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ELECTORAL CHOICES, ETHNIC ACCOMMODATIONS, AND THE CONSOLIDATION OF COALITIONS: CRITIQUING THE RUNOFF CLAUSE OF THE AFGHAN CONSTITUTION

Mohammad Bashir Mobasher*

Abstract: Article sixty-one of the Afghan Constitution requires a candidate to win an absolute majority of votes to become the president. This constitutional rule comprises a runoff clause, which prescribes a second round of elections between the two front-runners should no candidate win over 50% of the votes in the first round. While this article agrees with the majority view of Afghan scholars and politicians who see the runoff clause as instrumental to developing trans-ethnic coalitions and governments, it distinguishes between the formation of alliances and their consolidation. Ultimately, this article posits that the runoff clause actually impedes the long-term success of these coalitions. The analysis reveals that the formation of cross-ethnic coalitions under the runoff clause does not necessarily eliminate the likelihood of ethnic tensions during or after elections.

Having revealed some inherent flaws of the runoff clause, this article introduces some alternatives to, and adaptations of, the runoff system, which have been adopted in the constitutions, and electoral laws of other multiethnic states. It examines these alternatives in light of counterfactual simulations using the last three presidential elections. Through these observations, this article contributes to the ongoing legal and political discourse on reforming the Constitution and the electoral laws that began with the National Unity Government Agreement.

INTRODUCTION

Unlike the parliamentary elections that have exacerbated party fragmentation, the presidential elections of Afghanistan have given rise to coalitions that have transcended ethnic boundaries.¹ These emerging

* PhD student at the University of Washington School of Law. I'd like to thank Prof. Robert Pekkanen and Prof. Elizabeth Baldwin for spending their precious time on reviewing and editing this topic and offering invaluable insights and comments. I would also like to thank the editors of Washington International Law Journal for their insightful comments throughout the revision process. The helpful feedback from my dear friends Abdullah Dastageer Popalzai, Shukrullah Yamin, and Hashmat Khalil Nadirpoor should not go unnoticed and unappreciated.

¹ Andrew Reynolds & John Carey, *Fixing Afghanistan's Electoral System: Arguments and Options for Reform*, AFG. RES. AND EVALUATION UNIT, 9–10 (2012), <http://www.refworld.org/docid/5003f05a2.html>. Since the first parliamentary election (2005), Afghanistan experienced an increase in the number of parties and decrease in their share of seats in the Assembly. For example, the number of parties reached to over one hundred by the second parliamentary election (2010), until which a reregistration of political parties was required by the new Political Party Law. At the same time, parties' share of seats decreased from 156 seats in 2005 to ninety-three seats in 2010. The number of independent MPs almost doubled in 2010 (from 37.2% in 2005 to 62.4% in 2010). In 2005, the largest party in the parliament was *Hizb-Naween Afghanistan* (The New Afghanistan Party), which won twenty-

presidential coalitions have demonstrated popularity, cross-ethnic appeal, and political accommodation by elites.² The tradition of coalition-building has become firmly entrenched in the presidential elections of Afghanistan. However, despite this apparent potential for political development, coalitions have remained weak and prone to dissolution. Most coalitions have been built on the basis of patronage and personal politics while lacking titles, organizational structures, and ideologies.³ Some electoral coalitions have not even lasted long enough to witness elections.⁴ Others have dissolved immediately after elections.⁵ Notably, the number of coalitions is on the rise,⁶ which indicates a trend resembling party fragmentation in Afghanistan.⁷ Most importantly, although cross-ethnic coalitions have emerged during the presidential elections, they were not able to prevent ethnic tensions in the 2009 and 2014 elections.⁸

five seats (10%). The same party won only a single seat in 2010. In 2010, the largest share of seats by a party was eighteen. The same party, *Jamiat Islami* (Islamic Society Party), had twenty-two seats in 2005.

² Scholars like Thomas Rutting and Anna Larson preferred the word *proto-parties* for Afghan parties since these organizations do not constitute parties in the conventional sense. See Thomas Rutting, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and where they come from (1902-2006)*, 1 KONRAD STIFTUNG ADENAUER (2006), http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf; Anna Larson, *Afghanistan's New Democratic Parties: A Means To Organize Democratization?* AFG. RES. AND EVALUATION UNIT, 5 (2009) <http://www.refworld.org/pdfid/49c254a02.pdf>.

Thomas Rutting described *proto-parties* as “the parties in the making” and characterized them as the parties that “most lack cohesion and structure, a distinguishable program, and internal democracy. Many are extremely hierarchical or even authoritarian, often organized along ethnic lines.” These authors describe Afghan *proto-parties* as not resembling parties in established and/or Western democracies, in that they are largely based on the ethnic ex-military factions that fought in the civil war. See *id.*

³ Mohammad Bashir Mobasher, *Understanding Ethnic-Electoral Dynamics: How Ethnic Politics Affect Electoral Laws and Election Outcomes in Afghanistan*, 51 GONZ. L. REV. 355, 364 (2016) (“The second step [of candidates for developing cross-ethnic coalitions] is to draw the support of elites . . . by the promises of power sharing, distribution of public funds, and other social and economic pledges.”).

⁴ *Id.* at 414. From twenty-two large coalitions, ten coalitions went through dissolution or reformulation before elections. See *infra* Table I.

⁵ See Mobasher, *supra* note 3. From twenty-two large coalitions, only four coalitions were able to survive at least partly after elections. See *infra* Table I.

⁶ See *infra* Table I.

⁷ Ministry of Justice, *Registered Political Parties and Social Organizations* (May 4, 2016), <http://moj.gov.af/en/page/registered-political-parties-and-social-organizations/1700>. As of 2016, fifty to fifty-seven organizations registered as political parties in the Ministry of Justice. Interestingly, the listed number of registered parties is different from the English version (fifty parties) to Dari and Pashtu versions (fifty-seven parties) of the Website of the Ministry of Justice.

⁸ Int'l Crisis Group, *Afghanistan's Political Transition*, ASIA REPORT N° 260, (Oct. 16, 2014), <http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/260-afghanistan-s-political-transition.pdf>; see also NAT'L DEMOCRATIC INST., POLITICAL PARTIES IN AFGHANISTAN: A REVIEW OF THE STATE OF POLITICAL PARTIES AFTER 2009 AND 2010 ELECTIONS 28 (2011) [hereinafter NDI]; see also BEN SMITH, HOUSE OF COMMONS LIBR., POLITICAL DEVELOPMENTS IN AFGHANISTAN (2011); see also Frud Bezhan, *Ahead Of Presidential Vote, Afghan Political Forces Divide Along Ethnic Lines*, RADIO FREE EUROPE (Nov. 15, 2015), <http://www.rferl.org/content/afghan-politics-feature/25101500.html>. The presidential elections of 2009 and 2014 have led to an almost explosive level of ethnic divide and tensions.

This article provides a systematic analysis of the runoff clause of Article 61 of the Afghan Constitution and its impact on the formation and consolidation of coalitions.⁹ While this article agrees with most Afghan scholars and politicians who view the runoff clause as instrumental to developing trans-ethnic coalitions and governments, it distinguishes between the formation of alliances and their consolidation.¹⁰ Ultimately, this article posits that the runoff system actually impedes the long-term success of these coalitions primarily by encouraging patronage politics. Through this analysis, it also reveals that the formation of cross-ethnic coalitions under the runoff system does not necessarily eliminate the likelihood of ethnic tensions. In light of these observations, this article proposes a revisitation of Article 61 and the adoption of an electoral system that helps consolidate cross-ethnic coalitions and reduces ethnic tensions. Part I of this article focuses on how the coalitions form under the runoff rule in Afghanistan. Part II explains how the runoff clause hinders the consolidation of coalitions and depoliticization of ethnic issues. Finally, Part III reviews and explains some alternative systems and regulations that have been instrumental in instituting cross-ethnic coalitions and preventing ethnic conflict in different divided societies.

This article contributes to the ongoing legal and political discourse on reforming the Constitution and the electoral laws that began with the *National Unity Government Agreement*.¹¹ This Agreement, and the subsequent legislative decrees, which came about as the result of the disastrous 2014 presidential election,¹² proposed amending the Constitution

In both elections, the second rounds were boycotted by one of the front-runners and the threat to violence was louder than ever. The runoff of 2014 presidential election almost brought about a civil war, if it was not for international intervention.

⁹ See DAVID M. FARRELL, *ELECTORAL SYSTEMS: A COMPARATIVE INTRODUCTION* 46–47 (2d ed. 2011). The runoff clause requires two rounds of elections. Under this system of election, all candidates compete in the first round, some of them wanting to win outright. However, if no candidate wins the required majority (mostly, 50+1), a second round election will be held, in which only front-runners compete.

¹⁰ This conclusion was derived from interviews with forty scholars and politicians, which included MPs, leaders of parties and coalitions, and members of different Independent Electoral Commissions. The interview was conducted between March 20 and June 2.

¹¹ *Agreement between the Two Campaign Teams Regarding the Structure of the National Unity Government*, L.A. TIMES, Sep. 21, 2014, <http://documents.latimes.com/agreement-between-two-campaign-teams-regarding-structure-national-unity-government/> [hereinafter *Agreement*].

¹² Rob Crilly, *Afghan presidential candidate rejects election 'coup' and 'plans parallel government'*, THE TELEGRAPH (Jul. 8, 2014), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10952827/Afghan-presidential-candidate-rejects-election-coup-and-plans-parallel-government.html>. The massive fraud in the second round of 2014 led to electoral crisis and heated ethnic tensions. Abdullah Abdullah renounced the election result and declared his intention of forming his own government regardless of election results. See Int'l Crisis Group, *supra* note 8, at 18; see also KENNETH

and alternating electoral designs.¹³ Subsequent to the Agreement, however, the legal and political discourse has predominantly focused on reforming the parliamentary electoral system, known as the Single Non-Transferable Vote (SNTV).¹⁴ The runoff clause attracted very few scholars' attention.¹⁵ Even then, the scholarship on the runoff system remained merely descriptive due to the common perception that the runoff system encourages the development of cross-ethnic coalitions and government.¹⁶ This issue is ripe for examination, however, since the formation of broad-based coalitions during the presidential elections is juxtaposed with ethnic tensions in these elections, as well as the failure of coalitions to survive elections and their

KATZMAN, CONG. RESEARCH SERV., AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE 28 (2015). Later, Abdullah Abdullah's supporters gathered at the *Loya Jirga* (Grand Council) hall, many of them heavily armed, shouting at him to declare a 'parallel state'. Some of them "allegedly made preparations to seize control of government buildings in at least three provinces and occupy the presidential palace in Kabul."

¹³ *Agreement, supra* note 11, Sec. E; Farman-e-Taqnini [Legis. Decree] No. 40, 1394 (2015) [hereinafter "Farman 40"]; Farman-e-Taqnini [Legis. Decree] No. 83, 1394 (2015) [hereinafter "Farman 83"]. Complete versions of both reports are available at ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION 187–213 (Asadullah Sa'adati, ed., 1395) (2016).

¹⁴ See Sayed Mahdi Munadi, *Intekhabat Dar Keshwarhai Pasamunze'a wa Darshai Barai Afghanistan [Elections in Post-Conflict Societies and the Lessons for Afghanistan]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 41–60 (Mohammad Nabi Ahmadi & Majid Ismaelzada eds., 1393) [2014]; Sarwar Danish, *Anwa Nezamhai Intekhabati; Chegonagi Tarahi, Mazaya wa Ma'ayeb [Kinds of Electoral Systems, Their Designing, Advantages and Disadvantages]*, in ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] 49–52 (1394) [2015]; Mohammad Qasem Urfani, *Negahi Muqayesa'ee Ba Nezam Hai Intekhabati [A Comparative Perspective of Electoral Systems]*, in ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] 81–99 (1394) [2015]; Mohammad Ishaq Arefi, *Mutanaseb Sazi Nezam Intekhabati Ba Arzesh Hai Qanoon Asasi Wa Waziat Chand Qawmi [Complying the Electoral Systems to the Values of the Constitution and Multiethnic Context of Afghanistan]*, in ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] 125–139 (1394) [2015]; Mohammad Sarwar Jawadi, *Zafha Wa Ma'ayeb System Intekhabati Afghanistan [The Disadvantages of Afghanistan's Electoral System]*, in ANDISHA MOASER, FASELNAMA WEZHA INTEKHABAT [SPECIAL FOR ELECTIONS QUARTERLY] 101–123 (1394) [2015]; Qasem Ali Sedaqat, *Marzbandi Hawza Hai Intekhabati Dar Afghanistan [Districting Measures in Afghanistan]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 113–134 (Mohammad Nabi Ahmadi and Majid Ismaelzada eds., 1393) [2014]; ASADULLAH SA'ADATI, ET. AL., ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION (Asadullah Sa'adati ed., 1395) [2016]; ANNA LARSON, UNITED STATES INST. OF PEACE, POLITICAL PARTIES IN AFGHANISTAN 3 (2015).

¹⁵ See MOHAMMAD ASHRAF RASULY, TAHLIL WA NAQD QANOON-E-ASASI AFGHANISTAN [A CRITIC OF THE CONSTITUTION OF AFGHANISTAN] 75 (1389) [2010]; MOHAMMAD TAHIR HASHEMI, HUQOOQ ASASI WA NEHADHAI SIASI [THE CONSTITUTION AND THE POLITICAL INSTITUTIONS] 143 (1387) [2007]; see also JAWAD TAQI-ZADA, INTEKHABAT RIASAT JAMHURI DAR QANOON ASASI AFGHANISTAN [PRESIDENTIAL ELECTIONS IN THE CONSTITUTION], in SALNAMAH MOTAL'AT HOQUQY AFGHANISTAN [YEARBOOK OF AFGHAN LEGAL STUDIES] 170–182 (1394) [2016] (Jawad Taqi-zada has been the only author who explained the technicalities of the system in full depth, based on a comparative analysis of the system in Afghanistan, Iran, and France).

¹⁶ See *supra* note 10.

aftermath. This article is the first attempt to expose that juxtaposition, suggesting that the runoff clause should be amended or replaced.

I. THE RUNOFF CLAUSE AND THE FORMATION OF CROSS-ETHNIC COALITIONS

Article 61 of the Afghan Constitution requires a candidate to win an absolute majority of votes in an election to become the president.¹⁷ It includes a runoff clause, which provides that, “[i]f in the first round none of the candidates gets more than fifty percent of the votes, elections for the second round shall be held . . . and, in this round, only two candidates who have received the highest number of votes in the first round shall participate.”¹⁸ The electoral framework this clause sets for presidential elections is also known as *run-off system*,¹⁹ *majority-runoff*,²⁰ *delayed runoff*,²¹ *contingent runoff*,²² *two ballots*,²³ *second ballot*,²⁴ *double-ballot (DB)*,²⁵ *double-ballot runoff*,²⁶ or *two-round system*²⁷ in electoral studies.²⁸

¹⁷ QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN [CONSTITUTION], art. 61 (Jan. 26, 2004) (Afg.), <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

¹⁸ *Id.*

¹⁹ Massimo Bordignon, Tommaso Nannicini & Guido Tabellini, *Moderating Political Extremism: Single Round vs. Runoff Elections under Plurality Rule*, 1 (Inst. for the Study of Labor, Discussion Paper No. 7561) (2013); Karine Van Der Straeten et al., *Sorting Out Mechanical and Psychological Effects in Candidate Elections: An Appraisal with Experimental Data* (2013) (Working Paper, S. 12-296).

²⁰ Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems*, INT’L POL. SCI. REV. 4 (1997); FARRELL, *supra* note 9, at 46–47.

²¹ RACHEL LEWIS ET AL., MAJORITY RULE IN INTERNATIONAL PRESIDENTIAL ELECTIONS: THE DOMINANT ROLE OF RUNOFFS AROUND THE WORLD 2 (2006).

²² *Id.*

²³ FARRELL, *supra* note 9, at 45

²⁴ ENID LAKEMAN & JAMES D. LAMBERT, VOTING IN DEMOCRACIES: A STUDY OF MAJORITY AND PROPORTIONAL ELECTORAL SYSTEMS 53 (1959); Norris, *supra* note 20, at 3.

²⁵ Giovanni Sartori, *The Party Effects of Electoral Systems*, in POLITICAL PARTIES AND DEMOCRACY 95 (Larry Diamond and Richard Gunther eds., 2001); Thomas Fujiwara, *A Regression Discontinuity Test of Strategic Voting and Duverger’s Law*, 6 Q. J. POL. SCI. 197, 203 (2011).

²⁶ GIOVANNI SARTORI, PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS 139 (1976).

²⁷ John C. Courtney, *Plurality-Majority Electoral Systems: A Review*, 13 (Advisory Comm. of Registered Political Parties, Presentation Paper) (1999), http://www.elections.ca/res/rec/fra/sys/courtney_e.pdf.

²⁸ See DOUGLAS W. RAE, THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS 107 (1967) (runoff rule is commonly classified as a majoritarian rule); FARRELL, *supra* note 9, at 45; Sartori, *supra* note 25, at 95.

However, not all types of runoff are majoritarian. In fact, constitutional designers have adopted three different variations of the runoff rules in different countries: (a) majority-runoff, which is the most popular runoff system, requires a threshold of 50% in the first round; (b) qualified-runoff, which is adopted for presidential elections in some Southern American countries including Nicaragua and Costa Rica, requires a threshold below 50% for the first round; and (c) plurality runoff, which is popularly used for parliamentary elections, requires a very low threshold for winning the first round. For instance, in France the threshold is merely 12.5% while in Magnolia it is 25%. For the threshold in Nicaragua, see LAS

Today, the runoff system is a common electoral design for presidential elections.²⁹ Most countries with elected presidents require a second round election between the top two candidates.³⁰ From seventy-two countries with presidential constitutions, forty countries use the runoff system for electing their presidents.³¹ The popular purpose for adopting this electoral system has been to consolidate support behind the most viable candidate and encourage development of broad-based coalitions.³²

Similarly, perhaps the reason for adopting this electoral system in the Constitution of Afghanistan was that presidential candidates must be able to appeal to voters across ethnic groups. Assuming election results reflect ethnic headcounts, as indicated by Donald Horowitz in *Ethnic Groups in Conflict*,³³ the fifty percent threshold encourages cross-ethnic alliances in Afghanistan.³⁴ This is because none of the ethnic groups alone can deliver fifty percent of the votes.³⁵ Based on the most cited estimation, the largest ethnic group, Pashtuns, represents forty-two percent of the population.³⁶ The next three largest groups—Tajiks, Hazaras, and Uzbeks—are estimated to form between nine to thirty percent of Afghan population each.³⁷

CONSTITUCIONES DE NICARAGUA [THE CONSTITUTION OF NICARAGUA], Jan. 1, 1987, art. 147 (1), https://www.constituteproject.org/constitution/Nicaragua_2005.pdf. For Costa Rica, see CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [THE CONSTITUTION OF THE REPUBLIC OF COSTA RICA], Nov. 7, 1949, art. 139, <http://www.parliament.am/library/sahmanadrutyunner/kostarika.pdf>. For details about each type of runoff systems, see André Blais & Peter Loewen, *The French Electoral System and its Effects*, 32 WEST EUROPE POLITICS 345, 345 (2009); ANDREW REYNOLDS, BENJAMIN REILLY & ANDREW ELLIS, ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK 27 (2008).

²⁹ FARRELL, *supra* note 9, at 45; Bordignon Nannicini & Tabellini, *supra* note 19, at 1; Laurent Bouton and Gabriele Gratton, *Majority runoff elections: strategic voting and Duverger's hypothesis*, 10 THEORETICAL ECONOMICS 283, 284 (2015).

³⁰ Juan J. Linz, *The Perils of Presidentialism*, 1 J. DEMOCRACY 51, 57 (1990).

³¹ See *Comparative Data, Electoral Systems: Presidents*, THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/aceen/topics/es/esd/esd01/esd01e/default> (last visited Jul. 3, 2016).

This system has been preferred for presidential elections because the assumption is that the first person in the country should be chosen by at least a majority of the citizens. Some scholars, however, challenge this assumption, suggesting that not all citizens turn out to vote in the elections and thus technically this system does not represent a majority of citizens. See FARRELL, *supra* note 9, at 48–49.

³² Norris, *supra* note 20, at 4.

³³ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT*, 196 (2d ed. 2001).

³⁴ See Mobasher, *supra* note 3, at 363.

³⁵ See *id.*

³⁶ WORLD FACTBOOK: AFGHANISTAN, CENTRAL INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/worldfactbook/geos/print/country/countrypdf_af (last visited Jan. 8, 2016). This estimation has been used by UN agencies, NATO forces, and many national and international organizations including some working on elections in Afghanistan.

³⁷ Since there have not been any official estimations, different estimations of Afghan ethnic groups have been provided by different sources and authors. It is likely that ethnic identities of some Afghan authors have influenced their choices of estimations. See, e.g., *id.* at 3 (estimates that Tajiks make up 27%, Hazaras 9%, and Uzbeks 9%); THOMAS BARFIELD, *AFGHANISTAN: A CULTURAL AND POLITICAL HISTORY* 26 (2010) (estimating that Pashtuns make up 40%, Tajiks 30%, Hazaras 15%, and Uzbeks with Turkmens

Assuming these disputed estimations are accurate, this ethnic distribution is optimal for ethnic accommodations and continuity of democracy; and, in terms of building cross-ethnic coalitions, it corresponds well with the fifty percent threshold.³⁸ As such, the runoff system renders what Donald Horowitz and Benjamin Reilly expect from an electoral system in a divided society: making candidates reciprocally dependent on the votes of ethnic groups other than their own.³⁹

Most studies have associated the runoff system with the formation of broad-based coalitions.⁴⁰ Maurice Duverger stated that “in all countries where the second ballot has been working there are more or less clear traces of electoral alliances.”⁴¹ This system became appealing to constitutional designers across the world when it transformed the fragmented party system of France into two political blocs.⁴² Indeed, the fourth republic of France adopted a runoff system in order to prevent *party-hopping*⁴³ and cabinet instability.⁴⁴ While explaining the runoff system in France, Robert Elgie posited that “this system punishes stand-alone parties [and] or groups.”⁴⁵ Hence, it is no wonder that in Afghanistan, instead of relying on “proto parties,” presidential candidates tend to form broader formal or informal

about 10% of the population in Afghanistan); Muhammad Saleem Mazhar et al., *Ethnic Factor in Afghanistan*, 19 J. POL. STUDIES 98 (2012) (positing Pashtuns are 50% to 54%, Tajiks 26% to 30%, Hazaras 7%, and Uzbeks 8%); Nahid Suleman, *Ethnic Discrimination in Afghanistan*, INTERMEDIA, 2, http://www.intermedia.org.pk/pdf/pak_afghan/Naheed_Soleman_Ethnic_Discrimination_in_Afghanistan.pdf (estimating that Pashtuns make up 38%, Tajiks 25%, Hazaras 19%, Uzbeks 6%, and others 12%); Zaman Stanizai, *From Identity Crisis to Identity in Crisis in Afghanistan*, THE MIDDLE EAST INSTITUTE 3 (2009) (suggesting that Pashtuns make up 60% and Tajiks 12% of the population in Afghanistan).

³⁸ For the optimality of ethnic distributions for consolidation of democracy in different societies, refer to AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION*, 55–61 (1977); see also BENJAMIN REILLY, *DEMOCRACY AND DIVERSITY* 64 (2006).

³⁹ See HOROWITZ, *supra* note 33, at 647–49; BENJAMIN REILLY, *DEMOCRACY IN DIVIDED SOCIETIES: ELECTORAL ENGINEERING FOR CONFLICT MANAGEMENT* 10 (2001).

⁴⁰ See MAURICE DUVERGER, *POLITICAL PARTIES* 328 (1954); André Blais & Indridi H. Indridason, *Making Candidates Count: The Logic of Electoral Alliances in Two-Round Legislative Elections*, 69 J. OF POL., 193, 193–94 (2007); Courtney, *supra* note 27, at 13; Lise Rakner & Nicolas Walle, *Opposition Weakness in Africa: Democratization by Elections?* 20 J. OF DEMOCRACY 108, 116 (2009).

⁴¹ DUVERGER, *supra* note 40, at 328.

⁴² MATTHEW SOBERG SHUGART & JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 213 (1992).

⁴³ See Vicky Randall, *Party Regulation in Conflict-Prone Societies: More Dangers than Opportunities*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT*, 245 (Benjamin Reilly and Per Nordlund, eds., 2008) (used by some scholars to mean party fragmentation).

⁴⁴ Although some political scientists posed a question about whether the use of the runoff rule in France’s parliamentary elections or presidential elections should be given the credit for government stability, see SHUGART & CAREY, *supra* note 42, at 214–15; see also RAE, *supra* note 28, at 109.

⁴⁵ Robert Elgie, *France: Stacking the Deck*, in *THE POLITICS OF ELECTORAL SYSTEMS* 126 (Michael Gallagher & Paul Mitchell, eds., 2009).

coalitions. The fact that most cross-ethnic coalitions are developed in preparation for presidential election and not parliamentary election indicates this advantage of the runoff system in Afghanistan.⁴⁶ According to Table I, sixteen coalitions were formed before the presidential elections, and three coalitions before the parliamentary elections.

Table I. This table shows the number of coalitions that are formed prior to elections or some important events, such as the Emergency *Loya Jirga* (Grand Council), which elected a temporary president, and the Constitutional *Loya Jirga*.⁴⁷

⁴⁶ This table includes only those coalitions that have either officially announced their existence and objectives or have been popular information coalitions and have been formed for winning the elections. Otherwise, presumably all candidates form their own small and large (mostly informal) coalitions.

⁴⁷ *Who is Who*, AFGHAN BIOGRAPHY, http://www.afghan-bios.info/index.php?option=com_afghan_bios&id=3438&task=view&total=3261&start=664&Itemid=2 (last visited Nov. 28, 2015); Thomas Rutting, *On Your Marks! Alliances And Actors Before The 2014 Presidential Election*, AFGHANISTAN ANALYSTS NETWORK 15 (Sep. 17, 2013), <https://www.afghanistan-analysts.org/on-your-marks-alliances-and-actors-before-the-2014-presidential-election/>; ICSD, *supra* note 8, at 5; Bezhan, *supra* note 8; NDI, *supra* note 8, at 5; INT'L CRISIS GROUP, *Policy Briefing 141: Afghanistan's Parties In Transition* 5 (June, 2013), <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Afghanistan%E2%80%99s+Parties+in+Transition%2Fpdf>; REVIEW TRIBUNAL, *Background Paper: Afghanistan: Political Parties and Insurgent Groups 2001-2013*, 5 (2013), https://www.ecoi.net/file_upload/1226_1369733768_ppig2.pdf [hereinafter TRIBUNAL 2013]; Jackson Keith, *Backgrounder: The Formation Of Electoral Alliances In Afghan Politics In 2014*, INST. FOR THE STUDY OF WAR, 5 (2013); Thomas Rutting, *Ambiguity Reiterated: The 20-Parties' 'Democracy Charter*, AFGHANISTAN ANALYST NETWORK (Sep. 26, 2012), <https://www.afghanistan-analysts.org/ambiguity-reiterated-the-20-parties-democracy-charter/>.

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

It bears mentioning that none of the coalitions that have been formed between the 2014 presidential election and the possible 2017 parliamentary election have declared winning parliamentary seats as their objective. On the contrary, the New National Front of Afghanistan (NNF), which was formed in 2016, declared its intention of replacing the incumbents in the government in the next election.⁴⁸ Likewise, the Council for Protection and Stability of Afghanistan (APSC) has demanded that the country amend the Constitution by holding Constitutional Loya Jirga.⁴⁹ The alliance also demanded the resignation of the Unity Government after the *Loya Jirga*

⁴⁸ "Afghanistan's New National Front" Announces Existence, ATN NEWS (Jan. 14, 2016), <http://ariananews.af/latest-news/afghanistans-new-national-front-announces-existence/>.

⁴⁹ THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN Jan. 26, 2004, art. 110–111 (Afg.). Constitutional Loya Jirga [Loya Jirga Qanon-e-Asasi] is the grand council that amends the Constitution. This council includes members of the parliament as well as the presidents of provincial and district councils.

since the government was formed through a compromise rather than a fair election.”⁵⁰

Furthermore, the interaction of the runoff clause with the regime type, which is the presidential system in Afghanistan, advances its effect on building cross-ethnic coalitions.⁵¹ Presidential elections, unlike most parliamentary elections, require pre-electoral (proactive) coalition building.⁵² The advantage that pre-electoral coalitions have is that they are more amenable to cross-ethnic votes and alliances, especially since candidates and voters do not have perfect information about the viability of candidates and the optimal size of winning coalitions.⁵³ Unlike conventional wisdom in the literature, which suggests that the existence of perfect information is important for strategic coordination, the absence of such information urges serious presidential candidates to make broader rather than minimal winning coalitions.⁵⁴ Hence, while a threshold of fifty percent by the runoff system can allow a minimal coalition of two or three ethnic groups, the incertitude that the nature of presidential elections exerts pushes for a far broader coalition.

⁵⁰ See Tariq Majidi, *Ahadi Launches New Party, Says NUG Has Failed*, TOLONews, Jan. 2016, <http://www.worldaffairsjournal.org/content/new-national-front-afghanistan-opposition-party-launched>; Mir Abed Joenda, *Elam Amadaqi Shurai Herasat wa Subat Afghanistan Bar Barguzari Loya Jirga [The Council for Protection and Stability of Afghanistan Declares Readiness for Holding Loya Jirga]* TOLONews, (2016), <http://www.tolonews.com/fa/afghanistan/23253-new-council-pushes-government-to-convene-jirga-before-august>; also see *Daudzai: Namitawan Hukumat Maslahati Ra Madamul-Umur Qabol Kard [Daudzai: We Cannot Accept A Compromised Government to Stay Forever]* RADIO AZADI, Sar. 8, 1395 (2016), <http://da.azadiradio.com/a/27825262.html>.

⁵¹ The presidential regime was adopted by Chapter Three of the Constitution. See THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 60–70 (Jan. 26, 2004).

⁵² Scott Mainwaring & Matthew S. Shugart, *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal*, 4/29 COMP. POL., 449, 466 (1997); see also Danielle Resnick, *Do electoral coalitions facilitate democratic consolidation in Africa?*, 5/19 PARTY POLITICS 735, 740 (2011). In parliamentary elections, the electoral system determines whether a pre-electoral or post-electoral coalition is feasible. “In legislative elections, proportional representation (PR) systems are considered less likely to encourage pre-electoral coalitions because votes are not necessarily wasted in the traditional sense. Exceptions, however, can occur if threshold levels for gaining representation are relatively high, such as Mozambique’s former 5 percent threshold level.”

⁵³ Donald Horowitz, *Constitutional Design: Proposals versus Processes*, in THE ARCHITECTURE OF DEMOCRACY: CONSTITUTIONAL DESIGN, CONFLICT MANAGEMENT, AND DEMOCRACY (Andrew Reynolds, ed., 2002); see also Gregory P. Magarian, *Regulating Political Parties under a "Public Rights" First Amendment*, 44 WM. & MARY L. REV. 1939, 1964 (2003) (another advantage of pre electoral coalition building in the long run is that it, “by definition, reflects a choice to air strong political differences at the stage of party formation, rather than allowing those differences to invade the electoral and policymaking processes.”).

⁵⁴ GARY W. COX, MAKING VOTES COUNT, STRATEGIC COORDINATION IN WORLD’S ELECTORAL SYSTEMS, 79 (1997); ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY, at 7 (1957); see also JOHN VON NEUMANN & OSKAR MORGENSTERN, THE THEORY OF GAMES AND ECONOMIC BEHAVIOR 8–9 (3d ed. 1953).

One other constitutional rule that has built on the majoritarian effect of the runoff system is Article 60 of the Constitution, which is also reflected in Article 45 of the Election Law.⁵⁵ Article 60 requires each presidential candidate to introduce two vice presidential candidates prior to election.⁵⁶ In order to appeal to voters across ethnic lines, in all three presidential elections, the leading candidates have shown great incentives to choose their first and second vice presidents from two different ethnic groups.⁵⁷ In fact, calling the elections merely a race between presidential candidates is not entirely accurate since, based on Article 60 of the Constitution, the presidential and vice presidential candidates campaign together, compiling votes from their respective constituencies.⁵⁸ At times vice presidential candidates have contributed more votes per capita—or an equal proportion of votes—from their constituencies to their ticket than their presidential mates.⁵⁹ The following Table shows the composition of presidential teams in the last three elections.

Table II. For the 2004 and 2009 elections, this table shows the composition of leading presidential tickets. For 2014, the table shows the composition of all candidates.⁶⁰

⁵⁵ QANUN INTEKHABAT [ELECTION LAW] 15/5/1392 [Jun. 8, 2014,] S. 1112, art. 45 (Afg.).

⁵⁶ THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 60 (Jan. 26, 2004); *see also* ELECTION LAW, Jun. 8, 2014, S. 1112, art. 45.

⁵⁷ Although presidential tickets have shown cross-ethnic votes and accommodations, there are some issues with these ticket compositions. Mainly, the last three presidential elections demonstrated that the composition of presidential teams represented only the largest ethnic groups. Likely, presidential candidates chose running mates from the four larger ethnic groups because those candidates would draw greater numbers of ethnically motivated support. As Table I shows, other smaller size ethnic groups have remained unrepresented in presidential teams.

⁵⁸ The article states that, “[t]he President shall have two Vice Presidents, first and second. The Presidential candidate shall declare to the nation names of both vice presidential running mates.” *See* THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 60 (Jan. 26, 2004).

⁵⁹ *See* Mobasher, *supra* note 3, at 402–409.

⁶⁰ *The 2004 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/public_html/Election%20Results%20Website/english/english.htm (last visited May 2, 2015) [hereinafter “IEC 2004”]; *The 2009 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, http://www.iec.org.af/results_2009/leadingCandidate.html (last visited May 2, 2016) [hereinafter “IEC 2009”]; *The 2014 Presidential Election Results*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af/pdf/finallist13/presidential.pdf> (last visited Jan. 15, 2016) [hereinafter “IEC 2014”]; AFGHAN BIO, *supra* note 50; *Biographies Of Afghan Personalities Of Yesterday And Today*, AFGHANISTAN ONLINE, <http://www.afghan-web.com/bios/>; *Afghanistan’s Presidential Elections: Power to the People, or the Powerful?*, INT’L COUNCIL ON SECURITY AND DEV. 11–17 (Mar. 2009), http://www.nps.edu/programs/ccs/Elections/ICOS_elections.pdf [hereinafter, “ICOS”]; *Tarkib Mawenan Namzedhai Intekhabat* [The Composition of Vice-President Candidate], BBC, http://www.bbc.com/persian/afghanistan/2009/07/090630_a-af-election-vice-president-candidates.shtml; *Asia: Afghanistan Presidential Candidates 2014*, GLOBAL VOICE (Mar. 27, 2014), <https://iwpr.net/global-voices/afghan-presidential-candidates-2014>.

Ethnic Composition of Presidential Teams					
The Presidential Election of 2004: Leading Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Hamid Karzai <i>Pashtun</i>	Ahmad Zia Masoud <i>Tajik</i>	Mohammad Karim Khalili <i>Hazara</i>	Independent	55.40%
<i>Ethnicity</i>	Mohammad Yunus Qanuni <i>Tajik</i>	Taj Mohammad Wardak <i>Pashtun</i>	Sayyed Hosayn Alemi Balkhi <i>Hazara</i>	Coalition	16.30%
<i>Ethnicity</i>	Mohammad Mohaqiq <i>Hazara</i>	Nasir Ahmad Ensaf <i>Pashtun</i>	Abdul Fayaz Mehrayin <i>Tajik</i>	Independent	11.70%
<i>Ethnicity</i>	Abdul Rashid Dostum <i>Uzbek</i>	Shafiqa Habibi <i>Pashtun</i>	Mustafa Kamal Makhdom <i>Tajik</i>	Party	10.00%
The Presidential Election of 2009: Leading Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Hamid Karzai <i>Pashtun</i>	Mohammad Qasim Fahim <i>Tajik</i>	Mohammad Karim Khalili <i>Hazara</i>	Independent	49.67%
<i>Ethnicity</i>	Dr. Abdullah Abdullah <i>Tajik (Mixed)</i>	Homayon Shah Asefi <i>Pashtun</i>	Churagh Ali Ghuragh <i>Hazara</i>	Independent	30.59%
<i>Ethnicity</i>	Ramazan Bashardost <i>Hazara</i>	Mohammad Mosa Barekzai <i>Pashtun</i>	Afifa Marof <i>Tajik</i>	Independent	10.46%
The Presidential Election of 2014: All Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Dr. Abdullah Abdullah <i>Tajik*</i>	Eng Muhammad Khan <i>Pashtun</i>	Haji Mohaqeq <i>Hazara</i>	Party	45.00%
<i>Ethnicity</i>	Ashraf Ghani <i>Pashtun</i>	Gen Abdulrashid Dostum <i>Uzbek</i>	Mohammad Sarwar Danish <i>Hazara</i>	Independent	31.56%
<i>Ethnicity</i>	Zalmay Rasoul <i>Pashtun</i>	Ahmad Zia Masoud <i>Tajik</i>	Habiba Sorabi <i>Hazara</i>	Independent	11.37%
<i>Ethnicity</i>	Abdulrab Rasul Sayaf <i>Pashtun</i>	Ismail Khan <i>Tajik</i>	Abdul Wahab Erfan <i>Uzbek</i>	Independent	7.04%
<i>Ethnicity</i>	Qutbuddin Helal <i>Pashtun</i>	Enayatullah Enayat <i>Uzbek</i>	Mohammad Ali Nabizada <i>Tajik</i>	Independent	2.75%
<i>Ethnicity</i>	Gul Agha Sherzai <i>Pashtun</i>	Sayyed Hussain Alemi Balkh <i>Hazara</i>	Mohammad Hashem Zare <i>Uzbek</i>	Independent	1.57%
<i>Ethnicity</i>	Daud Sultanzyoy <i>Pashtun</i>	Farid Ahmad Fazli <i>Tajik</i>	Ms. Kazima Mohaqeq <i>Hazara</i>	Independent	0.46%
<i>Ethnicity</i>	Hedayat Amin Arsala <i>Pashtun</i>	General Khodaidad <i>Hazara</i>	Ms. Safia Sediqi <i>Pashtun</i>	Independent	0.23%
<i>Ethnicity</i>	Abdul Rahim Wardak <i>Pashtun</i>	Shah Abdul Ahad Afzali <i>Tajik</i>	Sayed Hussian Anwari <i>Hazara</i>	Independent	Withdrew
<i>Ethnicity</i>	Abdul Qayom Karzai <i>Pashtun</i>	Wahidullah Shahrani <i>Uzbek</i>	Mohammad Noor Akbari <i>Hazara</i>	Independent	Withdrew
<i>Ethnicity</i>	Sardar Mo'd Naem <i>Pashtun</i>	Taj Mohammad Akbar <i>Tajik</i>	Azizullah Puya <i>Pashtun</i>	Independent	Withdrew

Ethnic Composition of Presidential Teams					
The Presidential Election of 2004: Leading Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Hamid Karzai	Ahmad Zia Masoud	Mohammad Karim Khalili	Independent	55.40%
	<i>Pashtun</i>	<i>Tajik</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Mohammad Yunus Qanuni	Taj Mohammad Wardak	Sayyed Hosayn Alemi Balkhi	Coalition	16.30%
	<i>Tajik</i>	<i>Pashtun</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Mohammad Mohaqiq	Nasir Ahmad Ensaf	Abdul Fayaz Mehrayin	Independent	11.70%
	<i>Hazara</i>	<i>Pashtun</i>	<i>Tajik</i>		
<i>Ethnicity</i>	Abdul Rashid Dostum	Shafiq Habibi	Mustafa Kamal Makhdom	Party	10.00%
	<i>Uzbek</i>	<i>Pashtun</i>	<i>Tajik</i>		
The Presidential Election of 2009: Leading Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Hamid Karzai	Mohammad Qasim Fahim	Mohammad Karim Khalili	Independent	49.67%
	<i>Pashtun</i>	<i>Tajik</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Dr. Abdullah Abdullah	Homayon Shah Asefi	Churagh Ali Ghuragh	Independent	30.59%
	<i>Tajik (Mixed)</i>	<i>Pashtun</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Ramazan Bashedost	Mohammad Mosa Barekzai	Afifa Marof	Independent	10.46%
	<i>Hazara</i>	<i>Pashtun</i>	<i>Tajik</i>		
The Presidential Election of 2014: All Candidates					
	Candidate	1st Vice-President	2nd Vice-President	Affiliations	Total Vote
<i>Ethnicity</i>	Dr. Abdullah Abdullah	Eng Muhammad Khan	Haji Mohaqeq	Party	45.00%
	<i>Tajik*</i>	<i>Pashtun</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Ashraf Ghani	Gen Abdulrashid Dostum	Mohammad Sarwar Danish	Independent	31.56%
	<i>Pashtun</i>	<i>Uzbek</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Zalmai Rasoul	Ahmad Zia Masoud	Habiba Sorabi	Independent	11.37%
	<i>Pashtun</i>	<i>Tajik</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Abdulrab Rasul Sayaf	Ismail Khan	Abdul Wahab Erfan	Independent	7.04%
	<i>Pashtun</i>	<i>Tajik</i>	<i>Uzbek</i>		
<i>Ethnicity</i>	Qutbuddin Helal	Enayatullah Enayat	Mohammad Ali Nabizada	Independent	2.75%
	<i>Pashtun</i>	<i>Uzbek</i>	<i>Tajik</i>		
<i>Ethnicity</i>	Gul Agha Sherzai	Sayyed Hussain Alemi Balkh	Mohammad Hashem Zare	Independent	1.57%
	<i>Pashtun</i>	<i>Hazara</i>	<i>Uzbek</i>		
<i>Ethnicity</i>	Daud Sultanzoy	Farid Ahmad Fazli	Ms. Kazima Mohaqeq	Independent	0.46%
	<i>Pashtun</i>	<i>Tajik</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Hedayat Amin Arsala	General Khodaidad	Ms. Safia Sediqi	Independent	0.23%
	<i>Pashtun</i>	<i>Hazara</i>	<i>Pashtun</i>		
<i>Ethnicity</i>	Abdul Rahim Wardak	Shah Abdul Ahad Afzali	Sayed Hussian Anwari	Independent	Withdrew
	<i>Pashtun</i>	<i>Tajik</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Abdul Qayom Karzai	Wahidullah Shahrani	Mohammad Noor Akbari	Independent	Withdrew
	<i>Pashtun</i>	<i>Uzbek</i>	<i>Hazara</i>		
<i>Ethnicity</i>	Sardar Mo'd Naeem	Taj Mohammad Akbar	Azizullah Puya	Independent	Withdrew
	<i>Pashtun</i>	<i>Tajik</i>	<i>Pashtun</i>		

The runoff system has *centripetal effects*⁶¹ on both voters and elites.⁶² On the voter level, the runoff system encourages them to make a more informed choice in the second round⁶³ since the voters' freedom of choice is

⁶¹ Centripetal effects are the political effects that indicate political moderation and cross-ethnic appealing rather than political or social polarization. See REILLY, *supra* note 39, at 5–7.

⁶² Elgie, *supra* note 45, at 128; FARRELL, *supra* note 9, at 56, 60; Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?*, in THE FAILURE OF PRESIDENTIAL DEMOCRACY 21 (Juan J. Linz & Arturo Valenzuela eds., 1992) (under a runoff system “those [candidates] tending more toward the extremes are aware of the limits of their strength.”)

⁶³ GIOVANNI SARTORI, COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES, AND OUTCOMES 64 (1997); Sarah Birch, *Two-Round Electoral Systems and Democracy*, 36 COMP. POL. STUD. 319, 327 (2003).

restricted to front-running candidates.⁶⁴ Many voters do not have their own ethnic candidates in the second round. In effect, the voters have an opportunity to make a more politically informed choice, considering the policies and merits of the candidates. Highlighting voters' behavior, Giovanni Sartori described the runoff system as a *two-shots system*.⁶⁵ With the first shot, a voter shoots pretty much in the dark; on the second shot, however, the voter shoots in full daylight.⁶⁶ André Blais and coauthors, after arranging several experimental elections under a runoff system, concluded that extremist candidates have a zero percent chance of winning under majority-runoff.⁶⁷ On the elites level, two-round elections create the potential for diverse interests to coalesce behind qualifying candidates in the second round.⁶⁸ Eliminated candidates and parties have an opportunity to rally behind one front-runner or the other.⁶⁹ Since moderate candidates are likely to have more coalitional appealing than their extremist counterparts, they are more likely to win the second round. Examining runoffs in a number of countries, it appears that nowhere has the runoff rule led to extremist candidates winning, although political outsiders have been able to win the office.⁷⁰

While extremist candidates have not been able to win elections under a runoff system, this system does not eliminate the possibility that extremist candidates will make it onto the second ballot. The extremist candidates advance to the second round either because there are more moderate candidates, who split centrist votes,⁷¹ or because moderates are squeezed by the left and right candidates, and therefore excluded from the second round.⁷² The Fair Vote Report describes how in Peru (2006) and in France (2002) the multiplicity of candidates led to radical candidates getting to the second round.⁷³ For example, in the first round of 2006 election in Peru, the

⁶⁴ Sartori, *supra* note 26, at 63; Sartori, *supra* note 25, at 99.

⁶⁵ Sartori, *supra* note 25, at 98.

⁶⁶ *See id.* at 98.

⁶⁷ André Blais et al., *One-round vs. Two-round Elections: An Experimental Study*, 5 FRENCH POL. 278, 284 (2007).

⁶⁸ *See* IDEA, *supra* note 28, at 53; Courtney, *supra* note 27, at 13.

⁶⁹ *See* Courtney, *supra* note 27, at 13.

⁷⁰ Although extremist candidates could be political outsiders, political outsiders are not necessarily extremists. Political outsiders are primarily referred to as candidates who distinguish themselves from party politics. *See* ANDREW E. BUSCH, OUTSIDERS AND OPENNESS: IN THE PRESIDENTIAL NOMINATING SYSTEM, 22-26, 170-171 (1997). Therefore, political outsiders might be anti-establishment, but not necessarily anti-system or anti-institutions.

⁷¹ *See* LEWIS, *supra* note 21, at 5.

⁷² Bouton & Gratton, *supra* note 29, at 286.

⁷³ *See* LEWIS, *supra* note 21, at 5-6.

nationalist Ollanta Humala (30.7%) was far ahead of Alan Garcia (24.3%), a moderate candidate, since the moderate votes were split between Alan Garcia and Lordes Flores as well as others.⁷⁴ Also, in the 2002 presidential election of France, Le Pen, an anti-immigration candidate, was able to finish second because the votes of moderates were split between six candidates.⁷⁵ Similarly, in the 1996 Russian Presidential election, a communist candidate, Gennadii Zyuganov, finished second to Boris Yeltsin by just a three percent margin (thirty-two percent to thirty-five percent).⁷⁶

Nonetheless, in the second round, the votes mostly move away from the extremist to the moderate candidates and coalitions.⁷⁷ In all abovementioned elections, the moderate candidates were able to harbor the support of the backers of eliminated candidates and eventually win the runoff.⁷⁸ Therefore, even though the runoff rule allows advancement of extremist candidates to the second round, this system, unlike the plurality rule, prevents the election of radical or anti-system candidates.⁷⁹ For this very reason, the runoff system is known for reducing political extremism.⁸⁰

To date, no extremist candidate has made it to the second round in Afghan presidential elections. Hamid Karzai, the winner of the 2004⁸¹ and 2009 elections,⁸² Abdullah Abdullah, the runner up in 2009⁸³ and a front-runner in the 2014 election,⁸⁴ and Ashraf Ghani, the current president,⁸⁵ have all demonstrated moderate behavior and strong capabilities for building cross-ethnic alliances. For example, in 2004 and 2009, in addition to choosing his vice presidents from two different ethnic groups, Karzai was able to make alliances with a large number of elites from different ethnic groups.⁸⁶ Abdullah's tickets also represented three ethnic groups in both the

⁷⁴ See *id.* at 5.

⁷⁵ See *id.* at 6.

⁷⁶ Norris, *supra* note 20, at 4.

⁷⁷ Duverger, *Which is the Best Electoral System?*, in CHOOSING AN ELECTORAL SYSTEM: ISSUES AND ALTERNATIVES 38 (Arend Lijphart & Bernard Grofman, eds., 1984); see also David Goldey & Philip Williams, *France*, in DEMOCRACY AND ELECTIONS: ELECTORAL SYSTEMS AND THEIR POLITICAL CONSEQUENCES, 65–67 (Vernon Bogdanor & David Butler eds., 1983); Courtney, *supra* note 27, at 13; Bordignon, *supra* note 19, at 1.

⁷⁸ See LEWIS, *supra* note 21, at 5–6.

⁷⁹ See Birch, *supra* note 61, at 325; Fabrice Lehoucq, *Costa Rica: Modifying Majoritarianism with 40 per cent Threshold*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 133 (Josep M. Colomer ed., 2004).

⁸⁰ Bordignon, *supra* note 19, at 2; Courtney, *supra* note 27, at 14.

⁸¹ IEC 2004, *supra* note 60.

⁸² IEC 2009, *supra* note 60.

⁸³ See *id.*

⁸⁴ IEC 2014, *supra* note 60.

⁸⁵ *Id.*

⁸⁶ See Mobasher, *supra* note 3, 375, 378–9.

2009 and 2014 presidential elections.⁸⁷ In addition to his tri-ethnic presidential tickets, in both elections he officially established broad-based coalitions comprised of elites and parties from diverse ethnic groups.⁸⁸ Similarly, Ghani's presidential ticket represented an alliance of three groups: a Pashtun, an Uzbek, and a Hazara.⁸⁹ To include a Tajik representative at the highest level of his government, he appointed Ahmad Zia Masoud as his Special Envoy for Good Governance with the same level of authority and benefits as his vice presidents.⁹⁰

II. THE RUNOFF CLAUSE AND THE CONSOLIDATION OF CROSS-ETHNIC COALITIONS

While demonstrating the potential to encourage cross-ethnic alliances, the runoff clause has remained an unwelcoming system for the institutionalization of these coalitions.⁹¹ Many coalitions either dissolve or reformulate during elections; some others split immediately after elections.⁹² Most of them are built on the basis of patronage and personal politics while lacking titles, structures, and ideologies.⁹³ Notably, their number is on the rise, indicating a trend resembling party fragmentation in Afghanistan.

Table III. This table shows how many coalitions survived, partly survived, reformulated, or ceased to exist before, during, and after elections. The data is collected from a number of sources cited in the footnote.⁹⁴ This table only includes some officially established coalitions as well as some informal coalitions, which are large and popular. Reformulation happens when coalitions renew their members, titles, and objectives. Partly survived coalitions are the ones that a number of elites or party members split.

⁸⁷ See *id.* at 380–81, 402–05.

⁸⁸ See *id.*

⁸⁹ See *id.* at 407. In 2009, however, when Ghani was not a popular candidate, he appointed a Pashtun, Mohammad Ayob Rafiqi, as his first vice president. See Ayob Aryan, *Tarkib Mawenan Namzedhai Intekhabat: Numad Kasrat Garayee?* [*The Composition of Vice-President Candidate: A Sign of Pluralism?*], BBC (Jun. 4, 2009), http://www.bbc.com/persian/afghanistan/2009/07/090630_a-af-election-vice-president-candidates.shtml.

⁹⁰ Dr. Ghani even promised to amend the Constitution and appoint him as his third vice president. See Ahmad Qureshi, *Ghani promises to make Massoud 3rd VP*, AFGHAN PAZHWAK NEWS (May 26, 2014), <http://www.elections.pajhwok.com/en/2014/05/26/ghani-promises-make-massoud-3rd-vp>.

⁹¹ The runoff rule has also been associated with (i) being conducive to preference and information revelation and (ii) ensuring a large mandate to the winner, thereby being more democratic. See Bouton, *supra* note 29, at 284; see Blais, *supra* note 40, at 193–97; Courtney, *supra* note 27, at 13.

⁹² A good example of coalitions ceasing to exist after elections is Karzai's team. After almost fourteen years in office, Karzai no longer represents any coalition or party.

⁹³ See Mobasher, *supra* note 3.

⁹⁴ *Supra* note 52.

Est. Date	Coalitions	Sustaining By Elections	Sustaining Between 1st and 2nd Rounds	Sustaining After Election/Event	Sustaining Now
Oct. 2003	National Expediency Council (Shura-ye Maslahat-e Melli)	Failed	NA	NA	NA
Dec. 2003	National Movement of Afghanistan	Failed	NA	NA	NA
Jan. 2004	11th Jaddi Coalition	Failed	NA	NA	NA
Oct. 2004	Advisory Commission of National and Democratic Parties (AC-NDP)	Failed	NA	NA	NA
2004	Karzai's Informal Coalition	Succeeded	NA	Succeeded	Failed
Presidential Election (Oct. 2004)					
2005	National Democratic Front	Partly Survived	NA	Failed	NA
Apr. 2007	National United Front of Afghanistan	Partly Survived	Partly Survived	Reformulated	NA
2004	Karzai's Informal Coalition	Succeeded	Reformulated	Succeeded	Failed
Presidential Election (Aug. 2009)					
2011	National Coalition of Afghanistan (NCA)	Reformulated	NA	NA	NA
2011	National Front of Afghanistan (NFA)	Failed	NA	NA	NA
Sep. 2012	The Cooperation Council of Political Parties and Coalitions of Afghanistan	Failed	NA	NA	NA
Sep. 2013	Association of National Amity/Understanding of Afghanistan (ANAA)	Reformulated	Failed	NA	NA
Sep. 2013	Afghanistan Eastern People's Alliance (Eastern Unity Alliance)	Succeeded	Failed	Failed	NA
Aug. 2013	Electoral Alliances of Afghanistan (EUA)	Succeeded	Reformulated	Succeeded	Succeeded
2013-4	Informal Coalition Supporting Ghani	Succeeded	Reformulated	Succeeded	Partly Survived
Presidential Election (Apr. 2014)					

Many studies suggest that the runoff system leads to party fragmentation and multifactionalism.⁹⁵ This system has a very complicated relationship with coalition formation and consolidation. Despite theoretical advances, the conventional literature does not adequately account for how this system encourages the development of broad coalitions yet at the same time those coalitions remain unstable and crumbling under this system. Sartori, in his book *Comparative Constitutional Engineering*, posits that the effects of the runoff rule on the development of parties and coalitions cannot be predicted with any precision.⁹⁶ Damien Bol, André Blais, and their colleagues called this complication a “mystery” of the runoff system. After conducting some experimental elections under the runoff rule, they

⁹⁵ See, e.g., V.O. KEY, *SOUTHERN POLITICS*, 420 (1949); Birch, *supra* note 61, at 324; Mainwaring & Shugart, *supra* note 52, at 467; SHUGART & CAREY, *supra* note 42, at 213–214; Courtney, *supra* note 27, at 15; B.C. Canon, *Factionalism in the South: A test of theory and a Revisitation of V.O. Key*, 22 *AM. J. POL. SCI.* 833, 845 (1978); Byron Criddle, *Electoral Systems in France*, 45 *PARLIAMENTARY AFFAIRS* 108, 109 (1992); Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, 18 *PARTY POLITICS* 235, 255–256 (2012); Stephen G. Wright & William H. Riker, *Plurality and runoff systems and numbers of candidates*, 60 *PUBLIC CHOICE* 155, 163 (1989).

⁹⁶ SARTORI, *supra* note 63, at 67.

emphasized that while this rule presumably should reduce the number of candidates (parties and coalitions), in reality it does not.⁹⁷

One explanation for this puzzle focuses on the first round of elections, analyzing *voting behaviors*⁹⁸ in this round.⁹⁹ For instance, Maurice Duverger,¹⁰⁰ Garry Cox,¹⁰¹ William Riker,¹⁰² and César Martilini¹⁰³ observe that in the first round, the voters tend to vote sincerely since they have the chance to make strategic decisions in the second round.¹⁰⁴ This theory is based on the assumption that candidates react to voters' behavior, implying that candidates make their entry decisions on the basis of the electoral tendencies of voters.¹⁰⁵ Since there are no (or few) *bandwagon voters*¹⁰⁶ under the runoff system, more candidates are likely to run.¹⁰⁷ In effect, the runoff system discourages fewer candidates and the fusion of their

⁹⁷ Damien Bol et al., *Electoral System and Number of Candidates: Candidate Entry under Plurality and Majority Runoff* 20 (Paris School of Economics, Working Paper No. 2015-20, 2015), <https://halshs.archives-ouvertes.fr/halshs-01168722/document>.

A great number of scholars including Bol and Blais imply that the number of candidates is equivalent to the number of parties or coalitions in presidential elections and so they focus their analysis on the number of candidates. *See id.* at 1; Jakub Zielinski, *Translating Social Cleavages into Party Systems: The Significance of New Democracies*, 54 *WORLD POL.*, 184, 197–98 (2002); Wright, *supra* note 95, at 160, 176; Matt Golder, *Presidential coattails and legislative fragmentation*, 50 *AM. J. OF POL. SCI.* 34, 34–48 (2006); Matthew Shugart & Rein Taagepera, *Plurality Versus Majority Election of Presidents: A Proposal for a "Double Complement Rule"*, 27 *COMP. POL. STUD.* 323 (1994); Peter Buisseret, *Entry Deterrence Under Run-Off Rules* 1(2015) (Working Paper); Courtney, *supra* note 27, at 15.

⁹⁸ Voting behavior indicates an individual's voting choices based on that person's interests and values as well as "judgment[s] about the various candidates' chances of winning." *See* André Blais et al., *Strategic Vote Choice in One-round and Two-round Elections: An Experimental Study*, 64 *POL. RES. Q.* 637, 637 (2011). If a voter casts her vote merely on the basis of her preference, it is called sincere voting. However, if a voter casts her vote on the basis of the viability of a candidate, it is regarded as strategic voting. Virtually, in every formal model the assumption is that the voter votes either sincerely or strategically. *See* Fujiwara, *supra* note 25, at 198.

⁹⁹ COX, *supra* note 54, at 124; Fujiwara, *supra* note 25, at 200 (FN 7); Bordignon, *supra* note 19, at 1.

¹⁰⁰ DUVERGER, *supra* note 77, at 240.

¹⁰¹ COX, *supra* note 54, at 124.

¹⁰² William H. Riker, *The Two-Party System and Duverger's Law: An Essay on the History of Political Science*, 76 *AM. J. POL. SCI. REV.* 753 (1982).

¹⁰³ César Martinelli, *Simple plurality versus plurality runoff with privately informed voters*, 19 *SOC. CHOICE AND WELFARE* 901 (2002).

¹⁰⁴ *See also* Matthew Sober Shugart & Scott Mainwaring, *Presidentialism and Democracy in Latin America: Rethinking the Terms of the Debate*, in *PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA* 123 (Scott Mainwaring & Matthew Soberg Shugart eds., 1997); Thomas Piketty, *Voting As Communicating*, 67 *REV. OF ECON. STUD.* 169, 169–191 (2000).

¹⁰⁵ *See* Fujiwara, *supra* note 25, at 199, 228; *see also* Bol, *supra* note 97, at 6; Van Der Straeten, *supra* note 19, at 1–2.

¹⁰⁶ "Bandwagon voter" as opposed to "sincere voter" refers to the voter who votes strategically, deserting the preferred candidate in favor of a more viable one. *See* Fujiwara, *supra* note 25, at 202.

¹⁰⁷ Duverger, *supra* note 77; Riker, *supra* note 102.

supporters into larger coalitions.¹⁰⁸ However, Afghan presidential elections challenge this theory because the results of these elections have indicated that the tendency for *strategic voting*¹⁰⁹ is considerably high among voters.¹¹⁰

Indeed, all three Afghan presidential elections demonstrated that a runoff system has as much of a *bandwagon effect* as a plurality system does.¹¹¹ For example, in the 2004 election, of the eighteen candidates, only four dominated the polls, leaving their counterparts with less than one percent of votes each.¹¹² In 2009, the three leading candidates won almost ninety-one percent of votes, letting the other twenty-nine candidates share the rest.¹¹³ Similarly, in the first round of the 2014 elections, the three leading candidates won nearly eighty-eight percent, while the rest shared the remaining twelve percent of votes.¹¹⁴ The following table shows the difference between the average votes of each leading candidate from those of non-viable candidates in all three presidential elections.

Table IV. This table compares the average votes received by leading candidates and those of the rest. The average votes are calculated on the basis of election results produced on the Electoral Commission website.¹¹⁵

Elections	No. of Candidates	Leading Candidates' Average Votes %	Other Candidates' Average Votes %
2004	18	23.4	0.5
2009	32	30.2	0.3
2014	8	29.3	2.4

¹⁰⁸ A. LAWRENCE LOWELL, GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE, 110 (1896).

¹⁰⁹ Gary Cox defines strategic voting as the electoral behavior that “rational voters eschew wasting their votes on hopeless candidacies, preferring instead to transfer their support to some candidate with a serious chance of winning.” See COX, *supra* note 54, at 30. According to Aron Kiss, “Strategic voting occurs when an individual votes for an alternative that is not her most preferred one in the belief that this is a better way to achieve the best realistically possible outcome in the election.” See Aron Kiss, *Identifying Strategic Voting in Two-Round Elections*, 1 (2012) (Working Paper), <http://www.sciencedirect.com/science/article/pii/S0261379415001560>.

Nonetheless, in a divided society, the viability of a candidate is not the only reason for voting strategically as ethnic groups might tend to showcase their strength through voting strategically for one of their own candidates, even though that candidate is less likely to win a nationwide election.

¹¹⁰ Mobasher, *supra* note 3, at 367–69.

¹¹¹ “Bandwagon effect,” in an electoral context, refers to the situation where the electorates prefer to vote for the most viable candidates in order to make their votes count. See Fujiwara, *supra* note 25, at 203.

¹¹² See IEC 2004, *supra* note 60.

¹¹³ See IEC 2009, *supra* note 60.

¹¹⁴ See IEC 2014, *supra* note 60.

¹¹⁵ IEC 2004, *supra* note 60; IEC 2009, *supra* note 60; IEC 2014, *supra* note 60.

On average, each leading candidate shared between 23% to 30% of the votes, while the shares of deserted candidates ranged from 0.3% to 2.4% in the last three presidential elections. This huge gap between the vote share of leading candidates and others indicates that voters do vote strategically in the first round.¹¹⁶ This finding is consistent with the findings of some scholars such as Laurent Bouton,¹¹⁷ Gabriele Gratton,¹¹⁸ Daniel Prinz,¹¹⁹ Blais,¹²⁰ and Damien Bol,¹²¹ who also dispelled the assumption of the absence of strategic voting under the runoff system.¹²² André Blais and his colleagues conducted an experiment comparing strategic voting under plurality and runoff rules.¹²³ Their experiment indicated that the voters had as much incentive to vote strategically in a Two Round Election as in a One Round Election.¹²⁴ By this analysis, unstable coalitions are not the likely consequence of the lack of strategic voting under the runoff system.¹²⁵

¹¹⁶ This finding also challenges the conventional literature that strategic voting does not exist in divided societies since voters follow the instructions of their elites and are likely to vote for their own candidates. See Janet Landa et al., *Ethnic Voting Patterns: A Case Study of Metropolitan Toronto*, 14 POL. GEOGRAPHY 435, 435 (1995); COX, *supra* note 54, at 15–16, 44, 83–85; MARTINE VAN BIJLERT, HOW TO WIN AN AFGHAN ELECTION: PERCEPTIONS AND PRACTICES 2, 15 (2009); MOSER, *supra* note 70, at 24–25, 30; also see Robert G. Moser et al., *Social Diversity Affects the Number of Parties Even under First-Past-the-Post Rules*, Am. Pol. Sci. Ass'n 2011 Ann. Meeting Paper (2011). This conventional understanding of strategic voting did not account for the most likely situation in divided societies where voters engage in intra-ethnic voting coordination and defection: they defect from one of their ethnic candidates in favor of the another from the same group.

Mobasher, in his article *Understanding Ethnic-Electoral Dynamics*, has demonstrated that the “tendency for the intra-ethnic [strategic voting] is considerably high among all ethnic groups and in all Presidential elections . . . [E]thnic groups tend to vote collectively for their most viable candidates and defect from the others. . . . This electoral behavior is very similar to strategic voting in consolidated democracies where a left wing supporter is more likely to defect from a losing left candidate for a more viable [left candidate] but is less likely to defect from a losing left wing candidate to vote for a right wing candidate.” See Mobasher, *supra* note 3, at 368.

¹¹⁷ Bouton, *supra* note 27.

¹¹⁸ *Id.* at 283.

¹¹⁹ Daniel Prinz, *Strategic Voting, Mixed and Runoff Elections: Evidence from Hungary*, 4 (Mar. 30 2013) (Working Paper) <https://www.brown.edu/academics/economics/sites/brown.edu.academics/economics/files/uploads/Daniel%20Prinz%20thesis.pdf>.

¹²⁰ Blais, *supra* note 67, at 278–86.

¹²¹ Bol et al., *supra* note 97, at 12.

¹²² Under the runoff rule, the voters have the incentive to vote strategically because they fear that voting sincerely might result in two candidates in the second round that do not represent their interests and preferences at all, or that a rival candidate wins the first round flat out. See *id.* at 7.

¹²³ The purpose of Blais and his colleagues’ experiment was to determine whether voters behave differently in the two voting systems, given the same set of options, and whether these behaviors yield different outcomes as Duverger indicated. The same group of people voted in both elections. They had exactly the same set of options: five candidates with the same positions. Blais and his colleagues concluded that voters voted strategically under both electoral systems. See Blais, *supra* note 67, at 278–89.

¹²⁴ See Blais, *supra* note 67, at 278–89.

¹²⁵ Blais, *supra* note 40, at 193.

Some scholars draw attention to the influence of the runoff system on candidates' strategies independent from voters' behavior.¹²⁶ Blais and Indridason criticize the literature for the lack of attention to candidates' electoral strategies,¹²⁷ since an electoral system influences not only voters' behavior but also candidates' and parties' behavior.¹²⁸ Indeed the candidates (and their political allies) have more at stake in elections than voters, which is winning or losing political power. Accordingly, candidates are more invested in influencing the elections and alliances than voters. As such, candidates' strategies are more instrumental than voters' strategies in shaping parties and coalitions.¹²⁹ Therefore, analyzing candidates' coalition-building strategies may better explain why the runoff system thwarts the consolidation of coalitions.

Ensuring a possible second round, the runoff system provides enough incentives for not one but three categories of candidates to enter the competition: the first group is the "office seekers" who need to follow a winning strategy of making alliances across ethnic groups. The largest coalitions in the first round are formed by this category of candidates. The second category of candidates that the runoff system encourages is what I call "patronage-seekers" who enter the fray for some benefit other than winning. These benefits include patronage for small parties and candidates, especially if they win a considerable number of votes in the first round.¹³⁰ Indeed, in Afghanistan, many candidates run to raise enough votes to increase their political capital for bargaining with runner-ups in the second round.¹³¹ The more votes they receive, the better bargaining power they gain for patronage with front-running coalitions. Some candidates enter the race only as spoilers, splitting the votes of viable candidates¹³² for different reasons, including forcing a second round election.¹³³ For these opportunistic reasons, this category of candidates has little incentive to pull

¹²⁶ See *id.*; Blais, *supra* note 67, at 280.

¹²⁷ Blais, *supra* note 40, at 193.

¹²⁸ Blais, *supra* note 67, at 280.

¹²⁹ Blais, *supra* note 40, at 193.

¹³⁰ Elgie, *supra* note 45, at 123.

¹³¹ BIJLERT, *supra* note 116, at 9. Some scholars found similar tendencies in candidates in other countries. See SHUGART & CAREY, *supra* note 42, at 210, 225; Bol, *supra* note 97, at 22–23; Mark P. Jones, *Electoral Laws and the Effective Number of Candidates in Presidential Elections*, 61 J. POLITICS 172, 176 (1999).

¹³² See BIJLERT, *supra* note 116, at 9. Some scholars found similar tendencies in candidates in other countries. See COX, *supra* note 54, at 158; Mainwaring, *supra* note 52, at 467.

¹³³ SHUGART & CAREY, *supra* note 42, at 216.

out in favor of more viable candidates in the first round.¹³⁴ Indeed, they follow a blackmail strategy in the first round for more beneficial alliance making in the second round.¹³⁵ In that effort, they tend to form their own coalitions and distinguishable constituencies, although their coalitions remain informal, personalistic, and small.¹³⁶

The third category of candidates that the runoff system incentivizes is the “runoff-seekers.”¹³⁷ These are serious, but not necessarily the most viable, candidates who run in the first round with a hope that they may be able to finish as the runner up.¹³⁸ Their strategy is forcing a second round while finishing as a runner up.¹³⁹ Finishing as a runner up allows them to compete with the front-runner, having the chance of winning the alliance and vote shares of the losing candidates.¹⁴⁰ The success of the second place candidate is more probable when a majority of voters dislike the top finisher, or when, in a divided society, the top finisher is from a minority group, assuming votes are ethnic-based.¹⁴¹ Indeed, one of the reasons for

¹³⁴ They tend to establish themselves as the main figures in their constituencies. *See id.* at 255; Bol, *supra* note 97, at 23.

¹³⁵ Mainwaring, *supra* note 52, at 467.

¹³⁶ Most of these coalitions do not have any objectives other than competing in the elections. Many are so small—merely the alliance of president and vice president candidates—that their formation remains unknown to the media and public. As mentioned earlier, this study does not include those coalitions.

¹³⁷ Here, runoff in the context of “runoff-seekers” means the second round. Therefore, runoff-seekers are the candidates who would like to force a second round, in which they are one of the front-runners.

Thomas Fujiwara notes in his article, *A Regression Discontinuity Test of Strategic Voting and Duverger’s Law*, that some parties and candidates enter the race in order to finish third. He, however, does not explain why would a party or candidate would bear the cost of finishing third in an election, where only two candidates can qualify in the second round. It seems to be his version of the interpretation of Duverger’s hypothesis. *See* Fujiwara, *supra* note 25, at 215. Finishing third, however, does not seem to benefit a candidate unless either a second round allows three candidates to compete or the candidate wants to raise his political capital for bargaining against the front runners in the second round, which in that case the candidate is categorized as *opportunist* in this article.

¹³⁸ COX, *supra* note 54, at 158; SHUGART & CAREY, *supra* note 42, at 210; Mainwaring, *supra* note 52, at 467.

¹³⁹ *See* Mainwaring, *supra* note 52, at 467.

¹⁴⁰ SHUGART & CAREY, *supra* note 42, at 215–16.

¹⁴¹ *See id.* at 216.

In this situation, some also argue that political *outsiders* might gain the chance of prevailing over the first round frontrunner. *See* Birch, *supra* note 63, at 325; SHUGART & CAREY, *supra* note 42, at 215. Political outsiders are primarily referred to as candidates who distinguish themselves from party politics. It is not, however, a clear-cut definition since some candidates might run as a party nominee but prefer to establish themselves as political outsiders and are regarded as such by voters and politicians. A very recent example of that is Donald Trump who, while running as a Republican in the 2016 presidential election in the US, prefers to portray himself as an outsider. Political outsiders are likely to run a populist and anti-establishment campaign. *See* BUSCH, *supra* note 70, at 22–26, 154, 170–71.

There have been some cases where political outsiders became the eventual winner in the second round. Twice in Peru, political outsiders were able to force a second round, in which they eventually won against frontrunners. Also in Poland, a political outsider succeeded in his strategy of finishing second in the first round, though he lost the second round to the top finisher. *See* SHUGART & CAREY, *supra* note 42,

Abdullah's lead of the candidates in 2014's first round was the split of Pashtun votes among seven different Pashtun candidates.¹⁴² A survey before the second round of the 2014 election indicated that Ghani's votes among Pashtuns would increase from forty-nine percent in the first round to seventy-five percent in the second round.¹⁴³

The conventional literature failed to accurately predict the upper bounds of parties and coalitions because they failed to account for one or more of the categories of candidates and therefore under-predicted the number of candidates. For instance, the formula M+1, which was suggested by Garry Cox and other political scientists, falls short of predicting the upper bounds of parties and coalitions in a runoff system because it does not account for patronage-seeking candidates.¹⁴⁴ In this formula, M refers to the number of candidates that face off in the second round;¹⁴⁵ and so it is hypothesized that the runoff system should reduce the number of candidates to three parties in the long run.¹⁴⁶ Predictably, this upper bound does not even come close to reflecting the long lists of candidates that ran in the 2004 election (eighteen candidates),¹⁴⁷ the 2009 election (initially forty-four candidates),¹⁴⁸ or the 2014 election (initially eleven candidates)¹⁴⁹ in Afghanistan.¹⁵⁰ Some recent studies examining the runoff rules in different countries with longer experiences of runoff elections also indicated that the

at 33, 215. Encouraging a political outsider as a main contender is in itself a fragmenting characteristic of the runoff rule, considering the fact that they join the contest as a new contender challenging the established coalitions either as a leader of a new movement and alliance or as a populist independent. More importantly, political outsiders have less experience and less ability to building coalitions in the assembly. *See id.* at 22–33, 170–71, 215.

¹⁴² *See* Mobasher, *supra* note 3, at 384–85

¹⁴³ The same survey also demonstrated that most supporters of losing candidates would vote for Ghani in the second round. *See Afghan's Future Survey: Afghanistan's Ethnic, Regional Divisions Produce a Dead Heat in its Presidential Race*, LANGER RESEARCH ASSOCIATES 1, 5 (2014), http://www.langerresearch.com/wp-content/uploads/Afghanistan-Election_ACSOR-Langer.pdf.

¹⁴⁴ M+1 is an extension of Duverger's Law to the runoff system. M+1 indicates that eventually strategic coordination would lead to first round elections, where one additional candidate would compete with the M number of candidates—which is most often two candidates—that qualify for the second round election. *See* COX, *supra* note 54, at 123; Shugart & Mainwaring, *supra* note 104, at 406; SHUGART & CAREY, *supra* note 42, at 300; Wright, *supra* note 95, at 159–60.

¹⁴⁵ *See* COX, *supra* note 54, at 123; Shugart & Mainwaring, *supra* note 104, at 406; SHUGART & CAREY, *supra* note 42, at 300; Wright, *supra* note 95, at 159–60.

¹⁴⁶ *See* COX, *supra* note 54, at 123–24; Shugart & Mainwaring *supra* note 104, at 406; Bouton, *supra* note 29, at 283; Van Der Straeten, *supra* note 19, at 9.

¹⁴⁷ IEC 2004, *supra* note 60.

¹⁴⁸ The initial list of candidates for the 2009 presidential election is in KABUL PRESS, <http://kabulpress.org/my/IMG/pdf/presidential.pdf>.

¹⁴⁹ IEC 2014, *supra* note 60.

¹⁵⁰ Some factors other than the electoral system might also affect the number of candidates. These factors might include ballot access, open entry, filing fees, petition requirements, succession rules, incumbency, local party strength, and fragmentation of parties. *See* Wright, *supra* note 95, at 165.

runoff system is associated with far more than three candidates.¹⁵¹ In many countries, the average number of runners under the runoff system is over five candidates (coalitions).¹⁵²

In addition, by ensuring the possibility of a second round election, the runoff system postpones much of the bargaining and coalition building to the second round.¹⁵³ In fact, the runoff system invokes two rounds of coalitions: proactive coalitions and second round coalitions.¹⁵⁴ The proactive coalitions form before the first round elections and the second round coalitions strike when eliminated candidates join with the ones competing in a runoff.¹⁵⁵ The proactive coalitions are a combination of catchall (oversized) coalitions on the part of serious candidates and fragmented coalitions on the part of opportunist candidates. Hence, the first round elections experience a large number of coalitions. Notably, the presence of a large number of coalitions compels serious candidates to form oversized—and therefore less cohesive—coalitions to win.¹⁵⁶

The second round coalitions, which are common under runoff rules, are even more disruptive to coalition consolidation in general because these coalitions stem from the dissolving of proactive coalitions and the reconfiguration of the others.¹⁵⁷ In these coalitions the losing alliances regroup with front-running coalitions, which suggests that no coalition remains intact within each presidential election.¹⁵⁸

¹⁵¹ See Bol, *supra* note 97, at 20; Wright, *supra* note 95, at 161–62; Birch, *supra* note 63, at 323–24; Mainwaring, *supra* note 52, at 467; SHUGART & CAREY, *supra* note 42, at 212–14; Courtney, *supra* note 27, at 15; Croissant, *supra* note 95, at 255–56.

¹⁵² Wright, *supra* note 95, at 162.

¹⁵³ See Kaare Strom, Ian Budge, & Michael J. Laver, *Constraints on Cabinet Formation in Parliamentary Democracies*, 38 AM. J. POL. SCI. 303, 316 (May 1994); SHUGART & CAREY, *supra* note 42, at 216; Linz, *supra* note 30, at 57.

¹⁵⁴ SARTORI, *supra* note 63, at 166; Blais, *supra* note 40, at 194.

¹⁵⁵ See Blais, *supra* note 40, at 193.

¹⁵⁶ Afghan presidential elections have shown that serious candidates, in order to form a winning coalition and neutralize the effects of multiplicity of candidates in their constituencies, make coalitions with a variety of political groups and elites. For instance, in the presidential election of 2009, Karzai, in addition to forming an alliance of parties and political groups, entered into bargains with a large number of elites offering patronage. First, “he persuaded some strong Pashtun contenders such as Gul Agha Shirzai (then governor of Nangarhar) and Anwar-ul-Haq Ahadi (the head of a Pashtun nationalist party) not to run against him.” See Mobasher, *supra* note 3, at 378–79. “In the meantime, by introducing two prominent Tajik and Hazara strongmen—Marshal Qasim Fahim and Karim Khalili— as his [running mates], Karzai attempted to draw cross-ethnic votes.” *Id.* In addition, he made a coalition with Mohaqiq, the most prominent leader of Hazaras, and Dostom, a well-known Uzbek leader. See *id.*

¹⁵⁷ SARTORI, *supra* note 63, at 166; Blais, *supra* note 40, at 194.

¹⁵⁸ Courtney, *supra* note 27, at 14; Bordignon, *supra* note 19, at 14; Resnick, *supra* note 52, at 739.

The fact that runoff systems provide a secondary benefit for candidates, which is normally patronage, leaves coalitions even more vulnerable to instability. Patronage coalitions are not *coalitions of commitment*¹⁵⁹ or *permanent coalitions*¹⁶⁰ but rather *coalitions of convenience*¹⁶¹ where an alliance sustains as long as all parties benefit from their coalescence. It is not surprising that immediately after the first round of the 2014 election, the eliminated coalitions split into several factions so that their members joined the second round contenders on their own terms. This constant grouping and regrouping of alliances, which the runoff system instigates, offers little chance of coalition solidification.¹⁶² The following table illustrates how first round running mates split and eventually joined the rival front-runners in the 2014 runoff.

¹⁵⁹ Following Donald Horowitz's taxonomy, a coalition of commitment is the one that is formed not only to win elections and government power but also to implement a somehow coherent policy that is ideologically shared by its members. See HOROWITZ, *supra* note 33, at 366.

¹⁶⁰ A permanent coalition is the one that tends to survive even if it loses elections and government power. See *id.*

¹⁶¹ Coalition in convenience is the one that is formed for a particular purpose, most often that of winning elections and the government. See *id.*

¹⁶² Linz, *supra* note 62, at 22 ("The expectation of a runoff increases the incentive to compete in the first round either in the hope of placing among the two most favored or of gaining bargaining power for support in the runoff of one of the two leading contenders. Therefore, rather than favoring a coalescence of parties behind a candidate, the system reinforces the existing fragmentation.").

Adding to these issues, second round elections often encourage boycott by candidates and their supporters. See Birch, *supra* note 63, at 326. For instance, in Serbia in 2002, the defeated candidates boycotted the second round election, lowering the turnout by half. See OSCE/ODIHR Election Observation Mission: Statement of Preliminary Findings and Conclusions, ORG. FOR SEC. AND CO-OPERATION EUROPE (Oct. 13, 2002), <http://www.osce.org/odihr/elections/serbia/15327?download=true>. Also in Niger, in 2016, the opposition coalition with 17% of the vote dropped out of the runoff although the candidate was running from behind the bar. See *Opposition coalition to boycott Niger runoff poll*, ALJAZEERA (Mar. 9, 2016), <http://www.aljazeera.com/news/2016/03/opposition-coalition-boycott-niger-runoff-poll-160309050119175.html>.

Similarly, in Afghanistan, several candidates boycotted the presidential elections in 2004 and 2009. See Colin Freeman, *Afghan election fiasco as Karzai rivals pull out over fraud claims*, TELEGRAPH (Oct. 10, 2004), <http://www.telegraph.co.uk/news/worldnews/asia/Afghanistan/1473809/Afghan-election-fiasco-as-Karzai-rivals-pull-out-over-fraud-claims.html>; See also Jon Boone, *Afghanistan election challenger Abdullah Abdullah pulls out of runoff*, GUARDIAN (Nov. 1, 2009), <http://www.theguardian.com/world/2009/nov/01/afghan-election-karzai-abdullah>. In multi-ethnic Afghanistan, sometimes these electoral boycotts not only lead to electoral deadlock, but also tend to instigate ethnic tensions. Boycott of the runoff elections by Dr. Abdullah in both 2009 and 2014 led to ethnic tensions.

The runoff system has also been criticized for being costly and exhausting as well as responsible for the lower turnout rates. See Lakeman, *supra* note 24, at 53; Courtney, *supra* note 27, at 14. It is costly for both the government and voters, as well as for candidates. See LEWIS, *supra* note 21, at 2. Also, most voters do not turnout in the second round, which leads to the winner gaining fewer votes than he had in the first round. See Lakeman, *supra* note 24, at 53; LEWIS, *supra* note 21, at 2–3.

Table V. This table illustrates losing candidates' ticket splits in the 2014 election before the second round.¹⁶³

Losing Presidential Teams	Endorsed Candidates in Runoff Elections	Announcements
Abdulrab Rasul Sayaf	Abdullah Abdullah	Not Declared
1st Vice-President Candidate	Abdullah Abdullah	Declared
2nd Vice-President Candidate	Abdullah Abdullah	Declared
Qutbuddin Helal	Ashraf Ghani	Not declared
1st Vice-President Candidate		
2nd Vice-President Candidate	Abdullah Abdullah	
Gul Agha Sherzai	Abdullah Abdullah	Declared
1st Vice-President Candidate	Abdullah Abdullah	
2nd Vice-President Candidate		
Hedayat Amin Arsala	Ashraf Ghani	Declared
1st Vice-President Candidate	Ashraf Ghani	
2nd Vice-President Candidate	Ashraf Ghani	
Daud Sultanzoy	Ashraf Ghani	Declared
1st Vice-President Candidate	Abdullah Abdullah	
2nd Vice-President Candidate	Abdullah Abdullah	Declared
Zalmai Rasoul	Abdullah Abdullah	Declared
1st Vice-President Candidate	Ashraf Ghani	Declared
2nd Vice-President Candidate	Abdullah Abdullah	Declared

The table shows that from six presidential tickets, only two collectively joined one of the two front-running coalitions; four other presidential tickets split immediately after the first round, with some members joining Abdullah's campaign and others endorsing Ghani.¹⁶⁴ The presidential teams that withdrew early in the first round also split between frontrunners. For example, Qayum Karzai endorsed Ghani while his first running mate, Shahrani, supported Abdullah; somewhat similarly, while

¹⁶³ The data was collected from a number of sources, including Alissa J. Rubin, *Front-Runner in Afghan Election Secures a Key Ally*, N.Y. TIMES (May 11, 2014), <http://www.nytimes.com/2014/05/12/world/asia/abdullah-abdullah-afghanistan-presidential-election-coalition.html>; Sayed Tariq Majid, *Ashraf Ghani, Ahmad Zia Find Common Ground*, TOLONews (May 25, 2015), <http://www.tolonews.com/en/election-2014/14997-ashraf-ghani-ahmad-zia-find-common-ground>; Frud Bezhan, *Afghan Election: Numbers Stacked Against Ashraf Ghani*, RADIO FREE EUR. RADIO LIBERTY (Jun. 3, 2014), <http://www.rferl.org/content/afghan-election-ghani-numbers/25409182.html>; Maria Abi-Habib & Habib Khan Totakhil, *Afghan Presidential Front-Runner Gets More Backing*, WALL ST. J. (June 3, 2014), <http://www.wsj.com/articles/afghan-presidential-front-runner-gets-more-backing-1401812198>; Associated Foreign Press, *Former warlord joins Abdullah in Afghan election*, EXPRESS TRIBUNE (May 3, 2014), <http://tribune.com.pk/story/703684/former-warlord-joins-abdullah-in-afghan-election/>; Roya Ibrahim, *Daoud Sultanzoy Endorses Ashraf Ghani*, TOLONews (May 21, 2014), <http://www.tolonews.com/en/afghanistan/14936-daoud-sultanzoy-endorses-ashraf-ghani>; Saleha Sadat, *Female Elites Back Abdullah*, TOLONews (June 5, 2014), <http://www.tolonews.com/en/afghanistan/15134-female-elites-back-abdullah>; Sonil Hidari, *Arsala Endorses Ghani*, TOLONews (June 9, 2014), <http://www.tolonews.com/en/afghanistan/15181-hedayat-amin-arsala-endorses-ghani-in-runoff>.

¹⁶⁴ *Id.*

Rahim Wardak stepped down without backing any candidate, his second running mate embraced Ghani's campaign.¹⁶⁵

One major flaw that the runoff system has been charged with, particularly in divided societies, is that it hinders smaller groups from winning presidential office.¹⁶⁶ As to the case of Afghanistan, Kenneth Katzman concluded that the "electoral system . . . strongly favors the likelihood that the president will always be an ethnic Pashtun."¹⁶⁷ The three presidential elections (2004, 2009, and 2014) in Afghanistan have led to Pashtun candidates becoming presidents, although the results of the 2014 elections were too unsettled to confirm a legitimate winner. Indeed, in the first round of the 2014 election, Abdullah, a Tajik candidate, was the front-runner.¹⁶⁸

The runoff system has also been criticized for being prone to ethnic tensions and even political violence. For example, in countries such as Angola (1992), Algeria (1992), Congo (1993), Macedonia (1994), Togo (1994), and Haiti (1995), the losing candidates canceled the elections and resorted to violence against the potential winners in the second round.¹⁶⁹ To this effect, some scholars argue that the runoff system creates a culture of *wait and see*, where the losing parties might resort to violence.¹⁷⁰ In Afghanistan too, the boycott of the runoff elections by Abdullah in both 2009 and 2014 led to ethnic tensions.¹⁷¹ Particularly in the 2014 runoff, the ethnic tensions brought Afghanistan to the brink of a civil war.¹⁷² Therefore,

¹⁶⁵ Ghanizada, *Qayum Karzai endorses Dr. Ashraf Ghani in election runoff*, KHAAMA PRESS (June 8, 2014), <http://www.khaama.com/qayum-karzai-endoses-dr-ashraf-ghani-in-election-runoff-8233>; Saleha Sadat, *Endorsements Keep Rolling for Abdullah*, TOLONews (June 6, 2014), <http://elections.tolonews.com/node/4166>; Ghanizada, *Gen. Abdul Rahim Wardak withdraws from presidential election*, KHAAMA PRESS (Mar. 16, 2014), <http://www.khaama.com/gen-abdul-rahim-wardak-withdraws-from-presidential-election-2884>; Anwari, *Sayed Hussain died in India because of cancer*, AFGHAN BIOGRAPHIES (July 6, 2016), http://www.afghan-bios.info/index.php?option=com_afghanbios&id=3475&task=view&total=3293&start=332&Itemid=2.

¹⁶⁶ AREND LIJPHART, *THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE* 184, 186 (2008); STEIN ROKKAN, *CITIZENS, ELECTION, PARTIES: APPROACHES TO THE COMPARATIVE STUDY OF THE PROCESSES OF DEVELOPMENT* 157 (1970).

¹⁶⁷ KATZMAN, *supra* note 12, at 7.

¹⁶⁸ IEC 2014, *supra* note 60.

¹⁶⁹ See REYNOLDS, *supra* note 28, at 53; see also Birch, *supra* note 63, at 327.

¹⁷⁰ See REYNOLDS, *supra* note 28, at 53; see also Birch, *supra* note 63, at 327.

¹⁷¹ Shamshad Pasarlay et al., *Reforming the Afghan Electoral System: The Current Debate and its Implications for the Plans to Amend the Afghan Constitution*, INT'L J. CONST. L. BLOG, (May 8, 2015), <http://www.icconnectblog.com/2015/05/reforming-the-afghan-electoral-system-the-current-debate-and-its-implications-for-the-plans-to-amend-the-afghan-constitution/#more-4123>.

¹⁷² *Id.*

two-round elections can have a serious potential for electoral boycott and ethnic tensions.

III. VARIATIONS, ALTERNATIVES, AND ANCILLARIES

Since the failure of the 2014 presidential election, efforts began to reform the Constitution and electoral laws in order to put an end to ethnic tensions that tend to ensue during and after elections.¹⁷³ However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing only the parliamentary electoral system.¹⁷⁴ This article is the first attempt to extend the discourse to reforming the presidential electoral rules, as presidential elections have failed to institutionalize cross-ethnic coalitions and prevent ethnic tensions.

Donald Horowitz, in his groundbreaking book *Ethnic Groups in Conflict*, writes that under a proper electoral system, a presidential election should be an optimal conflict-regulating institution for a divided society.¹⁷⁵ He suggests that for a divided society, an electoral reform must be able to (a) disrupt ethnic voting and parties, (b) induce moderation and ethnic accommodation, (c) promote representation of minority groups, and (d) encourage cross-ethnic coalitions.¹⁷⁶ Part II of this article emphatically added that an electoral system must also help the consolidation of cross-ethnic coalitions.

Having exposed some failures of the runoff system in responding to the abovementioned needs in Part II, here I explore a number of alternative electoral designs, using the experiences of select countries that have adopted those alternatives. In addition, in order to test how these alternative designs

¹⁷³ The last three elections including the presidential elections of 2009 and 2014 as well as the parliamentary election of 2010 instigated ethnic tensions. The runoff of the 2014 presidential election almost brought about a civil war, if it was not for international intervention. See Int'l Crisis Group, *supra* note 8, at 2; NDI, *supra* note 8, at 28; SMITH, *supra* note 8, at 3; Bezhan, *supra* note 8.

¹⁷⁴ The two reports submitted by the Special Electoral Reform Commission to the government only suggest reform of SNTV. See Farman 40, *supra* note 13; Farman 83, *supra* note 13. The commission claims that the reports were produced after interviews and surveys with all interested parties such as voters, MPs, civil society, political parties, and lawyers. See ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION, 187–213 (Asadullah Sa'adati, ed., 2016). For articles about electoral reforms see ANNA LARSON & NOAH COBURN, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE (2014); REYNOLDS, *supra* note 28, at 6; LARSON, *supra* note 14, at 3; KATZMAN, *supra* note 12, at 5.

The few writings about the runoff rule in Afghanistan are merely for the description of the system and have no reform objectives. See RASULY, *supra* note 15, at 75; HASHEMI, *supra* note 15, at 143; TAQI-ZADA, *supra* note 15, at 170–82.

¹⁷⁵ SHUGART & CAREY, *supra* note 42, at 219.

¹⁷⁶ HOROWITZ, *supra* note 33, at 632.

apply to the Afghan political contest, I adopt a counterfactual simulation model, replacing the existing majority runoff with alternatives—while keeping all else the same—in the past three elections.¹⁷⁷ Examining such scenarios helps determine what would happen if the runoff system were adjusted or replaced with an alternative system.¹⁷⁸

Some examined reforms are merely adaptations of the runoff system and others are alternative electoral designs. The attempt is to explain their advantages and disadvantages in the context of Afghanistan, without precisely recommending one over the other.¹⁷⁹ In fact, a combination of some of these rules may work better than one in isolation.

A. *Adaptations of the Runoff System*

Studying constitutions and electoral laws of countries illustrates that the runoff system is no longer a rigid system with fixed features. Lawmakers have found ways to manipulate different aspects of this system in order to make it work properly in their societies in a given political environment.

1. Lowering the Threshold: Adopting a *Qualified-Runoff*

Lawmakers in some states have lowered the bar for winning the election in the first round. For instance, Costa Rica and Nicaragua adopted a

¹⁷⁷ The presidential election of 2002 in the Emergency Loya Jirga is not included in the analysis.

¹⁷⁸ Perhaps one weakness of this model is that it may not be able to take into account all of the variables and changes that might result from replacing a majority-runoff with an alternative. For example, it is common knowledge that electoral systems have their own mechanical and psychological effects on voters as well as candidates. See PIPPA NORRIS, *ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR*, 5–6 (2004); AREND LIJPHART, *ELECTORAL SYSTEMS AND PARTY SYSTEMS: A STUDY OF TWENTY-SEVEN DEMOCRACIES, 1945–1990* (1994); William R. Clark & Matt Golder, *Rehabilitating Duverger's Theory: Testing the Mechanical and Strategic Modifying Effects of Electoral Laws*, 39 *COMP. POL. STUD.* 679, 679, 685, 694 (2006). Hence, Ghani and Abdullah's votes, for example, might not have been the same under different electoral systems, even though social cleavages played a determinant role. But, coalition building and ethnic politics can be well predicted under this model. When necessary, these shortcomings are highlighted in this part.

¹⁷⁹ It bears mentioning that coalition institutionalization is a time-consuming process and a change in electoral law does not instantaneously lead to party or coalition development. See Allen Hicken, *Political Engineering and Party Regulation in Southeast Asia*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 80, 85 (Benjamin Reilly & Per Nordlund, eds., 2008); Margit Tavits, *The Development of Stable Party Support: Electoral Dynamics in Post-Communist Europe*, 49 *AM. J. POL. SCI.* 283, 283–98 (2005); Noam Lupu & Susan Stokes, *Democracy, Interrupted: Regime Change and Partisanship in Twentieth-Century Argentina*, 29 *ELECTORAL STUD.* 91, 91 (2010); Fernando C. Bértoa, *Party Systems and Cleavage Structures Revisited: A Sociological Explanation of Party System Institutionalization in East Central Europe*, 20 *PARTY POLITICS* 16, 18 (2012).

threshold of forty percent for winning in the first round.¹⁸⁰ In Argentina, the threshold is forty-five percent.¹⁸¹

These runoff adaptations are referred to as *qualified runoff*,¹⁸² *qualified majority*,¹⁸³ *plurality with minimum threshold*,¹⁸⁴ and *non-majoritarian runoff*.¹⁸⁵ Qualified majority is a variation of the runoff system where states require a threshold below fifty percent for winning outright.¹⁸⁶ If no candidate wins the required threshold, which is known as the *threshold of exclusion*,¹⁸⁷ the top two finishers compete in the second round to win the election.¹⁸⁸

A qualified-runoff might include a combination of (a) a threshold that is less than fifty percent, and (b) a minimum gap of votes (usually ten percent) between the top two finishers.¹⁸⁹ For instance, the constitutions of Argentina,¹⁹⁰ Bolivia,¹⁹¹ and Ecuador¹⁹² allow a candidate to become a president if the candidate receives over forty percent of the vote with a lead of more than ten percent of the vote over the second finisher. In Nicaragua, a candidate can win with either forty percent or thirty-five percent of the votes plus a margin of five percent more votes than the second finisher.¹⁹³ By any of these measures, as Table VI indicates, none of the three presidential elections in Afghanistan would have needed a second round

¹⁸⁰ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [CONSTITUTION OF COSTA RICA], art.139 (Nov. 7, 1949); CONSTITUTION OF NICARAGUA, art. 147 (1) (Jan. 1, 1987).

¹⁸¹ CONSTITUTION DE L'ARGENTINE [CONSTITUTION OF ARG.], Sec. 97 (May 1, 1853).

¹⁸² Qualified-runoff is a two-round electoral system which requires a threshold lower than absolute majority (50%). See Norris, *supra* note 20, at 4; LEWIS, *supra* note 21, at 2–3.

¹⁸³ Matthias Catón & Fernando Tuesta Soldevilla, *Political Parties in Conflict-Prone Societies in Latin America*, in POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT 129 (Benjamin Reilly & Per Nordlund eds., 2008). However, Rachel Lewis and her colleagues are skeptical about using the term majority for a threshold lower than 50%. They argue that “[a] true majority requirement in fact means having to win more than half of the votes.” Hence, a forty or forty-five percent threshold does not qualify as a majority system. See LEWIS, *supra* note 21, at 2–3.

¹⁸⁴ LEWIS, *supra* note 21, at 3.

¹⁸⁵ Buisseret, *supra* note 97, at 3.

¹⁸⁶ Catón, *supra* note 183, at 129.

¹⁸⁷ The threshold of exclusion is the minimum possible proportion of the vote which a winning candidate must obtain. See Douglas Rae et al., *Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems*, 3 COMP. POL. STUD. 479, 480 (1971); Buisseret, *supra* note 97, at 1.

¹⁸⁸ LEWIS, *supra* note 21, at 3.

¹⁸⁹ Mainwaring, *supra* note 52, at 468.

¹⁹⁰ CONSTITUTION OF ARG., Sec. 98 (May 1, 1853).

¹⁹¹ CONSTITUCIÓN POLÍTICA DEL ESTADO [BOLIVIA’S CONSTITUTION OF (PLURINATIONAL) STATE] art. 166(1) (Feb. 7, 2009), https://www.constituteproject.org/constitution/Bolivia_2009.pdf.

¹⁹² CONSTITUCIÓN DE LA REPUBLICA DEL ECUADOR [THE CONSTITUTION OF THE REPUBLIC OF ECUADOR], art. 143 (Sep. 2008), <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

¹⁹³ THE CONSTITUTION OF NICARAGUA, art. 147 (1) (Jan. 1, 1987).

race. Assuming that the candidates received the same votes under a qualified majority, in the 2004 and 2009 presidential elections, Karzai would have still been the winner.¹⁹⁴ In 2004, he scored a decisive 55.4% with a margin of 39.1% from the second finisher.¹⁹⁵ In 2009, he won 49.7% with a gap of 19.1% from Abdullah.¹⁹⁶ In 2014, Abdullah would have been declared the president with forty-five percent of votes and a difference of 13.4% from Ghani, who finished second.¹⁹⁷ In this scenario, ethnic tensions were less likely to happen in the 2009 and 2014 elections since the winning candidates had the indisputable forty percent of votes in both elections.¹⁹⁸

Table VI. This table illustrates the difference between the first and second leading candidates in the 2004, 2009, and 2014 elections.¹⁹⁹

The Last Three Presidential Elections Under A Qualified Runoff System (A 40% Threshold and 10% Votes Diff.)					
Election Year	Leading Candidate	Votes	Vote Diff. From 2nd Finisher	Result	Need for 2nd Round?
2004	Karzai	55.4%	39.1%	Winner	No
2009	Karzai	49.7%	19.1%	Winner	No
2014	Abdullah	45.0%	13.4%	Winner	No

A qualified runoff is a compromise between plurality and majoritarian systems,²⁰⁰ and it seems to provide three advantages. First, it guards against the main flaw of a plurality system, which is allowing candidates to win with *minority votes*.²⁰¹ Second, like a plurality system, it encourages broad coalitions.²⁰² With a forty percent threshold, small parties and nonviable candidates see a lesser chance of a second round taking place.²⁰³ Therefore they would rather join winning coalitions than to enter the race.²⁰⁴ The more the candidates and parties have incentives to strategically coordinate, the higher the chances are for consolidation of coalitions. Peter Buisseret,

¹⁹⁴ IEC 2004, *supra* note 60; IEC 2009, *supra* note 60.

¹⁹⁵ IEC 2004, *supra* note 60.

¹⁹⁶ IEC 2009, *supra* note 60.

¹⁹⁷ IEC 2014, *supra* note 60.

¹⁹⁸ In the 2014 election, ethnic tensions escalated due to irregularities in the second round. Although in 2009, it was the first-round results that instigated ethnic tensions, a 40% threshold, which did not seem unobtainable for Hamid Karzai, would have discouraged ethnic tension in this election also.

¹⁹⁹ IEC 2004, *supra* note 60; IEC 2009, *supra* note 60; IEC 2014, *supra* note 60.

²⁰⁰ SHUGART & CAREY, *supra* note 42, at 217; Bouton, *supra* note 29, at 3.

²⁰¹ See Bouton, *supra* note 29, at 3; SHUGART & CAREY, *supra* note 42, at 217. Here, minority vote literally means a small proportion of votes compared to the majority of votes, and not votes from ethnic minorities.

²⁰² See SHUGART & CAREY, *supra* note 42, at 217.

²⁰³ See *id.* at 210.

²⁰⁴ *Id.*

analyzing qualified majority through a formal model, concluded that qualified majority reduces party fragmentation as it only benefits major parties.²⁰⁵ Gabriel Negretto²⁰⁶ and Fabrice Lehoucq²⁰⁷ in their respective studies of the qualified majority in Argentina and Costa Rica claimed that this system was adopted by these nations to sustain a two party system.

Third, a lower threshold increases the chances for more than one ethnic group to win the election. For instance, assuming the election results remained the same, in the presidential election of 2014, Abdullah would have been the first Tajik candidate declared as the president under a qualified majority. His tally was forty-five percent, nearly fourteen percent higher than the votes of the second finisher.²⁰⁸

There are some weaknesses associated with lowering thresholds, however. Most importantly, the lower the bar, the less there is incentive for forming cross-ethnic coalitions. It is likely under qualified runoff that coalitions reduce to one or two ethnic groups, as candidates might see a higher chance with forming a minimal coalition. Particularly, a forty percent bar is lower than the estimated Pashtun population, which might encourage some ethno-nationalists to rally their campaign around mainly mobilizing Pashtun voters. Other ethnic groups are also able to form a winning coalition with the coordination of mainly two or three groups.

The other issue with this adaptation is that it does not do away with some shortcomings of the runoff system. Some opportunists and runoff seekers with considerable support have even more incentives to attend the contest. Grouping and regrouping of the coalitions might still exist, though to a lesser extent, since the chances for serious candidates to win the election in the first round are higher.

Some criticize lower-thresholds for decreasing the chances of a Condorcet winner.²⁰⁹ A Condorcet winner is the candidate who can win against each of the other candidates if the election is held one-on-one

²⁰⁵ Buisseret, *supra* note 97, at 2.

²⁰⁶ Gabriel L. Negretto, *Government Capacities and Policy Making by Decree in Latin America The Cases of Brazil and Argentina*, 37 COMP. POL. STUD. 531, 540 (2004).

²⁰⁷ Lehoucq, *supra* note 79, at 142.

²⁰⁸ IEC 2014, *supra* note 60.

²⁰⁹ Laurent Bouton, *A Theory of Strategic Voting in Runoff Elections*, 103(4) AM. ECON. REV. 1248, 1249 (2013).

between the candidates.²¹⁰ Most scholars concur that an election that ensures the winning of a Condorcet candidate is the fairest of all, other things being equal.²¹¹ However, one problem with Condorcet logic is that it has not taken social diversity into account. Considering ethnic voting in Afghanistan, Abdullah was simply a Condorcet loser to all seven candidates in 2014. Hence, based on Condorcet logic, Abdullah and other minority candidates will always remain losers as long as there is a candidate from the largest group. However, there is a serious question about the fairness of an electoral system if some groups are permanent losers under that system;²¹² more importantly, a system cannot lead to a stable democracy unless it includes and satisfies all major social forces.²¹³

Another criticism against the forty percent threshold advanced by Scott Mainwaring and Matthew Shugart is that under this system a candidate might win with a questionable margin of difference.²¹⁴ For example, a candidate may win with forty-five percent of the vote against forty-four percent for the runner-up.²¹⁵ This criticism is warranted in cases where the threshold of distance between the votes of the first and the second finisher is not accounted for. However, this criticism does not have merit in cases where, in addition to winning forty percent of the vote, the first finisher must win at least ten percent more of the vote than the second finisher. Additionally, marginal difference of votes is possible under any electoral system. For instance, fifty-one percent versus forty-nine percent under a majority runoff system or thirty-four percent versus thirty-three percent under a plurality are possible but conventionally satisfying outcomes to recognize the winners.

²¹⁰ Victoria Powers, *How to choose a winner: the mathematics of social choice 5* (Mathematisches Forschungsinstitut Oberwolfach 2015).

²¹¹ See Bouton, *supra* note 209, at 3–4.

²¹² See Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077, 1080, 1135 (1991). Guinier questions the fairness of the winner-takes-all rule, where blacks are the permanent losers in many districts although they have a sizeable population. She further suggests that “as a matter of broader democratic theory, voting rights activists and litigators should begin to worry more about the fundamental fairness of permanent majority hegemony in a political system whose legitimacy is based solely on the consent of a simple, racially homogenous majority.” JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 151 (1875) (“It is an essential part of democracy that minorities should be adequately represented. No real democracy, nothing but a false show of democracy, is possible without it.”).

²¹³ See JOSEF M. COLOMER, *POLITICAL INSTITUTIONS: DEMOCRACY AND SOCIAL CHOICE*, 58 (2001); SOFIE DREEF & WOLFGANG WAGNER, *DESIGNING ELECTIONS IN CONFLICT-PRONE DIVIDED SOCIETIES: THE CASE OF SOUTH SUDAN* 4 (2013), http://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif122.pdf; Lars-Erik Cederman et al., *Why Do Ethnic Groups Rebel? New Data and Analysis*, 62 WORLD POL. 87, 88, 99–105 (2010).

²¹⁴ SHUGART & CAREY, *supra* note 42, at 217.

²¹⁵ *Id.*

2. Constituency Pooling

One way to promote cross-ethnic coalitions would be to oblige the presidential candidates to garner a certain level of support across different regions.²¹⁶ Drawing support simultaneously from across different regions, which are geographically non-contiguous, is called *constituency pooling*.²¹⁷ Some countries have adopted such an electoral system, which requires that in order to win an election, a candidate has to receive votes from different regions inhabited by different ethnic groups.²¹⁸ For instance, in Indonesia, a candidate can win an election by receiving not only an absolute majority of votes nationwide but also at least twenty percent of votes in half of all provinces.²¹⁹ Similarly, in Kenya, a winning candidate, in addition to winning majority votes nationwide, has to garner twenty-five percent of the votes in more than half of the counties.²²⁰

Another variation of constituency pooling is *concurrent pluralities*.²²¹ This involves a plurality system, in which a presidential candidate must win pluralities concurrently in several regions of the country.²²² The concurrent pluralities system is the invention of Nigerian Constitution makers.²²³ According to this system, in addition to winning a nationwide plurality, a presidential candidate must win a minimum of twenty-five percent of votes in at least two-thirds of the states.²²⁴ If no candidate meets these requirements, only two candidates from the first round compete in the second round.²²⁵ Since states are drawn mainly along ethnic lines,²²⁶ the

²¹⁶ Benjamin Reilly, *Introduction*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 14 (Benjamin Reilly & Per Nordlund eds., 2008).

²¹⁷ Matthijs Bogaards, *Comparative Strategies of Political Party Regulation*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 52 (Benjamin Reilly & Per Nordlund eds. 2008).

²¹⁸ *Id.* at 53.

²¹⁹ Reilly, *supra* note 216, at 14.

²²⁰ CONSTITUTION art. 138(4) (2010) (Kenya), <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>.

²²¹ See SHUGART & CAREY, *supra* note 42, at 218.

²²² *Id.*

²²³ Reilly, *supra* note 216, at 14; John B. Ejobowah, *Integrationist and Accommodationist Measures in Nigeria's Constitutional Engineering: Successes and Failures*, in *CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION?* 234 (Sujit Choudhry ed. 2008).

²²⁴ CONSTITUTION OF NIGERIA (1999), § 133.

²²⁵ *Id.* § 134.

²²⁶ SHUGART & CAREY, *supra* note 42, at 218.

first round election automatically requires candidates to make broader coalitions in order to appeal to voters across ethnic lines.²²⁷

This *vote-pooling*²²⁸ formula works best when ethnic groups are territorially recognizable;²²⁹ therefore, it is an ideal rule for Afghanistan, which has geographically concentrated ethnic groups.²³⁰ Given the regional concentration of ethnic groups, Article 45 of the Election Law seems to have somewhat of a vote-pooling effect. This article requires presidential nominees to collect signatures of “one hundred thousand voters, from a minimum of twenty provinces, two percent from each province.”²³¹ On the surface, this threshold of nomination seems to suggest that presidential nominees need support from more than one ethnic group in order to qualify for candidacy. In reality, however, this threshold is much too low to have a constituency-pooling effect. It appears weaker in scope and scale than the vote-pooling rule in Nigeria and Indonesia. In fact, this threshold of nomination may be criticized for favoring only the two largest ethnic groups in Afghanistan. Pashtuns and Tajiks are the only ethnic groups that are estimated to have a minimum of two percent population in at least twenty provinces of Afghanistan.²³² The next two largest ethnic groups, Hazaras and Uzbeks, are present in fewer than fifteen provinces.²³³ Therefore, while having little vote-pooling effect, this threshold seems to qualify candidates from only the two largest ethnic groups. In the 2004 and 2009 presidential elections, when this threshold did not exist, there were some Uzbek and Hazara candidates who eventually won a large number of votes.²³⁴ After the adoption of this rule, however, the candidates in the 2014 presidential election were exclusively Pashtuns and a Tajiks.²³⁵

²²⁷ *Id.* Although this electoral system takes place in two rounds, Shugart and Carey suggest that it is a subset of the plurality system perhaps because there is no threshold of exclusion based on nationwide votes.

²²⁸ HOROWITZ, *supra* note 33, at 395 (using “pooling of votes” to indicate the transfer of votes across ethnic lines).

²²⁹ Bogaards, *supra* note 217, at 52.

²³⁰ Pashtuns mostly live in the south and seast; Tajiks live in the north, northeast, west, and central regions; Uzbeks mostly live in northern provinces; and Hazaras are concentrated in the central region. See WIEBKE LAMER & ERIN FOSTER, *AFGHAN ETHNIC GROUPS: A BRIEF INVESTIGATION 2–5* (2011)

http://www.operationspaix.net/DATA/DOCUMENT/6393~v~Afghan_Ethnic_Groups__A_Brief_Investigation.pdf.

²³¹ Election Law 2014, S. 1112, art. 45.

²³² Mobasher, *supra* note 3, at n.31.

²³³ See Mobasher, *supra* note 3.

²³⁴ IEC 2004, *supra* note 60.

²³⁵ Salih Doğan, *2014 Afghanistan Presidential Election: An Ethnic Analysis*, 3 *CAUCASUS INT’L* 93, 94 (2014).

3. The *Legislative-Runoff*²³⁶

Many scholars argue that one of disadvantages of a presidential constitution is its susceptibility to political deadlock, which results from the confrontation of the president and the legislature.²³⁷ Lawmakers in some countries have tried to get around this issue by requiring the second round to take place in the legislature,²³⁸ which resembles a key feature of parliamentarism.²³⁹ In other words, in these countries, if no candidate were to win an absolute majority in the first popular election, the top two or three candidates would have to compete for majority votes in the legislature.²⁴⁰ Chile before 1973 and Bolivia (1967-2009) were among the few countries that adopted this system in their constitutions.²⁴¹

In Bolivia, if no candidate could win an absolute majority in the first round election, the congress had to elect from the top two finishers.²⁴² This system encouraged permanent coalitions in Bolivia, as the legislative parties earned due influence in government formation.²⁴³ Edward Gamarra argues that after the adoption of this system, the “Bolivian politicians appeared to have achieved an equilibrium that could not have existed were the system purely presidential, especially if the president were elected by a majority runoff.”²⁴⁴ Three broad coalitions were formed in Bolivia²⁴⁵ as parliamentarians showed political maturity by entering into long-term pacts.²⁴⁶ Shugart and Carey argue that a purely presidential constitution in Bolivia would not have been capable of holding these coalitions together.²⁴⁷ Some scholars referred to the Bolivian political system as a hybrid

²³⁶ If no candidate wins a required majority through a popular vote, the frontrunners will compete in the legislature in the second round. This runoff subtype differs from the other subtype where both elections are held in the congress. The latter electoral system was used by Brazil until 1926. See Lehoucq, *supra* note 79, at 137.

²³⁷ See Linz, *supra* note 30, at 52–54; Mainwaring, *supra* note 52, at 450–54.

²³⁸ Eduardo A. Gamarra, *Hybrid Presidentialism and Democratization: The Case of Bolivia*, in PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA 363 (Scott Mainwaring & Matthew Soberg Shugart eds., 1997).

²³⁹ SHUGART & CAREY, *supra* note 42, at 78.

²⁴⁰ See Shugart & Mainwaring, *supra* note 104, at 17.

²⁴¹ *Id.*; SHUGART & CAREY, *supra* note 42, at 82–86.

²⁴² CONSTITUCIÓN POLÍTICA DEL ESTADO [CONSTITUTION] Feb. 2, 1967, art. 40 (Bol.).

²⁴³ Gamarra, *supra* note 238, at 379.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 391.

²⁴⁶ *Id.* at 392.

²⁴⁷ SHUGART & CAREY, *supra* note 42, at 84.

presidential system²⁴⁸ for the reason that the president was elected by the legislature in the second round.²⁴⁹

The parliamentary election of presidents offers some advantages that neither purely presidential nor parliamentary systems can offer.²⁵⁰ One advantage of a legislative runoff election is that it reduces the number of candidates by discouraging opportunist candidates and blackmailing coalitions. This is primarily because the front-runners no longer need the support of different constituencies in order to win the second round; hence, the opportunists have nothing to offer for bargaining. Besides, once coalitions are established, political outsiders have little chance to win the second round in the parliament and so they have little incentive to run.²⁵¹ Consequently, this system impedes fragmentation and regrouping of coalitions in the second round. Moreover, while the executive power originates from parliament, it does not depend on the parliamentary vote of confidence for its survival.²⁵² This ensures that the stability of the government is not put at risk, which is the case in fragmented parliamentary systems.²⁵³

Nonetheless, legislative-runoff systems have some downfalls that need to be highlighted. For instance, this system has a strong potential to encourage electoral corruption. Candidates may find it easier and even cheaper to buy MPs rather than trying to build coalitions with them based on some policy platform. Hence, it encourages patronage-based coalitions. Some studies have shown that political coalitions in Bolivia, for instance, were more driven by access to patronage than by policy platforms.²⁵⁴ MPs made a coalition to elect the president, but once the president was elected, the coalition weakened.²⁵⁵ Furthermore, some suggested that since after the election the president was not dependent on a parliamentary vote of confidence,²⁵⁶ presidents were less likely to stay loyal to coalitions.²⁵⁶ These

²⁴⁸ Gamarra, *supra* note 238, at 365.

²⁴⁹ *Id.* at 363.

²⁵⁰ SHUGART & CAREY, *supra* note 42, at 77.

²⁵¹ *Id.* at 85. In Chile, the Congress sought to appease a political outsider's protesting supporters by electing him as President, while blocking the implementation of his policies through legislation.

²⁵² *Id.* at 77.

²⁵³ *Id.*

²⁵⁴ Gamarra, *supra* note 238, at 399.

²⁵⁵ *Id.* at 370.

²⁵⁶ SHUGART & CAREY, *supra* note 42, at 83.

issues were perhaps the reason that the legislative-runoff was replaced with the direct runoff system in the new constitution of Bolivia.²⁵⁷

There is also a chance that in the legislature the second-place finisher wins the election.²⁵⁸ This might lead to some tensions since the candidate with the popular vote might raise the issue of legitimacy against the candidate with the legislative majority. It becomes more problematic if votes are cast on ethnic bases in the parliament, considering the fact that ethnic voting is more visible in the legislature.

In addition, the development of cross-ethnic coalitions is not insured under this system since building a minimal coalition is possible due to the presence of perfect information about the ethnic composition of the parliament. Knowing the number of ethnic representatives in the parliament, candidates may establish a minimum coalition of two or three groups, while excluding others. The following table shows the possibility of several minimal coalitions, using the current composition of *Wolesi Jirga*.²⁵⁹

Table VII. This table illustrates the possibility of minimal, oversized and grand coalitions, considering the current composition of *Wolesi Jirga*.²⁶⁰

Possible Coalitions in the Parliament of 2010-2016		
Coalition	Coalition Size by %	Coalition Size by Groups
Pashtun, Uzbek	51.985	Minimum
Tajik, Hazara, Uzbek	52.4	Minimum
Pashtun, Hazara	62.42	Minimum
Pashtun, Tajik	65.72	Minimum
Pashtun, Hazara, Uzbek	71.83	Oversized
Pashtun, Tajik, Uzbek	75.13	Oversized
Pashtun, Tajik Hazara	85.565	Oversized
Pashtun, Tajik, Hazara, Uzbek	94.975	Grand

It shows that four minimal winning coalitions are possible where some major ethnic groups are excluded. Similarly, the exclusion of at least one ethnic group is possible under three oversized coalitions under the

²⁵⁷ CONSTITUCIÓN POLÍTICA DEL ESTADO [BOLIVIA'S CONSTITUTION OF (PLURINATIONAL) STATE] art. 166(1) (Feb. 7, 2009), https://www.constituteproject.org/constitution/Bolivia_2009.pdf.

²⁵⁸ For example, in Chile in 1925 the second-place candidate in the parliament outran the first-round frontrunner. See SHUGART & CAREY, *supra* note 42, at 85.

²⁵⁹ Andrew Wilder, *A House Divided? Analyzing The 2005 Afghan Elections*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>; *Winning Candidate's List*, INDEPENDENT ELECTION COMMISSION OF AFGHANISTAN, <http://www.iec.org.af> [hereinafter IEC List].

²⁶⁰ Wilder, *supra* note 259; IEC List, *supra* note 259.

legislative-runoff system. Even these oversized coalitions are cost-effectively less desirable since these coalitions lead to further distribution of power (cabinet seats).²⁶¹ One factor that is likely to balance this flaw of the legislative-runoff system is the formation of proactive coalitions. Since serious candidates want to win in the first round outright, they tend to form pre-electoral coalitions, which are cross-ethnic. In effect, these proactive coalitions are likely to cut across ethnic lines in the parliament, should a second round take place.

B. *Alternative Electoral Designs*

1. *Alternative Vote*

One alternative to the runoff system that the reformers should consider for the presidential election is Alternative Vote (AV). This electoral system is also called *Preference Voting*,²⁶² *Preferential Voting System*,²⁶³ *Ranked Choice Voting (RCV)*,²⁶⁴ and *Instant Runoff Voting (IRV)*.²⁶⁵ Under an AV system voters rank candidates in order of their preferences by putting one, two, etc., beside each candidate's name.²⁶⁶ It is a majoritarian system²⁶⁷ since the winning candidate must be able to secure an absolute majority.²⁶⁸ If no candidate wins over fifty percent of the votes, the candidates with the lowest number of votes are eliminated and their ballots are redistributed to the candidates who were ranked second to the eliminated

²⁶¹ A minimum winning coalition is optimal when parties want to form a coalition, which helps them win the election but no more. An oversized coalition is greater than necessary for winning. A grand coalition is the coalescence of all relevant parties and groups regardless of their political or social differences in order to form a government. Oversize and grand coalitions are usually formed for reasons other than winning elections, which include efforts to avoid war and violence. For further explanation of these terms, see Norman Frolich, *The Instability of Minimal Winning Coalitions*, 69 AM. J. OF POL. SCI. 943, 943–946 (1975); E. Sridharan, *Introduction: Theorizing Democratic Consolidation, Parties, and Coalitions*, in COALITION POLITICS AND DEMOCRATIC CONSOLIDATION IN ASIA 12 (2012), https://www.researchgate.net/publication/298710092_Introduction_Theorizing_Democratic_Consolidation_Parties_and_Coalitions; LIIPHART, *supra* note 38, at 25.

²⁶² See, e.g., Steven Mulroy, *The Way Out: Toward A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies*, 33 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 333, 341 (1998).

²⁶³ See, e.g., Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 835 (2013); see FARRELL, *supra* note 9, at 51.

²⁶⁴ See, e.g., FAIR VOTE, <http://www.fairvote.org/rcv>.

²⁶⁵ See e.g., LEWIS, *supra* note 19, at 2.

²⁶⁶ Mulroy, *supra* note 262, at 342; Stephanopoulos, *supra* note 263; Benjamin Reilly, *Electoral Systems for Divided Societies*, 13 J. OF DEMOCRACY 156, 158 (2002); REYNOLDS, *supra* note 28, at 47–48.

²⁶⁷ Norris, *supra* note 20, at 4.

²⁶⁸ Richard Rose, *Elections and Electoral Systems*, in DEMOCRACY AND ELECTIONS: SYSTEMS AND THEIR POLITICAL CONSEQUENCES, 32 (Vernon Bogdanor & David Butler eds., 1983). However, there is no reason this threshold cannot be lowered in an AV system.

ones.²⁶⁹ This process continues until a candidate wins the majority.²⁷⁰ Surplus Vote (SV) is a cousin (or a subtype) of AV, in which all candidates except for the top two finishers are eliminated at once.²⁷¹ Then the votes of the eliminated candidates are distributed to the top two finishers based on the next preferences of the voters.²⁷² This system is used for presidential elections in Sri Lanka²⁷³ and mayoral elections in London.²⁷⁴ The Constitution of Sri Lanka restricted the voters' choices to three candidates,²⁷⁵ while in London the voters can choose only two candidates.²⁷⁶

Considering the presidential election of 2014 in Afghanistan, using SV could have led to any outcome. Indeed, a poll by Langer Research Associates indicated that Ghani was the second choice for twenty-one percent of respondents while Abdullah was the second choice for twelve percent.²⁷⁷ If we add these numbers to the actual number of the votes that Ghani and Abdullah won in the first round, Abdullah would have been the president with nearly fifty-seven percent of the votes. However, considering only the first and the second choices of the respondents, Ashraf Ghani would have been the president with fifty-seven percent, since thirty-six percent of respondents—including unlikely voters—replied that they would cast their first choice for Ghani compared to forty percent of respondents whose first choice was Abdullah.²⁷⁸ In fact, using SV in 2014 would have led to fewer candidates in the first place. Under this change, not only would Ghani and Abdullah have a different number of votes, the coalitions would also have been fewer and less susceptible to patronage bargaining and dissolution.

AV has similarities to both plurality and runoff rules. Some argue that it is designed to remedy the flaws of plurality and runoff systems while keeping their advantages intact.²⁷⁹ It is similar to plurality systems in the

²⁶⁹ *Id.* at 32; Alan Renwick, *Political Studies Ass'n, The Alternative Vote: A Briefing Paper* (2011), <https://www.psa.ac.uk/sites/default/files/TheAlternativeVoteBriefingPaper.pdf>.

²⁷⁰ See LEWIS, *supra* note 19, at 3; Mulroy, *supra* note 262, at 342.

²⁷¹ See REILLY *supra* note 39, at 16.

²⁷² *Id.*

²⁷³ THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, Sept. 7, 1978, art. 94, <https://www.parliament.lk/files/pdf/constitution.pdf>.

²⁷⁴ RENWICK, *supra* note 269, at 4; ROGER MORTIMORE & IPSOS MORI, A GUIDE TO THE ALTERNATIVE VOTE (2011), <https://www.ipsos-mori.com/Assets/Docs/Polls/RM-AVarticle.pdf>.

²⁷⁵ THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, *supra* note 273, at art. 94.

²⁷⁶ ROGER, *supra* note 274, at 2.

²⁷⁷ Langer, *supra* note 143, at 4.

²⁷⁸ *Id.*

²⁷⁹ LEWIS, *supra* note 21, at 3; AREND LIJPHART, PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT 20 (1992).

sense that it is only a one-round election.²⁸⁰ Therefore, it has the advantage of plurality systems, which is allowing only serious candidates to run in the election. Opportunist candidates see fewer benefits to running and obviously there is no space for runoff seekers. This way, both plurality and AV systems reduce the number of candidates, which in turn leads to broader and stronger coalitions. However, unlike plurality systems, an AV system does not allow a candidate with a small number of votes to win elections.²⁸¹ This difference indeed gives AV an edge over the plurality system.²⁸²

AV, and particularly SV, is similar to the runoff system in the fact that they both prevent candidates from being elected with only a minority vote.²⁸³ As such, both systems make it impossible for a single ethnic coalition in Afghanistan to win an election. Therefore, like the runoff system, AV offers the advantage of encouraging cross-ethnic coalitions.²⁸⁴ Both systems require voters to have more than one preference, if their first choice does not win.²⁸⁵ And the AV system, like the runoff system, tends to shift the preferences from extremist candidates to moderate ones.²⁸⁶ Nonetheless, unlike runoff systems, AV allows voters to make all of their choices in a single ballot, as opposed to requiring a second-round election.²⁸⁷ To this effect, the AV system bars coalition fragmentation and regrouping that are the normal course of coalition-making under the runoff system.

Furthermore, the AV system has an edge over plurality and runoff rules in the fact that it gives more choices to the voters. As Reilly posits, this system allows voters to reconcile their two conflicting aims: “the need to vote for their own ‘local’ ethnic candidate . . . and the desire to vote, using secondary preferences, for the candidate [with merits].”²⁸⁸ More importantly, the AV system not only makes the candidates dependent on cross-ethnic votes,²⁸⁹ it also encourages vote-pooling among voters.²⁹⁰

²⁸⁰ FARRELL, *supra* note 9, at 61.

²⁸¹ Courtney, *supra* note 27, at 10.

²⁸² FARRELL, *supra* note 9, at 61; RENWICK, *supra* note 269, at 9–10.

²⁸³ Vernon Bogdanor, *Introduction*, in *DEMOCRACY AND ELECTIONS: SYSTEMS AND THEIR POLITICAL CONSEQUENCES* 5 (Vernon Bogdanor & David Butler eds., 1983). Some also argue that AV creates only a manufactured majority since in the initial tally candidates may not win over 50% of the votes. *See, e.g.*, Courtney, *supra* note 27, at 9.

²⁸⁴ Bogdanor, *supra* note 283, at 5.

²⁸⁵ Rose, *supra* note 268, at 33.

²⁸⁶ *See* Ben Reilly, *Preferential Voting and Its Political Consequences*, in *FULL, FREE AND FAIR ELECTIONS* 78–79 (Marian Sawyer ed., 2001); RENWICK, *supra* note 269, at 15.

²⁸⁷ *See id.* at 32–33; *see also* Sartori, *supra* note 25, at 98; LAKEMAN, *supra* note 25, at 54–55.

²⁸⁸ REILLY, *supra* note 39, at 67.

²⁸⁹ *See* Reilly, *supra* note 286, at 158; DONALD L. HOROWITZ, *A DEMOCRATIC SOUTH AFRICA?: CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY* (1991).

However, the vote-pooling effect of AV is conditioned by an ethnic distribution, where no ethnic group exceeds fifty percent of the population.²⁹¹ By most estimations, ethnic distribution in Afghanistan perfectly meets this condition.²⁹²

Nevertheless, some scholars have criticized AV by identifying some of its main shortcomings. They have been particularly skeptical about the adoption of the AV system in countries with a lower level of literacy,²⁹³ which surely includes Afghanistan.²⁹⁴ Among other things, they argue that for some voters, making several preferences and ranking candidates accordingly is not an easy task.²⁹⁵ Also, the complexity of the tallying process might make the politicized but uneducated voters doubt the results.²⁹⁶ Furthermore, some suggest that the AV system, like the runoff system, gives edges for larger groups over smaller groups since larger groups have more chances of winning inter-communal preferences.²⁹⁷ Also, intra-communal ranking of candidates is likely to favor larger ethnic groups. For example, AV in the 2000 presidential elections of Republika Srpska, favored a hardline Serb candidate because the Bosnian voters cast their second preferences to minor Bosnian parties rather than voting for moderate Serb candidates.²⁹⁸

One other issue with the AV system is that voters are likely to *plump* (cast all)²⁹⁹ their votes for a single candidate rather than making a number of choices.³⁰⁰ This tendency effectively turns the AV system into a plurality

²⁹⁰ See TIMOTHY D. SISK, *DEMOCRATIZATION IN SOUTH AFRICA: THE ELUSIVE SOCIAL CONTRACT* 38 (1995); REILLY, *supra* note 39, at 22.

²⁹¹ Presentation Paper, Sofie Dreef and Wolfgang Wagner, *Electing to Fight or to Make Peace? Electoral Systems and Ethnic Violence in Post-Conflict Societies*, 7 (June 9–10, 2011) http://home.fsw.vu.nl/wm.wagner/dreef_wagner_etmaal_paper.pdf.

²⁹² REILLY, *supra* note 39.

²⁹³ REILLY, *supra* note 39, at 157.

²⁹⁴ Based on the data provided by World Bank, the rate of literacy in Afghanistan was 32% in 2010. See WORLD BANK, <http://data.worldbank.org/indicator/SE.ADT.LITR.ZS>.

²⁹⁵ See Courtney, *supra* note 27, at 9; Stephanopoulos, *supra* note 263, at 852; see also DOUGLAS W. RAE, *THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS* 128 (1971) (arguing that voters lack the “rather complex cognitive arrangements” necessary for preferential voting).

²⁹⁶ See Paul L. Mckaskle, *Of Wasted Votes And No Influence: An Essay On Voting Systems In The United States*, 35 HOUS. L. REV. 1119, 1126 (1999) (counting the vote (under SNV, which is a cousin of AV, used for parliamentary elections), however, is complex and difficult to explain, and many voters may not be able to understand the procedure fully).

²⁹⁷ See REILLY, *supra* note 39, at 23; see Courtney, *supra* note 27, at 11.

²⁹⁸ Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 CHI. J. OF INT’L L. 663, 678 (2006).

²⁹⁹ Plump refers to a situation where a voter casts all her votes to a single candidate—or eschews from making second and third choices. See, e.g., Mulroy, *supra* note 262, at 340.

³⁰⁰ See REILLY, *supra* note 39, at 156.

system.³⁰¹ Making further choices compulsory is also problematic since it would encourage voters to make uncalculated and random choices that may affect the result very badly.³⁰² Or take the case of the 2014 Afghan elections, in which under an AV rule, all Tajik voters would have had to cast their second and third preferences for a Pashtun candidate since there was only one Tajik candidate. Pashtun voters, however, could cast their second and third preferences for several other Pashtun candidates. Here, compulsory ranking gives an undue privilege to one ethnic group over the other.

2. Proportional Presidency

Linz criticizes presidential elections for being zero-sum games, where the winner wins the office and the losers have to step aside with empty hands.³⁰³ This feature of presidential elections becomes particularly problematic when candidates from a single group win the election every time.³⁰⁴ This leads to frustrations in other ethnic groups,³⁰⁵ which in turn hinders *depoliticization* of ethnic identities.³⁰⁶

With only three presidential elections passing,³⁰⁷ the frustrations have already grown among different ethnic groups as Pashtun candidates have consistently won the office.³⁰⁸ These concerns have been reflected in the writings of Kenneth Katzman, who posited that the “electoral system . . . strongly favors the likelihood that the president will always be an ethnic Pashtun.”³⁰⁹ Indeed, one main reason for proposing a parliamentary and semi-presidential system instead of a presidential constitution by the Northern Alliance, an alliance of mainly Tajik, Hazara, and Uzbek parties,³¹⁰

³⁰¹ *See id.*

³⁰² *See id.* at 157.

³⁰³ Mainwaring, *supra* note 52, at 450.

³⁰⁴ *See id.*

³⁰⁵ *See* SONALI KOHATKAR AND JAMES INGALLS, BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF SILENCE 142 (2006).

³⁰⁶ For understanding the concept and process of politicization and depoliticization as well as participation and de-participation of ethnic groups, refer to HEATHER STOLL, CHANGING SOCIETIES, CHANGING PARTY SYSTEMS 23, 37–45 (2013).

³⁰⁷ In fact, four presidential elections have been held since 2001. The first election was held in an *Emergency Loya Jirga* for choosing the head of a temporary government. This election has not been studied in the article since it was not a direct popular election; neither was it held under the runoff system.

³⁰⁸ SONALI, *supra* note 305, at 142.

³⁰⁹ KATZMAN, *supra* note 11, at 7.

³¹⁰ *See* TRIBUNAL 2013, *supra* note 50, 5 (Mar. 7, 2013); ICOS *supra* note 50; Gran Hewad, *The New National Front: A Dark Horse Returns with Three Riders*, AFGHANISTAN ANALYST NETWORK 1 (Dec. 2011) <https://www.afghanistan-analysts.org/the-new-national-front-a-dark-horse-returns-with-three-riders/>; Keith, *supra* note 50, at 5.

is that smaller ethnic groups want to make the highest executive office accessible to their candidates.³¹¹ Constitution designers in different countries have tried different paths to ensure that major ethnic groups are entrusted with the government. For example, Switzerland's Constitution introduced *collegial presidentialism*,³¹² which is a federal council of seven members where the presidency is rotated annually among its members.³¹³ This collegial executive was created to reflect the socio-political heterogeneity of Switzerland at the highest level of government.³¹⁴ A similar system was tried twice in Uruguay but did not work.³¹⁵

In order to deal with the problem of winner-take-all, here I propose *proportional presidency*. Proportional presidency enables the top two finishers to share the same presidential term, although with their own administrations in a sequence. I call it *proportional presidency* since the span of each president's administration must be proportional to the votes s/he receives. In order to have an optimal outcome, this system must have certain characteristics. First, under this system, one presidential term should be at least eight years to allow each administration to have a life span of at least three years. Second, a presidential term should be equal to two parliamentary terms, allowing concurrent elections after each presidential term. Third, the life span of each administration should be proportional to the votes each president receives, provided that each administration should have a duration of at least three years. Fourth, if the vote share of the second finisher falls short of acquiring him/her three years of presidency, the first finisher gets to be the president for a full parliamentary term, after which another concurrent election should be held. Fifth, the president with a higher percentage of votes runs the first administration and the one with a lower percentage of votes runs the second. With these characteristics, a proportional presidency would have led to a single round of election in 2014 in Afghanistan. Under an eight year presidential term, Abdullah Abdullah would have taken the office for 4.7 years, proportional to his forty-five

³¹¹ *Id.*; see also Hether K. Gerken, *Keynote Address: What Election Law Has to Say About Constitutional Law*, 44 IND. L. REV. 9 (2010) ("It is not difficult to imagine why . . . minorities would desire a chance to be in charge for reasons that have nothing to do with political outcomes or the distribution of tangible goods.").

³¹² SHUGART & CAREY, *supra* note 42, at 76.

³¹³ See BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 174–176 (Switz.).

³¹⁴ See David Altman, *Collegiate Executives and Direct Democracy in Switzerland and Uruguay: Similar Institutions, Opposite Political Goals, Distinct Results*, 14 SWISS POL. SCI. REV. 483, 484 (2008); LIJPHART, *supra* note 38, at 31.

³¹⁵ LIJPHART, *supra* note 38, at 212–13.

percent win of the vote. Subsequently, Ashraf Ghani would have been the president for 3.3 years (See Table VIII). Electoral fraud and ethnic tension would have been less likely since all stakeholders would have been sure about the presidency of their candidates.

Table VIII: This Table shows the duration of Abdullah and Ghani's presidencies (compared to their votes) under an eight year proportional presidency.

Proportional Presidential Under An Eight-Year Term		
Candidates	Votes	Years in Office
Dr. Abdullah	45%	4.7 years
Dr. Ghani	31%	3.3 years

The proportional presidency I propose here is different from *collegial presidentialism*.³¹⁶ In Switzerland, there is a council of seven-members who rotationally lead the country as the president every year.³¹⁷ Proportionality in collegial presidentialism indicates that the number of the presidents is proportional to the social cleavages and respective political parties.³¹⁸ In proportional presidency, however, proportionality determines the longevity of each administration by the share of votes that each president wins. Proportional presidency is also different from co-presidency, which was implemented to some extent in Cyprus (1960–1963).³¹⁹ Under a co-presidency, as proposed by Shugart and Carey, the president and vice president are elected on the same ticket by voters.³²⁰ They form the same administration, although they represent different ethnic groups and clearly have equal powers.³²¹ Proportional presidency, however, suggests separate administrations on the basis of the vote shares of two presidential candidates who have their own vice president nominees. This way, proportional presidency avoids *cohabitation*³²² that exists in co-presidency, as Shugart and Carey willingly admit.³²³

³¹⁶ SHUGART & CAREY, *supra* note 42, at 96; LIJPHART, *supra* note 38, at 212–13.

³¹⁷ LIJPHART, *supra* note 38, at 76.

³¹⁸ See WOLF LINDER AND ISABELLE STEFFEN, FORUM OF FEDERATION, SWISS CONFEDERATION 7 (2006), <http://www.thomasfleiner.ch/files/categories/IntensivkursII/Switzerlandg3.pdf>.

³¹⁹ SHUGART & CAREY, *supra* note 42, at 99–100.

³²⁰ However, in Cyprus, the president and vice president were elected separately and by different constituents. See SHUGART & CAREY, *supra* note 42, at 99.

³²¹ *Id.* at 99–100, 103–105.

³²² Cohabitation refers to the situation where a political confrontation occurs between the president and the prime minister and/or parliament. See Jayadeva Uyangoda, *The Dynamics of Coalition Politics and Democracy in Sri Lanka*, in COALITION POLITICS AND DEMOCRATIC CONSOLIDATION IN ASIA 211 (E.

Proportional presidency has some pros and cons, like all other alternatives.³²⁴ The major advantage of proportional presidency is the fact that it properly responds to the frustration of ethnic groups by allowing their candidates to possibly run the administration in different presidential terms. Knowing their candidates can win elections, voters have little incentive to stay in their ethnic box and elites have little justification to mobilize their ethnic groups.³²⁵ However, this advantage does not equally apply to all ethnic groups; for instance, Hazaras, Uzbeks, and other minorities still have little chance to win elections.³²⁶

One criticism against this system would be the discontinuity of administrations. An incumbent coalition is eventually replaced by an opposition coalition, which may undo all of (or most of) its policies. In addition, a concurrent election may help one administration obtain a majority in the parliament, but not the other. Therefore, political deadlock is always a possibility under this system. A viable solution to this problem is slate-proportional presidency, where each coalition introduces a slate of two presidential candidates rather than a single candidate. The voters first vote for a slate of candidates and then for individual candidates within each slate. This way, although candidates' votes determine the length of their presidencies, both presidents will be from the same coalition. Since both presidents presumably follow the same political agenda, there is no need for the minimum threshold of three years of presidency for the second president. Even the presidential term can be reduced to merely four to five years.

Including two vice presidents in the slate will allow each presidential ticket to represent all four large ethnic groups. Allowing the two vice presidents to remain in the office for a full presidential term, regardless of president alternations, has three positive outcomes. First, they will help with the continuity of policy implementation when the new president comes to

Sridharan ededs., 2012); TERRENCE E. COOK, NESTED POLITICAL COALITIONS: NATIONS, REGIME, PROGRAM, CABINET 166 (2002).

³²³ SHUGART & CAREY, *supra* note 42, at 104.

³²⁴ OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORG. FOR SECURITY AND CO-OPERATION IN EUROPE, GUIDELINES FOR REVIEWING A LEGAL FRAMEWORK FOR ELECTIONS 14 (Jan. 2001), <http://www.osce.org/odihr/elections/13960?download=true>.

³²⁵ T. Clark Durant and Michael Weintraub, *An Institutional Solution for Ethnic Patronage Politics*, JOURNAL OF THEORETICAL POLITICS, 15 (2013) ("insofar as a citizen expects to spend some time 'in' and some time 'out,' then it is easier to come to a time-consistent consensus to create a socially productive scope of office.").

³²⁶ Sven Gunnar Simonsen, *Ethnicising Afghanistan? Inclusion and Exclusion in Post-Bonn Institution Building*, 25 THIRD WORLD QUARTERLY 707, 714 (2006) ("In a deeply divided society it is difficult for someone from a small group to be elected president.").

office. Second, the supporters of vice presidents are likely to cast merit-based votes when their vice-president candidates are members of the slate rather than nominees of individual candidates. Third, the ethnic groups with vice president representatives will be satisfied with the fact that although their representatives in the executive do not have as much power as the presidents, their endurance in office is longer than that of the presidents. This is important because designing a system that includes only two ethnic groups is likely to alienate the two other ethnic groups, who are not likely to approve the system.³²⁷

A somewhat similar experience to slate-proportional presidency can be seen in Mauritius. In this country, one executive term was divided equally between two prime ministers, although through an agreement between the coalition partners rather than through some constitutional provisions.³²⁸ Thanks to this agreement, for the first time in Mauritius, an elite from a minority group—a non-Hindu—was able to become the prime minister.³²⁹ Colombia is another country that followed a similar approach. In 1958, in order to put an end to the civil war, the two dominant parties of Colombia agreed on a consociational form of government.³³⁰ Under this consociational arrangement, they rotated the presidency every four years and split seats in the Congress as well as in other government agencies evenly for over sixteen years.³³¹ Nonetheless, one major difference between these arrangements and the slate-proportional presidency is that the latter is a constitutional design and not a temporary arrangement between rival parties. In effect, the latter is likely to generate incentives for long-lasting coalitions.

³²⁷ In fact, even some strikes have already taken place against the present system of political distribution. In 2014, when the National Unity government was established, the Hazaras were unsatisfied with the distribution of the highest offices of the government. At the time, the president and the Chief Justice were Pashtuns, the Chief Executive was a Tajik, and the Speaker of the Assembly was an Uzbek. As a consequence, thousands of Hazaras stormed the streets and demanded that at least the head of one of the government branches should be a Hazara. See *Iterazhai Qawmi Ba Tarkib Kabina Jadid-e-Afghanistan* [Ethnic Demonstrations Against the Composition of the New Cabinet], BBC PERSIAN (Feb. 16, 2015), http://www.bbc.com/persian/afghanistan/2015/02/150215_193_afghan_power.

³²⁸ Denis Kadima and Roukaya Kasenally, *The Formation, Collapse and Revival of Political Party Coalitions in Mauritius: Ethnic Logic and Calculation at Play*, in *The Politics of Party Coalitions in Africa* 82 (Denis Kadima ed., 2006).

³²⁹ *Id.*

³³⁰ AREND LIJPHART, THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE 29–30 (2008).

³³¹ Scott Mainwaring, *Presidentialism, Multiparty Systems, and Democracy: The Difficult Equation* 7 (Kellogg Institute, Working Paper No. 144, 1990); AREND LIJPHART, THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE 29–30 (2008).

CONCLUSION

This article is the first attempt to study the merits of the runoff system under Article 61 in relation to the formation and consolidation of coalitions in Afghanistan. It comports with most studies that associate the runoff system with the formation of broad-based coalitions.³³² It also holds the somewhat conventional view that given the ethnic distribution in Afghanistan, the runoff clause, with a fifty percent threshold, has been instrumental to the development of cross-ethnic coalitions in all three presidential elections.

This article, however, departs from the conventional wisdom in several important respects. Most importantly, it suggests that the formation of coalitions does not necessarily imply the survival of coalitions. To this effect, it observes that while encouraging the formation of cross-ethnic coalitions, the runoff system has consistently hindered the perpetuation of these coalitions. It reveals that by ensuring a second round, the runoff system turns the first round into an investment juncture for patronage and runoff seeker elites, who would eventually bargain with (or in the case of runoff seekers, challenge) a front-runner in the second round. These candidates have formed their own small and large alliances in the first round and then joined the front-running coalitions in the second round, apparently after some serious patronage bargaining. What this suggests is that under the runoff system no coalition remains intact, neither in structure nor in policy. This process of coalition formation, dissolving, and reconfiguration under the runoff system has been an obstacle to the consolidation of coalitions.

This article timely engages with the recent efforts on reforming the Constitution and electoral laws in Afghanistan. Since the failure of the 2014 presidential election, these efforts escalated in order to put an end to ethnic tensions that have tended to ensue during and after Afghan elections.³³³ However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing only the parliamentary electoral system.³³⁴ By revealing some inherent flaws with the runoff system, this

³³² DUVERGER, *supra* note 40, at 328; Blais, *supra* note 40, at 193–94; Courtney, *supra* note 27, at 13; Rakner, *supra* note 40, at 116.

³³³ The last three elections including the presidential election of 2009 and 2014 as well as the parliamentary election of 2010 instigated ethnic tensions. The runoff of the 2014 presidential election almost brought about a civil war, if it was not for international intervention. *See supra* note 8.

³³⁴ *Supra* note 15.

article suggests that Article 61 of the Constitution needs to be revisited. For this very reason, Part III examined some alternative electoral designs. These designs included qualified runoff, legislative runoff, constituency pooling, an AV system, and proportional presidency. The observation of these institutional designs indicates that they are likely to remedy some of the negative impacts of the current majority runoff system on coalition building and electoral politics. As such, these alternative designs are more likely than the runoff system to encourage the consolidation of cross-ethnic coalitions. In addition, these designs are likely to reduce ethnic tensions in Afghanistan.

