

Discussion of forms of Government for Afghanistan

Barney Rubin 22 February 2003

All of you have written for us papers on the executive form of government for Afghanistan. The UN official dealing with these issues has pronounced your papers "awesome" (though of Afghan origin, I am afraid he is US-educated). Thanks for that.

Among other issues, you have considered the empirical record. I think Bill Maley did not go into detail on this, but I reproduce below Ben Reilly's summary and Jose Cheibub's different analysis. I would like to ask all of you to comment on these passages briefly.

In addition, there is some agreement that there are potential dangers in a presidential system for Afghanistan, because of the winner-take-all character of the office. Jose (from a successful presidential democracy, Brazil) suggest compensating for this through the presidential electoral system, presidential powers, and legislative electoral systems and organization; Maley and Reilly (both from the only continent with only parliamentary systems, Australian) seem to lean more toward parliamentary or mixed systems for this reason. As an American, I strongly recommend against the electoral college system. Could you each comment on this debate? I could send you all the papers if you want, but I did not want to burden you with too much reading.

Barney

Benjamin Reilly:

Beyond all of these arguments, there is the empirical record to consider. Of the many states that became independent in the three decades following the end of World War Two, all countries which could claim to have maintained a continuously democratic record to the late 1980s were parliamentary systems. Of the 93 new democracies that gained their independence between 1945 and 1979, all of the 15 countries which remained democratic throughout the 1980s were parliamentary rather than presidential systems, including some of the developing world's most successful democracies like India, Botswana, and Papua New Guinea. Conversely, all the new presidential democracies from this period suffered some form of breakdown. Overall, parliamentary systems have three times the rate of survival of presidential systems.
Jose Cheibub

Together, thus, these observations may seem to make a compelling case that countries seeking to establish a lasting democratic order should adopt a parliamentary form of government. Yet, none of these arguments is sufficient to make a presidential regime an unattractive choice per se. To begin with, democracies at low levels of income per capita face high risks of collapse, regardless of their form of government. As a matter of fact, when per capita income is less than \$1,000 (in 1985 PPP USD), parliamentary democracies are more likely to die (that is, to become a dictatorship) than presidential democracies: the expected life of the former is 7 years whereas the expected life of the latter is 10 years. The difference is not very large and hence not much should be made of it. What matters is that, at low levels of income, both types of democracy face equally high risks, with the form of government making little difference for the survival prospects of democracy. Therefore, the experience of currently stable democracies, which are also the wealthiest countries in the world, becomes less relevant and reasons that are specific to particular countries, such as historical precedent or preferences of current leaders, may matter more in choosing the form of government.

However, even if we were to take into consideration the experience of currently

democratic countries, there are good reasons to believe that the reason parliamentary democracies have a better survival record than presidential democracies is not related to these systems' constitutional principles. Here is some of the evidence that is relevant to this point:

- It is not true that presidential democracies are chronically prone to deadlocks between the executive and the legislative. The best estimate is that deadlock situations, that is, situations in which the legislature approves a bill that is vetoed by the president and the legislature cannot overcome the presidential veto, *could* emerge represent no more than one-third of all cases of presidential democracies.
- It is not true that parliamentary democracies do not experience deadlock; deadlock under parliamentarism is different than deadlock under presidentialism, but it also occurs. Thus, under parliamentarism deadlock occurs when elections are held, no clear majorities emerge in the legislature, the government has weak legislative support, faces a vote of no-confidence, a new government is formed, equally weak, a new vote of no-confidence is passed in the legislature, no other combination of parties will form a government, new elections are held, and, again, no clear majority emerges. The form the deadlock takes is necessarily different, given the differences in constitutional structures; but the outcome in one is not necessarily better than in the other. In both cases there is no majority that will support government policies.
- It is not true that political actors in presidential regimes will have no incentives to form coalitions. The notion that political parties under presidentialism have an overwhelming incentive to play it alone, that they will not cooperate with each other and will not support the president, even if they are part of the government, is misguided. Recent research shows that incentives for coalition formation are more or less similar under the two regimes; that legislative paralysis may occur, but only under very specific institutional conditions and, often, only if one of the parties to the conflict prefer the status quo. The difference in coalition formation between parliamentary and presidential democracies is one of number and not of quality.
- We also know that, contrary to one strongly held belief, presidential regimes are not incompatible with multiparty systems. They actually are at higher risk of collapsing into an authoritarian regime when there is a moderate number of parties. Moreover, the propensity for coalition formation increases in both parliamentary and presidential regimes when the number of political parties increases.
- It is also known that a decentralized mode of decision-making is not inherent to presidentialism. There are ways to structure the decision-making process in presidential democracies so as to neutralize most of the centrifugal forces that may operate in these regimes.
- Finally, the reason parliamentary regimes have a better survival record than presidential regimes is most likely related to the conditions under which presidential democracies, the majority of which emerged in Latin America, were created. Although this is an area that is still under research, there is some evidence pointing to the fact that presidentialism emerged in countries where the military already had a relatively high propensity to intervene in politics. Thus, what causes the more frequent breakdown of presidential democracies is not the fact that they are presidential, but the fact that they emerge in societies where democracy, of any type, is more likely to collapse.

What this means, thus, is that presidential regimes may work and that, if there is some independent reason for adopting one, it may be more efficient to concentrate in designing a presidential system that works, rather than spending resources in pre-empting that choice.

Jose Cheibub 24 February 2003

I think there are two points to be stressed:

First, no one denies that the historical record favors a parliamentary constitution: parliamentary democracies tend to survive longer than presidential democracies. What we should be careful with is making inferences from this record. I believe that there is enough evidence to suggest that this is not because of the type of constitution, but rather because of the conditions under which presidential democracies have emerged. Moreover, I also believe that there is enough evidence to suggest that there are other institutional provisions (whether or not they are constitutional) that may significantly modify the way the two systems actually work, as opposed to the way we think they should work. Thus, we must be careful in invoking the historical record to choose one form of government.

Which brings me to the second point. It is not really a matter of cultural bias in favor or presidentialism. But, if there is, among the actors who will have to live with the constitution, a strong preference for a presidential form of government (for whatever reason, most likely because of the simplistic analysis of presidentialism that you mention at the beginning of your paper), it may be better to spend resources designing a presidential constitution than to push a parliamentary constitution that will not be liked by many of the central actors. Pushing a parliamentary constitution would have been a reasonable alternative if we were certain that parliamentarism is more conducive to democratic survival than presidentialism. But then... see the paragraph above.

I agree with Ben that the multi-ethnic character of Afghanistan may pose some particular problems for a democratic constitution. Ben is in a much better position to address this issue than I am since he has been thinking about these things for a long time. What I have a hard time seeing, however (and here it may simply be a product of my own ignorance of the literature) is what kind of challenge an ethnically diverse society poses for a presidential constitution as opposed to a parliamentary one. The main argument, it seems to me, is about the winner-takes-all nature of presidentialism. Now, not only can this aspect be mitigated, but it is not correct to think that parliamentary regimes will never have such characteristic. But, again, there may be other arguments of which I am not aware.

I agree with Ben that an electoral college or an indirect election of the president is not a good idea.

As for your summary document I think it is very good and that it presents all the alternatives nicely. I have two minor comments.

First, I like the temporary electoral system, based on multi-member districts that are equivalent to the provinces and I agree that it should/could be made permanent. I wonder, however, about the effect of having the number of seats per province (in the temporary system) depend on the number of votes cast in that province. What will this force parties and individuals to do since they will not know exactly how many candidates to present and where to focus their resources during the campaign? This is particularly true if the distribution of people is highly unequal across provinces. I understand that the lack of a census makes it difficult to allocate the number of seats per province in a good way. But I also think it is imperative that all actors know prior to the election how many seats are there to be gained in each province. Is there a way to use some alternative instrument, even if imperfect, to assess the population of each province?

Second, I wonder if some more thought should be given to the very last paragraph in your document. The experience of Brazil shows that the way Congress is organized is crucial for the emergence of disciplined legislative parties. The Brazilian Congress, as many other assemblies in presidential and parliamentary regimes, are not at all organized like the US congress. I cannot offer much in this area, but I think it is an area that deserves more thinking.

Ben Reilly 24 February 2003

I broadly agree with what has been written by Jose in terms of the nuances in the debate about presidentialism vs parliamentarism, although I think the empirical evidence against presidentialism in terms of democratic survival is stronger than he considers it to be. However, he is right to point out that other issues may well be at work here. I think in my own paper I mentioned at some point the strong influence of other factors (eg a British colonial heritage) on the success of third-world parliamentary systems.

The key is that these choices are the product not just of abstract design, but of very specific historical circumstances in each country. So, if in Afghanistan there is a strong cultural bias in favour of presidentialism, then my recommendation would be that this is the model that should be chosen, but it should be chosen with a clear understanding of the potential weaknesses of the model for multi-ethnic societies in particular, something Jose does not mention but which is central to one of the main critiques of presidentialism.

Given this, it seems to me that the choice of electoral method for example becomes even more important, hence my suggestions on ways to ensure a president gains truly broad-based support. I agree that the electoral college is not the way to go. Better to use either a distribution requirement or an alternative vote in order to ensure majority support, although the former does have the problem you raised of leading to uncertainties if no candidate gets the required spread of votes (which has led to problems in both Kenya and Nigeria).

Bill Maley 24 February 2003

On the paras you sent and Ben's comments:

Certainly a wide range of factors come into play, and it would be unwise to generalise too starkly from macro data. I'm not convinced that there is much evidence from Afghanistan's past of a strong 'cultural' bias in favour of a *presidential system*: Daoud, Taraki, Amin and Najibullah all met sticky ends. Rather, there is at least anecdotal evidence that a lot of people dream of a peaceful life under a *wise and benevolent ruler*. This is perfectly understandable, given what Afghans have endured since 1978, but it is also a sentimental rather than realistic hope, given the disrupted processes of elite formation since then. I fear a presidential system could crank up hopes to entirely unreasonable heights, and set the scene for subsequent disappointment. (It also exposes the political system to the risk of a decapitating strike.)

I doubt that the dream of a peaceful life under a wise and benevolent ruler is 'cultural' in the sense of predisposing people to act against non-presidential systems purely because they are not presidential. At present, I suspect, most Afghans would settle for a system that provided adequate security and accountability, and not demand that it coincide with some historical pattern.

I'd be wary of an alternative vote system; with very low numeracy levels, there could be high levels of informality or vote wastage.

If Karzai's skill is in symbolism rather than governance, could he be sold a 'presidential system' that is really a Germany-Singapore-Israel-style 'presidential system'? (ie a parliamentary system without a constitutional monarch). Let him be a moral leader, Nobel Peace Prize candidate (the Afghan Corazon Aquino), and have a PM to govern! I agree entirely with what you say about the confusion of a mixed system; French-style cohabitation is the last thing Afghanistan needs.

BTW, Afghanistan seems to have more Vice-Presidents than any other country I've encountered. The question remains of how to avoid a messy vacuum if the President gets topped,

Barney Rubin 25 February 2003

On one matter: there is no uncontroversial way to assign population to provinces. This was a very bitter issue in the run-up to the Loya Jirga and was resolved, if at all, by giving ad hoc delegates to Pashtun provinces. Hence the reason for the post facto approach here. Currently the Central Statistical Office has started an age 18+ head count as a pre-census exercise designed to help voter registration. If that is completed on time, it could be used, though the issue of nomads remains controversial, as does the issue of the citizenship of many Afghan refugees and Afghans/Pakistanis from the tribal territories.

Ben Reilly 25 February 2003

This is a nice summary paper. I thought your discussion of the virtues and drawbacks of presidentialism make a lot of sense, and it was good to see a cogent discussion of the dangers of the office being captured by one group as I think this is the real danger for Afghanistan. However, the biggest threat is not that a majority group takes power and all others become "losers", but that the majority group splits its vote between several candidates and a representative of a minority group becomes president. This scenario would be immensely destabilizing and must be guarded against in the constitutional design.

Hence the importance of electoral system issues for the presidency. Your paper suggests that distribution requirements are to be preferred. However, I think the majority threshold is more important, and I disagree that asking voters to choose a second choice is necessarily complicated. Actually, it can be done quite simply: the ballot paper has two columns, one for a first choice and one for a second choice, and voters simply put a tick/cross against their favoured candidate in each column. The second choice votes are counted if no-one gets a majority on first choices alone. This simplified version of the alternative vote (called the "supplementary vote") was used for the election of the new mayor of London in 2001 and worked well.

In terms of the legislature, I think Bill Maley's suggestions for a regional-list PR system based around the existing provinces makes a lot of sense. However, this does not require any use of approval voting: the usual method of election would be closed or open list PR (in the latter, voters can choose which candidates within a party they prefer, in the former they can only vote for the party itself and thus have no influence over the ranking of candidates). Contrary to your assertion, this system is widely used in Europe; it has also become something of a standard model for UN elections and I think would be the most logical choice in Afghanistan.

Barney Rubin to Ben Reilly, 25 February 2003

One question: can you evaluate how practical it is to use the electoral systems you suggest (Alternative vote, or open-list PR) with an electorate that is probably 80 percent or more illiterate?

Ben Reilly 26 February 2003

If the level of illiteracy is that high, then simplicity of process should be the primary consideration influencing the electoral systems choice. Hence, I would suggest closed rather than open list PR and a single vote for President, but with some means of guarding against the minority victories I mentioned earlier. I think the two-vote, first-choice and second choice vote is one way to do this, although it is unavoidably more complex than a straight plurality ballot. One other issue to look at is a role for the parliament or some other body in choosing candidates for the pres elections; some countries do this and it is one way of keeping the number of candidates down (which is itself the best way to guard against minority victories) although i dont know how practical this would be in the Afghanistan case.

Bill Maley, 26 February 2003

Thanks for sending the revised summary paper. It's very neat. I'd still favour a PM as well as president. If a president is killed, it can simultaneously eliminate both the symbolic and functional heads, creating a more acute vacuum than if the symbolic head is eliminated (but not the functional) or the functional (but not the symbolic). You will see that I am into worst-case scenarios! But you're more up to date than I am on the art of the possible in the drafting committee.

I'm not so worried about Jose's point that parties and individuals 'will not know exactly how many candidates to present and where to focus their resources during the campaign'. While population guesstimates will not be nearly good enough to permit the drawing of electorate boundaries without the risk of appreciable malapportionment, they will probably be good enough to allow parties to make these cruder calculations.

The reference in the summary paper to 'certain types of fraud (underage balloting, ballot box stuffing, repeat voting), which would have to be guarded against' is well-taken. However, these are not just problems with the system I outlined: in any election in Afghanistan, these are precisely the kinds of palpable irregularity against which solid protections need to be designed, since those who lose will be looking for such flaws (and probably well-briefed on what flaws might occur) in order to impugn the results. Fortunately, there is a lot of practical experience with specific means of preventing such flaws.

Ben comments that 'the biggest threat is not that a majority group takes power and all others become "losers", but that the majority group splits its vote between several candidates and a representative of a minority group becomes president'. In the Afghan context, I think both scenarios are equally alarming, because of the spoiling capacity that even a minority group might enjoy. I think I would prefer Ben's "supplementary vote" model to one requiring support from a reasonable number of provinces: what if the top presidential candidate gets a plurality (but no absolute majority) and falls short of the (absolute) threshold requirement of provincial support? This could get very messy. But that said, the Afghan electorate will be very different from the London electorate, and one would need to be ready for high levels of vote exhaustion.

Ben is right that the system I proposed does not require any use of approval voting as such. One could divide up seats using closed or open-list PR for the lot. My suggestion for filling 1/3 of seats by approval voting is prompted in part by the sense that for a lot of Afghans, 'party' has become a dirty word. One might try to get around this by using 'tickets' or 'lists' as a synonym, but I suspect that pure closed-list PR would be very poorly received. But if a reasonable proportion of seats can be filled with approval voting (with is about the simplest system there is for voters to use), one might be able to use closed-list PR (popular with parties and easy for voters to use) for the rest without too much protest.

One other point. I think the very interesting discussion we've been having points to the importance of electoral education through radio (which has a high saturation rate in Afghanistan), and ballot papers of different colours for different purposes,

Yash Pal Ghai, 26 February 2003

like your draft--here are a few quick comments:

1. your point about the restrictions to two terms is well taken--but I would add a proviso, based less on empirical than theoretical basis. My impression is that due to international pressures, including the Pinochet doctrine, presidents are anxious before their terms come to an end, to 'rehabilitate' themselves. So as their terms are ending, they try to improve their image.

2. On decree making power of the president, I would advise instead that a representative standing committee of the legislature be appointed for this purpose, and other urgent business in between sessions of the legislature. China does that--although I realise this is not in itself a good recommendation!

3. I think you are giving too much power to the president over security forces. Why not a civilian dominated Defence Council?

4. The rule about 25% support in specified number of provinces (a la Kenya and Nigeria) is a good idea, but there are problems with it--if you get a

candidate with 50%+ support, but not the necessary 25%, s/he cannot be president; in fact the combination of two rules may not materialise at all. Nigeria almost did not manage to get its first president under this rule--until the Supreme Court came to its defence!

Bereket Selassie 26 February 2003

I reread your excellent synthesis of the papers as well as the comments of the other colleagues. There is nothing I can usefully add to what has been written. But consider one "hybrid" alternative to the presidential/parliamentary system. That is one in which the future president is elected on the basis of the parliamentary system, running (or is it standing?) for election in a constituency like all the other candidates, and then elected to the presidency by the elected Parliament for the same term as that of the latter with two four or five-year term limit. Once elected, he becomes an executive president à la Americaine with no right to sit in Parliament. The fact that the elected representatives of the nation choose the president would make for horse trading among the different parties/factions, and would consequently induce a politics of give-and take.

Aziz Huq
1 March 2002

First, I think it worth asking whether Afghan representatives would effectively work together in a legislature, or whether, as in the 1970s, "216 representatives would represent 216 parties," as has famously been said. I see the current parties, including Nizat I Milli, as fairly weak organizationally and personality-driven. Is there then the human capital for effective parliamentary governance? Initially at least, a system that relies on fewer personnel but that develops a political class seems more realistic.

Second, I am unsure how effective parliamentary governance could work in a nation with such a damaged transport infrastructure. It's difficult to see how representatives could both spend enough time in Kabul and in their districts to both play an effective role in governance and to prevent other leaders from emerging locally.

Third, just as qualifications for judges are being mooted, should there be constitutional qualifications for legislators: Say, an oath that they have not spilt the blood of innocent Afghans as in ELJ. Perhaps it would have more bite in the constitution.

Fourth, I fail to see why the marginal increase in complexity caused by a system like alternative voting need compromise an election. Surely, the challenge for illiterate voters will be interpreting and using any ballot: The notion of a second choice will be mere gravy.

Finally, in my experience speaking with Kabul-based civic groups, is that there is overwhelming support for a presidential system even among those who could never be

the represented group (Hazaras) – I think for the sentimental and shallow reasons that Prof. Maley identifies.

Donald Horowitz, 1 March 2003

Transcribed from a handwritten fax sent from Penang, Malaysia

The paper you asked me to comment on is very good, and I think your instincts are sound. If I were an Afghan, I believe I would want a strong president, elected by an ethnically conciliatory system, such as the Nigerian or Indonesian one or the alternative vote (which is also a good way to elect single executives). I would not want a French presidential / prime-ministerial system. Sri Lanka has one, and it has caused friction and hindered accommodation with the Tamils. (By the way, you say on pp.3-4 that AV is hard to implement with an illiterate population, but Papua-New Guinea used it successfully for parliamentary elections. The only issue would be the integrity of the count, not the voters' ability to mark the ballot).

The Eritrean system you mention seems undesirable to me. Indonesia had something similar, which caused great problems. The legislature elected a president who did not have wide support (this was Abdurrahman Wahid) and then forced a multiparty cabinet on him. He then tried to act presidential, dismissing such cabinet members, and ended up being impeached and removed. This is what led to adoption of direct election of the president. So urge them not to go this route in Afghanistan.

On the judicial review, it needs to be explained clearly that this is not a legislative power but a power to test laws for conformity to the constitution, and it is a power to be exercised sparingly. I would spell all of this out carefully.

To maximize presidential support and minimize problems of presidential succession, the president and vice president should run on a ticket. They could come from different parties, in which case there is a better chance that a ticket might command majority support and greater legitimacy and that succession, if it should come to that, would proceed smoothly.

Re: legislative elections: There is an additional reason to avoid open-list PR. In a multiethnic country, voters will move names of their ethnic kinfolk up on the list and those of ethnic strangers down, thereby defeating parties' abilities to balance tickets (assuming some multiethnic inclinations among parties).

The Maley proposals seem problematic to me. There is a large experience there on approval voting, which should be studied to gauge its impact, but one defect is that candidates might behave as if they and their supporters are in a zero-sum game with all other candidates and their supporters. Again, I would want to think more about whether approval rating could promote multiethnic coalitions.

The single non-transferable vote is truly a doubtful idea for a country that needs a vigorous government. There is experience with it in Japan and Taiwan, and the Japanese story is not a good one.

I really think the electoral systems should be presented the other way around. Ask what goals the electoral systems should serve and then find a system or hybrid of systems to serve those goals, as I said in the paper I sent to you.

On legislative power, if the loya jirga has sole power of constitutional amendment, will this not set up a potential rivalry between it and the legislature, so that elements disappointed in the legislature turn to the loya jirga to curb legislative power?

You have canvassed so many issues it is hard to deal with them all, especially in-between meetings here in Malaysia. I wish I could be more helpful. I will be back in the office on March 10, so feel free to contact me then.