

# An 'Islamic' Rule of Law in Afghanistan? The Case of the Nizamnama Reforms of Amir Amanullah Khan, 1919-1926

Faiz Ahmed  
*Brown University*

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**THANK YOU**

[**Note to Sharia-Governance-Development workshop colleagues:** the following is a preliminary attempt at adapting three chapters of my current book project on the first constitution of Afghanistan (1923) into a more succinct article for publication. While the earlier chapters trace the kindling of juridical ties between Ottomans, Afghans, and Indian Muslims as early as the 1860s, and proceed to evolving political and legal connections during the Young Ottoman, Hamidian, and finally Young Turk/Second Constitutional eras, the later three chapters condensed here are in several respects the *denouement* of the book following Afghanistan's independence in 1919. To truncate the length I have cut areas that are important and belong in the article but I've chosen not to include here. I am grateful for any feedback you may have at this stage.]

NB: Please overlook the diacritics disaster in this draft as I'm currently transitioning from disparate styles for different languages to *IJMES* consistency.

In the spring of 1919, a newly crowned king in Afghanistan led a motley campaign of irregular troops and tribal levies against the British Raj's imperial army, and stunningly, they succeeded. After ousting the last British garrisons from territory under his command, the young Amir Amanullah Khan (1892-1960) declared his kingdom to be an unconditionally free and independent state. Soon thereafter the Kabul-based government signed treaties of recognition and trade agreements with a host of countries across Europe, Asia, and the greater Middle East. Afghanistan would eventually become the first Muslim-majority state to join the League of Nations.

Having secured Afghanistan's sovereignty abroad, Amanullah Khan turned his attention inward, and launched an ambitious reform program with the goals of reordering his kingdom into a constitutional monarchy. Within a year of his rise to power Amir Amanullah commissioned an elite team of Afghan, Ottoman, and Indian Muslim jurists with a singular mandate: to lay the juridical foundations for a modern state with a capital in Kabul. By 1923,

the law commission had promulgated over seventy legal and administrative reforms. Known collectively as the “*Nizamnama Amaniyya*”, or “Ordinances of Amanullah” in Persian, this expansive judicial and administrative reform project included civil and criminal procedure codes, courtroom manuals for judges, drafts for commercial and other international treaties, as well as a broad range of government-issued reports, such as syllabi for educational administrators (including schools for girls and young women), and training exercises for cadets in a newly reorganized Afghan army. Most famous of all, the *Nizamnama Amaniyya* included Afghanistan’s *Qanun-i Asasi*, or the country’s first written constitution.

The resemblance to reconstruction policies being formulated in Afghanistan today has led many observers and even some historians to describe Amanullah Khan as “progressive,” “secular,” “ahead of his time,” “pro-Western modernizer,” or even “Afghanistan’s Atatürk.” What these readings often elide, however, was the monarch’s resolve that Afghanistan’s constitutional reforms comply with—or at least were *seen* to comply with—the sacred Islamic law. As stated in Articles 4, 16, and 21 of the *Qanun-i Asasi*, the king and his courts were to “rule in accordance with the principles enunciated in the Shari‘a.”<sup>1</sup> This raises a subsequent question. Is there an “Islamic” character to the *Nizamnama* reforms that transcends mere purported claims to be based on the Shari‘a?<sup>2</sup>

Far from mere window-dressing to enhance conservative appeal, I argue that Amir Amanullah’s *Nizamnama* codes can be understood as one of the twentieth century’s first and premier examples of Islamicate legal modernism in power, and this is evident from more than a surface study of the codes’ articles and textual provisions. I ground this conclusion in a review of three integral features of the *Nizamnama* codification project in particular: the jurisprudential sources of its substantive law, a social biography of its drafters, and the public awareness campaign galvanized by the chief promulgator himself, Amir Amanullah Khan. Accordingly, the paper is divided into three parts.

In Part I, I turn to the major sources of law consulted by the drafters and cited in the texts themselves. Challenging prevalent historiographical motifs of French borrowings, I discuss the jurisprudential sources consulted by the *Nizamnama* drafting committee based on references in the actual codes. Augmenting the work of earlier historians of Afghanistan during the Amani era, my findings indicate the main sources consulted by the *Nizamnama*

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<sup>1</sup> Articles 4, 7, 10, 13, 16, 21, and 72, *Qānūn-i Asāsī-yi Dawlat-i ‘Alīyyeh-i Afghanistan* (20 Ḥamal 1302 [April 9, 1923]).

<sup>2</sup> This question especially arises in light of the altogether unsurprising and certainly unexceptional nature of this claim in the context of post-colonial states of the greater Muslim world in the twentieth century.

drafting committee were canonical treatises, glosses, and commentaries of the Hanafi school of *fiqh*, or Islamic jurisprudence. From the twelfth century legal primer *al-Hidaya* of al-Marghinani (d. 1197) to Ibn ‘Abidin’s (d. 1836) magnum opus *Radd al-Muhtar* and *‘Uqud Rasm al-Mufti*, and from the late Mughal *Fatawa-i ‘Alamgiri* (completed 1675) to the Ottoman civil code or *Mecelle* (completed 1876), the Nizamnama texts are unambiguous in their reliance and evoking the most authoritative treatises, fatwa collections, and codes of the Hanafi school as its source of jurisprudence.

In Part II, I argue that beyond the legal sources consulted in its production, the premium Amir Amanullah Khan placed on promoting a “modern Muslim” society and “shari‘a-compliant” vision for the Afghan state is evident in the composition of his executive cabinet and the Nizamnama drafting commission itself. Both bodies comprised an eclectic and multinational group of Muslim professionals and jurists not only from Afghanistan’s two largest cities, Kabul and Qandahar, but as far as Istanbul, Damascus, Baghdad, and Lahore. In their ranks were notable Afghan ‘ulama’ trained in Deobandi madrasas, liberal members of the Young Afghan party, an Indian doctor, and an Ottoman lawyer at the very helm of the drafting commission.

Finally, in Part III, the paper discusses one of the only extant documents attributed to the pen of Amir Amanullah Khan—four Friday sermons he delivered in the southern city of Qandahar, Afghanistan in 1925. While I have translated and examined these documents in more depth elsewhere, my goal here is provide a snapshot into the public awareness campaign Amir Amanullah marshalled in defense of the Nizamnama reforms. Here I show that as Amanullah Khan sought to propel dramatic top-down social change in Afghanistan through law, he was at pains to stress his reforms were a legitimate interpretation of Islamic jurisprudence in light of modern conditions. As a window into one of the twentieth century’s first, and perhaps most understudied, examples of Islamicate legal modernism in power, this section offers some brief comments on Afghanistan’s Nizamnama reforms through the chief promulgator’s own words. In conclusion, I argue that by means of clearly enunciated, carefully crafted sermons endorsing his “shari‘ah-compliant” codes, Amir Amanullah sought the ever-elusive goal of reconstituting Afghan society in a manner conducive to the efficient administration of a centralized, territorial nation-state. What is more, the amir pursued this

goal while hoisting the modernist and populist banner of building an Islamicate “rule of law” in Afghanistan.<sup>3</sup>

## PART I: FEATURES AND SOURCES

Rather than a single cohesive text, the *Nizamnama Amaniyya* consists of over seventy disparate and separately-bound codes, lawbooks, judges’ manuals, and administrative regulations across a broad range of civil and military affairs. While the majority of these codes are titled with the singular noun “*Nizāmnāmeḥ*” (plural: *Nizāmnāmā*), or “Regulation/Ordinance” in Persian and Pashtu, several are named by the roughly synonymous “*Qānūn*” or “*Qānūnnāmeḥ*” (statutory law), or simply “*Kitāb*” (book), followed by the general subject of the binded text.<sup>4</sup> Taken as a whole the topics covered in the *Nizamnama Amaniyya* are vast and ambitious. Sundry in topic and scope, a shared characteristic of all these disparate texts is their uniform application, on paper at least, to the

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<sup>3</sup> Before commencing this jointly sociolegal and historical journey, a word on definitions is in store. While virtually a ubiquitous term in the lexicon of domestic politicians and international development analysts to refer to constitutional orders, “rule of law” is too often presumed to describe objective social and political conditions and therefore a value-neutral term. Not surprisingly, in both legal practice and academia, the term has attracted significant controversy. As legal anthropologist Laura Nader has observed,

Research on law and state power illustrates that, far from being neutral, law is often politically active, created by and for groups in power. This realization often separates anthropologists from development lawyers, who even today may still believe that ‘the rule of law’ creates a level playing field that works out in practice.

Laura Nader, *The Life of the Law: Anthropological Projects* (Berkeley: University of California Press, 2002), 6. In this study I use “rule of law” not as a concrete social condition, nor a political system based on Western notions of liberal democracy, but as an aspirational goal in which all members of a society (irrespective of economic or social status, or office) are held accountable to publicly known limits of behavior, and face legal sanctions for transgressing them. For an insightful discussion of “rule of law” concepts in international context and particularly transitional/post-conflict settings, see Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), 25-31. By “Islamicate”, I am applying historian Marshal Hodgson’s term referring to the products of regions in which Muslims are politically or culturally dominant, as opposed to the far more presumptive “Islamic” (properly religious or orthodox phenomena).

<sup>4</sup> Black’s Law Dictionary defines a code as “a complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations.” Bryan A. Garner, ed., *Black’s Law Dictionary, Second Pocket edition* (St. Paul: West Publishing Co., 2001), 106. Though not every single “Nizamnameh” falls within this generally-accepted definition of the word by Anglo-American lawyers today, I will use “codes” to refer to the collective body of *Nizamnama* texts in this paper.

country as a whole.<sup>5</sup> Some of the more prominent codes introduce foundational pillars of modern bureaucratic rule, such as the organization of ministries and municipal administrations, the regulation of state employees, the institution of a standard system of measurements, the registration of marriages, as well as identity cards (*tezkirah*) and passports for the “legibility” and surveillance of Afghan citizens in and outside the country.<sup>6</sup>

## Main Features

There is little doubt that the single most prominent Nizamnama text of the Amanullah era, however, was the *Qanun-i Asasi*. Promulgated on April 9, 1923, the document’s title translates as Afghanistan’s “Basic Law” or “Fundamental Code”, but is more commonly remembered as the country’s first constitution.<sup>7</sup> Political scientist Ludwig Adamec has considered the charter a “Bill of Rights” for Afghan citizens, and the “first written document dealing [with] the prerogatives of the ruler and the rights of the ruled.”<sup>8</sup> Consisting of 73

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<sup>5</sup> For examples of the latter kind, see ADL 0609 (1298 [1919]) (Amir Amanullah Khan, *Kitābchah-i qānūn-i kārguzārī-yi hukūkām*); ADL 0600 (1298 [1919]) (Amir Amanullah Khan, *Kitābchah-i dastur al-‘amal-i mahsul-i tujjaran*). These codes concern administrative laws dealing with the collection of revenue and regulation of employees and governors.

<sup>6</sup> Several of the selected Nizamnama I examined in the Afghanistan National Archives (ANA) have identical versions available in New York University’s Afghanistan Digital Library collection, including *Nizamnama-yi jazā-yi ‘umūmī* (Kabul: Maṭba‘ah-i Dā’irah-i Taḥrīrāt-i Majlis-i ‘Ālī-i Wuzarā, 1303 [1924]); *Nizamnama-yi jazā-yi ‘umūmī* (Kabul: Maṭba‘ah-i Rīyāsāt-i Shirkat-i Rafīq, 1306 [1927]); *Nizamnama-yi baladīyah* (Kabul: Maṭba‘ah-i Dā’irah-i Taḥrīrāt-i Majlis-i ‘Ālī-i Wuzarā, 1302 [1923]) (ADL 0064); *Qānūnnāmah-i hāzīrī*, (Kabul: Shirkat-i Rafīq, 1305 [1927]) (ADL 0051); and *Nizamnama-yi usūl-i muḥākamāt-i jaza‘iyah-i ma‘mūrīn* (Kabul: Maṭba‘ah-i Shirkat-i Rafīq, 1305 [1926]) (ADL 0671).

<sup>7</sup> Afghanistan’s first constitution was officially published in both the Dari (Afghan dialect of Persian) and Pashtu languages. The full-length Dari title is *Nizāmnāmā-yi asāsī-yi dawlat-i ‘alīyah-i Afghanistan*, but as mentioned, is more commonly cited as *Qanun-i Asasi*. The Pashtu version, *Asāsī nizāmnāmāh dalūr dawlat da Afghānistān*, is often cited to be the “official version”, though the Dari is more commonly cited in practice. For some of the earliest versions of the *Nizāmnāmāh-i Asāsī*, or first Afghan Constitution, all individually handwritten and identical, see ADL 0502 (8 Hut 1301) (*Nizamama-yi Asāsī*); ADL 0675 (8 Hamal 1302) (*Nizamama-yi asasi-yi dawlat-i Afghanistan*); ADL 0076 (20 Hamal 1302) (*Nizamama-yi asasi-yi dawlat-i Afghanistan*).

My use of the term “constitution” for Afghanistan’s *Qanun-i Asasi* of 1923 coincides with the definition offered in Black’s Law Dictionary, as “The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise.” *Black’s Law Dictionary*, 135.

<sup>8</sup> On this landmark charter, Adamec writes, “The first written document dealing [with] the prerogatives of the ruler and the rights of the ruled was the Afghan constitution promulgated by King Amanullah in [1923].” Ludwig W. Adamec, *Afghanistan, 1900-1923* (Berkeley: University of California Press, 1967), 58. Here Adamec mistakenly conflates the Afghanistan’s Code of Administration (*Nizamnama-yi tashkīlāt-i asāsī*), also of profound significance for establishing the bureaucratic organization of ministries and promulgated in October 1921, with the first Constitution of Afghanistan (*Nizāmnāmā-yi asāsī*) of April 1923. This confusion likely stemmed from the two documents’ close-sounding names in Persian. Similarly, Leon Poullada, author of the first academic

articles, the *Qanun-i Asasi* defined not only the rights and responsibilities of officials and citizens, but produced a “blueprint” for the organization of Afghanistan’s financial, political, and military affairs, including the scope of authority for central, provincial, and even district/municipal governments. The charter also established the foundation of representative institutions in Afghanistan—including advisory committees and provisional councils, half of whose members were to be “selected and appointed by the people”—thereby laying the seeds for an Afghan parliament.<sup>9</sup> There is also a nascent concept of the separation of powers, evident in the formation of a hierarchically-tiered network of “courts of justice” headed by a Supreme Court (*Dīwān-i ‘Āli*) in Kabul with a mandate for judicial review.<sup>10</sup> On a comparative (but still regional) note, the interpretation of Afghanistan’s *Qanun-i Asasi* of 1923 as a modern constitution is bolstered by the document’s name itself—an identical term to that of the Ottoman Constitution of 1876 (reinstated by the Young Turk coup of 1908) and the Iranian Constitution of 1906, from which subsequent “Young Afghan” constitutionalists undoubtedly took inspiration.

On the most salient features of Afghanistan’s *Qanun-i Asasi*, constitutional lawyer Nighat Chishti begins with the fact the charter was a *written* constitution, thereby enshrining the fundamental juridical and political principles of the state in a written document consisting of ten sections and 73 articles.<sup>11</sup> The written nature of the charter speaks to a centralizing impetus driving the constitutional project, with the goal of consolidating and uniformizing the *de facto* “patchwork” of legal systems operating autonomously in the provinces of the country under a central legal authority represented by a Supreme Court (*Dīwān-i ‘Āli*), the members of which would be appointed by the Amir himself. These features pose the historical question to what extent was Afghanistan’s *Qanun-i Asasi* of 1923 a product of grassroots mobilization by Young Afghan intellectuals and politicians to curb the autocracy of the monarch (akin to the Iranian Constitutional Revolution of 1905-06), or a top-down project of etatization to increase the power of the central government (akin to the Ottoman Tanzimat)? While I address this relevant historical question elsewhere, let us continue with the organization and content of the Nizamnama constitution and codes themselves.

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study on the Amanullah era in a western language, cites the charter’s provision of a nation-wide “juridical skeleton” for the first time in the country’s history. Leon Poullada, *Reform and Rebellion in Afghanistan: King Amanullah’s Failure to Modernize a Tribal Society* (Ithaca: Cornell University Press, 1973), 92-93.

<sup>9</sup> Article 41, *Qanun-i Asasi-yi Dawlat-i ‘Aliyyeh-i Afghanistan*. See also Article 4.

<sup>10</sup> Articles 21, 33, 34 and 50-57, *Qanun-i Asasi-yi Dawlat-i ‘Aliyyeh-i Afghanistan*,

<sup>11</sup> Nighat Mehroze Chishti, *Constitutional Development in Afghanistan* (Karachi: Royal Book Company, 1998), 22-23.

## Organization and General Content

As for the organization of the charter, the 73 articles of Afghanistan's first constitution can be divided into three major sections: the King's Duties and Powers, the Duties and Powers of the Cabinet, and finally, the Fundamental Rights of Citizens. In exchange for "the Nation's" allegiance to the King and the royal succession of his male line "through selection made by his majesty and by the people of Afghanistan", the King pledges "to rule in accordance with the principles enunciated in the Shari'a and in this Constitution", and to protect the independence of the country.<sup>12</sup>

The King's Powers are further divided into four branches: Executive, Legislative, Military, and Judicial. The Executive Powers of the King include the classical Sunni practice of minting coins in his name as well as including it in the Friday *khutba* (sermon); the awarding of honorary medals and other distinctions; and most significantly, the appointment, dismissal, and transfer of government ministers, including the Prime Minister.<sup>13</sup> The Legislative Powers of the King comprised the promulgation, ratification, and protection of public laws (*qanun*) and "laws of the Shari'a."<sup>14</sup> The Military Powers of the King include Commander-in-Chief of all armed forces in Afghanistan; the right to promulgation and enforcement of military regulations; declaration of war; and the signing of international treaties.<sup>15</sup> As for the King's Judicial Powers, they included grants of amnesty and the pardoning or commuting of punishments by law.<sup>16</sup> The section on Duties and Powers of the Cabinet can be summarized as responsibility for the execution of the King's laws and the laws of the Shari'a, and administration of the government in accordance with the "appropriate legislation" (articulated in a separate *nizamnameh*) governing their ministry.<sup>17</sup>

As to the Fundamental Rights of Citizens, Article 8 begins by addressing the perennial borderland controversy over "who is an Afghan", stating categorically that any and all permanent inhabitants of Afghanistan, regardless of religion, were considered citizens.<sup>18</sup> Article 10, essentially a "due process of law" clause, declared every citizen's personal

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<sup>12</sup> Article 4, *Qanun-i Asasi-yi Dawlat-i 'Aliyyeh-i Afghanistan*.

<sup>13</sup> Articles 7, 28 and 31, *Qanun-i Asasi-yi Dawlat-i 'Aliyyah-i Afghanistan*.

<sup>14</sup> Articles 7, *Qanun-i Asasi-yi Dawlat-i 'Aliyyah-i Afghanistan*.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.* See Chishti, 22-24, for a discussion of the broad powers and responsibilities in these articles.

<sup>17</sup> *Qanun-i Asasi-yi Dawlat-i 'Aliyyah-i Afghanistan*, Articles 25-35 ("Ministers"), Articles 36-38 ("Government Officials"), and Articles 39-49 ("Provincial Councils and the State Council").

<sup>18</sup> On the surface, this seems to imply Pashtuns ("Pathans") residing on the western side of the Durand Line would continue to be British Indian, and not Afghan, subjects. This was not, however, explicitly stated, nor is it clear from the document what the drafters' intentions were on this interminable irredentist issue.

freedoms to be guaranteed. According to Article 16, “All subjects of Afghanistan have equal rights and duties to the country in accordance with Shari‘a and the laws of the state.” Together these clauses in the constitution concerning individual rights, including the guarantee to every Afghan citizen the same basic rights irrespective of religion or gender, are some of the most celebrated by observers and historians of the country, citizens and otherwise.<sup>19</sup> As a more seasoned legal eye might anticipate, however, the definitions and details of these provisions remain vague and often broadly worded. The lacunae embedded within them were to be filled in by scores of supplementary law codes, or *Nizamnama*, the substantive content to which we now turn.<sup>20</sup>

### Jurisprudential Sources

The codified texts of the *Nizamnama Amaniyya*, similar in key respects to the late Ottoman *Mecelle* and the late Mughal *Fatawa-i ‘Alamgiri* before it, is bold and unambiguous when it comes to declaring a rootedness in “the Shari‘a.”<sup>21</sup> Beyond the religious or “conservative” appeal of such language, from where did the drafters of the *Nizamnama* codes actually draw their jurisprudence from in substance? True, it is difficult to glean a comprehensive list of the entire compendium of jurisprudential sources consulted by the commission members who drafted the *Nizamnama Amaniyya* given that, to the extent of my knowledge, no notes of the drafting commission have been found.<sup>22</sup> This does not, however, mean we are unable to surmise a general picture of the *kinds* of sources the *Nizamnama* commission members worked with and drew upon in producing these understudied codes.

A closer examination of substantive articles in the *Nizamnama Amaniyya* reveal a consistent grounding in the Hanafi *madhhab*, or school of Islamic jurisprudence. In several of the codes, for example, brief references in parentheses follow the statement of a rule.

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<sup>19</sup> Balland, D. “Afghanistan, Political History,” *Encyclopaedia Iranica*, Vol. I, Fasc. 5 (1983): 547-58.

<sup>20</sup> Leon Poullada has provided an incomplete list of the *Nizamnama* codes promulgated during the reign of Amir Amanullah Khan in *Reform and Rebellion in Afghanistan, 1919-1929*, 99-103. He also is one of the first western historians to refer to the *Nizāmnāmā-yi Asāsī* (Fundamental law) as Afghanistan’s first constitution.

<sup>21</sup> See, e.g., the several clauses declaring allegiance, obedience, or referring to the “principles enunciated in the Sharia” (Art. 4), “the Sharia” (Arts. 7, 13, 16), “a Sharia court” (Art. 10), “the principles of the Sharia” (Art. 21); “the requirements of the laws of Sharia” (Art. 72).

<sup>22</sup> This is a stark contrast from the relatively far more rich picture we have of the *Mecelle* drafting and compilation process. Today, for example, we have original notes, drafts, and other memoranda of Ahmed Cevdet Paşa and his elite *Mecelle* law commission housed in the Prime Ministry Ottoman Archives in Istanbul. For the one examination of this question by a historian of the Amani era, see Senzil Nawid, *Religious Response to Social Change*, 92-93.



These references most commonly cite monumental texts of the greatest jurists of the Hanafi school, from the twelfth century al-Marghinani's *al-Hidaya* and his contemporary Imam Fakhruddin Qadi Khan's *Fatawa Qadi Khan*, to the late Mughal proto-code *Fatawa-i 'Alamgiri* and comprehensive works of the distinguished late Ottoman jurist of Damascus Ibn 'Abidin.<sup>23</sup>

Some more words are in store regarding the frequent citing of two of Ibn 'Abidin's monumental works in particular: his magnum opus *Radd al-Muhtar* and his manual for juriconsults and judges, *'Uqūd Rasm al-Mufti*. One of most profound accomplishments of the famed late Ottoman jurist Ibn 'Abidin was his meticulous and comprehensive combing through centuries' worth of scholarship in the major works of the Hanafi school and verifying the relied-upon position in his renowned *Radd al-Muhtar*—a text cited at several instances in the Nizamnama codes.<sup>24</sup> By citing Ibn 'Abidin's work so frequently in the Nizamnama, this is an indication of loyal adherence to the Hanafi school by the Nizamnama jurists.

Even on the controversial issue of juridical eclecticism, or the occasional departure from the Hanafi school for opinions of other schools (*talfiq*, i.e. *when* can a jurist adhering to Hanafi school legitimately leave the position of the school's founder Imam Abū Hanifa, and if so, *how* does one determine the relied-upon position of the school), the Nizamnama commission appears to have turned to Ibn 'Abidin, in this case his judges' primer *'Uqūd Rasm al-Mufti*. For example, in this famous primer on the principles and etiquettes of the mufti, Ibn 'Abidin details the method of establishing “the relied-upon position” (*dhāhir al-riwāya*) for a legal question by defining the reliable books of the school, and when they can be adjusted or qualified by other opinions.<sup>25</sup> It is hence important to recognize that this issue was not novel to the Amani period or even the Mecelle, but was already dealt with by earlier scholars of the Hanafi School. The *Nizamnama Amaniyya*, therefore, is hardly unique in countenancing the occasional possibility of *talfiq*, and follows in the tradition of Hanafite

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<sup>23</sup> See, e.g., ADL 0317 (1300 [1921]) (Muhammad 'Abd al-Wasi' Qandahari, et al., *Tamassuk al-quzat-i Amaniyyah*, vol. 2. Kabul: Maṭba'ah-i Sangī-i Māshīnkhānah, 1300 [1921 or 1922]) for references (after statement of the rule) to such canonical Hanafi texts as *al-Hidaya*, *Fatawa Qadi Khan*, *Muhit al-Sarakhsi*, *Fath al-Qadir*, *al-Siraj al-Wahhaj*, *Kanz al-Daqaiq*, and.

<sup>24</sup> See, e.g., ADL 0317 (1300 [1921]) (Muhammad 'Abd al-Wasi' Qandahari, et al., *Tamassuk al-quzat-i Amaniyyah*, vol. 2. Kabul: Maṭba'ah-i Sangī-i Māshīnkhānah, 1300 [1921 or 1922]), p. 87.

<sup>25</sup> In the Hanafi school this would include, *inter alia*, Imam Sarakhsi's *Mabṣūt*, Imam Kasani's *Badā'i al-Ṣanā'i*, Imam Zayla'i's *Tabyīn al-Ḥaqā'iq*, and Imam Marghinani's *Hidāya*, along with the latter's voluminous commentaries, especially the *Ināya* of Imam Babarti and *Fath al-Qādir* of Imam Kamal ibn Humam. These texts are also profusely cited in Nizamnama texts such as the aforementioned *Tamassuk al-quzat*. Many thanks to Faraz Rabbani, Faraz Khan, and Sadia Yacoob for their insightful contextualization of these texts and their role in the Hanafi school.

legal modernism as practiced by the seventeenth century *Fatawa-i 'Alamgiri* commission, and nineteenth century Ottoman jurists like Ibn 'Abidin and the *Mecelle* drafting commission.<sup>26</sup>

In light of the frequent and exclusive references in the Nizamnama texts themselves, a *cumulative* review of the Nizamnama codes, therefore, informs us that the drafters drew in the main from the canonical sources of the Hanafi school of law. That is to say, far from a translation of French, Belgian, German or other European law codes, the evidence we have points to the major lawbooks, manuals, commentaries, and glosses of the Hanafi school of jurisprudence, from the twelfth century jurist al-Marghinani of Transoxiana to the late Ottoman jurist extraordinaire of Damascus, Ibn 'Abidin. This was akin to the proto-codification processes at the heart of the *Fatawa-i 'Alamgiri* fatwa compilation project of late Mughal India, and even more famously, the late Ottoman Civil Code, or *Mecelle*. In light of their exclusive references in the Nizamnama codes, it appears that the Hanafi school of law is where Amir Amanullah's law commission members sought jurisprudential precedent, and guidance.

## **PART II: THE FRAMERS**

Beyond the language of the Nizamnama's articles and sources referenced in its jurisprudence, the premium Amir Amanullah placed on promoting a modern Muslim identity for the Afghan state emerges from an exploration of the individuals who made up the lawmaking commission that drafted the first constitution of Afghanistan. As biographical evidence I have gathered about the composition of the Nizamnama drafting commission indicates, Afghanistan's first constitutional commission comprised an all-Muslim but otherwise eclectic group of jurists and politicians. Based on archival findings in Kabul, Delhi, Istanbul, and Ankara, my research shows that that the *Nizamnama Amaniyya* drafting commission included liberal bureaucrats from the palace administration, conservative *Mawlawis* linked to Deobandi madrasahs in India (but also graduates of the royally-endowed *Madrasa Shahi* in Kabul), Pashtun notables of the influential Muhammadzai tribe, and Ottoman legal advisors, including an Istanbul lawyer who Amir Amanullah appointed as the Nizamnama commission's director. Notably, this was at a time when most states relied on French, Swiss, Belgian, Austrian or German advisors for judicial reform and state-building,

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<sup>26</sup> Many thanks to Munes Tomeh for his insightful remarks on the *Mecelle* codification process in this regard.

underscoring Amanullah Khan's later references to the Turks as "elder brothers and guides" in charting alternate paths to modernization.<sup>27</sup>

The historiography of constitutionalism in Afghanistan has hitherto focused on the political movements of the Young Afghan secret society and other *anjumāns* from the Habibullah era to the Amanullah era. Such historiography dwells on the anti-monarchical ideologies of an underground movement of politicians, intellectuals and military cadets, led by Mahmud Tarzi but also other key influential political actors in Kabul during the Habibullah era. Works by 'Abd al-Hayy Habibi, Mas'ud Puhanyar, Sayyid Sa'd al-Din Hashimi, and Senzil Nawid in particular have focused on the politicians involved in the constitutional movement during the Habibullah era at length and will not be recounted here.<sup>28</sup> Others focus on Amanullah's alleged neglect of military reform as a key state-building institution (and a most violent process of seeking a Weberian monopoly on violence in the country).<sup>29</sup> Far less attention, by contrast, has been devoted to the impressive conglomeration of *juridical* actors—the jurists in particular—who actually *wrote* the first Afghan constitution of 1923, and the over seventy supplementary regulatory codes, or *Nizamnama*, alongside it.<sup>30</sup>

### **Afghanistan's First Constitutional Commission**

One of our best sources on Afghanistan's modern legal history from an Afghan scholar, written in Persian, and based on Afghan government sources is 'Aziz al-Din Wakil Fufalzai's *Dar al-Qaza' dar Afghanistan*, published in Kabul in 1990/91 (Afghan solar year

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<sup>27</sup> This phrase is in fact taken from Amanullah Khan's speech in Istanbul on May 19, 1928, hailing the fraternal ties between Afghanistan and Turkey. Poullada, *Reform and Rebellion*, 258.

<sup>28</sup> 'Abd al-Hayy Habibi, *Junbush-i Mashrūṭiyat dar Afghanistan* (Qum: Ihsānī, 1993); Mas'ud Puhanyar, *Zuhūr-i mashrūṭiyat va qurbāniyān-i istibdād dar Afghānistān* (Peshawar: Sabā Kitābkhānah, 1375 [1996]); Sayyid Sa'd al-Dīn Hashimī, *Junbush-i mashrūṭiyat khwāhi dar Afghanistan* (Kabul: Shūrā-yī farhangī Afghanistan, 2001).

<sup>29</sup> The latter works largely mimic, or rely too heavily, on British colonial officials' obsession with the state of the Afghan military, as opposed to watershed constitutional and juridical developments in the country. For example, a representative passage from the diary of British Consul at Kabul, Sir F. Humphrey, in the middle years of Amanullah's reign, writes,

The Afghan Army has been totally discredited by its failure to make any headway against ill-armed and badly-led tribesmen... The staff and the senior regimental officers are at present mainly recruited from among the young Afghans who have received a smattering of modern military education, either in Europe or in the Military College recently established in Kabul. They are wholly lacking in experience, and are not even remarkable for professional keenness, while the junior officers, who are for the most part much older soldiers, are not unnaturally discontented at being superseded.

IOR-R/12/LIB/107, *Precis on Afghan Affairs*, (para. 337, p. 155).

<sup>30</sup> For other major personages in Amir Amanullah's cabinet not related to judicial reforms, see IOR-R/12/LIB/107, *Precis on Afghan Affairs*, (para. 20, p. 7).

1369).<sup>31</sup> Fufalzai’s work provides one of the most thorough lists of the Afghan jurists and politicians who participated in codification and juridical centralization activities from the late nineteenth century to the Amanullah Khan era.<sup>32</sup> Fufalzai notes that soon after Amanullah Khan’s ascent to the throne in Kabul, he organized a *Mahfil-i Wad’-i Qawanin* (hereafter: “Codification of Laws Committee”), this judicial commission was made up of many of the preeminent ‘ulama’ of the country, along with an Ottoman lawyer named Osman Bedri Bey, to codify the laws of the state according to Islamic jurisprudence.<sup>33</sup> This was the commission that drafted the Nizamnama law codes and the first Afghan constitution of 1923. Fufalzai’s source for the members of the constitutional commission is a rare manuscript entitled *Tarikh-i Qada dar Afghanistan* (The History of the Judiciary in Afghanistan), published on 24 Sunbula 1299 [September 15, 1920] which includes a list of the names of the members of the Codification of Laws Committee.<sup>34</sup> According to Fufalzai, this juridical body was a dynamic lawmaking commission that was made up of two primary component parts—each representing two different groups of contributors to the compilation of the Nizamnama law codes and first Afghan constitution. The first group, representing Afghan ‘ulama’, was made up entirely of the most preeminent scholars of the country (mostly of Kabul, Qandahar, Jalalabad and the latter’s surrounding environs), though as we will also see, at least one Indian Muslim scholar was among the group. This group was selected by the Amir himself and endowed with the name, *Mahfil-i Shura-yi ‘Ulum* (hereafter: “Council on Islamic Sciences”). The members of this council, all ‘ulama’, include the following:

**[CUT: LIST OF MEMBERS WITH NAMES, TITLES, AND OCCUPATIONS]**

The Council on Islamic Sciences, of whose eight members are listed above, represented only one segment of the larger Codification of Laws Committee, however. Reflecting Amir Amanullah’s vision of a dynamic, cosmopolitan and well-rounded group of

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<sup>31</sup> Fufalzai, ‘Azīz al-Dīn Wakīlī. *Dār al-qaza dar afghanistan: az awayil-i ‘ahd-i-islam ta ‘ahd-i jumhuriyat*. Kabul: Markarz-i Tahqiqat-i ‘Ulum-i Islami, 1369 [1990/1991].

<sup>32</sup> See, for example, his list of members of the *Ta’sīs-i mahfil-i waḍ’-i qawānīn* (Foundation for the Compilation of State Law Codes) of Kabul in Fufalzai, *Dār al-Qaḍā’*, 518-519. For a summary of Amir Amanullah’s proclamation praising the noble work of the commission and extolling their qualifications and mission in line with Islamic law, see *Ibid.*, 519.

<sup>33</sup> *Ibid.*, 518.

<sup>34</sup> It is unclear if this document was indeed a published book, or a special manuscript. Either way I have been unable to locate any existing copies of this text. Many of the names in Fufalzai’s list are corroborated by partial lists included in works by Puhanyar, Hashimi, Nawid, Poullada, and Gregorian. None of the latter mentioned works have as extensive a list as that provided by Fufalzai.

legal professionals who would bring both a prolific knowledge of Islamic jurisprudence, *and* the administrative proficiency and experience in a centralized state like the late Ottoman empire and British India, the Amir also recruited a team of professionals of a more bureaucratic or administrative kind. While the Amir did not organize these members into a separately named (and presumably more authoritative) group like the aforementioned ‘ulama’ of the Council on Islamic Sciences, these additional members of the Codification of Laws Committee included a lawyer, a number of state bureaucrats, school teachers, and even a physician. In addition to the above leading members of the Afghan ‘ulama’ establishment who participated in the compilation of the Nizamnama codes, the *non-‘ulama’* contributors included,

**[CUT: LIST OF MEMBERS WITH NAMES, TITLES, AND OCCUPATIONS]**

The fledgling field of modern Afghan legal history is in no small measure indebted to Professor Fufalzai’s pioneering work in sifting through early twentieth century government records and establishing the most prominent *Afghan* legal actors in the Nizamnama reforms (a scholarly contribution he continues with regard to subsequent legislation in Afghanistan from Amir Amanullah’s successors to the Soviet invasion). What is missing from Fufalzai’s classic account of Afghanistan’s modern legal system, however, is a social and intellectual history of the Nizamnama commission itself, including biographical information on its members. More glaring is the absence of discussion on their links to educational, religious, and institutional networks in India and the Ottoman Empire.

As one of the only independent and fully-sovereign Islamicate states after World War I, Afghanistan featured prominently in elite ulama debates and popular anti-colonial discourse alike across the greater Muslim world, but exceedingly so in the Ottoman Empire and India. Far more than abstract or idealized sympathies shared by co-religionists—Afghanistan was a conduit through which early twentieth century pan-Islamicate exchanges (and debates) connecting the Middle East and South Asia flowed. Kabul also functioned as an autonomous meeting space for even broader anti-colonial coalitions in the region that transcended religion, such as that between the Indian Muslim Khilafat movement, Mahatma Gandhi’s secular Indian National Congress party, and even Bolshevik agitators from the

recently annexed Soviet Central Asia saw opportunities for alliances, or expansion.<sup>35</sup> Be they diplomatic or military, economic or cultural, these exchanges connecting late Ottoman Turkey and British India during the throes of World War I and subsequent Khilafat movement highlights Afghanistan as a strategic crossroads for Muslim transnationals shuttling between the Middle East and South Asia. The making of an Indo-Ottoman political nexus in Afghanistan after the Great War is evident in the successive Turkish delegations to Kabul in the early 1920s (most notably led by Cemal Paşa), and the migration of some 60,000 Indian Muslims to Afghanistan in the famous Hijrat movement of 1919-1924.

Still unexplored in Fufalzai's account, therefore, are the collaborations (and tensions) between Ottoman and Indian juridical actors at this time, and their dialectical relationship in shaping a rule of law in the newly independent Afghan state. We now turn to a more detailed discussion of the foremost individuals who served on the Codification of Laws Committee, in order to understand the diverse strands of education, employment experience, and professional *habitus* they brought to the first Afghan constitution and juridical field of Afghanistan during the Amani era. The following brief biographies of the most prominent Nizamnama actors are drawn from other works published in Afghanistan over the course of the twentieth century, augmented by my own independent research in Istanbul, Ankara, and Delhi with regard to the influential internationals who served on the commission in particular.

**Mawlawi 'Abd-al-Wasi' Qandahari, Afghan Islamic Scholar**

[CUT: SOCIOLEGAL BIOGRAPHY]

**Mawlawi Muhammad Ibrahim Khan Barakzai, Afghan Islamic Scholar-Statesman**

[CUT: SOCIOLEGAL BIOGRAPHY]

**Osman Bedri Bey, Ottoman Lawyer and Istanbul Police Commissioner**

[CUT: SOCIOLEGAL BIOGRAPHY]

**Dr. 'Abd al-Ghani, Indian Physician, College Administrator, and Prominent Advisor to Amir Amanullah**

[CUT: SOCIOLEGAL BIOGRAPHY]

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<sup>35</sup> As a crucial component of the Indian Non-cooperation movement, the Khilafat-Congress alliance fervently protested the Allied partitioning of Ottoman territory while mustering support for the Turkish war of independence.

## ‘Abd al-Rahman Ludin, Young Afghan journalist and administrator

### [CUT: SOCIOLEGAL BIOGRAPHY]

#### Other Contributors—Named and Unnamed

To the extent my research has shown, the aforementioned individuals constituted the leading and most prominent members of the first Afghan constitutional commission. They were not, however, the only ones. In addition to these above prominent players, there were other Afghan ‘ulama’, some of whose names we find mentioned in connection to the drafting of the Nizamnama codes. Most prominent among the latter were Mawlawi ‘Abd al-Shukur Khan and Mawlawi and Qazi ‘Abd al-Rahman Begtuti.<sup>36</sup> British Indian intelligence records from the India Office Records in London occasionally provide scattered references to prominent juridical actors in Afghanistan during the Amanulllah era, particularly in the declassified *Who’s Who in Afghanistan* manuals for years 1920 and 1930. Most relevant for our purposes are those entries pertaining to Afghans and Indians who served on the *Majlis-i Shura*, the advisory legislative body, many of whom served on the Nizamnama drafting commission. The most prominent among these include Mawlawi Sayf al-Rahman, an Indian and graduate of Delhi Madrasa, believed to be exile in from India due to involvement in “seditionist” activities against the British.<sup>37</sup> In addition, there appears to a notable role played by a certain Ahmad Jan, also an Indian doctor, of Peshawar, and a Civil Brigadier in Afghanistan during the Habibullah era.<sup>38</sup>

Finally, the Ottoman archives include a number of documents from the early Amani period on a Mehmed İsmail Han, an advisor to the Afghanistan Ministry of Education, including a description of duties. Included among them are advising in the overlapping areas of law, administration, and education (“kanun, nizamat, ve talimatlardan birer nüshanın

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<sup>36</sup> Both Punhanyar and McChesney mention “Chief Justice” (Qāḍī al-Quḍāt) ‘Abd al-Shukūr Khan taking part in the Nizamnama codes, but fail to provide any background information on this individual. Nor could I find any sources on his background and activities in the archives I worked in. McChesney, 14; Punhanyar, 54. Similarly, McChesney mentions the participation of qāḍī ‘Abd al-Rahmān Begtuti in the compilation of the codes, but no background information is provided, nor available from my research in the aforementioned archives. McChesney, 14. Poullada describes Begtuti as the “chief qazi” of Kabul in 1928, the latter era of the Amānī period, and it is unclear whether he participated before or after 1924 revolts. Poullada, 128-129. The events leading to Mawlawi ‘Abd al-Rahmān Begtuti’s arrest and execution are also recounted in Stewart, 391-396.

<sup>37</sup> *WWA (1930)*, 205. The above individual is also believed to be same person as described in *WWA (1920)*, 178.

<sup>38</sup> On Ahmad Jan, the 1930 *Who’s Who in Afghanistan* provides one of our only extant sources. *WWA (1930)*, 60.

gönderilmesi”).<sup>39</sup> Curiously, however, I did not find even a trace of his name in Afghan, Indian, or British archival records. Like others who served in the *Majlis-i Shura*, Amir Amanullah appears to have taken an active interest in Ahmad Jan’s extensive *administrative* experience. The amir likely saw this dynamic experience in drafting policy as crucial to the drafting of dozens of *Nizāmnāmah* codes geared not strictly to jurisprudential matters, i.e. solving disputes between private parties, but to much broader administrative matters involving social policy for the new Afghan state.

As seen in the above list and descriptions, the members of the elite commission that drafted the first Afghan constitution and supplementary Nizamnama codes were not uniform or homogenous in background or outlook in any way. Rather, they represented a diversity of educational institutions, professional qualifications and *habitus*, and socio-political networks. One interpretation of having such a diverse cast of personnel was this may have been an attempt on the Afghan Amir to keep the constitution’s restraint on the monarch weak, arising from differences from the commission members. This is not a strong argument, however, given the fanfare, attention, and resources Amanullah lavished on the Nizamnama as the hallmark project of his reign.

While the commission succeeded in completing the Nizamnama codes and publishing them for state use, this did not mean there was not intense controversy, and ultimately, discord between the members, as well as with the greater Afghan society. As Senzil Nawid has observed, “The ulama’s condemnation of the members of the *Hay’at-i Tamiz* arose partly from longstanding competition between the ulama trained in Afghanistan, in particular, graduates of the Madrasah- i-Shahi, who filled most important religious positions in the capital, including membership in the *Hay’at-i Tamiz*, and the Deoband-trained ulama.”<sup>40</sup> But when it comes to crafting a dynamic space of “creative adaptation”, the diverse jurists who participated in legal codification projects during the Habibullah Khan but especially Amanullah Khan eras share a core similarity with Afghan literati of the time. This was most evident in the jurists’ resourceful, selective, and innovative pulling from a variety of models and sources for their own crowning achievement: the first constitution of Afghanistan and the over seventy associated Nizamnama codes. It also speaks to their ability to simultaneously contest, collaborate, and compromise. While the jurists largely maintained a staunch loyalty

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<sup>39</sup> BOAMF.MKT 1244/46 (1341 S 04); BOA-MF.MKT 1244/38 (1340 Z 27).

<sup>40</sup> Nawid, *Religious Response*, 107. On aspects of the Nizamnama which many Deobandi trained ‘ulama’ found particularly troubling, see *Ibid.*, 107-113.



to the Hanafi school of *fiqh* (Islamic jurisprudence) which formed the jurisprudential substance of the codes on the one hand, on the other hand the organization, structure, and layout of the codes largely resembled the influence of more recent Ottoman law codes such as the *Mecelle*. Though the latter was drafted by jurists also working within a predominantly Hanafi training and jurisprudential tradition, it was the creative adaptation of Hanafi *fiqh* for substantive legal provisions in the *aesthetic* format of European law codes such as the Code Napoleon that made the *Mecelle* and *Nizamnama Amaniyya* new and distinct.

### **PART III: THE PROMULGATOR**

The final section of this paper focuses on the public awareness campaign for the Nizamnama Codes by the chief promulgator himself, Shah Amanullah Khan (in the second half of his reign, the monarch changed his title from “Amir” to “Shah”). As a case in point, this section discusses one of the only extant documents attributed to the pen of Shah Amanullah—four Friday sermons he delivered in the southern city of Qandahar, Afghanistan in autumn of 1925. While I have explored this amazing series of speeches in more detail elsewhere, here I show that as Shah Amanullah sought to propel dramatic top-down social change in Afghanistan through law, he was at pains to stress his reforms were a legitimate interpretation of Islamic jurisprudence in light of modern conditions. As a window into one of the twentieth century’s first—and largely unexplored—examples of Islamicate legal modernism in power, this section offers some brief comments on Afghanistan’s Nizamnama reforms through the chief architect’s own words.

#### **The Sermons**

Some years ago while researching at the Library of Congress I came across a rare printed copy of Shah Amanullah’s sermons in the appendix of a rather eclectic Persian text published in Peshawar, Pakistan, entitled *Hakmiyet-i Qanun dar Afghanistan* (“The Rule of Law in Afghanistan”). In spite of the seemingly coherent title and binded format of the work, the sermons are appended to an assortment of government inspection reports of local schools and ministry offices made during Amanullah’s visit to the strategic southern city of Qandahar between October 22 and November 12, 1925. I recently completed a preliminary translation of the *khuṭbas* from the original Persian and Arabic, and this section forms an initial step to my longer translation and commentary work on the sermons.

Delivered in Persian and Arabic in the *Khirqeh-i Sharif* mosque—Qandahar’s most sacred precinct—Shah Amanullah’s sermons demonstrate not only oratory prowess and charisma, but a mastery of Islamic symbols and rhetorical strategies. The latter is particularly evident in the way he justifies his controversial Nizamnama reforms in the language of pan-Islamic and Afghan unity, anti-imperialism, progress, but most of all, the heralding of a new “Rule of Law” in Afghanistan.<sup>41</sup>

But if Shah Amanullah’s sermons were delivered in a savvy, autochthonous vernacular, they still could not hide the most radical attempt in Afghanistan’s history to “re-engineer” society through law. Between the lines of his lofty rhetoric—which given his commanding oratory skills and eloquent vernacular likely stirred up the emotions of his congregation—lay a program of radical legal and administrative reforms which aimed to transform social life in Afghanistan at an unprecedented scale. These reforms included, *inter alia*, the centralization of state law courts, building a national army through conscription, imposing taxation on the provinces, and imposing compulsory primary education through an unprecedented expansion of government schools, transcending the capital Kabul and reaching deep into the outlying provinces.

Examining the language of the first two sermons in particular, this section asks the following questions: what was Shah Amanullah seeking to accomplish in delivering these *khuṭbas*? What do they tell us about his style of rule, the socio-legal reforms embodied in the Nizamnama, and how he sought to present them to the people of Qandahar in the late autumn of 1925? How did Amanullah Khan present his vision for the modern nation-state of Afghanistan? I argue that by means of carefully crafted sermons endorsing his “*sharī‘ah*-compliant” social and legal reforms, Shah Amanullah sought the ever-elusive goal of reconstituting Afghan society in a manner conducive to the efficient administration of a centralized, territorial nation-state, all the while hoisting the modernist and populist banner of an “Islamic rule of law” in Afghanistan.

### **Marketing the ‘Islamic’ state of Afghanistan**

King Amanullah’s choice of venue for his four subsequent weeks’ of Friday sermons in Qandahar can hardly be described as accidental. The *Khirqeh-i Sharīf* Mosque of central

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<sup>41</sup> Though the precise Persian term “*Hākmiyyet-i Qānūn dar Afghānistān*” (The Rule of Law in Afghanistan) only surfaces in the title of the document containing the speeches, other phrases and references used by Shah Amanullah connote similar meanings. Furthermore, the theme of the rule of law and the Nizamnama’s judicial reforms emerge more forcefully in the third and fourth week’s *khuṭbas*.

Qandahar, a grand edifice adjoining the Ahmad Shah Mausoleum, is arguably the most sacred precinct in all of Afghanistan, for two reasons: the founding father of the nation, Ahmad Shah Durrani (1723-1773), is buried on the premises. What is more, the mosque is believed to contain a sacred cloak (*khirqeh-i sharīf*) attributed to have belonged to the Prophet.<sup>42</sup> Control of the site has therefore been an immensely strategic tool for acquiring political legitimacy by Afghan rulers from the coronation of monarchs in the nineteenth century to even more times.<sup>43</sup> From the very outset of his first *khutba* in Qandahar, the Amir masterfully invoked the sanctity of the precinct and connected this holy aura to the heart of his message, as follows,

Qandahar is not only distinguished by the honor of a noble ancestral saint, but this blessed mosque in my opinion is distinguished among all other mosques—after the Ḥaramayn-i Sharīfayn (Mecca and Medina)—by an especially sacred distinction. Are we all aware of where that mark of distinction emanates from? On the steps of this exalted and holy shrine is the blessed cloak of the Master of all beings... In the presence of this source of dignity and divine favor and prestige, we endeavor time after time to fulfill his orders and avoid his prohibitions so that the essence of the holy Messenger is honored, as we struggle to the fullest extent to not deviate from his guidance and rulings.<sup>44</sup>

Beyond drawing attention to the sanctity of his surroundings and background stage, here Amanullah implicitly links the sanctity of these mountainous founding figures in Islamicate and Afghan history as well as the authority of Islam in general with the imperatives of his vision for dramatic social and political change in Afghanistan. In the judicial realm in particular, change is rarely justified or presented as such. Rather, sociopolitical movements accessing the judiciary to enact social transformation almost invariably justify and articulate policies in the language of tradition, conservatism, and *precedent*.<sup>45</sup> And what could be a more solid foundation and noble precedent than the Prophet of Islam himself on the one hand, to represent Islamiyat, and the founder of the Afghan nation Ahmad Shah Durrani, representing Afghaniyat, on the other? These two twin themes,

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<sup>42</sup> The sacred shrine of Hazrat ‘Ali ibn Abi Talib in Mazar-i Sharif, northern Afghanistan, would be the closest contestant in this respect.

<sup>43</sup> In 1994, the notorious founder of the Taliban movement, Mullah Omar, was reported to have entered the shrine after the Taliban’s capture of the strategic southern city. He reportedly hoisted up the cloak as a dramatic signal of a new political order taking root in the country, but also a clear attempt to garner legitimacy.

<sup>44</sup> Kh. 1, para 2 & 3

<sup>45</sup> As Sherman Jackson has comparatively noted, a similar logic applies to the most dramatic departures and radical decision in U.S. Supreme Court history—justified in the conservative language of tradition and precedent. Sherman Jackson, “Shari‘ah, Democracy and the Modern Nation-State.” *27 Fordham International Law Journal* (2003): 90-93.

Islamiyat (“Islamic-ness”) and Afghaniyat (“Afghan-ness”), permeate Amanullah’s first two speeches and for good reasons, as we shall now explore.

At first glance, we might ask: if Amanullah’s *khutbas* were really serving as a means to sell his political reform program to the public, then why does he ground his sermons in discussions of sacred rituals in Islam like prayers, fasting, and other external obligations of the religion? For example, in the beginning of the first *khutba*, Amanullah exhorts his congregation to be duty-bound to these very pillars, as follows,

I strongly emphasize that you complete your five daily prayers with proper manner and dedication, as you know that the most important and esteemed ritual of worship is prayer; there are many important benefits—worldly and religious<sup>46</sup>—so take care to your individual and congregational prayers in the mosque and do not let the time of prayers pass into their late times; in this manner be with the remaining rituals of worship: fasting the month of Ramadan, giving of Zakat, Hajj to the noble House of God, and the other pillars and rulings of religion, both heavy and light, and know that God will ask you of these things that I humbly reminded you of one by one in the next life, when one will wish in his sorry condition to return to complete those orders!<sup>47</sup>

In stressing one by one of the pillars by name, and dwelling on the significance of the core rituals of the faith, Amanullah again lays the groundwork for connecting the sanctity of religious obligations such as the daily prayers, fasting in Ramadan, and pilgrimage to Mecca with that of his subsequent social and political order: the new Afghan nation-state. Equating obedience to God with obedience to the king is certainly not a new discursive innovation on the part of Shah Amanullah. More significant is the *way* in which the monarch carefully navigates the complex intertwining terrain and evolving concepts of Afghan nationhood, citizenship, and the state that is distinctly modern and new. Take, for example, his attempt to obliterate—or marginalize, at least—competing loyalties to local tribes, lineages, villages and townships or other forms of political patronage and loyalty that constantly contested the authority of the central government in Kabul. Like the end-goal of his use of “vernacular” and attempt to frame his person as a common man’s king, Amanullah’s emphasis on the twin forces of Islamiyat and Afghaniyat sought to neutralize these competing notable forces and attract the attention and loyalty of ordinary Afghans to his centralizing regime in albeit far-off Kabul—a regime that nevertheless through the disciplinary technologies of the modern state embodied in the *Nizamnama*, was encroaching closer and closer into social life in the provinces. This is a rhetorical strategy that Amanullah most clearly demonstrated in the

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<sup>46</sup> The resemblance to popular Islamist slogans of combining “Deen and Dunya” elsewhere and later in the century is noteworthy.

<sup>47</sup> Kh. 1, para 5

following passages, the first being the same instance where the Amir explains “the purpose” of the khuṭba:

It is from this perspective that I engage myself with performing this very duty of the Sunnah, and at the same time in accordance with the commands and prohibitions of divine guidance I carry out this tradition in a clear and conclusive manner to you though my desires are in opposition to it [to giving the Khuṭba?]; I imagine you attend not to draw close to me but to draw close to God and the Messenger.<sup>48</sup>

By directly connecting his speech and its potentially contentious contents to the commandments of “God and the Messenger,” Amanullah links his own political imperatives and opinions to these sacrosanct sources of legitimacy in Afghan social and religio-political life. What could be more powerful, after all, than to ground a sovereign order to the most intimate aspects of many Afghans’ lives—their faith? Herein lay the rhetorical genius of Amanullah, and probably the impetus to give these khuṭbas in the first place: to use the sacred pulpit to ennoble his message and political vision in the eyes of his audience.

Rather in a most absolute and serious manner, I enjoin you to listen carefully to these words of mine, which conform to the commands of God and the Messenger, and that you absorb these words until they immerse the very core of your self and the soul in your body becomes seeped in striving towards their implementation.<sup>49</sup>

Here, Amanullah gathers legitimacy by framing his every word as being fully in line with Islam, i.e. “the commands of God and the Messenger.” It also would make any opponents think twice about openly opposing his program, or at least think long and hard about how to outmaneuver him in his own political game, as seen in the proclamation of various fatāwā (juridical opinions) by provincial rebels against the Amani regime in 1924 and 1928. At its most direct and unabashedly strategic extreme, Shah Amanullah incorporates the theme of obedience to him as paramount to obedience to God and the Messenger, in order to persuade and coax obedience *to his government*. For example, he states,

And I advise you that when it comes to unity and solidarity of our Islamic identity (*Islamiyat*) and Afghan identity (*Afghaniyat*), struggle and strive emphatically, and know that success and victory—both material and spiritual—is tied to love for the masses and love for each other in the path to progress of the nation, kingdom, and Islam. It is known that all this is for obtaining the pleasure of God and His Messenger; and the same applies to obeying the king

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<sup>48</sup> Kh. 2, para 7

<sup>49</sup> Khuṭba, 2, para 8

and people of authority—if you shoulder this responsibility, no enemy will be to undermine your strength and dignity, and you will gain the upper hand over their betrayals and evil.<sup>50</sup>

In another telling juncture of the sermons, and attempt to legitimize his radical socio-legal reforms, Shah Amanullah again professes loyalty to the noble and supreme Islamic law, the Shari‘ah. In one of his closing supplications, he exclaims with characteristic zeal and passion, “O God! Bestow on us utmost love for our Messenger, success in all our affairs, and guide us to uphold the Shari‘at!” By making public his supplication in this way, professing loyalty to the Shari‘ah in his personal life and public rule, Amanullah seeks to imply that his very imminent legal reform program is *the answer* to his prayer for guidance to uphold the Shari‘ah. It is worth pausing here to note the extreme contrast here between Shah Amanullah and Mustafa Kemal’s rhetorical strategies: while the latter emphasized rupture from the “old” Islamicate juridical tradition and ushering in of a “new” era, Amanullah sought to firmly enmesh his reform program from *within* that epistemological and discursive tradition, and use its sources to his advantage. This is not to say Amanullah did not have more confrontational moments with the ‘ulamā’ establishment, but that was precisely one of the major reasons he marshaled several ‘ulamā’ to his support in legitimizing the Nizamnama program.

In this manner, for Amanullah, “Islamiyat” becomes the sacred and legitimizing pole upon which the Afghan nation must be founded. Yet, supporting this central pillar is another pole: Afghaniyat, the latter supporting Amanullah’s vision for the creation of a (more) homogenous Afghan Islamic state. In this way, the rhetoric employing Islam becomes an actual centerpiece of Amanullah’s reform program itself.

## CONCLUSION

While the profound transformation and ensuing disintegration of the Ottoman empire from 1839-1923 has been conventionally summarized as an interim stage before the ultimate triumph of ethnic nationalism and secular modernity in the Middle East, this popular narrative elides the fiercely *contested* nature of institutional changes in the region. In particular, such accounts of linear decline and “westernization”, both in and outside Ottoman domains, marginalize the acute struggles of scholars, statesmen, and everyday citizens to constitute alternative modernities not rooted in strictly secular-liberal or Eurocentric cultural epistemes. The “Nizamnama” codes of King Amanullah Khan of Afghanistan (r. 1919-1929) and his transnational team of Muslim jurists represented one such project. Compared to the

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<sup>50</sup> Kh. 1, para 5

nation-building campaigns of Mustafa Kemal “Atatürk” of Turkey or Reza Shah Pahlavi in Iran, or even the British and French mandates of the inter-war Near East, Amanullah’s route shares many parallels but in the end represented a *different* path of modern state formation. Though also an attempt at “social engineering” through law, in contrast to the aforementioned regimes the Nizamnama codes of the 1920s constituted an endeavor to circumvent the widening gulf between “Islamic” and “Secular,” a dualism whose roots were laid in several Muslim-majority countries at precisely the same time, and have been hotly debated ever since.

As histories of Afghanistan during the Amani era (1919-1929) have largely focused on the second half of king Amanullah’s decade-long rule, particularly his violent overthrow at the hands of “tribal” revolts, there has been scarce work on the history *behind* the first Afghan constitution, the over seventy supplemental “Nizamnama” legal and administrative codes, and the conditions under which they were produced. The crucial and formative years of 1919-1926 have not been given close enough attention, as well as earlier legal and constitutional developments in the Amir ‘Abd al-Rahman (1880-1901) and Amir Habibullah eras (1901-1919). This paper sought to address the considerable gap in Afghanistan’s legal historiography, by providing a transnational *longue durée* history of the individuals, ideas, and institutions behind the Nizamnama codification project in Afghanistan.

The romanticization of Amir Amanullah as a tragic hero in western scholarship on Afghanistan has also overlooked crucial historical developments taking place in the country beyond the Kabul government’s ratification of codes and constitutions. Behind the auspicious rhetoric and meticulous legalese of the codes, an intense political battle was brewing in Afghanistan over what it meant to be both a “modern” and “Islamic” state in practice. At one level, the Nizamnama pitted the king’s reformist elite against powerful Pashtun tribes in the provinces wary of Kabul encroaching on their autonomy, each employing the discourse of Islam to promote their views of the good society. Yet even closer to home—and here far more research was needed—acute divisions emerged between the Turkish and Indian-trained members of the Nizamnama commission, heightened by differences over Turkey’s transition to a secular republic at exactly the same time. Without an operational bureaucracy, police, or army to enforce his laws, Amanullah’s government collapsed as a conflagration of tribal revolts converged on Kabul, deposing the king in 1929. It was the last time an Afghan government imposed reforms of such broad scale until the communist coup d’état of 1978 and ensuing decade of Soviet occupation.

Focusing on Shah Amanullah Khan's overthrow at the hands of violent tribal revolts that shook portions of southeastern Afghanistan in the late 1920s also falls too easily into conventional frameworks of the Afghanistan as the world's failed state *par excellence*. What these commonplace and uncritical perspectives ignore is that Amir Amanullah Khan's Nizamnama project laid the foundation for one of Asia's most stable Muslim states in the first half of the twentieth century. By promulgating the Nizamnama codes we might say Amir Amanullah sought a "modernized" approach to *fiqh*, a sacred law instrumentalized to fulfill the prerogatives of sovereign power—maintaining civil order, supervising officials, subjects, and markets, and settling property disputes—while being sensitive to prevailing cultural norms in Afghanistan, or as flexibly stated in the constitution itself, "in light of actual living conditions of the people and the exigencies of the time."<sup>51</sup> Beyond the language of its articles, the premium Amir Amanullah placed on promoting a simultaneously "modern" and "Muslim" identity for the Afghan state is evident in the composition of the Nizamnama drafting commission, as well as prominent officials in his cabinet—an eclectic group which included jurists, politicians, and military officers not only from Afghanistan's two largest cities, Kabul and Qandahar, but as far as Istanbul, Damascus, Cairo, Baghdad, and Lahore.

Finally, that Shah Amanullah Khan (r. 1919-1929) personally delivered Friday *khuṭbas* may in and by itself be a telling indicator of his concerted efforts to present himself as the "common man's king," the common Afghan's padshah, perhaps even the common Muslim's sultan. Standing and orating from the imam's pulpit in the central mosque of Qandahar four Fridays in a row, the Afghan amir sought to present his style of rule as approachable, down to earth, in touch with his people and the "pulse" of Qandahari society as it were. As to the substance of his sermons, Shah Amanullah was as keen to argue that all of the provisions of the Nizamnama law reforms he promulgated since coming to power in 1919 fell into line with Islamic law and the Hanafi school of jurisprudence in particular. This latter point speaks to Shah Amanullah's *persuasionist* model of modern legal and political reforms in Afghanistan, in contrast to the more autocratic, "blood and steel" methods of Mustafa Kemal in Turkey, Reza Shah in Iran, among other nationalist leaders at the time. This hesitancy to employ state violence on a massive scale, and preference for persuasionist models of socio-legal change, cannot be explained by simple good-will on Shah Amanullah's part. Unlike the former two leaders, Amanullah did not command a centralized army, nor centralized taxation system to fund such a far-reaching national project, nor did he have the

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<sup>51</sup> Article 72, Constitution of Afghanistan, 1923 (*Nizāmnāmā-yi asāsī-yi dawlat-i 'alīyah-i Afghanistan*, 20 Ḥamal 1302 [April 9, 1923]).



established state bureaucracy loyal to the center to carry out his reforms. These are only the most obvious differences distinguishing Amanullah's government in Afghanistan from the far more established bureaucracies of the early Turkish republic and Pahlavi Iran.

Shah Amanullah's *khuṭbas* and rhetorical prowess reveal another important perspective on his rule. The king's sermons challenge the rather hackneyed view that at the root of Shah Amanullah's downfall is a perennial conflict of "religious fundamentalism" versus "progressive secularism." That "Islam" was not, *per se*, the axis upon which Shah Amanullah's reforms turned might be seen in the fact that the king himself quite ably wielded Islamic cultural symbols to justify his reforms, but nonetheless within five years the king was overthrown by revolts brewing in the southern and eastern provinces of the country. While the cause of the 1928-1929 revolts that overthrew Shah Amanullah is not the topic of the present study, the monarch's keen ability to wield Islamic rhetoric in defense of his law reforms should lead us, perhaps, to focus on the *political* and *economic* threats his reform program posed to decentralized, tribally-administered governance in the east and south of the country in particular, rather than a pre-supposed "cultural divide" between the central government in Kabul and the majority Pashtun populations who resided in those regions.

In this way, Shah Amanullah's discursive campaign to legitimize the modern nation-state of Afghanistan by references to an "Islamic rule of law", concealed massive state disciplinary interventions into Afghans' everyday life. No matter how "Islamic" or "Afghan" he presented his state-building program, and no matter how elegant his sermons, the *Nizamnama* represented an unprecedented degree of interventionism in Afghan social life, threatening—at least in theory—the non-centralized, highly local modes of participatory governance characteristic of regions outside Kabul in particular. In the end, this is how many actors on the ground interpreted the *Nizamnama Amaniyya* codes, no matter how eloquent the sermonizing its chief promulgator wielded in its defense.

## **ABBREVIATIONS**

ADL	Afghanistan Digital Library. New York University
ANA	Arshif-i Milli-yi Afghanistan (Afghanistan National Archives). Kabul, Afghanistan.
BCA	Başbakanlık Cumhuriyet Arşivi (Prime Ministry Republican Archives). Ankara, Turkey.
BOA	Başbakanlık Osmanlı Arşivi (Prime Ministry Ottoman Archives). Istanbul, Turkey.
IOR	India Office Records. London, UK.
NAI	National Archives of India. New Delhi, India.