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CONSTITUTIONAL HISTORY OF AFGHANISTAN

CONSTITUTIONAL HISTORY OF AFGHANISTAN. When Amir ʿAbd-al-Raḥmān Khan (r. 1297-1319/1880-1901) acceded to power (see afghanistan x), he established a centralized monarchy in Afghanistan for the first time. Previously the political structure had been based on the notion that the ruler's authority was derived from and therefore limited by the *jerga*s, or councils, of tribal leaders. The *ʿolamāʾ* (religious scholars) provided legitimization for the new concept, constructing from koranic passages and Hadith a doctrine according to which monarchs professing the religion of Islam were viewed as vicars of the Prophet Moḥammad, the shadow of God on earth, and the shield against unbelief and rebellion (Gregorian, p. 130; Kakar, 1979, p. 8).

The early development of constitutionalism. In response to the establishment of absolute monarchy a movement to convert it into a constitutional monarchy began to gain ground among the intelligentsia, who were largely drawn from the old bureaucracy and aristocracy and educated either in traditional centers of learning or in the modern secondary schools that were opened in Afghanistan after 1321/1903, in the reign of ʿAbd-al-Raḥmān's son and successor, Ḥabīb-Allāh (1319-38/1901-19). One significant group of such reformers comprised the *ḡolām-bačča*s (lit. "page boys") attached to the royal court. They were primarily ambitious and idealistic offspring of provincial elders who had been trained at the court in Kabul in order to run the government (Kakar, 1979, p. 17; Ḥabībī, p. 49). Particularly under the tutelage

of progressive teachers, including Indian Muslims, in the new modern schools they were attracted to constitutional ideals. Revolutionary upheavals elsewhere (in Russia in 1905, in Persia in 1323-29/1905-11, in Ottoman Turkey in 1908) stirred the Afghan constitutionalists, but it was the poet and scholar Sarwar Waṣīf and his colleagues who provided immediate inspiration and organizational leadership. Although the constitutionalists numbered only a few hundred among a predominantly illiterate population, they were assertive and dissatisfied with a number of aspects of the status quo: with the financial allowances paid by the Moḥammadzay court to members of the clan; with the licentious life led by Ḥabīb-Allāh; with his friendly policy toward the British government of India, which had controlled Afghan foreign policy since 1297/1880; with the tyranny of government officials over the population; and with the backwardness of the country in general (Ḥabībī, pp. 6-48, 101-21).

According to one source, the leading constitutionalist organization was the Jamʿīyat-e serrī-e mellī (Secret national association; Ḡobār, p. 717), but, according to another, it was the Eḵwān-e Afḡān (Afghan brotherhood; Ḥabībī, p. 23). The primary goals were a constitutional monarchy and a freely elected national assembly. The reformers also sought full independence from foreign domination, social justice, and the introduction of “modern” civilization (Ḥabībī, p. 55). Although the majority of the leaders hoped to achieve these reforms by peaceful means, at a meeting of the more militant wing of the group in 1327/1909 it was decided that every member should carry a pistol (Ḡobār, p. 717). Spies warned the amir that the actual goal of the conspirators was to assassinate him and establish a “constitutional state.” He obtained copies of the decision on arming the members, as well as a list of the names of constitutionalists. Eight of them, including Sarwar Waṣīf, were executed and thirty-five others imprisoned, all without trial. The amir did not, however, harm relatives of the condemned. The fervent commitment of some of the constitutionalists to their cause is clear from a variation on a famous couplet by Saʿdī composed by Sarwar Waṣīf just before his execution: *Tark-e jān o tark-e māl-o tark-e sar; Dar rah-e mašrūṭa awwal manzel ast* “The sacrifice of life, the sacrifice of property, and the sacrifice of the head; all this is the first stage on the way to constitutionalism” (Ḡobār, pp. 717-18). In response to these events the amir adopted a more reactionary line, particularly in relation to the expansion of public education. His brother the powerful Nāʾeb-al-Salṭana Sardār Naṣr-Allāh Khan expressed opposition even to the modern educational institutions already in existence: “Education produces constitutionalism, and constitutionalism is opposed to the power of the sultan as sanctioned by the

Šarīʿa" (Ḡobār, p. 720). The surviving constitutionalists did not cease their activities, however. They formed smaller circles, focusing on clandestine distribution of handwritten letters (*šab-nāmas*) arguing their cause.

The amir made no change in the structure of the state, but he did continue the modest program of cultural modernization that he had already started. In 1329/1911 Maḥmūd Ṭarzī was granted permission to begin publication, under court supervision, of the newspaper *Serāj al-aḵbār* (successor to a publication of the same name founded by Mawlawī ʿAbd-al-Raʾūf in 1325/1906 but banned after the appearance of only one issue; Ḥabībī, p. 6). Ṭarzī, a prolific writer who had studied in Syria, can truly be said to have been the intellectual father of Afghan nationalism; he turned *Serāj al-aḵbār* into an effective vehicle for propaganda against British imperialism, for promoting Afghan nationalism, and for propagating ideas of progress and unity similar to those adopted by the Young Turks in Istanbul. *Serāj al-aḵbār* provided a forum for the Young Afghans, who were dissatisfied with the amir's autocratic and pro-British policies and had rallied behind his second son, Amān-Allāh, who was opposed to his father. During World War I the amir declared Afghanistan to be conditionally neutral (Adamec, p. 26), but a war party emerged among the opposition, with the goal of achieving total independence from Great Britain. Amān-Allāh persuaded his conservative uncle Sardār Naṣr-Allāh to accept leadership of the conspirators. The key figures at court had thus turned against the amir; after several unsuccessful assassination attempts, he was finally murdered on a hunting expedition in Laḡmān in February 1919 (Ḡobār, p. 741).

The first Afghan constitution. For the first time in the history of the country an Afghan ruler had been assassinated by a group of courtiers who had a program for reform. Indeed, the new ruler, Amān-Allāh (1338-47=1307 Š./1919-29), called himself a "revolutionary king" (*pādšāh-e enqelābī*; Ḡobār, p. 813). After a brief war with the British, during which Afghanistan gained full independence (see anglo-afghan war iii), Amān-Allāh began a series of social and governmental reforms. A number of constitutionalists were appointed to government posts and assisted in the implementation of the amir's program. The first Afghan constitution (Neẓām-nāma-ye asāsī) was adopted in 1301 Š./1922 by a *lōya jerga* (grand council of notables) especially convened for the purpose; it provided for a government composed of executive, legislative, and judicial branches, but the basic constitutionalist demand for an elected national assembly to which the government would be responsible was not

realized. Rather, the document provided for a cabinet of ministers, led by and accountable to the king, rather than to the legislature; the king himself was declared not responsible to any body. Members of the Šūrā-ye dawlat (State council), as well as of the provincial councils, were to be chosen only partly through popular elections (Ḡobār, p. 794; Ḥabībī, p. 160).

With the exception of one short interval Amān-Allāh served as his own prime minister. In his zeal for reform he surpassed all the contemporary reformist rulers in Asia. He used foreign credits to initiate a program for construction of an economic infrastructure and industrialization of the country (Ḡobār, p. 791). All Afghans were granted democratic rights, regardless of faith or race (Ḡobār, p. 794; Poullada, pp. 92-110). He also continued to expand the system of modern education, even teaching in some schools himself, as did his queen. Some of his more radical social reforms, for example, changing the weekly holiday from Friday to Thursday, forcing people in Kabul to wear Western uniforms and adopt Western forms of greeting, and banning veiled women from certain public places, aroused considerable opposition among conservative Afghans, opposition that eventually triumphed (Ḡobār, p. 812).

Furthermore, even his former constitutional supporters began to cool after he returned from an official trip abroad, in 1306-07 Š./1927-28, determined to force his reforms upon the people even more quickly, without regard to consequences. In addition, although the expanded bureaucracy was riddled with corruption, he failed to respond to ever more vocal complaints. By 1308 Š./1929 his support had evaporated. On one hand, the constitutionalists had been alienated. On the other, the clergy and conservatives in general viewed "constitutionalism" as the equivalent of "bolshevism" and the constitutionalists as "leftists deserving death"; the judges, claiming that "statutory law is the revoker of religion," had rejected Amān-Allāh's judicial reforms, which restricted their former absolute discretion; and the tribal elders and other magnates resented the loss of their allowances (Ḡobār, pp. 795, 798, 802-04). The idea that the king had become an infidel spread, and his unpopularity reached a climax. Whereas in 1303 Š./1924 a large rebellion had been quickly suppressed, in early 1929 the Tajik bandit Ḥabīb-Allāh, known as Bačča-ye Saqqā, was able to overthrow Amān-Allāh and to put an end to his reforms. Thus ended the first Afghan experiment with democratic liberalism.

The second Afghan constitution. After nine months of civil war another member of the Moḥammadzay tribe, the former general Moḥammad-Nāder, established himself as ruler (1308-12 Š./1929-33). Although he had been a

member of the anti-British war party and had distinguished himself in the war of independence in 1338/1919, both constitutionalists and supporters of the deposed king Amān-Allāh looked upon him as pro-British and objected to his installing himself on the throne, instead of restoring Amān-Allāh. For a time Nāder was successful in suppressing the opposition. In 1310 Š./1931 a new constitution (Oṣūl-e asāsī-e dawlat-e ʿalīya-ye Afḡānestān) was adopted by a *lōya jerga*, with recognition of Nāder and his descendants as the legitimate rulers of the country. Among the major differences from the constitution of a decade earlier were provisions for a cabinet accountable (except for the prime minister) to an elected national assembly (Majles-e šūrā-ye mellī) and a house of elders (Majles-e aʿyān) the members of which were to be selected by the king; in practice, delegates for election to the assembly were also handpicked by the government. Another departure was constitutional recognition of the supremacy of the Hanafite school of jurisprudence and guarantee of the autonomy of the Šarīʿa courts (Gregorian, p. 305). For the first time religious leaders were appointed to some ministerial posts. Nevertheless, the royal house maintained a monopoly of government power, and Afghanistan was only nominally a constitutional monarchy. In 1312 Š./1933 Nāder Shah was assassinated; he was succeeded by his nineteen-year-old son Moḥammad-Ẓāher (1312-52 Š./1933-73). For the first thirteen years of Ẓāher Shah's reign his uncle, the prime minister, Moḥammad-Hāšem, actually wielded the power of government. Concern for order became supreme, and the rights of individuals guaranteed in the constitution were trampled upon. Many political dissidents were put in prison, where some languished for more than a decade without trial. At the same time selective schemes for modernization and a gradual expansion of the modern educational system were undertaken (Dupree, 1980, pp. 465-98; Gregorian, pp. 342-74).

In 1325 Š./1946 Moḥammad-Hāšem was succeeded as prime minister by his brother Shah Maḥmūd, during whose tenure there was a brief democratic interlude. In 1326 Š./1947 there were free elections of urban mayors; two years later similar elections were held for the national assembly. The assembly was dominated by a minority of liberal democrats who stood for constitutional monarchy. Probably in 1329 Š./1950 a liberal press law was enacted, ushering in a period of political effervescence, as a number of new private weeklies strove to capture the imagination of the liberal intelligentsia. These publications were, however, more significant as forums for the newly formed, loosely organized political parties than as vehicles of propaganda among a still largely illiterate population. Through the press the reformist members of the

assembly became so outspoken that the shah and the prime minister felt unable to continue their experiment with more open government (Dupree, 1980, pp. 494-98).

In 1332 Š./1953 the shah named his first cousin and brother-in-law Sardār Moḥammad-Dāʾūd prime minister. Dāʾūd favored modernization, but he gave priority to authority and internal order at the expense of democracy and individual freedom. Once he took office, the new weeklies ceased publication, and political parties ceased public activity. Elections for the national assembly were still held, though the results were manipulated. In 1336 Š./1957 the police arrested, on flimsy charges, first the minister of finance, ʿAbd-al-Malek ʿAbd-al-Raḥīmzāy, and then a number of dissidents; they thus destroyed the sense of security that had prevailed during the democratic interlude. Nevertheless, there was economic progress through a series of five-year development plans within the state-dominated economic system. Meanwhile, continued expansion of the modern educational system and the gradual unveiling of women helped to swell the ranks of the frustrated intelligentsia.

The third Afghan constitution. A long-standing problem that had first arisen between Afghanistan and the British government of India over a large territory on the Afghan side of the frontier, which had nevertheless been declared part of the British sphere of influence in the Anglo-Afghan agreement of 1893 (see boundaries iii), became acute after 1947, when it was incorporated by the new state of Pakistan (Kakar, 1973, pp. 186-94). In response Afghanistan demanded application of the principle of self-determination to the inhabitants of the territory, which it labeled Paštūnestān. In 1340 Š./1961 the dispute caused a two-year suspension of diplomatic relations between the two Muslim countries (Ghaus, pp. 90-95). Alarmed by the resulting strengthening of Afghan ties with the Soviet Union under Dāʾūd's leadership, the shah decided to normalize relations with Pakistan and to democratize the government structure. In 1342 Š./1963 he persuaded Dāʾūd to resign and asked a commoner, Moḥammad-Yūsof, to form a new government. In the following year a new constitution was approved by a *lōya jerga*. In this constitution Afghanistan was declared "a constitutional monarchy." The national assembly (Wolesī jerga), provincial assemblies, and municipal councils were to be directly elected by the general population in secret ballots (*enteḵābāt-e serrī*). One-third of the members of the senate (Mešrano jerga) were to be elected in the same way, one-third to be elected indirectly by the provincial councils, and one-third to be appointed by the shah. The shah was

to nominate members of the cabinet, but they could be confirmed only by a vote in the assembly, to which they were to be accountable. Members of the shah's family, including paternal uncles and cousins, were barred from entering politics. Judges were to be appointed by the shah but to function independently.

All Afghan citizens were guaranteed the rights of free expression, of peaceful assembly, and of association. The police could neither make arrests nor enter private homes or confiscate property without warrants granted by the courts. Furthermore, individual freedom was guaranteed, except for those found guilty of crimes in the courts. Islam remained the state religion, and the state was to conduct religious affairs in accordance with the Hanafite school of law, but religious minorities were to be free to observe their own rites (Fayżzād, pp. 216-80).

Unlike the two preceding constitutions the constitution of 1343 Š./1964 actually took effect. The free press blossomed once again, and political parties became active under the protection of free association, even though they had still not been explicitly legalized. Several of them, including the Marxist People's democratic party of Afghanistan (P.D.P.A.; Ḥezb-e demōkrātīk-e ḵalq-e Afḡānestān), the Maoist New democratic current (N.D.C.; later known as Soʿla-ye jāvīd, Eternal flame), the Islamic Association (I.A.; Jamʿīyat-e eslāmī), and the Afghan social democratic party (A.S.D.P.; Da Afḡān tolinpāl woleswāk gund, commonly known as Afḡān mellat), were particularly successful in recruiting students. Whereas the first two sought to undermine liberal democratic government in order to establish a communist "people's democracy," the Islamic Association campaigned for an Islamic republic (Kakar, forthcoming, pp. 77-94; Kūškakī, pp. 141-56; see communism iv).

Most of those elected to the assembly in 1344 Š./1965 and 1348 Š./1969 were secular and religious notables from rural areas. The minority of national and liberal democrats included a few leftists and women. The assembly often failed to achieve a quorum and was frequently in conflict with the government. The leftist members were particularly outspoken. All these factors contributed to a general atmosphere of instability. In addition, the shah refused to sign bills passed by both houses of parliament to permit organization of political parties, provincial councils, and municipalities, and thus self-government was prevented from taking root at all levels. He also refused to recognize the governmental authority of the cabinet. The latter in turn failed to establish a working relationship with the assembly and to deal

effectively with the student agitation that began in 1344 Š./1965. Matters were further complicated by a serious drought in 1351 Š./1972.

The fourth Afghan constitution. In 1352 Š./1973, with the assistance of leftist military officers, the former prime minister Dāʾūd overthrew the monarchy and declared Afghanistan a republic (Dupree, 1980, pp. 559-658), with himself at its head. He governed with dictatorial powers until a new constitution was promulgated by a *lōya jerga* in 1355 Š./1976. A presidential government was then formed under the domination of the official Revolutionary national party (Ḥezb-e enqelāb-e mellī). The president was to be elected for a six-year term by a two-thirds vote of the *lōya jerga*. The national assembly was to sit for only four months a year and had the power only to question cabinet ministers, who were to be appointed by the president. In 1357 Š./1978, however, when President Dāʾūd began an effort to loosen ties with the Soviet Union, leftist military officers toppled him in a coup (Ghaus, pp. 105-208).

The coup brought the P.D.P.A. to power; the new communist leaders established a single-party government, “the new-style state of the Democratic Republic of Afghanistan,” in which the executive entirely dominated the legislature (renamed Šūrā-ye enqelābī, Revolutionary council) and the judiciary. Within the party the Ḵalq faction actually controlled the state: The secretary-general of the party, Nūr-Moḥammad Tarakī, became president of both the revolutionary council and the council of ministers, governing entirely by edict. Nevertheless, frequent rebellions weakened his government and increased his dependence on support from the Soviet Union. In 1358 Š./1979 he was replaced by Ḥafīẓ-Allāh Amīn, who showed signs of loosening Afghan dependence on the Soviets; the Soviet Union then invaded Afghanistan in December and raised the dissident Paṛčam faction of the P.D.P.A., led by Babrak Kārmal, to power (Hammond, pp. 49-53).

With the support of the Soviet army Kārmal also assumed the triple role of secretary-general of the P.D.P.A., president of the revolutionary council, and president of the council of ministers. In 1359 Š./1980 a temporary constitution, Oṣūl-e asāsī-e jomhūrī-e demōkrātīk-e Afḡānestān (Fundamental principles of the Democratic Republic of Afghanistan), was adopted. The expressed aim was to guide the Afghans in the creation of a society of human beings free from exploitation of one another. The constitution was based on the political structure that was already in existence. The rights to free expression, sanctity of the home, and peaceful assembly were again guaranteed; people were to be accused, arrested, and punished only in conformity with the law; individuals

were to be presumed innocent until found guilty in court. The P.D.P.A., representing itself as the party of the working class, was recognized as "the guiding and driving force of society and the state." The state undertook to bring the family, especially mothers and children, under its special protection and pledged to supervise youth. Followers not only of Islam but also of other faiths were guaranteed the freedom to practice their religions (Kakar, forthcoming, pp. 70-71). This constitution represented an ideal, but it had little effect on Afghan society as a whole. By the time it was promulgated the government had already lost control of the rural areas to the anti-Soviet freedom fighters (*mojāhedīn*). In the few urban areas that remained under its control the government disregarded the clauses guaranteeing individual rights while vigorously enforcing those that guaranteed its authority. For example, the writer and a number of his university colleagues spent five years in jail, along with thousands of others, for having monitored violations of human rights granted under this constitution.

The fifth Afghan constitution. In 1366 Š./1987, after Najīb-Allāh had replaced Kārmal as president, still another constitution was adopted. It provided for a bicameral legislature in which members of the national assembly were to be popularly elected. Both the parliament and the government were dominated by men and women with no affiliation to the official party. The word "democratic" was dropped from the name of the country, which thenceforth was known merely as the Republic of Afghanistan. Najīb-Allāh strove to effect "national reconciliation." The single-party system was abandoned in favor of political pluralism, and the P.D.P.A. was renamed Ḥezb-e waṭan (Fatherland party). Most of these changes were introduced in the more liberal atmosphere following the rise of Mikhail Gorbachev in the Soviet Union and after the withdrawal of Soviet troops from Afghanistan in 1368 Š./1989. The Soviet Union was dissolved in December 1991, and in April 1992 Kabul was taken by the *mojāhedīn*.

Under the leadership of Ṣebḡat-Allāh Mojaddedī the *mojāhedīn* declared an "Islamic state" in Kabul, to be governed by a "head of state," assisted by a leadership council and the council of *mojāhedīn*. The leadership council immediately banned the Fatherland party. In the absence of unity among the former organizations of *mojāhedīn*, however, conditions of political anarchy and civil war continued to prevail in Afghanistan. The provinces were controlled by councils unaccountable to the government in Kabul, and neighboring states, relying on groups of local allies, continued to interfere in

Afghan national affairs to further their own interests. In late 1992 there was thus no clear prospect of a unified administration, an end to civil war, or a new constitution.

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