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OP-ED CONTRIBUTOR

## Order in the Courts

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IT'S been a bad year for Afghanistan. Insurgents are gaining ground and killing more coalition soldiers, Afghan officials and civilians than at any time since the fall of the Taliban government. Reconstruction is faltering. A disenchanted population appears to be pulling back the welcome mat for foreign forces.

But a recent turn of events could have a significant positive impact on Afghanistan's future. A few weeks ago the new Parliament approved a fresh slate of Supreme Court justices — a strong group of professionals and reformers that includes several of Afghanistan's pre-eminent legal minds.

This court represents a sea change from the judiciary that has been in place since the collapse of the Taliban. For the first time in its history, Afghanistan may have a real system of checks and balances. But the United States and its partners must seize this opportunity and act quickly to support the new court, and not squander another chance for meaningful reform.

It's the big bang moment of democracy, when the three branches of government all come into being, each with its own powers and limitations. We are witnessing in Afghanistan today what the American founders understood so well: alone, factions and institutions will abuse their power, but in combination they will constrain and balance one another, creating stability amid competition and turmoil.

Afghanistan's Parliament, still struggling to find its feet, has played a critical role in this constitutional drama. Last spring, the body rejected the previous chief justice, Fazel Hadi Shinwari, a fundamentalist firebrand whom President Hamid Karzai had appointed in deference to Islamist demands. Rising to the challenge, Mr. Karzai then nominated Abdul Salam Azimi, a moderate Islamic scholar and the primary drafter of Afghanistan's new democratic constitution. The Parliament approved Mr. Azimi as chief justice, along with a slate of other moderates.

Chief Justice Azimi and his associates have substantial experience and a demonstrated desire to build an effective system that promotes the rule of law. In his swearing-in speech this month, the new chief justice railed against the corruption for which the judicial system is famous.

Overall, the efforts of the Afghan government and the international community to rebuild the judicial system have been meager. Courthouses have been built, laws revised, judges and prosecutors trained. But there has been no grand strategic plan to turn the tattered judiciary into a unified and coherent institution.

What might such a plan consist of?

It should focus on bolstering the Supreme Court's three critical functions and making it a linchpin of stability for Afghanistan.

First, the court must be able to check the power of the other branches and make the government accountable for abuses. An honest arbiter in the contests of power between Parliament and president, citizen and state, and church and state is essential to Afghanistan's development. To play this role, the court needs deep resources and strong political support. And there must be a steep price to pay for defying the judiciary — something the United Nations and NATO countries have to impress upon their Afghan partners.

Second, the Supreme Court must be able to fulfill its central role in deciding questions concerning Islam. This is enormously important in an Islamic society. The new constitution vests authority in the court to determine whether laws are in accordance with the "beliefs and provisions of the sacred religion of Islam." So long as the resurgent Taliban claim that the government is the corrupt puppet of infidels, the Islamic legitimacy of the government and the court must be strong. Moderate Islamic countries like Egypt, Indonesia and Turkey have a special role to play here, providing resources and credibility to the court.

Third, the Supreme Court must be responsible for the entire judiciary, down to the village level. Most Afghans will never encounter the court directly, but rather will interact with the government and legal system at the local level over issues like marriage, property disputes and crime. Providing better access to justice in the provinces — which necessitates difficult decisions about where and how to concentrate support — must be a high priority. It is more important for the judicial system to do well in a few regions than to do poorly everywhere. Qualified legal professionals are also desperately lacking. Potential leaders within the legal community must be chosen for intensive training, mentoring and promotion, and those who are incompetent should be removed.

The new court's leadership has much in its favor. With an infusion of funds and experienced judges, as well as a good relationship with President Karzai, it stands a good chance of success. But it will not be easy.

I have spoken to Chief Justice Azimi and some of the associate justices in recent days. They are fully aware of the immensity of the task before them. And while they are committed to meaningful reform, they stress that the window of opportunity will close quickly.

For Afghanistan, this is a rare chance for redemption. After several years of frail efforts to promote the rule of law, the Afghan people must make sure they capitalize on it.

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