

Avoiding the Pitfalls of a Traditional Legislature: An Alternative Approach

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Intro:

One of the fundamental tenets of a modern Republican system of government is the separation of power and an effective system of checks and balances among them. The traditional implementation of this principle has been the creation of a system of government consisting of the three independent branches, the executive, legislative and the judicial branch. The theoretical role and function of each of these entities along with their complex inter-relationships has been well studied and documented by political scientists and constitutional experts. However, every political society, with their own unique set of circumstances, presents challenges to the classical model of Republicanism. Afghan society, with all its complexities and devastation, requires its own set of adaptations, providing challenges to the purity of abstract definitions of the general principles of a modern Republican state.

In this paper, we will focus our attention on one of the branches of governing, the legislature. We will briefly state the role and function of the legislative bodies. We will then examine the difficulties and challenges that the Afghan society presents to the classical model. We follow this discussion with two implementation models, discussing their merits and shortcomings, with special attention to the Afghan adaptation. We will also briefly touch on the role of the political parties and its ramifications on the two alternative approaches.

Role of the Legislature:

The main function of the legislative branch of government is to create the laws of the state. Traditionally this body of government has also been granted the authority to ratify treaties and to declare war on behalf of the state. In accords with the principle of checks and balances, the legislature is often granted the authority to approve the nomination of cabinet members as well as the members of the Judiciary. In many implementations of the theoretical principles the legislature has also been entrusted in approving the state's budgets.

The legislature no doubt is a powerful branch of government with a great deal of authority and influence. The reason for this generous concentration of power, of course has been the underlying assumption that the legislature more than any other branch of government represents the will of the populace and is uniquely positioned to quantify the needs and aspirations of the local communities.

Afghan Challenges:

The massive devastation of Afghan society in all its depth and breadth is documented and is an accepted, albeit tragic and horrifying, fact of life. Among the casualties of the past quarter of a century of mayhem, has been the programmed and deliberate destruction of Afghan institutions by foreign interventions and their Afghan proxies. In a systematic way, the belligerents have continually chipped away at Afghan unity

and nationhood, by promoting and fanning ethnic, linguistic and religious strife. On many occasions, the warring factions have attempted to bring the narrow and locally oriented ethnic and linguistic differences to the fore of Afghan politics as a means to sustain their own local control of the hungry, powerless and abused population.

Factions are thus not so much based on economic or political ideology, but ethnic, linguistic and religious affiliation. To be fair, this is not entirely a new phenomenon. Similar factionalism existed even before the onset of the current conflict, albeit to a far lesser degree. In some sense, this is what would be expected in a state, where local communities function to a large degree independent of other localities, with minimum communication and interaction with sister communities in other parts of the state. In other words, politics in Afghanistan has taken an extremely local nature.

To build a modern and robust state, with strong foundations, the new constitution of the state must overcome the factional inertia as well as the other difficult challenges that Afghan society presents. Thus, a strong requirement on the new constitution is levied, which must provide for mechanism(s) to enhance the national unity and to highlight the national will and inspirations more so than the local one.

Two Body Solution and the 1964 Constitution:

Traditionally, two entities, the Lower House, and the Upper (Senate) House, have been charged to exercise legislative power. While the Lower House is meant to be in tune with the pulse of local communities, designed on the basis of proportional representation, the Upper House is designated to be a guardian of national interests, fewer in the number of its members, and more deliberative in style.

The Afghan constitution of 1964 [see www.institute-for-afghan-studies.org] adopted a variant of the two-body solution for the legislature: A Lower House (*Wolosi Jirga*) and an Upper House (*Meshrano Jirga*). Members of the Lower House were elected from each of the nation's districts for a four-year term (unless the legislature was dissolved earlier by the King). On the other hand, one-third of the members in the Upper House were appointed by the King for a period of five years, while the remaining two-thirds were elected according to the following formula. Each provincial assembly (*Jirga*) would elect one of their members to the Upper House for a period of three years, in addition each province would elect one member through a popular election to the Upper House for a period of four years.

While the 1964 constitution of Afghanistan was hailed, with good reason, as a remarkable and enlightened document, the arrangements for the legislature was far from ideal and a partial cause for many ensuing conflicts and disenchantment with "democracy" in Afghanistan. The fundamental problem was that Afghanistan lacked the homegrown political and democratic institutions that is so necessary in a state trying to adopt a republican style of government. The outcome of the so called "decade of democracy" was political and administrative chaos. The executive branch of government was paralyzed by the inexperienced and on some occasions dishonest House members. In the meantime, the only political organizations capable of sustaining themselves were necessarily those funded and sponsored by foreign states with their own subversive agendas. With these two deadly combinations alone, it is not surprising that during the eight years from 1965 to 1973, the executive branch turned around five times, culminating with the fateful coup of 1978, that nullified the 1964 constitution for good.

In a monarchical regime, the chief danger to an open and democratic system of government naturally arises from the excesses of the crown. In a republican system of government, this distinction falls to the legislature. The legislature enjoys not only the political advantages of a popularly elected membership, but also the authority to make rules and the power of the purse to bend the other branches to its will. Mixed with the inadequacies of the Afghan political forum, this phenomenon clearly appeared in a vicious form during the decade of democracy. The excesses of this period is well known to many Afghan technocrats who found themselves paralyzed and saw the wheel of the government come to a halt.

The purpose of this paper is certainly not to lay blame on institutions or individuals. However, it is crucial that if the 1964 constitution is to be used as a blue-print for the new constitution, as reported in the news media and various sources, then all attempts should be made to at least understand and analyze its points of failure and shortcomings. We would then argue that the legislative arrangements was such a weak point, where members of the House, often elected in their respective districts because of their economic and otherwise influence, were individuals with parochial interests. Their focus was, like their politics, not so much the nation's interests, rather personal gain and at best local interests.

In today's Afghanistan the monopoly of power has increased by orders of magnitude, where warlords and tribal chieftains are now also very armed and very dangerous. Parochial interests now carries a very different level of danger for a state trying to establish the rule of law and democracy.

An Alternative Approach:

As stated, legislative excess is the crucial problem of a republican system of government. With this observation and the circumstances and experiences of Afghan society in mind, we would propose a somewhat different arrangement for the legislative body of government. The principle of our proposal is based on the formation of a legislative organ that would possess wisdom, stability, and a broad view of the nation's interests. In this model, we propose the formation of a single Upper House to act with more coolness and wisdom than a popular branch normally would. This organ would be made up of fewer members to retain the contemplative and deliberative qualities that are desired. To ensure that national interests are the driving focus of this body, we propose that members be elected in such a scheme as to guarantee that individuals of national character would emerge to the forefront of Afghan political leadership. With these guiding principles, we propose one such mechanism for the formation of a legislative branch.

Mechanics of the model:

The Upper House (Senate) would form the sole legislative organ for the state. Each province would send one member to the Senate through open and universal election processes, that are not confined to the candidate's home province alone. One implementation of the principles outlined above could involve a two-stage election process for the members of the Senate. In the first round of elections, candidates would be required to win a certain percentage of votes in perhaps a third or a quarter of the provinces nation-wide. Candidates, who meet this threshold, would then compete in provincial elections for a seat in the national Senate.

This scheme is not a simple one, but is certainly achievable. As long as the rules are stated clearly and transparently, complexity is not necessarily a bad thing, when the purpose is to achieve a higher set of goals and ideals. For instance, the U.S. system of electoral colleges is a very convoluted system, but it has worked well and consistently.

While the specifics of the mechanics is presented here only as an example and certainly needs refinements, the underlying principles are important and necessary to achieve. Specially, considering the potential for disastrous consequences of an alternative approach, it is well worth investing the time to look into other approaches, that might be better suited to democratic principles in the context of Afghan society.

The rationale for this approach is to ensure that individuals of national character would assume positions in a strong Senate. By having to win elections in other provinces, this mechanism ensures that local issues and concerns will not take precedence over national interests. Such a mechanism would further ensure that warlords are not the determining forces in shaping the legislature. It would also ensure that regional factionalism is not rewarded with political capital. Further, keeping the membership to a minimum, provides the atmosphere for a deliberative institution that is required to make difficult national decisions.

We also propose that the term of the members would be lengthened to no less than six to eight years to ensure that the Senate will function as a deliberative entity without the concerns of the day to day problems, which ought to be the realm of the executive concerns. Further, to ensure that membership in this body is not taken for granted, we would propose using the instrument of term limits to bar the members from serving for more than two terms.

An additional benefit of this approach is the formation of national, versus local, political parties. Today, a number of groups are trying hard to form political parties. Adopting such a system, would ensure that the emerging political parties take shape in an environment where concerns for the broader national interests would bear more fruits than adopting regional or local agendas and forming groups based solely on ethnic, and linguistic affiliations.

Clearly, this approach would create a powerful entity in the legislature, but with proper safeguards, Afghanistan needs a stable system of governing today than one that at best would be reflexive and at worst narrow minded and parochial. By taking this approach, the constitutional committee could reshape the political landscape of the country for the better away from factional politics and more towards compromise and accommodation for different constituencies.

Conclusions:

The role of the legislative body in a democratic society is of paramount importance that comes with a great deal of responsibility. In designing the new constitution of Afghanistan, the constitutional committee is in a unique and privileged position to design a document that would stand the test of time and in the process would lay down the ground works for a robust, enlightened and decent form of government in service of all of the people of the nation. While, the constitution of 1964 was certainly an enlightened document, specially considering that it was put together almost forty years ago, it is important that other avenues are also pursued. Afghanistan has changed a great deal over this time period. The problems of the nation is far more acute. The country is more divided and the population more desperate. To compound this reality, neighboring states are still elbow deep trying to influence events in Afghanistan. It is thus incumbent on the constitutional commission to think through each and every decision and form a document that would evolve the country towards real democracy in the decades to come.

In this brief paper, we have outlined an alternative approach, which might be better suited to achieve a meaningful democracy under the current political and military climate. We have argued that a Senate is the right legislative instrument to carry the business of the government with cool, sober and intense consideration, rather than one running high on passion, dominated by petty demagogues, untutored novices, and under the demands of warlords and backing of foreign capitals. The principles articulated here will over time also bring a balance and political equilibrium and we believe would avoid the dangers of sectionalism, and ethnic and linguistic based politics. In short this scheme, we believe, would prevent the new born Afghan democracy from degenerating into a mobocracy.