. 108-121 (2009).
- Luke P. McLoughlin, *The Elysian Foundations Of Election Law*, 82 TEMP. L. REV. 89-148 (2009).
- M. N. Shahrani, *Squandering US Credibility in Afghanistan*, 25 AKADEMIK ARASTIRMALAR DERGISI, 103-107 (2005).
- Magna Inacio & Mariano Llanos, *The Institutional Presidency from a Comparative Perspective: Argentina and Brazil since the 1980s*, 9/1 BRAZILIAN POL. SCI. REV. 39-64 (2015).
- Margit Tavits & Natalia Letki, *From Values to Interests? The Evolution of Party Competition in New Democracies*, 76/1 J. POL. 246-258 (2014).
- Mark P. Jones, *Electoral Laws and the Effective Number of Candidates in Presidential Elections*, 61/1 J. POL. 171-184 (1999).
- Marvin G. Weinbaum, *Afghanistan: Nonparty Parliamentary Democracy*, 7/1 J. DEVELOPING AREAS 57-74 (Oct. 1972).
- Matthew Søberg Shugart, *Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns*, 3 FRENCH POL. 323–351 (2005).
- Matthijs Bogaards, *Counting Parties and Identifying Dominant Party Systems in Africa*, 43 EUR. J. POL. RES. 173–197 (2004).

- Michael W. Fowler, *A Brief Survey of Democracy Promotion in US Foreign Policy*, 11/3 DEM. & SEC. 227-247 (2015).
- Michelle Kuenzi & Gina Lambright, *Party Systems and Democratic Consolidation in Africa's Electoral Regimes*, 11/4 PARTY POL. 423-446 (2005).
- Mikhail G. Filippov, Peter C. Ordeshook, & Olga V. Shvetsova, *Party Fragmentation and Presidential Elections in Post-Communist Democracies*, 10/3 CONST. POL. ECON. 3-26 (1999).
- Muhammad Saleem Mazhar, Samee Ozair Khan and Naheed S. Goraya, *Ethnic Factor in Afghanistan*, 19/2 J. POL. STUD. 97-109 (2012).
- Nancy L. Rosenblum, *Primus Inter Pares: Political Parties and Civil Society*, 75/2 CHI.-KENT. L. REV. 493-529 (2000).
- Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116/2 HARV. L. REV. 649-683 (2002).
- Nathaniel Persily & Bruce E. Cain, *The Legal Status of Political Parties: A Reassessment of Competing Paradigms*, 100/3 COLUM. L. REV. 775-812 (2000).
- Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769-858 (2013).
- Norman Schofield, *Political Competition and Multiparty Coalition Governments* 23 EUR. J. POL. RES. 1-33 (1993).
- Pamela S. Karlan, *Constitutional Law, the Political Process, and the Bondage of Discipline*, 32 Loy. L.A. L. REV. 1185 (1999).
- Paul Gronke, *When and How to Teach Election Law in the Undergraduate Classroom*, 56 ST. LOUIS U. L.J. 735-745 (2012).
- Paul L. Mckaskle, *Of Wasted Votes and No Influence: An Essay On Voting Systems In the United States*, 35 HOUS. L. REV. 1119-1205 (1999).
- Peter C. Ordeshook & Olga V. Shvetsova, *Ethnic Heterogeneity, District Magnitude, and the Number of Parties*, 38/1 AM. J. POL. SCI. 100-123 (Feb. 1994).
- Peter Mair, *The Autonomy of the Political: The Development of the Irish Party System*, 11/4 COMP. POL. 445-465 (1979).
- Peter Mair, *The Electoral Payoffs of Fission and Fusion*, 20/1 B. J. POL. SCI. 131-142 (1990).

- Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems*, 18/3 INT’L POL. SCI. REV. 297-312 (1997).
- R. Michael Alvarez & Thad E. Hall, *Controlling Democracy: The Principal-Agent Problems in Election Administration*, 34/4 POL’Y STUD. J. 491-510 (2006).
- Raimondas Ibenskas, *Understanding Pre-Electoral Coalitions in Central and Eastern Europe*, 46 B. J. POL. S. 743–761 (2015).
- Rainer Grote, *Separation of powers in the Afghan New Constitution*, 64 ZAORV 897, 902 (2004).
- Rhea Abraham, *Politics of Ethnicity in Afghanistan: Understanding the Pashtuns and the Minor Ethnic Groups*, 2/2 DEFENSE & DIP. J. (Mar. 2013).
- Richard Briffault, *Lani Guinier and the Dilemmas of American Democracy*, 95 COLUM. L. REV. 418-472 (1995).
- Richard B. Warnecke, Timothy P. Johnson, Noel Chavez, Seymour Sudman, Diane P. O’Rourke, Loretta Lacey, & John Horm, *Improving Question Wording in Surveys of Culturally Diverse Populations*, 7/5 ELSEVIER 334-342 (Jul. 1997).
- Richard L. Hasen, *Do the Parties or the People Own the Electoral Process?*, 149 U. PA. L. REV. 815-841 (2000).
- Richard L. Hasen, *Introduction: Developments in Election Law*, 42 LOY. L.A. L. REV. 565-574 (2009).
- Richard L. Hasen, *Introduction—Election Law at Puberty: Optimism and Words of Caution*, 32 LOY. L.A. L. REV. 1095-1103 (1999).
- Richard L. Hasen, *The ‘Political Market’ Metaphor and Election Law: A Comment on Issacharoff and Pildes*, 50/3 STAN. L. REV. 719-730 (1998).
- Richard L. Hasen, *The Supreme Court And Election Law: A Reply To Three Commentators*, 31/1 J. LEGIS. 1-15 (2005).
- Robert Elgie & Iain McMenamin, *Explaining the Onset of Cohabitation under Semi-presidentialism*, 59/3 POL. STUD. 1-20 (2011).
- Robert Melson & Howard Wolpe, *Modernization and the Politics of Communalism: A theoretical Perspective*, 4/64 AM. POL. SCI. REV 1112-1130 (Dec. 1970).
- Ron Levy, *The Law of Deliberative Democracy: Seeding the Field*, 12/4 ELECTION L. J. 355-371 (2013).

- Roy A. Schotland, *And for the Student: The Seven Striking Strengths of Ballots, Bucks, Maps & the Law*, 32 LOY. L.A. L. REV. 1227 (1999).
- Roy E. Brownell II, *Vice Presidential Secrecy: A Study in Comparative Constitutional Privilege and Historical Development*, 84/2 ST. JOHN'S L. REV. 426-628 (Oct. 2011).
- Russell J. Dalton & Steven Weldon, *Partisanship and Party System Institutionalization*, 13/2 PARTY POL. 179-196 (2007).
- Salih Doğan, *2014 Afghanistan Presidential Election: An Ethnic Analysis*, 3/4 CAUCASUS INT'L. 94 (Winter, 2014).
- Samuel Issacharoff and Richard H. Pildes, *Not by Election Law Alone*, 32 LOY. L.A. L. REV. 1173-1183 (1999).
- Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50/3 STAN. L. REV. 643-717 (1998).
- Samuel P. Huntington, *Political Development and Political Decay*, 17/3 WORLD POL. 386-430 (1965).
- Sarah Birch, *Two-Round Electoral Systems and Democracy*, 36/3 COMP. POL. STUD. 319-344 (2003).
- Sara T. Ghadiri, *SNTV in Afghanistan: Is There a Better Option?*, 5/1 RES PUBLICA –J. UNDERGRADUATE RES. 85-91 (2010).
- Scott Mainwaring, *Political Parties and Democratization in Brazil and the Southern Cone*, 21/1 COMP. POL. 91–120 (1988).
- Scott Mainwaring, *Presidentialism in Latin America*, 25/1 LATIN AM. RES. REV. 157-179 (1990).
- Scott Morgenstern, Juan Javier Negri, & Ani'bal Perez-Lin'An, *Parliamentary Opposition in Non-Parliamentary Regimes: Latin America*, 14 J. LEGIS. STUD. 160–189 (2008).
- Scott S. Smith, *The Future of Afghan Democracy*, 3/1 STABILITY: INT'L. J. SEC. & DEV. 1-9 (Mar. 2014).
- Scott Worden, *Afghanistan: An Election Gone Awry*, 21/3 J. OF DEM. 11-25 (2010).
- Spencer Overton, *Forward: Political Law*, 81/6 GEO. WASH. L. REV. 1783-198 (2013).

- Staffan I. Lindberg, *Institutionalization of Party Systems? Stability and Fluidity among Legislative Parties in Africa's Democracies*, 42/2 GOV'T. & OPPOSITION 215-241 (2007).
- Stephen G. Wright & William H. Riker, *Plurality and Runoff Systems and Numbers of Candidates*, 60/2 PUB. CHOICE 155-175 (1989).
- Steven Mulroy, *The Way Out: Toward A Legal Standard For Imposing Alternative Electoral Systems As Voting Rights Remedies*, 33 HARV. C.R.-C.L. L. REV. 333 (1998).
- Sven Gunnar Simonsen, *Ethnicising Afghanistan?: Inclusion and Exclusion in Post-Bonn Institution Building*, 25/4 THIRD WORLD Q. 707-729 (2004).
- T. Clark Durant & Michael Weintraub, *An Institutional Solution for Ethnic Patronage Politics*, 26/1 J. THEORETICAL POL. 59-78 (2013).
- Terry M. Moe, *Power and Political Institutions*, 3/2 POL. SCI. & POLITICS 215-233 (2005).
- Thomas Fujiwara, *A Regression Discontinuity Test of Strategic Voting and Duverger's Law*, 6 Q. J. POL. SCI. 197-233 (2011).
- Thomas H. Johnson, *The Prospects for Post-Conflict Afghanistan: A Call of the Sirens to the Country's Troubled Past*, 5/2 STRATEGIC INSIGHTS (2006)
- Victor Araujo, Thiago Silva, & Marcelo Vieira, *Measuring Presidential Dominance over Cabinets in Presidential Systems: Constitutional Design and Power Sharing*, 10/2 J. BRAZILIAN POL. ASSOC. 1-23 (2016).
- Vicky Randall & Lars Svasand, *Party Institutionalization in New Democracies*, 8/1 PARTY POL. 5-29 (2002).
- Vishal Chandra, *The National Front in Afghan Politics: An Exploratory Study*, 33/4 STRATEGIC ANALYSIS 528-540 (Jul. 2009).
- Wahabuddin Ra'ees, *Democratizing Afghanistan: An Analysis of the 2005 Parliamentary Elections*, 14/1 INTELLECTUAL DISCOURSE 33-46 (2006).
- Zalmay Khalilzad, Scott Worden, & Adeed Dawisha, *Afghanistan and Iraq: Talking Stock*, 21/3 J. OF DEM. 41-49 (2010).
- Zephyr Teachout, *Neoliberal Political Law*, 77 LAW & CONTEMP. PROBS. 215 (2014).

Reports

- ALAN RENWICK, FREE AND FAIR ELECTION FORUM OF AFGHANISTAN, SURVEY REPORT: AFGHAN PERCEPTIONS OF DEMOCRACY & ELECTIONS (2014),

<http://www.sciencespo.fr/psia/sites/sciencespo.fr/psia/files/Afghan%20Perceptions%20on%20Democracy%20and%20Elections%20final%20report.pdf>.

- ANNA LARSON, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 362: POLITICAL PARTIES IN AFGHANISTAN (2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>.
- ASADULLAH SA'ADATI, ET. AL. ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION (2016).
- BABAK KHALATBARI, KONRAD ADENAUER STIFTUNG, COUNTRY REPORT: PARLIAMENTARY ELECTIONS IN AFGHANISTAN-DEMOCRACY WITHOUT POLITICAL PARTIES? (2010), http://www.kas.de/wf/doc/kas_20497-1522-2-30.pdf?101001105345.
- BEN SMITH, HOUSE OF COMMONS LIBRARY, POLITICAL DEVELOPMENTS IN AFGHANISTAN (2011), http://www.operationspaix.net/DATA/DOCUMENT/5~v~Political_developments_in_Afghanistan.pdf.
- EDINBURG INTERNATIONAL, AFGHANISTAN WEEKLY SECURITY REPORT (2014), <http://www.heritage.org/research/reports/2009/12/nato-allies-in-europe-must-do-more-in-afghanistan>.
- EUROPEAN UNION ELECTION ASSESSMENT TEAM, FINAL REPORT: PRESIDENTIAL ELECTION (2014), http://www.eueom.eu/files/dmfile/FINAL-REPORT-EUEAT-AFGHANISTAN-2014-c_en.pdf.
- EUROPEAN UNION ELECTION OBSERVATION MISSION, FINAL REPORT: PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS (2009), http://reliefweb.int/sites/reliefweb.int/files/resources/D6EAB212011938EF49257696001E2076-Full_Report.pdf.
- GRETCHEN BIRKLE, MICHAEL O'HANLON & HASSINA SHERJAN, *Toward a Political Strategy for Afghanistan*, FOREIGN POLICY AT BROOKINGS, POLICY PAPER NO. 27 (2011), http://www.brookings.edu/~~/media/research/files/papers/2011/5/afghanistan-ohanlon/05_afghanistan_ohanlon.pdf.
- GLEVUM ASSOCIATES, WAVE 1: AFGHANISTAN PRESIDENTIAL ELECTION 2014 POLL RESULTS (2013), <http://glevumassociates.com/doc/GlevumAfghanistanPresidentialElection2014WaveOneSurveyFindings%20.pdf>.
- INTERNATIONAL COUNCIL ON SECURITY AND DEVELOPMENT, DECISION POINT 2009: AFGHANISTAN'S PRESIDENTIAL ELECTION: POWER TO THE PEOPLE, OR THE POWERFUL? (2009), http://www.nps.edu/programs/ccs/Elections/ICOS_elections.pdf.

- INTERNATIONAL CRISIS GROUP, ASIA REPORT N°56, AFGHANISTAN’S FLAWED CONSTITUTIONAL PROCESS (2003), <https://d2071andvip0wj.cloudfront.net/56-afghanistan-s-flawed-constitutional-process.pdf>.
- INTERNATIONAL CRISIS GROUP, ASIA REPORT N°88, AFGHANISTAN: FROM PRESIDENTIAL TO PARLIAMENTARY ELECTIONS (2004), <https://d2071andvip0wj.cloudfront.net/88-afghanistan-from-presidential-to-parliamentary-elections.pdf>.
- INTERNATIONAL CRISIS GROUP, ASIA BRIEFING N°117: AFGHANISTAN’S ELECTIONS STALEMATE (2011), http://www.observatori.org/paises/pais_87/documentos/B117%20Afghanistans%20Elections%20Stalemate.pdf.
- INTERNATIONAL CRISIS GROUP, ASIA REPORT N°260: AFGHANISTAN’S POLITICAL TRANSITION (2014) [http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/260-afghanistan-s-political-transition.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/260-afghanistan-s-political-transition.pdf).
- INTERNATIONAL CRISIS GROUP, POLICY BRIEFING 141: AFGHANISTAN’S PARTIES IN TRANSITION (2013), <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>.
- INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS, ELECTIONS IN INDONESIA: 2014 NATIONAL LEGISLATIVE ELECTIONS (Apr. 2, 2014), https://www.ifes.org/sites/default/files/indonesia_2014_national_legislative_election_faq.pdf.
- THE INTERNATIONAL REPUBLICAN INSTITUTE, AFGHANISTAN PUBLIC OPINION SURVEY (2009), <http://www.iri.org/sites/default/files/2009-News-Release-Files/2009%20August%2014%20Survey%20of%20Afghan%20Public%20Opinion%20July%2016-26,%202009.pdf>.
- JACKSON KEITH, INSTITUTE FOR THE STUDY OF WAR, BACKGROUNDER: THE FORMATION OF ELECTORAL ALLIANCES IN AFGHAN POLITICS IN 2014 (2013), http://www.understandingwar.org/sites/default/files/Backgrounder_AFGElectoralAlliances_0.pdf.
- KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, REPORT: AFGHANISTAN: PRESIDENTIAL AND PARLIAMENTARY ELECTIONS (Jul. 7, 2005), <http://www.dtic.mil/dtic/tr/fulltext/u2/a461386.pdf>.
- KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, REPORT: AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE (Jul. 28, 2014), <https://www.fas.org/sfp/crs/row/RS21922.pdf>.
- LANGER RESEARCH ASSOCIATION, AFGHAN’S FUTURE SURVEY: AFGHANISTAN’S ETHNIC, REGIONAL DIVISIONS PRODUCE A DEAD HEAT IN ITS PRESIDENTIAL RACE (2014), http://www.langerresearch.com/wp-content/uploads/Afghanistan-Election_ACSOR-Langer.pdf.

- LAURA DEMETRIS & JOHN RATCLIFFE, POST-CONFLICT RECONSTRUCTION PROJECT, POLICY BRIEF: RESULTS OF THE AFGHAN PARLIAMENTARY ELECTION: LAYING THE GROUNDWORK FOR DEMOCRACY IN AFGHANISTAN (2006), http://www.afghandata.org:8080/xmlui/bitstream/handle/azu/13689/azu_acku_pamphlet_jq1769_a5_d464_2005_w.pdf?sequence=1&isAllowed=y.
- MIGRATION REVIEW TRIBUNAL, BACKGROUND PAPER: AFGHANISTAN: POLITICAL PARTIES AND INSURGENT GROUPS 2001-2013 (Mar. 7, 2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf.
- MINORITY RIGHTS GROUP INTERNATIONAL, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES – AFGHANISTAN (Jul. 2012), <http://www.refworld.org/docid/4954ce5ec.html>
- POLITICAL STUDIES ASSOCIATION, BRIEFING PAPER: THE ALTERNATIVE VOTE (2011), <https://www.psa.ac.uk/sites/default/files/TheAlternativeVoteBriefingPaper.pdf>.
- SCOTT WORDEN, UNITED STATES INSTITUTE OF PEACE, PEACE BRIEF 61: TRANSPARENCY IS THE KEY TO LEGITIMATE AFGHAN PARLIAMENTARY ELECTIONS (OCT. 2010), <https://www.usip.org/sites/default/files/PB%2061%20Transparency%20is%20the%20Key%20to%20Legitimate%20Afghan%20Parliamentary%20Elections.pdf>.
- SOFIE DREEF & WOLFGANG WAGNER, PEACE RESEARCH INSTITUTE FRANKFURT, REPORT NO. 122: DESIGNING ELECTIONS IN CONFLICT-PRONE DIVIDED SOCIETIES: THE CASE OF SOUTH SUDAN (2011), http://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif122.pdf.
- SWISSPEACE, FAST UPDATE: AFGHANISTAN QUARTERLY RISK ASSESSMENT (SEP-DEC 2004) (2005), http://www.swisspeace.ch/fileadmin/user_upload/Media/Projects/FAST/Asia/Afghanistan/FAST_Update_Afg_04_04.pdf.
- THE ASIA FOUNDATION, AFGHANISTAN IN 2013: A SURVEY OF THE AFGHAN PEOPLE (2013), <http://asiafoundation.org/resources/pdfs/English2013ExecutiveSummary.pdf>.
- THE ASIA FOUNDATION, VOTER BEHAVIOR SURVEY: AFGHANISTAN'S 2010 PARLIAMENTARY ELECTION (2012), <http://asiafoundation.org/resources/pdfs/VoterBehaviourSurveyBook.pdf>.
- THOMAS H. NEALE, CONGRESSIONAL RESEARCH SERVICE, PRESIDENTIAL AND VICE PRESIDENTIAL SUCCESSION: OVERVIEW AND CURRENT LEGISLATION (Sep. 27, 2004), <https://fas.org/sgp/crs/misc/RL31761.pdf>.
- THOMAS H. NEALE, CONGRESSIONAL RESEARCH SERVICE, REPORT: CONTINGENT ELECTION OF THE PRESIDENT AND VICE PRESIDENT BY CONGRESS: PERSPECTIVES AND CONTEMPORARY ANALYSIS (Nov. 3, 2016), <https://fas.org/sgp/crs/misc/R40504.pdf>.

- UNITED NATION HIGH COMMISSIONER FOR REFUGEES, ASSESSMENT REPORT: SOLUTION STRATEGIES FOR AFGHAN REFUGEES TO SUPPORT VOLUNTARY REPATRIATION, SUSTAINABLE REINTEGRATION, AND ASSISTANCE TO HOST COUNTRIES (May 3, 2012), <http://www.unhcr.org/4fa7e0ea9.pdf>.
- USAID & ALTAI CONSULTING, PRIORITY DISTRICT REPORT: URGON (PAKTIKA) (2010), <http://www.altaiconsulting.com/docs/media/2010/15.%20Paktika%20-%20Urgun.pdf>.
- ZEKRIA BARAKZAI, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT: 2014 PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS IN AFGHANISTAN (2013), <https://www.usip.org/sites/default/files/SR3382014%20Presidential%20and%20Provincial%20Council%20Elections%20in%20Afghanistan.pdf>.

Periodicals

- AAN Team, *Finally Towards a Complete Afghan Cabinet? The next 16 minister nominees and their bios (amended)*, AFGHAN ANALYST NETWORK (Mar. 24, 2015), <https://www.afghanistan-analysts.org/finally-a-complete-afghan-cabinet-the-next-16-minister-nominees-and-their-biographies/>.
- Arif Sahar & Aqila Sahar, *Press and Ethnic Polarization in Post-2001 Afghanistan: The 2014 Presidential Election Experience*, CENTRAL ASIAN SURVEY (Jul. 17, 2015) <http://www.tandfonline.com/doi/abs/10.1080/02634937.2015.1063234?journalCode=ccas20>
- Abass Hussieni & Nurullah Faizi, *Negahi Ba Tarkib Jadid Majles Numayendagan Afghanistan*, KABUL CENTER FOR STRATEGIC STUDIES (1389) [2010].
- Abdulbasir Saeed, *Ahmad Shah Ahmadzai: Islamist Insists He's Broken Armed Faction Ties*, INSTITUTE FOR WAR AND PEACE REPORTING (Sep. 1, 2006), <https://iwpr.net/global-voices/ahmad-shah-ahmadzai-islamist-insists-hes-broken-armed-faction-ties>.
- Abubakar Siddique, *Afghanistan's Ethnic Divides*, BARCELONA CENTRE FOR INTERNATIONAL (Jun. 2012), https://www.cidob.org/en/content/download/35203/567954/file/OK_ABUBAKAR+SIDDIQUE.pdf.
- Amanullah Ghilzai, *Ethnic Divisions and Alliances in the Afghan Elections*, MIDDLE EAST INSTITUTE (Apr. 1, 2014), <http://www.mei.edu/content/ethnic-divisions-and-alliances-afghan-elections>.
- Andrew Reynolds, *Fixing Afghanistan's Electoral System: Arguments and Options for Reform*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2012), <http://www.areu.org.af/Uploads/EditionPdfs/1211E-Fixing%20Afghanistans%20Electoral%20System%20BP%202012.pdf>.

- Andrew Reynolds & Andrew Wilder, *Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2004), <http://www.areu.org.af/Uploads/EditionPdfs/433E-Free,%20Fair%20or%20Flawed-BP-print.pdf>.
- Andrew Reynolds, Lucy Jones, & Andrew Wilder, *A Guide to Parliamentary Elections in Afghanistan*, AFGHANISTAN RESEARCH EVALUATION UNIT (Aug. 2005), <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN021668.pdf>.
- Andrew Wilder, *A House Divided? Analysing the 2005 Afghan Elections*, Afghanistan RESEARCH AND EVALUATION UNIT (Dec. 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>.
- Anna Larson, *Afghanistan's New Democratic Parties: A Means to Organise Democratization?* AFGHANISTAN RESEARCH AND EVALUATION UNIT (Mar. 2009), <http://www.refworld.org/pdfid/49c254a02.pdf>.
- Anna Larson, *Deconstructing Democracy in Afghanistan*, AFGHANISTAN RESEARCH EVALUATION UNIT (May, 2011), http://www.afghandata.org:8080/xmlui/bitstream/handle/azu/15224/azu_acku_pamphlet_ds371_412_137_2011_w.pdf?sequence=1&isAllowed=y
- Antonio Giustozzi, *Between Patronage and Rebellion: Student Politics in Afghanistan*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (Feb. 2010), <http://www.areu.org.af/Uploads/EditionPdfs/1004EBetween%20Patronage%20and%20Rebellion%20%20Student%20Politics%20in%20Afghanistan%20BP%202010.pdf>.
- Ashok K Mehta, *Elections in Afghanistan: The First Democratic Transition*, FRIDRICH EBERT STIFUNG (2014), <http://library.fes.de/pdf-files/bueros/indien/10741.pdf>.
- Carina Perelli & Scott Smith, *Anticipating and Responding to Fraud in the 2014 Afghan Elections*, CHATHAM HOUSE (Feb. 2014), http://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140200AfghanistanElectionsFraudPerelliSmith.pdf.
- Catinca Slavu, *External Voting for Afghanistan's 2004 Presidential Election*, AFGHANISTAN ANALYSTS NETWORK (Jul. 2012), http://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/09/4_Slavu_External_Voting.pdf.
- Chris Johnson, William Maley, Alexander Thier and Ali Wardak, *Afghanistan's Political and Constitutional Development*, OVERSEAS DEVELOPMENT INSTITUTE (Jan. 2003), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf>
- *Coalitions: A Guide for Political Parties*, NATIONAL DEMOCRATIC INSTITUTE (NDI) & OSLO CENTER FOR PEACE AND HUMAN RIGHTS (2015), <https://www.ndi.org/coalitions-guide>.

- *Elections in Indonesia 2014 National Legislative Elections Frequently Asked Questions*, INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (Apr. 2, 2014), https://www.ifes.org/sites/default/files/indonesia_2014_national_legislative_election_faq.pdf.
- Gillies Dorronsoro, *Afghanistan: Searching for Political Agreement*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (2010) http://carnegieendowment.org/files/searching_polit_agreement.pdf.
- Gran Hewad, *The New National Front: A Dark Horse Returns – with Three Riders*, AFGHANISTAN ANALYSTS NETWORK (Dec. 1, 2011), <https://www.afghanistan-analysts.org/the-new-national-front-a-dark-horse-returns-with-three-riders/>.
- Gran Hewad, Thomas Ruttig & Claudio Franco, *Tit for Tat – and Worse: The long history of enmity between parliament and government*, AFGHANISTAN ANALYSTS NETWORK (Jul. 23, 2013), <https://www.afghanistan-analysts.org/tit-for-tat-and-worse-the-long-history-of-enmity-between-parliament-and-government/>.
- Gretchen Birkle, Michael O’Hanlon, Hassina Sherjan, *Afghanistan should be divided or that autonomous regions with unusually strong powers of their own are necessary*, BROOKINGS INSTITUTE (May. 2011).
- Haseeb Homayoun, *Afghanistan Report 4: The Reelection of Hamid Karzai*, UNDERSTANDING WAR (Jan. 2010), http://www.understandingwar.org/report/re-election-hamid-karzai_
- Juan Gonzales, *Return of the Warlords": Afghan Elections Marred by Fraud, Warlord Dominance*, DEMOCRACY NOW! (Oct. 7, 2009), http://www.democracynow.org/2009/10/7/return_of_the_warlords_afghan_elections_
- Kate Clark, *Afghanistan (almost) has a Cabinet: MPs confirm all candidate ministers*, AFGHAN ANALYST NETWORK (Apr. 18, 2015), <https://www.afghanistan-analysts.org/afghanistan-almost-has-a-cabinet-mps-confirm-all-candidate-ministers/>.
- Kate Clark, *Dancing to Power: Getting an Afghan presidential ticket together*, AFGHANISTAN ANALYST NETWORK (Sep. 30, 2013), <https://www.afghanistan-analysts.org/dancing-to-power-getting-an-afghan-presidential-ticket-together/>.
- Kenneth Janda, *Political Parties and Democracy in Theoretical and Practical Perspectives: Adopting Party Law*, NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (2005), https://www.ndi.org/files/1948_polpart_janda_110105.pdf.
- M. A. Mohamed Salih & Per Nordlund, *Political Parties in Africa: Challenges for Sustained Multiparty Democracy*, INTERNATIONAL IDEA RESEARCH AND DIALOGUE

- COORDINATION (2007), <http://www.idea.int/sites/default/files/publications/political-parties-in-africa-challenges-for-sustained-multiparty-democracy.pdf>.
- Mara Tchalakov, *The Northern Alliance Prepares for Afghan Elections in 2014*, AFGHANISTAN REPORT (Aug. 2013), http://understandingwar.org/sites/default/files/NorthernAlliance-2014Elections_1AUG.pdf.
- Martine van Bijlert, *How to Win an Afghan Election: Perceptions and Practices*, AFGHANISTAN ANALYSTS NETWORK (Aug. 2009) <http://www.afghanistan-analysts.org/wp-content/uploads/2013/07/20090809-how-to-win-an-afghan-election.pdf>
- Martine van Bijlert, *What to Watch in the Elections (1): Voter registration*, AFGHANISTAN ANALYSTS NETWORK (Apr. 2014), <https://www.afghanistan-analysts.org/what-to-watch-in-the-elections-1-voter-registration/>.
- Martine van Bijlert, *Who Controls the Vote? Afghanistan's Evolving Elections*, AFGHANISTAN ANALYSTS NETWORK (Sep. 15, 2010), <https://www.afghanistan-analysts.org/publication/aan-papers/who-controls-the-vote-afghanistans-evolving-elections/>.
- Marvin G. Weinbaum, *Toward a More Effective Parliament?*, AFGHANISTAN ANALYST NETWORK (Jul. 2012), https://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/09/5_Weinbaum_Toward_a_More_Effective_Parliament.pdf.
- Matthieu Aikins, *2010 Elections 29: Losing legitimacy – Kandahar's preliminary winners*, AFGHANISTAN ANALYSTS NETWORK (Oct. 25, 2010), <https://www.afghanistan-analysts.org/2010-elections-29-losing-legitimacy-kandahars-preliminary-winners/>
- Nahid Suleman, *Ethnic Discrimination in Afghanistan*, INTERMEDIA, http://www.intermedia.org.pk/pdf/pak_afghan/Naheed_Soleman_Ethnic_Discrimination_in_Afghanistan.pdf.
- NATIONAL DEMOCRATIC INSTITUTE, *POLITICAL PARTIES IN AFGHANISTAN: A REVIEW OF THE STATE OF POLITICAL PARTIES AFTER 2009 AND 2010 ELECTIONS*, (Jun. 2011), <https://www.ndi.org/files/Afghanistan-political-parties-july-2011.pdf>.
- *The 2010-2015 Wolesi Jirga Directory*, NATIONAL DEMOCRATIC INSTITUTE (May 2012), <https://www.ndi.org/files/AFG-2010-2015-Wolesi-Jirga-Directory.pdf>.
- Noah Coburn, *Afghanistan: The 2014 Vote and the Troubled Future of Elections*, CHATHAM HOUSE (Mar. 2014), http://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140200AfghanistanElectionsFraudPerelliSmith.pdf.

- Noah Coburn & Anna Larson, *Voting Together: Why Afghanistan's 2009 Elections were (And Were Not) a Disaster*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (Nov. 2009), available at <http://www.areu.org.af/Uploads/EditionPdfs/937E-Voting%20Together%20Why%20Afghanistans%202009%20Elections%20were%20%28and%20were%20not%29%20a%20Disaster-BP.pdf>.
- Olivier Roy, *Afghanistan: Internal Politics and Socio-Economic Dynamics and Groupings*, WRITENET (2002), <http://www.refworld.org/pdfid/3e9ae5535.pdf>.
- Paraag Ashuga, *Electoral Reform Critical Before Afghanistan's Next Presidential Election*, INSTITUTE FOR THE STUDY OF WAR (Oct. 2, 2012), http://www.understandingwar.org/sites/default/files/Backgrounder_AFGElectoralReformCritical.pdf.
- Paul D. Miller, *Democracy in Afghanistan: The 2014 Election and Beyond*, RAND CORP. (2014), http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE120/RAND_PE120.pdf.
- Peter Dimitroff, *The September 2005 Parliamentary and Provincial Council Elections In Afghanistan*, NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI) (2006), https://www.ndi.org/sites/default/files/2004_af_report_041006.pdf.
- Rachel Lewis, Rob Richie, & Jack Santucci, *Majority Rule in International Presidential Elections: The Dominant Role of Runoffs Around the World*, FAIR VOTE RESEARCH (Jun. 2006), http://archive.fairvote.org/reports/researchreports/majority_rule_int06.pdf.
- Sayed Yaqub Ibrahimi, *Candidates Controversy as Presidential Race Kicks Off*, INSTITUTE FOR WAR & PEACE REPORTING (Jun. 24, 2009), <https://iwpr.net/global-voices/candidates-controversy-presidential-race-kicks>.
- Shahrzad Akbar & Zubaida Akbar, *Elections and Conflict in Afghanistan*, INTERNATIONAL POLICY ANALYSIS (2011), <http://library.fes.de/pdf-files/iez/08587.pdf>.
- Suhaila Muhsini, *Sayed Ishaq Gailani: Ex-Mujahedin With Moderate Views*, INSTITUTE FOR WAR AND PEACE REPORTING (Sep. 1, 2006), <https://iwpr.net/global-voices/sayed-ishaq-gailani-ex-mujahedin-moderate-views>.
- *The 2010 Wolesi Jirga Election in Afghanistan*, NATIONAL DEMOCRATIC INSTITUTE (2010), <https://www.ndi.org/sites/default/files/Afghanistan-2010-election-observers-final-report.pdf>.
- Thomas J. Barfield, *Fundamentals of Governances in Afghanistan*, AMERICAN INSTITUTE OF AFGHANISTAN (2009), https://www.bu.edu/aias/reports/governance_short.pdf.
- Thomas Ruttig, *A Joint 'Durrani' Candidate for President? After the Unity Jirga in Kabul*, AFGHANISTAN ANALYSTS NETWORK (Mar. 5, 2014), <https://www.afghanistan-analysts.org/a-joint-durrani-candidate-for-president-after-the-unity-jirga-in-kabul/>.

- Thomas Ruttig, *Afghanistan Has a Two-Party System*, AFGHANISTAN ANALYSTS NETWORK (Jun. 6, 2010), <https://www.afghanistan-analysts.org/afghanistan-has-a-two-party-system-now/>.
- Thomas Ruttig, *Ambiguity Reiterated: The 20-parties ‘Democracy Charter’*, AFGHAN ANALYST NETWORK (Sep. 26, 2012), <https://www.afghanistan-analysts.org/ambiguity-reiterated-the-20-parties-democracy-charter/?format=pdf>.
- Thomas Ruttig, *Bomb and Ballot: The many strands and tactics of Hezb-e Islami*, AFGHANISTAN ANALYSTS NETWORK (Feb. 19, 2014), <https://www.afghanistan-analysts.org/bomb-and-ballot-the-many-strands-and-tactics-of-hezb-e-islami/?format=pdf>.
- Thomas Ruttig, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from (1902-2006)*, KONRAD ADENAUER STIFTUNG (2006), http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf.
- Thomas Ruttig, *Narrower Than Expected: Political opposition presents “Electoral Union of Afghanistan”*, AFGHANISTAN ANALYSTS NETWORK (Aug. 29, 2013), <https://www.afghanistan-analysts.org/narrower-than-expected-political-opposition-presents-electoral-union-of-afghanistan/>.
- Thomas Ruttig, *On Your Marks! Alliances And Actors Before The 2014 Presidential Election*, AFGHANISTAN ANALYSTS NETWORK (Sep. 17, 2013), <https://www.afghanistan-analysts.org/on-your-marks-alliances-and-actors-before-the-2014-presidential-election/>.
- Thomas Ruttig, *Pluralistic within Limits, But Not Democratic: Afghanistan’s Political Landscape Before The 2014 Elections*, AFGHANISTAN ANALYSTS NETWORK (Oct. 24, 2013), <https://www.afghanistan-analysts.org/pluralistic-within-limits-but-not-democratic-afghanistans-political-landscape-before-the-2014-elections/>.
- Thomas Ruttig, *Political Parties in Re-Registration*, AFGHANISTAN ANALYSTS NETWORK (Mar. 4, 2010), <https://www.afghanistan-analysts.org/political-parties-in-re-registration/>.
- Thomas Ruttig, *Re-plugging: The final List of Presidential and Vice-Presidential Candidates*, AFGHANISTAN ANALYSTS NETWORK (Feb. 9, 2014), <https://www.afghanistan-analysts.org/re-plugging-the-final-list-of-presidential-and-vice-presidential-candidates/>.
- Thomas Ruttig, *The not yet officially announced results – electoral maths with unknowns*, AFGHANISTAN ANALYSTS NETWORK (Sep. 28, 2014), <https://www.afghanistan-analysts.org/2014-elections-52-the-not-yet-officially-announced-results-elections-maths-with-unknowns/>.

- Vishal Chandra, *Total Recount in Afghanistan: What Next?* INSTITUTE FOR DEFENSE STUDIES AND ANALYSES (Jul. 26, 2014), http://www.idsa.in/issuebrief/TotalRecountinAfghanistan_vchandra_260714.
- Wolf Linder & Isabelle Steffen, *Swiss Confederation*, FORUM OF FEDERATION (2006), <http://www.thomasfleiner.ch/files/categories/IntensivkursII/Switzerlandg3.pdf>.
- Zaman Stanikzai, *From Identity Crisis to Identity in Crisis in Afghanistan*, MIDDLE EAST INSTITUTE (Dec. 2009), <http://www.mei.edu/sites/default/files/publications/Stanizai.pdf>.

Working Papers

- Ana Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability I* (The Afghanistan Research and Evaluation Unit, Discussion Paper, 2010), <http://areu.org.af/EditionDetails.aspx?EditionId=452&ContentId=7&ParentId=7>.
- Anika Gauja, *Legislative Regulation, Judicial Politics and the Cartel Party Model* (University of Sydney, Department of Government and International Relations, Workshop Paper, 2011), <http://apo.org.au/node/28970>.
- Anika Gauja, *Comparative Gatekeeper Provisions in Party and Electoral Law: Sustaining the Cartel?* (University of Sydney, Department of Government and International Relations, Workshop Paper, Aug. 2011) <http://ecpr.eu/filestore/paperproposal/94a1de0e-cb77-415e-bf6a-955cb5f663b0.pdf>
- Antonio Giustozzi, *Respectable Warlords? The Politics Of State-Building In Post-Taleban Afghanistan 1* (Development Research Center, LSE, Working Paper No. 33, Sep. 2003), <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries1/WP33.pdf>.
- Antonio Giustozzi, *The Ethnicisation Of An Afghan Faction: Junbesh-I-Milli From Its Origins To The Presidential Elections* (Crisis States Programm, Working Paper no.67, 2005).
- Astri Suhrke, *The Democratisation of a Dependent State: The Case of Afghanistan* (Chr. Michelsen Institute, Working Paper No. 51, 2007).
- Bahar Jalali, *Afghanistan: 1963-1973* (2005) (Unpublished Dissertation, University of California, Berkeley).
- Benjamin Dubow, *Ethnicity, Space, and Politics in Afghanistan 4* (University of Pennsylvania Scholarly Commons, Seminar Paper, Nov. 1, 2009), http://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=senior_seminar.

- Conrad Schetter, *Ethnicity and the political reconstruction in Afghanistan 3* (LSE Research Online, Conference Paper 3, 2005)
http://eprints.lse.ac.uk/28376/1/Schetter_LSERO_version.pdf
- Damien Bol, André Blais, Jean-François Laslier and Antonin Macé, *Electoral System and Number of Candidates: Candidate Entry under Plurality and Majority Runoff* (Paris School of Economics, Working Papers No. 2015-20 2015).
- David Esmati, *Ethnicity, Corruption and Voting Behavior in Afghanistan* (2015) (unpublished M.A. thesis New York University International Relations).
- Dipali Mukhopadhyay, *Warlords As Bureaucrats: The Afghan Experience*, (Carnegie Endowment for International Peace, Carnegie Papers No. 101, Aug. 2009).
- Donald Horowitz, Nadirsyah Hosen, Simon Butt, & Adriaan Bedner, *Debate: Constitutional Change and Democracy in Indonesia*, (Journal of the Humanities and Social Sciences of Southeast ASIA and OCEANIA, Debate, 2014).
- Eko-Davies Oluwafisayo E., *A Critical Appraisal Of Election Laws In Nigeria* (2011) (unpublished B.Law. thesis, University of Ilorin).
- Fernando Casal-Bértoa, Daniela Romée Piccio & Ekaterina R. Rashkova, *Party Law in Comparative Perspective 1* (The Legal Regulation of Political Parties, Working Paper No. 16, 2012).
- Frishta Ali, *Afghanistan: The rise of ethnic consciousness through history; a comprehensive overview of the origin of the Afghan conflict* (SSOAR, Working Paper, 2015).
- Hamidullah Qeyam, *Ethnicization of Politics in Afghanistan* (2012) (unpublished M.A. thesis, University of Texas at Arlington).
- Ingrid van Biezen & Ekaterina R. Rashkova, *Breaking the Cartel: The Effect of State Regulation on New Party Entry* (Economic and Social Research Council, Working Paper No. 12, Aug. 2011), <http://www.partylaw.leidenuniv.nl/uploads/wp1211.pdf>.
- Jin-Young Kwak & Kenneth Janda, *Measuring Party System: Competitiveness and Volatility in Parliamentary Party Systems* (Konkuk University, Northwestern University, Working Paper, 2010).
- Johannes Freudenreich, *Coalition Building in Presidential Systems*, (Universität Potsdam, 2012), https://www.academia.edu/461874/Coalition_Building_In_Presidential_Systems.
- Johannes Freudenreich, *Government Formation under Presidentialism* (Universität Potsdam, 2012).

- John C. Courtney, *Plurality-Majority Electoral Systems: A Review* (Advisory Committee of Registered Political Parties, Presentation Paper, 1999).
- John M. Akerman, *Towards an Ontology of Election Law* (National Autonomous University of Mexico, Working Paper, 2010).
- Juan J. Linz, *Presidential or Parliamentary: Does it Make a Difference?* (Latin American Program of the Woodrow Wilson International Center for Scholars, Project Paper, 1985).
- Karine Van Der Straeten, Nicolas Sauger, Jean-François Laslier & André Blais, *Sorting Out Mechanical and Psychological Effects in Candidate Elections: An Appraisal with Experimental Data* (Toulouse School of Economics (TSE), Working Paper, 2012).
- Kei Kawai & Yasutora Watanabe, *Inferring Strategic Voting* (Northwestern University, 2010).
- Kenneth Janda, *Clarifying Concepts in Democracy Assistance: ‘Engineering’ v. ‘Regulating’* (The Hague, Working Paper, 2006).
- Kenneth Janda, *How Nations Govern Political Parties* (World Congress of the International Political Science Association, Working Paper No. 16, Jul. 2006), http://paperroom.ipsa.org/papers/paper_5034.pdf
- Leonardo Arriola, *Between Coordination and Cooptation: The Opposition’s Dilemma in Africa* (2008) (Unpublished Ph.D. Dissertation, Stanford University).
- Massimo Bordignon, Tommaso Nannicini, & Guido Tabellini, *Moderating Political Extremism: Single Round vs. Runoff Elections under Plurality Rule* (Institute for the Study of Labor (IZA), Discussion Paper No. 7561, 2013).
- Mariana Llanos, *Explaining Coalition Performance in Presidential Systems: The Importance of (a Parliamentary-style) Coalition Management* (European Consortium of Political Research, Presentation Paper, 2006) (Do not quote or cite without author authorization).
- Matthias Messner & Matthias K. Polborn, *Strong and Coalition-Proof Political Equilibria under Plurality and Runoff Rule* (University of Rochester, Seminar Paper, 2005).
- Nicholas R. Miller, *The Alternative Vote And Coombs Rule Versus First-Past-The-Post: A Social Choice Analysis Of Simulated Data Based On English Elections, 1992-2010* (University of Maryland Baltimore County, Working Paper, 2013).
- Nicholas Stephanopoulos, *Teaching Election Law* (University of Chicago Public Law & Legal Theory Working Paper No. 515, 2014).

- Orla King & Jeroen de Zeeuw, *Political Development in Conflict-Prone Societies* (Netherlands Institute of International Clingendael, Seminar Paper, 2006).
- Oyelowo Oyewo, *Political Parties And Constitutionalism In Democratizing States In West Africa: A Comparative Study Of Nigeria, Benin, Ghana And Senegal* (University of Lagos, Working Paper, Unidentified), <https://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws13/w13-oyewo.pdf>.
- Peter Buisseret, *Entry Deterrence Under Run-Off Rules* (Games and Economic Behavior, Working Paper, 2015).
- Peter Vermeersch, *Theories Of Ethnic Mobilization: Overview And Recent Trends* (Center For Research On Peace And Development, Working Paper, Sep 2011), <https://soc.kuleuven.be/web/files/12/80/wp03.pdf>.
- Raimondas Ibenskas, *Understanding Pre-Electoral Coalitions in Central and Eastern Europe*, Department of Politics, University of Exeter.
- René Teijgeler, *Afghan Political Parties: A Short Outline* (2009), <https://www.semanticscholar.org/paper/Afghan-Political-Parties-a-Short-Outline-Teijgeler/7be5c4843e33b46d874dd78f6c9b32d29922c23e>.
- Robert G. Moser, Caitlin Milazzo, & Ethan Scheiner, *Social Diversity Affects the Number of Parties Even under First-Past-the-Post Rules* (University of Washington, American Political Science Association 2011 Annual Meeting, 2011).
- Ron Levy, *Drawing Boundaries: Election Law Fairness and its Democratic Consequences* (Griffith University, Working Paper, 2011).
- Richard S. Katz, *Democracy and the Legal Regulation of Political Parties 2* (USAID Conference on Changes in Political Parties, Conference Paper October 1, 2004).
- S. Yaqub Ibrahim, *Political Parties and Political Development in Afghanistan 5* (Apr. 17, 2014).
- Samuel Issacharoff, *The Role of Political Parties in Partisan Competition*, (Columbia Law Review Symposium, draft, 1999).
- Scott Mainwaring, *Presidentialism, Multiparty Systems, and Democracy: The Difficult Equation* (Kellogg Institute, Working Paper No. 144, 1990).
- Sebastien G. Lazardeux, *Cohabitation and Policymaking Efficiency Semi-Presidential Systems* (2009) (Unpublished Ph.D. Dissertation, University of Washington).

- Sofie Dreef and Wolfgang Wagner, *Electing to Fight or to Make Peace? Electoral Systems and Ethnic Violence in Post-Conflict Societies* (the 10th Dutch-Flemish Etmaal, Paper prepared for presentation, 2011).
- Sona N. Golder, *Government Formation and Cabinets*, (Emerging Trends in the Social and Behavioral Sciences, Presentation Paper 2015).
- Sujit Choudhry & Richard Stacey, *Semi-Presidentialism as a Form of Government: Lessons for Tunisia*, “Consolidating the Arab Spring: Constitutional Transition in Egypt and Tunisia” 2 (International IDEA & The Center for Constitutional Transitions at NYU Law, Jun. 2013), *available at* http://constitutionaltransitions.org/wp-content/uploads/2013/06/2_Choudhry_Stacey_Separation_of_Powers.pdf.
- Thiago Silva, *How Long Will It Last? Cabinet Termination in Presidential Systems* (American Political Science Association Annual Meeting, Presentation Paper, 2016).
- Timor Sharan, *The Dynamics of Elite Networks and Patron-Client Relations in Post-Bonn Statebuilding Afghanistan* (University of Exeter, 2009) https://www.ucl.ac.uk/ceelbas/workshops/international_elites_workshops/Sharan_Paper_Lane_Workshop.pdf.
- William Maley, *Executive, Legislative, and Electoral Options for Afghanistan* (Working Paper, 2003).
- Xinmin Liu, *Duverger’s Law Versus the Cleavage Approach: Testing Competing Theories Of Party Systems In New Democracies* (2002) (Unpublished Dissertation, University of New Orleans).
- Yuji Kanamaru, *Ethnic Accommodation and Democracy in Multiethnic Countries: Comparative Study of Malaysia and Singapore* (23rd World Congress of International Political Science Association, Presentation Paper, Jul. 2014).

News

- *11 Mawred Peshnehadi Kamision [khas] Islahat Intekhabati [11 Recommendations by the Special Electoral Reform Commission of Afghanistan]*, AFGHAN PAPER, 2005, <http://afghanpaper.com/nbody.php?id=101770>.
- *Abdul Rauf Ibrahim Ba Hais Rayees Wolesi Jirga Intekhab Shud [Abdul Rauf Ibrahim, Elected As the Speaker of Wolesi Jirga]*, DEUTSCH XXL, Feb. 27, 2011, <http://p.dw.com/p/R4ea>.
- *Abdullah Abdullah to Contest*, THE HINDU, Oct. 2013 <http://www.thehindu.com/news/international/south-asia/abdullah-abdullah-to-contest/article5189613.ece>.

- Abubakar Siddique, *Afghanistan's Hazara Minority Outraged by Science Academy Insults*, RADIO FREE EUROPE, Jul.3 2012, <http://www.rferl.org/content/afghanistan-hazaras-ethnic-tensions-academy-of-sciences/24633486.html>.
- Ali M Latifi, *Afghan Presidential Hopefuls Take To TV*, AL JAZEERA, Feb. 5, 2014, <http://blogs.aljazeera.com/blog/asia/afghan-presidential-hopefuls-take-tv>.
- Amin Tarzi, *Dispute Within Political Party Ranks Over Support For Afghan Leader, As Claims of Support Are Conflicting*, AFGHANISTAN NEWS CENTER, Oct. 8, 2004, <http://www.afghanistannewscenter.com/news/2004/october/oct92004.html>.
- *Ashraf Ghani Ba Darj Kalema 'Afghan' Wa Qaumiat Dar Shenasa-nama Hai Electronici Mawafeqat Kard [Ashraf Ghani Accepted the Inclusion of Afghan and Ethnic Identity in the Electronic ID Cards]*, BBC PERSIAN, Mar. 2, 2017, <http://www.bbc.com/persian/afghanistan-39117888>.
- Azam Ahmed, *Afghan Candidate Stops Short of Forming Government*, N. Y. TIMES, Jul. 8, 2014, http://www.nytimes.com/2009/01/30/world/asia/30afghan.html?_r=0.
- Azam Ahmed, *Afghan First Vice President, an Ex-Warlord, Fumes on the Sidelines*, N. Y. TIMES, Mar. 18, 2015, <http://www.nytimes.com/2015/03/19/world/asia/afghan-first-vice-president-an-ex-warlord-fumes-on-the-sidelines.html>.
- Babrak Noorzad, *IEC Finalizes List of Runoff Polling Centers*, TOLO NEWS, Jun. 4, 2014, <http://www.tolonews.com/en/afghanistan/15125-iec-finalizes-list-of-runoff-polling-centers>.
- Bashir Payman, *Intikhabat-e-Afghanistan: Aya Meyar Hai Madum Taghir Karda? [Afghanistan Election: Has The People's Standard of Choice Changed?]* BBC PERSIAN, Mar. 31, 2014, http://www.bbc.co.uk/persian/afghanistan/2014/03/140330_k03_af2014_bloc_voting_in_afghanistan.shtml?s.
- *Basta Peshnehadi Kamision Islah Intekhabati Afghanistan ba Hekomat [Recommendations Package of Special Electoral Reform Commission for the Government]*, BBC, 2013, http://www.bbc.com/persian/afghanistan/2015/08/150830_k03_afghan_electoral_reform_commission_offers.
- Brian Glyn Williams, *The Return of the Kingmaker*, FOREIGN POLICY, Aug. 17, 2009, <https://jamestown.org/program/the-return-of-the-kingmaker-afghanistans-general-dostum-ends-his-exile/>.
- Bryan Denton, *For Afghans, Name and Birthdate Census Questions Are Not So Simple*, N. Y. TIMES, Dec. 10, 2014, http://www.nytimes.com/2014/12/11/world/asia/for-afghans-name-and-birthdate-census-questions-are-not-so-simple.html?_r=0.

- Carlotta Gall, *Election of Karzai Is Declared Official*, N. Y. TIMES, Nov. 4, 2004, http://www.nytimes.com/2004/11/04/international/asia/04afghan.html?_r=0.
- Carlotta Gall & Ruhullah Khapalwak, *As Afghan Vote Nears, Taliban Step Up Intimidation Campaign*, N. Y. TIMES, Aug. 12, 2009, <http://www.nytimes.com/2009/08/13/world/asia/13kandahar.html>.
- Dexter Filkins, *Afghan Presidential Election Delayed*, N. Y. TIMES, Jan. 29, 2009, http://www.nytimes.com/2009/01/30/world/asia/30afghan.html?_r=0.
- Dexter Filkins, *The Afghan Bank Heist: A secret investigation may implicate dozens of high-ranking government officials*, THE NEW YORKER, Feb. 14, 2011, <http://www.newyorker.com/magazine/2011/02/14/the-afghan-bank-heist>.
- Dexter Filkins, *Threats by Taliban May Sway Vote in Afghanistan*, N. Y. TIMES, Aug. 16, 2009, <http://www.nytimes.com/2009/08/17/world/asia/17taliban.html>.
- Duncan Campbell, *Afghan Warlords 'Bigger Threat Than Taliban'* THE GUARDIAN, Jul. 12, 2004, <http://www.theguardian.com/world/2004/jul/13/afghanistan.duncancampbell>.
- Emma Graham-Harrison, *Afghan census dodges questions of ethnicity and language*, THE GUARDIAN, Jan. 3, 2013, <http://www.theguardian.com/world/2013/jan/03/afghan-census-questions-of-ethnicity>.
- Emma Graham-Harrison, *Afghanistan election guide: everything you need to know*, THE GUARDIAN, Feb. 3, 2014, <http://www.theguardian.com/world/2014/feb/03/afghanistan-election-guide-candidates-list>.
- Erin Friar, *Afghanistan Election: The Crucial Choice of VP by Ghani, Series*, THE GUARDIAN, Apr. 3, 2014, <http://guardianlv.com/2014/04/afghanistan-election-the-crucial-choice-of-vp-by-ghani-series/#EXwAlRukfvhx1sTy.99>.
- *Ethnic Hazaras Protest In Feud With Afghan Nomads*, REUTERS, Jul. 2, 2008, <http://mobile.reuters.com/article/idUSISL116163?irpc=932>.
- Farah Stockman, *Karzai's Pardons Nullify Drug Court Gains: Well-known traffickers set free ahead of election*, BOSTON GLOBE, Jul. 3, 2009, http://www.boston.com/news/world/middleeast/articles/2009/07/03/presidential_pardons_nullify_victories_against_afghan_drug_trade/.
- Frud Bezhan, *Ahead of Presidential Vote, Afghan P A Short Outline political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE, Jul. 28, 2015, <http://www.rferl.org/content/afghan-politics-feature/25101500.html>.

- Geeti Mohsini, *Blame Game Between Rassoul & Ashraf Ghani Campaigns*, TOLO NEWS, Mar. 20, 2014, <http://www.tolonews.com/en/election-2014/14271-blame-game-between-rassoul-a-ashraf-ghani-campaigns>.
- Ghanizada, *Gunmen kill Dr. Abdullah's campaign team members in Herat*, KHAMA PRESS, Feb. 1, 2014, <http://www.khaama.com/gunmen-kill-dr-abdullahs-campaign-team-members-in-herat-2746>.
- Ghanizada, *Mohaqqiq and Hezb-e-Islami deputy named Dr. Abdullah's vice-president*, KHAMA PRESS, Oct. 1, 2013, <http://www.khaama.com/mohaqqiq-and-hezb-e-islami-deputy-named-dr-abdullahs-vice-president-1918>.
- Ghanizada, *Syed Mansoor Naderi supports Ashraf Ghani in presidential elections*, KHAMA PRESS, Feb. 13, 2014, <http://www.khaama.com/syed-mansoor-naderi-supports-ashraf-ghani-in-presidential-elections-2782>.
- Ghanizada, *Zalmai Rassoul endorses Abdullah in election runoff*, KHAAMA PRESS, May 11, 2014, <http://www.khaama.com/zalmai-rassoul-endorses-abdullah-in-election-runoff-8054>.
- Harun Najafizada, *Afghan Notebook: Wowing the crowds*, BBC NEWS, Mar. 18, 2009, <http://www.bbc.com/news/world-asia-26576308>.
- *Hemayat Do Hizb Umda Az Karzai Dar Intekhabat* [Two prominent Political Party Supports Karzai in the Election] BBC PERSIAN, Sep. 30, 2009, http://www.bbc.co.uk/persian/afghanistan/2009/05/090530_dn_mohaqqiq_karzai.shtml.
- Jon Boone, *Afghan president Hamid Karzai picks ex-warlord as election running mate*, THE GUARDIAN, May 4, 2009, <http://www.theguardian.com/world/2009/may/04/afghanistan-president-hamid-karzai-election>.
- Jeffery Stern, *The Making of an Afghan Politician*, SLATE, Aug. 19, 2009, http://www.slate.com/articles/news_and_politics/dispatches/2009/08/the_making_of_an_afghan_politician.html.
- Jon Boone, *Hamid Karzai pulls out of historic TV debate just hours before broadcast*, THE GUARDIAN, Jul 22, 2009, <http://www.theguardian.com/world/2009/jul/22/hamid-karzai-tv-debate-afghanistan>.
- Karim Amini, *Uzbek and Turkmen Traitors If They Don't Vote Ghani: Dostum*, TOLO NEWS, Jun. 7, 2014, <http://elections.tolonews.com/uzbek-and-turkmen-traitors-if-they-dont-vote-ghani-dostum>.

- Karin Brulliard, *Win or Lose, Abdullah May Play Pivotal Role in Afghanistan*, WASHINGTON POST, Oct. 15, 2009, <http://www.washingtonpost.com/wpdyn/content/article/2009/10/14/AR2009101401946.html>.
- *Karzai's warlord links challenged*, BBC NEWS, Aug. 16, 2009, http://news.bbc.co.uk/2/hi/south_asia/8204350.stm.
- Khushnood Nabizada, *Abdul Rashid Dostum*, KHAMA PRESS, Sep. 24, 2010, <http://www.khaama.com/abdul-rashid-dostum>.
- Leela Jacinto, *Another election, another cycle of fraud and violence?* FRANCE 24, Sep. 17, 2009, <http://www.france24.com/en/20100916-afghan-parliamentary-elections-fears-another-cycle-fraud-violence-karzai-taliban>.
- Lesley Wroughton and Maria Golovnina, *Disputed Afghan Election To Be Recounted in Full*, REUTERS, Jul. 9, 2009, <http://www.reuters.com/article/2009/07/09/us-afghanistan-pardons-idUSTRE5684FW20090709>.
- Makia Monir, *Karzai Vow Draws Negative Reaction*, PAJHWOK, Jun. 16, 2009, <http://e-ariana.com/ariana/ariana.nsf/allDocs/7cb3e5dbec08cc41872575d90052e074!OpenDocument&Click>.
- Masood Korosh, *Promising Findings of FEFA Survey*, DAILY OUTLOOK AFGHANISTAN, Mar. 29, 2014, http://outlookafghanistan.net/topics.php?post_id=9754#ixzz35nf7DiQF.
- Matthew Rosenberg, *Technocrat to Afghan Populist, Ashraf Ghani Is Transformed*, N. Y. TIMES, Jun. 11, 2014, <http://www.nytimes.com/2014/06/12/world/asia/technocrat-to-populist-an-afghan-transformed.html>.
- Muhammad Hassan Khitab, *Electoral watchdog fines Sherzai, Rassoul*, PAZHWAK AFGHAN NEWS, Feb. 4, 2014, <http://elections.pajhwok.com/en/2014/04/02/electoral-watchdog-fines-sherzai-rassoul>.
- Muhammad Hassan Khitab, *Ghani Fined For Failing To Return Govt. Vehicles*, PAZHWAK AFGHAN NEWS, Feb. 15, 2014, <http://www.elections.pajhwok.com/en/2014/02/16/ghani-fined-failing-return-govt-vehicles>.
- Mujib Mashal, *Heated Rhetoric, But Few Real Differences Between Afghan Front-Runners*, ALJAZEERA AMERICA Jun. 12, 2014, <http://america.aljazeera.com/articles/2014/6/12/afghan-election>.
- *Mushakhasat Shunasnama Barqi Afghanistan Nehayee Shud [The Features of Afghan Electoranic Cards Finalized]* BBC PERSIAN, May 29, 2013, http://www.bbc.com/persian/afghanistan/2013/05/130529_k05_afghan_e_idcard,

- Najmuddin A Shaikh, *Will Dr Abdullah Be president in Afghanistan?* The Express Tribune, INT'L N. Y. TIMES, May 12, 2014, <http://tribune.com.pk/story/707135/will-dr-abdullah-be-president-in-afghanistan/>.
- Nathan Hodge, *Afghanistan Elections: Tensions Simmer in Jalalabad*, THE WALL STREET JOURNAL, Jun. 14, 2014, <http://www.wsj.com/articles/SB10001424052702304709904579406813606798606>.
- Nathan Hodge, *Afghan Candidates Discuss Ways to Secure Pashtun Support*, THE WALL STREET JOURNAL, Feb. 26, 2014, <http://www.wsj.com/articles/SB10001424052702304709904579406813606798606>.
- Nathan Hodge, *Taliban Attack Abdullah's Campaign Motorcade*, THE WALL STREET JOURNAL, Feb. 19, 2014, <http://www.wsj.com/articles/SB10001424052702303775504579392840958479528>.
- Priyane Wijesekera, *Who is an Executive Prime Minister?* THE SUNDAY TIMES, Jul. 25, 2010, http://www.sundaytimes.lk/100725/News/nws_37.html.
- *Profile of Ramazan Bashardost*, WAR NEWS RADIO, Jul. 28, 2015, <http://warnewsradio.org/read-more/profile-of-ramazan-bashardost/>.
- Rafi Sediqi, *Gul Agha Sherzai Asks for BSA Signature*, TOLO NEWS, Feb. 9, 2014, <http://www.tolonews.com/en/afghanistan/13783-gul-gha-sherzai-asked-bsa-to-be-signed>.
- *Recap: Afghanistan Votes 2014*, THE WALL STREET JOURNAL, Jun. 13, 2014, <http://blogs.wsj.com/dispatch/2014/06/13/as-it-happens-afghanistan-votes-2014-3/>.
- Renee Montagne, *Afghan Politicians Pursue Minority Hazara Voters*, NPR, Aug 07, 2009, <http://www.npr.org/templates/story/story.php?storyId=111639248>.
- Renee Montagne, *To Broaden Appeal, Afghan Candidates Make Surprising Choices*, NPR, Apr. 3, 2014, <http://www.npr.org/sections/parallels/2014/04/03/298579270/to-broaden-appeal-afghan-candidates-make-surprising-choices>.
- Richard A. Opiel Jr. *Afghan Leader Courts the Warlord Vote*, N. Y. TIMES, Aug. 7, 2009, http://www.nytimes.com/2009/08/08/world/asia/08arlords.html?_r=0.
- Rob Crilly, *Ashraf Ghani: From the World Bank to Afghanistan's next president?* THE TELEGRAPH, Jul. 7, 2014, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10952284/Ashraf-Ghani-From-the-World-Bank-to-Afghanistans-next-president.html>.
- Robert Mackey, *A Technocrat Shakes Up the Afghan Campaign*, N. Y. TIMES, Aug. 13, 2009, <http://www.nytimes.com/2009/08/14/world/asia/14ghani.html>.

- Robert Mackey, *Afghan Husbands Win Right to Starve Wives*, N. Y. TIMES, Aug. 17, 2009, <http://thelede.blogs.nytimes.com/2009/08/17/afghan-husbands-win-right-to-starve-wives/>.
- Ron Moreau & Sami Yousafzai, *Afghan Elections: The Warlords are Back*, THE DAILY BEAST, Oct. 16, 2013, <http://www.thedailybeast.com/articles/2013/10/16/afghan-elections-the-warlords-are-back.html>.
- Ron Nordland, *Warlords With Dark Pasts Battle in Afghan Election*, N. Y. TIMES, Feb. 26, 2014, http://www.nytimes.com/2014/02/27/world/asia/warlords-with-dark-pasts-battle-in-afghan-election.html?_r=0.
- Saleha Sadat, *Candidates Exaggerate Parliamentarians' Support*, TOLONNEWS (Feb. 19, 2014) <http://elections.tolonews.com/candidates-exaggerate-parliamentarians-support>.
- Saleha Sadat, *Election Shows Potential for Politics Beyond Ethnicity*, TOLO NEWS, Apr. 29, 2014, <http://www.tolonews.com/en/afghanistan/14704-election-shows-potential-for-politics-beyond-ethnicity>.
- Sayed Salahuddin, *Afghan presidential race front-runner Abdullah escapes suicide attack in Kabul*, WASHINGTON POST, Jun. 6, 2014, http://www.washingtonpost.com/world/asia_pacific/afghan-election-front-runner-escapes-car-bombings-in-kabul/2014/06/06/19d18b52-ed69-11e3-b84b-3393a45b80f1_story.html.
- Sayyad Salahuddin, *Karzai Pardons Five Afghan Heroin Traffickers*, REUTERS, Jul. 12, 2014, <http://www.reuters.com/article/us-usa-afghanistan-kerry-recount-idUSKBN0FH0PJ20140712>.
- *Security fears shutter Afghan polls*, AL JAZEERA, Aug. 18, 2010, <http://www.aljazeera.com/news/asia/2010/08/201081871831375811>.
- Sharif Amiry, *Leading Presidential Tickets Trade Blows* TOLO NEWS, Jan. 2, 2014, <http://elections.tolonews.com/leading-presidential-tickets-trade-blows>.
- Tim Craig, Abdullah, *The Front-Runner in Afghan Election, Picks Up Support From Former Rival*, WASHINGTON POST, May 11, 2014, http://www.washingtonpost.com/world/abdullah-the-front-runner-in-afghan-election-picks-up-new-support-from-one-time-rival/2014/05/11/db84abd8-d939-11e3-8009-71de85b9c527_story.html
- Wakil Kohsar, *From Ex-Warlords to Scholars: Who Wants to Rule Afghanistan*, NBC NEWS, Apr. 5, 2014, <http://www.nbcnews.com/storyline/afghanistan-election/ex-warlords-scholars-who-wants-rule-afghanistan-n24756>.

- Wesal Zaman, *With Vote Ruled Valid, Karzai's the Official Winner*, LOS ANGELES TIMES, Nov. 4, 2004, <http://articles.latimes.com/2004/nov/04/world/fg-karzai4>.
- Yaroslav Trofimov, Margherita Stancati & Nathan Hodge, *Afghan Rivals Abdullah Abdullah and Ashraf Ghani Race to Presidential Runoff*, THE WALL STREET JOURNAL, Jun. 14, 2014, <http://www.wsj.com/articles/afghan-rivals-abdullah-abdullah-and-ashraf-ghani-race-to-presidential-runoff-1402105898>.
- Zafar Shah Rouyee, *Tensions rise before Afghan run-off*, AFGHANISTAN TODAY, Jun. 10, 2014, <http://www.afghanistan-today.org/helper/articleprint.php?id=716>.
- *Zalmay Rasool, Gul Agha Shirzai Fined*, AFGHAN ISLAMIC PRESS, Jan. 4, 2009, <http://www.afghanislamicpress.com/en/story.php?id=64706>.

Websites

- *2014 Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/results/en/elections#>.
- AFGHAN BIOS, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=903&task=view&total=3079&start=1681&Itemid=2 (Last Visited Aug. 4, 2014).
- AFGHAN ELECTION DATA, <http://afghanistanelectiondata.org/front>.
- *Afghanistan*, NATIONAL DEMOCRATIC INSTITUTE, <https://www.ndi.org/afghanistan>.
- AFGHANISTAN INFORMATION MANAGEMENT SERVICES, <http://www.aims.org.af>.
- AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/today/qanuni.html>.
- *Afghanistan Presidential Election Results- 2004*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm (Last Visited, March 24, 2015).
- *Afghanistan 2009 Elections*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_2009/resultsprovince.html (Last Visited, March 24, 2015).
- *Afghan elections 2014* DAWN.COM, <http://www.dawn.com/in-depth/afghan-elections-2014-profiles/>.
- AFGHANISTAN'S GANDHI: DR. RAMAZAN BASHARDOST, <http://ramazanbashardost.com/spip.php?rubrique2> (Last Visited, Nov. 2016).

- *Biography: Ashraf Ghani*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/ghani.html>.
- CENTRAL STATISTICS ORGANIZATION, <http://cso.gov.af/en> (Last Visited, Jan. 2017).
- ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/consociationalism>.
- FAIR VOTE, <http://www.fairvote.org/rcv>.
- GLOBAL SECURITY ORGANIZATION, <http://www.globalsecurity.org/military/world/afghanistan/politics-parties-coalitions.htm>.
- HAZARA PEOPLE INTERNATIONAL NETWORK, <http://www.hazarapeople.com/2011/02/09/afshar-massacre-1993/>(Last Visited Dec. 10, 2016).
- INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/> (Last Visited, March 24, 2015).
- *National and Provincial Data, United States Army Combined Armed Center, CENTER FOR ARMY LESSONS LEARNED, AFGHANISTAN PROVINCIAL RECONSTRUCTION*, http://usacac.army.mil/cac2/call/docs/11-16/app_a.asp#a-p1.
- NATIONAL COALITION OF AFGHANISTAN, <http://www.nca.af/general-malik-dr-abdullahf2014010852.html>.
- *Profiles of Afghan Power Brokers*, CENTER FOR AMERICAN PROGRESS, <https://www.americanprogress.org/issues/security/news/2009/10/26/6734/profiles-of-afghan-power-brokers/#8>.
- PROGRAM FOR CULTURAL AND CONFLICT STUDIES, <http://www.nps.edu/programs/ccs/>.
- UNICEF website <http://unicef.org/infobycountry/afghanistan>.
- *Winning candidate's list*, INDEPENDENT ELECTION COMMISSION, <http://www.iec.org.af> (downloadable copy of this document *available at*: <http://www.hazara.net/downloads/downloads.html>).
- *World Factbook: Afghanistan*, CENTRAL INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/theWorldFactbook/geos/print/country/countrypdf_af.pdf (Last Visited Jan. 25 2015).

Video

- *ATN Debate 2014 Presidential Election*, YOUTUBE, <https://www.youtube.com/watch?v=f0r-Vi8y52c>.

- BBC Persian, *Itrazhai Qaumi Ba Tarkib Kabina Jadid [Ethnic Protests to the New Cabinet Composition]*, http://www.bbc.co.uk/persian/afghanistan/2015/02/150215_193_afghan_power_
- *TOLONews*, *04 February 2014 First Presidential Debate in Full on Security and Politics*, YOUTUBE, <https://www.youtube.com/watch?v=ALHn0-4uWNw>.
- *TOLONews TV*, YOUTUBE, <https://www.youtube.com/watch?v=GZPvKAuEUhw>
- Thomas Evans, *Karzai Challenger Quits Afghan Runoff*, CNN: AMANPOUR, http://www.cnn.com/2009/WORLD/asiapcf/11/01/afghanistan.election/index.html?eref=onion_

Appendices

Appendix I Terminology and Definitions

- *Political Law* is rarely used as a disciplinary lens in legal and political studies. It is significantly broader than the conventionally used frameworks such as Election Law, Electoral Systems, Constitutional Law, and Constitutional Design. Spencer Overton describes political law as “the study of the activities not only of judges, but also of policymakers, regulators, and practitioners.”¹ This definition is broad in one sense and narrow in another. Since not all activities of policymakers, regulators and practitioners, and particularly judges, constitute political activities, Spencer’s definition of political law seems overextended. At the same time, the definition seems overly narrow because it excludes political institutions and processes such as the branches of government, parties, and their institutionalizations.

The *People vs. Perfecto* case from the Philippines defines political law as a “branch of public law, which deals with the organization and operations of the governmental organs of the State and defines the relations of the State with the inhabitants of its territory.”² This is also a broad definition since the relationship between the State and its inhabitants is not just political in nature. It covers a variety of relations including economic, cultural, and educational relations that do not necessarily fall under the umbrella of political law.

To clarify the definition for the purpose of this dissertation, I distinguish between *Political Law* (singular, capital letters) as a discipline, and *political laws* (plural) as rules and regulations. Further, I define *political laws* as the laws and regulations that regulate political activities, institutions, and processes. Accordingly, political laws include related provisions of the Constitution, the election laws, and party laws. It bears mentioning that these laws are not entirely distinct from each other. In fact, this dissertation reveals they overlap to a considerable extent. And the Constitution, as the mother law, tends to set the principles for the two other laws.

¹ Spencer Overton, *Forward: Political Law*, 81/6 GEO. WASH. L. REV. 1783 (2013).

² *People vs. Perfecto*, 43 Phil. 887.

- **Party law**, in a general sense, is defined as “the total body of law that affects political parties.”³ Accordingly, party law refers to all state laws as enacted in national constitutions, court law, legislative statutes, executive orders, or administrative rules.⁴ However, “Party Law” in a particular sense, is referred to as the main body of a statute that makes a textual reference to political parties in its title: for example, Political Parties Law.⁵ Some refer to latter with capital letters.⁶
- **A coalition** is defined as a group of individuals and parties who agree to pool their resources for the pursuit of a common goal and agree on the sharing the benefits.⁷ Coalition formation in fragmented, new democracies is different than in consolidated democracies. In new democracies with fragmented party systems, coalitions are the precondition for party institutionalization. In consolidated democracies, however, coalitions might be the outcome of the alliances between already institutionalized parties who are intending to form a government. Furthermore, while in Lijphart’s representational (consociational) form of government, parties are the contenders and coalitions are the outcomes, in Horowitz’s aggregative (centripetalist) form of government, coalitions are the contenders and institutionalized party systems might be the outcome. This is primarily because consociationalism encourages post-election coalitions while centripetalism persuades pre-election coalitions.
- **Oversized coalitions** are those coalition governments that have included more member parties and elites than needed to win an election. Conversely, **minimum coalitions** are large enough to win elections but no larger than that.
- **Cross-ethnic coalitions** refer to those formal and informal coalitions that involve elites, factions, and parties from different ethnic groups who join forces to win election and/or implement a specific policy agenda.

³ Fernando Casal-Bértoa, Daniela Romée Piccio & Ekaterina R. Rashkova, *Party Law in Comparative Perspective*, 2 (Conference on the Legal Regulation of Political Parties, Working Paper, 2012) <http://www.partylaw.leidenuniv.nl/uploads/wp1612.pdf>.

⁴ Kenneth Janda, *How Nations Govern Political Parties* 1 (World Congress of the International Political Science Association, Conference Paper SS 3.476, Jul. 2006) available at: http://paperroom.ipsa.org/papers/paper_5034.pdf.

⁵ Casal-Bértoa, *supra* note 3.

⁶ *See id.*

⁷ Frank P. Belloni & Dennis C. Beller, *The Study of Factions*, in *FACTION POLITICS: POLITICAL PARTIES AND FACTIONALISM IN COMPARATIVE PERSPECTIVE X* (Frank P. Belloni & Dennis C. Beller eds., 2011).

- ***Institutionalization***, in Huntington’s words, “is the process by which organization and procedures acquire value and stability.”⁸ In this dissertation, the institutionalization of cross-ethnic coalitions entails a process that involves alliances entrenching themselves across not only elections but also branches of government, and constituencies.⁹ In the context of Afghanistan, a single cycle of the institutionalization of coalitions is referred to as a process in which cross-ethnic coalitions (a) take form, (b) compete in the presidential elections, (c) sustain in the executive or as opposition, (d) compete in the parliamentary elections, or (e) seek to form an alliance inside the Assembly. A coalition is institutionalized when it survives multiple cycles of presidential and parliamentary elections as an incumbent or a formidable opposition, having at least win a number of seats in the parliament. I use ***coalition-building*** to indicate general development of coalitions. However, I use ***coalition-making*** to only indicate the formation of coalitions.
- ***Vote pooling*** indicates an electoral behavior where voters cast ballots across ethnic lines.¹⁰
- ***Political Ideals***, as described by Cecil Burn, are the “things or states desired, which would imply a modification of law or government, or, in group relations, a modification of existing circumstances.”¹¹ By contrast, ***political practices*** are the actual engagement of individuals and groups into political affairs, driven by either their political ideals or immediate interests.
- ***Centripetal tendencies*** refer to a political culture that not only praises and idealizes moderation and ethnic accommodation, but also encourages institutional inclusiveness and ethnic depoliticization through legal and political means.
- ***Proto-parties***, as Thomas Ruttig describes it, *are* “the parties in the making.”¹² These proto-parties lack structural cohesions, internal discipline, and identifiable programs. In contrast, they are hierarchical, personalized and ethnic-based. Describing Afghan proto-parties, Anna Larson, writes that “[t]hey do not resemble parties in established and/or Western

⁸ SAMUEL HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 12 (1968).

⁹ MAURICE DUVERGER, *POLITICAL PARTIES: THEIR ORGANIZATION AND ACTIVITY IN THE MODERN STATE* 337 (BARBARA AND ROBERT NORTH, trans., 1954).

¹⁰ DONALD HOROWITZ, *ETHNIC GROUP IN CONFLICT*, 395 (2nd Edition, 2001).

¹¹ CECIL DELISLE BURNS, *POLITICAL IDEALS, THEIR NATURE AND DEVELOPMENT: AN ESSAY*, Appendix I (1915).

¹² Thomas Ruttig, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from (1902-2006)*, 1 KONRAD STIFTUNG ADENAUER (2006), http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf.

democracies, in that they are largely based on the ethnic ex-military factions that fought in the civil war.”¹³

- ***Qualified-runoff*** is a two-round electoral system, which requires a threshold lower than absolute majority (50%).¹⁴
- ***Wolesi Jirga*** is the Pashto term for the House of Representative. I excluded ***Meshrano Jirga*** (the Senate) because the president appoints about one-third of the Senators.¹⁵

¹³ Ana Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability*, AFGHANISTAN RESEARCH AND EVALUATION UNIT 5 (2010), <https://areu.org.af/archives/publication/1030>.

¹⁴ PIPPA NORRIS, ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR 4 (2004); Rachel Lewis, Rob Richie, & Jack Santucci, *Majority Rule in International Presidential Elections: The Dominant Role of Runoffs Around the World*, FAIR VOTE RESEARCH 2-3 (Jun. 2006).

¹⁵ See CONSTITUTION, art. 84 (3).

Appendix II

Abbreviations

| | |
|------------|---|
| — Afg. | Afghanistan |
| — ACNDP | Advisory Commission of National and Democratic Parties |
| — Appoint. | Appointment |
| — ANAA | Association of National Understanding of Afghanistan |
| — AIMS | Afghanistan Information Management Services |
| — AISS | Afghan Institute of Strategic Studies |
| — APSC | The Council for Protection and Stability of Afghanistan |
| — Con. | Constitution |
| — CAC | United States Army Combined Armed Center |
| — CEO | Chief Executive Officer |
| — Diff. | Difference |
| — Elec. | Electoral |
| — EAA | Electoral Alliances of Afghanistan |
| — FPTP | First Past the Post |
| — IEC | Independent Election Commission of Afghanistan |
| — KCSS | Kabul Center for Strategy Studies |
| — Legis. | Legislature |
| — Minis. | Minister |
| — MJ | Meshrano Jirga [House of Elders] |
| — No. | Number |
| — NCA | The National Coalition of Afghanistan |

| | |
|---------|---|
| — NFA | National Front of Afghanistan |
| — NNF | The New National Front of Afghanistan |
| — NPS | The Program for Cultural and Conflict Studies |
| — NUFA | National United Front of Afghanistan |
| — NUG | National Unity Government |
| — Par. | Party |
| — Parl. | Parliamentary |
| — Pop. | Population |
| — Pres. | President/Presidential |
| — WJ | Wolesi Jirga [House of People] |
| — Sec. | Section |
| — SERC | The Special Electoral Reform Commission |
| — SNTV | Single Non-Transferable Vote |
| — VP | Vice President |
| — WJ | Wolesi Jirga [House of People] |

Appendix III
Survey and Interview Questions

Survey Questions

Gender ()

Province ()

Ethnicity ()

1. Are you a member of a political party?
 - a. Yes
 - b. No (if no answer the following questions)
 - i. Do you support a political party?
 1. Yes
 2. No
2. What presidential candidate do you trust more to vote for? (You can rank them)
 - a. An independent candidate ()
 - b. A party candidate ()
 - c. A candidate from a political coalition ()
 - d. Party/coalition affiliation is irrelevant
3. What parliamentary candidate do you trust more to vote for?
 - a. An independent candidate
 - b. A party candidate
 - c. A candidate from a political coalition
 - d. Party/coalition affiliation is irrelevant
4. Do you trust political parties?
 - a. Yes
 - b. No
5. Do you trust political coalitions?
 - a. Yes
 - b. No
6. What comes first to your mind, when you hear about parties? (You may choose multiple answers)
 - a. Jihad and resistance ()
 - b. Elections ()
 - c. Democracy ()
 - d. Civil war and violence ()
 - e. Communist parties ()
 - f. Ethnocentrism ()
 - g. Other (.....)
7. Which of the following benefits Afghanistan more?
 - a. Having political parties
 - b. Having Political coalitions
 - c. Having both of the above
 - d. Getting rid of parties and coalitions
 - i. Why?
8. What kind of party system should Afghanistan have?
 - a. A party system where parties represent different ethnic groups.

- b. A party system where some parties are cross ethnic and some parties represent ethnic groups.
 - c. A party system where ethnic parties are not allowed.
- 9. Is there a party that advocates the best interest of your community?
 - a. Yes
 - b. No
 - c.
- 10. What do you think about parties? (You may choose multiple answers)
 - a. Parties are the cause for ethnic tensions
 - b. Parties are important for democracy
 - c. Parties only act for their own interest
 - d. Parties have programs and political ideologies
- 11. Did you vote in the previous elections?
 - a. No
 - b. Yes
- 12. Who was your favorite presidential candidate in 2014?
 - a.
 - i. Why?
- 13. Who was your favorite parliamentary candidate in 2010?
 - a.
 - i. Why?
- 14. Do you have any suggestions for the author of this research?
 - a.

Interview Questions for Coalitions' Elites

- 1. Does the coalition have any constitution?
 - a. Is the constitution of the coalition publicly available? Can I get one?
- 2. Is the coalition developed on the basis of some agreement?
 - a. Is that agreement available
- 3. Is there an MoU or agreement on which the coalition was formed?
- 4. Does the coalition have the ultimate goal of transforming in to political party?
- 5. Why no establishing a party why decided to make a coalition?
- 6. What is crucial for a coalition in order to sustain?
- 7. What were the underlying criterions for selection of partners?
- 8. Why coalitions are not stable?
- 9. Do you think the future of political development of Afghanistan sees the merging of parties as coalitions or the expansion of parties?
- 10. How long the negotiations for coalition lasted?
 - a. What were the terms of negotiation?
- 11. Is/was the leader of the coalition elected?
 - a. How is the leader replaced?
 - b. Who is the leader of the coalition now?
- 12. Has the coalition been convening regular meetings since the establishment of the government?
- 13. Does the coalition have any publication (or other form of outreach media)?

- a. Whether the publication was established before or after the coalition formation?
14. Was the coalition able to register in the IEC?
 - a. Introduce candidate
 - b. Use coalition's symbol and title
15. What is political and ideological agenda of the coalition?
 - a. Does the coalition have stands regarding the reform of the constitution?
 - i. Stands on presidential vs. parliamentary vs. semi-presidential systems?
 - ii. Stands on centralized or decentralized form of government?
 - b. Does the coalition have any stands regarding the reform of the electoral law?
 - i. Stands on electoral system?
 - ii. Stands on election commissions?
 - c. Does the coalition have any proposal for the reform of the party law?
 - i. Stands on party registration?
 - ii. Stands on public funding of political parties?
 - d. How the coalition intends to pursue its cause?
16. Who are the members of the coalition?
 - a. Who are the party members of the coalition?
 - b. Who are the independent members of the coalition?
 - c. What communities the coalition represents?
17. Has the coalition achieved some political power?
 - a. How many members has the coalition had in the (past/present) cabinets?
 - b. How many members of the coalition have worked as a governor in the provinces?
 - c. How many members of the coalition are in the parliament?
 - d. Do the MP members vote coherently in the parliament? Can you provide an example?
18. Does the coalition have a headquarters?
 - a. Does the coalition have regional offices?
19. How is the coalition funded? Is the coalition's funding system independent from its member parties?
 - a. Does the coalition receive funds from the government?
20. Does the coalition have plans to emerge as a broad-based party?
 - a. Do all members of the coalition support a broad-based party development?
 - b. What measures have been taken to establish a broad-based party?
21. Does the coalition prepare for parliamentary election?
 - a. How?
 - b. What is the procedure for choosing candidates?

Interview Questions for Parties' Elites

1. Does your party have a constitution?
 - a. Is the constitution of the party publicly available?
2. Is the leadership in the party an elected body?
 - a. Who is the leader of the party now?
 - b. What is the procedure for the replacement of leadership?
3. Have the party been convening regular meetings since the establishment of the government?

4. Does the party have any publication (or other form of outreach media)?
 - a. What is the publication (outreach media) of the party?
5. What is the political and ideological agenda of the party?
 - a. Does the party have any stand regarding the reform of the constitution?
 - i. Stand on presidential vs. parliamentary vs. semi-presidential systems?
 - ii. Stand on centralized or decentralized form of government?
 - b. Does the party have any stand regarding the reform of the electoral law?
 - i. Stands on electoral system?
 - ii. Stands on election commissions?
 - c. Does the party have any proposal for the reform of the party law?
 - i. Stands on party registration?
 - ii. Stands on public funding of political parties?
 - d. How the coalition intends to pursue its cause?
6. Who are the members of the party?
 - a. How many members does the party have?
 - b. What community the coalition represents?
7. Has the party achieved some political power?
 - a. How many members has the party had in the cabinet?
 - i. What are the names of party members serving in the cabinet?
 - b. How many members of the party have worked as a governor in the provinces?
 - c. How many members of the party are in the parliament?
 - d. Do MP members vote coherently in the parliament? Example?
8. Does the party have a headquarters?
 - a. Does the party have regional offices? In which provinces?
9. How is the party funded?
 - a. Does the party receive funds from the government?
10. Does the party plan to broaden its support and membership?
 - a. What are the inclusion and exclusion criteria for party membership?
 - b. What measures have been taken to establish a broad-based party?
11. Does the party want to land candidates for parliamentary election?
 - a. What is the procedure for choosing candidates?
 - b. In what provinces does the coalition introduce candidates?
12. What kind of following party system does the party support? Why?
 - a. A party system representing different ethnic groups
 - b. A party system having both ethnic and cross-ethnic parties
 - c. A party system that does not allow the activities of ethnic parties
13. Which kind of the following government does the party support?
 - a. A government representing different ethnic groups proportionally
 - b. A government based on merits
 - c. A government based on party or minimal coalition
14. What are the demands of the party from the government and parliament?
15. What do you think is the reason for fragmented party system in Afghanistan?
16. Do you think parties are the cause for ethnic tensions sometimes?
17. Why parties cannot establish a broad-based support?
18. Has your party been part of any coalitions?
 - a. Which coalitions?

- b. If it left the coalition, why?
- c. Is it intending to establish a broad-based coalition?

Interview Questions for Lawmakers

1. Are you member of a party/coalition?
2. Are you intending to join a party in the future?
3. What presidential candidate do you trust more to vote for?
 - a. An independent candidate
 - b. A party candidate
 - c. A candidate from a political coalition
 - d. Party/coalition affiliation is irrelevant
4. What parliamentary candidate do you trust more to vote for?
 - a. An independent candidate
 - b. A party candidate
 - c. A candidate from a political coalition
 - d. Party/coalition affiliation is irrelevant
5. Do you think parties are the cause for ethnic tensions sometimes?
6. Do you think political parties are important for democracy in Afghanistan?
7. What kind of party system does Afghanistan need?
 - a. A party system representing different ethnic groups
 - b. A party system having both ethnic and cross-ethnic parties
 - c. A party system that does not allow the activities of ethnic parties
8. What do you think is the reason for fragmented party system in Afghanistan?
 - a. What constitutional rule is responsible for fragmented party system?
 - b. What electoral rule is responsible for fragmented party system?
 - c. Have the party law failed to help party development?
 - d. What should be changed in the constitution and Election laws to develop a strong party system?
9. Did you vote for Party Law?
10. Why the parliament approved SNTV system?
11. If you disapprove SNTV, what alternative system do you propose? Why?
12. Do you think parliamentary grouping helps party development?
13. Why constitutional rule about cross-ethnic nature of party?
14. Why a TRS system was adopted?
 - a. For cross-ethnic appeal of president, or
 - b. For preventing the winning of candidates with plurality vote

Interview Questions for IEC/MOJ

1. Can coalition register in your organization?

2. Does coalition or party work better for elections?
3. Why so many candidates register while they know they cannot win?
4. Did the banned parties join the others? How many? To which parties? (goal of law)
5. What countries laws were looked at for drafting this law?

**Appendix IV Tables
and Data**

Table App. IV-1

| Groups of Subjects in Survey | | | |
|-------------------------------------|--------------|-----------|-----------|
| Category | Groups | Subject # | Subject % |
| Ethnicity | Tajik | 275 | 42.3 |
| | Pashtun | 177 | 27.2 |
| | Hazara | 109 | 16.8 |
| | Uzbek | 59 | 9.1 |
| | Arab | 7 | 1.1 |
| | Pashaiee | 6 | 0.9 |
| | Nooristani | 3 | 0.5 |
| | Baluch | 1 | 0.2 |
| | Turkmen | 1 | 0.2 |
| Gender | Female | 174 | 26.8 |
| | Male | 476 | 73.2 |
| Party Affiliation | Independent | 511 | 78.6 |
| | Party Member | 139 | 21.4 |

Table App. IV-2

| Interviewees | |
|--------------------------------|--|
| Organization | Title of Organization |
| Coalition | Jabha Harakat Nawin Milli Islami Afghanistan |
| Coalition | Herasat wa Subat |
| Coalition | Jabha Milli Naween Afghanistan |
| Coalition | Jabha Milli/Itelaf MiliIslahat wa Hamgarayee |
| Coalition | Ielaf Nerohai Democrat wa Mutaraqi Afghanistan |
| Coalition | Jabha Falah Milli |
| Coalition | National Solidarity of Afghanistan (now party) |
| Coalition | Herasat wa Subat |
| Coalition | Hambastagi Milli |
| Party | Hizb-i-Islami |
| Party | Rawand-i-Sabz |
| Party | Jumbesh Milli Islami |
| Party | Jamiat-i-Islami |
| Party | Wahdat-i-Islami Khalili |
| Party | Bidari wa Falah |
| Party | Mutahid Milli |
| Party | Harakat Inqilab Islami |
| Party | Afghan Milat |
| Party | Tafahum Milli Afghanistan |
| Party | Hambastagee Milli Afghanistan |
| Party | Harakat Islami Afghanistan |
| Party | Paiwan Milli |
| Party | Milli Watan |
| Party | Adalat wa Tawse-a |
| Party | Saadat Milli Afghanistan |
| Party | Mutahid Milli, Mutaraqi Mardum |
| Wolesi Jirga | WJ |
| Wolesi Jirga | WJ |
| Wolesi Jirga | WJ |
| Wolesi Jirga | WJ |
| Electoral Commission | Electoral Commission |
| Electoral Commission | Electoral Commission |
| Ministry of Justice | Ministry of Justice |
| Ministry of Justice | Ministry of Justice |
| TIFA | TIFA |
| Electoral Complaint Commission | Electoral Complaint Commission |
| Constitutional Commission | Constitutional Commission |
| Legal Advisor | Legal Advisor |
| Electoral Complaint Commission | Electoral Complaint Commission |

Table App. IV-3¹⁶

| Coalitions (and Their Member Parties and Elites) | | | Objectives |
|--|-------------------|-----------|---|
| United Islamic Front (2001) | | | |
| Elite Members | Elites | Ethnicity | Not Declared |
| | Abdullah Abdullah | Tajik | |
| | Yunis Qanooni | Tajik | |
| | Marshal Fahim | Tajik | |
| Paiman-e Kabul [Kabul Accord] (Summer 2002) | | | |
| Party Members | Chairman | Ethnicity | Establishing a Non-Ethnic Political Party |
| Hiz-e Adalat wa Refa-e Afghanistan [Afg. Justice and Welfare Party (JWPA)] | Sher Pacha Qiam | Pashtun | |
| Sazma-e Inqilabi-ye Zahmatkashan-e Afghanistan [Revolutionary Organization of Afghanistan's Toilers] | | | Constitutionalism |
| Member Associations and Councils | Chairman | Ethnicity | |
| Shura-ye Demokrasi bara-ye Afghanistan [Council for Democracy in Afghanistan (CfDA)] | Aziz Gardezi | Pashtun | |
| Shura-ye Insijam-e Milli wa Mardomi-ye Afghanistan [National and Popular Coordination Council of Afg.] | | | |
| Anjuman-w Wafaq-e Milli [National Unity Society] | | | |
| Wulusi Millat | | | |

¹⁶ Thomas Ruttig, *On your Marks: Alliances and Actors Before the 2014 Presidential Election*, AFGHAN ANALYSTS NETWORK 15 (Sep. 17, 2013); INTERNATIONAL COUNCIL ON SECURITY AND DEVELOPMENT, *DECISION POINT 2009: AFGHANISTAN'S PRESIDENTIAL ELECTION: POWER TO THE PEOPLE, OR THE POWERFUL?* (2009), http://www.nps.edu/programs/ccs/Elections/ICOS_elections.pdf; Gran Hewad, *The New National Front: A Dark Horse Returns – with Three Riders*, AFGHANISTAN ANALYSTS NETWORK (Dec. 1, 2011), <https://www.afghanistan-analysts.org/the-new-national-front-a-dark-horse-returns-with-three-riders/>; Frud Bezhani, *Ahead of Presidential Vote, Afghan P A Short Outline political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE, Jul. 28, 2015, <http://www.rferl.org/content/afghan-politics-feature/25101500.html>; NATIONAL DEMOCRATIC INSTITUTE, *POLITICAL PARTIES IN AFGHANISTAN: A REVIEW OF THE STATE OF POLITICAL PARTIES AFTER 2009 AND 2010 ELECTIONS*, (Jun. 2011), <https://www.ndi.org/files/Afghanistan-political-parties-july-2011.pdf>; INTERNATIONAL CRISIS GROUP, *POLICY BRIEFING 141: AFGHANISTAN'S PARTIES IN TRANSITION* (2013), <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>; MIGRATION REVIEW TRIBUNAL, *BACKGROUND PAPER: AFGHANISTAN: POLITICAL PARTIES AND INSURGENT GROUPS 2001-2013* (Mar. 7, 2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf; JACKSON KEITH, INSTITUTE FOR THE STUDY OF WAR, *BACKGROUNDER: THE FORMATION OF ELECTORAL ALLIANCES IN AFGHAN POLITICS IN 2014* (2013), http://www.understandingwar.org/sites/default/files/Backgrounder_AFGElectoralAlliances_0.pdf; Thomas Ruttig, *Ambiguity Reiterated: The 20-parties 'Democracy Charter'*, AFGHAN ANALYST NETWORK (Sep. 26, 2012), <https://www.afghanistan-analysts.org/ambiguity-reiterated-the-20-parties-democracy-charter/?format=pdf>.

| Elite Members | Elites | Ethnicity | |
|--|----------------------|-----------|---|
| | Rangin Dadfar Spanta | Pashtun | |
| | Najib Roshan | | |
| | Isma'il Akbar | | |
| | Oasim Akhgar | | |
| | Azam Dadfar | Uzbek | |
| National Front for Democracy in Afghanistan (NFDA) (Mar. 2003) | | | |
| Member Coalitions | Leader | Ethnicity | |
| Shura-ye Mudafe'an-Solh wa Demokrasi [The Council of Defenders of Peace and Democracy (CDPD)] | | | Democratization of Afghanistan |
| Shura-ye Milli-ye Solh wa Demokrasi-ye Afghanistan [National Council for Peace and Democracy (NCPDA)] | Eng. Usman Tariq | | |
| Shura-ye Milli-ye Hemayat az Solh wa Demokrasi [National Council for the Support of Peace and Democracy] | | | |
| Paiman-e Kabul [Kabul Accord] (2 Parties of Accord) | | | |
| I'tilaf-e Niruha-ye Milli wa Mutaraqi-ye Afghanistan [Coalition of National and Progressive Forces of Afghanistan] | | | |
| Shura-ye Melli-ye Taraqi-khwahan-e Afghanistan [National Progressive Council of Afghanistan (NPCA)] | Abul Ahrar Ramizpur | | Introducing a Joint Candidate |
| Member Associations and Councils | Chairman | Ethnicity | |
| Kanun-e Demokratha-ye Afghanistan [Afghanistan Center of Democrats] | Muhammad Nur Sohaili | | |
| Mash'al-e Demokrasi [Torch of Democracy] | Fazi Rahman Urya | Pashtun | |
| Itifaq-e Mubarizan wa Ittehadia-ye Sarasari-ye Zanan-e Afghanistan [All-Afghan Women's Assoc. (AAWA)] | Soraya Parluka | Pashtun | |
| Many Others | | | |
| Party Members | Chairman | Ethnicity | |
| Hezb-e Adalat wa Refah-e Afghanistan [Afghanistan Justice and Welfare Party of Afghanistan (JWPA)] | Sher Pacha Qiam | | |
| National Movement of Afghanistan (Formed 2003, Registered 2004) | | | |
| Elite Members | Elites | Ethnicity | |
| | Yunis Qanooni | Tajik | Advocate the Objectives of Jihad Against the Soviet Union |
| | Abdullah Abdullah | Tajik | |
| | Marshal Fahim | Tajik | |
| | Ahmad Zia Masoud | Tajik | Advocate Resistance Against the Taliban |
| | Ahmad Wali Masoud | Tajik | |
| National Expediency Council (Oct. 2003) | | | |
| Party Members | Chairman | Ethnicity | |
| Nohzat-e Milli, Afghanistan Newin | Ahmad Wali Masoud | Tajik | Commitment to Human Rights |
| Hezb-e Ashti-ye Milli-ye Afghanistan [Afghanistan National Reconciliation Party (HAMA)] | Hussain Ramuz | Hazara | |
| Hezb-e Afghan Millat [Social Democratic Party] | Anwarulhaq Ahadi | Pashtun | Democratic Government |
| Tehrik-e Wahdat-e Milli-ye Afghanistan [National Unity Movement of Afghanistan (NUMA)] | Sultan Mahmud Ghazi | Pashtun | |
| Jombesh-e Hambastagi-ye Milli-ye Afghanistan [National Solidarity Movement of Afghanistan] | Sayed Ishaq Gailani | Pashtun | |
| | | | Advocate the Objectives of Jihad Against the Soviet Union |

| Member Coalitions | Leader | Ethnicity | |
|---|---------------------------|-----------|---|
| Jabha-ye Milli Bara-ye Demokrasi-ye Afghanistan [National Front for Democracy in Afghanistan (NFDA)] | | | Advocate the Values of Resistance Against the Taliban |
| Paiman-e Kabul [Kabul Accord] | | | |
| Elite Members | Elites | Ethnicity | |
| | Qayom Karzai | Pashtun | |
| | Rangin Dadfar Spanta | Pashtun | |
| | Najib Roshan | | |
| | Azam Dadfar | Uzbek | |
| 11th Jadi Front [Later, 'Justice and Democracy Front] (Jan. 2004) | | | |
| Party Members | Chairman | Ethnicity | |
| Factions of Paiman-e Kabul | | | Advocating Parliamentarianism |
| Hezb-e Wahdat Islami Mardom Afghanistan | Mohammad Mohaqiq | Hazara | |
| Hezb-e Harakat Islami Afghanistan | S. Mohd. Ali Jawaed | Hazara | |
| Hezb-e Jombesh Islami Afghanistan | Abdul Rashid Dostum | Uzbek | Introducing a Presidential Candidate |
| Hezb-e Kangara | Abdul Latif Pedram | Tajik | |
| Factions of Jamiat Islami Afghanistan | Abdul Hafiz Mansour | Tajik | |
| | Muhaidin Mehdi | Tajik | |
| National Understanding Front of Afghanistan (NUF) (Apr. 2005) | | | |
| Party Members | Chairman | Ethnicity | |
| Hezb-e Afghanistan- Newin [New Afghanistan Party] | Yunis Qanooni | Tajik | Advocating Parliamentarianism |
| Hezb-e Wahdat-e Islami-ye Mardom-e Afghanistan [People's Islamic Unity Party of Afghanistan] | Mohammad Mohaqiq | Hazara | |
| Hezb-Iqtidar-e Islami-ye Afghanistan [Islamic Rule Party] | Ahmad Shah Ahmadzai | Pashtun | |
| Hezb-e Harakat-e Islami Afghanistan | S. Mohd. Ali Jawed | Hazara | |
| Hezb-e Wahdat-e Milli wa Islami-ye Afghanistan [National and Islamic Unity Party of Afghanistan] | Mohammad Akbari | Hazara | |
| Hezb-e Istiqlal-e Milli-ye Afghanistan [National Independence Party of Afghanistan] | Taj Mohd. Wardak | Pashtun | |
| Harakat-e Inqilab-e Islami wa Milli-ye Afghanistan [Islamic and National Revolution Movement of Afg.] | Ahmad Nabi Mohammadi | Pashtun | |
| Sazman-e Islami-ye Afghanistan-e Jawan [Young Afghanistan Islamic Organization] | S. Jawad Hossaini | Hazara | |
| Hezb-e E'tedal-e Milli wa Islami-ye Afghanistan [National and Islamic Moderate Party of Afghanistan] | Qarabeg Izadyar | | |
| Hezb-e Solh wa Wahdat-e Milli-ye Afghanistan [Peace and National Unity Party of Afghanistan] | Abdul Qadeer Emami Ghorri | | |
| Hezb-e Wahdat-e Milli-ye Aqwam-e Afghanistan [National Unity Party of Afghanistan's Tribes] | Nasrullah Barakzai | Pashtun | Proportional Electoral System |
| Hezb-e Kangara-ye Milli [National Congress Party] | Abdul Latif Pedram | Tajik | |
| | | | Running Parliamentary Elections |
| Coalitions | Chairman | Ethnicity | |
| Jombesh-e Hambastaqi-ye Milli-ye Afghanistan [National Solidarity Movement of Afghanistan] | Eng. Ahmad | | |
| Elite Members | Chairman | Ethnicity | |
| | Hafiz Mansour | Tajik | |
| | Ahmad Zia Masoud | Tajik | |

| National Democratic Front (Probably mid-2005) | | | |
|--|------------------------|-----------|--|
| Party | Chairman | Ethnicity | |
| Afghanistan Work and Development Party | Zolfaqar OMaid | | |
| Afghanistan Liberal Party | Ajmail Sohail | Pashtun | |
| Afghanistan People's Welfare Party | Miagul Wasiq | Pashtun | |
| Afghanistan People's Prosperity Party | M. Rabir Feroz | | |
| Afghanistan Understanding and Democracy Party | Ahmad Shaheen | Pashtun | |
| National Unity of Afghanistan Party | Abdul Khalit Niamat | | |
| Freedom and Democracy Movement | Ab. Raqeen Jawid | Pashtun | |
| Afghanistan People's Hope Party | Alhaj Sirajudin Zafari | Pashtun | |
| Afghanistan National Progress Party | Mohd. Zarif Naseri | Pashtun | |
| Afghanistan Ethnic Groups Solidarity Party | Abdul Qahir Sharyati | Pashtun | |
| Afghanistan Republican Party | Sibghatullah Sanjar | Pashtun | |
| Young Afghanistan Islamic Party | Mohd. Jalil Karzai | Pashtun | |
| Afghanistan Peoples Liberation Party | Dr. Ghulam Farooq | Tajik | |
| National United Front of Afghanistan (NUF) (Apr. 2007) | | | |
| Party Members | Chairman | Ethnicity | |
| Islamic Society Party | Burhanudin Rabani | Tajik | Empowering Parliament |
| | Ismail Khan | Tajik | |
| | Ahmadzai Masoud | Tajik | Supporting Decentralization |
| | Marshal Fahim | Tajik | |
| | Mustafa Kazemi | Hazara | Legalization of International Armed Activities |
| | Nurulhaq Ulumi | Pashtun | |
| | Mustafa Zahir | Pashtun | |
| | Yunus Qanooni | Tajik | Negotiating with Taliban |
| | Abdullah Abdullah | Tajik | |
| | S. Mansour Naderi | Hazara | Recognition of Durand Line |
| | Abdul Rashid Dostum | Uzbek | |
| Elite Members | Elites | Ethnicity | |
| | S. Mohd. Gulabzoi | Pashtun | |
| National Front of Afghanistan (NFA) (2011) | | | |
| Party Members | Chairman | Ethnicity | |
| Jamiat-e Islami | Salahuddin Rabani | Tajik | Supporting a Semi Presidential System |
| | Ahmad Zia Masoud | Tajik | |
| Jombesh-e Milli Islami | Abdul Rashid Dostum | Uzbek | |
| Hezb-e Wahdat-e Islami-ye Mardom-e Afghanistan | Mohammad Mohaqiq | Hazara | Supporting a Federal System |
| Hezb-e Musharekat Milli Afghanistan | Najibullah Kabuli | Tajik | |
| Nangarhar Tribal Unity Council | Haji Aman Khairi | Pashtun | |
| National Coalition of Afghanistan (NCA) (Dec. 2011) | | | |
| Party Members | Chairman | Ethnicity | |
| Hezb-e Eqtedar-e Melli | Said Ali Kazemi | Hazara | Supporting a Parliamentary System |
| Hezb-e Wahdat-e Islami-ye Milli | Muhammad Akbari | Hazara | |
| Hezb-e Wahdat-e Islami Millat-e Afghanistan | Qurban Ali Urfani | Hazara | |
| Hezb-e Muttahed-e Milli | Nurulhaq Ulumi | Pashtun | Supporting Federalism |
| National Unity Movement of Afghanistan | Humayon Shah Asefi | Pashtun | |
| National Environment Authority | Mustafa Zahir | Pashtun | |
| Hope and Change | Abdullah Abdullah | Tajik | |
| Hezb-e Afghanistan-e Newin | Yonus Qanooni | Tajik | |

| | | | |
|---|----------------------|-----------|---|
| Nohzat-e Milli | Ahmad Wali Masoud | Tajik | |
| Hezb-e Mardom-e Muslimin | Hafiz Mansour | Tajik | |
| Member Coalition | Leader | Ethnicity | |
| Jabha-ye Salah wa Falah-e-Afghanistan | Ahmad Shah Zadran | Pashtun | |
| Elite Members | Elites | Ethnicity | |
| | Ismail Khan | Tajik | |
| | Marshal Fahim | Tajik | |
| | S. Mohd. Gulabzoi | Pashtun | |
| The Cooperation Council of Political Parties and Coalitions of Afghanistan (Sep. 2012) | | | |
| Party Members | Chairman | Ethnicity | Advocating Timely Elections |
| Hezb-e Islami Afghanistan | Ab. Hadi Arghandiwal | Pashtun | |
| Hezb-e Afghan Millat | Anwarulhaq Ahadi | Pashtun | |
| National Islamic Front | S. Pir Ahmad Gailani | Pashtun | |
| Hezb-e Wahdat-e Milli wa Islami-ye Afghanistan [National and Islamic Unity Party of Afghanistan] | Karim Khalili | Hazara | |
| Hezb-e Jamiat-e Islami | Salahuddin Rabani | Tajik | |
| | Marshal Fahim | Tajik | |
| | Bismillah Mohammadi | Tajik | |
| Hezb-e Afghanistan-e Newin | Yonus Qanooni | Tajik | Stronger Role for Political Parties |
| Hezb-e Eqtedar-e Milli Afghanistan | Sayed Ali Kazemi | Hazara | |
| Hezb-e Wahdat-e Islami-ye Millat-e Afghanistan | Qurban Ali Erfani | Hazara | |
| Rawand-e Sabz | Amrullah Saleh | Tajik | |
| Hezb-e Islami-ye Motahed-e Afghanistan | Wahidullah Sabawun | Pashtun | Advocating Fraud Prevention |
| Nohzat-e Milli Afghanistan | Ahmad Wali Masoud | Tajik | |
| Nohzat-e Hambastagi-ye Milli | Sayed Eshaq Gailani | Pashtun | |
| Hezb-e Mardom-e Muslimin | Hafiz Mansur | Tajik | |
| Member Coalitions | Leader | Ethnicity | |
| National Front of Afghanistan | | Tajik | |
| National Coalition of Afghanistan | | Tajik | |
| Elite Members | Elites | Ethnicity | |
| | Ismael Khan | Tajik | |
| | Marshal Fahim | Tajik | |
| | S. Mohd. Gulabzoi | Pashtun | |
| Electoral Alliance / Union of Afghanistan (EUA) (Aug. 2013) | | | |
| Member Parties and Traditional Councils | Chairman | Ethnicity | |
| Green Trend | Amrullah Saleh | Tajik | |
| Hezb-e Haqiqat | Shah Wali Karimzai | Pashtun | |
| Council of the Arab Tribes of Afghanistan | Mullah Ezzat | | |
| Smaller, otherwise unaffiliated parties | Shah Wali Karimzai | Pashtun | |
| Member Coalitions | Chairman | Ethnicity | |
| National Front of Afghanistan | Ahmad Zia Masoud | Tajik | |
| Jamiat-e Islami | Salahudding Rabani | Tajik | |
| | Atta Mohd. Noor | Tajik | |
| Jombesh-e Milli Islami | Abdul Rashid Dostum | Uzbek | |
| Hezb-e Wahdat-e Islami-ye Mardom-e Afghanistan | Muhammad Mohaqiq | Hazara | |
| National Coalition of Afghanistan | Abdullah Abdullah | Tajik | |
| Hope and Change | Abdullah Abdullah | Tajik | |
| Hezb-e Afghanistan-e Newin | Yonus Qanooni | Tajik | |

| | | | |
|---|-----------------------|-----------|-------------------------------------|
| Nohzat-e Milli | Ahmad Wali Masoud | Tajik | |
| Hezb-e Muttahed-e Milli | Nurulhaq Ulumi | Pashtun | |
| Hezb-e Eqtedar-e Milli | Said Ali Kazemi | Hazara | |
| National Unity Movement of Afghanistan | Humayon Shah Asefi | Pashtun | |
| Hezb-e Mardom-e Muslimin | Hafiz Mansur | Tajik | |
| Hezb-e Wahdat-e Islami-ye Milli | Muhammad Akbari | Hazara | |
| Hezb-e Wahdat-e Islami Millat-e Afghanistan | Qurban Ali Urfani | Hazara | |
| Jabha-ye Salah wa Falah-e Afghanistan | Ahmad Shah Zadran | Pashtun | |
| Association of National Amity / Understanding of Afghanistan (National Understanding Forum (Sep. 2013)) | | | |
| Party Members | Chairman | Ethnicity | |
| Also: Association of National Compromise of Afg. | Said Ishaq Gailani | Pashtun | |
| Hezb-e Nehzat Hambastagi Milli Afghanistan | Said Ishaq Gailani | Pashtun | |
| Hezb-e Resalet-e Mardomi Afghanistan | Noor Agha | | |
| Hezb-e Afghanistan Wahed | Wasel Rahimi | | |
| Hezb-e Arman-e Mardom-e Afghanistan | | | |
| Hezb-e Azadi wa Masawat-e Afghanistan | | | |
| Hezb-e democracy Afghanistan | | | |
| Hezb-e Jumbesh-e Democracy Afghanistan | | | |
| Hezb-e Adalat wa Refa | | | |
| Hezb-e Harakat-e Milli Islami Afghanistan | | | |
| Hezb-e Nahzat-e Hakemyat-e Mardomi Afghanistan | | | |
| Afghanistan Eastern People's Alliance (Eastern Unity Alliance) (Sep. 2013) | | | |
| Elite Members | Elites | Ethnicity | Supporting a Presidential Candidate |
| | Gul Agha Shirzai | Pashtun | |
| | Mir Wais Yasini | Pashtun | |
| | Fazil Hadi Muslimyar | Pashtun | |
| | Abasin Zahir | Pashtun | |
| | MPs from Eastern | Pashtun | |
| Doctors Without Borders (Informal Coalition) | | | |
| Elite Members | Elites | Ethnicity | Choosing a Presidential Candidate |
| | Ashraf Ghani | Pashtun | |
| | Ali Ahmad Jalali | Pashtun | |
| | Omar Zakhilwal | Pashtun | |
| | Faruq Wardak | Pashtun | |
| | Zalmai Khalilzad | Pashtun | |
| | Qayum Karzai | Pashtun | |
| | Jailani Popal | Pashtun | |
| Karzai's Camp (Informal Coalition) | | | |
| Party Members | Leaders | Ethnicity | Supporting a Presidential System |
| Hezb-e Islami-ye Afghanistan | Ab. Hadi Arghandiwal | Pashtun | |
| Hezb-e Wahdat-e Islami | Abdul Karim Khalili | Hazara | |
| National Islamic Front of Afghanistan | Pir S. Ahmad Gailani | Pashtun | |
| Hezb-e Ensejam-e Milli | Sebghatullah Mojadedi | | |
| Harakat-e Inqilab-e Islami | Najibullah Sadeq | | |
| Hezb-e Saadat-e Milli wa Islami | Musa Hotak | Pashtun | |
| | Mohammad Osman | | |

Table App. IV-4

| Source | Province | Ethnic Composition | | | | | Candidates Votes in 2004 | | | | | Candidates Votes in 2009 | | | | Candidates Votes in 2014 | | |
|--------|------------|--------------------|--------|---------|--------|--------|--------------------------|----------|--------|--------|----------|--------------------------|----------|-------|--------|--------------------------|--|--|
| | | Pashtuns | Tajiks | Hazaras | Uzbeks | Karzai | Qanooni | Mohaqqiq | Dostum | Karzai | Abdullah | Bashardost | Abdullah | Ghani | Rassul | | | |
| NPS | Badghis | 28% | 62% | 0% | 5% | 61% | 32% | 1% | 2% | 26% | 64% | 1% | 68% | 10% | 5% | | | |
| NPS | Baghlan | 20% | 52% | 15% | 12% | 35% | 39% | 7% | 8% | 30% | 57% | 7% | 60% | 20% | 11% | | | |
| NPS | Bamyan | 1% | 16% | 67% | 0% | 9% | 12% | 76% | 0% | 39% | 18% | 39% | 68% | 11% | 12% | | | |
| NPS | Daykundi | 9% | 0% | 88% | 0% | 13% | 1% | 84% | 0% | 29% | 7% | 61% | 75% | 11% | 12% | | | |
| NPS | Ghazni | 49% | 5% | 46% | 0% | 52% | 4% | 39% | 0% | 24% | 10% | 61% | 54% | 19% | 17% | | | |
| NPS | Ghor | 3% | 58% | 39% | 1% | 28% | 46% | 19% | 0% | 36% | 47% | 11% | 60% | 13% | 9% | | | |
| NPS | Khost | 99% | 1% | 0% | 0% | 96% | 1% | 0% | 0% | 69% | 7% | 1% | 36% | 74% | 7% | | | |
| NPS | Paktya | 91% | 9% | 0% | 0% | 88% | 1% | 0% | 0% | 72% | 5% | 1% | 5% | 62% | 8% | | | |
| NPS | Samangan | 2% | 65% | 1% | 30% | 7% | 38% | 20% | 30% | 43% | 44% | 9% | 61% | 27% | 8% | | | |
| AIMS | Farah | 71% | 27% | 0% | 0% | 75% | 21% | 0% | 0% | 57% | 22% | 7% | 32% | 40% | 13% | | | |
| AIMS | Faryab | 6% | 18% | 2% | 50% | 10% | 13% | 0% | 73% | 60% | 30% | 3% | 29% | 65% | 2% | | | |
| AIMS | Hilmand | 91% | 0% | 2% | 1% | 90% | 3% | 3% | 0% | 73% | 5% | 5% | 17% | 33% | 27% | | | |
| AIMS | Kabul | 60% | 25% | 10% | 2% | 53% | 20% | 18% | 1% | 49% | 29% | 13% | 50% | 32% | 8% | | | |
| AIMS | Kunar | 97% | 0% | 0% | 0% | 95% | 2% | 0% | 0% | 81% | 7% | 0% | 12% | 65% | 11% | | | |
| AIMS | Kunduz | 31% | 23% | 7% | 20% | 46% | 18% | 2% | 25% | 32% | 55% | 6% | 47% | 38% | 6% | | | |
| AIMS | Laghman | 49% | 20% | 0% | 0% | 88% | 7% | 0% | 0% | 75% | 14% | 2% | 10% | 50% | 9% | | | |
| AIMS | Nangarhar | 91% | 0% | 1% | 0% | 95% | 2% | 0% | 0% | 75% | 6% | 1% | 19% | 60% | 8% | | | |
| AIMS | Noristan | 0% | 0% | 0% | 0% | 58% | 31% | 0% | 0% | 46% | 41% | 1% | 38% | 15% | 12% | | | |
| AIMS | Panjshir | 0% | 100% | 0% | 0% | 1% | 95% | 0% | 0% | 29% | 68% | 1% | 87% | 0% | 9% | | | |
| AIMS | Zabul | 99% | 0% | 0% | 0% | 86% | 4% | 0% | 0% | 62% | 13% | 1% | 19% | 38% | 22% | | | |
| CAC | Badakhshan | 1% | 77% | 0% | 12% | 30% | 40% | 1% | 4% | 34% | 50% | 1% | 65% | 14% | 10% | | | |
| CAC | Jauzjan | 17% | 12% | 0% | 40% | 12% | 4% | 1% | 78% | 58% | 25% | 4% | 20% | 69% | 7% | | | |
| CAC | Kandahar | 98% | 1% | 0% | 0% | 91% | 3% | 1% | 0% | 74% | 9% | 3% | 11% | 14% | 54% | | | |
| CAC | Nimroz | 27% | 6% | 0% | 6% | 89% | 7% | 1% | 0% | 73% | 14% | 2% | 21% | 34% | 30% | | | |
| CAC | Paktika | 96% | 0% | 0% | 3% | 96% | 3% | 0% | 0% | 54% | 24% | 7% | 11% | 65% | 15% | | | |
| CAC | Urezgan | 90% | 0% | 10% | 0% | 77% | 4% | 8% | 0% | 61% | 9% | 15% | 24% | 27% | 24% | | | |

Table App. IV-5

| Province | Population | | Gender | | Education | Urbanization | | Turnout Rate (Based on Pop.) | | | |
|------------|------------|------------|--------|------|-----------|--------------|-------|------------------------------|---------|---------|---------|
| | In 2013-14 | % of Total | Female | Male | | Literacy | Rural | Urban | In 2004 | In 2009 | In 2014 |
| | | | | | | | | | | | |
| Badghis | 487800 | 2% | 49% | 51% | 9% | 97% | 3% | 43% | 17% | 28% | 33% |
| Baghlan | 894900 | 3% | 49% | 51% | 20% | 80% | 20% | 29% | 18% | 33% | 52% |
| Bamyan | 439900 | 2% | 49% | 51% | 24% | 97% | 3% | 36% | 30% | 40% | 46% |
| Daykundi | 417500 | 2% | 49% | 51% | 16% | 100% | 0% | 43% | 34% | 43% | 47% |
| Ghazni | 1208600 | 5% | 49% | 51% | 29% | 95% | 5% | 45% | 14% | 33% | 31% |
| Ghor | 679000 | 3% | 49% | 51% | 15% | 99% | 1% | 36% | 34% | 47% | 58% |
| Khost | 565200 | 2% | 49% | 51% | 23% | 98% | 2% | 45% | 8% | 21% | 84% |
| Paktya | 543000 | 2% | 49% | 51% | 15% | 96% | 4% | 74% | 5% | 48% | 94% |
| Samangan | 381400 | 1% | 49% | 51% | 12% | 92% | 8% | 36% | 30% | 39% | 45% |
| Farah | 498900 | 2% | 49% | 51% | 15% | 93% | 7% | 29% | 10% | 20% | 18% |
| Faryab | 981200 | 4% | 49% | 51% | 18% | 88% | 12% | 39% | 22% | 29% | 41% |
| Hilmand | 909400 | 3% | 49% | 51% | 4% | 94% | 6% | 38% | 8% | 13% | 8% |
| Kabul | 4227200 | 16% | 48% | 52% | 57% | 16% | 84% | 21% | 12% | 20% | 30% |
| Kunar | 443300 | 2% | 49% | 51% | 27% | 97% | 3% | 28% | 19% | 26% | 57% |
| Kunduz | 991000 | 4% | 49% | 51% | 22% | 75% | 25% | 35% | 10% | 23% | 24% |
| Laghman | 438300 | 2% | 49% | 51% | 12% | 99% | 1% | 22% | 19% | 21% | 33% |
| Nangarhar | 1489800 | 6% | 49% | 51% | 27% | 85% | 15% | 36% | 25% | 24% | 34% |
| Noristan | 145600 | 1% | 49% | 51% | 14% | 100% | 0% | 38% | 8% | 45% | 66% |
| Panjshir | 151000 | 1% | 49% | 51% | 27% | 100% | 0% | 37% | 30% | 30% | 51% |
| Zabul | 299100 | 1% | 49% | 51% | 1% | 96% | 4% | 12% | 5% | 8% | 25% |
| Badakhshan | 935300 | 4% | 49% | 51% | 25% | 96% | 4% | 31% | 26% | 34% | 40% |
| Jauzjan | 530700 | 2% | 49% | 51% | 27% | 79% | 21% | 40% | 26% | 30% | 30% |
| Kandahar | 1201000 | 5% | 49% | 51% | 13% | 65% | 35% | 32% | 7% | 27% | 34% |
| Nimroz | 162100 | 1% | 49% | 51% | 15% | 84% | 16% | 29% | 23% | 32% | 24% |
| Paktika | 427700 | 2% | 49% | 51% | 2% | 99% | 1% | 51% | 20% | 46% | 91% |
| Urezgan | 380500 | 1% | 49% | 51% | 7% | 96% | 4% | 21% | 8% | 7% | 7% |

Table App. IV-6

| Security and Turnout Rates in 2009 | | | | Security and Turnout Rates in 2014 | | | |
|------------------------------------|-------------|-----------------|---------------|------------------------------------|-------------|-----------------|---------------|
| Provinces | Incidents | Incidents Rate% | Turnout Rate% | Provinces | Incidents | Incidents Rate% | Turnout Rate% |
| Bamyan | no incident | 0 | 30 | Bamyan | no incident | 0 | 40 |
| Ghor | no incident | 0 | 34 | Panjshir | no incident | 0 | 30 |
| Panjshir | no incident | 0 | 30 | Samangan | no incident | 0 | 39 |
| Samangan | no incident | 0 | 30 | Daykundi | no incident | 0 | 43 |
| Daykundi | no incident | 10 | 34 | Badghis | no incident | 0 | 28 |
| Badakhshar | less than 5 | 25 | 26 | Noristan | no incident | 0 | 45 |
| Badghis | less than 5 | 25 | 17 | Ghor | at least 1 | 25 | 47 |
| Baghlan | less than 5 | 25 | 18 | Badakhshan | at least 1 | 25 | 34 |
| Faryab | less than 5 | 25 | 22 | Baghlan | at least 1 | 25 | 33 |
| Jauzjan | less than 5 | 25 | 26 | Faryab | at least 1 | 25 | 29 |
| Laghman | less than 5 | 25 | 19 | Jauzjan | at least 1 | 25 | 30 |
| Nimroz | less than 5 | 25 | 23 | Nimroz | at least 1 | 25 | 32 |
| Noristan | less than 5 | 25 | 8 | Khost | at least 1 | 25 | 21 |
| Paktya | less than 5 | 25 | 5 | Laghman | over 5 | 50 | 21 |
| Farah | over 5 | 50 | 10 | Farah | over 5 | 50 | 20 |
| Ghazni | over 5 | 50 | 14 | Kunduz | over 5 | 50 | 23 |
| Kabul | over 5 | 50 | 12 | Paktya | over 10 | 75 | 48 |
| Kunduz | over 5 | 50 | 10 | Ghazni | over 10 | 75 | 33 |
| Nangarhar | over 5 | 50 | 25 | Kabul | over 10 | 75 | 20 |
| Zabul | over 5 | 60 | 5 | Nangarhar | over 10 | 75 | 24 |
| Paktika | over 10 | 75 | 20 | Zabul | over 10 | 75 | 8 |
| Urezgan | over 10 | 75 | 8 | Paktika | over 10 | 75 | 46 |
| Hilmand | over 20 | 100 | 8 | Urezgan | over 10 | 75 | 7 |
| Kandahar | over 20 | 100 | 7 | Hilmand | over 10 | 75 | 13 |
| Khost | over 20 | 100 | 8 | Kandahar | over 10 | 75 | 27 |
| Kunar | over 20 | 100 | 19 | Kunar | over 10 | 75 | 26 |

Table App. IV-7

| Ghost Balloting in Provinces In the Runoff of 2014 | | | |
|--|-------------------|----------------|--------------|
| Province | Eligible Voters % | Turnout Rate % | Difference % |
| Urezgan | 45 | 7 | -38 |
| Hilmand | 45 | 8 | -37 |
| Farah | 45 | 18 | -27 |
| Nimroz | 45 | 24 | -21 |
| Kunduz | 45 | 24 | -21 |
| Zabul | 45 | 25 | -20 |
| Kabul | 45 | 30 | -15 |
| Jauzjan | 45 | 30 | -15 |
| Ghazni | 45 | 31 | -14 |
| Laghman | 45 | 33 | -12 |
| Badghis | 45 | 33 | -12 |
| Kandahar | 45 | 34 | -11 |
| Nangarhar | 45 | 34 | -11 |
| Badakhshan | 45 | 40 | -5 |
| Faryab | 45 | 41 | -4 |
| Samangan | 45 | 45 | 0 |
| Bamyan | 45 | 46 | 1 |
| Daykundi | 45 | 47 | 2 |
| Panjshir | 45 | 51 | 6 |
| Baghlan | 45 | 52 | 7 |
| Kunar | 45 | 57 | 12 |
| Ghor | 45 | 58 | 13 |
| Noristan | 45 | 66 | 21 |
| Khost | 45 | 84 | 39 |
| Paktika | 45 | 91 | 46 |
| Paktya | 45 | 94 | 49 |

Table App. IV-8

| Province | Ethnic Population | | | | | | Seats of Ethnic Groups in 2005 | | | | | | Seats of Ethnic Groups in 2010 | | | | | |
|------------|-------------------|--------|---------|--------|--------|--|--------------------------------|--------|---------|--------|--------|--|--------------------------------|--------|---------|--------|--------|--|
| | Pashtuns | Tajiks | Hazaras | Uzbeks | Others | | Pashtuns | Tajiks | Hazaras | Uzbeks | Others | | Pashtuns | Tajiks | Hazaras | Uzbeks | Others | |
| Badakhshan | 1% | 77% | 0% | 12% | 10% | | 0% | 100% | 0% | 0% | 0% | | 0% | 89% | 0% | 11% | 0% | |
| Badghis | 28% | 62% | 0% | 5% | 5% | | 50% | 25% | 0% | 0% | 0% | | 0% | 0% | 50% | 0% | 50% | |
| Baghlan | 20% | 52% | 15% | 12% | 1% | | 25% | 38% | 13% | 13% | 13% | | 13% | 25% | 38% | 0% | 25% | |
| Bamyan | 1% | 16% | 67% | 0% | 16% | | 0% | 0% | 100% | 0% | 0% | | 0% | 0% | 100% | 0% | 0% | |
| Daykundi | 9% | 0% | 88% | 0% | 4% | | 0% | 0% | 100% | 0% | 0% | | 0% | 0% | 100% | 0% | 0% | |
| Farah | 71% | 27% | 0% | 0% | 2% | | 80% | 0% | 0% | 20% | 20% | | 60% | 40% | 0% | 0% | 0% | |
| Faryab | 6% | 18% | 2% | 50% | 24% | | 0% | 33% | 0% | 0% | 0% | | 22% | 11% | 11% | 56% | 0% | |
| Ghazni | 49% | 5% | 46% | 0% | 0% | | 45% | 0% | 55% | 0% | 0% | | 0% | 0% | 100% | 0% | 0% | |
| Ghor | 3% | 58% | 39% | 1% | 0% | | 33% | 50% | 17% | 0% | 0% | | 0% | 0% | 50% | 0% | 50% | |
| Helmand | 91% | 0% | 2% | 1% | 6% | | 88% | 0% | 13% | 0% | 0% | | 88% | 0% | 13% | 0% | 0% | |
| Jauzjan | 17% | 12% | 0% | 40% | 31% | | 20% | 20% | 0% | 20% | 20% | | 0% | 20% | 0% | 40% | 40% | |
| Kabul | 60% | 25% | 10% | 2% | 3% | | 45% | 24% | 30% | 0% | 0% | | 33% | 24% | 39% | 0% | 3% | |
| Kandahar | 98% | 1% | 0% | 0% | 1% | | 91% | 0% | 9% | 0% | 0% | | 82% | 0% | 18% | 0% | 0% | |
| Khost | 99% | 1% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | |
| Kunar | 97% | 0% | 0% | 0% | 3% | | 100% | 0% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | |
| Kunduz | 31% | 23% | 7% | 20% | 20% | | 22% | 44% | 0% | 11% | 11% | | 33% | 11% | 11% | 22% | 22% | |
| Laghman | 49% | 20% | 0% | 0% | 31% | | 75% | 0% | 0% | 25% | 25% | | 100% | 0% | 0% | 0% | 0% | |
| Nangarhar | 91% | 0% | 1% | 0% | 8% | | 93% | 0% | 0% | 7% | 7% | | 86% | 0% | 0% | 0% | 14% | |
| Nimroz | 27% | 6% | 0% | 6% | 61% | | 50% | 0% | 0% | 50% | 50% | | 0% | 50% | 0% | 0% | 50% | |
| Noristan | 0% | 0% | 0% | 0% | 100% | | 0% | 0% | 0% | 100% | 100% | | 0% | 0% | 0% | 0% | 100% | |
| Paktika | 96% | 0% | 0% | 3% | 1% | | 75% | 0% | 0% | 25% | 25% | | 75% | 0% | 0% | 0% | 25% | |
| Paktya | 91% | 9% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | |
| Panjshir | 0% | 100% | 0% | 0% | 0% | | 0% | 100% | 0% | 0% | 0% | | 0% | 100% | 0% | 0% | 0% | |
| Samangan | 0% | 65% | 5% | 30% | 0% | | 25% | 25% | 0% | 0% | 0% | | 0% | 50% | 50% | 0% | 0% | |
| Urezgan | 90% | 0% | 10% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | | 67% | 0% | 33% | 0% | 0% | |
| Zabul | 99% | 0% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | | 100% | 0% | 0% | 0% | 0% | |

Table App. IV-9

| MPs Ethnic Group 2005 | | | | MPs Ethnic Group 2010 | | | |
|---|---------|---------|--------------------|-----------------------|---------|---------|--------------------|
| Ethnic Groups | MPs (#) | MPs (%) | Par. Affiliation % | Ethnic Groups | MPs (#) | MPs (%) | Par. Affiliation % |
| Pashtun | 118 | 47 | 49 | Pashtun | 95 | 38.2 | 46 |
| Tajiks+Aimaq | 53 | 21 | 70 | Tajiks | 55 | 22.1 | 57 |
| Hazaras | 30 | 12 | 95 | Hazaras+Shiites | 58 | 23.3 | 39 |
| Uzbeks | 20 | 8 | 100 | Uzbeks | 17 | 6.8 | 27 |
| Shiite | 11 | 4.4 | | Shiite | 5 | | |
| Aimaq | | | | Aimaq | 8 | 3.2 | |
| Turkman | 5 | 2 | | Turkman | 4 | 1.6 | |
| Arab | 5 | 2 | | Arab | 5 | 2.0 | |
| Ismaili | 3 | 1.2 | | Ismaili | 4 | | |
| Pashai | 2 | 0.8 | | Pashai | 2 | 0.8 | |
| Baloch | 1 | 0.4 | | Baloch | 1 | 0.4 | |
| Nuristani | 1 | 0.4 | | Nuristani | 2 | 0.8 | |
| | | | | Gujar | 1 | 0.4 | |
| | | | | Tatar | 1 | 0.4 | |
| Source | | | | | | | |
| ANDREW WILDER, A HOUSE DIVIDED? ANALYSING THE 2005 AFGHAN ELECTIONS AFGHANISTAN RESEARCH AND EVALUATION UNIT (Dec. http://www.refworld.org/pdfid/47c3f3c01b.pdf (Page 8) | | | | | | | |
| DOWNLOADABLE COPY OF THIS DOCUMENT AVAILABLE AT: http://www.hazara.net/downloads/downloads.html | | | | | | | |
| https://web.archive.org/web/20110723142745/http://hazara.net/downloads/afghanistan_analysis_of_wolesi_jirga_2010.pdf | | | | | | | |

Table App. IV-10

| Loss / Gain of Seats by Ethnic Groups (From 2005 to 2010 Elections) | | | | | |
|---|-------------|---------|-------|-------|--------|
| Province | Total Seats | Pashtun | Tajik | Uzbek | Hazara |
| Bamyan | 4 | 0 | 0 | 0 | 0 |
| Daykundi | 4 | 0 | 0 | 0 | 0 |
| Faryab | 9 | 2 | -2 | 0 | 1 |
| Kunduz | 9 | 1 | -3 | 0 | 1 |
| Ghazni | 11 | -5 | 0 | 0 | 5 |
| Kabul | 33 | -4 | 0 | 0 | 3 |
| Kandahar | 11 | -1 | 0 | 0 | 1 |
| Urezgan | 3 | -1 | 0 | 0 | 1 |
| Badakhshan | 9 | 0 | -1 | 1 | 0 |
| Helmand | 8 | 0 | 0 | 0 | 0 |
| Jauzjan | 5 | -1 | 0 | 0 | 0 |
| Khost | 5 | 0 | 0 | 0 | 0 |
| Kunar | 4 | 0 | 0 | 0 | 0 |
| Laghman | 4 | 1 | 0 | 0 | 0 |
| Nangarhar | 14 | -1 | 0 | 0 | 0 |
| Nimroz | 2 | -1 | 1 | 0 | 0 |
| Noristan | 2 | 0 | 0 | 0 | 0 |
| Paktika | 4 | 0 | 0 | 0 | 0 |
| Paktya | 5 | 0 | 0 | 0 | 0 |
| Panjshir | 2 | 0 | 0 | 0 | 0 |
| Zabul | 3 | 0 | 0 | 0 | 0 |
| Farah | 5 | 0 | 2 | 0 | -1 |
| Ghor | 6 | -2 | -3 | 0 | 2 |
| Badghis | 4 | -2 | -1 | -1 | 2 |
| Baghlan | 8 | -1 | -1 | -1 | 2 |
| Samangan | 4 | -1 | 1 | -2 | 2 |

Table App. IV-11

| Party Representatives in 2005 and 2010 Parliaments | | | | | | | | | | | |
|--|------------------------------------|---------------------|------|-------|----------------|------|-----------------------|------|------|--------------------|-----------|
| Title (In Persian) | Title (In English) | MPs (by CSS+AREU) | | | MPs (by IND) | | MPs (by Fixing AFG) | | | Strategic (2010) | |
| | | 2005 | 2010 | 2010 | 2005 | 2010 | 2005 | 2010 | 2010 | Member | Affiliate |
| Hizb-i-Jamiat Islami | Islamic Peoples Party Of Afg. | 10 | 14 | 17 | 22 | 17 | 22 | 18 | 14 | 21 | |
| Hizb-i-Nahzat-i- Milli | National Movement Faction | 12 | 0 | | | | | | | | |
| Hizb-i-Mahaz Milli | National Islamic Front of Afg. | 10 | 0 | 3 | 6 | 6 | 10 | 6 | | | |
| Hizb-i-Afghan Milat | Social Democrat Party | 7 | 1 | 8 | 4 | 4 | 7 | 4 | 1 | 2 | |
| Hizb-i-Dawat Islami Afg. | Islamic Mission Party | 7 | 0 | 9 | 4 | 4 | 7 | 4 | | | |
| Hizb-i-Jabha Milli Nijat-e Afg. | National Rescue Front Party | 4 | 0 | | | | 4 | 0 | | | |
| Hizb-i-Hambastagee Milli Afg. | National Solidarity Party | 3 | 0 | 3 | 1 | 1 | 3 | 1 | | | |
| Hezb-e Hambastagee Jawana Afg. | Afghan Youth Solidarity Party | 1 | 0 | | | | 1 | 0 | | | |
| Hizb-i-Afghanistan Naween | The New Afghanistan Party | 25 | 1 | 13 | 1 | 1 | 25 | 1 | | | |
| Hizb-i-Junbesh-e-Milli Afg. | National Movement Party of Afgh. | 20 | 4 | 15-33 | 10 | 10 | 20 | 12 | 4 | | |
| Hizb-i-Wahdat Mardom Afg. | Islamic Unity Party of Afg. People | 18 | 8 | 9 | 11 | 11 | 18 | 12 | 8 | | |
| Hizb-i-Islami Afghanistan | Islamic Party of Afghanistan | 12 | 24 | 0 | 1 | 1 | 12 | 1 | 24 | 17 | |
| Jabha-i-Democratic Milli (14 parties) | National Democratic Front | 7 | 0 | | | | | | | | |
| Hzab-i-Chappi | Left Parties | 6 | 0 | | | | 6 | 0 | | | |
| Hizb-i-Jamhorikhwahan | Republican Party | 0 | 0 | 0 | 9 | 9 | | | | | |
| Hizb-i-Harakat Milli Afghanistan | Islamic Movement of Afg. | <5 | | 1-3 | 4 | 4 | | | | | |
| Hizb-i-Eqtedar Islami | Islamic Power Party | <7 | | 4-12 | | | 1 | | | | |
| Hizb-i-Niyaaz Milli | National Need Party | | | 0 | | | 1 | | | | |
| Hizb-i-Musharakat-e Milli | National Partnership Party | | | 0 | | | 1 | | | | |
| Hizb-i-Paiwand-e-Milli | National Solidarity Party of Afg. | 2 | 4 | 1 | 1 | 1 | 4 | 2 | 4 | 4 | |
| Others | | 2 | 56 | | | | | | | | |
| Sources | | | | | | | | | | | |
| Andrew Reynolds, Fixing Afghanistan's Electoral System: Arguments and Options for Reform, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2012), http://www.areu.org.af/U | | | | | | | | | | | |
| Fixing%20Afghanistans%20Electoral%20System%20BP%202012.pdf. | | | | | | | | | | | |
| NATIONAL DEMOCRATIC INSTITUTE, THE 2010-2015 WOLESI JIRGA DIRECTORY (May 2012), available at https://www.ndi.org/files/AFG-2010-2015-Wolesi-Jirga-Directory.pdf | | | | | | | | | | | |
| ABASS HUSSEINI AND NURULLAH FAIZI, KABUL CENTER FOR STRATEGIC STUDIES, NEGAHI BA TARKIB JADID MAULES NUMAYENDAGAN AFGHANISTAN (1389) [2010] | | | | | | | | | | | |

Table App IV-12

| Proportionality of District Population to Seats | | | | |
|---|---|-----------------|-----------------------------|----------------------------------|
| Province | Population | Allocated Seats | Seats for Female Candidates | Proportionality Pop. / Seats* |
| Badakhshan | 919900 | 9 | 2 | 6.9% |
| Badghis | 479800 | 4 | 1 | -9.3% |
| Baghlan | 879000 | 8 | 2 | -0.1% |
| Balkh | 1271300 | 11 | 3 | -5.3% |
| Bamyan | 432700 | 4 | 1 | 1.4% |
| Daikundi | 410800 | 4 | 1 | 6.4% |
| Farah | 490600 | 5 | 1 | 10.6% |
| Faryab | 964600 | 9 | 3 | 2.3% |
| Ghazni | 1188600 | 11 | 3 | 1.5% |
| Ghor | 668000 | 6 | 2 | -1.4% |
| Helmand | 894200 | 8 | 2 | -1.8% |
| Herat | 1816100 | 17 | 5 | 2.7% |
| Jawzjan | 521400 | 5 | 1 | 5.0% |
| Kabul | 4086500 | 33 | 9 | -12.8% |
| Kandahar | 1175800 | 11 | 3 | 2.6% |
| Kapisa | 426800 | 4 | 1 | 2.8% |
| Khost | 556000 | 5 | 1 | -1.3% |
| Kunar | 436000 | 4 | 1 | 0.7% |
| Kunduz | 972200 | 9 | 2 | 1.6% |
| Laghman | 431200 | 4 | 1 | 1.8% |
| Logar | 379400 | 4 | 1 | 13.6% |
| Nangarhar | 1462600 | 14 | 4 | 4.8% |
| Nimroz | 159300 | 2 | 1 | 27.4% |
| Nuristan | 143200 | 2 | 1 | 34.8% |
| Paktia | 534000 | 5 | 1 | 2.7% |
| Paktika | 420700 | 4 | 1 | 4.2% |
| Panjshir | 148600 | 2 | 1 | 32.3% |
| Parwan | 642300 | 6 | 2 | 2.5% |
| Samangan | 375100 | 4 | 1 | 14.6% |
| Sari Pul | 541000 | 5 | 1 | 1.4% |
| Takhar | 950100 | 9 | 2 | 3.8% |
| Uruzgan | 374100 | 3 | 1 | -13.6% |
| Wardak | 577100 | 5 | 2 | -5.2% |
| Zabul | 294100 | 3 | 1 | 10.7% |
| <i>*Negative percentages indicate that the provinces that are disadvantaged while positive number indicate that the provinces awarded with more share of seats.</i> | | | | |
| Sources | | | | |
| Source 1 | Central Statistics Office, Population http://cso.gov.af/en/page/demography-and-socile-statistics/demogra-statistics/3897111 | | | |
| Source 2 | Andrew Reynold and John Carey, Fixing Afghanistans Electoral System (2012), http://www.areu.org.af/Uploads/EditionPdfs/1211E- | | | |

Table App. IV-13

| Vote Difference Between First and Last Seat-Winners in the Parliamentary Election of 2005 | | | | | |
|--|---|------------------------|-----------------|----------------------|-----------------------------|
| Province | 1st Seat-Winner Votes | Last Seat-Winner Votes | Vote Difference | Vote Difference by % | First Candidate Affiliation |
| Kuchi | 26491 | 1182 | 25309 | 77.6% | Indep. |
| Balkh | 19614 | 3018 | 16596 | 93.0% | Party |
| Samangan | 19166 | 3561 | 15605 | 94.6% | Indep. |
| Ghor | 18493 | 3960 | 14533 | 95.3% | Party |
| Hirat | 17906 | 2041 | 15865 | 91.2% | Indep. |
| Parwan | 16998 | 1679 | 15319 | 89.9% | Indep. |
| Badakhshan | 16410 | 3667 | 12743 | 95.5% | Party |
| Kabul | 16233 | 1129 | 15104 | 85.6% | Party |
| Daikundi | 15780 | 8581 | 7199 | 98.2% | Party |
| Ghazni | 13855 | 3679 | 10176 | 96.2% | Indep. |
| Nangarhar | 13624 | 2625 | 10999 | 94.8% | Indep. |
| Wardak | 12774 | 2236 | 10538 | 94.3% | Party |
| Bamyan | 11993 | 5603 | 6390 | 97.9% | Indep. |
| Paktika | 11600 | 2308 | 9292 | 95.0% | Indep. |
| Takhar | 11286 | 3907 | 7379 | 97.1% | Indep. |
| Kapisa | 10199 | 1464 | 8735 | 93.0% | Indep. |
| Sar-i-Pul | 9804 | 3091 | 6713 | 96.8% | Party |
| Faryab | 9299 | 1349 | 7950 | 93.1% | Indep. |
| Laghman | 8730 | 2336 | 6394 | 96.3% | Party |
| Kunar | 8359 | 2538 | 5821 | 96.7% | Indep. |
| Jauzjan | 8137 | 3058 | 5079 | 97.3% | Party |
| Baghlan | 7849 | 1373 | 6476 | 94.3% | Party |
| Kunduz | 6978 | 2172 | 4806 | 96.8% | Indep. |
| Paktia | 5917 | 3850 | 2067 | 98.5% | Indep. |
| Kandahar | 5662 | 627 | 5035 | 91.0% | Indep. |
| Panjshir | 5400 | 4545 | 855 | 98.8% | Indep. |
| Khost | 4921 | 2110 | 2811 | 97.7% | Indep. |
| Badghis | 4593 | 2003 | 2590 | 97.7% | Indep. |
| Farah | 3763 | 2223 | 1540 | 98.3% | Indep. |
| Logar | 3540 | 1174 | 2366 | 97.0% | Party |
| Nimroz | 3480 | 3369 | 111 | 99.0% | Indep. |
| Nuristan | 3349 | 2261 | 1088 | 98.5% | Indep. |
| Helmand | 3048 | 574 | 2474 | 94.7% | Indep. |
| Zabul | 2795 | 753 | 2042 | 96.3% | Indep. |
| Uruzgan | 2251 | 251 | 2000 | 91.0% | Party |
| Sources | | | | | |
| <i>Source 1</i> | NATIONAL DEMOCRATIC INSTITUTE, THE 2010-2015 WOLESI JIRGA DIRECTORY (May 2012) available at https://www.ndi.org/files/AFG | | | | |
| <i>Source 2</i> | AFGHANISTAN ELECTION DATA, http://afghanistanelectiondata.org/election/2005 | | | | |