Electoral Choices, Ethnic Accommodations, and the Consolidation of Coalitions: Critiquing the Runoff Clause of the Afghan Constitution

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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

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* 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. 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. Some electoral coalitions have not even lasted long enough to witness elections. Others have dissolved immediately after elections. Notably, the number of coalitions is on the rise, which indicates a trend resembling party fragmentation in Afghanistan. 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.

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.


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.


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

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.

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

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.

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.


and alternating electoral designs.\textsuperscript{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).\textsuperscript{14} The runoff clause attracted very few scholars’ attention.\textsuperscript{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.\textsuperscript{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

\textsuperscript{13} KATZMAN, CONG. RESEARCH SERV., AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE 28 (2015). Later, Abdullah Abdullah’s supporters gathered at the \textit{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.”


\textsuperscript{15} See MOHAMMAD ASHRAF RASULY, TAHIL WA NAOQ QANOON-E-ASASI AFGHANISTAN [A CRITIC OF THE CONSTITUTION OF AFGHANISTAN] 75 (1389) [2010]; MOHAMMAD TAHIR HASHEMI, HUQOQ 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 SULMAH MOTAL’AT HOQQOY 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).

\textsuperscript{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. It includes a runoff clause, which provides that, “if 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.” The electoral framework this clause sets for presidential elections is also known as run-off system, majority-runoff, delayed runoff, contingent runoff, two ballots, second ballot, double-ballot (DB), double-ballot runoff, or two-round system in electoral studies.

18 Id.
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.
26 GIOVANNI SARTORI, PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS 139 (1976).
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.\(^{37}\)

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\(^{32}\) See id.


\(^{34}\) See Mobasher, supra note 3, at 363.

\(^{35}\) See id.

\(^{36}\) *World Factbook: Afghanistan, Central Intelligence Agency*, https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_af (last visited Jan. 8, 2016). This estimation has been used by UN agencies, NATO forces, and many national and international organizations including some working on elections in Afghanistan.

\(^{37}\) 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. 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.

Most studies have associated the runoff system with the formation of broad-based coalitions. Maurice Duverger stated that “in all countries where the second ballot has been working there are more or less clear traces of electoral alliances.” This system became appealing to constitutional designers across the world when it transformed the fragmented party system of France into two political blocs. Indeed, the fourth republic of France adopted a runoff system in order to prevent party-hopping and cabinet instability. While explaining the runoff system in France, Robert Elgie posited that “this system punishes stand-alone parties [and] groups.” 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 LIPJHART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION, 55–61 (1977); see also BENJAMIN REILLY, DEMOCRACY AND DIVERSITY 64 (2006).


41 DUVERGER, supra note 40, at 328.


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.

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. 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.

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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.

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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


\(^{49}\) 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."  

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. Presidential elections, unlike most parliamentary elections, require pre-electoral (proactive) coalition building. 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. 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. 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.

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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.”).

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. Article 60 requires each presidential candidate to introduce two vice presidential candidates prior to election. 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. 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. 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. 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.

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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.  
# Ethnic Composition of Presidential Teams

## The Presidential Election of 2004: Leading Candidates

<table>
<thead>
<tr>
<th>Candidate</th>
<th>1st Vice-President</th>
<th>2nd Vice-President</th>
<th>Affiliations</th>
<th>Total Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hamid Karzai</td>
<td>Ahmad Zia Masoud</td>
<td>Mohammad Karim Khalili</td>
<td>Independent</td>
<td>55.40%</td>
</tr>
<tr>
<td>Mohammad Yunus Qanubi</td>
<td>Taj Mohammad Wardak</td>
<td>Sayyed Hosayn Alemi Balkhi</td>
<td>Coalition</td>
<td>16.30%</td>
</tr>
<tr>
<td>Mohammad Mohaqiq</td>
<td>Nasir Ahmad Ensaif</td>
<td>Abdul Fayaz Mehrayin</td>
<td>Independent</td>
<td>11.70%</td>
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<tr>
<td>Abdul Rashid Dostum</td>
<td>Shafiqa Habibi</td>
<td>Mustafa Kamal Makhdomi</td>
<td>Party</td>
<td>10.00%</td>
</tr>
</tbody>
</table>

## The Presidential Election of 2009: Leading Candidates

<table>
<thead>
<tr>
<th>Candidate</th>
<th>1st Vice-President</th>
<th>2nd Vice-President</th>
<th>Affiliations</th>
<th>Total Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hamid Karzai</td>
<td>Mohammad Qasim Fahim</td>
<td>Mohammad Karim Khalili</td>
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<td>49.67%</td>
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<tr>
<td>Dr. Abdullah Abdullah</td>
<td>Homayon Shah Asef</td>
<td>Churagh Ali Ghurgh</td>
<td>Independent</td>
<td>30.59%</td>
</tr>
<tr>
<td>Ramazan Bashardost</td>
<td>Mohammad Mosa Barekzai</td>
<td>Affifa Marof</td>
<td>Independent</td>
<td>10.46%</td>
</tr>
</tbody>
</table>

## The Presidential Election of 2014: All Candidates

<table>
<thead>
<tr>
<th>Candidate</th>
<th>1st Vice-President</th>
<th>2nd Vice-President</th>
<th>Affiliations</th>
<th>Total Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Abdullah Abdullah</td>
<td>Eng Muhammad Khan</td>
<td>Haji Mohaqeq</td>
<td>Party</td>
<td>45.00%</td>
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<tr>
<td>Ashraf Ghani</td>
<td>Gen Abdul rashid Dostum</td>
<td>Mohammad Sarwar Danish</td>
<td>Independent</td>
<td>31.56%</td>
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<tr>
<td>Abdulrah Rasul Sayaf</td>
<td>Ismail Khan</td>
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<td>7.04%</td>
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<tr>
<td>Qutbuddin Helal</td>
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<td>Independent</td>
<td>2.75%</td>
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<tr>
<td>Gul Agha Sherzai</td>
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<td>Mohammad Hashem Zare</td>
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<td>1.57%</td>
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<tr>
<td>Daud Sultanov</td>
<td>Farid Ahmad Fazili</td>
<td>Ms. Kazima Mohaqeq</td>
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<tr>
<td>Hedayat Amin Arsalan</td>
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<td>Ms. Safia Sedigi</td>
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<td>Abdul Rahim Wardak</td>
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<td>Sayed Hussain Anvari</td>
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<td>Wahidullah Shahrani</td>
<td>Mohammad Noor Akbari</td>
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<td>Withdraw</td>
</tr>
<tr>
<td>Sardar Mo'd Naeem</td>
<td>Taj Mohammad Akbar</td>
<td>Azizullah Poya</td>
<td>Independent</td>
<td>Withdraw</td>
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Ethnic Composition of Presidential Teams

The Presidential Election of 2004: Leading Candidates

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<td>Ethnicity</td>
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<td>Mohammad Karim Khalil</td>
<td>Independent</td>
</tr>
<tr>
<td>Pashtun</td>
<td></td>
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<tr>
<td>Tajik</td>
<td>Hazara</td>
<td></td>
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</tr>
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<tr>
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<td>Hazara</td>
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<tr>
<td>Abdul Rashid Dostum</td>
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<td>Mustafa Kamal Makhdom</td>
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<td>10.00%</td>
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<td>Ethnicity</td>
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<td>Hazara</td>
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<td>Ethnicity</td>
<td>Hamid Karzai</td>
<td>Mohammad Qasim Fahim</td>
<td>Mohammad Karim Khalil</td>
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</tr>
<tr>
<td>Pashtun</td>
<td></td>
<td></td>
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<tr>
<td>Tajik</td>
<td>Hazara</td>
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<tr>
<td>Dr. Abdullah Abdullah</td>
<td>Homayon Shah Asifi</td>
<td>Churagh Ali Ghurgh</td>
<td>Independent</td>
<td>30.59%</td>
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<tr>
<td>Ethnicity</td>
<td>Ramazan Bashardost</td>
<td>Mohammad Mosa Barekzi</td>
<td>Afsha Marof</td>
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<tr>
<td>Hazara</td>
<td>Pashtun</td>
<td>Tajik</td>
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The Presidential Election of 2014: All Candidates

<table>
<thead>
<tr>
<th>Candidate</th>
<th>1st Vice-President</th>
<th>2nd Vice-President</th>
<th>Affiliations</th>
<th>Total Votes</th>
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<tr>
<td>Ethnicity</td>
<td>Dr. Abdullah Abdullah</td>
<td>Eng Mohammad Khan</td>
<td>Haji Mohaqiq</td>
<td>Party</td>
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<tr>
<td>Ethnicity</td>
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<td>Gen Abdulrahad Dostum</td>
<td>Mohammad Sarwar Danesh</td>
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<td>Zalmay Rasoul</td>
<td>Ahmad Zia Masoud</td>
<td>Habiba Sorabi</td>
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<tr>
<td>Ethnicity</td>
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<td>Ismail Khan</td>
<td>Abdul Wahab Erfan</td>
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<td>Enayatullah Enayat</td>
<td>Mohammad Ali Nabizada</td>
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<tr>
<td>Ethnicity</td>
<td>Gul Agha Sheraizai</td>
<td>Sayed Hussain Alemi Balkh Mohammad Hashem Zare</td>
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<tr>
<td>Ethnicity</td>
<td>Daud Sultancoy</td>
<td>Farid Ahmad Fzali</td>
<td>Ms. Kazima Mohaqiq</td>
<td>Independent</td>
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<tr>
<td>Ethnicity</td>
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<td>General Khodaidad</td>
<td>Ms. Safia Sediqi</td>
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<td>Hazara</td>
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<td>Ethnicity</td>
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<td>Shah Abdul Ahad Afzali</td>
<td>Sayed Hassan Anwari</td>
<td>Independent</td>
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<td>Hazara</td>
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<tr>
<td>Ethnicity</td>
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<td>Wahidullah Shahrani</td>
<td>Mohammad Noor Akbari</td>
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<td>Ethnicity</td>
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<td>Pashtun</td>
<td>Tajik</td>
<td>Pashtun</td>
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The runoff system has centripetal effects on both voters and elites. On the voter level, the runoff system encourages them to make a more informed choice in the second round since the voters’ freedom of choice is

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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.”)

restricted to front-running candidates. 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. With the first shot, a voter shoots pretty much in the dark; on the second shot, however, the voter shoots in full daylight. 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. On the elites level, two-round elections create the potential for diverse interests to coalesce behind qualifying candidates in the second round. Eliminated candidates and parties have an opportunity to rally behind one front-runner or the other. 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.

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

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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.
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.\footnote{See id. at 5.} 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.\footnote{See id. at 6.} 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).\footnote{Norris, supra note 20, at 4.}

Nonetheless, in the second round, the votes mostly move away from the extremist to the moderate candidates and coalitions.\footnote{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.} In all abovementioned elections, the moderate candidates were able to harbor the support of the backers of eliminated candidates and eventually win the runoff.\footnote{See LEWIS, supra note 21, at 5–6.} 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.\footnote{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).} For this very reason, the runoff system is known for reducing political extremism.\footnote{Bordignon, supra note 19, at 2; Courtney, supra note 27, at 14.}

To date, no extremist candidate has made it to the second round in Afghan presidential elections. Hamid Karzai, the winner of the 2004\footnote{IEC 2004, supra note 60.} and 2009 elections,\footnote{IEC 2009, supra note 60.} Abdullah Abdullah, the runner up in 2009\footnote{See id.} and a front-runner in the 2014 election,\footnote{IEC 2014, supra note 60.} and Ashraf Ghani, the current president,\footnote{Id.} 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.\footnote{See Mobasher, supra note 3, 375, 378–9.} Abdullah’s tickets also represented three ethnic groups in both the
2009 and 2014 presidential elections. 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. Similarly, Ghani’s presidential ticket represented an alliance of three groups: a Pashtun, an Uzbek, and a Hazara. 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.

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. Many coalitions either dissolve or reformulate during elections; some others split immediately after elections. Most of them are built on the basis of patronage and personal politics while lacking titles, structures, and ideologies. 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. 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.

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87 See id. at 380–81, 402–05.
88 See id.
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.
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

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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.  

One explanation for this puzzle focuses on the first round of elections, analyzing voting behaviors in this round. For instance, Maurice Duverger, Garry Cox, William Riker, and César Martinelli 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. 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. Since there are no (or few) bandwagon voters under the runoff system, more candidates are likely to run. In effect, the runoff system discourages fewer candidates and the fusion of their

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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 Zieliński, 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”, 199 COMP. POL. STUD. 323 (1994); Peter Buisseret, Entry Deterrence Under Run-Off Rules 1 (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.


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


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. However, Afghan presidential elections challenge this theory because the results of these elections have indicated that the tendency for strategic voting is considerably high among voters.

Indeed, all three Afghan presidential elections demonstrated that a runoff system has as much of a bandwagon effect as a plurality system does. 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. In 2009, the three leading candidates won almost ninety-one percent of votes, letting the other twenty-nine candidates share the rest. 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. 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.

<table>
<thead>
<tr>
<th>Elections</th>
<th>No. of Candidates</th>
<th>Leading Candidates’ Average Votes %</th>
<th>Other Candidates’ Average Votes %</th>
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<tr>
<td>2004</td>
<td>18</td>
<td>23.4</td>
<td>0.5</td>
</tr>
<tr>
<td>2009</td>
<td>32</td>
<td>30.2</td>
<td>0.3</td>
</tr>
<tr>
<td>2014</td>
<td>8</td>
<td>29.3</td>
<td>2.4</td>
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</table>

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.
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

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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 Biltert, 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 . . . [Ethnic] 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.
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. Blais and Indridason criticize the literature for the lack of attention to candidates’ electoral strategies, since an electoral system influences not only voters’ behavior but also candidates’ and parties’ behavior. 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. 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. Indeed, in Afghanistan, many candidates run to raise enough votes to increase their political capital for bargaining with runner-ups in the second round. 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 candidates for different reasons, including forcing a second round election. For these opportunistic reasons, this category of candidates has little incentive to pull

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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.
132 See BJLERT, 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.\textsuperscript{134} Indeed, they follow a blackmail strategy in the first round for more beneficial alliance making in the second round.\textsuperscript{135} In that effort, they tend to form their own coalitions and distinguishable constituencies, although their coalitions remain informal, personalistic, and small.\textsuperscript{136}

The third category of candidates that the runoff system incentivizes is the “runoff-seekers.”\textsuperscript{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.\textsuperscript{138} Their strategy is forcing a second round while finishing as a runner up.\textsuperscript{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.\textsuperscript{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.\textsuperscript{141} Indeed, one of the reasons for

\begin{itemize}
\item\textsuperscript{134} They tend to establish themselves as the main figures in their constituencies. See id. at 255; Bol, supra note 97, at 23.
\item\textsuperscript{135} Mainwaring, supra note 52, at 467.
\item\textsuperscript{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.
\item\textsuperscript{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 opportunists in this article.
\item\textsuperscript{138} COX, supra note 54, at 158; SHUGART & CAREY, supra note 42, at 210; Mainwaring, supra note 52, at 467.
\item\textsuperscript{139} See Mainwaring, supra note 52, at 467.
\item\textsuperscript{140} SHUGART & CAREY, supra note 42, at 215–16.
\item\textsuperscript{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. 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.

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. In this formula, M refers to the number of candidates that face off in the second round, and so it is hypothesized that the runoff system should reduce the number of candidates to three parties in the long run. Predictably, this upper bound does not even come close to reflecting the long lists of candidates that ran in the 2004 election (eighteen candidates), the 2009 election (initially forty-four candidates), or the 2014 election (initially eleven candidates) in Afghanistan. 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
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.
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.\textsuperscript{151} In many countries, the average number of runners under the runoff system is over five candidates (coalitions).\textsuperscript{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.\textsuperscript{153} In fact, the runoff system invokes two rounds of coalitions: proactive coalitions and second round coalitions.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{157} In these coalitions the losing alliances regroup with front-running coalitions, which suggests that no coalition remains intact within each presidential election.\textsuperscript{158}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{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.
\item \textsuperscript{152} Wright, supra note 95, at 162.
\item \textsuperscript{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.
\item \textsuperscript{154} Sartori, supra note 63, at 166; Blais, supra note 40, at 194.
\item \textsuperscript{155} See Blais, supra note 40, at 193.
\item \textsuperscript{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—Marshall 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.
\item \textsuperscript{157} Sartori, supra note 63, at 166; Blais, supra note 40, at 194.
\item \textsuperscript{158} Courtney, supra note 27, at 14; Bordignon, supra note 19, at 14; Resnick, supra note 52, at 739.
\end{itemize}
\end{footnotesize}
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.

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\(^{159}\) 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 COOPERATION 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

<table>
<thead>
<tr>
<th>Losing Presidential Teams</th>
<th>Endorsed Candidates in Runoff Elections</th>
<th>Announcements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abdurrah Rasul Sayaf</td>
<td>Abdullah Abdullah</td>
<td>Not Declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>Qutbuddin Helal</td>
<td>Ashraf Ghani</td>
<td>Not declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>Gul Agha Sherzai</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>Hedayat Amin Arsala</td>
<td>Ashraf Ghani</td>
<td>Declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Ashraf Ghani</td>
<td></td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Ashraf Ghani</td>
<td></td>
</tr>
<tr>
<td>Daud Sultanzoy</td>
<td>Ashraf Ghani</td>
<td>Declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>Zalmat Rasoul</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
<tr>
<td>1st Vice-President Candidate</td>
<td>Ashraf Ghani</td>
<td>Declared</td>
</tr>
<tr>
<td>2nd Vice-President Candidate</td>
<td>Abdullah Abdullah</td>
<td>Declared</td>
</tr>
</tbody>
</table>

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, Shahranid, supported Abdullah; somewhat similarly, while


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,


\(^{167}\) 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.


\(^{172}\) 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. However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing only the parliamentary electoral system. 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. 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. 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

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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 Goldner, 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.

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

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

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. For instance, the constitutions of Argentina, Bolivia, and Ecuador 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. By any of these measures, as Table VI indicates, none of the three presidential elections in Afghanistan would have needed a second round

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180 Constitución Política de la República de Costa Rica [Constitution of Costa Rica], art. 139 (Nov. 7, 1949); Constitución de Nicaragua, art. 147 (1) (Jan. 1, 1987).
181 Constitución de la República del Ecuador [Constitution of the Republic of Ecuador], art. 147 (1) (Jan. 1, 1987).
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 Constitución de Arg., Sec. 98 (May 1, 1853).
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. In 2004, he scored a decisive 55.4% with a margin of 39.1% from the second finisher. In 2009, he won 49.7% with a gap of 19.1% from Abdullah. 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. 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.

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

<table>
<thead>
<tr>
<th>Election Year</th>
<th>Leading Candidate</th>
<th>Votes</th>
<th>Vote Diff. From 2nd Finisher</th>
<th>Result</th>
<th>Need for 2nd Round?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>Karzai</td>
<td>55.4%</td>
<td>39.1%</td>
<td>Winner</td>
<td>No</td>
</tr>
<tr>
<td>2009</td>
<td>Karzai</td>
<td>49.7%</td>
<td>19.1%</td>
<td>Winner</td>
<td>No</td>
</tr>
<tr>
<td>2014</td>
<td>Abdullah</td>
<td>45.0%</td>
<td>13.4%</td>
<td>Winner</td>
<td>No</td>
</tr>
</tbody>
</table>

A qualified runoff is a compromise between plurality and majoritarian systems, 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. Second, like a plurality system, it encourages broad coalitions. With a forty percent threshold, small parties and nonviable candidates see a lesser chance of a second round taking place. Therefore they would rather join winning coalitions than to enter the race. The more the candidates and parties have incentives to strategically coordinate, the higher the chances are for consolidation of coalitions. Peter Buisseret,

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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.\textsuperscript{205} Gabriel Negretto\textsuperscript{206} and Fabrice Lehoucq\textsuperscript{207} 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.\textsuperscript{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.\textsuperscript{209} A Condorcet winner is the candidate who can win against each of the other candidates if the election is held one-on-one

\begin{footnotesize}
\begin{enumerate}
\item Buisseret, \textit{supra} note 97, at 2.
\item Lehoucq, \textit{supra} note 79, at 142.
\item IEC 2014, \textit{supra} note 60.
\item Laurent Bouton, \textit{A Theory of Strategic Voting in Runoff Elections}, 103(4) \textit{AM. ECON. REV.} 1248, 1249 (2013).
\end{enumerate}
\end{footnotesize}
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.”).
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.\(^\text{216}\) Drawing support simultaneously from across different regions, which are geographically non-contiguous, is called *constituency pooling*.\(^\text{217}\) 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.\(^\text{218}\) 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.\(^\text{219}\) 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.\(^\text{220}\)

Another variation of constituency pooling is *concurrent pluralities*.\(^\text{221}\) This involves a plurality system, in which a presidential candidate must win pluralities concurrently in several regions of the country.\(^\text{222}\) The concurrent pluralities system is the invention of Nigerian Constitution makers.\(^\text{223}\) 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.\(^\text{224}\) If no candidate meets these requirements, only two candidates from the first round compete in the second round.\(^\text{225}\) Since states are drawn mainly along ethnic lines,\(^\text{226}\) the

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\(^{217}\) 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.


\(^{221}\) See Shugart & Carey, *supra* note 42, at 218.

\(^{222}\) *Id.*


\(^{224}\) *CONSTITUTION OF NIGERIA* (1999), § 133.

\(^{225}\) *Id.* § 134.

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

This vote-pooling\textsuperscript{228} formula works best when ethnic groups are territorially recognizable;\textsuperscript{229} therefore, it is an ideal rule for Afghanistan, which has geographically concentrated ethnic groups.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{232} The next two largest ethnic groups, Hazaras and Uzbeks, are present in fewer than fifteen provinces.\textsuperscript{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.\textsuperscript{234} After the adoption of this rule, however, the candidates in the 2014 presidential election were exclusively Pashtuns and a Tajiks.\textsuperscript{235}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{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.
\item\textsuperscript{228} HOROWITZ, supra note 33, at 395 (using “pooling of votes” to indicate the transfer of votes across ethnic lines).
\item\textsuperscript{229} Bogaards, supra note 217, at 52.
\item\textsuperscript{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.
\item\textsuperscript{231} Election Law 2014, S. 1112, art. 45.
\item\textsuperscript{232} Mobasher, supra note 3, at n.31.
\item\textsuperscript{233} See Mobasher, supra note 3.
\item\textsuperscript{234} IEC 2004, supra note 60.
\item\textsuperscript{235} Salih Doğan, 2014 Afghanistan Presidential Election: An Ethnic Analysis, 3 CAUCASUS INT’L 93, 94 (2014).
\end{itemize}
\end{footnotesize}
3. The Legislative-Runoff

Many scholars argue that one of the disadvantages of a presidential constitution is its susceptibility to political deadlock, which results from the confrontation of the president and the legislature. Lawmakers in some countries have tried to get around this issue by requiring the second round to take place in the legislature, which resembles a key feature of parliamentarism. 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.

Chile before 1973 and Bolivia (1967-2009) were among the few countries that adopted this system in their constitutions.

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. This system encouraged permanent coalitions in Bolivia, as the legislative parties earned due influence in government formation. 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.”

Three broad coalitions were formed in Bolivia as parliamentarians showed political maturity by entering into long-term pacts. Shugart and Carey argue that a purely presidential constitution in Bolivia would not have been capable of holding these coalitions together.

Some scholars referred to the Bolivian political system as a hybrid system.

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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.
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 system\textsuperscript{248} for the reason that the president was elected by the legislature in the second round.\textsuperscript{249}

The parliamentary election of presidents offers some advantages that neither purely presidential nor parliamentary systems can offer.\textsuperscript{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.\textsuperscript{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.\textsuperscript{252} This ensures that the stability of the government is not put at risk, which is the case in fragmented parliamentary systems.\textsuperscript{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.\textsuperscript{254} MPs made a coalition to elect the president, but once the president was elected, the coalition weakened.\textsuperscript{255} Furthermore, some suggested that since after the election the president was not dependent on a parliamentary vote of confidence, presidents were less likely to stay loyal to coalitions.\textsuperscript{256} These

\begin{footnotesize}
\textsuperscript{248} Gamarra, \textit{supra} note 238, at 365.
\textsuperscript{249} \textit{Id.} at 363.
\textsuperscript{250} SHUGART & CAREY, \textit{supra} note 42, at 77.
\textsuperscript{251} \textit{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.
\textsuperscript{252} \textit{Id.} at 77.
\textsuperscript{253} \textit{Id.}
\textsuperscript{254} Gamarra, \textit{supra} note 238, at 399.
\textsuperscript{255} \textit{Id.} at 370.
\textsuperscript{256} SHUGART & CAREY, \textit{supra} note 42, at 83.
\end{footnotesize}
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

<table>
<thead>
<tr>
<th>Possible Coalitions in the Parliament of 2010-2016</th>
<th>Coalition Size by %</th>
<th>Coalition Size by Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pashtun, Uzbek</td>
<td>51.985</td>
<td>Minimum</td>
</tr>
<tr>
<td>Tajik, Hazara, Uzbek</td>
<td>52.4</td>
<td>Minimum</td>
</tr>
<tr>
<td>Pashtun, Hazara</td>
<td>62.42</td>
<td>Minimum</td>
</tr>
<tr>
<td>Pashtun, Tajik</td>
<td>65.72</td>
<td>Minimum</td>
</tr>
<tr>
<td>Pashtun, Hazara, Uzbek</td>
<td>71.83</td>
<td>Oversized</td>
</tr>
<tr>
<td>Pashtun, Tajik, Uzbek</td>
<td>75.13</td>
<td>Oversized</td>
</tr>
<tr>
<td>Pashtun, Tajik Hazara</td>
<td>85.565</td>
<td>Oversized</td>
</tr>
<tr>
<td>Pashtun, Tajik, Hazara, Uzbek</td>
<td>94.975</td>
<td>Grand</td>
</tr>
</tbody>
</table>

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

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.
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). 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, Preferential Voting System, Ranked Choice Voting (RCV), and Instant Runoff Voting (IRV). Under an AV system voters rank candidates in order of their preferences by putting one, two, etc., beside each candidate’s name. It is a majoritarian system since the winning candidate must be able to secure an absolute majority. 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

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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 A. M. J. 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_Party_Coalitions; Lijphart, supra note 38, at 25.


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.


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 See also, Richard Rose, *Elections and Electoral Systems*, in *DEMOCRACY AND ELECTIONS: SYSTEMS AND THEIR POLITICAL CONSEQUENCES*, 32 (Vernon Bogdanor & and David Butler eds., 1983). However, there is no reason this threshold cannot be lowered in an AV system.
This process continues until a candidate wins the majority. 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. Then the votes of the eliminated candidates are distributed to the top two finishers based on the next preferences of the voters. This system is used for presidential elections in Sri Lanka and mayoral elections in London. The Constitution of Sri Lanka restricted the voters’ choices to three candidates, while in London the voters can choose only two candidates.

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. 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. 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 had 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. It is similar to plurality systems in the

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270 See Lewis, supra note 19, at 3; Mulroy, supra note 262, at 342.
271 See Reilly supra note 39, at 16.
272 Id.
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. 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. This difference indeed gives AV an edge over the plurality system.

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. 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. Both systems require voters to have more than one preference, if their first choice does not win. And the AV system, like the runoff system, tends to shift the preferences from extremist candidates to moderate ones. 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. 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].” More importantly, the AV system not only makes the candidates dependent on cross-ethnic votes, it also encourages vote-pooling among voters.

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

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, which surely includes Afghanistan. Among other things, they argue that for some voters, making several preferences and ranking candidates accordingly is not an easy task. Also, the complexity of the tallying process might make the politicized but uneducated voters doubt the results. 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. 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.

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

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292 Reilly, supra note 39.
293 See, 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.
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. 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. 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. This feature of presidential elections becomes particularly problematic when candidates from a single group win the election every time. This leads to frustrations in other ethnic groups, which in turn hinders depoliticization of ethnic identities.

With only three presidential elections passing, the frustrations have already grown among different ethnic groups as Pashtun candidates have consistently won the office. 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.” 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,

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301 See id.
302 See id. at 157.
303 Mainwaring, supra note 52, at 450.
304 See id.
306 For understanding the concept and process of politicization and depoliticization as well as particization and de-particization 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.
is that smaller ethnic groups want to make the highest executive office accessible to their candidates.\(^\text{311}\) 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 \textit{collegial presidentialism},\(^\text{312}\) which is a federal council of seven members where the presidency is rotated annually among its members.\(^\text{313}\) This collegial executive was created to reflect the socio-political heterogeneity of Switzerland at the highest level of government.\(^\text{314}\) A similar system was tried twice in Uruguay but did not work.\(^\text{315}\)

In order to deal with the problem of winner-take-all, here I propose \textit{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 \textit{proportional presidency} since the span of each presidents’ administration must be proportional to the votes s/he receives. In order to have an optimal outcome, this system must have certain characteristics. First, under this system, one presidential term should be at least eight years to allow each administration to have a life span of at least three years. Second, a presidential term should be equal to two 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, \textit{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 \textit{BUNDESVERFASSUNG [BV] [CONSTITUTION]} Apr. 18, 1999, SR 101, art. 174–176 (Switz.).


\(^{315}\) LUPHART, 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.

<table>
<thead>
<tr>
<th>Candidates</th>
<th>Votes</th>
<th>Years in Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Abdullah</td>
<td>45%</td>
<td>4.7 years</td>
</tr>
<tr>
<td>Dr. Ghani</td>
<td>31%</td>
<td>3.3 years</td>
</tr>
</tbody>
</table>

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.\(^{323}\)

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\(^{317}\) LIJPHART, *supra* note 38, at 76.


\(^{320}\) 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. 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. 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.

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 edds., 2012); Terrence E. Cook, Nested Political Coalitions: Nations, Regime, Program, Cabinet 166 (2002).

323 Shugart & Carey, supra note 42, at 104.


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_l93_afghan_power.


\(^{329}\) Id.


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.\textsuperscript{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.\textsuperscript{333} However, the ongoing legal and political discourse on reforming the electoral laws has centered on changing only the parliamentary electoral system.\textsuperscript{334} By revealing some inherent flaws with the runoff system, this

\textsuperscript{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.
\textsuperscript{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.
\textsuperscript{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.