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The Constitution and Laws of Afghanistan

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BY

MIR MUNSHI
SULTAN MOHAMMAD KHAN, F.R.G.S.
BARRISTER-AT-LAW
ADVANCED STUDENT OF CHRIST'S COLLEGE, CAMBRIDGE

London
JOHN MURRAY, ALBEMARLE STREET
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AMIR ABDUR RAHMAN KHÂN, G.C.B., G.C.S.I.

AND

PRINCE HABIBULLAH KHÂN, G.C.M.G.

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INTRODUCTION

THERE is hardly any branch of Law on which distinguished lawyers, in one country or another of the civilised world, have not already made and published exhaustive researches. It is, therefore, very difficult for me to find a legal subject on which anything new or original can be said. But I am led to follow the example of Sir Henry Maine, who wrote on the Evolution of Laws; Charles Darwin, who wrote on the Evolution of Biological Species; and Mr. Jevons, who has written on the Evolution of Religion; by considering the advice of Sir Alfred Lyall, given in his "Asiatic Studies" (p. 256), where he says, "The instrument now chiefly employed by science in the prosecution of researches is the comparative method, which examines apparent resemblances in phenomena for the purpose of bringing out their essential differences; the record of successive differences being the history of their evolution."

Hence the subject which I have chosen is that of the Laws, both private and constitutional, of Afghanistan, for these laws give students the opportunity of comparing the modern laws of the most

advanced European countries with the immature laws of a country which is now only just emerging from a state of lawlessness. Another object of my researches is to point out how far the laws and customs now practised in Afghanistan are based upon ancient oriental customs and Mohammadan law, and how far they have been borrowed in more modern times from those of India and other neighbouring countries, and, finally, how much of them is due to the present Amir Abdurrahman Khan. Mr. Wheeler, writing a life of the present Amir in 1895, mentions that before his time each State Secretary used to work in his own house, and thus it took a week or ten days for any business to be transacted; but the present Amir erected for the first time a block of Government Offices, so that all his officials could be under one roof and under his own superintendence. Again, after the seventeenth century Afghanistan fell into a state of anarchy and tribal rule, so that there consequently ceased to be any uniform law throughout the country until the reign of the present Amir, and since the re-establishment and enforcement of this law by him, no one has made an attempt to put it into a written form in the English language. Hence

I believe these few pages, even in my imperfect English, may be found of some service and interest to those seeking information about legal matters in that country. I may mention here that the absence of books on Afghan law to quote from as my authorities has rendered mine a very difficult task. In searching in the libraries of the University of Cambridge and the British Museum, all the books of reference on Afghanistan which I have been able to find were either on history, travels, or war, and none specially on law.

It would be most ungrateful on my part to omit to mention that my warmest thanks are due to Dr. Peile, Master of Christ's College, Professor Clark, Chairman of the Law Board, Dr. Hill, Ex-Vice-Chancellor and Master of Downing College, Dr. Kenny, Law Reader of the University of Cambridge, Mr. Wright, Law Lecturer of Christ's College, and to other members of the Law Board who have given me every encouragement in my efforts.

SULTAN MOHAMMAD KHAN.

CHRIST'S COLLEGE, CAMBRIDGE,
April, 1900.

CHRONOLOGICAL TABLE

11th Hijira, corresponding 632 A.D., Mohammad died.

60th Hijira, corresponding 679 A.D., Yazeid appointed hereditary Amir amongst the Arabs.

31 Hijira, corresponding 7th century, Islam introduced in Afghanistan.

1536. Parliament gave power to Henry VIII. to nominate a successor for him.

1722. The son of an Afghan Chief named Mir Waiz invaded Persia.

1726. Nadir Shah took Persia and Afghanistan.

1747. Nadir Shah assassinated.

1748. Ahmad Shah elected King of Afghanistan and died in 1773, and his son Timoor Shah succeeded him.

1793. Timoor Shah died.

1826. Dost Mohammad became Amir of Afghanistan.

1863. Dost Mohammad died at Herat, and Shir Ali succeeded him.

1866. Abdurrahman defeated Shir Ali, and placed his father Amir Afzul on the throne.

1867. October. Afzul died of fever, and Abdurrahman placed his uncle Azam on the throne.

1868. Shir Ali defeated Azam and took the Kabul throne.

1879. The English defeated Shir Ali, and he died of gout; his son Yakoob succeeded him, and owing to Sir Louis Cavagnari's assassination Yakoob was sent down to India.

1880. Amir Abdurrahman succeeds to the throne, and abolishes the Law of Self-redress and Blood-money through the whole of Afghanistan.

1883. The Amir passes a law concerning the status of women, and abolishes accessory dower.

1891. The Amir introduced the system of Oath of Allegiance on the Koran amongst his councillors.

1891. The Amir appointed his son Habibullah Khan to hold the public Durbars.

1894. The Amir introduces books in the offices instead of slips of paper.

1895. The Oath of Allegiance was taken from the whole country.

1895. The Amir adopted the title of Zia-ul-Millat-Au-Dina (the Light of Religion and Faith). He also abolished Slavery by royal proclamation.

List of the most Important Books consulted in preparing for this Dissertation.

"Alkoran."

"Notes and Commentaries on Chinese Criminal Law," by E. Alabaster.

"Law relating to disposition of property among Mohammedans," by Mr. Justice Ameer Ali.

"Lectures on Mohammedan Law," by Mr. Justice Ameer Ali, published 1885.

"Personal Law of the Mohammedans," by Mr. Justice Ameer Ali.

"Law of Contract," by Sir William Anson.

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"Commentaries on the Law of England," by Sir William Blackstone.

"Analysis of Criminal Liability," by Professor E. C. Clark.

"Early Roman Law," by Professor E. C. Clark.

"Practical Jurisprudence," by Professor E. C. Clark.

"Criminal Law," by Disney and Gundry.

"Hamilton's Hadaya," by Grady.

"Criminal Law," by Harris.

"Hindu and Mohammedan Law," by Sir William Macnaghten, edited by H. H. Wilson.

"Ancient Law," by Sir Henry Maine.

"Early Institutions," by Sir Henry Maine.

"Early Law and Customs," by Sir Henry Maine.

"The Institutions of Justinian," by J. B. Moyle.

"Law of Torts," by Sir Frederick Pollock.

"History of the English Law," by Sir Frederick Pollock and Professor Maitland.

"Institutes of Justinian," by Sandars.

"The Mohammedan Law," by Shama Churum Sircar, Professor of Law, Tagore Law Lectures of 1873 and 1875.

"Law and Customs of the Persians," by E. S. Wearing.

"Law of Real Property," by Sir J. Williams.

"Law of Personal Property," by Sir J. Williams.

"History of Civilization," by Buckle.

"System of Positive Polity," by Comte, trans. by Dr. Bridges.

"An Apology for Mohammad and the Koran," by J. Davenport.

"The Decline and Fall of the Roman Empire," by Gibbon.

"The State in its relation to the Church," by W. E. Gladstone.

"Mohammad and His Successors," by Washington Irving.

"Asiatic Studies," by Sir Alfred Lyall.
"History of the Anglo-Saxons," by Sir F. Palgrave.
"Constitutional History of England," by Bishop Stubbs.
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"Ethics of Islam," by Mr. Justice Ameer Ali.
"Spirit of Islam," by Mr. Justice Ameer Ali.
"Observations on the Mussulmans of India," by Mrs. Mir Hassan Ali.
"Allen's Diary in Afghanistan and Sinde."
"Amir Abdurrahman's Autobiography and various Official Records of Afghanistan."
Several Articles on the Amir written by the Officials of the Durand Mission in various papers of London in 1893.
An Article on the Ameer Abdurrahman in the "Review of Reviews" of 15th December, 1897.
Several Articles on the Ameer and on Afghanistan in the "Asiatic Quarterly Review," April, 1894.
"Lord Lytton's Indian Administration," by Lady Betty Balfour.
"An enquiry into the Ethnography of Afghanistan," by Dr. H. W. Bellew.
"Tunis Past and Present," by A. M. Broadley.
"Problems of the Far East," by Lord Curzon.
"Russia in Central Asia," by Lord Curzon.
"Lecture on Afghanistan" in Transactions of the Royal Geological Society, 1895, by Lord Curzon.
"Account of the Kingdom of Kabul," by Hon. Mountstuart Elphinstone.
"Edinburgh Review" for July, 1876.
"Afghan Wars," by A. Forbes.
"A Journey from Bengal to England," by G. Forster.
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"The Second Afghan War," by Col. Hanna.
"Habeh-ul-Seer."
"Indian Magazine" for June, 1898.
"Kaye's First Afghan War."
"Russia in Central Asia," by Dr. Henry Landsdell.
"Through Central Asia," by Dr. Henry Landsdell.
"History of Afghanistan," by Malleson.
"Hayati Afghani," by Mohammad Hyat Khan.
"Rauzat-ul-Ahbab."

Article on the Amir in the "Nineteenth Century," 1887, by Sir West Ridgeway.
"Forty-One Years in India," by Lord Roberts.
"Account of Afghanistan," by Lady Sale.
"Islam and its Founder," by J. W. H. Stobert.
"Tareekh-Sultani," by Sultan Mohammad Khan.
"Asiatic Neighbours," by S. S. Thornburn.
"Afghanistan," by P. C. Walker.
"Eighteen Years in the Khyber," by Sir Robert Warburton.
"A Tour to Shiraz," by E. S. Wearing.
"The Ameer Abdur Rahman," by S. Wheeler.
"England and Russia Face to Face in Asia," by Captain Yate.
"Northern Afghanistan," by Major Yate.

ERRATA

Page 5, line 11 from top, *for* "1773" *read* "1793".

Page 6, line 11 from bottom, *for* "Ranjid" *read* "Ranjit".

Page 9, line 4 from top, *for* "Yahoob" *read* "Yakoob".

" line 13 from top, *for* "Amir, Shere Ali" *read* "Amir Shere Ali".

Page 16, line 13 from bottom, *for* "Ranzat" *read* "Rauzat", etc.

Page 19, line 7 from top, *for* "Yezid" *read* "Yazeid".

" line 16 from top, *omit word* "hereditary".

Page 21, line 11 from top, *for* "centuries" *read* "generations".

Page 26, line 3 from bottom, *for* "murmers" *read* "murmurs".

Page 27, line 11 from top, *for* "gun" *read* "cane".

Page 34, last paragraph should be enclosed in quotation marks.

Page 37, line 3 from bottom, *for* "cemeting" *read* "cementing".

Page 39, lines 5 and 11 from bottom, *for* "published" *read* "printed" in each case.

Page 42, line 12 from top, *for* "Comments" *read* "Commentaries".

Page 47, line 12 from top, *for* "succession" *read* "accession" (also elsewhere if the word *succession* is used in this connexion read accession).

Page 52, line 2 from top, *for* "cases of" *read* "cases on".

Page 53, line 3 from bottom, *for* "these" *read* "them".

Page 59, line 11 from top, *for* "bondholder" *read* "landholder".

Page 61, line 12 trom top, *for* "Omla" *read* "Amla".

Page 104, line 7 from top, *for* "the Controller" *read* "its Controller".

Page 106, line 6 from top, *for* "Yahoob" *read* "Yakoob".

Page 110, line 9 from top, *for* "a" *read* "the".

Page 115, line 3 from top, *omit word* "small".

Page 117, line 6 from top, *omit word* "lowly".

Pages 118 and 119, line 7 from top in each case, *for* "Thesis" read "Dissertation".

Page 121, line 4 from top, *omit word* "not".

Page 149, line 10 from top, *for* "mancipation" *read* "*mancipium.*"

Page 152, line 5 from bottom, *for* "Barwana" *read* "Parwhana".

CHAPTER I

Historical Outline

AFGHANISTAN is a compound word signifying the house or country of the Afghans. The word "stan" in Persian means home or living place, hence Afghanistan means the country or home of the Afghans, just as Hindustan means the country of the Hindus, Turkestan the country of the Turcomans, Beluchistan that of the Beluchis, Kafiristan of the Kafirs, etc.

The origin of the Afghans is disputed by many authors, but I will give here the statement of one of the latest writers, namely, Mr. Wheeler, who wrote, in 1895, the life of the Amir Abdurrahman. He says, "The true Afghans, according to their own traditions, trace their descent from Afghana, the son of Jeremiah, the son of Saul. Afghana, it is said, was Solomon's commander-in chief. They were transported from Syria to Persia by Nebuchadnezzar, and thence emigrated to the mountains of Ghor, and what is now the country of the Hazaras. They were converted to Islam by a party of their own tribe who had gone to Arabia, under a leader named Wais, and had there fought for the prophet Mahomet." This statement agrees with that of other Afghan historians, except as to the name of the leader "Wais", which is given as Kais, who

after his conversion to Islam was called Abdur Raschid (see "Tarikh Sultani," p. 18). The influence of Islam upon Afghan institutions has been so profound that it becomes important to trace the date at which that influence began. Malleson, in his history of Afghanistan, p. 53, mentions, on the authority of Mr. Hanway, that Mohammadanism spread over Afghanistan in the ninth century. In this he is mistaken, unless he only means that Mohammadanism was not general in Afghanistan until that date.

The arguments showing Mr. Wheeler's statement to be the correct one are as follows: Firstly, there are tombs of Jabir Ansar and some other of Mohammad's personal companions in the cities of Kabul and Balkh, showing that they visited Afghanistan in the seventh century.

Secondly, though Mr. Malleson names Abdul Malik the fifth Samani king, as the first Mohammadan ruler of Afghanistan, other histories show that several other Moslem rulers had invaded Afghanistan before his time.

The most correct statement concerning this, is that of Mohammad Hayat Khan, Sessions Judge of the Punjab, in his book entitled "Hayat i Afghani." This book is received as the highest authority on the history of Afghanistan and the origin of the Afghans. He says (p. 40) that, in the year 31 of the Hijra Abdullah bin Amir, whose commander-in-chief was named Haneef, conquered Afghanistan and appointed Moslem governors over Herat, Ghor, Nesha Poor, Balkh, Toos and various other cities of Afghanistan.

The same book gives the names and histories of the Mohammadan sovereigns who ruled over Afghanistan from that date up to the present time.

Though there have been constant changes of a political character ever since, still from this date the permanent and predominant principles guiding the social life and law have been those of Islam, replacing the old Judaism and Budhism. For centuries after this introduction of Islam in Afghanistan the Afghan sovereigns ruled over, not only Afghanistan, but also parts of Hindustan, which they continued invading from time to time. In the sixteenth and seventeenth centuries Afghanistan was partly under the rule of the kings of Persia, and partly under that of the great Moghuls of Delhi, who held Kabul, Kandahar, Balkh, and Badakhshan. Kandahar and Herat were under the rule of the Persian Sophy Dynasty at the end of the seventeenth century.

In 1706, Mir Waiz Ghilzai, an Afghan chief, rebelled against the Persian governor of Kandahar, and in 1722 his son successfully invaded Persia.

In 1727, and in the following few years, the Turcoman, Nadir Shah, drove back the Afghans and made himself master of Persia, Afghanistan, and the Punjab. To quote Miss Hamilton's lecture of June, 1898, at the Imperial Institute (published in the Indian Magazine), "Nadir Shah was assassinated for his cruel oppressions in 1747, and the question as to who should succeed him was decided in accordance with the singular suggestion that it would be safest to choose the chief of the weakest tribe of all, who could either be easily overthrown if a bad

ruler, or supported by all the other chiefs. Baba Ahmad Shah was selected, and he reigned for twenty-six years, the first elected king of Afghanistan."

It will not be out of place to say a few words about this remarkable man, Ahmad Shah, as he was afterwards entitled, who was the founder of the present Durani dynasty in Afghanistan. He was the first elected and constitutional sovereign that ever ruled in Afghanistan, and being supported by the representatives of various Afghan clans and tribes, extended his kingdom from Meshad in Persia, to Lahore in the Punjab. At the time of Nadir's invasion of India, Ahmad Shah was a subordinate military officer in his army. He was so popular that after Nadir's death the Afghans constituted him their superior military officer instead of Noor Mohammad Ghilzai, their former military chief.

In 1748, various Afghan tribes, being tired of the disturbed condition of their country, were desirous of selecting a king for themselves. Their representatives assembled on a hill near the city of Kandahar, and their choice fell upon Ahmad Shah.

During his whole reign of almost twenty-six years he ruled by the advice and council of the representatives of his people, who were always present and ready to give him their opinion and support. He was a man of very strong character and did not allow himself to be led by any one particular party. He always worked hard and lived the life of an active statesman, as well as that of a soldier. His generosity, impartiality, and love of literature were well known to his countrymen. He

died in 1773, of cancer, and was succeeded by his eldest son, Timoor Shah, in the same year.

Timoor Shah moved his capital from Kandahar to Kabul; this latter place continues to be the capital at the present day. Timoor was a weak ruler, and instead of consolidating his father's vastly extended empire, passed his time in self-indulgence; hence there was neither law nor order in the country; robbery and anarchy once more prevailed, and the Persian provinces, as well as the Punjab, were lost.

After Timoor's death, in 1773, his numerous sons made matters worse by trying to rule despotically; killing, imprisoning, or dismissing the representatives of the people who were their counsellors, and by fighting amongst themselves for the throne. Timoor had made a great mistake in dividing his dominions among his various sons during his lifetime, which misguided policy enabled them to oppose successfully the supremacy of any one individual among their number.

To quote the words of the present Amir Abdurrahman Khan: "After Ahmad Shah's death, history shows in full detail how his sons lost the kingdom owing to discords between them, and their endeavours to break down the constitutional system of government.

"The last king, named Shah Shujah, whom the English wished to force upon the people against their wish, was killed by the Afghans. Many English also, who supported him, were killed.

"My grandfather, Dost Mohammad Khan, found that the principal cause which led to the ruin of

Ahmad Shah's dynasty, was that Timoor in his lifetime divided his kingdom into provinces, appointing his sons as governors over them. Each son had his separate revenue, as well as his own army, and after the death of their father, which happened in 1793, they fought among themselves, thereby greatly reducing the strength of the kingdom.

"I need not relate in detail here how my grandfather, Dost Mohammad Khan, succeeded to the throne, owing to the quarrels between Timoor's sons.

"Dost Mohammad Khan made the same mistake in dividing the kingdom of Afghanistan among his sons, giving to each one of them a separate army. In consequence of this policy "the sons were placed by their own father in the position of being able to fight against each other."

Mahmoud Shah, one of Timoor's sons, defeated his brother, Shah Shujah, aided by Feteh Khan, an Afghan chief, and took the throne of Kabul in 1808. Shah Shujah, after a hard struggle for the throne, was made prisoner first by Ranjid Singh, Rajah of the Punjab, afterwards, on his escape from this captivity, falling into the hands of the English.

The ungrateful Shah Mahmoud killed Wazir Feteh Khan most cruelly; he is mentioned in Mr. Allen's "Diary of Scinde", and in many other English books, as "the Afghan Warwick, or kingmaker."

To avenge this outrage the younger brother of Feteh Khan—Dost Mohammad Khan—took up arms against Mahmoud, and aided by his brothers

and other chiefs of the country, who were discontented with the despotic rule of Timoor Shah's sons, took the throne of Kabul in 1826. Dost Mohammad assumed the title of "Amir", signifying the "Commander of the Faithful". This title has been adopted by various Mohammadan rulers since the days of Mohammad.

Dost Mohammad reigned from 1826 to June 9th, 1863 (when he died at Herat), with the exception of the time during which he was a prisoner in the hands of the English in Calcutta. The full details of this imprisonment may be read in the pages of Kaye's "First Afghan War".

Mr. Wheeler, in comparing Dost Mohammad's character with that of the present Amir, says that the Dost was a vigorous and capable ruler; his audacity and success were vastly admired by his subjects, his simple manners and rough and ready justice at the same time making him very popular. Although he had the good sense to perceive the advantages of a friendly alliance with the English, he was nevertheless careful to keep his country a close borough of Islam. His manners evinced great urbanity and politeness, and an exercise of those easy and seducing ways which so effectually engage the affections.

Both in person and character his grandson Abdurrahman closely resembles him. But, as Mr. Curzon (now Lord Curzon) says, the present Amir has surpassed his grandfather by introducing new reforms which Dost Mohammad never attempted.

On Dost Mohammad's death in 1863, in the

absence of his eldest son Afzul, who was then Governor and Viceroy of Turkestan, Shere Ali, his younger brother, assumed at Herat the title of Amir. This resulted in several wars between Shere Ali, Afzul, and his many other brothers and half-brothers.

Abdurrahman Khan, the present Amir, son of Afzul, defeated Shere Ali, and placed his father Afzul on the Kabul throne on May 21st, 1866. Afzul died of cholera after a short reign in October, 1867, and Abdurrahman then placed his uncle Azim on the throne. But Azim, becoming jealous of the influence exercised by Abdurrahman in Kabul, sent him to Turkestan to assume the charge of the army and government there.

Shere Ali Khan, who was defeated several times by Abdurrahman whenever he attempted to fight, seized this opportunity of Abdurrahman's absence from Kabul, and, having marched from Herat, took Kabul from Azim on Sept. 11th, 1868. Abdurrahman fled to Russia, Azim died on his way to Persia, and Amir Shere Ali Khan ruled in Kabul until 1879.

Amir Shere Ali Khan introduced several laws during his reign; one established military conscription, another household taxation, a third the custom of blood-feud or blood-money, which actually encouraged people to kill one another. In this way, by payment of a very small sum into the Government Treasury, a man was allowed to kill his enemies. In some provinces the price thus set on a man's life was only fifty rupees. This law of blood-money is mentioned in the government records of Kabul, as also in some of Miss Hamilton's lectures on Afghanistan.

In 1879, Shere Ali, being defeated by the English, fled to Russia to obtain their assistance, and died on his way there. He was succeeded by his son Yahoob, who, in consequence of the assassination of Sir Louis Cavagnari, the British agent at Kabul, was taken prisoner by the English and sent to India, where he still remains.

Abdurrahman, the present Amir, left Russia, concluded a treaty with the Indian Government, and succeeded to the Kabul throne in July, 1880.

The kingdom upon which he thus entered he subsequently trebled in size by the successive annexations of:—Herat, which was under Ayoob, son of the late Amir, Shere Ali; Kandahar, which was placed under Sirdar Shere Ali Wali of Kandahar by the British; Hazarah Jat, which for four centuries had been independent of Afghanistan; and Kafiristan, which had never before been annexed to Afghanistan since the time of Alexander the Great. These extensive dominions he has succeeded in reducing to a condition of peaceful order previously unknown in the history of Afghanistan, and has established throughout them a uniform administration of government and justice marked by the introduction of many reforms, which will be mentioned in my later pages. Those readers who may wish to peruse in detail the story of this remarkable reign will find it in Mr. Wheeler's and in Munshi Mahboob Ali's biographies of the Amir; Mr. Stead's article in the "Review of Reviews" for Dec. 15th, 1897; Dr. Leitner's article in "The Asiatic Quarterly Review", April, 1894; Sir Lepel Griffin's article in the "Fortnightly Review",

1892; Col. Warburton's "Eighteen Years in the Khyber", p. 147—253; Lord Curzon's various articles in the "Times" of 1894—95, and his lecture on Afghanistan in the "Trans. Roy. Geog. Soc.", 1895; Sir West Ridgeway's article in the "Nineteenth Century", 1887; Miss Hamilton's lecture at the Imperial Institute, published in the "Indian Magazine", June, 1898; and various articles written by Sir Mortimer Durand's Mission to the leading London newspapers in the autumn of 1893.

Before concluding this chapter I wish to say a word or two about the Amir's tribe, the Durani tribe, to a branch of which, called the Barakzai, he belongs.

According to the belief of the Afghans the designation 'Durani' (gem of gems) was conferred on the tribe by Ahmad Shah, himself a member of it, in consequence of a vision vouchsafed to one of the saints of those days; but according to the late Surgeon-General Bellew, Durani is only a modern version of the name of the ancient Drangai, a people mentioned by Arrian as dwelling on the banks of the Helmond at the time of Alexander the Great's invasion. The Barakzai, or Children of Barak, the branch to which the present Amir belongs, Dr. Bellew identifies with the Barkaioi of whom Herodotus had heard, and who, according to the Greek traveller and historian, were transported to Asia from their original homeland in Libya. This is going rather far back, and we may remain content to know that at the present time the Barakzai are the most powerful tribe in Afghanistan.

CHAPTER II

The Title to the Crown

On no other point of law is there so much controversy and difference of opinion in Mohammadan communities as in reference to the title to the Crown. Nearly all European historians assert that the only right of succession in Mohammadan countries is that of sword and strength. Thus a writer in the "Edinburgh Review" (October, 1883), discussing the title to the throne of Afghanistan from the standpoint of an English lawyer, says:—"The law systems of the East, though full and ample on the succession to private property, have little or nothing to say on the subject of succession to thrones. No uniform rule appears to have been recognised as of binding force, and, as an inevitable consequence, no more futile cause of bloody civil wars, of domestic strife, and of ruthless butchery has existed than the question as to which member of a ruling family had the preferable claim to the crown. 'There are few things,' observes Sir H. Maine, 'on which mankind were at first less agreed, few things on which their usages were less at one, than the rule which of the family should have the headship.' The most ancient mode of settling such contentions was that which we may call Natural Selection. The competing chiefs fought it out, and the strongest, the most

crafty or unscrupulous made good his claim. Sometimes one of the kinsmen had the opportunity of crushing the others by a sudden blow, and an indiscriminate massacre of a household cleared a way for an aspirant to the vacant throne. The reader will call to mind several instances of such wholesale clearances in Hebrew history. Such was the story of Athaliah, 'that wicked woman,' the mother of Amaziah, who, when her son was dead, put to death all the seed-royal of the house of Judah. One only, the child Joash, was secreted and saved to occupy eventually his father's throne. Meanwhile Athaliah 'reigned over the land.' Such too was the slaughter of the seventy sons of Ahab by order of Jehu, and that of his seventy brothers, save one who escaped, by Abimelech. In the Turkish Empire similar examples of conspiracy, massacre, and dethronements have been common history. A declaration that fratricide is a rule of the Ottoman State has been attributed to Mohammad II., but the most ruthless exterminator of rival claimants was Mohammad III., who is said to have massacred nineteen of his brothers, and drowned twelve of his father's wives who were supposed to be pregnant. It is obvious how much the practice of polygamy tends to multiply claimants to the succession, and increases the temptation to summary methods of disposing of them.

We have had very recently before us in Afghanistan a striking illustration of the perplexities caused by the disputes among rival members of the same royal house. All the competitors in this case de-

duced their descent from Dost Mohammad Khan, and each set up a title to the succession. Shere Ali, after a hard struggle, ascended his father's throne, but he was not his father's eldest son. Then came Yakub Khan, who was not the eldest son of Shere Ali. The now reigning Amir Abdurrahman Khan is not a son of Shere Ali at all, but the son of his elder brother. No rule but that of the strongest appears to exist for settling the claims of such rival pretenders to the Afghan throne. A civil war is the natural sequence of a vacancy. One system indeed of royal succession has from long antiquity prevailed in a reigning Mohammadan house, that of the Ottoman Sultans, under which not the son, but the eldest male relative, of the late sovereign succeeds. In unsettled times, and among warlike communities, there is much to be said in favour of this usage, since it provides in most cases a full-grown and experienced man to fill the vacant seat, and obviates the dangers arising from the minority of an infant prince, and the cabals and intrigues incident to a regency. This rule is now in force among the Turks. The present Sultan succeeded his brother, who left children, and Sultan Mourad, who reigned but a few months, succeeded his uncle Abdul Aziz, who also left children."

I am afraid that this chapter will take larger scope than the small size of my book can fairly admit, but as the point has never been clearly laid down by any lawyers, either Western or Oriental, it is necessary to endeavour to explain it as comprehensively as possible.

The first great difficulty in tracing a law of succession in Mohammadan countries is that the State and Religion have never been divided. It frequently happens that a person who has the qualifications for being head of the State has not, according to the belief of various Mohammadan sects, the qualifications for being head of Religion. But the relations of Crown and Religion we will deal with in another chapter. The three chief qualifications which tell in the succession to the throne are as follows: hereditary claims of the eldest son, election by the people, and deference to the expressed wishes of the deceased sovereign. Yet I cannot say that even the combination of all these three qualifications makes the succession certain.

It will be necessary to give a short historical sketch in order to show how, in Mohammadan countries, these three points came to be regarded as qualifications. According to the historians of various countries in the East, it appears that the right of hereditary succession of the eldest son to the headship or chieftaincy had been recognised before Mohammad from time immemorial. In Genesis it is stated that the headship of Abraham's house descended to his eldest son. A valuable hint is furnished to us from a quarter fruitful in such indications; for Sir Henry Maine writes in his "Ancient Law", Chap. VII., p. 233, "Although in India the possessions of a parent are divisible at his death, and may be divisible during his life, among all his male children, in equal shares, and though this principle of the equal distribution of

property extends to every part of the Hindu institution, yet wherever public office or political power devolves at the decease of the last incumbent, the succession is nearly universally according to the rules of primogeniture. Sovereignties descend therefore to the eldest son, and where the affairs of the village community, the corporate unit of Hindu society, are confided to a single manager, it is generally the eldest son who takes up the administration at his parent's death." Again, "There seems to be a form of family dependency still more archaic than any of those which we know from the primitive record of organised civil societies. The Agnatic union of the kindred in ancient Roman law, and a multitude of similar indications, point to a period at which all the ramifying branches of the family tree held together in one organic whole; and it is no presumptuous conjecture that when the corporation thus formed by the kindred was in itself an independent society it was governed by the eldest male of the oldest line" (3rd edition "Ancient Law").

There are ample instances in history which show that this rule of the right of the eldest son or other nearest male relative to the succession of the office of headship was observed in Turkey, Persia, and Afghanistan, as Sir Henry Maine mentions it to have been amongst the Hindus. Gibbon (Vol. III., pp. 5—18), gives us a fruitful hint to show that a right of inheritance was recognised amongst Arabs also. He writes as follows: "The son of Abu Taleb (Ali) was in his own right the chief of the

family of Hashem, and the hereditary prince or guardian of the city and temple of Mecca."

It is true that, owing to the practice of polygamy, sometimes the actual eldest son has been passed over and his younger half-brother—the son of some favourite wife—has been nominated by the father as heir to the throne*; but even in such a case the younger prince thus chosen is always the eldest of this favourite wife's children.

Having thus described the old customary law of the hereditary succession of the eldest son which was exercised in Afghanistan, as well as in all the neighbouring countries, we will give an account of the elective kings, and also of the right of succession by the nomination of the deceased ruler.

Washington Irving (in his "Mahomet and his Successors" Pt. II.; Gibbon ("Rome" Vol. III., pp. 517—528); Ranzat-al-Ahbab (Edition of 1897, Vol. I., p. 555, and Vol. II., pp. 29—33); Habeeb-os-Seear (Edition of 1857, Vol. I. Pt. IV., pp. 1—84), and various other books which I have gone through in my researches, contain very interesting accounts of their views of the principles which Mohammad had established for succession to the throne. I will, however, in preference to them, give here only the view of an eminent living legal writer, Mr. Justice Amir Ali (formerly of Christ's College, Cambridge), whose works on Mohammadan Law are recognised by the Indian Government as authoritative; and will leave the earlier writers to those who

* See Maine's "Ancient Law," 6th Edition, pp. 42 and 43.

may be anxious to pursue the subject, as nearly all of them state only the same views as are held by Amir Ali.

In his "Short History of the Saracens" (pp. 21—51), this learned author tells us that Mohammad founded a Republican government, but on Mohammad's death (which happened in the 11th year of Hejira, corresponding with 632 A.D.) there arose a question as to who was to succeed him. He says: "And now arose the question as to who was to succeed in the government of the commonwealth. Mohammad had often indicated Ali as his successor, but had laid down no definite rule. This gave scope to individual ambitions, to the detriment of Islam, and in later times became the fruitful cause of dynastic wars and religious schisms. Had Ali been accepted to the Headship of Islam, the birth of those disastrous pretensions that led to so much bloodshed in the Moslem world would have been averted. Among the Arabs the chieftaincy of a tribe is not hereditary but elective; the principle of universal suffrage is recognised in its extremest form, and all the members of the tribe have a voice in the election of their chief. The election is made on the basis of seniority among the surviving male members of the deceased chieftain's family. This old tribal custom was followed in the choice of a successor to the Prophet, for the urgency of the times admitted no delay. Abû Bakr who, by virtue of his age and the position he held at Mecca, occupied a high place in the estimation of the Arabs, was elected to the office of Caliph or Vice-gerent of the Prophet."

I may here interpolate on the authority of the writers I have cited above, that a further cause of his election was that he had been nominated by Mohammad to be Imam or Leader at the time of Mohammad's illness; which gave an impression that he wished Abû Bakr to succeed him. "His election was accepted by Ali and the chief members of Mohammad's council and family. On his election, he said to the multitude who had sworn allegiance to him—'Behold me, charged with the cares of government. I am not the best among you; I need all your advice and all your help; if I do well, support me; if I mistake, counsel me. To tell truth to a person commissioned to rule is faithful allegiance; to conceal it is treason. In my sight the powerful and weak are alike; and to both I wish to render justice. As I obey God and His Prophet, obey me; if I neglect the laws of God and the Prophet, I have no more right to your obedience.'"

Before his death Abû Bakr nominated Omar as his successor in the Caliphate, and his appointment was accepted by the people. But Omar, instead of similarly nominating his successor, entrusted this duty to six notables of Medina, whose choice fell upon Osmân, son of Affân. Osmân was assassinated by insurgents in 34 A.H. and was succeeded by Ali, who was proclaimed Caliph without opposition.

Soon after this the kingdom was divided by force of arms between Ali and Moawyah, thus founding the great schism between Sunnis and Shiahs, which still separates the Moslem world.

Ali was assassinated in the 40th Hejira, 660 A.D., and his son Hassan, after six months' rule, having resigned the throne, Moawyah became the king of the whole Moslem Empire in the 41st year of Hejira (Irving, p. 202). Moawyah died in 60 Hejira, corresponding to 679 A.D., having nominated his son Yezid as his successor, by which he rendered the Caliphate hereditary in his line. Yet to nominate a successor was what the Prophet himself had not done, and what Abû Bakr, Omar, and Othman had therefore declined to do; and for Moawyah to make a nomination was in direct opposition to the national feelings of the time. But no active resistance was made.

After this, fourteen Caliphs of the line named Omaya, ruled one after the other in hereditary succession. Hence this rule of the hereditary succession of the eldest son has ever since been observed to a great extent in all Mohammadan countries. Yet at the same time the king's right of nominating a successor also has been always acknowledged. In England itself, even so late as Henry VIII.'s reign, Froude tells us ("History of England," Edition of 1856, II. 205) that—"The uncertainty of the succession to the throne was a continual anxiety to the nation. . . . From the Heptarchy downwards, English history furnished no fixed rule, but only a series of precedents of uncertainty." Hence in 1536, in the Act of Succession, Parliament even went so far as to give Henry VIII. a power, in case of his dying childless, to nominate a successor to the throne (Froude, II. 511).

The support of the heads of the civil and military officers and the chiefs of the country also have played and still play a great part, in Mohammadan countries, in determining the succession of a candidate.

In Afghanistan, from the commencement of Islam, numerous kings have succeeded to the throne by the right of primogeniture, when supported by the chiefs of the country. But sometimes the kings have nominated a son, although he was not the eldest, either because he was the ablest or because his mother was the king's favourite. But these nominations have usually resulted in a civil war.

It is, however, quite clear that a candidate has never found much difficulty in succeeding to the throne if he had in his favour all the three points, *i.e.*, (*a*) hereditary succession by primogeniture; (*b*) nomination by his father; (*c*) the approval of the electorate or heads of the State.

Hence it follows that it is not the lack of law in Mohammadanism which has caused so many sanguinary wars about the throne, but simply an ignorance or wilful disobedience of the law. Because, if the Muslims had followed the laws of hereditary succession, election, and nomination, which are laid down by Mohammad and his early successors in their conduct, if not in their express words, there would never have been so many civil wars for the throne. The present Amir of Afghanistan has secured the succession of his son, Prince Habibullah, by combining in him these three qualifications in the following manner; he has in his own lifetime appointed him as an officiating Amir, to hold public

audiences which the earlier Amirs of Afghanistan held themselves in person; he has, moreover, brought all the chiefs of the State into direct contact and communication with him, and so secured him their friendship. Thus the Amir believes that Habibullah will have the full triple right of succession—by primogeniture, by nomination, and by the support of the people (see "Autobiography of the Amir", chapter "My Successor to the Throne").

The principles which thus regulate the succession to the Afghan throne were well sketched two centuries ago by Mr. Elphinstone in his book called "Kingdom of Kabul", published 1839, Vol. II., p. 243; and the events of the two intervening generations have confirmed and developed the views he indicated. He writes, "Among the Afghans the power of the Dorani aristocracy and the organisation of the other tribes afford a permanent means for the control of the royal authority, and for the peaceable maintenance of the privileges of the nation. But as they have no Statute Law (except that of Mohammad) and no public records of the proceedings of their government, it is impossible that any regular constitution should have grown up among them. There are, however, some established customs and opinions respecting their government which I shall proceed to set forth. The crown is hereditary in that branch of the house of Sadozai which is descended from Ahmad Shah. There does not, however, appear to be any rule fixed for its descending to the eldest son. When a king dies it has been usual for the great Durani sirdars present at the court to meet and

consider which of his sons is to succeed. They are determined by the will of the father and by age and character of each of the princes, and their voice secures the possession of the capital, and gives a great advantage to the prince in whose favour it declares, but the practice of conferring the different great governments on the king's sons generally leads to a contest, which is decided by the wealth, abilities, and popularity of the rivals."

CHAPTER III

Prerogative of the Crown

BEFORE proceeding to mention the powers attaching to the Crown, I will say a word or two about the coronation and the ceremony of taking the Oath of Allegiance, as these stand in Afghanistan to-day. A very easy and simple way of giving allegiance is to place the right hand upon the right hand of the Sovereign, swearing at the same time fidelity to him. This giving of the hand of allegiance to the Sovereign is called Baiat (= to surrender obedience). This custom of putting the hand on the right hand of the Sovereign, as a token of allegiance, was first introduced by Mohammad himself; he "took hands of allegiance" from the emissaries from Medina, who placed their right hands on his right hand and swore allegiance. This incident is mentioned in the Koran (see also Irving's "Mohammad," Pt. I. p. 70, published in 1894). In these later times the king's right hand is kissed at the same time by those giving him their hand of allegiance.

The present Amir has made one innovation in this matter, namely, that the people make oaths of fidelity and allegiance on the Koran. Whether he has taken this idea from the Parliamentary custom of England—as the Members of Parliament swear upon the Bible when giving the Oath of Allegiance to their

Sovereign, or whether it is his own idea, I cannot tell. But this system was introduced in 1891, when the Amir intended to leave Afghanistan for England, and took these oaths from all the chiefs and representatives of the country to be faithful to him and his family during his absence as well as in his presence. The same oath was extended to all his subjects in 1895 once more.

It is generally the custom in Afghanistan for the representatives of the country and the chiefs of the court to place either the turban or the crown of the deceased king upon the head of his successor; this ceremony is called Dastar bandi (= crowning or placing the new turban). They then put his sword at his knees. They also enter the name of the new king in the Khutba or Liturgy. His name thenceforward is also engraved upon the coinage of the country and on the Royal Seal.

After the ceremony of crowning is accomplished, illuminations and fireworks and much rejoicing follow. The king attends the public prayers, generally held on Friday, as a concluding ceremony. Those who desire to read more about coronations should see Elphinstone's "Kingdom of Kabul" (Vol. II. Bk. V.), also Hayat Afghani.

I have stated elsewhere that Mohammad founded his Government on republican principles. It is quite clearly mentioned in the Koran, as well as in all such books as are authorities on Mohammad's career, that all the affairs of his Government during his lifetime were settled by the opinions of the majority of the representatives of Islam. As Mr. Irving says in his

work on Mohammad (Pt. I., p. 112), "Though Mohammad did not want to go to the battle of Ohod, yet his young followers being anxious to fight, Mohammad yielded to their clamours." So simple and unselfish was he, that the same author mentions (p. 115), that "at the time of Mohammad's marriage, the household goods consisted of a sack of barley, a hand-mill, a pan, and a pot of butter. Such was the frugality of his habits and the simplicity of the Arab life."

The same author mentions (page 187) that "Mohammad, at the time of his death, addressing the congregation, said: 'Is there anyone among you whom I have stricken? Here is my back, let him strike me in return. Is there anyone whose character I have aspersed? Let him now cast reproach on me. Is there anyone from whom I have taken aught unjustly? Let him now come forward and be indemnified.' Upon this a man from among the throng reminded Mohammad of a debt of three dinars of silver, and was instantly repaid with interest. 'Much easier is it,' said the Prophet, 'to bear punishment in this world than throughout eternity.'"

Again, (on p. 188) the same author says that "Mohammad, at the time of his death, said to his followers: 'My last command to you is that you remain united; that you love, honour, and uphold each other; and that you exhort each other to the performance of pious deeds. By this alone men prosper; all ill deeds lead to destruction.'" This statement shows clearly that Mohammad himself

did not preach or lay down that law of cruelty, and those powers of wholesale murder, which have been considered as their prerogative by numerous Mohammadan sovereigns who call themselves followers of Mohammadan law.

Now, passing from Mohammad, we take Abû Bakr, who succeeded him, about whom the same author (Irving, Pt. II. p. 5) says: "On assuming the supreme authority, Abû Bakr refused to take the title of king or prince. Several of the Muslims held him to be God's Vicar on earth; but he rejected the appellation. He was not the Vicar of God, he said, but of God's Prophet, whose plans and wishes it was his duty to carry out and to fulfil. In so doing, he added, 'I will endeavour to avoid all prejudice and partiality. Obey me only so far as I obey God and the Prophet. If I go beyond these points I have no authority over you; if I err, set me right, I shall be open to conviction.'"

After Abû Bakr, his three successors—Omar, Osman, and Ali—followed the same Republican government. But Moawyah changed the government from a republican into an hereditary one, his son, in his turn, making it a most despotic one, killing the grandchildren of Mohammad, whose religion he pretended to follow.

As Gibbon says (Vol. III. p. 523), "The aspiring wishes of the Caliph (Moawyah) were finally crowned by the improved change from an elective to an hereditary kingdom. Some murmers of freedom or fanaticism attested the reluctance of the Arabs, and four citizens of Medina refused to take

the oath of fidelity. But the designs of Moawyah were conducted with vigour and address; and his son Yezid, a feeble and dissolute youth, was proclaimed Commander of the Faithful and the successor of the Apostle of God. By his orders the grandson of Mohammad was (A.D. 680, Oct. 10) slain with three and thirty strokes of lances and swords. After they had trampled on his body they carried his head to the castle of Cufa, and the inhuman Obeidollah struck him on the mouth with a gun. 'Alas!' exclaimed an aged Mussulman, 'on those lips have I seen the lips of the Apostle of God!'"

From this date despotic plans of government and sanguinary wars and inhuman bloodshed have been considered part of their prerogative by some of the Mohammadan kings and rulers, and this has been the cause of the downfall and weakness of Mohammadan sovereignties. I do not believe that Mohammadan kingdoms will ever prosper until they follow in the footsteps of Mohammad by governing on constitutional principles. A despotic ruler can make a kingdom a very strong prosperous sovereignty if he is a strong wise man, but the moment he dies he carries his plans of administration with him to the grave, and everything he did in his lifetime is undone in a moment.

In theory the prerogative and authority of Mohammadan sovereigns by Mohammadan law somewhat resemble the authorities and powers of the old Roman praetors; thus, they cannot dispense with the laws of Mohammad, but they have the powers of

interpreting them, and of making some small changes in the customary law, and of introducing new laws on points on which nothing has yet been mentioned in Mohammadan law. But in practice (as is mentioned, and truly, by many historians) there is no limit to the powers of the sovereigns in Oriental countries; their word is law, and they have the power of life and of death.

The readers of this essay must not misunderstand me by supposing that all the Mohammadan sovereigns did not and do not follow the laws of Mohammad in exercising their sovereign authority. Many of them were very virtuous and justice-loving rulers, but there were some who did not follow in the footsteps of Mohammad in exercising their powers. They believed that it was their prerogative to do what they chose, and they interpreted the Prophet's law to suit their own cruel ambitions. Of course it is in human nature to try to extend its own power, authority and fame as far as possible, and it is not only with the Mohammadan sovereigns, but with the Hindus, with Christians, and with every other nationality, that kings have always been apt to try and rule arbitrarily, and to allow of no interference with their powers and authorities. Instances of this are not wanting in the history of nations, as, for instance, we have only to cite in English history the struggles of Parliament with kings in the past—Henry VIII., Charles I., and James II., who tried to get rid of Parliament so that they might rule despotically.

Having thus described the general practice of the

prerogatives of the crown according to Mohammadan law, I will proceed to give an account of the exercise of that power in Afghanistan, on the authority of the latest writers. I will also try to explain how far these powers have been changed and developed by the present Amir Abdurrahman Khan, who is a man of marvellous abilities. He is trying to introduce into his dominions gradually all modern reforms from the most civilised countries, according to the progress which his people are making.

I have mentioned in my former chapters that Ahmad Shah was an elected king, who succeeded to the throne of Kabul, but that after his death his sons and successors gradually broke down the constitutional system of government, changing it into a despotic government, which resulted in anarchy. Such was the condition of the country at the time of the present Amir's accession in 1880. Mr. Elphinstone in his "Kingdom of Kabul" (Vol. II., new and revised edition, Bk. V.) gave an account of the prerogatives of the Kabul kings, which I will cite with the corrections necessary to fit it to the present day. "In most Asiatic governments there are no limits to the powers of the crown but those of the endurance of the people, and the king's will is never opposed, unless by a general insurrection. Among the Afghans, however, the power of the Durani aristocracy, and the organisation of the other tribes, afford a permanent means for the control of the royal authority and for the peaceable maintenance of the privileges of the nation. But as they have no Statute Law except that of Mohammad, and no public records

of the proceedings of their Government, it is impossible that any regular constitution should have grown up among them. There are, however, some established customs and opinions respecting Government which I shall proceed to state. The king has the exclusive privilege of coining, and his name is put on all the money in the empire. It is well known what consequence the Asiatics attach to this right, and that they regard the possession of it as the chief test of sovereignty. A similar test is the privilege enjoyed by the king of being prayed for in the Khutba (part of the Mohammadan religious service). He has the right of war and peace, and can make treaties on his own authority. It seems to be understood that he cannot cede any part of the territory occupied by Afghan tribes." (I may here interpolate that the present Amir can if he chooses.)

"All appointments are in his gift, but in many cases his choice is confined to particular families. Of this description are the chiefships of tribes, some offices of the state, and many of the king's household are also hereditary." (The present Amir, more prudently, does not acknowledge hereditary office for anybody; every person is rewarded according to his services and merits.)

"He has the entire control of the revenue, both in collection and expenditure; he cannot, however, increase the settlement of the land revenue, fixed by Ahmad Shah." (The present Amir has power to change this, and has changed it.)

"The only means he possesses of increasing his resources derived from the Afghans are by fines,

compositions for military services," (the present Amir has abolished compositions for military service) "and in some cases arbitrary valuations of the produce on which the revenue is assessed." (The valuation in the present Amir's time is decided by a Council of Valuers.)

"The king cannot resume the grants of his predecessors." (The present Amir has resumed them all, leaving only such grants as he thought fit.) "In civil wars the grants of one pretender are resumed by the other on the grounds of their not being the acts of a lawful monarch, but even this is not often done." (The present Amir does not call the acts of his predecessors unlawful, but such grants as he thinks were made to people who do not deserve them he has refused to acknowledge. For instance, about one-third of the whole revenue used to be given to the priests and mullas without their doing any service for the government, on the mere ground that they pray for the prosperity of the king. The present Amir has abolished all this, and only those priests and mullas are paid who are employed by him for the public services.)

"The Customs duties having never been altered, I do not know whether the king has the right to increase them; he certainly has the power, as his doing so would not immediately affect any body of men strong enough to question his orders." (No body of men exists who would be strong enough to question the present Amir's orders, and the Amir has the power to alter the Customs, and has done so.)

"The king has the control of military levies and the command of the army. A part of the administration of justice has been shown to be left to the international government of the tribes." (The present Amir has abolished the governments of all the tribes; his is now the sole government.)

"The other branches belong to the Sovereign. He appoints all Kazis, and confirms their sentences in places where they have criminal jurisdiction. In cases where the crime is against the State, the king is the sole judge. His power, however, does not, even in this case, extend to the life of a Suddozye (= member of the king's tribe)." (The present Amir's power does extend over everyone.)

"The king has the direction of religious affairs; but, the national religion being firmly established, he has little room for interference. The rights which the Afghan nation possesses over the conquered provinces and other dependencies of the State are entirely vested in the Crown. Besides the direct powers that are possessed by the king, it is obvious that he must derive much influence from the exercise of them. In the policy of the Court of Kabul towards its own subjects, the most striking object is the close connection of the king with the Duranis, and the rivalry between him and the aristocracy of that tribe." (There is no rival to the present Amir—there is only one king, one power, and one law.)

"It is the king's policy to keep the Duranis in subjection to himself, while he exalts them over other Afghans." (The present Amir does not exalt any

men for their nationality, but only for their merits and services. There are many Duranis and members of the Royal Clan who are subordinates to other Afghans.) "For this purpose he protects the Tajiks, and all others whose power he can use to depress the nobles without endangering the ascendency of his tribe." (The present Amir has the power to depress the nobles himself without going a roundabout way to ask the Tajiks or others to help him.) "The king's object with the Afghan tribes is to get men from the western ones and money from the eastern." (The present Amir's law towards his western and eastern subjects is equal.) "In like manner in foreign policy the Afghans have shown no desire for western conquest; their views towards Persia and Turkestan were confined to the defence of Khorassan and Balkh; it was indeed the deathbed injunction of Ahmad Shah to his sons not to attack the Osbegs, whom he called 'the hive without honey'." (The present Amir has conquered all the Turkomans as far as the Oxus river; and it is really a hive with honey, because the countries of Kataghan and Turkestan are most fertile and rich.)

"The Afghan Government has always shown a great deal of moderation towards its own subjects, its dependent states and even its enemies. When there are punishments for rebellion they always fall on the chiefs alone. The Afghan Government, however, like most others in the East, is disgraced by the perfidious means sometimes resorted to by its ministers to seize the offenders, and by the use of torture. It is chiefly made use of to extort money,

and consequently falls most often on the rich and great." (There is at the present time no minister or chief in Afghanistan who can torture or extort money from the people with impunity, and without the command of the Amir.)

Mr. Wheeler, in writing the life of the present Amir, says (p. 138), "The Amir Abdurrahman has always held somewhat inflated notions as to the divine right of kings; he was firmly resolved from the first that his will should be supreme throughout Afghanistan, and no power but his own be allowed in the land. Every man of influence, rank or position must be taught humility or take the consequences. Every unruly tribe must be coerced into obedience, inured to discipline. The process began almost as soon as he mounted the Musnid; and before very long there was scarcely left a single great man in the kingdom save the Amir himself."

Abdurrahman has succeeded in great undertakings; he has kept faith with his friends; he has crushed his enemies. He has ruled over the Afghans for the space of twenty years, and it will be to the benefit of his subjects if his reign is prolonged.

CHAPTER IV

Modes in which the Royal Prerogative is Exercised

THE king's commands are circulated throughout his dominions in the following manner :

(1) By his personal orders in Public Durbar in the shape of Declarations or Speeches, or in acting as a Supreme Court of Jurisdiction and Court of Appeal.

(2) By direct orders under the Royal Seals or the Royal Signature, or by both Seal and Signature.

(3) Acting through Governors, Secretaries of State, and various other ministers and officials, who, in their turn act either according to the instructions which they receive from the Sovereign, or according to the general powers and jurisdiction bestowed upon them by the Sovereign.

(4) By circulating certain books or pamphlets which are published in the Government printing-press at Kabul.

(1) For changes which are made in the foreign or home policy of the Government, or in any other public laws and customs of the country, it is customary in Afghanistan for the Amir to hold a public audience, in which the royal family, the chiefs and

representatives of various tribes and the heads of the ecclesiastical offices, and other civil and military heads of the State are generally present, when the Amir reads out loudly his royal proclamation in the form of a speech. This is generally responded to by an address from those present on behalf of their various departments or clans. In an article written by an Oriental, who had seen the present Amir, in the "Review of Reviews" (Dec. 15, 1897), an instance of his power of oratory and knowledge is mentioned. He says: "It is most interesting to listen to the Ameer's public speeches. They are really marvels of eloquence. . . . His *darbaris* and other listeners in front of him are transfixed, and he plays upon their temporarily hypnotised faculties, dismissing them after a fiery but nevertheless perfectly self-controlled harangue, sometimes lasting three or four hours, with feelings of awe and wonderment. In addition to being a genius, the Ameer appears a very widely-read man, with almost a supernaturally retentive memory; for he can quote and recite volumes of valuable matter, and place interpretations upon what he has read and heard which a Daniel would be proud of. In a recent speech, for example, he referred to an incident in French history of thirty years ago; and he seems to have followed pretty closely the events connected with the Turco-Greek war." Another example of the way in which the Amir issues his declarations is mentioned in Mr. Wheeler's book (pp. 205—6). "On November 13th," he writes, "Sir Mortimer Durand and all the officers of the Mission attended

a grand durbar at the Ameer's palace. Writing on the day afterwards, the correspondent of the 'Allahabad Pioneer' said:

'Sir Mortimer and the officers of the Mission were received in the Durbar Hall by Sirdars Habibulla and Nasrulla (Abdur Rahman's two eldest sons), and conducted to seats at the top of the hall. Opposite were the seats of the Ameer's chief officials, civil and military. Amongst those in the front row were General Jan Mahomed, commanding the artillery, a smart, soldierlike looking man; General Mir Mahomed, who has lately been commanding in Hazara, and the Khan-i-Mulla, or chief priest. On the other side of the hall were rows of officers in the army. The Shahgassi, or Goldstick-in-waiting, acted as Master of the Ceremonies, aided by another official carrying a silver stick. In front of the Ameer's chair was a fine African lion's skin. On the Ameer's arrival the Durbar stood up. Walking in, he shook hands with Sir Mortimer and the officers, and took his seat. After a few remarks about the want of a suitable place for durbars until he had built this fine hall, he commenced an excellent speech. He dwelt on the fact that since his accession he had unceasingly striven for the welfare and prosperity of his country; that every nation had need of powerful friends; and that he had sedulously cultivated the friendship of England, whose interests for weal and woe were identical with those of Afghanistan. For the purpose of cemeting this friendship he had desired to receive the Mission, and it was a source of great satisfaction that a man had come at its head who was a trusted

councillor of the Government of India, and who could discuss matters with him in the Persian language; one, moreover, who was an old friend, and whom he knew to be straightforward and trustworthy. He wished the people of Afghanistan to know that the result of the Mission was that the bond of friendship between England and Afghanistan was now established on a firm and permanent basis, which gave him great satisfaction. He wished the fact of this friendship to become known throughout Afghanistan and to all Governments throughout the world.' "

(2) Under this heading come all such royal commands as are either in the shape of judgments given by the king (acting as a judge), or grants given by the king, or fines and punishments imposed by the king on individuals; or minor innovations in the policy or laws of the country. Thus, for instance, when a case is tried before the king, the first process is that a summons is issued under the Royal Seal or Signature, ordering such individuals as are to be tried to make their appearance before the king. When the king orders a grant to be made to anyone, or appointments to be made to various offices, he likewise issues orders direct from his own royal mandate. There are various kinds of seals; there are also certain documents which require both seal and signature, but I will deal with the details of the use of the Great and Small Seals and Sign Manual later on.

(3) I will deal fully with this third point in the chapter on the Government Departments, giving there full details of every official's jurisdiction and

power of control, as well as how that power is derived from the Sovereign, and how he receives his daily instructions from the king. Here it is sufficient to say that the royal commands are given to those various officials, either in the shape of answers to their questions or in direct new commands from the Sovereign, ordering them to do a certain act. These instructions are sometimes under the Royal Seal, sometimes under signature, and sometimes under both.

(4) Under this last heading come those subjects which are required to be known throughout the whole Afghan kingdom; as, for instance, some religious orders; orders to induce people to be prepared to meet any foreign aggression, or to stop any rebellion in the country; also the account of some important discussions which may have taken place between the Amir and his neighbouring Governments; or some understanding about the division of Afghanistan's boundaries with its neighbours; or codes of law which are written and published for the governors and civil and criminal officers of the country; or military regulations and text-books for the examination of various military officers, etc. For instance, the conversations which took place between the Amir and Lord Dufferin in 1885, and between the Amir and Sir Mortimer Durand in 1893, were published in the shape of pamphlets for distribution throughout the country. In an appendix I give references with regard to two other published proclamations of the Amir, taken from Mr. Wheeler's book.

Though in the Oriental books of history we have references showing that some sovereigns had Seals even before the time of Mohammad, yet as the Mohammadan law, which is followed by Mohammadan sovereigns, takes its date from Mohammad, therefore I will take the history of Royal Seals only from that time.

Mohammad himself had a seal, which was made of silver, and the engraved part under his finger, close to the palm of the hand, bore the inscription "Mohammad, the Messenger of God" (see Irving's "Mohammad", published in 1894, Pt. I., p. 193). Following the Prophet's example every Mohammadan of rank wears a seal ring, inscribed with his own name; and Mohammadan sovereigns usually have also official seals of a still larger size, on which not only the wearer's name, but also his kingly title is given. The difference between the seals of the English sovereigns and the Amir and his predecessors is this: the seals of the latter bear the name of the sovereign but no motto, as the English seals do, and that, as is the general Oriental practice, the seals of the Afghan rulers are used with a thick ink, whilst those of the English sovereigns are used on wax.

A great deal of change has taken place in the use of seals during the present Amir's reign. For instance, in the early ages of his reign, as in those of his predecessors, the royal seal did not require to be counter-sealed by any of the government officials. Hence there was the disadvantage that if any document was sealed by the officials unjustly and fraudu-

lently, no one was responsible but the sovereign himself, whose seal it bore. The present Amir introduced a law that any of his officials from whose office a document is issued, or on whose request and petition the king has sealed a document, must seal it with his seal before the king's Seal-Keeper attaches the king's seal to it. In this manner the official who attaches his seal to the document is held responsible if he had no authority by law, or no permission from the king, for issuing such a document. Another change which has taken place is that the Amir has added, since 1895, on the seal his new title of Zia-ul-Millat au Dina (= the light of religion and faith), as he also has added the same title to the coinage of the country (see Warburton's "Eighteen Years in Khyber", p. 153). We see in Anson (Vol. II., p. 45, ed. 1892) that "the Lord Chancellor used in England in early ages to counter-sign the royal documents before they were sealed by the Royal Seal".

All such documents as are to be addressed from the Amir to any of the foreign governments, and all treaties and agreements, and other papers of grave importance must bear both the Great Seal and the signature of the Amir; the idea being that otherwise the seal might possibly be forged or attached without the king's knowledge. He therefore signs such documents after they have been sealed.

The Small Seal is only used for orders on the Government Treasury at Kabul for payments of money and other documents concerning the expenditure, also for giving receipts for money paid into

the Treasury. Such documents as are sealed with the small seal are called Barats (= gifts or grants). This small seal is also counter-sealed by the seal of the official on whose responsibility the expenses are paid out of the Government Exchequer. These seals are always attached to the foot of the documents, where the date is also given.

The use of the seal and signature in Afghanistan resembles in some respects the use of the seals of the English sovereigns in the early ages, as mentioned by Sir William Blackstone in his book entitled "Comments on the Law of England", Bk. II., Chap. 21, pp. 345—346, in which he says: "The king's excellency is so high in the law that no freehold may be given to the king nor derived from him but by matter of record. To this end a variety of offices are erected, communicating in a regular subordination one with another, through which all the king's grants must pass, and be transcribed and enrolled, that the same may be narrowly inspected by his officers, who will inform him if anything contained therein is improper or unlawful to be granted. These grants, whether of lands, honours, liberties, franchise or aught besides, are contained in charters or Letters Patent, that is open letters—*literae patentes*; so called because they are not sealed up, but exposed to open view, with the Great Seal pendant at the bottom; and are usually directed or addressed by the king to all his subjects at large. And therein they differ from certain other letters of the king, sealed also with his Great Seal, but directed to particular persons, and for particular purposes; which therefore not being proper

for public inspection are closed up and sealed on the outside and are thereupon called Writs Close—*literae clausae*, and are recorded in the close rolls in the same manner as the others are in the patent rolls. Grants or letters patent must first pass by bill, which is prepared by the Attorney and Solicitor Generals in consequence of a warrant from the Crown; it is then signed, that is superscribed at the top, with the king's own Sign Manual and sealed with his Privy Signet, which is always in the custody of the Principal Secretary of State, and then sometimes it immediately passes under the Great Seal, in which case the patent is subscribed in these words by the king himself. Otherwise the course is to carry an extract of the bill to the keeper of the Privy Seal, who makes out a writ or warrant thereupon to the Chancery; so that the Sign Manual is the warrant to the Privy Seal and the Privy Seal is the warrant to the Great Seal, and in this case the patent is subscribed 'by writ of Privy Seal'. But there are some grants which only pass through certain offices, as the Admiralty or Treasury, in consequence of a Sign Manual, without the confirmation of either the Signet or the Privy Seal."

As Sir William Blackstone here says, "The king's excellency is so high in the eye of the law that no freehold may be given to the king nor derived from him but by matter of record". This is the idea which is held in Afghanistan to-day; for it is considered that the Amir cannot remember hundreds of commands which he gives verbally every day; and therefore, if he should forget any

of his orders, no one could bring evidence against his word or dispute his statement. It is therefore the order of the Amir to all his officials that if he gives verbally to any of them any command or instruction, such official must write it down at once, and take the Amir's signature or seal upon it for record or remembrance, to remind him in case he should forget. This rule applies not only to the freeholds which may be given to the king, or derived from him, but also to all matters of every kind. For instance, if the Amir orders his treasurer to give anyone ten shillings, he gives it on the spot, but writes it down at the same time, and makes the Amir sign or seal it. Or if he orders an executioner to hang a man, he obeys his orders, but at the same gets the Amir's signature for such an order. If the Amir orders a gaoler to release a prisoner, he takes the signature in like manner; or if the Amir buys or sells anything, it is put in a written form or agreement in the same manner as among private individuals. The Amir in such matters takes some person as his agent, and sends this agent with two witnesses to the Court to sign and witness the agreement on his behalf.

The second paragraph in the quotation from Blackstone also resembles the practice which is at present carried out in Afghanistan, as the public letters are placarded on a bar in front of the central police-station for the inspection of the public. The Great Seal is attached at the foot of such letters; a copy also of these letters is kept in offices which are open to the view. But letters addressed to private

individuals are closed up, and the cover is sealed by another seal which is called Muhr-i-packet ("cover seal" or seal of closure).

About the third paragraph there is no Attorney-General or Solicitor-General, nor is there any such office in Afghanistan. But, as I have mentioned, the king does not attach his seal, which is in the custody of the Nazir, or Lord of the Seal, until after the seal of the head of a department by which the letter is sent to the king to be sealed. Sometimes the Amir puts his signature with or without seal in the following words: "I, the Amir Abdur Rahman, sign this myself." (See, for a photographed facsimile example of this, the "Asiatic Quarterly Review" for April, 1894, p. 291, where, I may add, the letter is written in my own handwriting in my capacity as his secretary, and is signed by the Amir at the foot.)

The seal is supposed to be used for the purpose of saving the king the trouble of signing so many papers. Therefore one of the secretaries or the treasurer or head of any other office of the Government receives a direct order under the signature, or sometimes under both signature and seal, from the sovereign to carry out certain instructions. Then, on the authority of the king's sanction, he issues orders for the execution of such commands in his own seal; and the Lord of the Seal, without asking the king, counter-seals it with the Great Seal.

There is another kind of seal which has been newly introduced by the Amir; it is called Muhr-i-Rahdari (= seal for issuing passports). This seal is only used to seal the papers for travellers who

wish to pass through Afghanistan. The keeper of this seal attaches it to the passport after seeing that the seal of the Passport Office has been affixed by the clerk, as also the seal of the head of the police.

Unlike the strange doctrine which still lingers in English law, and makes an unsigned but sealed document have far more effect than one which is signed but not sealed—(see Anson's "Contracts", chap. II., out of which I quote only one sentence here, which runs as follows: "A gratuitous promise, or promise for which the promisor obtains no consideration, present or future, is binding if made under seal, is void if made verbally or in writing not under seal")—the signature of the Amir is, and throughout Oriental countries always has been, considered of far greater importance than the seal, and the confidential letters are nearly always signed by the Amir himself. If the king takes the trouble to sign a letter addressed to anyone instead of sealing it, it is considered a mark of royal favour and an act of special kindness.

CHAPTER V

The King in Durbar and Council

THE subject of this chapter would form matter for a whole volume if it were treated in detail, because it shows a very interesting resemblance to the growth of the English Constitution in the early ages of its history, but unfortunately there is neither time nor space for going into such detail. I must therefore leave the further exposition to some other occasion. Here I will give only a short account, which may none the less be found to yield some interest.

If I were trying to give a short definition of the Afghan legislature as it was at the time of the present Amir's succession to the throne, I should quote a few verses from the Odyssey of Homer, as given in Sir Henry Maine's "Ancient Law" (published 1876, p. 125). The quotation runs thus: "They have neither assemblies for consultation, nor Themistes, but every one exercises jurisdiction for his wives and his children, and they pay no regard to one another." But in the present Amir's administration we find instead a curious sort of combination of the old customs and laws of Afghanistan with others introduced by him from India, or copied from the modern machinery of western governments, and especially from the English Constitution. I will try to explain this hereafter.

At present there are three classes of chiefs who form the Council or Durbar of the king. These are the Sirdars, the Khans, and the Mullas. The Sirdars are something like the English peers of the realm; they take their seats in the Court by their hereditary right, being members of the Royal Clan. The Khans are representatives of the country. The Mullas are the representatives of the Mohammadan religion. It is therefore necessary that I should give some account of the origin of these three Estates of the Realm. Mr. Elphinstone, in his book on the "Kingdom of Kabul" (published in 1839, Vol. I., p. 210), gives the following interesting account of them. "As each tribe has a government of its own and constitutes a complete commonwealth within itself, it may be well to examine the rise and present situation of this commonwealth before we proceed to consider them as composing one state or one confederacy under a common sovereign. Taking the descent of the Afghans from one ancestor, as long as the number of families was small, they were under the direction of their common progenitor.* As they grew more numerous they were separated into various

* I may add here, to Mr. Elphinstone's words, a remark which I do not find in any historian, but which is suggested to me by the meaning of the word Badshah or Padahshah (= king). This I consider to be a compound word, *i.e.*, Pada = flock, Shah = chief,—that in early ages of which we have no records, the king must have been little more than a head shepherd, or the chief of several shepherds. There was therefore little jurisprudence in the simple lives of the shepherds in ancient society. But gradually as mankind possessed larger estates than mere flocks of cattle, the laws were made for the administration of the extended powers of the kings.

tribes, each tribe remaining under its own hereditary chief, entirely independent of the common head of the race. The tribes continue in a great measure unmixed, each having its territory compact. They still retain the patriarchal government I have alluded to, and the operation of the principle which I suppose to have separated them is still very observable. Each tribe has branched into several divisions, and each of these divisions is governed by its own independent chief. The name of the Ooloos is applied either to whole tribes or to one of those independent branches. The word seems to mean a clannish commonwealth. The Ooloos were divided into several branches, each under its own chief, who is subordinate to the chief of the Ooloos. Each subdivision has its chief man subordinated to the chief of the division in which it is comprehended. The chief of the Ooloos is called a Khan; he is always chosen from the oldest family of the Ooloos. In most cases the selection rests with the king, who can remove a Khan at pleasure, appointing one of his relations in his stead." (In the present Amir's reign, not in most cases but in *all* cases the appointments rest upon the Amir's approval.)

"In some Ooloos the Khan is elected by the people. In both cases some attention is paid to primogeniture, but more to age, experience, and character. When the Khan dies, two or more of his sons or nephews endeavour to make parties in the tribe, and sometimes stir up open war in the Ooloos, in which sometimes one hostile tribe joins with one or other of the claimants. During civil

wars in the nation the unsuccessful candidate for the commonwealth of the Ooloos joins the pretender to the throne, and is brought into power on the success of his party." (In the present Amir's reign no chiefs or Ooloos can fight against the other; this abuse is therefore abolished, and the king nominates a new Khan without any loss of time.)

"The head of a subordinate division is always elected by the people from the oldest family in it, except in the lowest sub-division, where the superiority is nearly always natural, as when an old man is head of ten or twelve families formed by his sons, nephews, and grandchildren. The internal government of the Ooloos is carried on by Khans and by assemblies of the heads of divisions. These assemblies are called Jeergas. In cases of little consequence, or in an emergency, a Khan acts without consulting the Jeergas, who on smaller occasions give their opinion without consulting the Jeergas below them. But in matters of importance, when circumstances admit, the sentiments of the whole tribe are ascertained before anything is decided. In some rare cases the Khan establishes arbitrary power, and acts without consulting any of the Jeergas under him, and his example is followed by the subordinate chiefs. But more frequently the chiefs are neglected, and every subdivision, every quarter, and even every family, throws off its dependence on its superiors, and acts according to its own interest or inclination. This evil is remedied in some cases by the appointment of a temporary magistrate, chosen on account of his abilities; a sort of dictator who has great powers during

the war or other occasions for which he has been appointed, but he returns to the situation of a private person when the period of his office has expired." (In the present Amir's reign all magistrates are permanent, and do not retire as mentioned by Mr. Elphinstone.)

"Throughout all the tribes the clannish attachment of the Afghans, unlike that of the Highlanders, is rather to the community than to the chief. There is scarcely any tribe among the Afghans of the East that is not in a state of actual war between themselves." (Now in the reign of the present Amir wars between the clans themselves are unheard of.)

"The general law of the kingdom is that of Mohammad, which is adopted in civil actions in the Ooloos also; but their peculiar code, and the only one applied to their internal administration of criminal justice, is the Pooshtoonwullee, or usage of the Afghans,—the rude system of customary law, founded on principles such as one would have supposed to have prevailed before the institution of civil government." (The Amir has abolished these rough notions of law, replacing them by a uniform law throughout the whole kingdom, and respecting some reasonable customs at the same time.)

"The opinion that it is every man's right and duty to do himself justice, and to revenge his own injuries, and to take redress for wrongs and the punishment of crime into his own hands, is still to some extent practised. If the offender be out of his

power he may wreak his vengeance on a relation, and in some cases of any man of the tribe." (This practice has been entirely abolished by the present Amir.)

"The assemblage of many commonwealths, such as I have described, composes the Afghan nation, and the whole, or nearly the whole, is formed into one state by the supreme authority of a common sovereign. The king is the natural head of the tribe of Durani—the greatest, the bravest, and most civilised in the nation." (The government of the whole country centres in the king, though he is supposed to consult with the Khans, who are representatives of the various clans of the country, and the Sirdars, who are representatives of the royal clan, and the Mullas, who are representatives of the Mohammadan religion.)

"With the exception of the republican government of the Ooloos, the situation of the Afghan country appears to bear a strong resemblance to that of Scotland in ancient times; the direct power of the king over the towns and the country immediately around, the precarious submission of the nearest clans, and of individuals of the remote ones, the inordinate power and affection of the nobility most connected with the court, and the relations borne by all the great lords to the Crown, resemble each other so closely in the two states that it will throw light on the character of the Durani government to keep the parallel in view. The defects of this system are obvious, and when we come to observe in detail the anarchy and disorder which

so often arise under a republican government of the tribes, we might be induced to underrate the quantum of happiness it produces, and to suppose that the country would derive more advantage from the good order and tranquillity which an absolute monarchy, even on Asiatic principles, would secure." (This suggestion of Mr. Elphinstone was not out of place. It is now clear that the absolute monarchy which the present Amir has founded is a cause of peace in the country, putting an end to the once constant fightings between the Afghan tribes. But the Amir, by the overthrow of many internal insurrections and rebellions, established his will as a law throughout the whole of Afghanistan, and, on its being established, he then commenced to give his subjects a voice in the administration and welfare of the kingdom, as I will hereafter explain.)

But before proceeding any further we must say a word or two about the Sirdars and the Mullas. Mr. Elphinstone (in his second vol., p. 102) says, "The heads of the Durani clan are called by the military title of Sirdar". The present Amir has made this change in the seat of the Sirdars in the Royal Durbar, that, like peers of Ireland and Scotland, the members of the Durani clan cannot all take a seat in the Royal Durbar. In fact, by the Amir's law, only such men are entitled to the designation of Sirdar and to take a seat among the Sirdars as are descendants of the Amir Dost Mohammad Khan and his brothers. Even among these it is not the custom, as it used to be before the Amir's time, that every baby of the royal family was called a Sirdar. At present only

such people are called Sirdars as bear their title by the sanction of the Crown. Every person who bears the title of Sirdar takes his chair in the royal assembly, which is somewhat of a notion of the Amir to copy the English House of Lords. The Amir's heir is also called Sirdar. There is one other change which the Amir has made in this assembly, and that is he has introduced the system of creating peers or Sirdars by his own prerogative, from such clans as are not related to the royal family. For instance, the most eminent among the Sirdars is Sirdar Abdullah Khan of the Tookhi tribe, who has been created Sirdar by the Amir, and whose name is mentioned by Wheeler and other writers.

Mr. Elphinstone gives a long account of the office of Mullas, for which I have no room here; I will only mention for reference his statement in Vol. I., p. 222, that all civil and criminal trials are conducted before a Jeerga, which is composed of Khans, Mulliks or elders, assisted by Mullas. He says again, on p. 281, "that Meer Wauez, a Mulla, had become so popular with the bulk of the Afghans that he used his influence to dethrone Shauh Mahmoud". Among the old Roman magistrates it was a curious thing that those who were magistrates and had to administer the law did not know law, and those who did know law had no power of exercising that law except by selling to litigants their information on legal points. We see traces of the same thing in Mohammadan countries; the sovereign and his governors who were to give judgment did not know law, whilst the Mullas, who knew Mohamma-

dán law, had to sell their information of that law. A system therefore grew up, to which Mr. Elphinstone refers in the above-mentioned quotation, that Mullas were required to be with the Khans, or barons, as well as with the king, to give them their assistance and advice on points of Mohammadan law (or 'Sharai'). This system has given them the right of having a seat in the Royal Durbars from early ages, and of course sometimes they have exercised far greater influence over the king and his courtiers than any other councillors of the Crown. The present Amir first stopped all the influence and authority which they had in the administration of the kingdom, and then appointed some of them to hold ecclesiastical offices and courts under the pleasure of the Crown. Even this appointment is only made in case of their passing examinations, which he has instituted, in Mohammadan law. Like the English bishops, not all of them are entitled to have seats in the Royal Durbar, but only a limited number by the seniority of their services and offices. The Mullas in Kabul Durbars do not take their seat among the Sirdars, or peers, as bishops do in England, but take them according to their family rank, *i.e.*, if a Mulla belongs to the Royal family by birth he will take his seat among the Sirdars, or peers, and if he is a commoner by birth he will take his seat among the assembly of the Khans, or representatives of the Commons.

It is a well-known fact that the Amir is a very great student of ancient as well as modern histories, and has read the constitutional history of the various

European Governments and their growth, with the keenest interest. Hence it is very natural that he should introduce, as he has done in his Durbar, the representatives of all these three Estates of the Realm, so that they should represent the feelings of the nation before him, and then will give him their support and assistance in every way. He does not, however, give them full authority, as they are not yet capable, for want of education, of making a proper use of the powers which may be vested in them. I will here give a copy of the Amir's own views in this respect, mentioned in the chapter "On the Future of Afghanistan" in the Amir's life, not yet published, but abstracts of which are given in Mr. Wheeler's "Life of the Amir", as well as in the "Asiatic Quarterly Review" of April, 1894.

> "I must mention that I have thought it important to give many hints to my son and successor, as a guide and foundation for the principles which he is to follow. I will now proceed to discuss another matter, the mode of administering and ruling Afghanistan, which ought to develope gradually but steadily, so that the kingdom may become a strong, self-governed kingdom.
>
> "The foundation-stone of a constitutional government has been laid by me, though the machinery of representative government has not taken any practical shape as yet. It is necessary that every ruler should observe and consider the various modes of government applied in various countries, not jump at conclusions in a hurry, but apply the best modes of governing gradually, modifying them according to circumstances and the position of his country. In

my belief, the best principle of governing was that laid down by the great lawgiver of Arabia, Mohammad, our Holy Prophet, may God bless him. It was the system of a representative government divided into two parties; one of them called Muhagir and the other Ansar. The government was carried out on the principles of democracy; every member had the power of giving his vote and opinion; and the majority was to be followed. I have made the following arrangements for making Afghanistan into a constitutional government. There are three kinds of representatives who assemble in my court and audience for consulting with me about the supplies for war materials and various other state affairs. These three classes of people are called Sirdars, or aristocracy, Khawanin Mulki (Commons) or representatives of the people, and Mullas (ecclesiastical heads and church representatives). The first of these take their seats in the court by hereditary right, subject to the approval of the sovereign. The second are elected from among the chiefs of the country, who are chosen in the following manner. In every village or town there is one man elected by the burgesses of that town who must have certain qualifications which I need not give here in detail. He is elected by the inhabitants of that village or town and is called Malik or Arbab. These Maliks or Arbabs elect another man who is one of them but a man of greater influence and greater importance in their province or constituency, whom they call their Khan (or chief). Our House of Commons is composed of these Khans. But in the matter of electing these Khans the final authority rests with the sovereign, who judges of the suitability of the election of these persons for the post of Khan by their merits, their position, their loyalty, their services

or the services of their fathers; these facts are considered, as well as the fact that the candidate has been already chosen by the people. The third party consists of the Khan Aloom (the head of religion), the Kazis (the ecclesiastical judges); Muftis (the ecclesiastical heads of churches and inferior courts), and Mullahs (the priests). The last named people are the ecclesiastical heads, and rise to the position of holding their seats in the Parliament by passing examinations in religious studies and in the laws of the country, and by serving in the religious departments.

"This constitutional body has not yet attained the ability nor the education to qualify it for being entrusted with authority of any importance for giving sanction to bills or acts of the Government. But in time they will perhaps have such authority, and in this way the people of Afghanistan will be governed for their own safety by themselves. I must strongly urge my sons and successors never to place themselves as puppets entirely in the hands of these representatives of constitutional government; they must always reserve to themselves the full power of organising the army, and keep it in their own hands, without admitting any right of interference by their constitutional advisers. And further, they must keep the power of vetoing any reforms, schemes or Bills passed and sanctioned by their Council or Durbar, or Parliament, as this body may be called.

"My sons and successors should not try to introduce new reforms of any kind in such a hurry as to set the people against their ruler, and they must bear in mind that in establishing a constitutional government, introducing more lenient laws, and modelling education upon the system of modern universities,

they must adopt all these gradually as the people become accustomed to the idea of modern innovations, so that they will not abuse the privileges and reforms given to them."

Besides these three Estates of the Realm there is another sort of assembly on a larger scale and of greater numbers than these. When proclamations of war are being made, or on similar occasions of emergency, when the king requires the support of the whole nation in the shape of money, or fighting men, etc., he summons the principal bondholders of the whole country, as well as subordinate Mullas and chiefs of the Royal Clan and other notables of the country, in order to consult with them and to ask them for their support and help. This is something like the old Wittenagemot which existed in England. There is a great deal in Stubbs' "Constitutional History of England" (Vol. I. published 1873, pp. 356—368) which resembles the assemblies of the Afghanistan sovereign; but I am afraid that this chapter will be too long to hold it all. Much also has been said already in previous pages of this essay which readers can compare with Stubbs for themselves.

Having thus given an outline of those who attend the king's Durbar, I will proceed to mention the days of the week which are devoted to the various business and affairs of the Government; also how and by whom the courtiers are summoned to the Court, and the process of legislation. Mr. Wheeler mentions, in his "Life of the Amir" (p. 213), that "Monday would be devoted to the affairs of Herat,

Kandahar, and the outlying provinces; Thursday to correspondence with India; on Tuesday there would be a military review; on Wednesday and Saturday the Amir sits as a High Court of Justice and Appeal, when the meanest of his subjects may come before him with a petition; Friday is a day of rest; Sunday is devoted to the Amir's private affairs. According to Kondamir there was a very similar division of the week at the Court of the Indian Moghul, Humayun, who died 1556." Mr. Wheeler makes a little mistake in this statement. Monday and Thursday are devoted to postal despatches and to the Exchequer; Tuesday is a military levee for military cases and all the affairs of the War Office; Wednesday is devoted to the affairs of the whole kingdom in general, when the three Estates of the Realm, as above mentioned, all attend the Royal Council or Durbar; Friday is a day of general holiday; on Saturday the Amir sits as a Court of Appeal and Supreme Court of Justice; Sunday is a day devoted to inspecting the discipline of the army, magazines, war materials, manufactories, industries, and various other miscellaneous government affairs. But this public Durbar is now generally held by the Amir's eldest son, Prince Habibullah, since 1891. The Amir himself is a sort of Executive Government, acting in Cabinet and attending public Durbars occasionally when there are matters of grave importance that require his presence. But we shall deal with these in full detail in other chapters.

The three classes of representatives of the nation above mentioned are divided into two parties. One

of them is called the Durbar Shahi, or the royal assembly, the other is called the Khawanin Mulkhi (= representatives or the chiefs of the Commons of the country). These representatives are summoned by a call from the office of a court functionary called Aishak Akasee (= Gentleman Usher, who stands in the Amir's Durbar somewhat as does the Lord Chamberlain in England). It is his duty to invite and summon all the members of the king's council, and to arrange their seats according to the order of their merits. He has another subordinate officer, who is called Omla Bashi, who delivers to all the representatives of the country the summons to attend the Royal Durbar. He takes a receipt for the delivery of the summons. On their arrival outside the royal audience hall they are received at the gate of the hall by another officer, called Kabchi Bashi, or Officer of the Silver Stick in Waiting. This official is a deputy of the Gentleman Usher. He leads the people to the Gentleman Usher, and introduces them to him.

After the attendance of all these three Estates of the Realm the process of legislation is as follows: in some cases the king reads a proclamation, or makes a speech on the points of law or changes which are required in the policy or law of the country, and asks their opinion. This nearly always results in the expression of the same views as those held by the sovereign, as this assembly has neither the capacity nor the courage to detect anything wrong in the law or policy of their sovereign. In fact, it is considered a favour on the part of the sovereign to invite these

people to his presence, rather than as a favour or service on their part to attend the Durbar. But gradually these people are getting more and more encouragement from the Amir to express their opinions more and more freely and frankly in the interests of the country.

A second mode of introducing any changes into the law is that some member or members of this assembly may lay a petition before the sovereign, to which the royal sanction may be given, and so make it part of the law of the land. But the most important factor in changes of the law consists of the daily reports from the magistrates, the governors, the ecclesiastical and criminal courts, the revenue department, and other officers of the government, who forward to the sovereign their decisions for his approval and sanction, or send in their petitions or the petitions of tribes in the country requesting the sovereign to sign a new law. If the Amir forms a favourable opinion upon these documents they are enrolled in the Record Office of the Government, and thenceforward form a part of the archives and laws of the country. In all these matters those members of the Royal Durbar, or the assembly who are present, inform the king if the petitioner or the magistrate had misinformed the sovereign, thus trying to pass a law on wrong information. I will deal in future chapters with some other modes in which the law of Afghanistan has developed in the reign of the Amir. It is sufficient here to say that it resembles the development of the Roman Law in ancient times, which the emperors had improved and developed by various

methods, the most important of which were these: "sometimes by *edicta* pronounced by the emperor in his magisterial capacity; or *mandata*, orders directed to particular officers; sometimes by *decreta*, or judicial sentences given by the emperor which served as precedents; at other times by *rescripta*, that is, answers given by the emperor to magistrates who requested his assistance in the decision of doubtful points" (see Sandars' Introduction).

CHAPTER VI

The King and his Cabinet

THE Executive officials of the Amir have a selected body which acts as a Cabinet Council, distinguished from the general assembly mentioned in Chapter V., in such a manner that the Council mentioned in that chapter is called Durbar-i-Am or public audience, whilst this smaller Council is called Khilwat, or Durbar-i-khas, which means private and confidential assembly or Cabinet meeting. This reminds us of the early foundation of the English Cabinet by the English kings, who selected a few confidential servants with whom they could hold consultations on private matters. As I have mentioned elsewhere, the Amir is fully informed about the growth of the English Constitution, and therefore his administration is a very interesting mixture of the Oriental Constitutions with those of the West. I will try to compare this private Council of the Amir with the growth of the English Cabinet as mentioned by Sir William Anson, in his book on "The English Constitution" (published 1892, Pt. II., p. 100, et seq.). I will also show, in the chapter on the Government Departments, how far there is a resemblance of the same kind. It is the mistaken belief of some people in England that the Amir of Afghanistan and other Asiatic Monarchs have no advisers at all. I believe

that those sovereigns are more under the influence of those by whom they are surrounded than many European sovereigns. It is quite true that their word is law, and their will cannot be opposed by any of their ministers; but they are not inspired about the condition of the country; on the contrary, what they know comes from information which, in the main, they receive through their officials and servants. In this respect European sovereigns are less dependent on their counsellors than are the Asiatic sovereigns, because they obtain their information direct, by frequently travelling about the country, by the liberty of the press, which points out the mistakes or wrong deeds of their ministers more deliberately and frankly in Europe than in countries where the officials of the Government exercise a great deal of despotic and arbitrary authority without the fear of public criticism. Hence the few selected officials who are the private Assembly of the Amir may be looked upon as his advisers and counsellors in the same manner, though not holding the same authority, as Cabinet Ministers in England.

In the public Durbars there are two kinds of officials who attend the Durbar. One class consists of those who are holding offices under the Crown. These may be placed in the same category as the Privy Councillors. The second class is composed of the representatives of the country, such as the Sirdars and Khans, etc., but holding no office under the Crown. Then the small body of officials who form the private Assembly or Cabinet of the king are selected from among the Privy Councillors, in

this respect resembling the Cabinet Ministers in England, who are also selected from the list of Privy Councillors.

As there is a difference in the way in which the summons are issued in England to the Cabinet Ministers and to the Privy Councillors, so there is a sort of difference in the summons sent out for the attendance at the public Durbar and for the attendance at the Amir's private meetings or Assemblies. For the public Durbar the summons are sent through an official called Amla Bashi, but those to attend the private Assembly are sent direct from the Crown through one of the Cabinet Ministers. As Sir William Anson says, "every member of the Cabinet is a Privy Councillor", so every member of the Amir's Cabinet is a member entitled to attend the public Durbar in the capacity of a Privy Councillor.

These Cabinet Ministers are selected counsellors in whom the king has confidence; they come into his presence and assist him in the transaction of the more secret and confidential affairs than those which are dealt with in a formal manner in the public Durbars. In this respect the resemblance approaches very closely to the facts given by Sir William Anson, when he says, "the Cabinet became the term for that group of Privy Councillors with whom the king took counsel on affairs of state, and that the great Council or the Privy Council assembled for the transaction of formal business, which was all that it was now permitted to do."

It is, however, only a sort of notion of a Cabinet which is being founded in Kabul; it is not a clearly

defined Cabinet, which again resembles the early stages of the English Cabinet, described by Anson as follows: "But though the functions of the two bodies are thenceforth tolerably distinct, the Cabinet itself is not always very clearly defined". The Amir sometimes prefers to consult with a smaller group of Ministers in matters which are secret and important, or which specially concern their departments. Here again, this Cabinet resembles that of William III., as Anson says, "William III. sometimes preferred to act with smaller groups of Ministers in matters which were secret and important, or which specially concerned their departments".

There are dozens of examples, some of which I have in my possession, in the Amir's own handwriting, in which officials have complained of being left out of the Cabinet meetings, and the Amir's answer was that there was no ground for complaint. This again resembles the instance of the complaint made by Lord Normanby in 1694, that he was left out, and the king's reply that there was no ground of complaint.

Again, as in the early days of the English Cabinet, there is no regular limited number; the only distinction being the king's confidence. Sometimes we see in the private Assembly or Cabinet of the Amir the heads of certain departments, and at other times, when such heads leave their office and their successors have not gained the Amir's confidence, these are not allowed to enter into the private Assemblies; the reason being that they do not hold the confidence which their predecessors did, though they

hold the same office. Anson also mentions an example where persons were admitted into the Cabinet who did not hold any great office under the Crown; so in Kabul, occasionally people enjoy the confidence of being the king's counsellors in the Cabinet who hold no executive office under the Crown. There are also examples where one Cabinet official has tried to keep the other out of the Cabinet Council, as Anson mentions that Pelham tried to keep Lord Bath out of the Cabinet in 1745 because he was his opponent. The Amir's Cabinet also resembles the English Cabinet of the old time in this respect, that the members have no collective responsibility, as Anson says about the early English Cabinet: "Plainly, a Cabinet which contained persons hostile to those who were carrying on the king's government could not be collectively responsible for the advice tendered to the king. Lord Bath would not have admitted his responsibility for the action of Newcastle and Pelham, nor Lord Mansfield for the action of the Rockingham Cabinet". Again, the Amir's Council resembles the Cabinet in England in this respect, that though they are not collectively responsible for the action of each other, yet they are strictly responsible for a collective secrecy as to the matters passing in the Court. As Anson says: "Closely connected with what has gone before is the secrecy which is imposed on Cabinet Ministers as to the matters passing in the Cabinet." The Amir can dismiss one or all of his Ministers. This is also mentioned by Anson in the case of George III., who dismissed Lord Granville's Ministry because

they differed from him on the removal of the Roman Catholic Disabilities Bill.

The Amir's Cabinet differs, however, from the English Cabinet in that he has no Prime Minister, and that the Cabinet cannot give any advice to the Crown without being asked to do so, or beyond the jurisdiction of their own various departments. But it was the absence of the king from the English Cabinet that created the office of Prime Minister; and as the Amir is never absent from his Council, or, in other words, there is no Council if he is absent, those reasons which were the cause of the creation of the office of Prime Minister in England do not exist in Afghanistan.

There is no Party Government in Afghanistan. The Amir is not under any of those restrictions which are mentioned by Anson: "The Sovereign shall not seek or take advice from others in matters of State unknown to the Cabinet; he shall not give public expression to opinions on matters of State unadvised by them; and, lastly, he shall give them proof of his confidence by the acceptance of their advice, not only as to the measures of Government but in other ways, and especially as to the persons who shall fill offices in the royal gift."

The Amir's Cabinet Councils are not dependent on any other officials or representatives of the country, as is the case in England, where the Cabinet depends upon the House of Commons. They simply depend on the pleasure of the Crown; though, if they were unpopular in the country, the majority of the people have a considerable power to get them

dismissed by reporting and complaining against them, rightly or wrongly, to the Sovereign.

The following officials are generally in the Cabinet of the Amir: the Gentleman Usher; Lord of the Seal; Chief Secretary, and several other secretaries; military officials of the body-guard; Lord Treasurer of the private treasury of the Sovereign; Secretary of State for War; Secretaries of State for the North, South, East, and West; Postmaster-General; Commander-in-Chief, or his deputy; Master of the Horse; Kotwal or Home Secretary; Quartermaster-General; Accountant-General; Head of the personal attendants of the Sovereign; Superintendent of the Magazines; Heads of the Board of Trade and of the Board of Education. Besides, there are sometimes some other officials or chiefs who are sufficiently in the Sovereign's confidence to be admitted. This favour is not always restricted to any certain individual or individuals, nor to those holding any particular post.

The duties of these various officials, as well as the Amir's business in these private Cabinet assemblies, will be given under the heading of the duties pertaining to the different departments.

CHAPTER VII

The Crown, Justice, and the Courts of Justice.

To introduce this chapter I may mention a remark that I have just now read in the "Daily Chronicle" of April 25th, to the effect that "Conduct is a question of latitude". If this be so, then the laws of a nation must be in consonance with the conduct, and therefore also a question of latitude. For instance, in Europe, if anyone entered a Church without taking his hat off and at the same time took his boots off, the people worshipping therein would look upon him as a lunatic. On the other hand, if anyone enters an Eastern Mosque without taking his boots off he will most likely get a sound thrashing. Hence, what is considered wrong in one place is considered right in another. And as laws ought to be made to suit the conditions of the people, Sir Lepel Griffin, who knows the Amir better than many Europeans who pretend to know him, very wisely remarks of the Amir's laws, "If the Ameer rules with an iron hand it is because he has to rule over an iron people." At any rate, whatever he does, whether it appear wise or unwise, in accordance or in antagonism with the views of European critics, there is no doubt about one thing, that he does what, in his own judgment, he thinks lawful and for the good of his people. I can quote from those who have had opportunities of

seeing the Amir, many evidences to prove this statement. I will give one of these, which was written in the "Review of Reviews", December 15th, 1897, by an Oriental traveller who knew him well. "One sterling quality of the Ameer must be admitted. He is intensely patriotic; and whatever he has done which has appeared opprobrious in our eyes, he has always had at heart the good of his country and of his people."

The Amir of Afghanistan, in his powers of administration of justice, resembles the Sovereign of England. As the Queen is acknowledged to be the head of the Church of England, so he is acknowledged to be the head of the Islamic Church in Afghanistan. And as the Queen is considered the head of the Legislative Body, there being no Parliament which does not consist of the Queen and the Houses of Lords and Commons, so the Amir is the head of the Legislature in Afghanistan. As the Queen is looked upon as the head of the Executive in England, so the Amir is regarded as the head of the Executive of Afghanistan. As the Courts of Justice in England exercise their powers and jurisdiction in the name of Queen Victoria, so the Courts of Justice in Afghanistan exercise their powers in the name of the Amir. Hence he is considered to have the right of directing the ecclesiastical, judicial, legislative, and executive bodies of his government. But he exercises far greater arbitrary personal influence and power over all the above-mentioned elements of the Constitution than perhaps the Queen does in England. This has always been the case in societies which have not

attained such an advanced position as England at present stands in. Before proceeding further to mention the relations of the Amir towards these bodies which make law and administer law, I may remark that in the early laws of all countries we see certain things in common. One of these is that the King, in addition to his other powers, has always been a judge. Another is that very often in the commencement of communities, the founders of states have combined together the administration of the State and of Religion; and that even when, afterwards, some other class grows up as the special protector of the divine part of the law, the head of the temporal part of the laws still take precedence over the ecclesiastical class, and thus claims to be exercising a divine right. I will quote the writings of some European authors.

Sir Henry Maine, in his "Early Law and Custom" (published 1891, p. 160), says: "In the records of very ancient societies, belonging to races with which we have some affinity, we come upon a personage resembling him whom we call the King; he is almost always associated with the administration of justice. The King is often much more than a judge; he is all but invariably a military chief, he is constantly a chief priest; but, whatever else he may be, he seldom fails to be a judge, though his relation to justice may not be exactly that with which we are familiar. . . . The monuments of jurisprudence which lay claim to the highest antiquity are those of the Hindoos. . . . they are, in fact, books of mixed law and theology, the manuals in use with the Indian Brahmans in

ancient law schools. . . . In these ancient law books, in so far as they are law books, the authority of a king is assumed. He sits on the throne of justice, he has the book of the law before him, he has learned Brahmans* for Assessors." Here in Maine's statement we see that a king is always a judge in addition to his other authorities; and further, that it is not only in Mohammadanism, Christianity, and Judaism, the religions whose followers all believe in prophets, that the laws of Religion and State are combined, but even also in Hinduism, which had no belief in either Old or New Testament. We also see that the laws become divided, as mentioned in the last sentence of the quotation, in such a manner that the king is considered to be the head of the State Law; and the Brahmans, who were the ecclesiastical judges of Hinduism, are regarded as the heads of the Law of Religion.

Another evidence in support of my statement is given in an "Apology for Mohammad and the Koran", by John Davenport (published 1869, Chap. III.). His first paragraph indicates that the origin of the Mohammadan law and of the Christian law, and of the Jewish law is one; and his second paragraph indicates that Mohammad and Moses, as well as the Hindu ancestors mentioned in Maine's quotation, were the heads of the laws both of State and of Religion.

> "It has been objected that Mohammed, while pretending not to deliver any new religion to the Arabians,

* Religious lawyers or priests.

but only to revive that old one which God had revealed to Abraham, and Abraham had delivered to Ishmael, the founder of their nation, actually did found a new religion, and consequently spake that which was false. But if that only be a new religion which differs from the former in the object of its worship and the moral duties imposed by it, then certainly neither that of Moses nor that of Jesus Christ nor that of Mohammed were new religions. That of Moses was no more than the renewal and enforcement by laws of that religion which Adam, Noah, Abraham, Isaac, Jacob, and Ishmael professed, and which was to adore the one only God, and Him to love and obey with their whole soul, and to practise those moral duties which the necessity of human society as well as the will of God imposed upon mankind. Thus, Jesus Christ tells us that to love God above all things and our neighbour as ourselves was the whole Law and the Prophets, that is, that Moses and the Prophets taught the Israelites a religion which entirely consisted in the love and adoration of one eternal God, and an extensive love of one another; and hence the doctrine of Jesus Christ himself was not new, but the same that Moses had taught before, with this only difference, that our moral duties to one another were commanded with more force than before, and this admirable and divine rule set down, by which the meanest and most ignorant of mankind might know with almost certainty when he offended against these moral duties and when not, as the precept 'Do unto others as you would they should do unto you' clearly shows.

"In acquiring and using power Mohammed did but follow the example of Moses, who could not have effected the deliverance of the Children of Israel out of Egypt had he not assumed the authority of a leader

> and a head—the maker or dispenser of the laws ; and surely no man ever yet upbraided him with making ambition the end and design of that achievement, since without that power he could not have accomplished the mission upon which he had been sent by Jehovah. And thus it was in the case of Arabia, which, being divided into many tribes, frequently at war with one another, Mohammed had no other way of uniting them into one body, and of establishing his religion among them than by making himself their head or leader, a circumstance which fully exonerates him from the charge of personal ambition."

But it is quite clear that in an advanced state of society it cannot be agreed that Religion and State should be mixed together ; and the more that the nations progress the more do the laws of Religion and State become separated. History shows that in every nation there comes a stage when the people, imbued with new ideas, cannot be governed entirely upon the old laws which have not kept pace with the growth of human knowledge ; and therefore those in favour of the old dogmas and the Orthodox Church fall into disputes with the supporters of new laws. We can find two great authorities, one from the West, the other from the East, trying to make us believe that Religion and State ought not to be separated. I will mention them here. Mr. Gladstone, in his book " On the State in its relations with the Church ", Chap. I., says : " The union is, for the Church, of secondary though of great importance ; ' her foundations are on the holy hills ' ; her charter is legibly divine. . . . But the State in rejecting her would actively violate its solemn duty, and would, if the

theory of the connection be sound, entail upon itself a curse. We know of no effectual preservative principle except religion, nor of any permanent, secure, and authenticated religion but in the Church. The State, then, if she allows false opinions to overrun and bewilder her, and under their influence separates from the Church, will be guilty of an obstinate refusal of truth and light, which is the heaviest sin of man."

Mr. Wheeler, in his "Life of the Amir" (p. 225), gives the opinion of an Oriental Emperor as follows: "I have heard," says the Emperor Tamerlane in his Memoirs, "that Church and State are twins, and that every sovereignty which is not supported by religion soon loses all prestige, and its orders are not obeyed, every person, worthy or unworthy, presuming to meddle therewith."

With all due respect to Mr. Gladstone and the Emperor Tamerlane, I am very sorry to say that my views do not agree with theirs, and I think that the less the laws of State and those of religious bodies intermeddle with each other, the better it will be for both. History is full of examples showing that under religious practices and superstitions, sanguinary wars have been caused not only between Mohammadans and Christians, or between Hindoos and Mohammadans, or between Christians and Jews, but also between the various sects of the same religion. In fact, I believe that religion is a matter entirely between the Creator and His creatures, and that the State has no more right to interfere with it than a private individual has to interfere in the

affairs of his neighbour's household. Every religion has its old deeply-rooted dogmas and statute laws, which are not flexible but rigid, and cannot be dispensed with; and the more the State interferes with those laws the more it will be despised by those who are staunch believers in religious principle. On the other hand, a progressive commonwealth in any of the various societies of the human race requires laws to be made to meet the extending needs of its growth, which did not exist at the time that the dogmas of religion were laid down. Therefore, if the State were left entirely to the government of ecclesiastical bodies, they would have a very limited code, which would hardly cover secular requirements, and would probably stop the growth of secular Law, which I hold to be the only great existing agency for the development of nations and for the preservation of their development, in contradiction to Mr. Gladstone's view that the Church is the only institution for its preservation. I believe (and can quote authorities for my belief) that Mohammad himself intended to separate Religion from State, and even during his own lifetime.

I will now give a few references in support of the views I have expressed. Sir Syed Ahmed Khan, in his "Essays on the Life of Mohammed" (Vol. I. Introduction, p. 2), says: "We are not a little perplexed to find Islam representing God to have said, 'I am with each individual in the appearance which he forms of Me in his own mind'." This supports my view that Religion is a matter for each individual to decide for himself, and not for the State to force

upon him. And I may quote here Comte's statement ("System of Positive Polity", Vol. II. pp. 93—95, trans. Dr. Bridges): "This separation of the powers is at the bottom the whole cause of the essential superiority which the Western form of Monotheism has over the Eastern. The morality of Islam is not inferior in power to that of Catholicism, and its dogmas are less repulsive to the reason. The inferior social influence of Mohammedanism is therefore only due to the position of the priests. . . . The Moslem system retained and even extended this concentration of both powers in one hand, as was required by a military Theocracy. . . . In order to establish a system of conquest, Islam concentrated as far as possible the two powers; although its great Founder was conscious of the importance of separating them." I will further quote one of the greatest living authorities on the politics and religious laws of the East and West, namely Sir Alfred Lyall, who says, in his "Asiatic Studies" (Ch. VI.):—

> "One important difference between the earlier and the latest principles of government is marked by the changes which have taken place in men's ideas on the subject of the proper relations between the ruler and the priesthood, the State and the Church, the civil government and the ecclesiastical bodies. In times when all authority necessarily claimed to derive from a divine mandate, when laws were supernaturally delivered, and when crimes might be most effectively treated as sins against the gods, it was natural that the ruler should assume religious as well as civil supremacy; that he should take on

himself, wherever he could, the visible headship of the external worship; and that he should employ his power to obtain command of spiritual forms and institutions. We know that the Roman emperors long kept in their own hands the chief pontifical office, until the sacred or hierophantic functions of the sovereign vanished in Europe with Paganism. Then, in the Middle Ages, came the long struggle between the ecclesiastical and the civil powers; when the Papacy had concentrated and brought into focus all the independent spiritual authority of Western Christendom, and declared absolute separation between the domains of the Church and of the State. But between spiritual and temporal matters, as they affect the daily life and conduct of the people, the distinction is in practice hard to draw, and harder to maintain. The attempt to partition off such things into two provinces, and to place each province under an independent and coördinate authority, was inevitably followed by incessant and fervent discussion and contest as to the right and recognisable border that should divide two complicated and very ill-defined jurisdictions. . . . . And the general result, in the most civilised countries, is that while the ecclesiastical power has in these latter days been disarmed, and can no longer uphold any pretensions to concurrent authority within the domain of civil administration, on the other hand, the civil power is rapidly withdrawing from its ancient claims to headship and overlordship in matters religious or ecclesiastical. The civil government interferes very reluctantly indeed in questions of doctrine; it still maintains (under such laws as may be existing) what M. Paul Bert, the French Minister, has recently termed 'a general police of worship', but the tendency is towards repealing any laws which

throw this duty upon the administration. . . . . On the whole it is now becoming an established principle in Western Europe that a complete and formal separation between religion and civil rulership is essential to any rational administration of the State or of the Church. . . . So that the earlier ideas on this subject are now not only rejected, but reversed; to the principle of union between the secular and spiritual authorities is succeeding the principle of divorce.

"But if it is true that European ideas on the relations between Church and State are reaching this climax, this makes it very well worth while to bear in mind that in the non-Christian world the earlier notions on this subject predominate, and materially influence societies. Three out of the great governments of Europe—England, France, and Russia—rule over large numbers of non-Christian people, and are in constant relation with non-Christian States; and some of the many and strange difficulties besetting this position are connected with the incident that in Asia and Mahommedan Africa the temporal ruler is generally expected to do what in Western Europe he is generally denounced for doing; to assume, that is, a direct and practical authority over the administration of religious affairs; while the statesman is undoubtedly expected to be a worshipping man. Moreover, these difficulties, where Islam is concerned, have not missed appreciation at Constantinople, for the Sultan has lately been disclosing some anxiety about the spiritual unity of Islam, and is shewing a disposition to employ his claims to the Kaliphate as a means of taking upon himself the functions left vacant by the disabilities of a non-Mahommedan ruler in Mahommedan countries. And the mere fact that the Turkish Sultans, with no pretensions to sacred character or descent, have

> for some centuries been able to impose themselves as Khalifs upon a very large part of the Mahommedan world, proves how closely the spiritual headship is bound up, outside Europe, with temporal dominion. It is, and must be, the policy of a native Asiatic ruler to secure and maintain this union of forces, since, so long as he stands outside and disconnected from the spiritualities, he is in a dangerously imperfect condition; he leaves in other hands a lever that may be used to upset him, and he is cut off from the control and direction of an active, never-resting machinery, always at work among his people. Of course an Asiatic sovereign may, and does, govern people of various creeds, as in India; and it may happen, though the case is rare, that he himself professes exclusively the creed of a minority. But in this latter case (which almost always indicates recent and incomplete conquest) the position of a native ruler is unstable; while, on the other hand, the more effectually he can combine with his secular sovereignty an acknowledged authority over and control over the religious organisation, the stronger and more solid is his dominion."

Sir Alfred Lyall's remarks explain how this question stands according to Mohammadan law, and I pass from this discussion of the origins of the various religions and laws to the laws of Islam alone and their relations with the State. It is a mistake, made by many European writers, to suppose that Mohammadan sovereigns claim divine rights. I do not know of any Mohammadan sovereign in history who has ever laid claim to the possession of divine rights. This idea of mixing divinity and humanity never entered into the mind of the founder of the Islamic

principle, nor into the minds of any of the followers of his faith. Mohammad himself repeatedly says: "I am a man, and human like all of you." His first successor, Abû Bakr, as I have stated elsewhere, on the best authorities among European writers, refused even to be called the Vicar of God, saying that he was only the Vicar of Mohammad, whose laws he was to carry out. And all Moslem sovereigns, without a single exception, look upon themselves as mere agents to carry out and obey the laws of Islam without claiming to be divine or even to be considered prophets. Neither do they claim authority to introduce any innovations into their religion. The idea of divinity being combined with humanity exists only in the Christian world; some members of which infer from the word 'Mohammadanism' that Mohammadans are believers in the divinity of Mohammad in the same way as they interpret the term Christians to mean believers of the divinity of Christ. How much Muslims and Christians differ in their views on this subject cannot be better said than in the words of Gibbon (Vol. III., ch. 50, p. 527). "If the Christian apostles, St. Peter or St. Paul, could return to the Vatican, they might possibly enquire the name of the Deity who is worshipped with such mysterious rites in that magnificent temple; at Oxford or Geneva, they would experience less surprise, but it might still be incumbent on them to peruse the catechism of the Church, and to study the orthodox commentators on their own writings and the words of their own Master. But the Turkish dome of St. Sophia (with an increase of splendour and size),

represents the humble tabernacle erected at Medina by the hands of Mahomet. The Mahometans have uniformly withstood the temptation of reducing the object of their faith and devotion to a level with the sense and imagination of man. 'I believe in one God, and Mahomet the Apostle of God,' is the simple and invariable profession of Islam. The intellectual image of the Deity has never been degraded by any visible idol. The honours of the Prophet have never transgressed the measure of human virtue; and his living precepts have restrained the gratitude of his disciples within the bounds of reason and religion."

How little is known about Mohammadanism by those who are considered great authorities on this subject in Europe, has been shown by Gibbon, in his "Rome" (Vol. III., Ch. 51), and Carlyle (Works, Vol. VI., p. 214), confirms Gibbon's opinion, which is as follows: "The writers of the 'Modern Universal History' have compiled the life of Mohammad and the Annals of the Khalifs. They enjoyed the advantage of reading and sometimes correcting the Arabic text. Yet notwithstanding their high-sounding boasts, I cannot find, after the conclusion of my work, that they have afforded me much (if any) additional information. The dull mass is not quickened by a spark of philosophy or taste. The compilers indulge the criticism of acrimonious bigotry against Boulainvilliers, Sale, Gagnier, and all who have treated Mahomet with favour or even justice."

The unfortunate part of Islam is the creeping in of that corruption which is introduced into every religion by its followers as soon as the eyes of its

founder are closed. Though Mohammadan Sovereigns and the Fathers of Islam had to follow the laws which were laid down by Mohammad, and to make new ones to suit the progress of the community in harmony with the principles of a republic, and with common sense and logical inference, yet the Muslim Sovereigns and Fathers, whilst abstaining from the rights of dispensing with the Islamic laws, claimed to interpret those laws to suit their convenience. In this connection Gibbon says (end of Vol. III.): "The authority of the Companions of Mohammad expired with their lives; and the Chiefs or the Amirs of the Arabian tribes left behind in the desert the spirit and quality of independence. The regal and sacerdotal characters were united in the successors of Mohammad, and if the Koran was the rule of their actions, they were the supreme judges and interpreters of that divine book." Thus from the very first century of the Islamic foundation, we see at one time some strong and powerful religious leader wield a dominating influence over the temporal head of the State, and interpret the laws of Islam to suit his own ecclesiastical ends; whilst at another period we see some head of the State influence the Fathers of the Church and make them instruments of his will, forcing them to interpret the law to suit his own despotic views. Hence the weakness of Islam. I have no room here to give full details, but anyone who wishes to follow up the subject further may read with advantage "The Life and Teachings of Mohammad", by Mr. Justice Amir Ali (in my belief the greatest living authority in the Muslim world on the laws of Islam), Chapter

16; his "Short History of the Saracens," and other books on Islamic laws.

At the time of the accession of the present Amir to the throne of Kabul, he found the most arbitrary and fanatic powers being exercised in the administration of the State by the clergy of Islam, or, in other words, by the Mullas. He had the advanced idea of keeping the State and Religion entirely aloof from each other. This, however, he could not do without first putting an end to the self-made laws and arbitrary powers of the Mullas. I have mentioned elsewhere that a large portion of the Government revenue used to go into the pockets of these Mullas, simply because the sovereigns were obliged to keep on friendly terms with them. The uneducated fanatic community of the so-called Ghazis (Ghazis were those who fought for their religion) were entirely under their influence. In the many rebellions and insurrections which endangered the Amir's rule, the Mullas took a large share. We read, in the pages of Mr. Wheeler and other writers, that the Mullas declared to the Afghan people that the Amir was an infidel, and persuaded them to join Ayub against him. These writers also describe how Mulla Mushk-i-Alim and his son stirred up the most dangerous Ghilzai rebellion against the Amir. I have elsewhere mentioned Mr. Elphinstone's account of the powers of the Mullas before the Amir's time; he says (Vol. I., p. 283), "An injury or an insult to a Mulla would in itself be sufficient to raise a tumult." I will now show the difference in the position of the Mullas at the present day. There is no doubt about

the truth of Mr. Wheeler's statement that "in this city of Cabul the Amir did not give the enemies of law and order a chance." In the present day it is impossible for the most powerful Mulla to stir up the feelings of the populace.

Mr. Elphinstone in the same volume (p. 246) confirms my statement, that by law the king has no right to interfere with religion, or to claim divine rights. "The king has the direction of religious affairs, but the national religion, being firmly established, he has little room for interference." The Amir has taken away all these arbitrary powers from the Mullas, though appointing some of them to be heads of the courts of justice and religious affairs. I will now deal with the relations of the State and Religion in the Courts of Justice, as they stand in Afghanistan to-day. As in England in Anglo-Saxon times, so still in Islam the courts of ecclesiastical judges and those of the civil courts of the State are not sharply separated, and there is much to be done before the State and Religion are definitely separated from each other and placed under separate laws and governments, though the Amir has, to a very great extent, separated Islamic Church and State.

I have pointed out, on the authority of Maine, that as in Hinduism, so in Islam and Judaism, and in the Roman Paganism, both State and religious offices were at first administered in one court and by one person, whom we may call a king in some ages, and a prophet or divine leader of religion in another age. The next development in this court was, as

Maine points out, that the king with the Hindus had Brahmans or Fathers of religion to advise him. This also came to be the case in Islam, as I have pointed out in a quotation from Mr. Elphinstone in a former chapter; the Mullas were advisers of the tribal chiefs and rulers. A third stage came when the kings and the ecclesiastical heads held two separate courts; the affairs of the kingdom being largely extended, the king keeps the most important cases for his own court, leaving the cases of less importance to be tried by the ecclesiastical head (who bears in Islam the title of Kazi, or judge of religious law). To quote Mr. Elphinstone, "Wherever the king happens to reside, criminal complaints are made to him; if they are trifling matters he refers them to the Kazi, or desires the Arzbegee (= the officer by whom representations are made to him) to settle them." (Elphinstone, Vol. II., p. 263.) These are the two principal Courts which we see have existed for generations in all Islamic governments alike, and still exist; whilst the other Courts of Justice differ a great deal in one Islamic country from those in force in another.

Before proceeding any further I must explain that the Amir, like every Muslim sovereign, regards himself independent of the others in the temporal as well as in the ecclesiastical affairs of his dominions. It is understood that the Muslim community throughout the world look upon the Sultan of Turkey as a guardian of the sacred houses of their religion, Mecca and Medina; but he has no ecclesiastical or temporal authority or right of interference in the dominions of

other Muslim sovereigns who are independent, and not under the protection of the Turkish empire. The only relation which, by Islamic law, one Muslim sovereign bears to another, is the general tie and bond of brotherhood which has been taught by the great founder of Islam in this saying, "Kullo mominon Ikhwatun" (= All believers in the one God are brothers). Every independent Muslim sovereign looks upon himself as a servant of his religion, and it is his duty to help all Muslims, in whatever part of the world they may be, to the best of his ability, refraining from all interference in any way in the political relations which exist between the Muslim subjects of any other sovereign, whether that sovereign is Muslim or otherwise. True, the other Muslim sovereigns or Muslim communities may help the Sultan in a religious war, but this does not imply that by the Islamic law he has any right to force them so to help him; it would be merely a matter of brotherly affection and a bond of sympathy between the followers of one faith, just as in the case of the Christians who went out of their way to help the Greeks and Armenians against the Turks. In this case it was not that by the law of Christ the Greeks or the Armenians had any right to force the Christian world to help them; it was simply a voluntary act, perhaps prompted by religious sympathy existing between one community and the other. I may here quote a few sentences from a letter of the Amir, which was addressed to the newly-converted English community of Liverpool. It will be found in Mr. Wheeler's "Life of the Amir" (p. 226). This letter

was written under my own hand according to instructions received from the Amir, and it is signed by him, as I have frequently seen the Amir sign himself on hundreds of letters: "I, the Amir Abdurrahman, a servant and slave of the Islamic religion, sign this letter." In it he says: "It is our conviction that the King of Kings appointed us, as well as all the other rulers of the Muslim world, to be the guardians of the Faith, and to protect, sympathise, and patronise Muslims, therefore we shall do what we can for you whenever you need our assistance. We shall ever be pleased to hear about you and your congregation of new Muslims, and all about the welfare and progress of Islam."

Muslims who are subjects of Sovereigns of different faiths should, according to Islamic laws, submit to the laws of the country in temporal affairs; though in the matter of their religious duties the rule for their conduct should be the Koran and the laws of Islam. So long as a Sovereign does not interfere with the practice of their religion, and allows them full freedom for their Faith, it is their duty by the Islamic canons to be as loyal and faithful to that Sovereign as they would be to an Islamic ruler. In the event, however, of a Sovereign or Government not allowing them the free exercise of their religion, they are instructed by Islamic principles to follow the example of Mohammad, the founder of their religion, and leave that country for another, where they can carry out their religious duties without hindrance. This is what Mohammad did when he left Mecca for Medina,

owing to the people of Mecca interfering with his worshipping the Unity of God, from the date of which departure his era, the year of Hejira, commences.

Returning to the subject of the Courts of Justice in Afghanistan, Mr. Elphinstone (Vol. II. p. 244) says about the Court of the King: "The Court is called the Derree Khauneh, which is like the Aulee Kaupee (Sublime Porte) in Turkey, and signifies the Gate, a form of oriental adulation which implies that a subject ought to intrude no further into the palace, even in his thoughts." But this name of the Court of Kabul has now been replaced by the Indian word, Durbar. I do not know whether in his thoughts an Oriental could penetrate into the palace of the King or not; but in practice there is no ceremony to stop any common beggar from walking into the Amir's presence when he is holding Durbar, and putting his complaints before him, standing face to face before his Sovereign. Thus Mr. Wheeler, in his "Life of the Amir" (p. 220), mentions that on Mr. O'Meara's visit to Kabul in 1887, "Mr. O'Meara was much struck by the Amir's accessibility to his subjects. As he rode into Kabul from his summer residence at Pughman, Abdurrahman would stop his horse to take a petition from the hand of the meanest wayfarer, even from an old woman by the roadside. Forty years before, the American adventurer, Mr. Harlan, saw Dost Mohammad (the Amir's grandfather) doing exactly the same thing."

The law which is exercised in the Court of the Amir, as well as in the Court of the Kazi, is based

upon the laws of Islam and the customs of the country. But as this belongs to another chapter, I must here confine myself to saying that there is no limit to the powers which the Amir can exercise as a Court of Justice. All the cases which are decided by the Amir himself can be brought under two headings. Firstly, he sits as a Supreme Court of Appeal; in which capacity he hears and decides the appeals from all the various courts, whether civil, criminal, or ecclesiastical. Secondly, there are some cases which he hears himself from the beginning and decides himself, just as do the inferior Courts. Commonly it is understood that when the Amir thus sits as an original court to hear cases which are not appeals from any other court, such cases must be of great importance; as, for instance, political disputes, cases of high treason or other offences against the king or his household, matters of Government revenue. But this is merely a theory. Any person who has even a trifling matter in dispute, can have his case decided by the Amir himself, if he fears that the subordinate Court is prejudiced against him, or if he prefers for any other reason to go to the King himself to going in the first instance to the subordinate Courts. It is, however, in the pleasure of the Crown to refer such a plaintiff to any subordinate Court he chooses, unless the plaintiff can convince the King that he has reason to show that justice would not be equally meted out in such a court. I have mentioned in another part of this Dissertation that the Amir's Durbars are two; one the Public Durbar, the other the Private one. At present, since 1891, the public

Durbar is held by the Amir's eldest son, Prince Habibullah Khan, who acts under the laws and instructions which he takes from his father; the private Durbar is held by the Amir himself. The Amir's eldest son is thus a Supreme Court of Appeal above every other Court of the kingdom, excepting only that of the Amir. But all capital punishment is in the hands of the Amir after judgment is given by the Court of the Kazi, or his son; for when any person is sentenced to death by these Courts, that sentence must be confirmed by the Sovereign himself before being carried into execution.

I will describe in a few words the modes of trial in the Court of the King.

(1) *Appeals.* These are brought before the King in the following ways: Firstly, the various courts forward for the King's approval such judgments as they consider of great importance, and therefore do not like to take upon themselves the responsibility of deciding. Secondly, the same Courts forward to the King for his opinion questions on which there is no definitely laid down law for them to abide by. Thirdly, in cases where the detective departments of the Amir, which are supposed to be everywhere, report to him that some kind of fraud or partiality has been shown in a decision, he sends for the case, to examine it himself. Fourthly, where a plaintiff or defendant is dissatisfied with the judgment of any Court he can appeal to the Amir.

(2) *First Instance.* When the Amir sits as an ordinary Court and hears cases which have not been

decided by any other Court before, the ways of bringing such before him are the following: firstly, any person or persons can come and put their claims by word of mouth before the Amir, just as they would before any other magistrate. Secondly, if people are reported by the detectives, or by any other official of the Government, to have done anything wrong, or to have suffered any injustice, the Amir summons them through one of his officials to attend his Court for the trial of their case. Thirdly, the Amir introduced a new system—that any person who does not like to put his complaint before him in the public audience (the complaint being of some secret nature or the person unable to explain himself properly) may put the petition by writing instead of orally. But this system enlarged the work of the Court, since people used to write a quantity of unnecessary matter in their petitions, which they could easily have spoken to the Amir in a few words, and which was of no confidential importance whatever. The Amir, therefore, ordered that all such persons as wished to put their claims in writing should buy a printed form, of the value of 3 rupees 4 annas, from the Government Exchequer. This measure put a limit to these unnecessary writings.

In both cases, whether it be an appeal or an original case, the modes of trial are the same. The plaintiff brings his witnesses with him, if it be necessary to have any witness at all, and the defendant brings his witnesses also. The case is then decided on the spot, on both sides being heard, and is not kept lingering on for months, as is the practice in

England. I must say, however, that the mode of trial which here keeps the case pending so long, giving the barristers a chance of earning their living by fighting over forms or other legal points, sometimes of no great consequence, does not leave any doubt about the proper and impartial administration of justice. But in Afghanistan, if this practice were followed, there are not sufficient Courts to decide all the cases which they do, though their short and simple procedure, of course, is liable to make mistakes.

The next important Court, and the Court which transacts nearly all the administration of justice in Afghanistan, is the Court of the Kazis. Here I will give Mr. Elphinstone's statement (p, 262, Vol. II.), followed by my own comments. "Justice is administered in cities by the Kazi, the Muftis, the Ameeni Mehkemeh, and the Darogha of the Adawlut. In Civil suits the Kazi receives complaints and sends a summons up by an officer of his own to the defendant. The case is tried according to the rules and forms prescribed by the Shirra, or Mohammadan law, modified by certain customary laws. In doubtful cases the Muftis give their law, supported by quotations from books of authority. The Kazi's orders are never disputed, it being reckoned impious to refuse to conform to the Shirra. If he should be resisted it is the duty of the Sirdar to enforce his decree." (There is no such office now as Sirdar, and the Kazi's orders are enforced by his own direct orders, or, in the case of refusal, by the King himself if he supposes them to be correct.)

"Ameeni Mehkemeh receives charge of deposits. The Darogha Adawlut is a superior over the whole, and his duty is to see that all proceedings are conformable to law." (This office is now obsolete.) "In criminal complaints the rules are nearly the same, but the practice is different. Criminals are generally first brought to the Sirdar, and the Kazi's sentence in all important cases is executed by him. This gives the Sirdar a degree of power which is particularly felt when he disagrees with the Kazi." (There is no Sirdar now; the Kotwal holds an office which does this duty in addition to his other duties, which will be mentioned in their place.) "The Kazis nowhere interpose unless an application is made to them. This happens more rarely in the more remote parts of the country, where they are chiefly appealed to in civil cases. The Kazis are appointed by the King." (The Kazis and Muftis all have now adequate salaries, though Mr. Elphinstone says that then a few only of them received pay from the Government.) "There are Kazis in all considerable towns, and they have deputies over the whole country."

As Mr. Elphinstone mentions in another chapter, there are Governors in every town who represent the King's Court there, as the Kazis represent the Court of the Head Kazi of Kabul there.

There is in every principal town a third Court, which decides only cases of a commercial nature. This Court is called Punchait (or, a council); it consists of a number of merchants of various communities, and is presided over by the chairman. There is a

fourth Court which has sprung up from the Court of the King, to decide the cases of land revenue and the accounts of the various departments. I will deal with this Court under the heading of the Departments. The fifth Court somewhat resembles the old Court of the Star Chamber in England; it has to do with such executions and criminal offences as the King does not wish to be tried by the law administered in the other Courts, but rather by his own will and his personal law and powers. In some respects this Court resembles the Office of the Home Secretary in England; it having the custody of the gaols and of petitions of pardon, and the charge of the whole police force, as well as other duties resembling very closely those of the English Home Secretary. Mr. Elphinstone says about this Court: "The police of towns is managed under the Sirdar by the Meer Shub, the Mohtesib, and the Darogha of the Bazaars." The office of Sirdar, as I have before said, is now held by the Kotwal, who has far greater influence than the Sirdar. There is no Darogha of Bazaars at present, and the Mohtesib is considered to be under the Kazi, and belongs more to the ecclesiastical department than to the Police Department. "The Meer Shub answers to the Kotwal in India." I have said above that this office is now called the office of the Kotwal, as in India, and the duties of the Sirdar and Meer Shub are both embodied in the Kotwal. But the remaining pages in which Mr. Elphinstone treats of the office of the Kotwal are now quite obsolete. The summary of this office at present is as follows: he hears all the criminal offences

whatever their nature, and manages the police and gaols. He has jurisdiction to try all criminal cases whether small or grave and serious ; he must however give actual judgment only in small cases, referring the more serious ones to the Court of the King or to that of the Kazi. He must furthermore send the reports of the cases decided by him to the King every night. He has also jurisdiction like the Justices of the Peace in England in summoning and arresting criminals of all kinds. He must also look after the department of the British Agent, and must keep his eye upon all refugees and foreigners in the Afghan service. Some Detective departments are likewise under his supervision. He must also enforce some judgments of the other Courts. He has also the collection of some taxes, and the safety of the roads. He superintends as well the department for the issue of passports. The name of this officer as well as of his office has been borrowed from India, the head office of the Police in the Indian towns being called Kotwali, and the head of the office is called Kotwal. The difference is that the Kotwal of Kabul, as I have said, exercises a far greater power than the Kotwali in India, and is a very important and confidential courtier of the King.

Before closing this chapter I must say that in Afghanistan nearly every official is a kind of court to decide cases of his own department; and the jurisdiction of one court from the other is not very sharply separated yet. The modes of trial and summoning in the Kotwal's office are the same as in the other offices, but sometimes there is a sort of

force or torture still practised to make a criminal who has committed some serious offence confess his crime. This ugly practice will, I hope, soon disappear. It is already disappearing, for the laws are being modified as the people become more civilised.

CHAPTER VIII

The Departments of Government

I AM afraid this essay is already too long; and, feeling that the Law Board of the University will not be much interested to read about the departments of the Government which do not much concern the law, I will give only a short skeleton of the most important of them.

Mr. Elphinstone (Vol. II. p. 251) says:

"The general administration of the Government is conducted by the king with the assistance of the Grand Vazier. This officer has the entire direction of the revenue and the management of the public affairs of the Government at home and abroad; he has also the control of all the other departments. Next to the Vazier in the general administration, of the principal ministers, is the Munshi Bashi, or the Chief Secretary, who manages all the king's correspondence."

From the very first year of the Amir's accession to the throne, the office of the Grand Vazier was transferred to an officer who had all other authorities except that of interfering with the political affairs of the Government, and was called the Chief of the Government Offices. But soon after, this office was placed under the control of a Council, instead of being under one head; and the President of this

Council is the Amir's second son, Prince Nasrullah Khan, who visited England; he is subordinate to his eldest brother, Prince Habibullah Khan. As long as this office was not separated from the King's Court, as it is at present, the Grand Vazier always being in personal attendance upon the King, the custom was for the court to travel with the King, and the landowners had to run after the court as in the early days of the kings of England. The separating and establishing of this court in the capital somewhat resemble the early Court of Common Pleas in London.

The absence of the Grand Vazier from personal attendance upon the king placed the management of the political affairs of the Government, at home and abroad, under the control of the Chief Secretary, placing him in a position of greater confidence even than the Grand Vazier himself; and he, with the help of several other secretaries, still conducts the King's correspondence, both for home and abroad.

But the office of the revenue which thus remained under a functionary who was called Grand Vazier before this Amir's time, was too much for him to manage when the Government became more extended, and four other offices therefore were established under him, which are respectively called the offices of the Secretaries of State for north, south, west, and east. Each of these Secretaries of State manages the revenue department of that direction, whether east, west, north, or south, which his office concerns.

There were two other offices established at the same time, as branches of this Head Office; one of them is the office in which the income of the

whole kingdom is entered, the other in which the expenses of the whole kingdom are given. The copies of all documents which are issued from any of these offices are kept in another called the Record and Diary Office. At present all these offices, in addition to certain others, which do not concern the land revenue, are under that one council and its officer to which I have referred above.

Before passing over this department, I must mention that all these offices issue orders to those who owe land revenue, or any other taxes or money to the Government, to pay such sums to the Government Treasury, and to show the receipts of the Treasury to the office from which such orders are issued; for expenses, also, every department issues orders of payment on the Government Exchequer.

The principal source of the Government revenue is land revenue and Custom-house duties, including various kinds of stamp duties and postage, etc., many of which did not exist before the present Amir's time. The Treasury is presided over by a Treasurer, under whom is the Secretary, or Chancellor of the Exchequer. The Treasury takes receipts for all that is paid out, and also for all that is paid in. The heaviest expenses on the Treasury are those of the Army and the salaries of the Government departments, public works, and workshops, etc. Mr. Elphinstone does not mention the name of any of the officers of the Treasury in his chapter on this department except that of the Head-Treasurer, Sandook-dar-Bashi. The collection of the land revenue in Afghanistan resembles in some respects

that of India. For instance, Mr. Elphinstone, in his second volume (p. 259) says:

"The land revenue is collected by the headman of each village, and paid directly to the Hakim or his agents." In India also the head of each village, who is called Number-dār, collects the revenue and pays it to the Tahsildar (who answers to the Hakim) or to his agents or subordinates.

"Once a year he (the Hakim) gives in his accounts, which pass through the hands of several officers before they receive the king's approbation." In India, too, the Tahsildar (or Hakim) gives in his accounts once a year, which pass through several offices before they receive the approbation of the final Finance Office of India.

The expenses of management, the assignments that have been given on the province, the price of the articles commissioned by the king, and similar charges, are struck off, and the balance is either sent by the Treasury, or more frequently, orders to its amount are given to the troops and others who have claims on the Government. The Hakim exercises a great control over the collection and the expenses of the revenue.

The other offices of less importance are as follows: The Mir-a-khor (Mr. Elphinstone mentions him on p. 253, Vol. II.), or Master of the Horse. This office is not now hereditary as Elphinstone says.

The head of the Intelligence Department is no longer called Harkara-Bashi, as Mr. Elphinstone mentions on the same page. This department is divided into numerous branches under different

officials, *i.e.*, the Chief Secretary, the Lord of the Seal, the Kotwal, the Amir's political agent in India, and the like.

The Post-Office is under the control of the Post master-General.

The Custom-House Office is called Chabootra, and is under an officer called the Controller.

The Kafila-Bashi (whom Mr. Elphinstone mentions in Vol. I. Chap. X.), looks after the caravans. There are various other small offices under the revenue department which could not be mentioned here.

The offices of the Public Works department, manufactories, industries, magazines, etc., are all under the control of the office of Government expenses.

I have mentioned various officers who attend the King himself in person, and therefore need not repeat them again, but I may explain a few words in the account given us by Mr. Elphinstone (Vol. II., pp. 231—254).

The office of Ishik Agasi is more than Master of Ceremonies, as Mr. Elphinstone calls him. He is Gentleman Usher; he is the Master of the Ceremonies; he assists the king in holding his court, in summoning the plaintiff and defendant, and making all the arrangements of the king's judgments to be prosecuted, and various other duties in the court.

The office of Arz-Begee is not hereditary, as Mr. Elphinstone asserts, and his duties are not all those that he specifies. He only repeats in an audible voice to the king what is said by his subjects who are admitted to his presence. Mr.

Elphinstone makes a mistake too in calling Kabchi Bashi, who presents persons admitted to pay their respects to the king, by the name of Chaous Bashi.

Another office is that mentioned by Mr. Elphinstone on p. 254: "Paish Khidmats deserve, however, to be mentioned, for though they are menial servants about the king's person, they are often men of rank, and frequently of great influence with their master."

The Medical department is not, as Mr. Elphinstone says, under the Hakim Bashi, but is divided into two divisions at present; one being under the control of medical doctors of the European school, and the other under the native Hakims of various departments.

The Educational department is under the control of a Board of Education and Examiners; but stands in great need of improvement.

The Army is directly under the personal control and instruction of the Amir himself. It has a Secretary of State called Amin-i-Nizam, or Secretary of State for War, a most confidential officer of the Crown. One great reform which the present Amir has introduced into the Army is that he has abolished the system of conscription, which was introduced by Amir Shere Ali Khan, thereby causing a general sense of dissatisfaction to the whole nation. The numerous other reforms which the Amir has introduced into the Army, as, for instance, the proper discipline and training, examinations of the officers, and modern arms, upon the latest European system, cannot be recounted in this short space. Above all,

the regular payment of monthly salaries was unknown in Afghanistan before the present Amir's time. The pay of the soldiers which used to be always in arrears, had a great deal to do with the assassination of Sir Louis Cavagnari and his staff in 1879, resulting in the exile of the then Amir, Mohammad Yahoob, and in the downfall of his government. The Amir has also laid the foundation of the system of a Court-martial; but as there is no such court definitely established as yet, I did not count it in my enumeration of the Courts of Justice.

For the next account of this most important department I will quote here the statement of Mr. Wheeler mentioned in his "Life of the Amir", pp. 215—218:—

> "Army reform, to which Abdur Rahman from the first paid keen attention, has proceeded on lines laid down by the Ameer Shere Ali, who, though he spoke contemptuously of our Sepoys, was ready enough to imitate our military methods. In the old days the Afghan army, in time of foreign invasion, was the nation in arms. Every male was born a soldier, and would be attached to this or that tribal chief from the day he could hold a musket. On the outbreak of war each chief with his contingent would hasten to the ruler's camp, whither also would flock as many of the townsfolk as wished to join in the fight, and a variable number of free lances. The troops received no pay, and lived by plunder. For the most part they were horsemen, armed with fire-lock or carbine, pistols, and sword or lance, and a target a foot-and-a-half across. In fact, the Afghan army, as General Ferrier observed, was a miscellaneous and undisciplined rabble. 'The inaptitude of

the nation,' the same authority wrote, 'for military organisation arises from their spirit of impatience under the slightest degree of restraint; and to this feeling their religion contributes, for they are taught to believe that having proclaimed a *Jehad* (holy war) the numerous battalions of the infidels are powerless against a handful of the Ghazis, or soldiers of the faith.'

"But Ameer Shere Ali, after his visit to Lord Mayo, resolved to have a regular army. Batteries of field and mountain artillery, and regiments of horse and foot, were raised; and the English field-exercise books for the three branches of the service were translated into Persian and Pushtu. Shere Ali also started foundries for cannon and small-arm factories. His military reforms, however, broke down at the first test. After the defeat of his armies at Peiwar Kotal and Ali Musjid, the new discipline and the new organisation went to pieces; and at Charasiab and Ahmad Khel the enemy was an undisciplined mass of armed men fighting pretty well as they pleased under the tribal leaders. And since this style suited the national temperament, they fought with courage and determination.*

"Abdur Rahman's talent for organisation, even more perhaps than his wish to have an effective army, led him to recur to the regular system which his uncle Shere Ali had introduced. Divisions, brigades, regiments, batteries, troops and companies, were accordingly called into existence, and a scale of military pay was elaborated, in which a general of the first

* Hand manufactories were started during the reign of Amir Dost Mohammad, and also some system of regular army regiments was also then commenced which Amir Shere Ali improved.

class was to receive 600 Cabuli rupees monthly, a brigadier two hundred and fifty, a colonel of cavalry two hundred, a major one hundred and twenty, captains of cavalry eighty, of infantry and artillery thirty, and so on down to corporals of foot, who received ten rupees. The rank and file was to be paid partly in kind, a trooper getting sixteen rupees in cash and four rupees worth of grain, a private of foot five rupees in cash and three rupees worth of grain. Every regiment was to have a *mulla* as chaplain, a physician (*hakim*), and surgeon (*yarrah*). As a rule the officers of the Ameer's army are men of family appointed direct, promotion from the ranks being rare. Besides the regular army there is a large body of irregular levies, consisting of the mounted retainers of the tribal chiefs, and militia infantry (*khassadars*), who receive pay at the rate of five or six rupees a month. Both with the regulars and the levies, pay is often months in arrears, and forced contributions are very generally exacted from the civil population.* As regards numbers it was reported in 1882 that the Ameer's army in Cabul, Kandahar, Herat, and beyond the Hindu Kush consisted of 1600 artillery, 9750 cavalry, 30,890 infantry, 7500 irregular cavalry, and 9000 *khassadars*, a total of 58,740 men, with 182 guns. It was weak in artillery, there being few trained gunners. The cannon were partly of English, partly of native manufacture, and were of various ages and patterns. The infantry rifles of the regulars, also, were of different make and pattern, from the old two-grooved Brunswick to the Martini-Henry. The *khassadars* were largely armed with matchlocks.

* This is incorrect. The pay of the regular army is never in arrear for more than two months.

The cavalry were armed with swords and carbines, and three regiments of lancers were being raised.†

"The English officers of the Boundary Commission were present at a review of the troops at Cabul in 1886. A force of 2800 infantry, 800 cavalry, and 32 guns went on parade. Major Yate says that the men looked as if they only needed good leaders to be fit for a campaign, but the company commanders were scarcely up to the mark, and the lack of efficient officers was most likely the weak point in the Afghan army. This being the opinion of a military man, is better worth noting than the unstinted praise which has been bestowed on the Afghan troops of the new model by civilian writers."

Before concluding the chapter on the Government Departments I must mention that all these departments, which are in Kabul, the capital of Afghanistan, have their branches in all the principal towns of the whole kingdom. In all those towns the Governor is considered to substitute the King, and has the same sort of officials around him as the King himself, but lower in rank and on a smaller scale, and he is considered in the same manner the highest court in his town, as the King is the highest court in the capital.

The Governors of Herat and Turkestan are called Naib-ul-Hakumat, or viceroys, and all the rest are called Hakims, or governors, occupying their positions according to the importance of the towns and provinces over which they govern. All

† Now they are all equipped with the latest arms of Europe, and the number of the army as well as of the artillery is far larger than as stated above.

these subordinate offices send their reports to the Head-offices at Kabul, which send reports to the Amir's eldest son, or to the Amir himself.

Mr. Wheeler (in Chap. X.) mentions the change which has taken place in the Government Offices during the present Amir's reign in the following words :—

"A soldier above all things in his youth, Abdur Rahman, after his accession in middle age to a throne, became a vigorous bureaucrat. He applied himself to the task of reorganising the administration with fervid industry. The English officers of the Boundary Commission, when they passed through Kabool, were made acquainted with his system. The various secretaries—if Mirza may be thus rendered—used formerly to work each in his own house, and thus it took a week or ten days to get anything done. The Amir accordingly erected a block of Government Offices, so that he could have all the officials at head-quarters under one roof, and himself superintend their labours."

CHAPTER IX

The Crown in its Relations with Foreign Powers

THERE is no space in these few pages to give a copy of the standing treaties or the details of communications and the history of the events which led to them. I will confine myself to a brief account of the relations of the Government of Afghanistan with Foreign Powers, with a recommendation to those who are anxious to know more of the details of this subject to read Mr. Wheeler's "Life of the Amir"; "Lord Lytton's Administration of India", by Lady Betty Balfour; Lord Curzon's "Russia in Central Asia", Ch. IX.; Lord Roberts' "Forty-one Years in India"; and lastly, "Abdurrahman's Autobiography", which will be published soon.

Afghanistan is acknowledged to be an independent Government by her foreign neighbours, and no Power has any right to interfere in the administration of justice, in the laws, or the internal policy of the Amir. The Government of Afghanistan owes no national debt, nor any war indemnity to any nation in the world. Hence no Power or nation can say to the ruler of Afghanistan that he must pay his debts or war indemnities before he is allowed to buy or make war materials, or before making any military preparations.

The Amir of Afghanistan is not, like the Sultan

of Turkey, under the domination of the Concert of Europe; he is not hampered by any capitulations with Foreign Powers; he has no foreign ambassadors about him to intrigue against him and come between him and his subjects; no Power on earth has any rights, by international law or treaties, that would enable such Power to ask the Amir for concessions to make railways, etc.

The relations between the British Empire of India and Afghanistan, as they stand to-day as fixed by treaties, can be summarised in these few words: That the British Government acknowledges Afghanistan as an independent kingdom, and she further acknowledges that she has no right to interfere or to advise the Amir in the internal policy of his kingdom, nor yet in the administration of his Government. Great Britain is responsible for the safety and integrity and independence of Afghanistan against any unprovoked aggression on the part of any Foreign Power, so long as the Amir does not act against the advice of the British Government in matters affecting his relations with other Powers. Great Britain pays the Amir 18 lakhs of rupees as an annual subsidy, by virtue of Sir Mortimer Durand's treaty with the Amir dated 1893, in addition to which she helps Afghanistan by presenting her with war materials from time to time. She acknowledges the right of the Amir to have his political Agent and representative at the Court of the Viceroy of India, and the Amir is entitled to make or import all kinds of goods and war materials into his country from whatever country he pleases.

In return for these pledges given by the British Empire, the Amir's obligations may be given in a few words as follows: He is bound by his word and treaties to be a true friend and ally to the British Empire; he pledges himself not to communicate with any Foreign Powers without consulting with the Indian Empire; he must also have a British Agent at Kabul. This British Agent, however, must always be a Mohammadan subject of the Indian Empire; neither he nor any member of his staff can be Europeans. The British Agent at Kabul holds quite a different position to that held by the British political Residents at the Courts of the Indian princes. These Residents practically dictate to the princes how they are to carry on the administration of their States, whilst the British Agent at Kabul cannot even go to see the Amir, except in the public Durbars, or by special appointment upon some important business.

Some people ask the question—Why, if Afghanistan is an independent kingdom, does she receive an annual sum from the Indian Exchequer? The payment of this very sum is to maintain and strengthen that independence, so that Afghanistan should be strong enough to hold her independence unweakened by internal troubles and rebellions from any Foreign Power. Moreover, this subsidy is paid in return for those pledges which the Amir has given to withdraw from communicating direct with any Foreign Power without consulting the Indian Empire. This curtailment of his right of communication with Foreign Powers is rather a blessing than a restraint

on his sovereign rights, because communication with Foreign Powers does more harm than good to a small and weak kingdom.

There are many instances in history showing that one sovereign has given subsidies to another, for example, Charles II. of England drew an annuity from the king of France; and Great Britain herself paid subsidies to several continental princes in more recent generations.

The Amir has more than once declared (and proved) that so long as England keeps her word he will keep his, as a true friend and ally, to the most noble of all Sovereigns of the day, Her Majesty Queen Victoria, Empress of India; and I hope most earnestly that this bond of union between the British Empire and this powerful, strong, independent Muslim Sovereign, Amir Abdurrahman, Zia-ul-Millat au Dina, will grow stronger and stronger every day, for the sake of the interests of both sovereigns and their nations, and for the maintenance of peace. In this alone lies the happiness of the creatures of God, and I hope that this friendship will enable the Amir to introduce that knowledge, education, and science which have made England the great nation she is to-day.

The British political Agents at Kabul are appointed in this way: the Indian Foreign Office makes a list of a few selected Mohammadan officials of the Indian Empire and forwards their names to the Amir for his approval. The Amir usually selects one out of these candidates. Generally, the term of office for the British Agent is from three to five years,

and when he returns to India he is rewarded by the title of Nawab. His staff usually consists of two secretaries, one small hospital assistant, and about two or three dozen private servants and body-guard; all these being natives of India as above mentioned. This British Agent generally attends the public audiences of the Amir or, in his absence, those of his eldest son. Moreover, if he has any letters or communications from the British Government to convey to the Amir, he writes a letter to the Amir asking for an appointment, the day and time for which being fixed, he delivers such communications to the Amir; after which he returns to his office.

If there are any legal disputes or claims between members of the staff of the British Agent, both parties, client and defendant, are referred by him to the Courts of Justice in India. But if the British Agent or any member of his staff have a dispute with the Afghan subjects of the Amir, such cases are usually decided in the Courts of Kabul, under the law of that country; with the exception of very gross and serious political complications, which are referred to the two Governments concerned, for decision between themselves.

The British Agent puts his diary and also the private letters of the whole of his staff into one package, which he delivers to the Amir's Postmaster-General at Kabul, taking a receipt for their delivery under seal; from the Amir's post-office they are sent down to Peshawar, where the Amir's Postmaster at that place takes a receipt of its delivery to the political Agent at Peshawar. In the same manner,

the packages of letters which are delivered by the British political Agent at Peshawar to the Amir's Postmaster at that place are delivered to the British Agent at Kabul by the Amir's Postmaster-General, who also takes a receipt for their safe and close delivery.

The services and duties of the Amir's political Agent who is with the Viceroy of India, and who, together with his staff, is also a Mohammadan subject of the Amir, are nearly the same as those of the British Agent at Kabul, except that the term and time of his office is not limited, and depends entirely on the pleasure of the Amir.

Besides the political Agent of the Amir who is appointed at the Court of the Viceroy, the Amir has several other private commercial agents in India, as well as in England. There is no extradition treaty, nor any rights of the practice of the law of extradition between the Government of Afghanistan and that of India, nor between Afghanistan and other Powers. Hence, if any offender or criminal of one Government enters into the land of the other, he is never given up to his own land again.

CHAPTER X

Comments on Private Law

THAT remarkable man, Abdurrahman, has been called by some writers the "Napoleon of Afghanistan", from the fact that he rose from the position of a lowly soldier to become the most powerful monarch in the East. Others call him "Peter the Great", because, like that ruler, he has worked with his own hands as a carpenter, a blacksmith, a rifle-maker, and a bricklayer, that he might teach his people and set them a good example. He has also introduced engineering and mechanical industries into the country. In my opinion steam-power is the predominant force in pushing forward the civilisation of a nation; and by introducing modern appliances into Afghanistan the Amir has shown a keen grasp of the part this measure would play in the position his nation would occupy in the future history of Asia. Other writers call the Amir "an heir to Alexander the Great", from his love of extending his dominions and subduing the wild races of the hills, who never lived under such peaceable conditions before under any Sovereign in the whole history of the world. But I, his humble servant, who have had the honour of enjoying his confidence for twelve years, as Lord

Curzon says, in one of his friendly letters to me,* prefer to call the Amir the "Justinian of Afghanistan", which is a title worthier of him, and yet has not been bestowed upon him by any previous writer.

It would be impossible to compress into one short thesis—much less into one chapter of it—all the improvements that the Amir has introduced into the Private Law of Afghanistan. The various particular codes of law made by the Amir are so numerous that even in Afghanistan, in the language of the country itself, they have not been put together in one volume, and would require, to my knowledge, at least a dozen bulky volumes to contain them. To give the readers of my Essay an idea of the outline of these codes of law, I may mention that every official, the holders of all offices, great or small, in Afghanistan, has a code signed or sealed by the Amir, on which he acts. They are still being enlarged every month, as new improvements and inventions are introduced into the country which did not before exist, and the codes of law relating to and governing them are being made and circulated daily. It is a common saying in Afghanistan that there is not even a donkey-driver in the country who does not possess a signature of the Amir to some document, giving him the law which he is to obey in

* Dec. 3rd, 1894. "My dear Mir Munshi, I congratulate you upon the honourable position that you occupy in the regard of H.H. the Amir, who has evidently no more devoted servant than yourself. . . . Wishing you all success in your distinguished career, I am, yours very truly, GEORGE CURZON."

looking after his donkeys, and sorrow be to him if he disobeys it!

It is a difficult task for me to write fully about these codes of Private Law, as I must pause after every sentence to consider the best words in which to express myself, being short of English vocabulary; and when I consider that this Thesis is to be placed on the tables of some of the greatest lawyers of the greatest University of the greatest Empire in the world, I feel the difficulty still more. I will therefore give in this chapter the Private Law only upon points in which the present Amir has made the most striking and important improvements and reforms, to add to the peace and happiness of his people.

Before proceeding further I must mention, however, that there are some critics who would be ready to say that the Amir has made no laws that they know of. My answer to this is that if an owl does not see the light of the sun, it is not because there is no sun and light; or if a deaf person cannot hear the beautiful tones of a musical instrument, it is not the fault of the instrument. Of course I admit that there are people who have been placed alive in cages by the Amir; as one cage, for instance, is hanging on the road from Peshawur to Kabul, and has been there for the last fifteen years. Nearly every English traveller who has visited Kabul during the Amir's visit has written about this cage. Sometimes, too, it is said that an evil spirit has appeared and carried away chief robbers and burglars at night. But all these severe punishments, if not mentioned in Islamic law and only exercised by the law of the Amir him-

self, were inflicted at times when the Afghans could understand no law, and would not submit to the rule of anyone. Hence, the only course for the Amir was either to let his own throat be cut by the enemies of the law, or to send them out of the world before him! It is possible that some mistakes have been made in giving such judgments; but to "err is human", and law only punishes for evil intentions. What the Amir did, he did, as we have shown elsewhere, with the best intentions of justice, and it was the only way to put the country into a state of order and peace.

The general law administered in all the Courts of Afghanistan is that of Islam and of the customs of the country, as has been mentioned by Mr. Elphinstone, and the Amir has developed this in the manner I have narrated in another chapter. Hence, for the fundamental law of Afghanistan I may refer the readers to the numerous books on Islamic Law, especially to Hamilton's "Hedaya", edited by Grady; Mr. Justice Ameer Ali's numerous lectures and books on Mohammedan Law; Shama Churum Sircar's Muhammadan Law. I would, however, especially recommend those who are interested in the laws of Afghanistan to read Mr. Elphinstone's "Kingdom of Kabul", for he had the assistance of the Government of India, and took years in writing about Afghanistan. I have frequently quoted this writer as my authority.

Before giving an account of a few most important laws which the Amir has introduced, or, in other words, improved, I will give a sort of skeleton of

the Amir's changes in the law, as given shortly by Mr. Wheeler in the last chapter of his book, simply as evidence to support my statements that the Amir has not *made* new laws.

"M. Darmesteter, on whose authority this programme is given, describes Abdur Rahman as delivering justice with his hand on his sword-hilt. Offences against property were punished with severity. If a traveller lost anything passers-by were forbidden to pick it up, even to return it to the owner, on pain of having their hands cut off. Doubtless in distant ages it will be recorded, as it was of Sher Shah the Afghan, that in the reign of Abdur Rahman a woman might travel in safety with all her gold ornaments. . . . . Once there was brought before the Amir a man who declared, in a state of unrepressed excitement, that the Russians were advancing to invade Afghanistan. 'The Russians are coming?' said the Ameer; 'then you shall be taken to the summit of yonder tower, and shall have no food till you see them arrive.' In the city of Cabul the Ameer did not give the enemies of law and order a chance. The chief magistrate became an object of public execration, but of wholesome dread. His spies were believed to be everywhere; and hardly a word could be spoken without its coming to the ears of the Naib Kotwal, and through him to the Ameer himself. The Cabul police code is curiously elaborate. It forbids evil speaking in the streets. The vituperation of a Sauyyid (a reputed descendant of the Prophet Mahomed through his daughter Fatima), of a man of learning, or of a civic elder, renders the offender liable to twenty lashes and a fine of fifty rupees. If the bad language is only aimed at a common person, ten lashes with a fine of ten rupees

is the penalty provided. Punishments are also laid down for dishonest tradesmen who cheat with false weights, or adulterate the food they sell; for the indecorous bather, the gambler, the purveyor of charms; as also for persons who misbehave in the mosque, forget to say their prayers, or observe a fast day. The man who kisses anybody else's wife is to have thirty lashes and be sent to prison for further enquiry. Very careful directions are laid down in regard to the administration of the lash. The instrument itself, the regulations say, is to be of a peculiar pattern, made of three strips of camel, cow, and sheep skin, its handle of olive wood. The stripes are to be laid on with pious ejaculations, and the police officer (mutahsib) is exhorted to feel, if he cannot show, sorrow for the wrong-doer, 'since Mahommedans are all of one flesh'. He should guard himself against vain-glory, the prompting of the devil. Special cognizance is to be taken of offences against religion. If any free-thinking Cabuli omits to bend his head with due reverence at the hour of prayer, the police officer should remonstrate with him gently at first, and if the mild appeal fails, should use hard terms, such as 'O foolish, O stupid one'. In the event of continued obstinacy, the stick is to be applied; and as a last resource the Ameer is to be informed, who 'will do the rest'. The manner in which the law is administered in Afghanistan would perhaps seem barbarous to Europeans, but we must not forget that Orientals look at these things in quite a different light. It is related of Alptegin that when he was in camp near Ghuzni some of his servants stole fowls from the villagers. The Sultan ordered holes to be bored through their ears, and the fowls to be suspended therefrom by strings. The culprits were then marched through the ranks, the birds all

the while tearing at their faces till blood poured in streams. 'The news of this act of justice,' says the Mohammedan chronicler, 'having reached the ears of the people, they agreed that so just a man was worthy to be their ruler.' That is how it strikes an Afghan" (pp. 213—215). Again, on p. 224, "Dr. Lillias Hamilton, who attended the Amir during his illness in 1894, says, 'As regards living alone, if you are once under the Ameer's protection it does not much matter where you are or who is with you; it seems to me you are equally safe anywhere. It is wonderful, as you pass through that wild country of wild men, how he is able to keep his people in check at all, but he does it somehow.'"

Mr. Wheeler continues (p. 227):

"Abdur Rahman has made frequent endeavours to inspire his own subjects with a proper sense of their duties as good Mahomedans. His police regulations, in which certain crimes of irreverence are penalised, have already been quoted. In another State paper 'men of sense and understanding' are exhorted to eschew vain expenditure on funerals. When a rich man dies in Cabul, mullas are employed for several days to read prayers over his grave, and the Ameer may have thought that too much money was spent in this way. At any rate, he issued a proclamation with a text from the Koran, which says, 'Waste not thy substance profusely, for prodigals are the brethren of devils' (Sale's 'Al Coran,' Chap. XVII.). 'If a man' says the Ameer, 'puts not his trust in the clear injunction of the Koran, he shall be turned out of the presence of God, and he shall deserve the fire of hell, from which may God preserve us.' . . . . Sir West Ridgeway, who had good opportunities of judging, described the Ameer as one of the few great men living. . . . He ruled with a rod of iron,

> 'He is a hard and cruel ruler, but he rules a hard and cruel people.' The type is common enough in Oriental history, and many kings since Rehoboam have lashed their subjects with the whip of scorpions. Afghan chiefs, John Lawrence said, are not to be judged by the principles of Christendom."

The law-books of the Mohammadans are more voluminous than those of the Hindus. Like them also they are based upon religion. The text of the Koran is the primary authority, and where that is insufficient, as it mostly is, the defect is in some part supplied by the Sunna or Hadis (= sayings and doings of Mohammed, as preserved by his companions and immediate followers). In fact, however, the great body of the law, like that of the Hindus, is to be found in the writings of later jurists as systems, digests, separate treatises, and collections of Fatwas or judicial decisions.

> "The writers of Mohammadan Law are divided into two principal schools, conformable to the great schism that separates the followers of Islam into two hostile sects of Sunnis and Shias, the former of whom maintain the rightful succession of the thirty Kaliphs, and the latter, who curse them as usurpers, and recognise Ali, the son-in-law of Mohammad as his sole lawful successor. The Sunni sect predominates in Arabia, Turkey, Afghanistan, and Turkestan, the Shia sect in Persia; in India both sects are found; generally the educated Mohammadans are Sunnis, the vulgar are Shias. . . . . The Sunni authorities are divided into a variety of subordinate schools, of which four are recognised as the principal: that of Abû Hanifa, who flourished in the latter part of the eighth century; of Abû Abdul Malik at

the end of the same century; of Mohammed bin Idris Ashshafi, who ruled about the same date, and Ibn Hanbal who died A.D. 855; of these schools the authority of the second prevails throughout Africa; of the third in Egypt and Arabia, and a few places in the south of India; the fourth has a limited currency, and is rarely followed out of Arabia, but the first, the school of Abû Hanifa, especially has developed by his disciples, Abû Yussif and Mohammad, and is the principal and almost the exclusive source of the Sunni Law in India (also in Afghanistan). The Shias, in like manner, admit four or five various schools. Their differences are chiefly on religious matters, but they also differ in some points on law, as noticed in the following pages in the chapter on Imamiya, laws of inheritance, that is, the law of the twelve Imams, a title given to Ali and his descendants by the Shias.

"The authorities of Mohammadan Law are of five descriptions—(1) the Koran with the Tafsirs or Commentaries; (2) the Hadis with the works on Ijma; the decisions of the Companions of Mohammad and their disciples; the Kiyas or conclusions deduced from a comparison of the Koran; the Sunna and the Ijma, according to the exercise of private judgment; (3) general treatises on the fundamental principles of law and digests of general or special law, with their commentaries; (4) separate treatises on the law of inheritance; (5) the Fatwa or books of decisions." *

* See Sir William Macnaghten's "Principles of Hindu and Mohammadan Law," edited by H. H. Wilson (Introduction); Mr. Ameer Ali's "Lectures on Mohammadan Law," published 1885, Lec. I.; and Mr. Shama Churum Sircar's "Lectures on Mohammadan Law," published 1873, Ch. I., giving the account of the growth of Moham-

But, as I have mentioned elsewhere on the authority of Mr. Elphinstone, though the fundamental law of Afghanistan was that of Islam, yet every tribe had its own customary law, and very little was known about the law of Islam in the dark ages of Afghanistan.

The Amirs of Afghanistan, as well as all other Muslim rulers, believe that where they have no authority from Islamic Law to refer to, they can make their own laws, as well as they can interpret the Islamic law. About their power of interpretation I have quoted Gibbon elsewhere, and about the other point Mr. Ameer Ali, on the 6th page of his book on Mohammadan Law mentioned above, supports my belief and view. "Ali declined to accept the office [Kaliph] on those terms; declaring that in all cases respecting which he found no positive law or decision of the Prophet, he would rely upon his own judgment." Following this rule the Muslim sovereigns where they find no positive law or decision of the Prophet, no matter whether it does not exist or they are merely unaware of its existence, make their own law.

The law of Afghanistan in the present day may be easily placed under three headings; (1) those of Islam; (2) those of the Amir, which are based upon Islamic laws, the opinions of the people,

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madan Law, somewhat in the same manner, though with full details. In Afghanistan the school of Abû Hanifa is principally followed. The most important books in the hands of the Kazis and Muftis are Hidiya and Fatawa Alam giri (so-called after the name of the Emperor Alam Gir of India, by whose hands it was compiled).

and the Amir's own personal views and ideas; (3) Customary laws of the various tribes. In all criminal and political cases, practically the chief part of the law has been made by the Amir, and so in cases as to the Government revenue. But for the rest, Islamic law is the general rule. Thus very little is left to custom.

Or again: these laws may be placed under two headings, as (1) those strictly laid down by Islam and the Koran, which are called Faraiz (= compulsory and unchangeable); (2) the laws of the Amir and the customs of the country, these are changeable, and are always being modified by the Amir, to suit the condition of the people and to keep pace with the progress of the country. But even in the Faraiz and Islamic Laws, the law only declares a rule, whilst the Amir believes that he has the right to define how that rule is to be applied. The general belief in Islam is that wherever any other classes of law are against that of the Koran, the Koran is to predominate, as the Koran is considered a Divine Law but all the rest of the laws are made by man.

"In China the principle was laid down in all ages—that the person has been considered more important than mere property; but in practice it appears that a robber who kills or wounds the owner of property is more severely dealt with than a person who kills or wounds the protector of an unvirtuous woman." (See "Notes and Commentaries on Chinese Criminal Law," by Ernest Alabaster, Introd., p. xlviii). The same

law exists at present in Afghanistan as in China; for, though such a case as above mentioned has not been decided upon, yet another case decided that a person who steals property is punished more severely than one who kills an adulterer.

The rule of Appeal, unlike that of England, is that the superior Court, instead of being satisfied with the investigation of the subordinate court, takes the case as if it was a new one, and begins by calling for new evidence and making fresh inquiries and investigations from the very beginning, as though the case had never been tried by another court before.

When a case between a very powerful party and a weak party is tried, the presumption of the Amir's law is to be in favour of the weak, unless proved otherwise. And there is no exemption nor special law for any of the highest officials of the Crown, or even for the nearest relatives of the Sovereign; everyone is considered subject to the same law and to the same trial. The Amir's own wife was ordered by the Amir to answer in the court when a firm of Parsees sued her for some money, though she was a Muslim and they were Parsees, in fact, infidels according to the belief of the Afghans.

The other instance is one which occurred to myself. A coachman, named Natoo, got hold of an Indian who owed him some money. I told the coachman to give him time, which he did. During the time given, the coachman did not ask any more for the money; and some time after the

man left Afghanistan and went to India. The coachman sued me before Prince Habibullah Khan; the Prince spoke to me in these words: "Though you are a courtier of my father, and my tutor and personal friend, yet if you remain sitting near me as you are, but the plaintiff standing below me, your position and dignity would prejudice the witnesses of the poor plaintiff against him and would make them afraid of your position. I shall therefore be pleased if you will get down and stand by the coachman till the case is tried, so that justice should be equally meted between my friend and an ordinary coachman." I accordingly took my stand beside the plaintiff and I arranged the matter with him. I was very pleased by the impartial justice dealt out by my friend and pupil.*

The law relating to disputes between foreign subjects and Afghans is, in one instance, unfortunate, somewhat resembling that narrated by Alabaster (p. l, Introd.); for if a case is decided in the courts in India about an Afghan subject, the Afghan courts do not accept the judgment, and consider it void. In the same way the chief court of Punjab considers cases decided in the courts of Kabul to be void.

By the Amir's law, unlike those of his predecessors, the military men, in all cases not concerning their military duties, are subject to the

* In Chinese law, on the other hand, certain individuals are treated more tenderly than others (Alabaster, *ibid.* p. lii).

same law as are the rest of the subjects. Alabaster tells us, (Introd., p. liii.,) that in China also there is the same law. But in military matters the army of Afghanistan is subject to military law, and the punishments are severe, as in England. But the investigation of the cases is made very carefully by the Amir himself, so that military officers should not pass hard sentences on their subordinates without very clear proof.

Alabaster gives us an interesting account (*ibid.*, pp. lv. lvi.) of the powers of the head of the family and the head of the clan in China, which resembles somewhat the powers formerly exercised in Afghanistan. In early ages heads of clans and families had the powers of life and death, as I have said on Elphinstone's authority. But now, in the Amir's reign, no head of a family or clan can use over his family or clan any powers that are not in harmony with the laws of Islam and those of the Amir.

If any person sees a wrong-doer committing a crime and does not stop him, he is guilty of the same crime and receives the same punishment as the wrong-doer himself. This is unlike the Chinese law, where the overlooker or bystander is forbidden to interfere (*ibid.*, p. lvii). But, as in Chinese law, so by Afghan law, political considerations override the law (*ibid.*, p. lviii).

By the Amir's law, as by the practice which has always prevailed in Islamic countries, any person can engage a lawyer, called Wakeel, to fight his case for him. Unlike Chinese law (as

mentioned pp. lix. lx. *ibid.*) and unlike English law, where a marriage cannot be arranged through an agent, yet in Islamic countries this is very often done, especially where there is the Pardeh system. The bride appoints one of her relatives as her agent in the presence of two witnesses; and this agent accepts the bridegroom on her behalf, and settles all the other claims concerning the marriage portion.

The laws of Afghanistan exist in the shape of books; in various printed codes; written codes, written by the officials of various departments and sealed and signed by the Amir; also some written only on small scraps of paper, which were in practice in all the Government offices before the Amir introduced the custom of using books in 1894. The law is that if any person takes a leaf out of the book, his hands are cut off. The people used to cut sheets out, and enter others, to injure some other person. Hence, the Amir introduced the law that books are sealed on their bindings and the sheets are counted. The official who takes the book from the office writes with his own hand: "I [So and So] herewith promise that if I cut a sheet out of this book, my hands are to be cut off." If some other person cuts out the leaf, or if he loses the book, he must report it at once; and prove it too. Before books were introduced, all the Government offices used to have for Records small scraps of paper which were put one on the top of another, without being bound or paged; so the officials, at any time without any fear of

being found out, took out any tell-tale sheets which showed that they had cheated the Government or private individuals. If the slips were once lost or mixed together, it was a difficult task to put them in order; as there were no numbers to mark the pages.

There is one blot which cannot be overlooked; and that is the system of torture, for the purpose of extorting confession of the truth in all criminal cases, and sometimes even in cases of Government revenue and political offences of various kinds. Though this often makes the criminal speak the truth, he is also liable to speak untruth from pain and fear. The system prevails also in China. (Alabaster, p. lxii.). The instruments of torture are various, but generally known as Fanah, an instrument something like the Scotch boot. The same kind of instrument is also used in China, as stated by Alabaster.

There is one other point on which the Criminal Law of Afghanistan is very imperfect, namely, that there is no fixed limit for punishments; one person is sentenced to death for a certain crime, and another person, for the same crime, may be released with only a thrashing. There is also no fixed time for imprisonment. A person may be put in prison and left there for ever if the king happens to forget about him. There are very often cases in which the gaoler has been very severely punished, because the king ordered that a prisoner should be released within a week after having been brought before him; but as the gaoler

did not wish to release him, he kept him in durance for ten years until some private person or detective informed the king of the fact.

Though in theory the punishment in Afghanistan for murder, treason, adultery, and apostacy, is death, yet frequently the offenders on these points are treated with leniency. Sometimes criminals convicted of smaller offences may be sentenced to death. In short, the sentence of death is entirely at the will of the Sovereign. Sometimes prisoners sentenced to death are given the king's grace. At others they are banished to another part of the country for life; this resembles the life-imprisonment in India. Sometimes they are put in prison for an unlimited time; but after a period of varying length the king forgives them. At other times a prisoner may ransom his life by paying money; or his friends and relations may thus ransom him. But such grace is very rarely given in the case of murder—in fact, scarcely ever, unless the relatives of the murdered person pardon the murderer, or take compensation for it. In such a case the Government takes 7000 rupees fine, which is called Diat, (='compensation' in Arabic) or life money. But even this life money and a pardon from the nearest relatives of the murdered man do not always save the murderer from being hanged. Alabaster (p. lxv. *ibid*) says that in China capital sentences are most often not carried out).

As in Chinese Law, so in the law of Afghanistan, capital punishment and the manner of death varv.

In China (p. lviii.) the accessories to a murder are not visited with the death penalty except in certain cases, but in Afghanistan, every person who takes any part in the murder, or even takes part in the conspiracy for it, are all sentenced to death. The murderer is tortured till he confesses all those who helped him or gave him advice or took any part in the murder. It is owing to these very severe laws about murder that there are not five murder cases in a year throughout the whole kingdom of Afghanistan; whereas a former record shows that from 500 to 1000 murder cases were committed annually in one province alone of only 20,000 families. Not only is the punishment for murder severe for those who take part in it, but the inhabitants round the spot where the crime was committed, extending to a distance where a loud cry from the spot can be heard, are responsible for finding the murderer; if he is not found they must pay very severe fines. In some cases, again, if the murderer or robber or burglar proves to be a person of loose character, for instance, a gambler, a drunkard, etc., the people are fined for not having reported his wrong-doings to the police department. Hence the stranger who has no passport or certificate of good character would not be admitted into any community throughout Afghanistan. If parents do not report about their bad children, or children about their parents, wives about their husbands, brothers about their brothers, they are also punished; and there are very frequently cases where such relatives report against each other.

The procedure is this: First the police authorities only advise a person to be careful. At other times they take a guarantee for his good behaviour. If he misbehave again he is either fined or put in prison. But such reports require to be proved. The easiest way of proving a person to be of loose character is for people to inform the detectives, who then catch him in his misdeeds. It is believed in Afghanistan that there is no house without a spy; though it is an exaggeration. But when it is considered how carefully people have to live, and that they go in fear of their relatives reporting against them, there must be some truth in the story.

Friday is the day devoted to prayers and the worship of God, and on this day even marriages or other contracts which are entered into before the afternoon—the time for prayers—are considered illegal by most of the Islamic lawyers. Yet sometimes on this day four or five persons were brought into Kabul severely wounded (and sometimes one or two would die from the treatment they had received) from a place called Jubba; where people assembled for gambling, wrestling and throwing stones at each other in play. But now there is a special law made by the Amir forbidding all these foolish things, and people who act against it are quietly shut up in prison by the policemen who go there to watch the conduct of the people.

If any official, courtier, or judge exceeds his jurisdiction he is punished most severely (and even

for any unofficial crime is punished more severely than a commoner would be who committed the same wrong). The object of the Amir in thus acting is to put a stop to the despotic and cruel powers which were exercised before his time by nearly all the officials and chiefs in the country, every one of whom had their private gaols, and had the powers of life and of death.

Alabaster (Chap. I.) gives a very interesting account of the Chinese measures for the prevention of crime. These resemble somewhat the methods practised in Afghanistan, though in the latter country they are more severe. But it would be impossible, in this short essay, to recount all the precautions that are taken in Afghanistan for the prevention of crime. It is, however, noteworthy that fewer crimes are now committed in Afghanistan than in any of the most civilised countries in the world; so that the present peaceful condition of the country is sufficient justification of such precautionary measures. Formerly the king himself, and nearly all the members of his family and other chiefs, had their hired robbers, and the property of no one was safe. Now there are fewer cases of theft in a month throughout the whole dominion than in the Punjab, a province of India, of nearly the same population. I have elsewhere given Mr. Wheeler's account of Miss Hamilton's opinion on this subject.

It will be interesting in this connection to quote Mr. Alabaster ("Notes and Commentaries on Chinese Criminal Law", Chap. I. pp. 3—5):

"It is commented on in our law books that it is an honour, and almost a singular one, to our English laws, that there is provision in them for obliging persons whom there is probable ground to suspect of future misbehaviour, to stipulate with, and to give full assurance to, the public that such offence as is apprehended shall not happen. It will surprise European readers to learn that this honour is shared by the much despised Chinese. Indeed, the practice is wider than with us, it being in the power of the magistrate, in any case where he is led to think it desirable, to make suspicious characters give security for their good behaviour, and to compel their relatives or neighbours to become responsible in seeing that they will carry out their undertaking. The document takes the form of a bond, somewhat answering to our recognizance. No specific sum of money is mentioned in the bond—the punishment of fines, although it may be shown to exist, being looked on with disfavour—but it is the duty of the bondsmen to watch the principal, and, if there be occasion, hand him over to the Court for safe keeping, under penalty of being held parties to the offence committed by him and punished as accessories thereto. Nay, without a special bond, the wardsmen and *tipaos* are bound to give information, or, if need be, arrest and give over to the authorities all bad characters within their ward whom there is reason to suspect. The same responsibility attaches to parents and heads of families, with regard to those related to them, or within their influence. Foreigners judge of Chinese Law by the trading towns where they reside, and where a large floating population drawn from every quarter of the Empire makes the maintenance of order particularly difficult, and where, moreover, the power and influence of the mandarins

is further crippled by constant foreign interference. Strange as it may seem, however, there is far greater security for life and property in the majority of Chinese towns and villages than in our metropolis."

There are in Afghanistan laws which decree to wrongs committed against certain persons or in certain places severer punishments than to ordinary cases of the same nature. For instance, offences against the person or property of orphans, widows, parents, syads, and the revenue of the Government, judges, tax-collectors, or those committed in mosques or other sacred places. The greatest drawback in the administration of justice before the Amir's time was the bribery of officials, and false, borrowed, or hired witnesses. The punishments for this class of offences are now very severe; and a special law of evidence, requiring all the evidence to be qualified by law, and permitting cross-examination, has put a check upon false witnesses. There is also a system of jury introduced in certain cases, for which there is a code of law. The ecclesiastical matters of Hindus and other religions are decided by the councillors of their own religion.

Having thus given the skeleton outline of some of the most conspicuous of the particular codes of law, I will proceed to recount those points of law in which the Amir has made very large improvements for the happiness and peace of his people.

The first great law made by the Amir, in the very first year after his accession to the throne, was that of the abolition of the wholesale murders which used to be the ordinary practice throughout the

whole kingdom of Afghanistan. I have said already that the punishments inflicted upon murderers were severe, and the same punishments extended to those who helped them in any way by sheltering them or in the actual commission of the crime. I have also stated the happy result of these severe measures. Here I will say that it took fifteen years (from 1880—1895) before the Amir succeeded in making his people obey this law, and in preventing the loss of so many lives. The rebellions raised against the Amir by nearly every tribe during this period were in consequence of his interference in their internal government; mainly in taking away from them the practice of homicide, as well as that of private war between the chiefs of the tribes.* A short summary of the condition of the country as the Amir found it at the time of his accession, and of the way in which this cruel system of murder came to be practised in Afghanistan, will be found interesting.

In Pollock and Maitland's "History of English Law" (Vol. I., p. 24, published 1895), is given a full account of the way in which the idea of self-revenge which prevailed in England in Anglo-Saxon times, had its birth. For this was afterwards substituted blood money paid into the king's exchequer. The third stage was to abolish blood-money and to punish the murderer by death. "In Anglo-Saxon times, as well as in other Germanic laws, we find that the idea of wrong to a person or his kindred is still primary, and that of offences against the common-

* See Lord Hobhouse's speech, quoted in Appendix II.

weal secondary, even in the gravest cases. Only by degrees did the modern principles prevail, that the members of the commonwealth must be content with the remedies afforded them by law, and not seek private vengeance; and that on the other hand public offences cannot be remitted or compounded by private bargains. Personal injuries in the first place were a cause of feud and private war between the kindred of the wrong-doer and of the person wronged, but the feud might be appeased by the acceptance of a compensation. Some kind of arbitration was probably resorted to from a very early time to fix the amount. The next stage is a scale of compensation fixed by custom or enactment for death or minor injuries, which may be graduated according to the rank of the person injured. . . . . The conception of an offence done to the State in its corporate person (as in our system), as represented by the king, is of later growth."

Exactly the same system prevailed in Afghanistan in Mr. Elphinstone's time. He says: "The general law of the kingdom is that of Mohammad; but their peculiar code, and the only one applied to their internal administration of criminal justice, is Pooshtoonwullee, or usage of the Afghans, a rude system of customary law, founded on principles such as one would suppose to have prevailed before the institution of Civil government. The opinion that it is every man's right and duty to do himself justice, and to revenge his own injuries, is by no means eradicated from among the Afghans; and the right of society to restrain even the reasonable passions of individuals,

and to take the redress of wrongs and the punishment of crime into its own hands, is still very imperfectly understood; or if it is understood, is seldom present to the thoughts of the people. This must have had its origin at a time when Government afforded no protection to individuals, and in such circumstances it must be allowed to be beneficial and even necessary; but it has taken root in the habits of the Afghan nation, and although in most parts of their country justice might now be obtained by other means. . . . yet it is still lawful and even honourable in the eyes of the people to seek that mode of redress. The injured party is considered to be entitled to strict retaliation on the aggressor; 'an eye for an eye, and a tooth for a tooth' and so on. If the offender be out of his power, he may wreak his vengeance on a relation, and in some cases on any man of the tribe. If no opportunity of exercising this right occur, he may defer his vengeance for years, but it is disgraceful to neglect or abandon it entirely, and it is incumbent on his relations and sometimes on his tribe to assist him in his retaliation. Retaliation thus exercised of course leads to new disputes, the quarrel becomes inveterate, and in serious cases it is often transmitted from father to son for every generation. . . . This system is encouraging assassination; and the chiefs of the country or the officials are trying to reduce it by levying some compensation to be given to the injured or to his relatives, as it is not thought that the society is injured, or that it has any right to punish for the sake of example after the actual sufferer has been satisfied. In some rare cases, however, the Khan or

the chief levies some fine for the State in addition." (Elphinstone's "Kingdom of Kabul," on Private Revenge, Vol. I.)

This reminds us of the law of Rome under the early kings, as described in Prof. Clark's "Early Roman Law" (§§ 7, 8); and this was still the condition of Afghanistan when the present Amir became its ruler. The government fine for a murder was in some cases three hundred rupees, in others fifty rupees, for the life of a man; and in some cases only twelve rupees for the life of a woman.* Sometimes a murder kindled the fire of assassination between two great tribes, those of the offender and the offended. And in fact, as I have mentioned elsewhere on the authority of Mr. Elphinstone, kings themselves encouraged assassination by making one tribe to fight against another, merely because, as they could not keep them in order, this was considered the easiest way of turning their arms away from attacking the government, which was too weak to protect itself. This induced the Amir to pass a law in the very year of his accession (1880), that no tribe or private individual should seek justice except through the law; and in this manner he succeeded in putting an end to this system of tribal rebellion and assassination.

The same sort of system prevails even now among the frontier tribes outside the Amir's frontier and considered as being in the British sphere by the Durand Treaty of 1893. (*See* Warburton, "Eighteen Years in the Khyber", and Lord Hobhouse's speech

* The value of an Afghan rupee is 1*s*.

in Appendix II.) And, curiously enough, even in Afghanistan itself, a somewhat vague notion still prevails in the exercise of the Afghan law, that the idea of personal right stands before the right of the State; because the relations of the murdered or injured person are considered as entitled to be compensated before the State takes any step to levy fines or inflict punishments upon the criminals. In fact, in all criminal cases, except murder and theft, if the injured person forgives, or becomes reconciled, the State does not interfere. For instance, if a man breaks the shoulder of another, the State often does not trouble itself about the committer of the damage, if he can show a letter from the injured man saying that he pardons the aggressor or will take compensation for his hurt.

I will now bring forward another important law made by the Amir. But before giving it, I must give a short account of the status of woman as it was before Islam; as it stands by Islamic law; and as it stood in Afghanistan before the Amir altered the law on this subject. It is very curious to find that the criminal laws of the East and West resembled each other so much in their original form; the reason for which is, most likely, the influence of the Church on the laws of the middle ages, because the religious law of Islam, especially in its criminal law, takes its origin from the law of Moses, which is the foundation of the Christian law also. Mr. Justice Ameer Ali, in the "Spirit of Islam" (Chap. XIII.), says: "Among the Athenians, the most civilised of all the nations of antiquity, the wife was a mere chattel,

marketable and transferable to others, and a subject of testamentary disposition." And Sandars says (Justinian, Lib. I. Tit. x.), "In Rome, Manus was not perhaps attached to the marriage by mere cohabitation, but was applied to it on the analogy of the ownership which was acquired in a thing by uninterrupted possession." As with the Romans and among the Athenians, so with the Afghans, women were originally considered as chattels and part of property.

Having thus given the status of women in early ages, I will give a short account of her status according to general Islamic law. But as I am here concerned only about the law of marriage and the wife's inheritance, I will not go into details but confine myself to that portion which deals with my subject. Mr. Justice Ameer Ali, in the chapter already quoted, and Mr. Shama Churum Sircar (in the ninth of his "Lectures on Mohammedan Law", published 1875), give full accounts of the Islamic law in this respect. But Macnaghten ("Mahommedan Law, Ch. VII.), condenses the subject into a few words. He says:—

> "First, marriage is defined to be a contract founded on the intention of legalising generation. Second, proposal and consent are essential to a contract of marriage. Third, the conditions are discretion, puberty, and freedom of the contracting parties. In the absence of the first condition the contract is void *ab initio*; for a marriage cannot be contracted by an infant without discretion, nor by a lunatic. In the absence of the latter conditions, the contract is voidable; for the validity of marriages contracted

by discreet minors, or slaves, is suspensive on the consent of their guardian or masters. It is also necessary that there should be no legal incapacity on the part of the woman; that each party should know the agreement of the other, that there should be witnesses to the contract, and that the proposal and acceptance should be made at the same time and place. . . . The effect of a contract of marriage is to legalise the mutual enjoyment of the parties, to place the wife under the dominion of the husband, to confer on her the right of dower, maintenance, and habitation, to create between the parties prohibited degrees of relation, and reciprocal right of inheritance. . . . . The right of a wife to maintenance is expressly recognised, so much so, that if the husband be absent and have not made any provision for his wife, the law will cause it to be made out of his property, and in case of divorce, the wife is entitled to maintenance during the probation. A woman having attained the age of puberty, may contract herself in marriage with whomsoever she pleases, and her guardian has no right to interfere if the match be equal, but if it is not equal, he has a right to set it aside. But the guardians cannot interfere after the birth of an issue. A necessary concomitant of a contract of marriage is dower, the maximum of which is not fixed, but the minimum is ten dirms (a dirm is *6s. 8d.*), and it becomes due on the consummation of the marriage (though it is usual to stipulate for delay as to the payment of a part), or on the death of either party, or on divorce. Where it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand. If a husband divorce his wife on his death-bed, she is nevertheless entitled to inherit if he died before the expiration of

the term (four months and ten days) of probation, which she is bound to undergo before contracting a second marriage. A vow of abstinence made by a husband and maintained inviolate for a period of four months, amounts to an irreversible divorce. Impotency especially is also a ground for admitting a claim to separation on the part of the wife. A child born six months after marriage is considered to all intents and purposes the offspring of the husband, and so also a child born within two years of the death of the husband, or after divorce."

Now, after giving this short summary of the position of a woman by Islamic law, I will state how she formerly stood in Afghanistan. Before, however, commencing the statement, as given by Mr. Elphinstone, I must inform the readers of this dissertation that wherever he says "This is on the authority of Mohammadan law", he means Mohammadan law as conceived by the Afghans; for it is nearly always a mere local superstition mistaken for true Mohammadan law. So Miss Hamilton (in her Lecture on Afghanistan, in the "Indian Magazine" for June, 1898) says: "Some of the fanatic Afghans think that to kill a Christian is a meritorious act, not knowing that they thus transgress the law of the Koran." The Mohammadan law, as given by all the European or Eastern Mohammadan lawyers who know it well, is as quoted by Sir William Macnaghten; and wherever Elphinstone's account of Mohammadan law differs from that it is to be considered as founded on wrong information. Elphinstone (Vol. I., p. 236) says: "The Afghans purchase their wives. The practice is recognised by Moham-

madan law, and is followed in most parts of Asia. . . . The effect of the practice is that women . . . are in some measure considered as property. But among the Afghans, as among the Jews, after the death of the husband, it is thought incumbent on the brother of the deceased to marry his widow, and it is a mortal affront to the brother for any other person to marry her without his consent."

From the above quotation from Mr. Elphinstone, my readers will see that the point which I am going to deal with is this. By this disgraceful custom, which had become law among the Afghans, and was enforced by the Government, the moment a woman was married she was considered as part of the purchasable property, not only of the husband, but of his brothers, and (in default of his brothers) of their nearest male relations; and further, in default of traceable relations, she even became the property of his clan. So, after the the death of the husband it was considered a disgrace for the deceased husband's brother or his nearest male relative not to marry her, even against her wish; and not only against her wish, but even if he wished not to marry her he was bound to keep to the custom of his tribe (as mentioned by Mr. Elphinstone). Very often after the death of the husband, the widow did not wish to marry his relatives; and as they wished to force her to do so, the result was the taking up of arms, and a war between the family of the widow and that of her husband. The quarrel was furthermore taken up by the widow's whole tribe and that of her deceased husband's relatives. Several cases

of this kind were brought before the Amir; and finally, in 1883, he passed a law declaring all such claims to be illegal, and enacting that the law of Islam, as mentioned above, should hold good throughout the whole kingdom.

This clause, as to a widow being considered the property of the nearest male relative of the husband, changed also the law of inheritance. For previously all the property of her husband, together with herself and her children, used to become the property of the person who married her by force. But the restoration of true Islamic laws concerning the widow's liberty restored also the doctrine of inheritance as laid down by Islamic law.

And there were many other abuses of the same kind. For instance, marrying girls under the age of puberty without their consent, in the absence or death of their parents, by bribing their guardians or various other frauds. The Amir's law orders, according to Islamic law, that such girls on their attaining the age of puberty, or even before, shall be quite at liberty to repudiate such marriages; and the people who forced them into them shall be liable to criminal punishment.

There grew up another system which also was based on no law at all. The dower (Mihr) given on the part of the bridegroom to the wife is (as I have quoted above, on Sir William Macnaghten's authority) a necessary part of a marriage in Islam. For, as in early Roman Law so in Islam, in consequence of the *patria potestas*, the daughter (like the son) could be sold or given away by her parents with or

without compensation. Concerning marriage, a difference with regard to *patria potestas* is that the gift of a girl by her parents is always valid in Islam, but the gift of her in marriage by any other guardians is subject to her consent; and she can refuse it even after being married, if married in minority by the consent of her guardian. The Mihr (*donatio ante nuptias*),* which the husband gives, or promises to give, at the time of his marriage, is a form of mancipation employed for her purchase and sale as a bride. At the time of marriage and settling this Mihr, the husband says, "I promise this Mihr in compensation for my wife's Nafas (person)"; and the wife says, "I accept him as my husband and agree to give my Nafas (person) for this Mihr." Professor Clark informs us that a similar law prevailed amongst the ancient Romans (see his "Early Roman Law", § 26). But as no fixed maximum sum is mentioned in Islamic law for the Mihr, it was left open for the parties to decide it at the time of their being married. Hence, if the parents of a girl were influential people, or if they saw that the boy was madly in love with the girl, they used to fix an imaginary marriage portion or dower. This imaginary dower, which used to be hundreds of times more than the property of the husband, was of course impossible to pay; and therefore a great many quarrels and fightings arose out of this illegal practice. The Amir

* The corresponding fortune brought by the wife to the bridegroom, or given to him on her behalf by her family, is called Daheij—the *dos* of Roman Law. The Mihr is, of course, the Roman *donatio ante nuptias* (see Sandars' "Justinian", Lib. 2, Tit. 7).

therefore enacted in 1883, that the dower for members of the Royal family was not to exceed 12000 rupees, and not to be under 3000; that of the nobility and chiefs and other great officials was to be between 1000 and 3000 rupees; that of ordinary people between 300 and 900 rupees. He added a provision that if the husband wished to give his wife more, he was quite at liberty to do so; but it was not to be mentioned in the marriage contracts, and the law would not enforce any such accessory gift. People who were accustomed not to obey any law at all, went on in an underhand manner writing contracts mentioning an amount of dower above the sums enacted by the Amir's law. He found that one of his confidential courtiers named Ghulam Riza Khan, and various other officials, had taken part in such a contract, and he fined them very severely in 1885. This was spread throughout the country, and put an end to all illegal contracts in this matter. Another point was, that there were frequent disputes about marriage because marriages were usually not registered, not even being put into writing except very rarely. The Amir made a law enacting that all people who wished to be married should buy a printed stamped form from the Government Office, stating for what purpose it was bought, that they might have their marriage registered in one of the ecclesiastical Courts; paying a registration fee of ten rupees for the two items into the Government Treasury.

An equally important point on which the Amir has made laudable reform, adding greatly to the happiness of his subjects, is the abolition of the

disgraceful system of slavery. Elphinstone (Vol. I., pp. 318—320) gives a somewhat vague account of this. He says: "There are slaves in Afganistan as in all Muslim countries. I shall now give a short account of their situation. By far the greater part are home-born, but some supplies are received from foreign countries. Abyssinians and negroes are sometimes brought from Arabia. The Baluchis sell Persian and other people whom they capture in their forays, and a great many Kafirs are purchased from their own nation or made prisoners by the Eusofzyes on their border." This system of slavery in Afghanistan grew to such an extent that one clan or tribe or royal family that was stronger than another was in the habit of capturing prisoners from its antagonists and making slaves of them. Hence there was no privilege for any special class, or clan, or religion, but everyone was liable to be made a slave. The first law that the Amir passed in this respect was to the effect that there should be no more selling of free persons into slavery, and that only captives taken in war, or the offspring of those who were already slaves, were to be considered slaves. But he went a step further even than this; for, after conquering the country of the Kafirs, which was the chief storehouse for keeping up the slave trade, he ordered that the prisoners taken in war, although they were Kafirs, should not be made slaves. He paid to the warriors the value of all the Kafirs who had been captured in the war of 1895, and released them all, giving them a province of land where they might make their habitation. He also gave to some

of them government employment in the army and in various other departments. At the present time, therefore, the buying and selling of any description of human beings is forbidden by the Amir's law. Moreover, though the nobility still retain as slaves those who are born as such in their houses, they now are not allowed to treat them harshly. In the old times people might kill their slaves in Afghanistan, just as in ancient Rome, modern America, and other countries; but by the Amir's law a person who kills his slave is liable to the same punishment he would receive for killing any other freeborn person. The same restriction has been placed on the powers of parents, though formerly they had the power of killing or selling their children, as was the case in Roman Law also (see Moyle's "Institutes of Justinian", English Translation, 2nd ed., p. 12).

In fact the offspring of slaves are looked upon as children of the family, and are called in Kabul Khanah Zad (= born in the family), and they are treated as members of the family. In many cases I know of, where their masters have given them manumission, they nevertheless will not go away from the comforts they enjoy in the families of the rich. Some of the highest officials in the Amir's service are slaves of his. For instance, Nazir Safar Khan, the Lord of the Seal, the most confidential courtier of the Amir, is his slave. The late Barwana Khan, head of all the Amir's military force at Kabul, and Jan Mohammad, Lord of the Treasury, were till their death the Amir's slaves. His Commander-in-Chief, Faramurz Khan, under whose care

and trust he has left the city of Herat (which is of far greater importance, standing as it does in the face of Russian advance, than Kabul itself), is also a slave.

Mr. Wheeler says about the abolition of slavery by the Amir (p. 107): "In justice to the Amir Abdurrahman, it should be mentioned that the extension of his authority over Shignan was in one way a blessing to the people, since his officials put a stop to the exportation of slaves, which under the native Mirs had been carried on in so ruthless a fashion. The rumour that a new order of things had been established began to spread far and wide. Miserable creatures who had lived years in cruel bondage escaped from their masters and made their way back to their homes in Shignan, where now, thanks to Abdurrahman, they might abide in peace."

Another great change which the Amir has made is in the Law of Real and Personal Property, and the Law of Contract; documents relating to which are now all written on printed forms and stamped papers, and in them all proper legal rules for the competency of the parties and that of the witnesses are observed. I cannot give the full details of the Code which governs this, but I must say a few words upon it.

The land of the people was never properly surveyed or measured, and the revenue was charged only approximately. The system for fixing the Government revenue on land was like the system which existed in the Punjab and some other parts of India before British rule; namely, the assessors used

to look at the fields and say, for instance, There will be about a thousand tons of corn, so the landowners must pay one-third of that amount into the Government Treasury. This system, of fixing the revenue approximately, was called in Afghanistan Sihkot (= dividing into three shares). Now, the revenue, in parts of Afghanistan which have been surveyed, has been fixed per acre according to the quality of the land, as is that in India. In some other parts it is already being fixed. The same kind of changes have been made in the water irrigation of the land. Before the Amir's time many villages, where in the past some official or favourite of the king had lived, enjoyed more water from the canals and paid less revenue, whilst in other villages the people paid more revenue and got a less share of water. An elaborate code of law has now been enacted, resembling that in force in India, which gives all the people equal rights in water, according to the quantity of the land they possess and the revenue they pay.

The Amir has also made a new law, unknown in Afghanistan before his time, about life-imprisonment, which sends people who deserve this punishment into such remote parts of his dominions as are sparsely populated, giving them lands to cultivate. This is, I think, an idea which coincides with the practice in India; as Indian life-prisoners are sent to the islands which are situated in the Indian Ocean.

The Amir's code of law for the safety of travellers enacts that the Kafila Bashi is to take sufficient guarantee that the owner of hired ponies should not

rob or misbehave to the strangers who hire his ponies; and that he should take from them a receipt for having conducted them safely from one place to another. The inhabitants of any village or town through which the road passes are responsible to give back a traveller's lost goods, or in default the price thereof, if the robbers who stole the goods live in those towns or villages.

I am afraid that my dissertation has exceeded a hundred and fifty pages. I have seen copies of other dissertations containing only fifty or sixty pages, and I fear, therefore, that saying too much will be just as bad as saying too little. I will consequently bring my book to a close. Before doing so, however, I should like to remark that there are some people who say that the Amir is a savage, and that his laws are barbarous. My answer to them is that "Those who live in glass houses should not be first to throw stones". They should not compare the society of to-day with that of the time when it was considered lawful to hang a person for stealing a sheep. The law is of course supposed to be appropriate to the condition of its people, and even in the most civilised and law-abiding country of England there is still room for improvement in the law. In 1880 Professor Clark, on the last page of his "Analysis of Criminal Law", looked forward to the time "when our Criminal Code will finally emerge from the crucible—perhaps one should rather say the battlefield—of Parliament"; but that time has not arrived, even now in 1900.

Fortunately, people who have had to deal with

the Amir, as Lord Curzon, Sir Mortimer Durand, Sir West Ridgeway, and other great officials governing the countries in the neighbourhood of Afghanistan, know the Amir better than do his hostile critics; and their opinions about him are well known from their writings. Even those great statesmen of England who have not seen him, know his merits better than do some self-constituted authorities who keep on writing articles and lecturing; like the one who, when recently lecturing before a great European Emperor, as a military authority on Afghanistan, said (if the accounts given in the newspapers be correct) that the Army of Afghanistan is only 35,000 men. (Some of the Perdeh women in Afghanistan know more about the number of the foreign armies than such military authorities do about the armies of Afghanistan; and I am sure if I lectured to the Amir on the armies of any of the European Empires with such imperfect knowledge, he would soon tell me how little I know about it.) For instance, the Earl of Kimberley, the Liberal Leader of the House of Lords, the most eminent statesman of his day in the Liberal Party, told me in the course of conversation that the Amir had faculties equal to those of a very clever European Prime Minister. And Lord Rosebery's opinion of the Amir was not less complimentary. In short, the impression which I have in my mind, and which I hope to convey to the Amir when I leave this country in the course of a few weeks, is that it is the earnest desire of all the great statesmen of England that he, as their ally and friend, should be prosperous and live long, that he

may keep in order and rule that rightly-named Yaghistan (= land of the unruly), which from the Creation until his reign had never known how to obey a sole monarch or a uniform Law.

APPENDIX I

In Mr. Wheeler's book, already often referred to here, it is stated, pp. 227—29, that "The most remarkable document of a theological kind to which Abdur Rahman has given his imprimatur, is the pamphlet printed by his order (if not compiled by his own hand), in December, 1887, and intended to set forth the duty of obedience to kings." A number of extracts translated from this work were given by the "Allahabad Pioneer," and they show how Abdur Rahman posed, in the eyes of his subjects, as the enemy of unbelievers. The materials for the pamphlet are said to have been collected by a committee of thirteen *mullas*, and to have been edited by the Ameer himself. The first chapter deals with *Jehad*, or religious war, and says:

> "May it not remain hidden from all believers and followers of the Prophet, that the gracious God has imposed *Jehad* on all believers as a weighty debt and bounden duty; and whoever shall deny this shall become a Kafir, since this has been established and made clear by the Koran and the traditions of the Prophet. . . . . The object of this is that you should fight with the Kafirs who are near you, and it is necessary that the enemies of religion should be made to endure roughness of conversation. Before and during the fight you should show endurance and bravery. Fear not death, and repress your enemies thoroughly. And know that God is with the pious, to whom He renders help and gives

victory. . . . It is necessary that all believers should join in *Jehad*, and not sit like women in their houses, but like brave men they should become *Ghazis* in the cause of God, and they should not fear death."

The second chapter treats of the honours and rewards in heaven that await the warriors of God. Then follows a veritable call to arms:

"Therefore it is necessary that true and devout Mahomedans, whether foot-soldiers or horsemen, should hasten to the frontiers, which they should guard and protect; and they should prevent the wicked Kafirs (unbelievers) from entering the territory of Islam. During the encounter they should fight bravely against them, and not allow these honourable rewards to slip out of their hands. They should make themselves worthy of Paradise, and of its beautiful and bejewelled *houris*. They should use their best endeavours to protect their religion. Therefore do we notify to all the inhabitants, whether high or low, of all the cities, towns, and villages, that insomuch as it is incumbent, in accordance with God's word, on all the people to render aid to the religion of Islam, in the same way as prayers and fasts are incumbent on them, so also in *Jehad* it is absolutely binding on all believers, since now there is a general rising and call to arms and the frontiers of the territory of Islam have fallen into the possession of tyrants, that by the grace of God they should do their utmost to support the religion of Mahomed and to uphold its supremacy, and go forth to war, and like tigers meet the host of unbelievers on the field of battle, and with their swords mow down that pernicious body, and use their heads as balls."

After another eloquent description of the joys of Paradise, reserved for those who join in *Jehad*, the Ameer's pamphlet says:

"Then, O ye believers, why do you not strive to attain a high position in the next world, and pleasure and the grace of God, so that in this world you may gain honour and respect, and exceeding happiness in Paradise where a man of the lowest rank shall receive two-and-seventy *houris* with two-and-eighty thousand attendants? Each abider in Paradise shall have seventy couches for his repose, and the smallest pearl that adorns the diadems of the *houris* shall be of such brilliance and lustre as to illumine all space between east and west. And were one of the *houris* to visit this world, it would be lit up with resplendent light, and the whole space between earth and sky would be filled with delicious perfume. The robe that covers these *houris* is more precious than this earth and all therein."

The following remarkable extracts are from another proclamation which was circulated in the spring of 1887, when the Ghilzai rebellion was seriously disturbing the peace of the country. It is to be found on pp. 248—251, App. II. of Mr. Wheeler's book:

"May it be known to the *Raizes* great and small, cultivators, dervishes, and all Mussulmans of the holy religion of Mahomed in Afghanistan, that in this season of varying hues, matters of different colours have presented themselves within the country of Afghanistan. Outwardly they look awkward, and inwardly cause much grief. You are not acquainted with all these affairs, owing to your misfortune and perpetual wretchedness; and you remain busily handling the cup of pleasure and amusement. You are engaged in the massacre of each other, but the axe will fall on your feet. From morning to evening you discourse nonsense, and think not of your end or your future state. Your spirit and intelligence are much to be applauded!

* * * * * *

"The country of Afghanistan is a mere spot overshadowed by two infidels. This is quite apparent. And it is closely besieged. Yet although imprisoned men are always thinking of their release, you are indifferent to your bonds. Although you suffer embarrassment at their hands, you think the present circumstances quite satisfactory. But they will not leave you there. The one from the east and the other from the west will by various artifices possess themselves of our country. Before the people they will say, 'Who are senseless, that they intend to take Hindustan?' They disbelieve in the saying that the country of God is not circumscribed, and they consider Afghanistan as their passage, and lull us in the sleep of the hare.

"I sometimes wonder that my sorrow is made a joke of, but sometimes I laugh myself. You leave all to luck, in a matter of life and death. By the grace of God we number some thirty millions in all. You should ponder deeply, yourselves, that notwithstanding so much strength, yet will our country be taken, and so many of God's creatures will pass into the mansion of death within sight of their enemies. Alas! alas! you do not feel shame because you have borne too great shame already. Alas! the name of Afghan should not have been given you by the giver of names, as you do not deserve it.

"You are not acquainted with the temperament of both nations, but I have full knowledge of their affairs, as I have lived long in their country and passed my life there; and like meat being roasted over the fire, I well understand being basted by the possessors of wealth. Both nations outwardly are rivals purposing to take our country; but inwardly they are combined and one. O ye born blind! And O ye for ever unfortunate! Do you not see with the eyes

of the world? If they really disagree together, why does not Russia take London and the British country, or Britain take Russia? When they will sit happily at leisure after taking our country, they will compare together their spoils one with the other; and the heritage of the Mahomedans will remain with the infidels, whose end is evil.

"They will not be satisfied with the taking of the country of Afghanistan but will introduce their customs, which are disgraceful in the extreme. For instance, husbands have no power to kill their wives for misconduct—a condition of things hated in Afghanistan—and other evils, besides that mentioned above, too numerous to speak of or write about. Therefore I tell you in all kindness to reply whether you can hear all that I have said; if you can, you will understand that your honour, religion, and wealth have all passed out of your hands; and if not, you will have to fight and die. I know that from the absence of kindly feeling you will commit yourselves to the sin of killing each other, but why do you not plan the prevention of the thing that will take place eventually? And why do not you seize the opportunity according to the sentence of the Koran, the meaning of which is, 'Ye will repent of the thing which has once occurred, but it will be useless, as it will not come back again'.

"I say again to you, O ye tribes of Afghanistan! you should hear with the ears of sense that one thing more which I want to explain, and which is according to our holy religion, supported by a sentence from the Holy Koran. In the matter of war with the infidels, 'Ye should prepare yourselves just as the infidels prepare themselves'. As regards drill and organisation, which duty has been placed upon you by the Koran, you should act accordingly, so

that you may not be put to shame by the world and religion. It is this, that it is necessary for you all, old and young, to commence your drill in your own houses, and send to me one man out of every twenty-one, and the remaining twenty heads should pay him from among themselves in due proportion until his time of service is over, when another man should be similarly sent and paid. And as such steps are taken in self-interest, no wages should be demanded. This has happened in the country of the Sultan of Turkey. You should profit by this example. You should use my words as the amulet of your lives, so that you may be protected against the wiles of your deceitful enemies.

"If you consider my words to be mere nonsense, they will, to my sorrow, go forth in vain; but if you study the pith of my speech, and give place in your hearts to its meaning, you will earn happiness therein and accept it. And you should send a paper denoting your assent and sealed with your seals to Cabul; and this will be kept for ever as a deed. And if it may seem to you difficult to act upon my instructions, you should let me know, that I may point out to you again with reasons how this proposal for a new army can be carried out, that we may protect ourselves from the wickedness of our enemies. Both these ways are before you.

"As regards some of my affairs with the British Government, they are the result of fresh complications and of new matters. But I will soon invite the elders and influential men of Afghanistan, and take their opinion on these very matters."

APPENDIX II

Lord Hobhouse on Afghanistan

In the *Indian Magazine* for June, 1898, Lord Hobhouse

is reported to have made the following remarks at a meeting in the Imperial Institute:

> I recollect an Afghan coming to Calcutta for some trading purpose. He was a handsome, picturesque man; and a gallant Captain in the army (who was also a draftsman) got him to sit as a model. When the work was done, the Captain offered some money. The man seemed dissatisfied. "Is not that enough?" said the Captain. "Quite enough," said the Afghan; "but I hoped your honour would have given me a gun or a sword." "What do you want with them?" "Oh! if I was properly armed I would go and kill Huzoor Ali," or whatever the name may have been. "Why? Is he a bad man? What has he done to you?" "No, he is not bad; he has done nothing to me." "Why, then, do you want to kill him?" "Why, last year his uncle killed my cousin; and, when I can, I shall kill him." Now here was a man, pleasant and kindly enough, but it was a point of honour and conscience with him to kill a neighbour, whom he did not dislike, on account of a family blood-feud, and he would otherwise have fallen in his own estimation. Again, a friend of mine visited me in Calcutta, bringing some servants from the Andaman Islands. They were a fine, manly-looking set of fellows—at least, I thought so, and I said so. "Yes," said he, "they are all murderers." It was startling; but the explanation was simple. They belonged to the North-West Frontier, to tribes which, if not Afghan, are in close resemblance with them, and they had killed people in blood-feuds. They were not criminals in their own eyes; they were not degraded; they were the best of the Andaman population—honest, trustworthy followers; but they had the ill-luck to practise their barbarous custom in some place where British law prevailed.

Of course, the civilised nation is bound to prevent private war—that is one of the first steps of advancing civilisation—and to inflict punishment on those who wage it. But these people had done nothing of which they were ashamed in killing their hereditary foes. In fact, it was the omission to do it which would have lowered them in their own eyes and in those of their neighbours. In a Court of Morals we should not judge them very harshly, and yet in a Court of Law we must treat them as murderers. In estimating their character we must try to put ourselves in their place, and to judge them from their own standard of right and wrong. Such incidents as these tend to show us the immense difference between the two points of view—that of a highly organised community, and that of one with a much more primitive character. The Afghans are, as we have just heard, a congeries of separate tribes, with very little coherence, and, of course, plenty of dissensions between them: but it happens just now that a strong able man, the present Ameer, is trying to combine them in closer unity. This local condition, with its inevitable accompaniment of wars, fierce habits, and ignorance, creates a yawning gulf between our mental habits, which is fatal to harmony. How is it to be bridged over and made narrower? That can only be done by many efforts, carried on by many people through a long period of time. One such effort Miss Hamilton has made to-day. We shall all agree that, perplexing as these extremes of character are, there is a great deal to admire in the Afghans; for they have high aspirations and a brave spirit. The more they can learn of us, and we of them, the more likely we are to keep peace together.

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