In July 1880, ‘Abd al-Rahman Khan (r. 1880–1901) became the new amir of Afghanistan thanks to his own resourcefulness, some measure of luck, and the assistance of both the Russian and the British empires. His life experience had prepared him for the “Great Game” that he was entering, and the new amir seems to have fully understood the position of the political entity he was ruling over. ‘Abd al-Rahman’s Afghanistan was to serve as a buffer, or in the amir’s own terminology, “a curtain,” between the Asiatic colonies of Britain and Russia. As an active player in the Anglo-Russian “Great Game” that was being played out in South and Central Asia, the amir had chosen to side with Britain. As he wrote in 1885, it would have been “impossible for the people of Afghanistan to become friendly with the Russian state, because that latter is not abandoning its designs on India, for which it must step on this [Afghan] people.”

With his foreign policy in the hands of British control and guarantees to protect Afghanistan from any foreign aggression, ‘Abd al-Rahman channeled his energies into extending his authority over hitherto-independent or semiautonomous regions of the country. In the words of Barnett Rubin, under ‘Abd al-Rahman, “Afghanistan became a buffer state, in which an indigenous ruler began to build an internally autonomous state with only external colonial support.”

**IMPOSING HUKUMAT ON YAGHISTAN**

‘Abd al-Rahman was determined to impose the rules of government (a’in-i hukumat) on the entire domain that he had won the right to govern. Unlike previous Afghan rulers, this amir was intent on obliging those regions of the country that had either been
totally autonomous or had offered no more than a token allegiance to submit to the Afghan state centered on Kabul. ‘Abd al-Rahman referred to these areas as *yaghistan*.

For late-nineteenth-century British writers, “Yaghistan” referred to a specific geographical area corresponding roughly to what is today Pakistan’s Federally Administered Tribal Areas (FATA). According to Sana Haroon’s chapter in this volume, early-twentieth-century Indian Muslim activities also identified “Yaghistan” as India’s northeastern region’s nonadministered areas, which later became FATA. For ‘Abd al-Rahman, Yaghistan—literally “the Land of the Yaghi [Unruly, Hostile]”—meant any area not under governmental control and did not refer to a specific geographical locality.  

Describing the dialectics of state and tribe of the Ghilja’i Pashtuns, Jon Anderson explains the phenomena of *yaghistan* and *hukumat* as follows:
Ghilza'i do not see “tribe” in relation to “state” but locate each as aspects of opposite, dialectically related realms which take temporal and transient shape in a continuous play of integration and disintegration. What they put in opposition are the activity and seats of government (hukumat, where governing takes place) to the lands of freedom or unrestraint (yaghistan), as points on a plane. Yaghistan is where no man is above another, in contrast to hukumat, where there are governors and governed.

This rather idealized concept of yaghistan as an egalitarian and nonhierarchical society not answerable to any authority is what 'Abd al-Rahman was trying to uproot from all areas within his domain, replacing that with the notion of hukumat by persuasion, if possible, or with brute force and terror, if necessary. The amir never doubted law and order as represented by an organized central state structure were right, and lawlessness and disorderly association of communities and tribes were wrong. The rule of law had to be established, and the state was to be the executive force to impose it, “so that the Afghan nation, aided by royal magnanimity, would reach great heights in intellect and knowledge and the same rank as other law-abiding and orderly states.”

The institutionalization of the state’s authority required a fundamentally different set of rules. For the first time in the history of the country, rules were codified and supervised by an extensive bureaucracy. In the words of the historian and subsequent president Ashraf Ghani, Afghanistan’s existing “mode of domination,” in place since 1747, was replaced. Previously, “most local power-holding families in most regions had managed to reproduce themselves socially and politically.” Now, a new mode materialized, “where political power resided in the institutions of a centralized state.” With a combination of unhindered sovereignty within established borders, ruthless application of violence, and “systematic use of Islam as an ideology of State-building,” the amir was able for the first time to exert “state sovereignty” throughout the country. Using sources published by the Afghan amir and court registers from Kunar, Ghani highlights 'Abd al-Rahman’s emphasis on the Islamization of the courts and, through them, the entire bureaucratic system of the country. This, he argues, introduced an 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.”

Hasan Kawun Kakar, concurring with Ghani’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.” However, as Ghani argues, while 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.” For the first time in the history of the Afghan state, the Shari’a became the supreme law of the land, and state-appointed courts replaced all other, local means of settling disputes. Thus, the control of the legal system formed the basis for the amir’s policies of centralization,
This chapter examines some of the justifications, methods, challenges, and effects of the amir’s Islamization of the judicial system to introduce and consolidate the rule of a central authority over the entirety of his political domain.

Despite the dangers in drawing parallels between European theories of state building and the formation of states such as Afghanistan, in some sense ‘Abd al-Rahman’s concept of consolidating the administrative structure in his domain within fixed boundaries fits Max Weber’s political theories on the formation of the modern state. According to Weber, the “patriarchal and patrimonial systems of administration” were to be replaced by a technical and effective bureaucratic system, and “traditional authority” was to be exchanged for what he termed “rational” or “legal” authority. The Weberian notion of legal authority as the basis of the modern state is not entirely incompatible with the Islamic concept of the ruler’s authority, which stems from his position as the upholder of Islamic law. Consequently, the creation of ‘Abd al-Rahman’s state apparatus, cloaked in an Islamic archetype, is not far from the Weberian model. Moreover, in line with Weber’s classical concept that monopoly over the use of physical violence (Gewaltsamkeit) distinguishes “the state from all other institutional forms of domination in society,” ‘Abd al-Rahman sought to monopolize the enforcing power to establish his version of Islamic rational and legal authority over the society that he was trying to organize under a centralized state structure and within defined boundaries.

THE ESTABLISHMENT OF A NEW JUDICIAL SYSTEM

According to the historian of the period Fayz Muhammad Katib, ‘Abd al-Rahman’s first administrative objective was to put an end to the bloodletting that the people of Afghanistan had committed against one another. He did this by granting a blanket amnesty for criminal activity that occurred prior to his reign. The main purpose of the decision for an amnesty was to end the conflicts that had occurred in the country as a result of the Second Anglo-Afghan War of 1878–80. The amir personally proclaimed that all cases of murder, personal injury, and theft that had taken place prior to his reign would not be investigated, as it would require a lifetime to settle them all and would distract him from other important state affairs. The amir added that, from the beginning of his reign onward, anyone committing an illegal act would be investigated. In his Siraj al-tawarikh, Fayz Muhammad goes on to dutifully add that, after this royal order, all cases that had resulted in animosities and rebellions were resolved, and the Afghans, Hazaras, Turks, and Tajiks, who previously had mistrusted each other, now came together peacefully.

However, after the new proclamation was enacted, the blanket began to have holes. The amnesty underwent gradual change as the judicial system of the country was being regulated through the imposition of a uniform system of law for the entire country. The amir began by excluding disputes based on inheritance.
Soon after, he instituted a systematic, retroactive statute of limitations on cases that could be brought before a judge through the publication, in 1885, of *Asas al-Quzat* (Fundamentals for Judges), by Ahmad Jan Khan Alkuza’i. This 140-page instruction manual for judges, containing 136 rules, bears the approving signature of the amir after each rule, illustrating his direct supervision and interest in the endeavor. The manual represents the first attempt by the Afghan state to extend a judicial system over the entire country and codify the Shari’a as the state law.\(^{15}\)

Article 51 of *Asas al-Quzat* specifically states that only cases that had occurred within the previous fifteen lunar years could be litigated. The article allows for exceptions to this statute of limitation for cases involving inheritance and religious endowments, or where one of the parties had been absent during the original litigation. For all other cases older than fifteen years requiring judgment that fell outside these exceptions, the judges are obligated to forward them to Kabul in order for the amir to pass whatever judgment he may deem fair.

Based on his instructions to judges, it is plausible to conclude that ‘Abd al-Rahman’s initial general amnesty was intended to exempt his government in its early stages of existence from dealing with potentially explosive cases involving claims that arose during the years of the Second Anglo-Afghan War. The amir may also have been hoping to gain time to establish a framework for the judges in the country to be able to deal with cases before them in a systematic, comprehensive manner.

**THE ELEVATION OF SHARI’A AS THE LAW OF THE STATE**

‘Abd al-Rahman’s understanding of his function 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.”\(^{16}\) In a biography of the amir, Sultan Muhammad Khan relates a dream that ‘Abd al-Rahman had sometime before 1879, prior to leaving Russian Turkistan for Afghanistan. In this metaphorical dream, the then-Afghan exiled prince is brought before Prophet Muhammad 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 instead place *Kalima* [the Muslim testimony of God’s unity].” Upon giving this answer, continues the biography, he received approval and blessing.\(^{17}\)

The administration of the law by the government meant that the amir could assume, directly or indirectly, the function of the judiciary and interpret the laws as he wanted. Sultan Muhammad in another work has written that, according to Islamic tradition, ‘Abd al-Rahman not only could interpret Islamic law but could also make his own laws where the Shari’a did not provide conclusive commands. With some degree of exaggeration, Sultan Muhammad has added that in “all
criminal and political cases practically the chief part of the law has been made by the Amir, and so in cases of the Government revenue.” 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 the scholar of Islamic law N. J. Coulson argues, from the eleventh century onward, the Sunni schools of Islamic jurisprudence accepted two prerequisites for the holder of the office of caliph. One is extreme piety, and the other is 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.”

Another Islamic legal specialist, 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.” Schacht points out the Muslim rulers’ workaround: they 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.”

With the assumption of this discretionary power, which came to be known as siyasa (discipline or infliction), the sovereign in theory sought to complete the scope of the Shari'a and in practice began to “regulate by virtually independent legislation matters of police, taxation, and criminal justice, all of which escaped the control of the kadi [sic] in early 'Abbasid times.” The term siyasa in the evolution of the Islamic state came to be equated with “the exercise of political authority.” In 'Abd al-Rahman's publications, the term siyasa (written in its Persian form, siyasat) is used in the same manner as it was by the 'Abbasid caliphs.

The crux of the amir's efforts was to establish a policy of administering justice based on the Shari'a that would serve as the law for all inhabitants of Afghanistan. He stressed that the royal decrees issued by him would reflect the divine commands; thus, according to Amin Saikal, 'Abd al-Rahman became “the first Afghan ruler strongly to invoke something akin to the divine right of kings as a source of political legitimacy.” Therefore, deviation from his decrees was tantamount to disobedience of the divine rules. Early in the amir’s reign, whenever the excessive repression of the amir became the cause of concern on the part of 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, which was, after all, the basic qualification required by the 'ulama of the country.

For example, in 1882, the amir imprisoned some of the leaders of the Afghan resistance movement against the British invasion of 1878–79. This action put 'Abd al-Rahman on a collision course with the celebrated resistance leader Mulla Din...
Muhammad Andari, better known as Mulla Mush-k-i ‘Alam. The amir sought to justify the incarcerations through appeal to the Shari’a. Aware of the power of Mush-k-i ‘Alam to raise a rebellion, the amir dispatched a mission of mediation to the mullah with a conciliatory message contained in a decree. The text of message is incorporated in its entirety, with very slight editorial changes to its original language, into the text of Siraj al-Tawarikh. ‘Abd al-Rahman justifies his harsh policies because of the need to uphold the Shari’a through governmental siyasat. The amir begins by asserting that he considers the people of Afghanistan well-wishers of the saltanat (kingdom) and followers of the Shari’a. Then ‘Abd al-Rahman writes that no one has been imprisoned without clear proof of his deviation from the divine commands and the path of the Shari’a. The amir then asks the following rhetorical question: Would God, his Messenger, and the elders of religion (which included the ‘ulama) be satisfied if a group of Muslims were to take an oath of allegiance to an amir who had rescued the whole of an Islamic country (Afghanistan) from the attacks of foreign troops and then rebelled against him? The amir ends by stating:

Praise be to God, since the day that we set foot back into this kingdom we have neither been desirous nor covetous of anyone’s possessions and wealth. We have given, in the way of relief, to the subjects thousands upon thousands of rupees. Never before in the royal diwan were registered as many sayyids [sadat] and ‘ulama as we have registered. And thus, all our efforts are aimed at the progress of the nation and implementing the Shari’a commands. Consequently, in very little time much of the glory of Islam has reappeared, and many ills have been rectified. Muslim women, to a great extent, have become covered in the veil of chastity and in the robe of virtue and veil of modesty. The impertinent, thieves, and highway robbers have quit their abominable acts. Security has been established in all provinces and districts out of fear of punishment [bim-i siyasat] and the diligence with which the petitioners seeking justice are attended to. No one can engage in committing murder or initiating wrongdoing any more. In the event that someone commits a crime or treachery, the shar’i wrongdoing will immediately be punished according to the fatwa of religious scholars, based on the commands of God and the Prophet, and the crimes against the state will either be punished by torture and yasa [a term derived from the ancient Mongol code of law used in nineteenth-century Afghanistan to denote capital punishment] or requited by forgiveness and benevolence.

THE IMPLEMENTATION OF THE SHARI’A AND CUSTOMARY LAW

The eastern and northeastern Pashtun-dominated areas of the country presented significant challenges to ‘Abd al-Rahman’s plans to impose a structured and centralized legal system in his country. In the prevailing customs of the Pashtuns, the state—in this case the amir himself—was not the arbiter, nor did he have any
control over the judgments. The presence of local laws prevented the imposition of hukumat on yaghistan.

In a royal decree dated September 20, 1889, the amir reprimands the governor of Ghazni, Sardar Shirindil Khan, reminding him that in the previous year twelve cases of murder had occurred in Katawaz, eighty kilometers south of Ghazni, and not one was brought before the court. According to information provided by the local khans, four people who were accused of committing adultery were killed, and the culprits in the other crimes—presumably the murders—escaped. The amir continues to inform Shirindil Khan that, according to his orders, the accused and plaintiff in every case should come before the court. Cases involving adultery should be litigated in accordance with the Shari'a, and a judge should send his finding to the amir. Finally, if a murder suspect evades judgment by fleeing, diya has to be collected from the felon’s tribe. Then the amir expresses his frustration at the lack of progress in creating a uniform legal system based on the Shari’a and 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 governor 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. Alef-Shah Zadran, who conducted fieldwork in the mid-1970s on the traditional Pashtun legal system in Almarah, a village situated some twenty-five kilometers west of Khust proper, writes that the “Pashtuns are people who live by a body of tsali (codes)” that he calls the “Pashtuns’ Shari’a.”

Asta Olesen explains that “the Pashtun tribesman saw no conflict in the fact that ‘what is in the Qur’an is not in Khost—and what is in Khost is not in the Qur’an.’”

‘Abd al-Rahman did replace informal or customary laws with state-sponsored and codified rules and regulations, sometimes arbitrarily, especially when the informal rules allowed room for mischievous activities that either threatened the safety of the state or deprived the amir of revenue. However, the statement by Sultan Muhammad that in ‘Abd al-Rahman’s court system “very little” was “left to custom” was more idealistic than based in reality, as customary law prevailed in spirit and practice and became the dominant means of solving disputes in periods following the amir’s rule.

THE INSTITUTIONALIZATION OF THE HANAFI SCHOOL AS OFFICIAL STATE DOCTRINE

The imposition of the Shari’a as state law not only challenged the traditional codes of conduct and customary laws of the various tribal confederacies living in Afghanistan, but also it institutionalized the Hanafi school of jurisprudence (fiqh) as Afghanistan’s only religious rite. Asas al-Quzat lays out a strict interpretation of the application of the Hanafi fiqh. When presented a case, the qazis and the muftis
must base their rulings on those upon which Abu Hanifa (d. 767), Abu Yusuf (d. 795), and Muhammad al-Shaybani (d. 805) have agreed. If there are differences of opinion, then Abu Hanifa’s interpretation must be given precedence over the other two.30 Furthermore, in Asas al-Quzat there is no indication that the judges can base their judgment on schools of jurisprudence (fiqh) other than the Hanafi.

However, while officially following the Hanafi rite, there was evidence of flexibility. According to Kakar, in some areas of the law, the amir relied on the Maliki interpretation of the Shari’a, in particular with regard to ta’zir punishments, within the framework of the Maliki doctrine of siyasa shar’iya (governance in accordance with the Shari’a). This doctrine gives the sovereign the right to use any methods to discover where guilt lies and to apply the kind of punishment that fits the nature of crime and the character of the offender, even if it exceeds a comparable punishment under the hudud ordinances.31 Additionally, in Ihtisab al-Din, which served as the guideline for the supervisors (muhtasib) of religious and moral codes, it is stated that the muhtasib must not enforce the Hanafi rulings on those deeds that are considered permissible in one school and forbidden in another. The text gives the example of eating lizards, which, though not allowed in the Hanafi jurisprudence, is permissible in Shafi’i jurisprudence. This kind of flexibility was justified because of the importance of preventing discord among Muslims.32 Since there are no indications that in the nineteenth century there was a significant number of Shafi’i followers in Afghanistan, nor was eating lizards an issue in the country, the flexibility described in Ihtisab al-Din can be best viewed as an indication that the ‘ulama under the amir were aware of the permissibility of minor rituals included in other schools of jurisprudence under a state that officially adhered to the Sunni branch of Islam.33 On the other hand, the same flexibility did not extend to those segments of the population in Afghanistan who did not follow Sunni doctrines.

The Position of Shi’is in the Amir’s Centralization Policies

Prior to accession to amirship, ‘ Abd al-Rahman generally held a favorable attitude toward the Shi’is and the Hazaras.34 Once amir, this continued. He then set out to centralize the country under an ecumenical state in which all Muslims were viewed as equals so long as they obeyed the commands of the ulul’amr and, particular to the Hazaras, that there be no “Yaghistan-i Hazara.”35

In Sarrishta-yi Islamiyya-yi Rum, a publication dated 1886, the amir calls on his people to emulate the example set by the Ottomans in organizing a strong military force. He addresses his people as “O people of Afghanistan, who are Dur-rani and Ghilja’i and Persian-speakers and Hazaras and Turks, you all belong to Afghanistan, and are all believers and Muslims.”36 Likewise, in 1887, the amir, in a letter to a number of Hazara leaders, asserted that “if we were to think that there was a distinction between Afghan [Pashtun] and Hazara, both of whom have the
same *qibla*, belong to the community of one Prophet (peace be upon him), and are devotees of one Book, and separate them one from the other, then on the Day of Reckoning before the Lord of the Religion and the Book, we would be ashamed and have no answer.”\(^{37}\) In the case of law, although the guidelines to the judges ordered them to pass judgment in accordance with Hanafi *fiqh*, there is no evidence to suggest that initially this rule was applied to Hazaras or that the central government had the power to enforce the judgments in the courts in the Hazara districts, where the population was predominantly Shi’i.

Beginning in 1891, ‘Abd al-Rahman’s ecumenical attitude and policies eventually gave way to a fierce hostility toward the Hazaras when he tried to impose the power of the central government on them. The amir declared *jihad* against the people of Hazarajat in 1892 and solicited *fatwas* from a number of Sunni ‘ulama, which declared the rebellious Hazaras infidels. A massive propaganda campaign followed, encouraging people, mostly Pashtun nomadic groups, to kill and pillage the now-anathematized Hazaras.\(^{38}\) At times ‘Abd al-Rahman tried to differentiate between those Hazaras who were loyal to him, and by extension to the state, and those who rebelled or resisted the centralization campaigns and thus remained *yaghi*.\(^{39}\) However, the amir did not trust the Shi’is in sensitive civilian and military positions, where their loyalty to the Afghan state could be questionable.

Contrary to the above-noted statement published by the amir in 1887, where the Hazaras were included as part of the people of Afghanistan, in a sermon to his people in 1894, ‘Abd al-Rahman addresses them in the following way:\(^{40}\)

> Let it not be hidden from the wise and the learned of Afghanistan, be it Afghan, Tajik, or Turk, that in stating a few words I wish to enlighten those who are dear to me, the nation, and those who are of the same religion and creed (*mazhab*) as I . . .

First, I declare to you all that the king who is from the people of Afghanistan, and the army that is from Afghanistan’s own people, will be one and of the same nature as the subjects of Afghanistan.

The term “Hazara” is explicitly omitted from this published address, and this omission is underscored by the phrase “who are of the same religion and creed as I.”

After the pacification of the Hazarajat region, the amir sought to apply the same version of the Shari’a throughout his kingdom by imposing Hanafi Sunni courts on the Shi’i-dominated parts of Afghanistan.\(^{41}\) Not only were Hanafi judges appointed in 1893 to Shi’i regions, but the amir also sanctioned forcibly educating the Shi’i Hazaras in Hanafi Sunni Islam in 1895. The amir also banned Shi’i religious ceremonies such as the Ashura, which commemorates the death of Husayn bin ‘Ali, the third imam of the Shi’is.\(^{42}\) From ‘Abd al-Rahman’s policies toward his Shi’i subjects, Kakar deduces that the amir “wished to make his Muslim subjects adhere only to the Sunni faith of Islam, and thus bring religious unity among them.”\(^{43}\)
THE ISLAMIZATION OF JUDICIAL ADMINISTRATION AND NON-MUSLIM MINORITIES

The only reference in the court manuals published during the reign of ‘Abd al-Rahman to the status of non-Muslim minorities before the law is Rule 75 of Asas al-Quzat. It spells out the administration of the oath at the beginning of a court hearing. It says that Christians, Jews, and Zoroastrians must take their oaths in accordance with their own religions. This rule on taking oaths, however, does not specify that any other law but the Shari’a can be applied to the cases involving non-Muslims. The only exception recorded by Fayz Muhammad Katib appears to have been in a case of embezzlement of government funds by Hindu civil servants in 1891. Instead of ordering the trial of the accused according to the Shari’a, the amir sent a royal decree to Diwan Naranjan Das, a Hindu financial officer for the southern zone of Kabul, and inquired about punishment for theft in the Hindu religious texts. He then proceeded to apply that punishment to the culprit rather than imposing the Shari’a punishment.

The exact number of non-Muslims in Afghanistan in the latter two decades of the nineteenth century is not known. There was a considerable number of Hindus scattered in the east and south, especially in cities such as Kabul, Jalalabad, and Qandahar. Hindus worked in the government, mostly as accountants, and a large number of them were traders. Few Jewish families lived in Herat, Kabul, and parts of Afghan Turkistan. The reference to the Christians most probably is to the few Armenians who lived in Kabul. There is information on one Armenian who served as the translator for John Gary, the British physician of the amir. There is not much known about Zoroastrians in Afghanistan during the period in question, but a reference to them in Asas al-Quzat suggests that there still existed some remnants of that native belief. Another explanation for the inclusion in Asas al-Quzat of the Zoroastrians and Christians, two faiths that were not represented in any significant number in Afghanistan, can be that adherents of these faiths along with Judaism are accepted by Islam as People of the Book and therefore needed to be included in the original sources for the manual for Afghan judges.

Despite lack of reference to the position of Hindus in formal judicial texts, Amir ‘Abd al-Rahman’s court system included a commercial tribunal in Kabul for settling disputes among merchants to which at its inception in 1893 the amir appointed four Muslim and three Hindu magistrates. According to Katib, the amir ordered the members of the panchat courts (mahkama-yi panchat), each of whom is described as being a trustworthy and influential merchant, to solve any commercial dispute brought before them in consultation with one another. The term panchat (or panchayat) is Hindi in origin and refers to the council of arbiters that constituted of five or more village elders who could rule on civic disputes in a
community. In the twentieth century, the panchat or panchayat system of arbitration seems to have referred to practices among the Pashtuns of the tribal areas of British India as discussed in chapter 7 in this volume.

While not referring specifically to the existence of a commercial tribunal or panchat court, Frank Martin illustrates the amir’s handling of a commercial dispute sometime after 1895. In a rare glimpse into the functioning of the court, Martin recounts that an Afghan merchant petitioned the amir for help so that he could recover an amount of money owed to him by the British government for supplies he furnished to their army of occupation during the Second Anglo-Afghan War. The amir “thought the best way to do justice to the man, without committing himself to any decision, was to appoint six persons chosen from among the leading merchants in Kabul,” including Martin, to review the case. When the documents, all written in English, were presented to the committee, it was discovered that man had no claim. The presence of Martin on the committee may have been due to the fact that the lawsuit had been brought against the British government and, thus, the amir had wished to have a British subject present to ensure fairness. Another reason for Martin’s participation may have been that no one in the court was able to read the documents presented by the plaintiff, which, as Martin pointedly states, were written in English. From the information provided, 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 tradesman had commercial problems with the Afghan government.

The elevation of Shari’a according to the Hanafi creed as the supreme and only state law of Afghanistan under ‘Abd al-Rahman was institutionally enforced in most cases with the formal exception of commercial disputes involving non-Muslim parties in the dispute. This expedient system allowed the government in Kabul to ensure that commercial ties with British India were preserved and expanded, and that merchants could do business in Afghanistan with the confidence of legal protection. The minor rights granted to Christians, Jews, and Zoroastrians under the law were according to the Muslim custom and had little practical impact as the number of adherents of those religions living in Afghanistan in the latter decades of the nineteenth century were minuscule.

THE ISLAMIZATION OF THE JUDICIAL ADMINISTRATION AND WOMEN

The supremacy of Shari’a courts over local customs, as Ashraf Ghani argues, gave women the right to dispute legal cases for the first time in the history of Afghanistan. To enable female subjects to take advantage of their Islamic rights,
the amir instructed judges in the cities to designate one day or half a day each week, depending on demand, to women petitioners only. In the month of August 1893, an inn (sira’i) in Kabul was designated exclusively for women travelers who had come to the capital from provinces to appeal their cases before the court.

There is abundant evidence all through primary sources showing women exercising their right to use the legal system. In *Siraj al-tawarikh*, there are several cases where ‘Abd al-Rahman, upon learning that women were treated as commodities, intervened to correct the situations according to the Shari’a. For example, when a woman whose husband was out of the country was sold to another man by force, the amir ordered both the seller and the buyer to be punished severely and declared the transaction against the Shari’a. Similarly, when two men settled their
dispute according to custom versus the Shari'a by exchanging their wives with one another, the amir angrily responded, “May God damn your father! Which sect, set of beliefs, community, or religion holds such an exchange and quid pro quo to be acceptable and lets tribal leaders perpetrate and decide such a thing?” The amir continued to add that in Islam “such an act is utterly forbidden.”

The amir’s response to a petition from a woman from Herat is illustrative of the impact of the new rights granted to women. After reviewing the woman’s request, the amir ordered the chief justice (khan-i ‘ulum) to force the husband either to pay for his wife’s living expenses or to divorce her. In an editorial style, Katib adds that since ‘Abd al-Rahman, “in contrast with previous rulers of Afghanistan, had put this legal rule into effect (i.e., pay maintenance or provide a divorce) and made it effective throughout the country during his reign,” recording one case of many “indicates” the amir’s concern for Shari’a.

**ISLAM AS NATIONALISM**

‘Abd al-Rahman understood the composition of his state as a multiethnic, feudal patchwork of disassociated communities with no common bond other than a strong belief in the religion of Islam. The obvious difference between the adherents of Shi‘i and Sunni Islam notwithstanding, the only tie between various communities and tribal confederations was Islam, as interpreted in accordance with local customs and with its laws enforced by locally appointed clergymen over which the central government had little to no influence. What the amir desired was to force on every community and tribal confederation within his domain a single interpretation of Islam that would derive from him.

In 1896, after the subjugation of the Hazaras was completed, the amir put into practice his long-standing aim of conquering the only non-Muslim region in the country and the last autonomous part thereof, a region northeast of Kabul known as Kafiristan (Land of the Infidels). While the justification for the conquest of Kafiristan was the spread of Islam, in practice, the amir’s primary concern was extending hukumat into the last yaghistan within his state. During the campaign to pacify the region, Field Marshal Ghulam Haydar Khan sent the following message to the Kafirs of Barikut:

> It is not the duty of the government to compel, force, or impose on them to accept, or take the path of, the religion of Islam. The obligation that does exist is this: that they render obedience and pay their taxes. As long as they do not disobey this command, they will not incinerate themselves with the fire of the padishah's [king’s] wrath. In addition, they are not to block the building of the road [that was planned through their territory].

In the end, Kafiristan was subdued; most of its residents either by force or for economic reason—namely avoiding the jizya poll tax—were converted to Islam;
and the region later became known as Nuristan (Land of Light). 'Abd al-Rahman’s final conquest was celebrated with the publication in 1896 or 1897 of a celebratory poem, and Katib bestowed upon him the nickname “Idol-Smasher.”

With the completion of military campaigns in 1896 aimed at bringing all hitherto-autonomous regions (i.e., yaghistan) under authority of the central government, the amir embarked on a plan to lay the foundation of a nation, if with less vigor and less tangible results than his state-formation schemes. In May 1896, in a tribal covenant (ahdnama-i qawmi) the Muhammadza’i—the amir’s own subtribe—bestowed upon ‘Abd al-Rahman the title “Light of the Nation and of the Religion” (ziya al-milla wa’l-din). Making use of the symbolism of this honorary title in furthering his nation-building aims, the amir ordered that thereafter, on every August 17 an annual national commemoration would be held in every corner of Afghanistan, known as the National Day of Unity (jashn-i muttafiqiya-i milli). While this was at best a symbolic attempt to unify the different nationalities living in the country, it did nevertheless serve as the precursor to undertakings by later Afghan monarchs to create a national state.

While the amir recognized his nation to be multiethnic in nature, he equated Afghan identity with the Pashtun identity. The nation-state that he established was based on the supremacy of the Pashtuns and as a Pashtun nation, notwithstanding the facts that ‘Abd al-Rahman participated—if somewhat reluctantly—in delineating his country’s boundaries and, as a result, relinquished Afghan sovereignty over half of the Pashtuns living in the northwestern part of British India. As seen in chapter 8, by Faridullah Bezhan, the merger of Afghanistan’s nationalism with Pashtun supremacy has continued to be part of Afghan reality and experience.

As Amin Saikal has argued, the price of national cohesion orchestrated by ‘Abd al-Rahman was that Pashtuns were instituted “as an overlord vis-à-vis all others, and not only in the political and military aspects; such issues as the sense of ethnic superiority among Pashtuns . . . were great obstacles on the road to genuine national consolidation of Afghanistan, yet they formed the backbone of every Afghan monarch’s policy.”

CONCLUSIONS

Until the reign of Amir ‘Abd al-Rahman Khan, Afghanistan was a loosely governed country with many parts of it devoid of government (hukumat), areas that the amir often described as yaghistan, land of the unruly. With help from his British patrons, he demarcated Afghanistan’s boundaries, creating a defined geographical entity over which to exercise his sovereignty, despite formally acquiescing to relinquish control over a large number of Pashtuns. However, it was his clear determination to impose the ordinance of government (a’in-i hukumat) on the entire state with internationally agreed-upon borders over which he was sovereign.
Among the strategies used by the amir in his state-building process was indeed the use of terror, intimidation, and forced exile, made possible by the creation of a strong, centralized, and surprisingly loyal national military. However, this chapter has tried to briefly illustrate how ‘Abd al-Rahman legitimized his drive for creation of a centralized and defined state through an Islamization process that began with the reorganization and expansion of the judicial system and how this process affected various segments of Afghan society. The amir inextricably linked the legitimacy of his rule (and the implicit illegitimacy of any others) to clearly understood Islamic notions of justice and governance, and he repeatedly insisted that any divergence from his rule was tantamount to deviation from Islam. Justice and good governance were effected through a visible and accessible system of courts. He consistently and repeatedly asserted the idea that if people obeyed the state (i.e., the amir), then they would not only ensure their own safety and security but also be afforded a defined, fair, and transparent system of judicial recourse.

As Amin Saikal has written, while the “substantive political, administrative, legal, economic and social reforms” of ‘Abd al-Rahman were undoubtedly “limited in scope, and were in accordance” with his “perceived political needs and resources available to him,” these reforms nonetheless laid “the basis for the institution of identifiable governmental, administrative and Islamic-legal systems.” And at the end of his rule, according to M. Nazif Shahrani, ‘Abd al-Rahman had “created an Afghanistan that had recognized international boundaries, was politically unified, and governed directly by a centralized authority, within the framework of fairly well-defined and universally applied administrative and judiciary rules and regulations.”

Writing a century after ‘Abd al-Rahman’s rule, Mohammad Hashim Kamali wrote that “Islam is the strongest unifying force within Afghan society.” However, when discussing the leaders of religious groups in Afghanistan such as judges, muftis, and the ’ulama more generally, Kamali explained there exists no “organized system to determine the power and influence of the religious groups.” Kamali continues, the “absence of a centralized structure has meant that religious leadership in Afghanistan is almost wholly governed by local patterns and the personal attributes” of the ’ulama and mullahs.

Thus, despite ‘Abd al-Rahman’s efforts to curb the power and influence of religious groups by ordering the clergy and the ’ulama to pass a test of their religious knowledge and those claiming descent from Muslim Prophet Muhammad to prove their lineage, it seems localism and unregulated Islam have prevailed in Afghanistan and not ‘Abd al-Rahman’s vision of a centralized, regulated Islam answerable to the state, which according to some scholars is more natural for the country’s makeup. More studies of ‘Abd al-Rahman’s centralization policies and practices may be a useful tool for Afghanistan’s future models of governance and for determining the role of Islam in the country’s national and political fabric.