

# Challenging White Beards

## Critical Thinking Curricula in Rule of Law Capacity Building

**Barron Helgoe**

Afghanistan Justice Sector Support Program (JSSP)

Email: [vhlaw@suddenlinkmail.com](mailto:vhlaw@suddenlinkmail.com)

**Lynda Boswell**

Ph.D. candidate with Walden University

Email: [lynwin08@gmail.com](mailto:lynwin08@gmail.com)

**Aimal Murady**

Afghan Professional Manager



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Barron Helgoe, J.D.<sup>i</sup>, Lynda Boswell, M.A.<sup>ii</sup>, Aimal Murady, M.A.<sup>iii</sup>

### **Abstract**

Afghanistan is an emerging democracy that has experienced significant tumult. Through all this tumult, it has retained a common characteristic of polities traditionally based on tribal fealty: respect for elders. Afghanistan, like many countries in the Middle East and Central Asia, is a land of many tribes and within this tribal structure, elders are granted deference. Pashtun Afghan male elders are called *Speena Zheera* – “White Beards”, a term of great respect. Challenging the decision of an elder, even when the elder is wrong, can be seen as disrespectful.

Students in Afghanistan do not question their professors and “Socratic dialogue” is mostly absent. Students receive information from professors; they are not generally taught to question their elder teachers. Because of this dominant pedagogy, students are not imbued with advanced critical thinking skills. Now a constitutional Islamic republic with both a formal and informal justice sector, junior justice officials grow up with the ethic that it is impolite to challenge authority.

We find that the lack of critical thinking inhibits justice sector capacity building and positive reform. The employment of critical thinking elevates the effectiveness and power of junior officials and improves their relationship as an individual justice worker with the State. Respectfully challenging authority advances reform by permitting the more rapid consideration and adoption of improved governance concepts.

We look at Afghanistan as practitioners and posit examples of encouraging critical thinking skills training through Rule of Law capacity-building curricula. One particular example comes from our own program: Afghan staff were initially hesitant to critique incorrectly written reports. Through time, they have learned how to diplomatically “encourage” change. By employing critical thinking, they are more willing to listen gracefully to challenges to their own ideas.

This paper concludes that Rule of Law development programs in eldership-based societies advance reform by incorporating critical thinking lesson plans into curricula.

**Keywords:** *Critical Thinking, Afghanistan, Rule of Law, International Development, Capacity Building*

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### **Background**

Afghanistan is an emerging democracy that has experienced significant tumult over the past half century. Through all this tumult, it has retained a common characteristic of polities traditionally based on tribal fealty: respect for elders. Afghanistan, like many countries in the Middle East and Central Asia, is a land of many tribes and within this tribal structure, elders are granted deference. Pashtun Afghan male elders are called *Speena Zheera* – “White Beards”, a term of great respect. Challenging the decision of an Afghan elder, even when the elder is wrong, can be seen as disrespectful.

Afghanistan tribes include Hazara, Nuristani, Pashaei, Pashtun, Tajik, and Uzbek, and many others. Multiple languages are spoken within its border. Intra and inter-tribal conflicts have been traditionally resolved by tribal elders through an informal justice system of Shuras and Jirgas. Disputes were settled by the agreements reached by elders, often with group rights dominating the particular rights of the aggrieved and accused.

The Islamic Republic of Afghanistan, a 21<sup>st</sup> century constitutional republic, has enacted a formal system of criminal justice that includes a multi-tiered court system. The criminal courts are staffed with prosecutors, and trial and appellate judges. The accused have a right to defense counsel and appeals. Formal sector trials blend elements of the civil law and common law. This paper addresses the formal sector.

Those unfamiliar with the Afghan constitution and laws would find them more comprehensive and protective of human rights than originally thought. For example, laws that promote drug treatment for addicts, alternatives to detention for juveniles, and protections for women against domestic violence already exist. It is in the implementation of those laws that the Afghan justice sector finds its most significant challenges. Lack of facilities, trained staff and public awareness create obstacles to the delivery of meaningful and transparent justice services. Against this summary backdrop, international aid has been implemented.

The international community, in cooperation with the Afghan Government, has funded a wide variety of Rule of Law development projects to support the formal and informal Afghan justice sectors. The purpose of this support has been multifold, but generally revolves around several impact goals: 1) Afghanistan's criminal justice institutions and actors are fully capable of fulfilling their mandates and sustaining their own operations without reliance on the international community; 2) All people, including women, juveniles, and vulnerable groups, are treated fairly and appropriately by both Afghan justice actors and institutions nationwide; 3) Afghan justice actors and institutions are, and are perceived as being fair, honest, and transparent.

### **The Importance of Critical Thinking**

Critical thinking is defined as “the objective analysis and evaluation of an issue in order to form a judgment.”<sup>iv</sup> Wisdom may accrete on one with age, but along with this accretion comes a rigidity in thought. Regardless of the society, opinions of elders on matters of popular culture are routinely ignored by young adults. However, when it comes to matters of more import, judicial decisions and matters of State, elders are ones who are elevated to formal decision-making positions. Unfortunately, their decisions are not infrequently wrong. How best then to ensure a successful challenge to those decisions by junior justice officials in a society that concomitantly teaches submission to such elders?

From law schools to police academies, judicial *Stage* courses to advanced continuing legal education courses, international Rule of Law programs have sought to instill the awareness of the law, lawful practices and ethical conduct by Afghan justice actors. Each of these internationally supported programs has received students who have been raised with a healthy respect for the decisions of elders. Respect for elders is certainly a valuable civic good. Societies that do not respect elders suffer from intergenerational alienation, the loss of family cohesion and support, and lose access to the accumulated wisdom of the senior members of society. At the same time, eldership-based societies, particularly those rapidly developing, may be inhibited by an unwillingness to question assumed authority. New ideas languish, reforms are stymied, and thoughtful approaches to improving society--including improving the delivery of justice sector services--do not flourish. To encourage such useful thoughts, young justice sector actors must become familiar with critical thinking.

Critical thinking and the reasoned analysis that flows from such thinking is the best vehicle for convincing an elder of the value of a new approach. Critical thinking is empowering. The force of logic emboldens junior justice officials and motivates their courage to challenge the thinking of a respected elder. Good counsel is valued by all people and, in eldership-based societies, the ability of junior justice officials to advocate properly for a legal or reform position provides an opportunity for the elder decision maker to reconsider previously held positions.

### **Teaching Critical Thinking in Practice**

The largest rule of law program supported by the international community included critical thinking curricula in its lesson plans for Afghan justice officials.<sup>v</sup> The program included specific critical thinking skills lesson plans for that cover several days of an eight-week advanced continuing legal education course. In addition, topical lesson plans included participatory exercises that require critical thinking to solve problems. Critical thinking

curricula for program mentors included instruction on effective and respectful methods for broaching new ideas with senior officials.

The best example of the employment of critical thinking skills is the application of evidence to the statutory elements of a crime. Course participants were given fact scenarios and asked to determine if the facts constitute a prosecutable offense. Facts were changed to allow the students to think carefully through the issue and rules, allowing them to compare and contrast the facts and elements to arrive at a logical conclusion.

Care was taken to educate the students on the law, and the concept of law, as distinct from morality. Often students were happy to conclude that a perpetrator did “something wrong,” but were compelled, by logic, to conclude that the wrong committed was not illegal. The ability to make the distinction between law and morality has always been an essential quality of “thinking like a lawyer.” Law students worldwide graduate with these skills, but it is particularly important that justice actors in an eldership-based society like Afghanistan do so. Imparting these thinking skills to young criminal detectives, prosecutors and defense attorneys, as well as judges, was an important goal of the program. Because of these skills, young justice officials were prepared to advocate for their clients in court.

An extensive qualitative study by the program determined, *inter alia*, that after exposure to training, as well as mentoring: 1) criminal detectives increased their application of critical thinking to obtain proper evidence, 2) prosecutors increased their application of critical thinking in preparation and presentation of cases; 3) defense attorneys increased their use of critical thinking in advocating for their clients, and 4) judges increased their substantiation of decisions based on the evidence presented by counsel.<sup>vi</sup>

Other US-supported Rule of Law programs stress the importance of critical thinking. The Phillip C. Jessup International Law Moot Court Competition (Jessup) has been held in Afghanistan for several years. Jessup is a mock International Court of Justice competition in which students from different law schools are provided a fictional dispute to argue in person. The Afghan winner advances to compete against other national representatives. The evidence of proper and articulate analysis by Jessup oralists is an important component for competitive success.<sup>vii</sup>

In addition to training justice actors, the main Rule of Law program supported by the international community sought to instill critical thinking skills in program staff. Internal management courses emphasized the value of critical thinking in approaching and solving programmatic challenges. Afghan staff were initially hesitant to critique incorrectly written reports or opinions. Over time, they learned through classes and mentoring how to diplomatically “encourage” change. By employing critical thinking, they were more willing to listen gracefully to challenges to their own ideas. Improved management skills among program staff allowed for the smooth transition of program management responsibilities from international staff to local national staff. Teaching critical thinking was instrumental in reducing the international footprint and cost of the program, thereby increasing its sustainability.

A related area of management training included educating program staff about risks of the “Abilene Paradox”<sup>viii</sup>: whereby a group collectively decide on a course of action that is contrary to the preference of many, if not all, of the individuals in a group. Quiet acquiescence to an initial idea, however ill considered, is a real risk in group dynamics.

Program staff were educated about the need to speak up when they disagree. Critical analysis of proposed ideas provides the dissenting group member a credible foundation for challenging the proposal.<sup>ix</sup>

### **Observations: Interview Series One**

In October and November 2015, informal focus group interviews were conducted that addressed the interviewees' knowledge and application of critical thinking in their prospective Afghan Rule of Law ministries. The findings are based on focus groups that were conducted with participation of different junior and senior officials from the Attorney General's Office (AGO), Ministry of Justice (MOJ), Ministry of Women's Affairs (MOWA), and Supreme Court, during one-and-half-hour discussions. Focus groups explored participant's experiences with the critical thinking concept and the ways in which they were applying or not applying it at the workplace. In total, four focus groups were conducted across the AGO, MOJ, MOWA, and Supreme Court with officials from Policy and Planning and Legal Aid Directorates including directors, managers and officers.

The focus group was conducted by a team consisting of a moderator and an assistant moderator. The moderator facilitated the discussion while the assistant took notes. The team compiled and synthesized the collected data to identify primary themes.

During the first two focus groups, MOJ and MOWA, the following questions were asked:

1. What is critical thinking? Why it is important?
2. How have you applied it at your work? (Please provide examples)
3. How do you encourage your staff to bring their new ideas to your attention?
4. What is an example of how you see others at work applying critical thinking?
5. Tell us about how you best communicate your suggestions to senior officials. To junior officials. What has been the best approach?
6. Which groups of professionals and staff in your office/ministry would most benefit from a critical thinking course? Do you have any suggestions on how to make the course effective?

Qualitative data analysis revealed four overarching themes across these two focus groups. Themes addressed the demand for critical thinking training in rule of law capacity building areas.

*Theme #1: Knowledge and understanding of critical thinking concept:* Across the focus groups, participants reported low levels of understanding of the concept of critical thinking. The definition and examples provided of critical thinking were too general; it seemed to be a new concept for them. Participants discussed critical thinking as a skill used at higher organizational levels, rather than a personal skill. Most respondents could not identify a real case example of the use of critical thinking skills at their workplace.

*Theme #2: Applying critical thinking skills at workplace:* Lack of applying critical thinking skills at the workplace emerged as a prominent theme conducted with junior and senior officials. In two focus groups, participants discussed a variety of approaches toward applying critical thinking at the workplace, but the examples they brought did not reflect those

approaches. Except for a few participants, the examples of critical thinking were not related to the question or even related to the cases they were explaining.

*Theme 3#: Encouraging staff to advance a new idea at the workplace:* Respondents discussed a number of situations in which they took part in the decision-making process or accepted a different opinion with respect; experiences which built trust among senior and junior officials. However, many felt senior officials did not listen or ended up making decisions different from those recommended by junior officials. However, several participants stated they believed that if they expressed their ideas consistently, or passionately, seniors would eventually react not only neutrally or indifferently, but also negatively.

*Theme #4: Communicating suggestions between junior and senior officials:* Across the focus groups, respondents reported a number of negative experiences with communicating suggestions; they felt stereotyped, disrespected, or dismissed by seniors. Many respondents reported similar experiences in different levels of hierarchy. Some noted that they were unable to communicate with higher levels of the leadership and given this, they were not surprised by their negative experiences. In addition to reports of feeling stereotyped and disrespected, respondents discussed a range of experiences in which they were neglected, even when they reported an accountability failure. In addition, their expressions of distress were misunderstood, they were not listened to, or they felt invisible to seniors.

The communication style between juniors and seniors was one way, and this stems from conventional and traditional administrative beliefs/rules: within the government all orders, commands and instructions were perceived as being issued from the top down. Performance and reporting, not new thinking were the key functions and responsibility of the lower level staff within the structure. "According to the rules, orders and instructions come from the top down; within the governmental bodies, the lower level juniors should follow the instructions, perform and report the tasks," one of the senior participants said. This top-down management style leads to misunderstanding and misinterpretation of the rules by some senior officials. In short, a culture of top-down decision making, with attendant indoctrination of junior staff, presents a key challenge to applying the critical thinking skills in the workplace.

### **Observations: Interview Series Two**

After the experiences of the initial two focus groups, the words "critical thinking" were modified to "unbiased view" as those words were more understood and translatable in Dari. With that, the questions asked from the Supreme Court and AGO focus groups were:

1. What is an unbiased view? Why is it important?
2. How have you applied it at your work? (Please provide examples)
3. How do you encourage your staff to bring their new ideas to your attention?
4. What is an example of how you see others at work applying unbiased view?
5. Tell us about how you best communicate your suggestions to senior officials. To junior officials. What has been the best approach?
6. Which groups of professionals and staff in your office/ministry would most benefit from an unbiased view course? Do you have any suggestions on how to make the course effective?

Qualitative data analysis revealed three overarching themes across two additional focus groups. Themes address demand for “unbiased view” training in rule of law capacity building areas.

*Theme #1: Knowledge and understanding of unbiased view concept:* The knowledge levels of the participants of the AGO focus group on this topic were poor. They misunderstood the terms as relating to independent performance rather than decision-making skills. The majority of the participants believed that performance was the sole catalyst for administrative improvement. Some respondents said that independent thinking, an important component of effective ministerial administration, had been ignored.

Others noted that use of an unbiased view could play a role in improving ministerial transparency and accountability.

On the other hand, the Supreme Court focus group participants seemed to grasp the concept of an unbiased view; however, they related to the use of the unbiased view within the judicial and administrative ethics context, particularly by senior officials. An example of unhelpful outside influence was remarked upon. In a previous case, a court official had been influenced by some members of Parliament.

*Theme #2: Applying unbiased view skills in the workplace:* Respondents stated they expressed an unbiased view at the workplace in both writing and conversations. One respondent applied an unbiased view when writing a letter to the senior or junior staff. Some claimed that most of them were observing the use of unbiased views at the workplace. One participant was a young prosecutor with three years of experience and a master’s degree. He said he was working as a senior officer position for three years and applied for directorate-level position, but was never promoted. Some of the current directors with only bachelor’s degrees received the position. The official felt there was not equal opportunity for young AGO professionals and felt disempowered to make any changes. The focus group was his first opportunity to discuss this issue.

Senior respondents claimed they were applying the unbiased view at the workplace; junior officials expressed a different opinion. However, the senior officials only spoke in general terms about such use.

Low level of education was perceived by junior officials as a dominant reason unbiased views were ignored in the workplace. Less educated senior staff were seen as empowered to make routine decisions. Level of education was seen by junior officials as inversely related to the level of decision-making. Participants noted that another impediment in the development of an unbiased view at the workplace is the broad misuse of personal and political influence over written or unwritten rules and workplace customs. “We are under pressure from the top and senior officials through small sticky notes (*Proza* in Dari; Post-It Notes) to fulfill the request and do it immediately while ignoring the law and procedures.” Juniors were not able to criticize or ignore *Proza* from senior officials. Ministerial administration by *fiat*, as opposed to invited dialogue, is seen as the result, which impedes reform.

*Theme 3#: Encouraging staff to bring new ideas within the workplace; communicating suggestions between junior and senior officials:* When the focus group discussed ways to encourage staff to bring new ideas at the workplace, and communicate suggestions between



junior and senior officials, focus group participants relayed that no avenue existed for this to happen. Junior staff participating in the focus group expressed fear about corresponding in this manner with senior staff. They felt it would insult the senior staff. However, a young female but senior official stated that she had brought some new initiatives at her office. She wrote appreciation letters to junior staff and encouraged them to offer new ideas and suggestions. After that initiative, the senior official noted, communication in the office improved.

In terms of the Supreme Court, the participants expressed that *Sharia* and Law were the main factors in decision-making. In addition, each judge may independently make a decision on a judicial panel. Although the senior officials expressed that communications between junior and senior officials were friendly, this observation did not match the perceptions of junior officials. A positive outcome of the focus groups is that participants did express the need for capacity building in the area of critical thinking, or, unbiased views.

## **Conclusion**

Critical thinking is a key element of justice sector reform in the Middle East and Afghanistan. Focus groups show that there is a minimal level of understanding of critical thinking in justice sector ministries in Afghanistan, but little effective use. Capacity is low. Justice sector actors must first be taught what critical thinking is and then be given the tools to utilize this new mindset in a culturally acceptable way. Class curricula, follow-on mentoring and on the job training can all be used to advance the penetration of critical thinking “language” into justice sector ministries. Improving the use of critical thinking skills by justice sector officials will lead to the sharing of reform ideas from the bottom up and contribute to improving ministerial transparency and accountability. Critical thinking will improve the delivery of justice services, result in holistic and rational decisions, and help ensure Rule of Law strategies are translated into action.

Countries in the Middle East and Central Asia have predominantly young populations. Rule of Law development programs in these eldership-based societies are presented a unique challenge. The content of program curricula, of course, must be relevant and accessible. In addition to preparing subject matter content that is tied to the laws of the country, curricula developers must be mindful of the change dynamics present in the society. New ideas, and the change they represent, too often are met with defiance. Curricula must empower young justice officials who serve under respected elders with the skills to enact change. Critical thinking skills provide that power. Rule of Law development programs in eldership-based societies advance reform by incorporating critical thinking lesson plans into curricula.

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<sup>i</sup> Chief of Team, Afghanistan Justice Sector Support Program (JSSP).

<sup>ii</sup> Former Monitoring and Evaluation Section Lead Mentor, JSSP [Current Ph.D. candidate with Walden University]

<sup>iii</sup> Afghan Professional Manager, JSSP

<sup>iv</sup> [http://www.oxforddictionaries.com/us/definition/american\\_english/critical-thinking](http://www.oxforddictionaries.com/us/definition/american_english/critical-thinking)

<sup>v</sup> The United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL) funds the Afghanistan Justice Sector Support Program. JSSP is a multi-pronged effort to develop and strengthen the capacity of the Afghan criminal justice sector institutions and justice professionals. JSSP provides capacity building, technical

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advice and direct assistance primarily to the Attorney General's Office, Ministry of Justice, Ministry of Women's Affairs and the Supreme Court. JSSP has been implemented by PAE, an international mission support services provider, since the program's inception in 2005.

<sup>vi</sup> *Passim*, SEVEN YEARS IMPLEMENTING RULE OF LAW IN AFGHANISTAN, a qualitative study of the Justice Sector Support Program (2013), a PAE program submission to INL.

<sup>vii</sup> See generally, <https://www.ilsa.org/jessuphome/2014-08-15-09-28-47/judging>

<sup>viii</sup> <http://www.rmastudies.org.nz/documents/AbileneParadoxJerryHarvey.pdf>

<sup>ix</sup> See also, Wilkie, D. (2007). DEVELOPING OPPORTUNITY IN THE MIDDLE EAST. *International Educator*, 16(2), 32-39; <http://search.proquest.com/docview/200699357>. "While there is a new appreciation for the need to teach critical thinking and communication skills, programs that cultivate research skills, transparency, and individualized and creative approaches to problem-solving are 'still viewed with considerable suspicion, especially by national governments.' said Gordon Brent Ingram, who is associate dean for environmental projects at George Mason University." *Id.* at 32. Burke, L. (2014). TWENTY-FIRST CENTURY LEARNING FROM A THIRD CENTURY BC PERSPECTIVE, *The International Schools Journal*, 33(2), 47-57; <http://search.proquest.com/docview/1523933323>. And compare, Baytiyeh, H. & Naja, M., (2014) CAN EDUCATION REDUCE MIDDLE EASTERN FATALISTIC ATTITUDE REGARDING EARTHQUAKE DISASTERS? *Disaster Prevention and Management*, Vol. 23 No. 4, pp. 343-355. "The paper calls for the integration of critical thinking along with disaster risk education throughout the schools' system to reduce the dominating culture of fatalism and to facilitate the implementation of disaster risk reduction strategies in the Middle Eastern communities." *Id.* at 343.

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