

# Afghanistan Law Bibliography



Compiled by Timothy Mathews  
January 2013

# The Afghanistan Analyst Law Bibliography

4<sup>th</sup> Edition – January 2013

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This bibliography is intended to be an up-to-date resource for legal study and research pertaining to modern Afghanistan (1747 and later).

**Accessibility**

Some sources are only available through legal search engines, such as Westlaw and Lexis-Nexis, or through academic databases such as JSTOR. Hyperlinks are provided to sources that are freely available. For most books, hyperlinks are provided to Google Books because this often offers a free preview and multiple options to purchase the book if one cannot be obtained from a nearby library. Hyperlinks to Google Books are not endorsements of any merchants listed by Google.

With all hyperlinks, care has been taken to only link to sites that are not malicious and that post materials that appear to be lawful and comply with copyright laws. However, websites occasionally change owners, rename files, or are targeted by malicious hackers. Users of this bibliography assume all risk when clicking on links to third-party sites.

**Changes from the 3rd Edition**

In this edition, I added or replaced approximately 25 references. This edition retains the organization of the third edition, but includes an additional section for dispute resolution involving warlords and the Taliban, and additional subsections within the section on Islamic law. Since finalizing the third edition, hyperlinks to several documents changed, and some documents appeared to no longer be online at all. For those documents that were freely available, but that I could not relocate while compiling this edition, I uploaded backups to the afghanistan-analyst.org site and changed the hyperlinks to reflect this. I also corrected outdated hyperlinks. For several hyperlinks, particularly those in the Islamic Law section, there appears to be a problem when I convert the bibliography from an MS Word file to an Adobe PDF file. The URL works fine before this conversion, but some hyperlinks do not function after conversion. If a hyperlink does not work, try pasting the author and title into Google.

As before, I have attempted to categorize articles according to the area of law that they place most focus upon. Recognizing that this is a subjective decision and many readers will expect some articles to be in different locations, most sections have a few cross reference recommendations and notes to highlight likely areas of overlap.

**Other Notes**

Please forward recommendations for the organization and content of this bibliography (errors, omissions, and bad hyperlinks) to: [timothy.mathews@maine.edu](mailto:timothy.mathews@maine.edu) or [contact@afghanistan-analyst.org](mailto:contact@afghanistan-analyst.org), or direct suggestions to me on Twitter ([@timmathews](https://twitter.com/timmathews)).

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Charlottesville, Virginia, USA

**Afghan Law, In General.**

This section lists references that encompass several areas of Afghan law. Since these references cover a broader survey of Afghan law, they necessarily go into less depth. Thus, they provide ideal introductions to the Afghan legal system.

This section focuses upon current law. Discussions of Afghan legal history are in section 3.

Although the online directories and collections listed in this section include laws written prior to the formation of the current Government of the Islamic Republic of Afghanistan, many of those laws retain some authority. After ousting the Taliban regime in 2001, the international community established the Afghanistan Interim Authority (AIA) by drafting the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, also known as the “Bonn Agreement.” Part II of the agreement declared that the Constitution of 1964 would be applicable, with some exceptions, and that

“existing laws and regulations, to the extent that they are not inconsistent with [the Bonn Agreement] or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations.”

The Constitution of 2004 superseded the 1964 Constitution. But, prior laws remain in effect until they are repealed, so long as they are not inconsistent with the Constitution of 2004 or international obligations. Directories and collections in this section provide English translations of Afghan laws. Books and articles explain the fundamentals of the current Afghan legal system.

**Online Directories and Collections**

Afghanistan Parliament, *Afghanistan Parliament Legislative Tracking Service*, [legtrack.af](http://legtrack.af).

Afghan Legal Info. Inst., *Afghan Laws*, Mar. 31, 2008, [asianlii.org](http://asianlii.org).

Checchi & Co. Consulting, Inc., *Afghanistan Legal Documents Exchange Center*, Nov. 5, 2011, [afghantranslation.chechiconsulting.com](http://afghantranslation.chechiconsulting.com).

International Center for Not-For-Profit Law, *Online Library – Research Center*, [icnl.org](http://icnl.org).

Lexadin, *World Law Guide - Afghanistan*, Jan. 1, 2011, [lexadin.nl](http://lexadin.nl).

NYU Libraries, AFGHANISTAN DIGITAL LIBRARY, [afghanistandl.nyu.edu](http://afghanistandl.nyu.edu).

Omar Sial & Md. Ershadul Karim, *Islamic Republic of Afghanistan Legal System and Research*, N.Y.U. L., HAUSER GLOBAL L. SCH. PROG., [nyulawglobal.org](http://nyulawglobal.org).

University of Nebraska-Omaha, THE ARTHUR PAUL AFGHANISTAN COLLECTION, *available at* [digitalcommons.unl.edu](http://digitalcommons.unl.edu).

## Books

AFG. LEGAL EDUC. PROG, STAN. L. SCH., AN INTRODUCTION TO THE LAW OF AFGHANISTAN (3rd ed., 2011), *available at* [alep.stanford.edu](http://alep.stanford.edu).

AFG. LEGAL EDUC. PROG, STAN. L. SCH., AN INTRODUCTION TO THE LAW OF AFGHANISTAN - STATUTORY SUPPLEMENT (2nd ed., 2011), *available at* [alep.stanford.edu](http://alep.stanford.edu).

BAR HUMAN RIGHTS COMM. OF ENG. AND WALES, MANUAL ON RULE OF LAW: AFGHANISTAN (2006), *available at* [barhumanrights.org.uk](http://barhumanrights.org.uk).

MOHAMMAD HASHIM KAMALI, LAW IN AFGHANISTAN (E. J. Brill 1985), *available at* [books.google.com](http://books.google.com).

## Articles

Jon Eddy, *Rule of Law in Afghanistan: The Intrusion of Reality*, 17 J. OF INT'L COOPERATION STUD. 1 (2009), *available at* [research.kobe-u.ac.jp](http://research.kobe-u.ac.jp).

Hatem Elliesie, *Rule of Law in Afghanistan*, in UNDERSTANDING OF THE RULE OF LAW IN VARIOUS LEGAL ORDERS OF THE WORLD (Koetter & Schuppert, eds., 2009), *available at* [afghanistan-analyst.org](http://afghanistan-analyst.org).

OFURHE A. IGBINEDION, THE LEGAL SYSTEMS OF AFGHANISTAN: A GEOGRAPHIC DISTRIBUTION (U. Chicago 2009), *available at* [ofurhe.com](http://ofurhe.com).

William Maley, *Democratic Governance and Post-Conflict Transitions*, 6 CHI. J. INT'L L. 683 (2006).

Laurel Miller & Robert Perito, *Establishing the Rule of Law in Afghanistan*, UNITED STATES INSTITUTE OF PEACE: SPECIAL REPORT 117 (2004), *available at* [usip.org](http://usip.org).

Neamat Nojumi, Dyan Mazurana & Elizabeth Stites, *Afghanistan's Systems of Justice: Formal, Traditional, and Customary* (Tufts University, Jun. 2004).

Ali Wardak, *Rule of Law in Afghanistan: An Overview*, in PETERSBERG PAPERS ON AFGHANISTAN (Danspeckgruber ed., 2009), *available at* [princeton.edu](http://princeton.edu).

## **Islamic Law. In General.**

Afghanistan's pluralist legal system is heavily influenced by Islamic Law. Sunni Islam has four major schools of jurisprudence, or *madhāhib*. Throughout Afghanistan's modern history, Afghans have recognized the authority of the Hanafi *madhhab* (singular form of *madhāhib*). Application of Hanafi jurisprudence derives an understanding, or *fiqh*, of what the law is according to the Hanafi *madhhab*. Many laws written in the 1970s codified some aspects of Hanafi *fiqh*. As noted in the prior section of this bibliography, laws pre-dating the Constitution remain in force until repealed. Furthermore, Article 130 of the 2004 constitution states that

“the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.”

The references below offer background materials to understand the basic concepts of Islamic Law, the Hanafi *madhhab*, and Islamic legal history. Two references are listed first: a search tool for an online Islamic Law library and a comprehensive encyclopedia of individuals who have transmitted canonical sayings of the Prophet Muhammad (PBUH). Thereafter, this section of the bibliography is divided into specific disciplines of Islamic law.

For legal history pertaining specifically to Afghanistan, see section 3.

### **Online Directories and Collections**

Int'l Islamic U. Malay., *Library Research Gateway*, ISLAMIC LAW DIGITAL LIBRARY, [lib.iium.edu.my](http://lib.iium.edu.my).

G.H.A. JUYNBOLL, ENCYCLOPEDIA OF CANONICAL ḤADĪTH (Brill 2007), *available at* [books.google.com](http://books.google.com).

### **2. 1 Fundamentals of Islamic Law**

THE AMMAN MESSAGE (Royal Aal al-Bayt Institute for Islamic Thought 2008), *available at* [bahaistudies.net](http://bahaistudies.net).

### **Books**

Peri J. Bearman, Wolfhart Heinrichs & Bernard G. Weiss THE LAW APPLIED (2008), *available at* [books.google.com](http://books.google.com).

Peri J. Bearman, Rudolph Peters & Frank E. Vogel, THE ISLAMIC SCHOOL OF LAW (Harvard 2005), available at [books.google.com](https://books.google.com).

Wael B. Hallaq, AN INTRODUCTION TO ISLAMIC LAW (Cambridge University 2009), available at [books.google.com](https://books.google.com).

Ahmad Hasan, THE DOCTRINE OF IJMĀ‘ IN ISLAM (3rd ed. 2009).

Mohammad Hashim Kamali, PRINCIPLES OF ISLAMIC JURISPRUDENCE (Islamic Society Texts 2003), available at [books.google.com](https://books.google.com).

Majid Khadduri & R.K. Ramazani, THE ISLAMIC CONCEPTION OF JUSTICE (Johns Hopkins 1984), available at [books.google.com](https://books.google.com).

Bernard G. Weiss, THE SPIRIT OF ISLAMIC LAW (University of Georgia 1998), available at [books.google.com](https://books.google.com).

## Articles

Nesrine Badawi, INTRODUCTION TO ISLAMIC LAW (Prog. on Humanitarian Pol’y & Conflict Research at Harv. U. 2009), available at [ihl.ihlresearch.org](http://ihl.ihlresearch.org).

M. Cherif Bassiouni & Gamal A. Badr, *The Shari’ah: Sources, Interpretation, and Rule-making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135 (2002), available at [jay.law.ou.edu](http://jay.law.ou.edu).

Bernard K. Freamon, *Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence*, 11 HARV. HUM. RTS. J. 1 (1998), available at [ssrn.com](http://ssrn.com).

Nazeem MI Goolam, *Ijtihad and its Significance for Islamic Legal Interpretation*, 2006 MICH. ST. L. REV. 1443 (2006), available at [msulawreview.org](http://msulawreview.org).

Adham A. Hashish, *Ijtihad Institutions: The Key to Islamic Democracy Bridging and Balancing Political and Intellectual Islam*, 9 RICH. J. GLOBAL L. & BUS. 61 (2010), available at [rjglb.richmond.edu](http://rjglb.richmond.edu).

Saim Kayadibi, *Ijtihad by Ra’y: The Main Source of Inspiration behind Istihsan*, 24 AM. J. OF ISLAMIC SOC. SCIENCES 73 (2007), available at [i-espistemology.net](http://i-espistemology.net).

Muhammad Hashim Kamali, *Siyasa Shariah or the Policies of Islamic Government*, 6 AM. J. OF ISLAMIC SOC. SCIENCES 59 (1989), available at [i-espistemology.net](http://i-espistemology.net).

Liaquat Ali Khan, *Jurodynamics of Islamic Law*, 61 RUTGERS L. REV. 231 (2009), available at [rutgers.edu](http://rutgers.edu).



Ali Khan, *The Reopening of the Islamic Code*, 1 U. OF ST. THOMAS L. J. 341 (2003), available at [washburnlaw.edu](http://washburnlaw.edu).

Khizr Muazzam Khan, *Juristic Classification of Islamic Law*, 6 HOUS. J. INT'L L. 23 (1984).

Herbert J. Liebesny, *Judicial Systems in the Near and Middle East: Evolutionary Development and Islamic Revival*, 37 MIDDLE E. J. 202 (1983).

Clark B. Lombardi & Nathan J. Brown, *Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights?*, 21 AM. U. INT'L L. REV. 379 (2006), available at [auilr.org](http://auilr.org).

Asifa Quraishi, *Who Says Shari'a Demands the Stoning of Women? A Description of Islamic Law and Constitutionalism*, 1 BERK. J. MIDDLE E. & ISLAMIC L. 163 (2008), available at [law.wisc.edu](http://law.wisc.edu).

Asifa Quraishi, *Interpreting the Qur'an and the Constitution*, 28 CARDOZO L. REV. 163 (2006), available at [cardozo.yu.edu](http://cardozo.yu.edu).

Asifa Quraishi, *On Fallibility and Finality: Why Thinking Like a Qadi Helps Me Understand American Constitutional Law*, MICH. ST. L. REV. (2009), available at [law.wisc.edu](http://law.wisc.edu).

Sadiq Reza, *Islam's Fourth Amendment: Search and Seizure in Islamic Doctrine and Muslim Practice*, 40 GEO. J. INT'L L. 703 (2009).

Frank Vogel, *An Introduction to the Law of the Islamic World*, 31 INT'L J. LEGAL INFO. 353 (2003).

Frank Vogel, *The Closing of the Door of Ijtihad and the Application of the Law*, 10 AM. J. OF ISLAMIC SOC. SCIENCES 396 (1993), available at [i-espistemology.net](http://i-espistemology.net).

Diana Zacharias, *Fundamentals of the Sunni Schools of Law*, 66 HEIDELBERG J. INT'L L. 491 (2006), available at [zaoerv.de](http://zaoerv.de)

## **2.2 Islamic Legal History**

Books discussing formation of schools of law and the role of Islamic law in Muslim societies

NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* (Princeton University Press 2008), available at [books.google.com](http://books.google.com).

BABER JOHANSEN, *CONTINGENCY IN A SACRED LAW: LEGAL AND ETHICAL NORMS IN THE MUSLIM FIQH* (Brill 1998) (1999), available at [books.google.com](http://books.google.com).

Christopher Melchert, *THE FORMATION OF THE SUNNI SCHOOLS OF LAW: 9TH-10TH CENTURIES C.E.* (Brill 1997), available at [books.google.com](http://books.google.com).

HARALD MOTZKI, THE ORIGINS OF ISLAMIC JURISPRUDENCE (Brill 2002), available at [books.google.com](http://books.google.com).

Nurit Tsafir, THE HISTORY OF AN ISLAMIC SCHOOL OF LAW (Harvard 2004), available at [books.google.com](http://books.google.com).

KNUT S. VIKØR, BETWEEN GOD AND THE SULTAN (Oxford 2005), available at [books.google.com](http://books.google.com).

### **2.3 Islamic Law and International Law**

Articles discussing international relations, International Humanitarian Law, and notions of *jihad*

Muhammad Mushtaq Ahmad, *The Notions of Dar al-Harb and Dar al-Islam in Islamic Jurisprudence with Special Reference to the Hanafi School*, 47 ISLAMIC STUD. 5 (2008).

Shaheen Sardar Ali and Javaid Rehman, *The Concept of Jihad in Islamic International Law*, 10 J. CONFLICT & SECURITY L. 321 (2005), available at [insct.syr.edu](http://insct.syr.edu).

Shaheen Sardar Ali, *Resurrecting Siyar Through Fatwas? (Re) Constructing 'Islamic International Law' in a Post-(Iraq) Invasion World*, 14 J. CONFLICT & SECURITY L. 115 (2009).

NESRINE BADAWI, ISLAMIC JURISPRUDENCE AND THE REGULATION OF ARMED CONFLICT (Prog. on Humanitarian Pol'y & Conflict Research at Harv. U. 2009), available at [ihl.ihlresearch.org](http://ihl.ihlresearch.org).

M. Cherif Bassiouni, *Evolving Approaches to Jihad*, 8 CHI. J. INT'L. L. 119 (2007), available at [insct.syr.edu](http://insct.syr.edu).

M. Cherif Bassiouni, *Protection of Diplomats Under Islamic Law*, 74 AM. J. INT'L L. 609 (1980).

Karima Bennoune, *As-Salamu Alaykum? International Law in Islamic Jurisprudence*, 15 MICH. J. INT'L L. 605 (1994).

James Cockayne, *Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations*, 84 INT'L REV. OF THE RED CROSS 597 (2002), available at [icrc.org](http://icrc.org).

Mohamed Abdel Dayem & Fatima Ayub, *In the Path of Allah: Evolving Interpretations of Jihad and Its Modern Challenges*, 7 UCLA J. ISLAMIC & NEAR E. L. 67 (2009).

Khaled Abdul el Fadl, *The Rules of Killing at War: An Inquiry Into Classical Sources*, 89 THE MUSLIM WORLD 144 (1999).

Bernard K. Freamon, *Martyrdom, Suicide, and the Islamic Law of War: A Short Legal History*, 27 FORDHAM INT'L L.J. 299 (2003), available at [insct.syr.edu](http://insct.syr.edu).

JIHAD AND THE ISLAMIC LAW OF WAR, (Royal Aal al-Bayt Institute for Islamic Thought 2007), available at [ammanmessage.com](http://ammanmessage.com).

Haim Malka, *Must Innocents Die? The Islamic Debate Over Suicide Attacks*, 10 MIDDLE E.Q. 19 (2003), available at [meforum.org](http://meforum.org).

Naz K. Modirzadeh, *Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds*, 19 HARV. HUM. RTS. J. 191 (2006), available at [law.harvard.edu](http://law.harvard.edu).

Muhammad Munir, *Suicide Attacks and Islamic Law*, 90 INT'L REV. OF THE RED CROSS 71 (2008), available at [icrc.org](http://icrc.org).

Margaret Pettygrove, *Conceptions of War in Islamic Legal Theory and Practice*, 2 MACALESTER ISLAM J. 34 (2007), available at [digitalcommons.maclester.edu](http://digitalcommons.maclester.edu).

Sadiq Reza, *Torture and Islamic Law*, 8 CHI. J. INT'L L. 21 (2007).

Sadia Tabassum, *Combatants, not bandits: the status of rebels in Islamic Law*, 93 INTL REV. OF THE RED CROSS 121 (2011), available at [icrc.org](http://icrc.org).

Anisseh Van Engeland, *The Differences and Similarities Between International Humanitarian Law and Islamic Humanitarian Law*, 10 J. OF ISLAMIC L. AND CULTURE 81 (2008).

David A. Westbrook, *Islamic International Law and Public International Law: Separate Expressions of World Order*, 33 VA. J. INT'L L. 819 (1993).

Anowar Zahid & Rohimi Shapiee, *Customs as a Source of Siyar and International Law*, 8 INT'L J. CIVIL SOC. & L. 36 (2010), available at [lawlib.wlu.edu](http://lawlib.wlu.edu).

Sheikh Wahbeh al-Zuhili, *Islam and International Law*, 87 INT'L REV. OF THE RED CROSS 269 (2005), available at [icrc.org](http://icrc.org).

## **2.4 Islamic Family Law**

Articles discussing issues relating to marriage, divorce, and inheritance under Islamic law

J. N. D. Anderson, *Invalid and Void Marriages in Hanafi Law*, 13 BULLETIN OF THE SCH. OF ORIENTAL & AFRICAN STUD. 357 (1950).

Lucy Carroll, *The Hanafi Law of Intestate Succession: A Simplified Approach*, 17 MODERN ASIAN STUD. 629 (1983).

Kathleen A. Portuan Miller, *Who Says Muslim Women Don't Have the Right to Divorce?*, 22 N.Y. INT'L L. REV. 201 (2009).

Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. INT'L & COMP. L. REV. 135 (2000), available at [lawdigitalcommons.bc.edu](http://lawdigitalcommons.bc.edu).

Javaid Rehman, *The Sharia, Islamic Family Laws and International Human Rights Law*, 21 INT'L J. L., POL'Y & THE FAMILY 108 (2007), available at [citeseerx.ist.psu.edu](http://citeseerx.ist.psu.edu).

## **2.5 Islamic Law and Commercial Law**

Articles discussing issues relating to contract law and commercial arbitration

M. Cherif Bassiouni, Gamal M. Badr, Saad El-Fishawy, Farooq A. Hassan & Erik Peterson, *Contracts and Litigation in Islamic Law*, 76 AM. SOC'Y INT'L L. PROC. 55 (1982).

Walid Iqbal, *Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition*, 28 FORDHAM URB. L.J. 1035 (2001).

Almas Khan, *The Interaction Between Shariah and International Law in Arbitration*, 6 CHI. J. INT'L L. 791 (2006).

Faisal Kutty, *The Shari'a Factor in International Commercial Arbitration*, 28 LOY. L.A. INT'L & COMP. L. REV. 565 (2006), available at [ilr.lls.edu](http://ilr.lls.edu).

Jacqueline McCormack, *Commercial Contracts in Muslim Countries of the Middle East*, 37 INT'L J. LEGAL INFO. 1 (2009).

## **2.6 Islamic Criminal Law**

### **Books**

N. HANIF, ISLAMIC CONCEPT OF CRIME AND JUSTICE (Sarup & Sons 1999), available at [books.google.com](http://books.google.com).

Rudolph Peters, CRIME AND PUNISHMENT IN ISLAMIC LAW (Cambridge U. 2005), available at [books.google.com](http://books.google.com).

### **Articles**

Tarek Badawy, *Towards a Contemporary View of Islamic Criminal Procedures: A Focus on the Testimony of Witnesses*, 23 ARAB. L.Q. 269 (2009).

M. Cherif Bassiouni, *Crimes and the Criminal Process*, 12 ARAB L.Q. 269 (1997),

Butti Sultan Butti Ali Al-Muhairi, *The Incompatibility of the Penal Code with Shari'a*, 12 ARAB L.Q. 307 (1997).

Nicholas Garces, *Islam, Till Death Do You Part? Rethinking Apostasy Laws Under Islamic Law and International Legal Obligations*, 16 SW. J. Int'l L. 229 (2010).

### **Afghan Legal History.**

Familiarity with Afghanistan's legal history helps to identify similarities and parallels between current systems and institutions, and those of the past. More in-depth study helps to understand what practices worked well in the past, which institutions were functional, and why. This provides a starting point of inquiry to explore what lessons can be applied to current reforms.

The references listed below are divided according to their focus upon the history of Afghanistan's legal traditions: customary law, Islamic law, and state law. The first subsection lists articles that discuss one or more of these traditions. Each subsection thereafter focuses upon one tradition.

Many articles do not fit neatly into categories of history versus contemporary issues. Many articles that discuss current reforms also include discussions of Afghanistan's legal history. Articles in this section put more focus upon history. Articles focusing more upon current reforms are listed in sections 4, 5, and 6 (constitutional law, state judiciary, informal dispute resolution).

#### **3.1 Afghan Legal History, in General.**

Articles in this subsection were selected for their emphasis on history and legal pluralism.

Similar articles that focus on legal pluralism, but with less emphasis on history are listed in section 1: Afghan Law, In General, on pages 2 and 3.

Faiz Ahmed, *Shari'a, Custom, and Statutory Law: Comparing State Approaches to Islamic Jurisprudence, Tribal Autonomy, and Legal Development in Afghanistan and Pakistan*, GLOBAL JURIST (2007), available at [mahkamahkonstitusi.go.id](http://mahkamahkonstitusi.go.id).

Thomas Barfield, *Afghan Customary Law and Its Relationship to Formal Justice Institutions*, [usip.org](http://usip.org).

Nafay Choudhury, *Reconceptualizing Legal Pluralism in Afghanistan*, 2010 WINDSOR REV. LEGAL & SOC. ISSUES 21 (2010).

Bruce Etling, *Legal Authorities in the Afghan Legal System (1964-1979)*, (Harv. L. Sch. 2003), available at [law.harvard.edu](http://law.harvard.edu).

Esther Meininghaus, *Legal Pluralism in Afghanistan*, Amu Darya Series Paper No. 8 (U. Bonn 2007), available at [zef.de](http://zef.de).

Senzil Nawid, *The State, the Clergy, and British Imperial Policy in Afghanistan during the 19th and Early 20th Centuries*, 29 INT. J. MIDDLE E. STUD. 581 (1997).

Amin Tarzi, *Historical Relationship between State and Non-State Judicial Sectors in Afghanistan*, (United States Institute of Peace 2006), available at [usip.org](http://usip.org).

M. G. Weinbaum, *Legal Elites in Afghan Society*, 12 INT. J. MIDDLE EAST STUD. 39 (1980).

### **3.2 Customary Law in Afghanistan.**

For discussion of customary law in Afghanistan's current legal system, see section 6: Informal Dispute Resolution, on pages 19-21.

Thomas J. Barfield, *Culture and Custom in Nation-Building: Law in Afghanistan*, 60 ME. L. REV. 347 (2008), available at [mainelaw.usm.maine.edu](http://mainelaw.usm.maine.edu).

Thomas J. Barfield, *On Local Justice and Culture in Post-Taliban Afghanistan*, 17 CONN. J. INT'L L. 439 (2002).

Benjamin Buchholz, *Thoughts on Afghanistan's Loya Jirga: A Myth?*, 104 ASIENKUNDE 23 (2007), available at [asienkunde.de](http://asienkunde.de).

LYNN CARTER AND KERRY CARTER, *A PRELIMINARY INVESTIGATION OF CONTEMPORARY AFGHAN COUNCILS* (Agency Coordinating Body for Afghan Relief 1989), available at [repository.forcedmigration.org](http://repository.forcedmigration.org).

CHECCHI AND CO. CONSULTING, INC., *FIELD STUDY OF INFORMAL AND CUSTOMARY JUSTICE IN AFGHANISTAN* (2005), available at [usip.org](http://usip.org).

M. Jamil Hanifi, *Editing the Past: Colonial Production of Hegemony Through the 'Loya Jirga' in Afghanistan*, 37 IRANIAN STUD. 295 (2004), available at [farda.org](http://farda.org).

INTERNATIONAL LEGAL FOUNDATION, *THE CUSTOMARY LAWS OF AFGHANISTAN* (2004), available at [usip.org](http://usip.org).

Palwasha Kakar, *Tribal Law of Pashtunwali and Women's Legislative Authority*, (Harv. L. Sch., 2003), available at [law.harvard.edu](http://law.harvard.edu).

Lutz Rzehak, *Doing Pashto: Pashtunwali as the ideal of honourable behavior and tribal life among the Pashtuns* (Afghanistan Analysts Network 2011), available at [aan-afghanistan.org](http://aan-afghanistan.org).

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This section also includes articles relating to transitional justice, “rule of law” efforts, and commercial law. Most writing about the former two issues is part of discussions related to judicial reform. For the latter, commercial law, there is not enough material listed to justify a full section of the bibliography. Furthermore, commercial law seems to be viewed more widely as the domain of the state court, rather than the village council.

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**Informal Dispute Resolution.**

Dispute resolution that occurs outside of the state courts and applies custom and tradition goes by several names. It is referred to as “customary dispute resolution,” “community based dispute resolution,” and “informal dispute resolution,” to name just a few. All are acceptable.

This section uses the latter term because it is broader. Customary dispute resolution implies the application of custom and tradition through processes grounded in custom and tradition. Community-based dispute resolution implies a process involving a reasonable representation of stakeholder interests. This section includes articles that discuss both, but also includes processes that mix custom with the new state legal system and are thus not entirely customary and not necessarily community-based.

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**Family Law.**

For purposes of this bibliography, family law includes issues related to marriage, divorce, inheritance, and child custody. Juvenile justice issues are included in the sections on the state judiciary (section 5), criminal law (section 9), and human rights (section 10), as appropriate.

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See also:

For further reading on human rights issues arising within the courts, browse articles in section 5: The State Judiciary, on pages 16-18.

For further reading on child marriage, see the article by Bahgam and Mukhatari in section 7: Family Law, on page 22.

For further reading on the rights of Hazaras, see the article by Desautels-Stein in section 4: Constitutional Law, on page 14.

**Violent Non-State Armed Groups and Alternative Dispute Resolution.**

Informal dispute resolution processes often compete with alternative venues offered, or coercively imposed, by non-state armed groups such as warlords or Taliban. Some of these venues lack any coherent set of guiding rules and may be entirely arbitrary charades. Others may attempt to assert control over a locale by demonstrating the ability to settle disputes in accordance with local values and customs, or in accordance with accepted Islamic principles, in order to restore harmony in a contentious community.

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