



Historical Relationship between State and Non-State Judicial Sectors in Afghanistan

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In the ideal classical Islamic system, the most important function of a ruler is that of lawgiver, to uphold justice through enforcing the Shari'a, a code of law ostensibly based on the Qur'an and the practices and sayings of the Prophet Mohammad. In reality, however, almost from the start the local customs of inhabitants of Muslim lands were either incorporated into the Shari'a or in many instances coexisted with the formal justice mechanisms represented by the Shari'a. In time as Muslims polities became more diverse, positive or secular law (*qanun*) also took its place alongside the Shari'a and customary laws. With the advent of modern Islamic states, central authorities have tried either to minimize the role of the informal justice mechanisms or to bring them under some degree of governmental control. In most cases where the central state has remained weak or where state structures have been weakened by political events, informal justice systems have filled the void created by the absence of state-sponsored justice mechanisms.

In Afghanistan, the initial efforts to codify the judicial system date back to the last two decades of the nineteenth century. During this time, the central authority attempted to reign in the informal justice systems and incorporate them into the nascent formal legal structure.¹ The intent was to dissolve eventually the dependence on informal, uncoded legal practices and replace them with a single, centralized, state-controlled judicial system. From this point forward, each successive government recognized that it could not ignore the informal justice system. This paper will examine how some rulers in Afghanistan have handled the informal justice system during their attempts to centralize their authority and will apply lessons learned to current discussions.

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Any attempt to review the historical interaction between state and non-state judicial sectors in Afghan society has to begin with an understanding of the historiographical heritage of the evolution of modern Afghanistan.

When examining the historical relationship between state and non-state justice sectors in Afghan society, one must take into account the presence of the statebuilding myth, which presumes that Afghanistan sprang into being as a fully functioning state with all of its state structures in place in 1747. The myth masks the actual process. The formation of the Afghan state, including the justice system, evolved over time. It is also important to consider the tribal structure of country at the time, especially the supremacy of one tribal confederation – i.e. the Pashtuns – and the binding of the Afghan national identity with Islam.

The process of building a state structure in Afghanistan began in the 1830s by Amir Dost Mohammad Khan (r. 1826-39, 1842-63)² and continued by his son and successor, Amir Shayr Ali (r. 1869-79). However, the nascent state structure took a near fatal blow during the 1879-80 war with British India and ensuing civil wars. When the dust had settled, a new ruler of Afghanistan, Amir 'Abd al-Rahman Khan (r. 1880-1901), had surfaced. Through an alliance with the British, this new amir secured his domain from outside threats. He then began to centralize his power to create a functioning state. One sector he paid particular attention to was the legal system. By bringing law and order through a centralized, regulated legal system, backed by brutal force, he hoped to gain control over the territory and to legitimize his rule.

'Abd al-Rahman inherited a legal system which had undergone recent reform. Shayr 'Ali had attempted to make the judicial system more centralized and accountable under a uniform legal code. His efforts were only partly successful because he could not control the 'ulama, especially those outside the large cities. According to one source, prior to the reign of 'Abd al-

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Rahman, the central government rarely interfered in the internal affairs of local autonomous communities, where "elders, advised by councils, acted as a sort of magistrate in settling disputes in accordance with the customary laws. Civil suits were settled by self-appointed religious leaders with the SHARI'A [*sic.*], in cities by state-appointed judges, and in rural areas by self-appointed religious leaders."³

No detailed study of the judicial system under Shayr 'Ali is available to be used as a comparison to the changes introduced to this system by 'Abd al-Rahman. Lists of publications in the reign of Shayr 'Ali do not include instruction manuals or any other texts dealing with the judicial system of the state. It is generally accepted that the country lacked a centralized and systematized judicial system.⁴

'Abd al-Rahman's understanding of his position as the head of an Islamic community was similar to the traditional Islamicate ideals of society, that such a community "exists to bear witness to God amid the darkness of this world, and the function of its government is essentially to act as the executive of the Law."⁵ The administration of the law by the government also meant that the amir could assume, directly or indirectly, the function of the judiciary and interpret the laws, as he wanted. Sultan Mohammad Khan, in his biography of 'Abd al-Rahman, relates a dream that the amir had before leaving Russian Turkistan for Afghanistan. In this metaphorical dream, the then Afghan exiled prince is brought before Prophet Mohammad and his companions and is asked what he would do if he is made king. 'Abd al-Rahman replies, "I will do justice and break the idols and place Kalima [the Muslim *shahada* (testimony) to God's unity] instead." Upon giving this answer, continues the biography, he received approval and blessing.⁶

The biographer of the amir in another place has written that 'Abd al-Rahman not only could interpret Islamic law but also made his own laws where the shari'a did not provide

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conclusive commands.⁷ This depiction is not so remote from the actual adjudication of cases that were settled by the Afghan courts during the reign of the amir, nor is it contrary to the practice of law throughout Islamic history. As N. J. Coulson argues, from the eleventh century onwards, the Sunni schools of Islamic jurisprudence (*fiqh*) accepted two prerequisites for the holder of the office of caliph. One was extreme piety; the other was possession of the faculty to understand and determine the divine law. Once these conditions were met, Coulson writes, the ruler "had the power to take such steps as he saw fit to implement and supplement the principles established by the religious law."⁸ Joseph Schacht states that according to the doctrine adopted at the beginning of the 'Abbasid rule, the caliph, though accepted as having absolute command of the community, "had not the right to legislate but only to make administrative regulations within the limits laid down by the sacred Law."⁹ However, Schacht also points out that Muslim rulers often enacted new laws under the guise of administrative regulations. Instead of calling them legislation, "they maintained the fiction that their regulations served only to apply, to supplement, and to enforce the *shari'a*, and were well within the limits of their political authority."¹⁰ With the assumption of this discretionary power, which came to be known as *siyasa* (discipline or infliction), the sovereign theoretically sought to complete the scope of the Shari'a and in practice began to "regulate by virtually independent legislation matter of police, taxation, and criminal justice, all of which escaped the control of the *kadi* in early 'Abbasid times."¹¹ The term *siyasat* in the evolution of the Islamic state came to be equated with "the exercise of political authority."¹² In 'Abd al-Rahman's publications, the term *siyasa* is used in the same manner as it was by the 'Abbasid caliphs.

The crux of the amir's efforts was to establish a system of administering justice based on the Shari'a to serve as the law for all inhabitants of Afghanistan. As stated above, until the reign

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of 'Abd al-Rahman, Afghanistan lacked a cohesive, centralized government (*hukumat*). Using classical Islamic notions of dispensation of justice and obedience to the ruler, 'Abd al-Rahman brought order to the loosely governed country, many areas of which the amir referred to as *yaghistan*, the "land of the unruly."¹³ I argue in my dissertation that he created a state through the codification of the court system and its functionaries and linked the legitimacy of his rule to clearly understood Islamic notions of justice and governance. Justice and good governance then were effected through a visible and accessible system of courts or, as in the cases of the *sandug-e 'dalat* – "boxes of justice" – mechanisms for local remedies for injustice.¹⁴ 'Abd al-Rahman stressed that the *farmans* (royal decrees) he issued reflected divine commands. Therefore, deviation from his farmans was to be regarded as tantamount to disobedience to the divine rules. Early in the amir's reign, whenever the excessive repression of the amir caused concern among the leading 'ulama, who still wielded considerable influence over public opinion, 'Abd al-Rahman would justify his actions as necessary steps in propagating the rule of the Shari'a, as if as to remind the 'ulama of his fundamental requirement to uphold the Shari'a and their primary duty to support him, the upholder of the Shari'a.

Using sources published by the Afghan amir and court registers from Konar, Ashraf Ghani Ahmadzai highlights 'Abd al-Rahman's emphasis on Islamization of the courts and, through them, of the entire bureaucratic system of the country. This, he argues, introduced a kind of understanding of the religion "that had very little in common with what passed as Islam before it, and [this] served as justification for the centralizing policies of the Amir."¹⁵ Hasan Kakar, concurring with Ahmadzai's point, adds that the "overall effects of these laws were that for the first time the inhabitants of Afghanistan began to learn how to obey a sole monarch and a uniform set of laws."¹⁶

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One challenge to this process was the existence of informal structures of justice in Afghanistan. The prevalence of informal customary and tribal justice mechanisms was not peculiar to Afghanistan. Generally speaking, in the Muslim world, while the ideal theory of the Shari'a was closely adhered to in the field of personal law, informal mechanisms dictated penal and administrative law. Going back to the birth of Islam in Arabia in seventh century, Prophet Mohammad united Arab tribes in a single polity or community (*umma*) under a "common ideology, centralized authority, and law."¹⁷ However according to John Esposito, this unity should not be overestimated since the "old tribal system of loyalties and values was not simply replaced but rather reformed and modified, Islamized."¹⁸

Ahmadzai maintains that for the first time in the history of the Afghan state, under 'Abd al-Rahman the Shari'a became the supreme law of the land and the courts replaced all other local means of settling disputes. The control of the legal system formed the basis for the amir's policies of centralization.¹⁹ A year before 'Abd al-Rahman's death in 1901, his biographer published a work on the laws of Afghanistan, painting an ideal situation, perhaps reflective of the amir's ultimate hopes. He stated the following:

The law of Afghanistan in the present day [1900] may be easily placed under three headings; (1) those of Islam; (2) those of the Amir, which are based upon Islamic laws, the opinions of the people, and the Amir's own personal views and ideas; (3) Customary laws of the various tribes. In all criminal and political cases, practically the chief part of the law has been made by the Amir, and so in cases as to the Government revenue. But the rest, Islamic law is the general rule. Thus very little is left to custom.²⁰

While 'Abd al-Rahman forcefully tried to institute a state-sponsored and controlled Shari'a-based legal system to replace all other mechanisms of dispute solving, he in practice could not eliminate all the non-state informal mechanisms. As Ghani Ahmadzai states, while

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most of the population of Afghanistan adhered to the religion of Islam, for most of the Pashtun tribal confederations living in the country, the Shari'a did not serve "as its judicial basis and no religious tradition enforced allegiance to monarchs."²¹ Throughout his reign, the amir struggled to bring these practices under the control, or at least supervision, of the central authority. For example, in a farman from 1889 addressed to Shirindel Khan, his hakim (governor) in eastern Afghanistan, the amir reprimanded Shirindel Khan for the failure of the courts in Katawaz to adhere to the Shari'a in its legal proceedings. The amir noted that in the previous year, twelve cases of murder had occurred in Katawaz and not one perpetrator was brought before the court. Also, according to information provided by the local khans, four people who were accused of committing adultery were killed, and the culprits in other crimes escaped. 'Abd al-Rahman stressed that the accused and plaintiff in every case should come before a formal court, and if a murder suspect evades judgment by fleeing, the *diya* (blood money) has to be collected from the felon's tribe. The amir, expressing his frustration on the lack of progress in his policy of creating a uniform legal system based on the Shari'a, writes: "Not one article of the Shari'a is progressing in Katawaz and they [the inhabitants of Katawaz district] are fearless people on whom the hakim cannot impose discipline. They find Shari'a rulings unpleasant and propagate their Afghan [i.e., Pashtun] customs." The amir cites the unruly attitude of the inhabitants and the corruption and ineffectiveness of government officials as reasons for the failure of the Shari'a vis-à-vis Pashtun tribal customs.²²

In certain instances, 'Abd al-Rahman allowed informal justice practices to continue; however, he subsumed them to his authority by regulating them or by bringing the state as party to the process with the end goal of dissolving these systems of customary law. For example, in the area of commercial disputes, 'Abd al-Rahman relied not on the Shari'a, but instead instituted

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a commercial court or tribunal based in Kabul in 1893 called panchat court (*makhma-ye panchat*) and appointed four Muslim and three Hindu magistrates.²³ The term *panchayat/panchaayat* is Hindi in origins and refers to a council of arbiters constituted of five or more village elders who would rule on civic issues in the community. From available sources, the conclusion may be drawn that the amir wanted the panchat court to be a tribunal with international members, namely Indians and occasionally British, with the capacity to settle disputes between Afghan merchants and foreign states or when foreign traders had commercial problems with the Afghan government.²⁴ While officially recognizing an informal mechanism, 'Abd al-Rahman kept the tribunal, the origins of which were Indian, under the government control by appointing the arbiters to the panchat court.

There were also instances in which 'Abd al-Rahman did not immediately dissolve the informal justice mechanisms but evaluated the value of the practice before eliminating it. One such case was the imposition of the *chaharyaka* tax.²⁵ As evident from 'Abd al-Rahman's farmans, the custom prevailing in the Khost region prior to 'Abd al-Rahman's reforms was the following: when the government restored stolen property to its rightful owner, the government was entitled to collect a fee of twenty five percent of the value of the property from the owner, the *chaharyaka* or "one-fourth."²⁶ This levy was acted as a finder's fee, sanctioned by the unwritten customary law of the region. (Whether the principle of the *chaharyaka* levy was extended to private individuals who restored property is not clear from the documents available.) At first, the amir allowed for the *chaharyaka* levy; however, he altered it to reflect his sense of justice. In a series of farmans to Shirindil Khan, the amir first instructed his hakim to collect the levy from the thieves rather than the owner of the stolen property, adding if the thief is not found, then the fine should be collected from the thief's tribe or any tribe that might have given refuge

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to the thief.²⁷ Eventually, the amir equated the collection of *chaharyaka* with an undesirable innovation (*bid'a*) and decreed that it no longer should be applicable in Afghanistan.²⁸

Amir Habib-Allah (r. 1901-19), 'Abd al-Rahman's son and successor, continued the Islamization and centralization of Afghanistan's judicial system by publishing more extensive and detailed law manuals. However, he did not maintain as draconian a hold on the people as had his father. During this time, religious and tribal leaders began reasserting their roles in arbitration and informal justice practices. Traditionally in informal dispute solving in Afghanistan, the arbitration could only rely on customary laws "as interpreted by the elders and/or on Shari'a as expounded by the mullahs."²⁹ According to Leon Poullada, this system "[gave] the mullah another lever of power in the tribe."³⁰ Thus, it could be argued that while those within the religious establishment under Habib-Allah welcomed the amir's tendency to increase the prevalence of the Shari'a, they granted that they and not the state were to be the interpreters of the laws.

It was not until 'Abd al-Rahman's grandson Amir Aman-Allah (r. 1919-29) became ruler that the late amir's vision to provide Afghanistan with a codified, state-supervised judicial system became formalized. Judicial reforms, in which a separate independent judiciary was established, were part of a much larger modernization program initiated by the new amir. Aman-Allah, first and foremost, provided Afghanistan with its first constitution.³¹ Article 55 in his Constitution stipulated that "no special court" could hear and adjudicate a special case nor could a special issue be established outside the framework of the regular judiciary. This severely limited the role of informal justice.³²

Aman-Allah's Constitution and the accompanying reforms severely challenged the authority of the traditional 'ulama and tribal leaders who regarded these as an encroachment on

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their authority. Senzil Nawid explains how the Pashtun tribes reacted to the reforms by stating, "They were menaced both by the imposition of universal conscription and the abrogation of practices of the Pashtun tribal code of honor (*pashtunwali*) in favor of new regulations."³³ In 1924, the Pashtun tribes in the vicinity of Khost, who were led by the Mangals, began to rebel against the central government in Kabul. The actual cause of this rebellion -- referred to in most sources as the Mangal or the Khost rebellion -- is still debated by historians and scholars. Poullada writes that there is enough evidence to suggest that the real controversy that led to the Khost rebellion was not the new constitution, but the disenchantment of the local tribes with regard to the king's centralization programs threatening their autonomy.³⁴ Nawid agrees that the "main motive" for the revolt was "to curtail the loss of their authority to the central regime."³⁵ The tribal informal justice mechanisms based on *jirgas* stood in opposition to the state laws, which "relied heavily" on the Shari'a.³⁶ Nevertheless, the leadership of the Khost rebellion was comprised mostly of the 'ulama (religious scholars), and their official complaint was that the new laws of the country did not conform to the Shari'a.³⁷

The eventual overthrow of Aman-Allah's government in 1929 became a lesson for successive Afghan governments as they moved very cautiously in extending the authority of the state, especially in the area of law, outside main urban areas. King Mohammad Nader (r. 1929-33) "adopted a policy of rapprochement towards the tribes."³⁸ Mohammad Nader's policies were generally followed by his son and successor, King Mohammad Zaher (r. 1933-73) until the mid-1960s. In 1964, Mohammad Zaher drafted a new Constitution, which again pressed for the consolidation of authority under a centralized law, and the state gradually extended its authority and laws into the outlying regions of the country.

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Despite the new constitution, evidence surfaced in the 1970s that informal justice mechanisms were alive and well in Afghanistan. Alef-Shah Zadran, who conducted fieldwork on the traditional Pashtun legal system in Almarah in the 1970s, determined that more than seventy five percent of cases were solved by informal justice mechanisms³⁹ Almarah is a village currently situated in Khost Province. During the late nineteenth century, Almarah was under the jurisdiction of Shirindel Khan, the hakim responsible for Katawaz. Zadran observes that the "Pashtuns are people who live by a body of *tsali* (codes) known in the literature as 'tribal laws,' 'traditional laws,' or 'customary laws.'"⁴⁰

In the late 1970s, Afghanistan saw the total erosion of state structures and controls, and central authority weakened. Because of this, the periphery became more independent and began taking charge of its own affairs, including the dispensation of justice. Still today in most parts of Afghanistan, the formal justice mechanisms, be it Shari'a-based or positive law, either remain very weak or are nonexistent.

As post-Taliban Afghanistan is moving forward with reestablishing the basics of state authority, the retooling and expansion of the judicial system take utmost importance. As an Islamic republic, the dispensation of justice remains central to the legitimacy of Afghanistan's governing system. There is no denying the fact that today a vast majority of disputes are solved by informal means. Because of the lack of a strong formal justice system, not relying on these informal practices is unwise at this time. As the government moves forward with codifying laws and defining its legal structure, it needs to take into consideration these informal practices and establish a legal structure based on Afghan reality that affords objectivity and universal application of law.

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In the conclusion of my dissertation, which I finished immediately after the fall of the Taliban regime, I wrote the following lines to which I continue to adhere:

In a time when Afghanistan is attempting to reorganize its judicial system and draft a new constitution, it would be prudent for those involved to look back to the experience of 'Abd al-Rahman. It behooves current policy makers to first learn from 'Abd al-Rahman's mistakes, especially his uncompromising use of force and his disregard for the fact that Afghanistan was and is inhabited by diverse ethno-linguistic and confessional groups. It equally behooves decision-makers to learn from the positive aspects of his reorganization of, and his innovations in, the structure of the justice system, such as making the judiciary accountable to the people and staffing it with officials drawing fixed salaries and carefully auditing its practices and procedures. 'Abd al-Rahman's emphasis on the administration of justice accountable to a central authority, and its implied other side of the coin, curbing the role of local religious and tribal leaders in the dispensing of justice could serve as a model for today.⁴¹

¹ For a study of the first attempts at centralization of Afghanistan's judicial system, see Amin Tarzi, "The Judicial State: Evolution and Centralization of the Courts in Afghanistan, 1883-1896," unpublished Ph.D. dissertation, New York University, 2003.

² While Dost Mohammad became the ruler of Kabul in 1828, he did not assume the title of amir until 1838 when he declared a jihad against the Sikhs who had recently taking control of Peshawar, for more on the dates of the amir's reigns, see Tarzi, "The Judicial State," p. 65, note. 133.

³ Hasan Kakar "An Analysis of the Centralization of Political Power in Afghanistan in the Reign of Amir Abdal-Rahman Khan (1880-1901)" in *Afghanistan* (Kabul), 30 (1) 1977, p. 1. The situation described by Kakar had lingered from the times of the Saduza'is (1747-1818, 1839-41. For a description of the judicial administration of the country during the first reign of Shah Shuja' al-Mulk (r. 1803-18, 1839-41), see Mounstuart Elphinstone, *An Account of the Kingdom of Caubul and its Dependencies in Persia, Tartary, and India*. Reprinted by in Graz by Akademische Druck- u. Verlagsanstalt in 1969 with bio-bibliographical notes by Alfred Janata from the first edition printed in London in 1815. Elphinstone writes that the "general law of the kingdom is that of Mahomet, which is adopted in civil actions in the Ooloosses (tribes, or as Elphinstone has it "clanish commonwealth[s]" - p. 159) also; but their peculiar code, and the only one applied in their *internal* administration of criminal justice, is the Pooshtoonwulle, or usage of the Afghauns; a rude system of customary law, founded on principles such a one would suppose to have prevailed before the institution of civil government." p, 165.

⁴ For variant lists of publications during the reign of Shayr 'Ali see Nigahi bar naqsh-i farhangi-yi Afghanistan dar 'ahd-i Islami 1976 (no author), pp. 133-134; Wasil Noor "Chronological Survey of the Dari Books Published in Afghanistan" *Central Asia* (Peshawar), 1 (5) 1980, p. 78. In his survey of the Afghan judicial system Fufalza'i reproduces several legal documents mostly related to real estate transactions, but he does not provide details on how the system worked, see 'Aziz al-Din Fufalza'i. *Dar al-qaza' dar Afghanistan*. Kabul, 1990. pp. 338-360.

⁵ Ann K.S. Lambton, *State and Government in Medieval Islam* (Oxford: Oxford University Press, 1981), p. xiv.

⁶ Mir Munshi Sultan Mahomed Khan, ed. *The Life of Abdur Rahman Khan Amir of Afghanistan, G.C.B., G.C.S.I.* 2 vols. (London: John Murray, 1900) -- Reprinted by in Karachi by Oxford University Press in 1980, vol. 1, pp. 230-232. Although the mention of breaking idols raises suspicion that the quote may not have come directly from 'Abd al-Rahman's mouth and may be the product of a Muslim Indian's frame of mind who would be more directly concerned with conflicts with Hindu idolaters, the general spirit of the story is consistent with the amir's emphasis on Islamic justice.

⁷ Sultan Mohammad [same as Sultan Mahomed, see Note 8] *The Constitution and Laws of Afghanistan*. (London: John Murray, 1900), p. 126.

⁸ Noel. J. Coulson *A History of Islamic Law*. (Edinburgh: Edinburgh University Press, 1964), p. 129.

⁹ Joseph Schacht, Joseph. *An Introduction to Islamic Law*. (Oxford: Oxford University Press, 1964), p. 53.

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¹⁰ Ibid. 54.

¹¹ Ibid. In Islamic law the term *siyasatan* refers to the act by the rulers to take action, usually disciplinary, for reasons expediency.

¹² F.R.C. Bagley, trans. *Ghazali's Book of Counsel for Kings*. With an introduction, notes and biographical index. 2nd ed. (London: Oxford University Press, 1971), p. 45, note 1.

¹³ Tarzi, "The Judicial State," p. 305.

¹⁴ Ibid. 306. The idea of "box of justice," while not novel in Afghanistan, was placement of sealed boxes throughout Afghanistan as a means to facilitate the means of petitioning for subjects who could not come to the capital because of distance or for fear of repercussions from their local governors; for more see, pp. 275-282.

¹⁵ Ashraf Ghani Ahmadzai. "State-Building and Centralization in a Tribal Society, Afghanistan: 1880-1901," unpublished MA thesis, American University of Beirut, Lebanon, 1977, p. 74.

¹⁶ Hasan Kawun Kakar *Government and Society in Afghanistan: The Reign of Amir 'Abd al-Rahman Khan*. (Austin: University of Texas Press, 1979), p. 169.

¹⁷ John L. Esposito. *Islam and Politics*. (Syracuse: Syracuse University Press, 1984), p. 4.

¹⁸ Ibid.

¹⁹ Ghani 1983, "Disputes in a Court of Shaira, Kunar Valley, Afghanistan, 1885-1890," in *International Journal of Middle East Studies*, 15 (1983), p. 253; Asta Olesen "The Political Use of Islam in Afghanistan During the Reign of Amir Abdur Rahman (1880-1901)," in *Contributions to Islamic Studies: Iran, Afghanistan and Pakistan* edited by Christel Braae and Klaus Ferdinand (Aarhus: Humanities Press International, Inc., 1987) p. 84.

²⁰ Sultan Mohammad 1900a, 126-127; also see Hamilton 1906, 275-76.

²¹ Ashraf Ghani, "Islam and State Building in a Tribal Society: Afghanistan 1880-1901," in *Modern Asian Studies*, 12 (1978), p. 269.

²² Tarzi, "The Judicial State," pp. 145-146. For a discussion of the farmans of 'Abd al-Rahman see, *ibid.* pp. 310-319; for Shirindel Khan's background, see *ibid.* pp. 236-248.

²³ Ibid. 181.

²⁴ For more information about the panchat court, see Tarzi "The Judicial State," pp. 181-185.

²⁵ Amin Tarzi, "A Tax Reform of the Afghan Amir, 'Abd al-Rahman Khan," in *Journal of Asian History* 27/1 (1993), pp. 30-50.

²⁶ Ibid. p. 45.

²⁷ Ibid. p. 46-47.

²⁸ Ibid. p. 48.

²⁹ Leon B. Poullada. *Reform and Rebellion in Afghanistan, 1919-1929: King Amanullah's Failure to Modernize a Tribal Society*. (Ithaca: Cornell University Press, 1973), p. 21.

³⁰ Ibid.

³¹ Ibid. 75.

³² For texts of all Afghan constitutions, see Sarwar Danesh, ed. *Matn-e kamel-e qawanin-e asasi-ye Afghanistan (az 1301 ta 1372 sh)*. (Qom: Markaz-e Farhangi-ye Nawisendagan-e Afghanistan), 1995.

³³ Senzil K. Nawid. *Religious Response to Social Change in Afghanistan 1919-29: King Aman-Allah and the Afghan Ulama*. (Costa Mesa, CA: Mazda Publishers, Inc., 1999), p. 85.

³⁴ Poullada. *Reform and Rebellion*. 94-95.

³⁵ Nawid, *Religious Response*. 87.

³⁶ Ibid.

³⁷ Mir Mohammad Sidiq Farhang, *Afghanistan dar panj qarn-e akhir*. 3 vols. (Qom: Mu'asesa-ye Matbu'ati-ye Isma'ilian, 1992), p. 525.

³⁸ Mohammad Hashim Kamali. *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary*. (Leiden: E.J. Brill, 1985), p. 20.

³⁹ Alef-Shah Zadran, "Socio-Economic and Legal-Political Processes in a Pashtun Village, Southeastern Afghanistan," unpublished Ph.D. dissertation, State University of New York at Buffalo, 1977, p. 288. Zadran's study was based on 29 cases..

⁴⁰ Ibid. p. 205. Zadran writes that "*tsale* is a trial or a pathway, demarcated by pillars, in order to lead pedestrians and passengers to the right goal or target," *ibid.* p. 206

⁴¹ Tarzi, "Judicial State," p. 308.