

The Democratisation of a Dependent State: The Case of Afghanistan



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Working Paper / Documento de trabajo
December 2007

Working Paper / Documento de trabajo

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Introduction¹

The US-led intervention in Afghanistan in late 2001 brought in its wake a formal democratisation process. A new constitution was promulgated, providing for an elected president and parliament along familiar Western lines. In one sense, but often overlooked, this was also a recreation of the past. Afghanistan was no stranger to constitutions, having had six between 1923 and 1990. Most had created national assemblies and elections in one form or other. Yet the degree of foreign involvement this time was unprecedented, and the reform process itself was shaped by the new state's extreme dependence on international economic and military assistance. The result was a process riveted by tension, one that gave the democratic venture form rather than content and had related counterproductive consequences.

Tension arose from several conditions. First, the principal reason for the US-led intervention in Afghanistan was not to promote political democracy, but to eliminate suspected terrorists and install a stable and cooperative regime in "the war on terror". The requirements of this strategic imperative did not always coincide with the promotion of democracy. US empowerment of local warlords who assisted American forces in the fight against the Taliban and Al-Qaeda is an oft-cited example. Second, the devastation in Afghanistan caused by years of violent strife led to massive international efforts to rebuild the state and the economy and restore security. The dominant international role in this regard - and the parallel extreme dependence of the government on foreign funds and military forces for its survival - eroded the very foundation of democracy as a system in which national representative institutions set priorities, implement policy, and are accountable for the results.

The contrast between the reality of extreme dependence and the theory of democracy was

heightened by the rhetoric of democratisation that accompanied the post-Taliban international venture in Afghanistan. Some who took the rhetoric seriously thought the reforms were a sham.² But the rhetoric was not simply a legitimising device. While driven by US security interests, the regime change in Afghanistan in 2001 was situated in a larger framework of democratisation. This reflected the prevailing UN approach to "post-conflict" reconstruction after the end of the Cold War, which was to introduce (or re-establish) institutions of liberal democracy. There were also Afghan-specific considerations. The dominant narrative of the past was constructed as Western abandonment of Afghanistan after Soviet troop withdrawal, followed by civil war, rule by a fundamentalist Islamist movement, and state failure that accommodated international terrorism. This sequence suggested that active international engagement was needed to develop a new order of peace and stability. Representative government was seen as the central ingredient in this regard, and had been specifically mentioned in several UN Security Council Resolutions in the 1990s.

The following analysis will focus on three areas of reform: the structuring of the interim administration, the promulgation of a new constitution, and the establishment of the legislature. The first set the tone for later reforms; the other two are key institutions in a formal democratisation process. The constitution was to be the source of legal legitimacy for the post-Taliban order, and an elected parliament was to give it democratic meaning.

The historical context

Past reforms:

Past political reforms in Afghanistan had mainly been inspired by statebuilding agendas that lacked a democratic framework, as well as by Marxism and

¹ Comments by William Maley and Arne Strand on an earlier version of this article are gratefully acknowledged.

² Shahrbanou Tadjbakhsh and Michael Schoiswol, "Installing democracy in Afghanistan", Seminar 576 August 2007, pp. 70-76.

radical Islamism. The modernisation reforms of the 1920s undertaken by King Amanullah and his advisor Mahmud Tarzi were designed to create what today would be called a developmental state. The same is true of the reforms of Mohammed Daoud, first in the 1950s, and especially after his coup d'état in 1973, when he proclaimed a republic with himself as president and prepared ambitious plans for state-led economic and social development. Daoud was overthrown by a Marxist regime committed to even more radical social transformation. The revolution of the People's Democratic Party (PDPA) of Afghanistan, launched in April 1978, was soon stalled by warfare, however. Almost two decades and another civil war later, the Taliban movement seized the capital and proclaimed ultra-conservative Islamist reforms in the approximately 90 percent of the countryside that they seemed to control. Sharia law now served as the principal legal framework for the exercise of justice, for the development of social policy, and as a source of legitimacy. Structures of the state administration that had gradually ceased to function due to years of warfare were left in disarray.

The legacy of liberal democratic reforms was weaker and more uncertain. It dates from two periods under the last king, Zahir Shah. The first period was brief (1949-53). The elections in 1949 had been relatively free from interference by the government's security apparatus. The constitutional balance of power favoured the executive over the legislative branch, but the parliament exploited its potential to become "more than an echo of the executive" at a moment when the King was young and his prime minister was indecisive.³ The new parliament "broke the graveyard silence" of previous assemblies, a deputy later proudly proclaimed. "The deputies of this convocation [assembly] opened the floodgates and paved the way for those who will succeed them. They could not liquidate the arbitrary rule, but they threw a stone at it."⁴

The flowering of civil and political society reflected broader social change. Growing urbanisation, education and commerce had created an emerging middle class of merchants, officers, civil servants and an aspiring and politically aware intelligentsia. These social formations gave rise to a variety of political movements that later formed three main currents – leftist, Islamist and ethno-nationalist.⁵ Soon, however, the royal conservative reflex reasserted itself. Prior to the 1952 election the government cracked down on the opposition, banned newspapers, fired government officials, imprisoned numerous students and forced others into exile. The new parliament had no members of the opposition.

The second democratic period lasted a short decade from 1964 until 1973, framed by the constitution of 1964. The decision of an otherwise weak and not particularly democratic king to promulgate a liberal constitution left many observers puzzled. The most direct reason was rivalry at the court.⁶ Zahir Shah wished to neutralise his politically ambitious prime minister, Daoud, who had marked himself as the King's ultimate rival (which he later proved by deposing the monarch in a coup d'état). For Zahir Shah and his supporters, a constitution that empowered the parliament was a means to outflank and isolate Daoud. It was a variation of the time-tested strategy of embattled monarchs to reach beyond the aristocracy in order to retain power. The King's strategy was enshrined in Art. 24, which prohibited members of the royal household from holding high political office. The restriction applied to Daoud, a cousin of the King, but not to the King himself, who was "above politics," although he was granted significant powers in the constitution.

The origins of the 1964 constitution, then, were not particularly liberal, and the parliament laboured under considerable limitations. While the elected members of the lower chamber had significant legislative power, the

³ Richard S. Newell, *The Politics of Afghanistan*, Ithaca: Cornell University Press, 1972, p. 98.

⁴ Cited in Amin Saikal, *Modern Afghanistan*. London: I. B. Tauris, 2005, p. 116.

⁵ Thomas Ruttig, *Islamists, Leftists – and a Void in the Center. Afghanistan's Political Parties and Where They Came From (1902-2006)*. Kabul, Konrad Adenauer Stiftung, 2006.

⁶ Amin Saikal, op.cit. pp.140-146.

King appointed his prime minister and other cabinet members, as well as the justices of the Supreme Court. Zahir Shah, moreover, had decided not to allow political parties to operate. This diluted lines of popular representation and accountability, and severely weakened the capacity of the parliament to work effectively as a legislative agency on programmatic, national or ideological issues. Instead, clientelist politics prevailed. One contemporary observer characterised the assembly as a fractured body driven by parochial interests and populated by religious men, teachers, minor government officials, prosperous merchants, and tribal notables (*khan* and *beq*).⁷ Most members were preoccupied with private business affairs and their role as a broker between the central government and their local constituencies. In this capacity, the legislators spent considerable time in Kabul seeking access to government offices, and on the floor of the Parliament took advantage of the opportunity for uninhibited debate. Little national-level legislation resulted.

Despite its limitations by the standards of liberal democracy, the 1964-73 period helped validate the post-Taliban democratic reforms. While enabled by foreign intervention and heavily shaped by the foreign presence, the recent reforms also resonated with Afghanistan's political history. The decision to invoke the 1964 constitution as the basis for the post-2001 regime until a new constitution was promulgated underlined the continuity with a democratic past, however faint. The establishment of a parliament with nationwide elections in 2005 likewise represented a re-introduction of an elected legislature, not something simply plucked off the shelf by international democratisation experts.

The transitional context

The last decade of Zahir Shah's rule later came to be regarded as a golden period. This was probably less

⁷ Marvin Weinbaum, "The Legislator as Intermediary: Integration of the Centre and Periphery in Afghanistan," in Albert.F. Eldridge (ed.), *Legislatures in Plural Societies: The Search for Cohesion in National Development*, Durham, Duke University Press, 1977.

because of its cautiously democratic institutions than because it was a quite peaceful period, especially as compared with the years of violence that followed. By the time the Taliban were deposed, peace and economic security were the most important concerns of the Afghan people, as numerous surveys have shown. Democratic reforms by themselves were a lesser priority, but widely welcomed because they suggested disarmament and peace.⁸

Some social groups had a stronger commitment to political democracy than others. The urban middle class of civil servants, prosperous merchants, professionals and intellectuals had, as a social class, underpinned the institutional development of political democracy in the 1960s and they were ready to support it again. Many of them had been forced into exile and now returned to work for the government, to resume their professions or businesses, or to swell the civil society of NGOs working for development, humanitarian or rights issues. The urban middle class as a whole had also suffered heavily from the civil war of the 1990s and the Taliban regime. This was particularly the case with the Kabulis, traditionally the most modern and cosmopolitan segment of Afghan society. The civil war among the mujahedin factions had caused massive destruction as they fought for control over the capital city. The Taliban movement that followed had developed in refugee camps and Deobandi madrasas in Pakistan, and drew support from the rural Pashtun heartland; its restrictive interpretation of Islam was totally alien to the urban middle class. To this group, democratic reform appeared as a promise of both peace and liberation.

On the other hand there were the powerful factions of mujahedin, the product of years of warfare supported by external powers. They were now poised to enter the political contest, heavily armed and lacking in democratic experience, but with organisations (*tanzim*)

⁸ *Human Security and Livelihoods of Rural Afghanistan, 2002-03*. Boston: Feinstein International Famine Center, 2004, http://fic.tufts.edu/downloads/human_security_and_livelihoods_of_rural_afghans.pdf ; Chris Johnson and Jolyon Leslie, *Afghanistan: The Mirage of Peace*. London: Zed, 2004, pp.106-108; National Democratic Institute, *Afghanistan. A Society in Transition*. 2003. <http://www.ndi.org/worldwide/asia/afghanistan/afghanistan.asp>

dating back at least to the time of resistance to the Soviet invasion. Other political parties, that either had survived from previous periods or were newly established, were weak. So was the social infrastructure for parliamentary democracy. The country was divided by ethnicity, tribes, clans and sub-clans, and by urban versus rural lifestyles. Years of warfare had deepened many divisions, particularly the distinction among the major ethnic groups (Pashtun, Tajik, Hazara and Uzbek) whose leaders had fought each other during the civil war of the 1990s. The rural-urban distinction, as noted above, had been sharpened by the Taliban regime, and the political spectrum was dominated by ideologies at odds with political liberalism - Marxism, Islamism and ethno-nationalism. To craft liberal political democracy onto this mosaic of diverse and potentially hostile constituencies was an extraordinarily demanding task.

Outside Afghanistan, the UN environment favoured democratisation reforms. Successive UN resolutions on Afghanistan in the 1990s called for "broad-based, representative government" with a commitment to human rights and, increasingly, women's rights. The democratic connection was formalised at the UN-led meeting in Bonn in early December 2001 that approved the framework for the political transition. As the principal architect of the initial conditions for regime change, Washington's formal support for the democratisation process entailed by the Bonn process was, of course, particularly important.⁹

Yet the international commitment to democratisation was potentially a liability as well. The post-Taliban democratisation process was from the outset more heavily internationalised than other reforms in Afghan history except under the communists. Reforms during the monarchy in the 1920s were certainly influenced by foreign ideas, but apart from a small number of foreign advisors they were very much an Afghan operation. The same applied to Zahir Shah's democratic reforms in

1964. This time, by contrast, the UN launched a visibly internationalised democratisation process. Foreign experts virtually flooded into the country to help implement the transition schedule of the Bonn Agreement. The visibility of the foreign hand in the reforms was exemplified during the 2005 elections when the UN had 40 million ballots printed in Europe and Australia flown into Afghanistan. The foreign role was accentuated by the widespread presence of international consultants in the new administration as a whole. While many experts were Afghans returning from exile, often temporarily, they worked on international salaries. This hardened the distinction between "the locals" (on local salary) and "the internationals" (on international salaries).¹⁰

Democratic reform assistance was part of a much broader and increasingly controversial international presence that grated on Afghan nationalist sensibilities. Huge salary differentials and growing disillusionment with the slow pace of reconstruction further enhanced tensions. Afghans soon referred to foreign NGOs as "cows that drink their own milk". The election to the Parliament in 2005 of a candidate from Kabul who ran on a populist platform against foreign experts underlined the point. More broadly, religious and political sentiments that fanned anti-foreign sentiments and occasional, violent anti-foreign demonstrations, as in February and May of 2006, cast a shadow over the foreign-supported democratic venture.

More important in terms of policy impact was the extreme dependence of the emerging Afghan state on international assistance. In this structure of support, the United States held a pre-eminent position that effectively set the parameters for the transition. By virtue of its military intervention, Washington was the architect of the "conditions of origin" of the post-Taliban order. Despite an initial reluctance to get

⁹ The United States accentuated its initial presence with frequent and visible overflights of B-52s. The demonstration of power so impressed the Afghans that they took to calling the planes "the new Vice and Virtue", named after the special police for public order that achieved much notoriety under the Taliban.

¹⁰ Interviews, Kabul, October 2002. The salary differential was enormous. By 2007 international consultants could fetch US\$25 000 a month and national consultants on 'international' salaries could earn US\$5,000-7,000. Regular civil service salaries were in the equivalent of hundreds, not thousands, of dollars per month. Interviews, Kabul October 2007.

involved in “nation-building”, as George W. Bush famously announced during his 2000 election campaign, the size of his administration’s economic and military contribution gave it unique influence. By 2004, US aid accounted for over half of all recorded donor assistance to the government budget.¹¹ The US government channelled funds directly to Afghan militias that continued to fight the Taliban and Al-Qaeda, and US forces led an international coalition in counter-insurgency operations in the southeast. The US Department of Defense demonstrated its power in 2002 by vetoing proposals by the newly established Afghan administration and the UN mission in Afghanistan (UNAMA) to deploy the UN-authorized International Security Assistance Force (ISAF) beyond Kabul. The Pentagon also took the lead in establishing the new Afghan National Army (ANA). By fiscal year 2003/04, the United States funded two thirds of the ANA budget, mostly channelled through the “external budget” controlled by donors rather than the government.¹²

This presence gave the United States a strong voice beyond matters of reconstruction and security. Washington effectively underwrote the very survival of the government, as Karzai publicly admitted,¹³ and wielded an implicit veto over all issues it considered important. Early in the transition period, Washington had focused on military matters and deferred to the UN and the Special Representative of the Secretary-General, Lakhdar Brahimi, on most political issues. The notable exception was the core question of who would lead the Afghan interim administration after Bonn. By mid-2003, however, Washington’s “no nation-building” policy had changed towards a broader and deeper involvement. The administration wanted rapid positive results to help President Bush’s re-election campaign

at a time when the Iraq operation was becoming problematic. As a result, the United States increased its reconstruction aid to over 1 billion dollars in 2004, maintained direct financing and major responsibility for training the new Afghan National Army, and, as we shall see, fine-tuned its involvement in the democratic reform process.

Structuring the interim administration

The Bonn process was emblematic of the importance of foreign influences on the development of the post-Taliban order. When the United States launched its military campaign in Afghanistan, Brahimi started consultations with governments in the region and the large powers, also known as the 6+2 group.¹⁴ Given Afghanistan’s strategic position, the first priority was to develop external legitimacy for a post-Taliban regime. The Afghans were only collectively invited to the final and formal phase of the negotiations. The invitation list developed by the UN and the 6+2 included representatives of Afghan exile groups and the armed factions fighting alongside US forces in Afghanistan, the Northern Alliance. Arriving in Bonn in early December, the Afghans were presented with a draft agreement prepared by Brahimi. The details had already been leaked to the press. At the same time, the US was pressing for a quick agreement to prevent the military campaign from forcing political events; the Northern Alliance militias had already seized Kabul. With Secretary of State Colin Powell literally calling on the UN for “Speed! Speed! Speed”, the Bonn agreement was signed within one week.

The meeting was structured to produce an agreement among victors rather than a peace settlement among belligerents - the Taliban were not invited - and the most contentious issue was how to divide the spoils of victory. Hamid Karzai was selected as the chairman of

¹¹ World Bank, Afghanistan. *Managing Public Finance for Development*. December 2005, p. 94, and <http://www.usaid.gov/policy/budget/cbj2007/ane/af.html>

¹² Astri Suhrke, *When More is Less: Aiding Statebuilding in Afghanistan*, Madrid: Fríde Working Paper 26, 2006, www.fride.org p.13.

¹³ As late as 2005, Afghanistan would not “make it as a sovereign, independent nation able to stand on its own feet,” if foreign forces left, Karzai said on Voice of America (in Pashto), VOA, 5/15/2005, cited on <http://www.globalsecurity.org>

¹⁴ The United States, Russia and Afghanistan’s neighbours.

the interim administration. He was least controversial to the various Afghan factions, and acceptable to the United States. From Washington's perspective, Karzai had several advantages. First, he was Pashtun, the traditional ruling ethnic group. Second, he did not have strong ties to any of the political exile factions or the powerful mujahedin factions. As such, he was a potentially unifying figure in Afghanistan's famously divisive political landscape.¹⁵ This fact also made him heavily dependent upon his external patrons and presumably cooperative. Third, his long-time residence in the United States made for easy cross-cultural communication with Washington.

To legitimate and further develop the transition plan, the Bonn Agreement called for a *loya jirga*, a deliberative meeting of tribal notables traditionally called by the King. The *jirga* was to be held within six months to select the head of state for the rest of the 4-year transition period, and to determine the structure and key personnel of the Transitional Authority. It seemed the perfect match of traditional and modern legitimacy. The *jirga* was duly held in June 2002, with over a thousand delegates present, but the proceedings were marred by breaches of both traditional and democratic rules. First, a high-ranking US official intervened openly to ensure that Karzai was selected as head of state. Several Afghan factions had been competing for the post, with the ageing Zahir Shah being promoted as the most serious alternative to Karzai. While the factions argued furiously, the US special advisor to Afghanistan, the Afghan-American Zalmay Khalilzad, entered the fray and cut the debate short. The King, he announced to the press, had decided not to seek a position in the interim administration.¹⁶ The *loya jirga* then confirmed Washington's preference and voted for Karzai as interim president.

Having a non-*jirga* member and a foreign government official make a critical decision on behalf of the *jirga* clearly violated both traditional and democratic

procedures, and seemed to make a mockery of the entire process. It rankled many Afghans, including those who supported Karzai. The story rapidly trickled down to the countryside as evidence of the futility of elections. When later discussing the forthcoming presidential elections, villagers asked what was the point, since "they" had even stopped the King from being elected.¹⁷

Second, there was a serious breach of the principle of freedom of debate. Intelligence agents of the Northern Alliance (which then controlled both the Ministry of Defense and Interior) were allowed into the main hall of the proceedings with the consent of Brahimi, the then head of the UN mission. The British officer in charge of the small international force in Kabul (ISAF) was prepared to challenge the Northern Alliance on this point, but the UN mission and the United States were not.¹⁸ They acquiesced in the name of stability and fear of alienating powerful Afghan factions. The compromise particularly alienated Afghan intellectuals and human rights activists, potentially the strongest supporters of the democratic venture.¹⁹

Third, the interim administration violated election procedures in order to secure more favourable votes and accommodate powerful armed factions. After the delegates had been elected according to previously established rules, the three key decision-makers – Khalilzad, Brahimi and Karzai – decided at the last minute to add around 100 government officials, including 32 provincial governors (self-appointed or newly anointed). The reactions among democracy supporters at home and abroad were predictably negative.²⁰

¹⁷ Chris Johnson, William Maley, Alexander Thier and Ali Wardak, *Afghanistan's political and constitutional development*. London: Overseas Development Institute, January 2003, p.12.

¹⁸ Astri Suhrke, Arne Strand and Kristian Berg Harpviken, *Conflicting Peacebuilding: Afghanistan Two Years After Bonn*. Bergen: Chr. Michelsen Institute, 2004, p. 29. <http://www.cmi.no/publications/publication/?1763=conflicting-peacebuilding>

¹⁹ Interviews with author, September 2002.

²⁰ International Crisis Group, *The Afghan Transitional Administration*. Prospects and Perils. Kabul/Brussels, 30 July 2002, p. 6. <http://www.crisisgroup.org/home/index.cfm?id=1820&l=1>

¹⁵ William Maley, *Rescuing Afghanistan*, London: C. Hurst & Co, 2006, pp. 33-35.

¹⁶ S. Frederick Starr and Marin J. Strmecki, "Afghan Democracy and Its First Missteps," *New York Times*, June 14, 2002.

Finally, a proposal to introduce a legislative assembly for the transitional period was discussed for two days before it was squashed by the newly elected President Karzai and his backers. Two groups of delegates wanted an assembly: conservative mujahedin factions, especially the non-Pashtun, who saw it as a power-sharing device, and intellectuals for whom an elected assembly was the hallmark of liberal democracy. The United States and the UN mission this time did not intervene directly. The US administration was trying to wrap up the military campaign against the Taliban and Al-Qaeda; details of the transitional political structure were not a high priority. The head of the UN mission played a relatively more important role. For the UN, a streamlined authority with powers concentrated in the president's office made it easier to manage the tight transitional schedule. There was also concern in UNAMA that a legislative assembly would be captured by the least democratic forces in the country, i.e. the conservative mujahedin. It was a familiar democratic dilemma of inclusion (in the name of democracy) vs exclusion (to screen out "non-democratic" participants). Brahimi used his immense authority in Afghanistan and the UN community to help block the proposal for a transitional assembly.²¹

The legitimacy bestowed by the first post-Taliban *loya jirga*, then, was mixed. To those who had high democratic hopes, it was a disappointment because of the compromises made and the heavy-handed foreign intervention. Nevertheless, it was a forum for negotiations, dialogue and expression of views. And the process was clearly more democratic than if the UN had left the transition to the leadership of the Northern Alliance.

The UN-sponsored democratic framework included the further requirement that the president must be directly elected. The large turn-out during the 2004 election (70 percent) was a high point in Karzai's presidential career and for electoral democracy in Afghanistan. Having won the elections,

Karzai increasingly relied on traditional sources of power and legitimacy by forming alliances with local centres of power regardless of democratic, technocratic or human rights criteria. The voters, too, seemed increasingly disinterested in the electoral process. The turn-out for the parliamentary elections in September 2005 was significantly lower, at 49 percent. More remarkably, only 33 percent of the registered voters in the urban middle-class stronghold of Kabul - presumably the core constituency of the new democracy - cast ballots.

Promulgating a new constitution

The process of crafting a new constitution after 2001 stood in a tradition of Afghan constitutional experience. Afghanistan's previous six constitutions had originated in diverse circumstances, yet all had a central legitimising purpose. The first (1923) was designed to provide a legal framework for King Amanullah's modernisation agenda, the second (1931) to legitimise the accession of another king, Nadir Shah, to the throne, a third (1964) to mobilise support for Zahir Shah's struggle with a rival branch of the royal family, a fourth (1977) to legitimise President Daoud's abolition of the monarchy and the rise of a one-party, developmental state, while the fifth (1987) and the sixth (1990) were to help the communist regime of Dr. Najibullah extricate itself from a disastrous war and compensate for the loss of Soviet support. All these constitutions had been introduced and steered from above in a fairly streamlined process. The post-Taliban constitution also had a central legitimising purpose - to mark the dawn of a new era - but the process was shaped by intense political competition over which interests it should serve and accordingly how the document should be structured.

Apart from an unprecedented nationwide popular consultation process in mid-2003, the drafting process

²¹ Interview with Brahimi, October 2002. Brahimi was said to be influenced by the electoral victory of the Islamic Salvation Front in his native Algeria in 1991.

followed established tradition.²² A small committee of experts prepared the first draft, which was reviewed by a larger commission. In the end a *loya jirga* would be called to deliberate and approve the text. Several controversial issues emerged during the early drafting process, including the role of Islam and the status of Afghanistan's several languages. Less recognised by outside observers, but readily acknowledged by Afghans as a critical issue, was the form of government. Should it be a purely presidential system or a mixed structure with a prime minister? The debate over the issue was quickly cast in ethnic terms. The non-Pashtun minorities – Tajik, Uzbek, Hazara, Turkmen, Qizilbash and others – were most outspoken in favour of maintaining the traditional position of a prime minister. Although the minorities together represented some 60 percent of the total population (with the Pashtun constituting the rest), they were divided on most issues. They feared that a Pashtun president, which was a given, would be able to mobilise the Pashtun vote as a bloc on critical issues, and get enough additional support from other ethnic groups to muster a parliamentary majority. The minorities therefore wanted a power-sharing mechanism and favoured a mixed system with a president and a prime minister, the latter preferably to be elected by the parliament. Pashtun voices, by contrast, argued that Afghanistan needed a strong executive in order to overcome the catastrophic divisions of the past and to provide a unifying leadership for the future. From this perspective a purely presidential system was best.²³

As the drafting progressed, the document moved steadily towards a presidential system. The first draft provided for a prime minister selected by the majority

of the lower house. In a later draft, the prime minister was appointed by the president.²⁴ At this point, the process was removed from the commission and proceeded in a "secretive and unaccountable manner" in the office of Karzai.²⁵ When the document was made public a couple of months later, in November 2003, the position of the prime minister had been eliminated altogether. Instead, two vice-presidents selected by the President were added.

The axing of the prime minister position was a significant departure from past practice. Except for the centralisation of power during the short-lived constitutional regime of Daoud and the late communist period, Afghanistan has since the establishment of a constitutional monarchy always had a prime minister. The issue so divided the constitutional *loya jirga* called to debate the draft that the proceedings collapsed in mayhem. The non-Pashtuns were ready to walk out and the vote had to be postponed. As it turned out, the delay served the Karzai-supporters well. They used the additional time to mobilise sufficient votes so that the assembly ultimately approved a purely presidential system. Karzai's handling of the issue was seen by the minorities as a heavy-handed use of parliamentary tactics. It appeared to observers and minorities alike that Karzai had exploited ethnic issues by appealing to Pashtun nationalism, thus "playing the Pashtun card".²⁶

Karzai's ability to stand down a varied and collectively powerful opposition during the constitutional process derived primarily from his relationship with the United States. Unlike many of his opponents who had armed followers and a political organisation, Karzai did not even have an armed guard of his own, but was protected by an American private security company. The arrangement, as Afghans frequently noted, was emblematic of the underlying power realities. By the time the constitutional process got underway,

²² The consultation process was in part *pro forma*. It lasted only two months, and there was no published draft to serve as a basis for discussion. The UN mission that led the process worked under a tight deadline laid down in Bonn. There was also some concern in UNAMA that the consultations could be hijacked by undemocratic forces such as local strongmen and Islamists.

²³ Foreign experts were divided. Barnett Rubin, who was involved in the process and an occasional advisor to Karzai, leaned towards presidentialism, citing the need for unifying leadership to build a central state. Barnett R. Rubin, "Crafting a Constitution for Afghanistan," *Journal of Democracy*, vol. 13, no 3, July 2004, pp.5-19. Others stressed the importance of power-sharing formulas to foster unity in a plural society. Johnson et.al. op.cit., pp. 19-24.

²⁴ This conformed to established practice during the constitutional monarchy when the King always appointed his prime ministers.

²⁵ International Crisis Group, *Afghanistan's Flawed Constitutional Process*. Brussels/Kabul, June, 2003, p.3. <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

²⁶ Interviews with author, July and August 2007.

moreover, Washington had shifted to an active “nation-building” strategy and in late 2003 dispatched its previous special representative to Afghanistan, Zalmay Khalilzad, as ambassador to Kabul.

A former National Security Council advisor, Khalilzad was part of the inner-circle of neo-conservatives in Washington. Combining his powerful standing in Washington with his Afghan-American background, Khalilzad quickly acquired the reputation of being Karzai’s *eminence grise*. While not demonstrating his influence as openly as during the episode with the King in 2002, the ambassador made a point of being very visible around Karzai and a frequent presence in his office. The comfort zone in Washington was clearly greater for a purely presidential system than a mixed or parliamentary system often associated with divisions, bargaining and political stalemate. As an American scholar who was an advisor during the constitutional drafting process noted, the shift to full presidentialism “showed there would be no uncertainty about who held legitimate executive power in Kabul, and Washington would retain the benefit of having a clearly identifiable Afghan partner whom it would know well and indeed preferred.”²⁷

Politicisation of ethnicity is an old issue and in a sense a structural feature of politics in Afghanistan, but the parliamentary issue left a deep scar among the minorities. It is striking that when opposition groups three years later managed to form what they called a United National Front, one of their main demands was a constitutional amendment to introduce parliamentarism.²⁸ The Front was dominated by ethnic minorities, including prominent Northern Alliance names like Marshal Fahim, General Dostum and Younos Qanuni.

Parliament: institutional restrictions

The strong executive notwithstanding, the parliament retained significant formal powers similar to those under the 1964 constitution. This included the right to confirm ministerial and Supreme Court appointments, approve the budget, and pass laws. The legislature was bicameral, with an elected lower house and an upper house partly indirectly elected and partly appointed by the president. The principal legal limitation on the assembly’s potential to become an active, accountable legislature in line with the expectations of liberal democracy did not derive from the constitution but the restrictions on the role of political parties. Political parties were allowed – around 60 had registered with the Ministry of Justice at the time of the 2005 parliamentary elections – but the government chose an election system that prevented political parties from formally fielding candidates.

The election system was an obscure and rarely used arrangement called the Single Non-Transferable Vote (SNTV). As used in Afghanistan during the 2005 elections it meant that voters could choose among individual candidates in multi-member constituencies, but there were no party lists and no party-identification of candidates on the ballot. There was no lower threshold for being elected, and – with no formal party affiliation allowed – no proportional representation according to party strength. There were quotas of reserved seats for women and kuchi (nomads, mainly Pashtun), but not for ethnic minorities. During the elections, over 2700 candidates who competed for the 249 seats of the Lower House were identified only by name, photo and a personal logo. The voters, many of whom were illiterate, had to manage a ballot several pages long. Provincial council elections were held concurrently, compounding voters’ difficulty in identifying their preferred candidates.

As an institution of political democracy, the SNTV was deeply flawed. Without electoral recognition of

²⁷ Rubin, 2004, op.cit. p. 12.

²⁸ Amin Tarzi, “Afghanistan: What Unites the ‘United Front?’” <http://www.globalsecurity.org/military/library/news/2007/05/mil-070510-rferl01.htm>

political parties, the parliament was likely to be fragmented and weak, with little capacity to aggregate local interests, address national-level issues, provide clear lines of accountability to the voters and thus, in the end, check the power of the executive branch. It would resemble the weak assembly during the democratic decade under Zahir Shah, and for some of the same reasons: the King had not allowed formal political parties at all for fear this would limit his own power. As an instrument to foster unity in a plural society, the SNTV was useless. For this purpose, a party-based proportional representation system would have been more suitable.

The limitations of a non-party election system were common knowledge.²⁹ Most of the diplomatic community in Afghanistan, the UN mission in Kabul (UNAMA), and virtually all resident international experts and civil society groups warned against adopting the SNTV. Two constitutional experts based in the eminent Kabul think-tank, AREU, distributed papers detailing its negative consequences. UNAMA and the Afghan-International Joint Electoral Management Body advised the government not to adopt the system, as did the resident representative of the European Union and the Brussels-based International Crisis Group.³⁰ Yet Karzai resisted and after a year-long debate pushed the SNTV through a final Cabinet decision in February 2005.

It was a remarkable choice and several explanations for it have been offered. Some saw it as a misunderstanding - "a path of muddled missteps". Karzai made the critical decision, but he chose the SNTV without "any understanding of its consequences or history".³¹ Alternatively, Karzai and some of his Pashtun ministers may have made an ethnic calculation - with weak political parties the government would be able to mobilise the Pashtun

votes in the parliament as Karzai had done in the constitutional loya jirga on the presidential-parliamentary vote.³² It is also possible that the argument publicly made by Karzai was decisive. Afghanistan, he and many others said, has historically had bad experiences with political parties. The communist party had left a devastating track of violence, as had the civil war among the political factions in the early 1990s.³³ An election system that strengthened the role of political parties, Karzai claimed, would likely institutionalise ethnic divisions and work against national reconciliation and unity. It was better, therefore, to have an election system where voters would vote for individuals rather than parties.

A more obvious explanation is the reasonable expectation that the SNTV would fragment the parliament and weaken the opposition. This, apparently, was the reason why the SNTV was adopted in Jordan – one of only two other countries in the world that use it – and where the King hoped it would split the voting power of adherents of the Muslim Brotherhood. A president with a strong political following might face a party-based parliamentary contest with more confidence, but Karzai never seriously tried to develop a political organisation of his own. Being the preferred American candidate and seemingly above factional politics had served him well in the presidential elections, but it could easily become a liability if political parties were permitted free play in parliamentary elections. The point was not lost on the many political parties preparing to contest the 2005 elections. As the elections drew near, a total of 34 parties representing the entire political spectrum jointly called for an election system based on party lists and proportional representation.³⁴

To understand Karzai's ability to press the SNTV through it is again necessary to consider the role of the United States. While other international representatives

²⁹ Richard Soudriette and Andrew Ellis, "Electoral Systems Today. A Global Snapshot." *Journal of Democracy*, 17 (2), 2006: 78-88.

³⁰ Andrew Reynolds, "The Curious Case of Afghanistan," *Journal of Democracy*, vol. 17, no.2, April 2006, pp. 104-117.

³¹ Reynolds op.cit., p. 107. In this version, an episode involving a bungled presentation of the rival proportional representation system is given much weight.

³² Reynolds op.cit., p. 107.

³³ Maley, op.cit., pp. 48-49, International Crisis Group, *Political Parties in Afghanistan*, Brussels/Kabul, June 2005.

<http://www.crisisgroup.org/home/index.cfm?id=3493>

³⁴ Ruttig, op.cit. p. 42.

were active in the discussion and aligned in favour of a party-based proportional representation, US officials were not. Ambassador Khalilzad did not take a public position, leading some observers to suggest that he was disinterested.³⁵ More likely, as a seasoned political player Khalilzad recognised the importance of institutional design in the outcome of an election and quietly backed Karzai. Moreover, he 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. SNTV is going to happen."³⁶ An election system likely to shield the executive from the parliament was consistent with US interests in a strong presidential system. A weak parliament would enable the United States to streamline the relationship with its main interlocutor in the country - the president. Since the president originally had been installed by the United States and remained heavily dependent upon his foreign patron, the relationship was - at least in theory - weighted in Washington's favour. The institutional arrangement suited Washington's primary policy objective in Afghanistan, which was not to promote political democracy but to eliminate terrorists and Al-Qaeda.

There was another consideration. The political factions most likely to benefit from a party-based election system were led by the old mujahedin leaders. Having developed as a result of war, these party structures were neither internally democratic nor externally transparent. Some of their leaders were implicated in war crimes or crimes against humanity. Their political orientation was mostly conservative Islamic or Islamist. By comparison, the newly established, more democratic and secularist political parties were quite weak. An election system that rewarded political parties would likely give voice to conservative Islamic power holders and "warlords". This concern was evident among US officials in Kabul, who also cited alleged negative reactions to political parties among ordinary Afghans.³⁷

³⁵ Reynolds op.cit. p. 110.

³⁶ Arthur Kent, "Cashing in on Karzai & Co.," *Policy Options*, November 2007, p. 11.

³⁷ Interview with former USAID official in Kabul, July 2007. A study commissioned by USAID and the US government supported Asia

The parliament in action

Washington had tipped the scales against an election system that experts agreed was important for the development of the Afghan legislature as an effective institution for national unity and liberal democracy.³⁸ In practice, the assembly soon showed itself to be a more assertive institution than many had expected.

Not surprisingly, the September 2005 elections produced a highly fragmented parliament, reflecting a system where even a very small number of votes produced a winner. In Kabul, for instance, most of the 33 winners each received only 1-2% of the total votes, and one was elected with less than 2000 votes - not much more than what a careful mobilisation of an extended family or clan could produce. Despite, or because of this, the mujahedin factions got a strong foothold in the parliament. Over half of the elected deputies were previous militia commanders or associated with the old mujahedin parties.³⁹ They rapidly took control over the presidium and the parliamentary committees as well.

The absence of political parties on the ballot clearly had not deterred de facto parties from organising and fielding candidates, as the victories of the old mujahedin groupings demonstrated. The newer, secular-democratic political parties did less well. On the local level, tribes organised to field candidates and canvass votes, functioning as de facto parties, especially in the southern provinces.⁴⁰ Yet localised sub-clans of tribes

Foundation documented "overwhelmingly negative" reactions among ordinary Afghans against political parties. "Formative Research for Civic Education Programs on Elections: Focus Group Discussions in the North, West, Southeast and South of Afghanistan," Kabul, The Asia Foundation, 2005.

³⁸ Andrew Wilder, *A House Divided? Analysing the 2005 Afghan Elections*, Kabul: The Afghanistan Research and Evaluation Unit (AREU), 2005, p. 1, Reynolds, op.cit..p. 116, Ruttig, op.cit. pp. 42-46.

³⁹ The Ittihad of Abdul Sayyaf (under a new name: Dawat); Jamiat led by Burhanuddin Rabbani, Wahdat led by Mohammad Mohaqqueq, Junbish of Abdul Rashid Dostum, and Hezb-e Islami (led by supposed defectors from the old party of Gulbuddin Hekmatyar).

⁴⁰ Wilder, op.cit., pp.20-25.

did not aggregate above the local level. Once the parliament assembled, shifting coalitions and ad-hoc alliance building was the order of the day. Underlying party structures were visible, but without the transparency, accountability and discipline associated with formal party structures.

The quality of the deputies was a matter of concern as well. A UN source estimated that of the 249 newly elected deputies, 40 were commanders still associated with armed groups, 24 members belonged to criminal gangs, 17 were drug traffickers, and 19 faced serious allegations of war crimes.⁴¹ The presence of alleged war criminals and drug traffickers in the parliament undermined the legitimacy of the democratic system, arguably more so than the external controlling efforts. The human rights record of leading mujahedin leaders had been documented in several human rights reports just prior to the elections and was openly discussed. Their presence reflected another compromise in the exclusion-inclusion dilemma of the democratic process. Arguably, the lack of a democratic background in itself would not be reasonable grounds for electoral exclusion, but a criminal background probably would – as was indeed affirmed by the 2004 Election Law. Nevertheless, the mujahedin were powerful men. Excluding and confronting them directly would invite the kind of instability and conflict that few in the international community, above all the United States, wanted to see. It would at the very least detract from the primary objective of defeating the Taliban and Al-Qaeda. At most it would mean fighting a multi-sided and inconclusive war. Electoral inclusion, on the other hand, was also potentially a way to move social conflict from the military to the political arena. Hence, the exit from the dilemma was to include with conditions attached.

The main conditions required that candidates must not have been convicted of a serious crime (the Election Law), and political parties must not have links to armed factions (Law on Political Parties). In practice, the vetting process excluded few, reflecting the primacy

of stability over justice criteria. As there had been no accountability mechanisms for past offences, no one had been convicted for war crimes. Individual candidates therefore could not be excluded on these grounds. As for links to armed groups, the mujahedin parties had surrendered their heavy arms in compliance with a UN demobilisation and disarmament program and, while clearly retaining the capacity to rearm, had no difficulties in registering. In fact, of all the 60 or more political parties that registered, only two had problems, and not on grounds of having links to armed groups.

The conservative, traditionalist or Islamist background of many members, and their hold on strategic committees, gave a certain political coherence to an otherwise fragmented assembly. Coherence was mostly in service of causes that divided the government, embarrassed modernist-reformists among Afghans and in the international community, and outraged human rights groups.⁴² The lower house (Wolesi Jirga) revealed its conservative Islamic credentials by sacking two modernist-reformist ministers, although in a surprise move it rejected the appointment of a famously conservative Chief Justice. It also prepared to restrict the media law, suspended an outspokenly critical female member of the House and, most controversially, proposed a sweeping amnesty bill that offered legal immunity to all Afghans who had been involved in the wars of the past two and a half decades, including the Taliban.⁴³ The upper house (Meshrano Jirga) concurred, and Karzai had neither the will nor the international backing to contest it. In March 2007 the amnesty bill became law.

⁴¹ Cited in Wilder, *op.cit.* p. 14.

⁴² Hafizullah Gardesh, "Afghan government Turns In On Itself", Institute of War and Peace Reporting, 06/27/2007. http://iwpr.net/?p=arr&s=f&o=336625&apc_state=heniarr200706

⁴³ Amin Tarzi, "Afghanistan: Amnesty Bill Places Karzai in a Dilemma," <http://www.rferl.org/featuresarticle/2007/02/85e5a401-6ce9-4424-bbdc-01a084f6c60b.html>

Democratisation and the dependent state

The legislature has in several countries been used to establish legal immunity for past abuses. The striking and ironic aspect of the Afghan case was that this was one of the few areas where the parliament could effectively legislate. Despite its formal powers under the constitution, the government's dependence on foreign economic and military assistance drastically limited the ability of the parliament to assert itself in critical matters of state.

Most importantly, the national budget was heavily dependent upon foreign funding. As late as 2005, around 90 percent of the total budget (including the development budget) was predicated on foreign transfers.⁴⁴ The prospects for the future were for a very gradual decline in dependence. Although government spokesmen maintained that the budget was a key instrument for directing national development, the donors had ultimate discretionary control over the magnitude of the funds and to that extent also the policy priorities. Only the operating budget, which represented about one-fourth of the total, was managed by the government. The rest was the development, or "external", budget, which the donors controlled more directly.⁴⁵ As result, the power of the parliament was extremely limited with regard to both taxation and spending. Limited capacity to collect domestic taxes meant that national revenues accounted for less than half of the operating budget. The rapidly expanding opium economy was of course illegal and not formally taxable. In short, whatever budgetary power Afghan authorities possessed was primarily vested in the executive branch that negotiated with the foreign donors.

The rentier-state feature implicit in this dependence on foreign funds also affected the long-term prospects for

democratisation. A parliament without the power of the purse was destined to remain more a forum for debate than an instrument for channelling popular demands into national-level decisions and for holding the executive branch accountable. With the primary lines of accountability stretching to donors rather than the parliament, the executive branch itself had few incentives – and probably some *disincentives* – to strengthen the legislative branch. It is indicative that in the debate over the election system, the two ministers who most strongly supported the SNTV had also established the most successful relations with the donors.⁴⁶

In security matters the picture is similar. The development of the Afghan security forces (the Afghan National Army, the increasingly paramilitary Afghan National Police and border security forces) was largely funded by three donors, the United States, the United Kingdom and Germany. Funding and programming as of 2007 is coordinated through the Afghan headquarters of the US Central Command (CSTC-A), whose mission is to "plan, program and implement ... reforms of the Afghan National Security Forces."⁴⁷

While the army's operational budget is managed by the Afghan Ministry of Finance, the development budget (including training and infrastructure) is under donor control. Force levels, strategy and salary levels are negotiated between the donors and the executive branch and ratified at international meetings such as the 2006 Compact meeting in London. Progress is monitored by Afghan and international officials (e.g. the JCMB).⁴⁸ The parliament is not involved.

Afghan authorities have even less say over the mission of foreign forces in the country. President Karzai increasingly complains that he is not informed of NATO operations. In a rare expression of protest, the upper house of the parliament in May 2007 called on

⁴⁶ The two ministers were then Finance Minister, Ashraf Ghani, and then Minister of Rural Rehabilitation and Development, Haneef Atmar.

⁴⁷ <http://oneteam.centcom.mil/default.aspx>.

⁴⁸ JCMB Task Force on Afghan National Police Target Strength, March 2007, [www.ands.gov.af/ands/jcmb/src/jcmb5/5B.%20Task%20Force%20on%20Police%](http://www.ands.gov.af/ands/jcmb/src/jcmb5/5B.%20Task%20Force%20on%20Police%20)

⁴⁴ World Bank, *op.cit.*, pp.7-8

⁴⁵ Suhrke, *op.cit.*, p.5.

NATO to “cooperate” more with the government. The possibility of a critical parliament was also the reason why, even years after the invasion, the presence of foreign forces in Afghanistan was not regulated by a treaty, which would require parliamentary approval. Instead, presidents Karzai and George W. Bush announced in 2005 a “strategic partnership”, the details of which have not been made public.

Conclusions

Having intervened in Afghanistan for purposes of regime change, the international community took the lead in creating a democratic framework for the post-Taliban order. The extreme dependence of the new Afghan state upon external support gave international actors significant influence, but incompatibility among policy objectives produced conflicting directions. Most obvious was the tension between political reforms and security issues. The tension was played out in the familiar dilemma of inclusion versus exclusion in the democratisation process. The case for exclusion to protect the process was recognised by Afghan law, but the required vetting process was trumped by the case for wide inclusion. Inclusion, it was argued, could help move social conflict from the military to the political arena, and pre-empt a possibly wider war that would detract from the primary objective of the US-led coalition to eliminate the Taliban and international terrorists. As a result, a number of alleged war criminals, persons with links to armed factions, and conservative Islamists were allowed into the parliamentary arena.

Elsewhere in the Muslim world the US government has found it difficult to promote parliamentary democracy and also accept that Islamists may win.⁴⁹ War-related concerns made this less of a problem in Afghanistan.

As for the form of government, the basic choice was between a strong executive that could unify through central leadership or a strong parliament that could unify through power-sharing mechanisms. A complex set of forces, including US preference for the first option, tipped the institutional balance in favour of the executive. The consequent constitutional and political responsibilities of the president are indeed so comprehensive, some observers argue, that they are difficult for one person to fill.⁵⁰

The parliament has so far emerged as a weak body, reflecting constitutional limitations, feeble political parties that are further hobbled by the election system and a social context that favour clientelist politics. An even more fundamental limitation arises from the structure of international power and decision-making in critical matters of state – that is, revenues and security. The near-total dependence on donor funds for revenues has crippled the independence of the government as a whole or, in the terms of Stephen Krasner, imposed “shared sovereignty.”⁵¹ To some, this condition is fundamentally undemocratic. A government without control over its budget and the military hardly merits the term democracy, Barnett Rubin writes with reference to Afghanistan.⁵² Yet it is necessary here to distinguish between “sovereignty” and “democracy”. Greater national control over the budget and the military would add to “sovereignty” but not necessarily to “democracy”. The executive branch of the Afghan government has at least some role in negotiating the terms of economic and military transfers with the foreign donors. The parliament, however, is virtually excluded from this dialogue. It also has very limited power to check the executive branch – including the rapidly expanding military establishment – and to influence policy in economic and security matters. It is above all in this respect

⁵⁰ William Maley, comment to author, 13 October 2007.

⁵¹ Stephen Krasner, “Building Democracy After Conflict. The Case for Shared Sovereignty,” *Journal of Democracy*, vol. 16, no. 1(2005):69-83.

⁵² Barnett R. Rubin, “Constructing Sovereignty for Security,” *Survival*, vol 47, no. 4, 2005, p. 101.

⁴⁹ Tom Carothers and Marina S. Ottaway (eds.), *Uncharted Journey: Promoting Democracy in the Middle East*. Washington, D.C.: Carnegie Endowment for International Peace, 2005.

that the institutions of democracy in Afghanistan have been constrained by external forces. In a stroke of irony, the international community has promoted democratisation but simultaneously created a state so dependent on external support that it deprives the critical institution of liberal democracy – the legislature – of its meaning. The logical response of the assembly has been to engage mostly in politics

that have symbolic or nuisance value. The compromises and often heavy-handed foreign involvement in the political reforms, moreover, conflict with the promise of autonomy, representation and fair process held out by the democratisation agenda. By implicitly devaluing the institutions it sought to promote, the democratisation process has also had potentially counterproductive effects.

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FRIDE

The post-Taliban democratic reforms in Afghanistan were in part a recreation of the past. Afghanistan has had six constitutions between 1923 and 1990, and most provided for national assemblies and elections in one form or other. Yet the degree of foreign involvement in the last reform process was unprecedented. The heavy foreign hand contradicted the promise of national autonomy, representation and fair process held out by the democratisation agenda. By implicitly devaluing the institutions it sought to promote, the democratisation process has also had potentially counterproductive effects. Moreover, while promoting democratisation, Western governments simultaneously created a state so dependent on external support that it deprived the critical institution of liberal democracy – the legislature – of its meaning. The logical response of the national assembly has been to mostly engage in politics with symbolic or nuisance value. This document focuses on three areas of political reform: the structuring of the interim administration, the promulgation of a new constitution, and the establishment of the legislature.

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