

# Rule of Law from the Ground Up: Legal Curriculum Reform in Afghanistan

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*The rule of law, arguably the most cherished political ideal, remains elusive in many corners of the world. Since its formation in the mid-eighteenth century, Afghanistan has experienced episodes of “rule by law,” “rule of man,” and “rule of gun” much more so than the rule of law. This Article contributes to the literature by exploring the nexus between the rule of law and legal education in developing and transitional states. In particular, the Article examines the critical role of curriculum reform in bolstering the legal education system and, thereby, promoting a rule of law culture in Afghanistan.*

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*The Afghanistan Legal Education Project (ALEP) was established in 2007 to respond to the pressing curriculum challenge confronting Afghan law schools. Innovative curriculum initiatives like ALEP can serve as catalysts for meaningful rule of law reform by tackling foundational deficiencies in the legal education system. First, ALEP’s textbooks meet the urgent demand for updated and rigorous pedagogical resources to better understand Afghanistan’s rapidly evolving legal landscape. Second, the curriculum strengthens law students’ critical thinking and analytical skills (thinking like a lawyer). Third, ALEP’s publications emphasize practice skills (acting like a lawyer). Fourth, the materials encourage the students to engage in critical discussions of legal ethics and professionalism (being a lawyer). Finally, ALEP’s original work in legal education reform constitutes a long-term and cost-effective investment in building a robust legal profession and elevating trust in the justice system. By enhancing the capacities of future lawyers to fulfill their legal obligations, such pioneering initiatives can serve as an impetus for concerted efforts in cultivating a rule of law culture from the ground up in Afghanistan and other transitional societies.*

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## INTRODUCTION

The rule of law is arguably the most cherished political ideal in today’s global discourse.<sup>1</sup> While legal scholars may disagree on its precise parameters, there is consensus on certain core tenets of this concept.<sup>2</sup>

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1. See, e.g., BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 1-3 (2004) (referencing various world leaders, from authoritarian regimes to liberal democracies, emphasizing the significance of the rule of law).

2. The divergent views on the contours of the rule of law can be generally classified into “thin” and “thick” conceptualizations. “Thin” accounts of the rule of law entail fewer requirements both formal and substantive while “thick” formulations incorporate greater political, economic, cultural, and social elements. *Id.* at 91-113. At a minimum, three essential themes of the rule of law include legal limitations on government, formal legality, and the principle of “rule of law, not man.” *Id.* at 114-26. Formal

Importantly, the rule of law does not imply “rule by law.” Rule by law refers to a system where the law’s primary purpose is to serve as an instrument of government action. As such, rule by law lacks the necessary “legal *limitations* on government, which is the *sine qua non* of the rule of law tradition.”<sup>3</sup> In this sense, the rule of law loses any real meaning as it becomes essentially rule by government.<sup>4</sup> Some argue that a legal system that disregards fundamental human rights is, at best, a rule by law system.<sup>5</sup>

Another related distinction must be made between the rule of law and the “rule of *man*.” The contrast between these two notions—phrased also as “a government of laws, not men,” “law is reason, man is passion,” or “law is objective, man is subjective”—reflects the underlying fear of being subject to the erratic vagaries of man.<sup>6</sup>

In order to have a system of rule of law rather than “rule by law,” the legal profession must function as the guardian of the law.<sup>7</sup> Put differently, the legal profession bears “[t]he ultimate responsibility for maintaining a rule of law system.”<sup>8</sup> Meeting this pivotal challenge requires a well-developed legal tradition and a robust legal profession driven by fidelity to the law.<sup>9</sup> Lawyers must serve as competent and ethical advocates, advisors, and problem-solvers in society. Moreover, the legal profession has a particular duty to advocate and defend judicial independence,<sup>10</sup> which is the lynchpin of the rule of law.<sup>11</sup>

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legality, in turn, requires that “rules be publicly known, consistently enforced, and even-handedly applied.” Sandra Day O’Connor, *Vindicating the Rule of Law: The Role of the Judiciary*, 2 CHINESE J. INT’L L. 1, 1 (2003).

3. TAMANAHA, *supra* note 1, at 92.

4. *Id.*

5. See, e.g., *Rule of Law Index 2017-2018*, WORLD JUSTICE PROJECT, 10 [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf) (last visited Mar. 2, 2020). The United Nation’s definition of the rule of law also underlines the significance of international human rights norms and standards. According to the United Nations, the rule of law refers to “a principle of governance in which [the government and citizens] are accountable to laws that are publicly promulgated, equally enforced and *independently adjudicated*, and which are *consistent with international human rights norms and standards*. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, *accountability to the law, fairness in the application of the law, separation of powers*, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency [emphasis added].” *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, UN SC, UN Doc. S/2004/616, 4.

6. Brian Z. Tamanaha, *The History and Elements of the Rule of Law*, SINGAPORE J. OF LEGAL STUD. 232, 243 (2012). A “rule of *man*” system recognizes no laws and, instead, is governed according to the ruler’s arbitrary caprice. The warlords’ grip on power in Afghanistan following the Soviet withdrawal in 1989, for instance, could be characterized as a “rule of *man*” episode. See *infra* Part I.

7. Cf. Tamanaha, *supra* note 6, at 244.

8. *Id.*

9. *Id.*

10. *Id.* at 245.

11. For a general discussion of the importance of a strong judiciary to maintaining the rule of law, see, e.g., O’Connor, *supra* note 2.

This is possible when judges and lawyers are properly trained and have internalized the requisite legal knowledge, skills, and ethics.<sup>12</sup> As such, legal education is crucial to developing a legal profession that can effectively safeguard the rule of law. Indeed, law schools, as gatekeepers of the legal profession, are uniquely positioned to cultivate a rule of law culture from the ground up. By molding future members of the bar and the bench, law schools are the foundation undergirding the legal profession. If that bedrock pillar is unstable, the superimposed legal institutions and the justice system as a whole will also falter.<sup>13</sup> The role of legal education is arguably even more pressing in developing and transitioning societies, like Afghanistan, where the rule of law is tenuous.

Despite considerable international support, moving towards a rule of law society has been a formidable challenge in Afghanistan.<sup>14</sup> Recurring political tumult and autocracy, since the country's inception, have yielded a stubbornly entrenched "rule by law" tradition.<sup>15</sup> There is a gulf between *de jure* rules, such as constitutional principles of judicial independence<sup>16</sup> and right to counsel,<sup>17</sup> and *de facto* practice. Graft runs rampant.<sup>18</sup> Protracted bureaucracy, corruption, and political interference afflict Afghanistan's formal justice system,<sup>19</sup> and help explain the widespread presence of informal dispute resolution processes such as *shuras* and *jirgas*.<sup>20</sup>

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12. Tamanaha, *supra* note 6, at 244.

13. The United Nations has also stressed professional training for lawyers, judges, and prosecutors as a core part of the framework for strengthening the rule of law. United Nations, *Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance*, 6 (2008).

14. *See, e.g., Rule of Law Index 2019*, WORD JUSTICE PROJECT, 33, <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf> (last visited Mar. 2, 2020) (Afghanistan is ranked 123rd out of 126 countries in the Word Justice Project's Rule of Law Index 2019).

15. *See infra* Part I.

16. CONST. OF THE ISLAMIC REP. OF AFG. Jan. 4, 2004, art. 116.

17. CONST. OF THE ISLAMIC REP. OF AFG. Jan. 4, 2004, art. 31.

18. *See, e.g., Corruption Perceptions Index 2019*, TRANSPARENCY INTERNATIONAL, 3, <https://www.transparency.org/cpi2019> (last visited Mar. 2, 2020) (Afghanistan is ranked 173rd out of 180 countries in Transparency International's Corruption Perceptions Index 2019).

19. TABASUM AKSEER ET AL., THE ASIA FOUNDATION, AFGHANISTAN IN 2019: A SURVEY OF THE AFGHAN PEOPLE, 146 (Tabasum Akseer & John Rieger eds., 2019), [https://asiafoundation.org/wp-content/uploads/2019/12/2019\\_Afghan\\_Survey\\_Full-Report.pdf](https://asiafoundation.org/wp-content/uploads/2019/12/2019_Afghan_Survey_Full-Report.pdf) (last visited Mar. 2, 2020). The Kabul Bank scandal, a major financial fraud case, epitomizes the corruption and limitations of the Afghan justice system. Crucially, the government failed to investigate many politically connected suspects, including the brothers of Afghanistan's former president and vice-president. *See* Grant McLeod, *Responding to Corruption and the Kabul Bank Collapse*, U.S. INST. OF PEACE (Dec. 2016), <https://www.usip.org/sites/default/files/SR398-Responding-to-Corruption-and-the-Kabul-Bank-Collapse.pdf> (last visited May 16, 2020).

20. AKSEER ET. AL., *supra* note 19, at 146-47. *Shuras* and *jirgas* are customary dispute resolution mechanisms involving tribal elders, disputants, and community members. *See, e.g.,* Thomas Barfield et al., *The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan*, U.S. INST. OF PEACE 7 (Nov. 2006), [https://www.usip.org/sites/default/files/file/clash\\_two\\_goods.pdf](https://www.usip.org/sites/default/files/file/clash_two_goods.pdf) (last visited May 16, 2020).

The shortcomings of the legal education system in Afghanistan directly contribute to the public's negative perception of the formal justice sector. Afghan law schools have struggled to instill aspiring judges and lawyers with the necessary knowledge, competencies, and ethical principles that are the preconditions for a robust legal profession and which promote greater trust in the justice system.<sup>21</sup>

There is a growing body of literature concerning legal education in post-conflict and transitional societies.<sup>22</sup> This Article contributes to the discourse by examining the critical role of curriculum reform in bolstering the legal education system and, thereby, promoting a robust legal profession. In particular, the Article will explore the Afghanistan Legal Education Project's (ALEP) work in designing innovative pedagogical materials for Afghan legal educators and its impact on the rule of law in the country.

This Article is structured as follows: Part I contextualizes the discussion with a brief history of Afghanistan's "rule by law" tradition. Part II examines the urgency of the curriculum challenge confronting Afghan law schools. Part III provides an overview of ALEP's work in designing innovative teaching materials critically analyzing Afghan law. Part IV argues that ALEP's curriculum development endeavor contributes to meaningful rule of law reforms by tackling foundational deficiencies in the legal education system. First, ALEP's textbooks meet the pressing demand for up-to-date and rigorous instructional resources to better understand Afghanistan's rapidly evolving legal framework.<sup>23</sup> Second, the curriculum strengthens law students' critical thinking and analytical skills (thinking like a lawyer).<sup>24</sup> Third, ALEP's publications

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21. The lack of trust in the formal justice system has produced significant deleterious consequences. The "justice vacuum" has created an opportunity for non-state actors, like the Taliban and other armed groups, to vie for legitimacy and power. In the absence of a reliable formal dispute resolution system, the public is forced to turn to the informal justice sector where legal rights and remedies are far from guaranteed especially for vulnerable groups like women and children. As such, an ineffective formal justice system heightens the potential for human rights abuse, saps state legitimacy in the court of public opinion, and, ultimately, weakens the rule of law. For an illustration of the harmful impact of informal justice processes on women's rights in Afghanistan, see Mehdi J. Hakimi, *Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan's Law on Elimination of Violence Against Women*, 18 NW. J. HUM. RTS. 52, 61-63 (2020) (discussing the illegal mediation of criminal cases of gender-based violence in Afghanistan).

22. See, e.g., Haider A. Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraqi Law Schools*, 23 BERKELEY J. INT'L L. 112 (2005); Geoffrey Swenson & Eli Sugerman, *Building the Rule of Law in Afghanistan: The Importance of Legal Education*, 3 HAGUE J. ON RULE L. 130 (2011); Stephen A. Rosenbaum, *A New Day: Prime Time to Advance Afghan Clinical Education*, 3 ASIAN J. LEGAL EDUC. 1 (2016); STACEY STEELE & KATHRYN TAYLOR, EDS., *LEGAL EDUCATION IN ASIA: GLOBALIZATION, CHANGE AND CONTEXTS* (Routledge 2011); and RONALD A. BRAND & D. WES RIST, EDS., *THE EXPORT OF LEGAL EDUCATION—ITS PROMISE AND IMPACT IN TRANSITION COUNTRIES* (Ashgate 2009).

23. See *infra* Part IV.A.

24. See *infra* Part IV.B.

emphasize the development of practice skills (acting like a lawyer).<sup>25</sup> Fourth, the materials support student engagement in critical discussions of legal ethics and professionalism (being a lawyer).<sup>26</sup>

Finally, ALEP's original work in legal education reform constitutes a long-term and cost-effective investment in building a rule of law culture from the ground up in Afghanistan.<sup>27</sup> By enhancing the capacities of future lawyers and judges to fulfill their legal obligations, such pioneering initiatives can serve as catalysts for concerted efforts to strengthen justice sector institutions and, over time, engender greater trust in the law.

### I.

#### THE BACKDROP: POLITICAL TURMOIL, AUTOCRACY, AND "RULE BY LAW"

Afghanistan's weak rule of law culture is a corollary of its turbulent history. Since its founding in the mid-eighteenth century, Afghanistan has been mired in violent political upheavals. These conflicts involved foreign powers, such as the three Anglo-Afghan wars in the 1800s and early 1900s, as well as numerous domestic succession struggles.<sup>28</sup> Afghans have thus witnessed an eclectic range of government systems: authoritarian monarchies, communist regimes, Islamic emirates, and, more recently, a fledgling democracy.

A unifying hallmark of these disparate regimes, to varying degrees, was the absence of an indispensable rule of law requirement: legal constraints on government power. Without a strong legislature and an independent judiciary, there was no *bona fide* system of checks and balances to hold Afghan rulers accountable. Kings, Soviet-backed rulers, and emirs often seized power and governed through violence rather than through legal democratic processes. Unbound by any genuine lawful limitation to their authority, they ruled as *de facto* autocrats.

In other words, Afghanistan's persistent political instability and tradition of unbridled executive power have entrenched, at best, a culture of "rule by law"—rather than rule of law—and, inevitably, hindered the development of a robust legal profession. A brief overview of the evolution of the Afghan state's legal order is instructive at this juncture.<sup>29</sup>

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25. See *infra* Part IV.C.

26. See *infra* Part IV.D.

27. See *infra* Part IV.E.

28. Undisputed succession after an Afghan ruler's death was "the exception rather than the rule." William Byrd, *Lessons from Afghanistan's History for the Current Transition and Beyond*, U.S. INST. OF PEACE 12 (Sep. 2012). The typical pattern was "violent contention for the throne, sometimes lasting for years." *Id.* at 3.

29. For more in-depth discussion of Afghanistan's history, see, e.g., THOMAS BARFIELD, *AFGHANISTAN: A CULTURAL AND POLITICAL HISTORY* (Princeton University Press, 2010); BARNETT R. RUBIN, *AFGHANISTAN FROM THE COLD WAR THROUGH THE WAR ON TERROR* (Oxford University Press, 2013); ROBERT D. CREWS, *AFGHAN MODERN: THE HISTORY OF A GLOBAL NATION* (Harvard University Press, 2015); and LOUIS DUPREE, *AFGHANISTAN* (Oxford University Press, 1980).

Some of the earliest measures to consolidate the central state and systemize the legal system were instituted by Abdul Rahman Khan (1880-1901). Cloaking his authority in divine right, he declared *Shari'a* the law of the land and installed himself as the supreme arbiter and implementer of the law.<sup>30</sup> Moreover, through executive fiat, he created a dual court system mandated with different jurisdictions: state courts and *Shari'a* courts.<sup>31</sup> This dichotomous judicial apparatus laid the grounds for enduring tensions in the justice sector and the legal education system.<sup>32</sup> All judges served at his sole will.<sup>33</sup>

Amanullah Khan (1919-1929), who assumed the throne after his father's assassination, amplified efforts to centralize power. He proclaimed Afghanistan's independence from the British, and enacted the country's first constitution in 1923. The constitution vested all law-making power in the king rather than a separate legislature.<sup>34</sup> Moreover, in a daring move, his constitution substantially curbed the authority of religious and tribal elders, especially in the administration of justice.<sup>35</sup> Amanullah's radical measures to consolidate power, and heavy-handed socio-political reforms, led to revolts that ultimately forced him to flee the country in 1929.<sup>36</sup>

Determined to avoid a similar fate, Nadir Shah (1929-1933) renounced Amanullah's reforms and tried to appease the religious and tribal leaders.<sup>37</sup> Notably, his 1931 constitution created a *de jure* bicameral legislature: the lower house was elected by the public and the upper house appointed by the king.<sup>38</sup> The legislators, however, were *de facto* handpicked by Nadir Shah himself and lacked binding lawmaking authority—making a mockery of representative governance.<sup>39</sup>

Nadir Shah was assassinated in 1933 and succeeded by his son, Zahir Shah (1933-1973). Afghans experienced a rare period of relative stability under Zahir Shah who oversaw a succession of prime ministers. Prime Minister Daoud Khan—the king's cousin and brother-in-law who, as we will shortly see,

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30. Barfield et al., *supra* note 20, at 18. See also KRISTINA ALEKSEYEVA ET AL., AFG. LEGAL EDUC. PROJECT, STANFORD LAW SCHOOL, AN INTRODUCTION TO THE LAWS OF AFGHANISTAN, 75 (4th ed. 2017).

31. ALEKSEYEVA ET AL., *supra* note 30, at 73-74. State courts adjudicated disputes relating to commerce, taxation, and administrative law, whereas *Shari'a* courts handled family, criminal, and personal law disputes. *Id.*

32. See, e.g., *infra* note 73 (highlighting the problematic present-day partition in the Afghan legal academy between the Faculty of Law and Political Science (FLPS) and the Faculty of *Shari'a* (FS)).

33. Barfield et al., *supra* note 20, at 18.

34. ALEKSEYEVA ET AL., *supra* note 30, at 77.

35. *Id.* See also Barfield et al., *supra* note 20, at 18.

36. ROSE LEDA EHLER ET AL., AFG. LEGAL EDUC. PROJECT, STANFORD LAW SCHOOL, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF AFGHANISTAN, 18 (Stephanie Ahmad et. al. eds., 2nd ed. 2015).

37. *Id.*

38. *Id.* at 19.

39. *Id.*

harbored greater ambitions<sup>40</sup>—embarked on a major legal codification project.<sup>41</sup> Zahir Shah’s 1964 constitution envisioned a separation of powers between the executive, legislative, and judicial branches of government.<sup>42</sup> The constitution also unified the judiciary by merging state and *Shari’a* courts, and guaranteed judicial independence.<sup>43</sup>

The on-the-ground reality, however, was rather underwhelming. Like his father, Zahir Shah showed little interest in meaningfully checking executive power. The parliament was largely symbolic.<sup>44</sup> Laws were often promulgated through executive decree during parliamentary recess.<sup>45</sup> Free elections and genuine legislative oversight were rare, and the government aggressively suppressed opposition.<sup>46</sup> The judiciary, too, was more robust on paper than in practice. The bench was practically undercut by the dearth of qualified judges and lawyers,<sup>47</sup> the parallel informal justice system, and the king’s supremacy.<sup>48</sup> Graft and nepotism were rampant.<sup>49</sup>

In 1973, Daoud Khan, supported by communist elements, overthrew Zahir Shah’s monarchy and proclaimed a republic.<sup>50</sup> While arresting and executing scores of officials and royal loyalists, Daoud Khan pilloried Zahir Shah’s “pseudo-democracy,” and vowed to establish a “genuine democracy.”<sup>51</sup> Daoud Khan’s regime, however, curtailed freedoms further, tolerated only one political party, and installed a cabinet of sycophants.<sup>52</sup> Notably, his coup triggered another tumultuous episode.

Daoud Khan was ousted by Nur Muhammad Taraki who was, in turn, deposed by Hafizullah Amin. With the communist regime in disarray, the Soviet Union invaded Afghanistan in 1979 and installed Babrak Karmal as the new leader.<sup>53</sup> Facing a growing insurgency, Karmal was replaced by Najibullah who

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40. Shaheen F. Dil, *The Cabal in Kabul: Great-Power Interaction in Afghanistan*, 71(2) AM. POLITICAL SCIENCE REV. 468, 468 (1977).

41. EHLER ET AL., *supra* note 36, at 19.

42. ALEKSEYEVA ET AL., *supra* note 30, at 84.

43. *Id.* at 83-84. *See also* Barfield et al., *supra* note 20, at 19.

44. EHLER ET AL., *supra* note 36, at 23.

45. Anne Evans et al., *A Guide to Government in Afghanistan*, THE WORLD BANK, 4-5 (2004).

46. EHLER ET AL., *supra* note 36, at 19.

47. Despite the relative stability under Zahir Shah, Afghanistan had only around 270 lawyers in the late 1960s. ROHULLAH AZIZI ET AL., AFG. LEGAL EDUC. PROJECT, STANFORD LAW SCHOOL, AN INTRODUCTION TO LEGAL ETHICS IN AFGHANISTAN, 25 (James Banker et al. eds., 1st ed. 2015).

48. EHLER ET AL., *supra* note 36, at 22.

49. Evans et. al., *supra* note 45, at 5.

50. ALEKSEYEVA ET AL., *supra* note 30, at 87.

51. Evans et. al., *supra* note 45, at 5. *See also* Dil, *supra* note 40, at 472. Despite four decades of relative peace under Zahir Shah, the coup did not provoke any effective protest from the populace. For many ordinary Afghans, the regime change was yet another “family matter and signified no great social revolution.” *Id.*

52. Evans et. al., *supra* note 45, at 5.

53. ALEKSEYEVA ET AL., *supra* note 30, at 88.

issued a new constitution in 1987. Like prior rulers, Najibullah's constitution failed to create a proper mechanism of checks and balances. His politburo—not the legislature—wielded ultimate lawmaking power, and the judiciary was expected to follow along.<sup>54</sup> Unable to stem the mounting opposition, the Soviet Union withdrew from Afghanistan in 1989. Shortly thereafter the country devolved into a vicious civil war and Najibullah was later executed by the Taliban.

The internecine civil war of the 1990s regressed Afghanistan further on multiple fronts. With the country almost hermetically sealed from the rest of the world, the Taliban tightened their grip on the populace and established an Islamic emirate based on a fundamentalist *Shari'a* outlook. With few codified laws or formal legal processes, the regime ruled by edicts.<sup>55</sup> Judges had to apply the Islamic state's radical interpretations of *Shari'a* in dispensing justice. Sympathetic to groups like Al-Qaeda, the Taliban viewed anything deemed modern or un-Islamic with deep suspicion.<sup>56</sup> The emirate banned women from education, public life, and the bench, and perpetrated extensive human rights atrocities.

In short, Afghanistan's chronic political turmoil and autocratic tradition yielded a deeply ingrained "rule by law" culture. This "rule by law" norm and concomitant popular discontent, as evinced by recurring insurrections and political unrest, deepened the divide between the central state and local power structures.<sup>57</sup> The Kabul-based autocrats' scope of influence often diminished precipitously beyond major urban centers.<sup>58</sup> The limited reach and legitimacy of formal state institutions were particularly conspicuous in the justice sector. Most Afghans often relied on informal justice mechanisms such as *shuras* and *jirgas*, rather than state courts, to resolve their disputes.<sup>59</sup>

This central-versus-local governance tension, especially in the justice system, persists today. Despite its durability, the informal justice system has serious drawbacks.<sup>60</sup> First, in many cases, these customary mechanisms violate

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54. *Id.* at 89.

55. EHLER ET AL., *supra* note 36, at 26.

56. For instance, while the internet revolution was taking over the rest of the world, the Taliban were preoccupied with publicly burning TVs and musical instruments, and beating and imprisoning anyone who played music. *See, e.g.*, Nicholas Wroe, *A Culture Muted*, THE GUARDIAN (Oct. 13, 2001), <https://www.theguardian.com/world/2001/oct/13/afghanistan.books> (last visited May 16, 2020).

57. Afghanistan's political history is defined by "a struggle between highly diverse, locally autonomous groups and governments in Kabul with ambitious centralizing agendas." Barfield et al., *supra* note 20, at 4. The continuation of this conflict will pose significant challenges to building the rule of law in Afghanistan. *Id.*

58. *Id.* at 5.

59. *Id.* at 13. These customary dispute resolution processes were deemed "fairer and less corrupt than the formal legal system." *Id.*

60. Given the present shortcomings of the formal justice system, traditional dispute resolution processes could serve a function in limited circumstances such as dealing with certain non-criminal matters under the necessary substantive and procedural safeguards. Indeed, the Afghan government is currently drafting the Reconciliation Law to regulate the informal justice system (on file with author).

the Afghan constitution and other codified laws.<sup>61</sup> Second, several traditional practices are also at odds with Islamic law.<sup>62</sup> Third, these informal forums are rife with human rights violations especially vis-à-vis vulnerable groups such as women and children.<sup>63</sup> Fourth, they are susceptible to graft.<sup>64</sup> Fifth, the outcomes are heavily influenced by local power dynamics rather than principles of equity and justice.<sup>65</sup> Sixth, even good-intentioned arbiters lack proper understanding of the law, including *Shari'a* principles.<sup>66</sup>

In addition, the informal justice system fails to address the chronic “rule by law” condition that has plagued Afghanistan since its inception.<sup>67</sup> Unsurprisingly, these political and historical factors coalesced to significantly stymie the development of a strong legal profession. Indeed, Afghanistan’s bar association, first founded in 1986, lacked independence and, like the bench, was overseen by the executive.<sup>68</sup> When the Taliban collapsed in 2001, the legal education system, like much of the rest of the country, was in tatters.

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61. The traditional discrimination against women and girls, for instance, is in flagrant violation of the Afghan constitution as well as the Law on Elimination of Violence Against Women. For a discussion of the detrimental impact of informal justice processes on women’s rights in Afghanistan, see, e.g., Mehdi J. Hakimi, *Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan’s Law on Elimination of Violence Against Women*, 18 NW. J. HUM. RTS. 52, 61-63 (2020) (examining the illegal mediation of criminal cases of gender-based violence in Afghanistan).

62. Various rampant customary practices—such as denying women’s inheritance, marriage, and education rights—violate *Shari'a* principles. See, e.g., *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, Office of the United Nations High Commissioner for Human Rights, 6, 11, 32 (Dec. 2010), [https://unama.unmissions.org/sites/default/files/harmful\\_traditional\\_practices\\_english.pdf](https://unama.unmissions.org/sites/default/files/harmful_traditional_practices_english.pdf) (last visited May 16, 2020) [hereinafter “OHCHR”].

63. Examples of these harmful traditional practices include *baad* (giving away girls to settle disputes), child and forced marriages, *badal* (exchange marriages), and “honor” killings. For further discussion of these problematic customary traditions, see *id.* at 5-44.

64. For instance, traditional justice forums are controlled by corrupt local strongmen in some areas. Moreover, some village elders exploit their connections to elicit bribes. Disputants also engage in significant forum shopping based on kinship and personal ties. Noah Coburn & John Dempsey, *Informal Dispute Resolution in Afghanistan*, U.S. INST. OF PEACE 10-11 (Aug. 2010).

65. Powerful actors—typically the wealthy, well-connected, and better-armed—tend to get their way, thus making the process a microcosm of “rule by law” and “rule of *man*.” The poor and vulnerable serve, in many cases, as collateral damage for the “good” of the community. See, e.g., Barfield et al., *supra* note 20, at 3 (noting that “imbalanced power relations between landowners, landless farmers, and gun-holders tend to subvert the principles of equity[.]”).

66. A United Nations study of Afghan customary practices underlined the pressing need to train and educate tribal and religious leaders on laws, including *Shari'a* principles, to help counter harmful traditional practices. OHCHR, *supra* note 62, at 49-50.

67. Indeed, customary practices—such as *loya jirgas* or grand tribal assemblies—have, at times, been manipulated to buttress the various Afghan autocrats’ regimes by, *inter alia*, legitimating the new ruler or his constitution.

68. The bar association operated under the Ministry of Justice and had limited actual authority beyond administrative tasks such as distributing licenses. AZIZI ET AL., *supra* note 47, at 23-24.

## II.

## THE LEGAL CURRICULUM CHALLENGE IN AFGHANISTAN

Assessments of the Afghan justice sector shortly after the fall of the Taliban underscored the critical need to revamp the legal education system. Studies highlighted systemic shortcomings concerning the state of legal knowledge, skills, and ethics within the judiciary.<sup>69</sup> Many judges lacked university-level education (36.6 percent), while a significant number never underwent judicial training (40 percent).<sup>70</sup> The Ministry of Justice also stressed the exigency of promoting the capacity, integrity, and independence of justice sector institutions by prioritizing legal training.<sup>71</sup> A 2004 assessment by the United States Institute of Peace (USIP) further emphasized the fundamental role of legal education reform in improving the dire state of the justice system.<sup>72</sup>

Sixteen years later, Afghanistan's legal education system continues to grapple with formidable deficiencies. These include a bifurcated legal education model across the Faculties of Law and *Shari'a*,<sup>73</sup> ineffective pedagogical approaches, overemphasis on didactic lectures and rote memorization, dearth of legal skills and ethics training, paucity of research culture, gender imbalance, absence of monitoring and evaluation, and lack of institutional oversight and coordination despite the proliferation of law schools.<sup>74</sup>

Most of the above hurdles have afflicted Afghan legal education for several decades.<sup>75</sup> However, Afghanistan today is, at least in one significant respect, very different from the pre-2001 context: the explosion of legal and regulatory reforms since the fall of the Taliban. Decades of political upheaval and conflict had left Afghanistan and its legal sector in ruin. The relative stability post-2001 created a much-needed respite to address a multitude of governance challenges. With the adoption of the 2004 constitution, an unprecedented plethora of statutes, legislative decrees, and regulations have been promulgated in an effort, backed

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69. See, e.g., Livingston Armytage, *Justice in Afghanistan: Rebuilding Judicial Competence after the Generation of War*, 67 HEIDELBERG J. INT'L L. 185, 200 (2007).

70. *Id.*

71. *Id.* at 195.

72. UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT: ESTABLISHING THE RULE OF LAW IN AFGHANISTAN, 9 (2004) [hereinafter "USIP Report"].

73. Afghanistan has an antiquated, dual system of legal education. There are two alternative pathways to becoming a legal professional in Afghanistan: the Faculty of Law and Political Science (FLPS) and the Faculty of *Shari'a* (FS). Despite differences in their respective curriculum, graduates of both the FLPS and the FS are eligible to become lawyers, prosecutors, and judges. For further discussion of this problematic partition in legal training, see Mehdi J. Hakimi & Erik G. Jensen, *Rethinking Legal Education in Afghanistan: The Law Program at the American University of Afghanistan*, 55 STAN. J. INT'L L. 83, 87 (2019).

74. *Id.* at 87-88.

75. See, e.g., Marvin G. Weinbaum, *Legal Elites in Afghan Society*, 12 INT'L J. MIDDLE E. STUD., no. 1, 43 (1980) (citing heavy reliance on theoretical instruction and lack of skills training as key shortcomings of Afghan legal education nearly four decades ago).

by the international community, to modernize the legal system and strengthen the rule of law in the country.<sup>76</sup>

While legislative reform has been a pressing necessity, the dizzying array of new rules has highlighted a foundational problem with the legal education system: the dearth of up-to-date textbooks critically analyzing the rapidly changing Afghan legal landscape. This systemic challenge has buffeted the entire justice sector including the bench. Studies have underlined Afghan judges' lack of access to critical resources including statutes and regulations, research tools, and legal textbooks.<sup>77</sup>

This resource deficit has significantly hindered the judiciary from fulfilling its constitutional mandate to administer justice and uphold the rule of law. First, in the absence of updated legal materials, the surge of regulatory reforms has increased uncertainty and confusion surrounding applicable law in Afghanistan.<sup>78</sup> With scant resources to provide guidance on the rapidly evolving legal regime, many judges unduly apply their interpretation of *Shari'a* in adjudicating disputes.<sup>79</sup> Second, and related, this resource gap has led to a disturbing pattern of judicial ignorance or non-observance of the law.<sup>80</sup> Third, besides lacking knowledge of the law, judges exhibit serious deficiencies in fundamental competencies such as legal reasoning, analysis, and research.<sup>81</sup>

Fourth, there are substantial concerns regarding judicial ethics and independence.<sup>82</sup> Fifth, these systematic shortcomings of the bench, along with the general public's unfamiliarity with new laws, further augment the popularity

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76. The post-Taliban period presented an opportunity to "catch up" with the 21st century developments on a slew of socio-economic fronts. Following the September 11, 2001 attacks, the international community took greater interest in the once-forgotten country. Isolation rapidly gave way to regional and international integration. Instituting vast legal reforms became, inevitably, a top priority given the woefully under-developed legal landscape.

77. See, e.g., Armytage, *supra* note 69, at 196-97 (finding, *inter alia*, that 83 percent of judges lack access to Supreme Court decisions, 55 percent lack access to legal textbooks, and 36 percent have insufficient access to statutes and regulations). See also Barfield et al., *supra* note 20, at 20 (noting that Afghan courts have limited understanding of the new laws due to the dearth of materials and education). In addition, there are major barriers facing provincial judges as they often have to travel to Kabul for training which is particularly restrictive for female judges. Armytage, *supra* note 69, at 197. Moreover, judicial practice manuals and legal textbooks are "virtually unheard of in Afghan judicial culture." *Id.* at 189.

78. The Afghan legal waters are further muddied by frequent regime changes, as discussed earlier, which led to regular promulgation of new constitutions and additional regulatory layers atop an already complex pluralistic legal matrix.

79. See, e.g., Barfield et al., *supra* note 20, at 20. The Afghan constitution stipulates that courts may apply *Hanafi* or *Shia* jurisprudence *only* in the absence of codified statutory provisions. CONST. OF THE ISLAMIC REP. OF AFG. Jan. 4, 2004, arts. 130, 131.

80. Cf. Armytage, *supra* note 69, at 198 (observing a widespread "ignorance or non-observance of law or legal process" in Afghan courts where many judges have adopted an ad-hoc approach to applying codified laws).

81. See *id.* at 199. See also *infra* Part IV.C.

82. See *id.* at 198-99. See also *infra* Part IV.D.

of informal justice mechanisms.<sup>83</sup> Ultimately, a poorly trained legal profession erodes trust in the justice system and weakens the rule of law. Assessments of the justice sector have thus underscored the urgent need for training lawyers, judges, and legal educators regarding Afghanistan's new regulatory framework.<sup>84</sup>

The scarcity of updated teaching materials is a pervasive problem across the higher education system in Afghanistan.<sup>85</sup> Evaluations of the Afghan higher education system have determined that “curricula, teaching materials and pedagogical methods are grossly outmoded.”<sup>86</sup> The Ministry of Higher Education has pinpointed “outdated curricula” and “under-resourced libraries” as “acute and pressing problems” facing the higher education sector.<sup>87</sup> Studies of Afghan legal education have identified books and curriculum development as key needs of Law and *Shari'a* Faculties.<sup>88</sup> This is a problem that is becoming increasingly exigent in light of the burgeoning new laws.<sup>89</sup>

83. Cf. Barfield et al., *supra* note 20, at 20 (arguing that Afghan citizens' minimal knowledge of the law contributes to the prevalence of non-state dispute resolution forums).

84. See, e.g., USIP Report, *supra* note 72, at 9.

85. See, e.g., Christine Roehrs, *One Thousand Dollars for Books per Year: Afghanistan's Undersupplied Universities*, AFG. ANALYSTS NETWORK (Nov. 23, 2014), <https://www.afghanistan-analysts.org/one-thousand-dollars-for-books-per-year-afghanistans-undersupplied-universities/> (last visited Mar. 2, 2020) (highlighting the absence of textbooks and learning materials as a pressing challenge facing Afghanistan's universities). One of the underlying causes for this problem has been the comparatively late attention given to the higher education system. *Id.* at 2, 9. Moreover, the recent focus on the higher education system also seems to overlook the urgent need for new learning and teaching materials. *Id.* at 10.

86. See, e.g., THE WORLD BANK, AFGHANISTAN: COUNTRY SUMMARY OF HIGHER EDUCATION, 2 (2007), [http://siteresources.worldbank.org/EDUCATION/Resources/278200-1121703274255/1439264-1193249163062/Afghanistan\\_CountrySummary.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/278200-1121703274255/1439264-1193249163062/Afghanistan_CountrySummary.pdf) (last visited Mar. 2, 2020). See also THE WORLD BANK, HIGHER EDUCATION IN AFGHANISTAN: AN EMERGING MOUNTAINSCAPE, 7 (Aug. 2013), <http://documents.worldbank.org/curated/en/307221468180889060/pdf/809150WP0Afgha0Box0379822B00PUBLIC0.pdf> (last visited Mar. 2, 2020) (“the curricula taught in [Afghan] universities has become dated and, in some cases, even obsolete”) [hereinafter “World Bank”].

87. Niamatullah Ibrahim, *Bureaucratic Policies and Patronage Politics: Prospects and Challenges of Private Higher Education in Afghanistan*, AFG. ANALYSTS NETWORK, 7 (Jun. 1, 2014), <https://www.afghanistan-analysts.org/publication/aan-papers/bureaucratic-policies-and-patronage-politics-prospects-and-challenges-of-private-higher-education-in-afghanistan/> (last visited Mar. 2, 2020).

88. See, e.g., USIP Report, *supra* note 72, at 10. See also Rosenbaum, *supra* note 22, at 15 (emphasizing the scant exposure to new instructional materials or innovative textbooks in law schools). See also Armytage, *supra* note 69, at 199, 201 (observing that legal curricula and pedagogy are outdated and must be modernized, as well as highlighting the need for core training modules for the judiciary).

89. A deficient legal curriculum compromises legal education and, inevitably, impacts the performance of legal professionals adversely. The poor performance is manifested through the lack of core professional competencies such as critical thinking, legal knowledge, practice skills, and ethics. See *infra* Parts IV.A.-D. Many lawyers, for instance, lack rigorous legal reasoning skills, and many judges err in the interpretation and application of the relevant laws. The bifurcated legal education system exacerbates the predicament. Judges who graduated from the Faculty of *Shari'a* may overlook binding codified laws in favor of Islamic law jurisprudence.

The dearth of updated pedagogical resources has indeed stymied the Afghan government's strategic plan to overhaul decades-old curricula across higher education. The Ministry's new strategy of upgrading the curricula has been limited to superficially updating the syllabi while, in practice, clinging to the same obsolete materials because the new literature promised in the syllabi has never appeared.<sup>90</sup>

Where new books may be available, their high prices deter otherwise enthusiastic audiences from accessing these important resources.<sup>91</sup> The relatively scant new textbooks in circulation tend to be locked in professors' offices far from students' reach due to the fear of loss or damage to these precious and scarce materials.<sup>92</sup>

In lieu of proper teaching materials, universities in general, and law schools in particular, tend to rely on the so-called "chapters." Chapters are usually a 20- to 30-page long patchwork of excerpts from (often outdated) books and handwritten lecture notes.<sup>93</sup> Users of these "morsels of knowledge" often do not know the underlying sources, authors or compilers, and original publication time of these chapters.<sup>94</sup> Lectures and exams are based on these excerpts and students are expected to memorize them verbatim rather than develop a critical understanding of the law.<sup>95</sup>

The lack of a research culture<sup>96</sup> across the academy has contributed to the shortage of high-quality scholarship and publications.<sup>97</sup> Unfamiliarity with rigorous research and writing skills, as well as the scarcity of research resources, has negative implications on student learning as well. Indeed, this research culture deficit has contributed to a growing plagiarism norm as evinced by booming dissertation sales.<sup>98</sup>

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90. See Roehrs, *supra* note 85, at 8.

91. *Id.*

92. *Id.*

93. *Id.* at 4, 9. Senior officials in the Ministry of Higher Education admit that some faculty at Kabul University, "the largest and most 'developed'" university in Afghanistan, still "teach with lecture notes they compiled decades ago, copied and copied again until barely legible anymore." *Id.* at 6.

94. *Id.* at 4.

95. *Id.* at 9.

96. *Id.* at 5. Afghanistan's Deputy Minister of Higher Education identified this lack of research culture as a significant reason for the paucity of updated textbooks. In addition, poor backgrounds and credentials present further challenges. Indeed, the majority of Afghan university teachers hold only a bachelor's degree. *Id.* at 6. While the number of Afghans with graduate degrees is rising, "brain drain" is a new headache. Furthermore, the ability of new Afghan professors to change the entrenched culture imposed by the old guard will be limited, particularly at public universities.

97. See, e.g., Ibrahimi, *supra* note 87, at 14, 18 ("original research is nearly non-existent across the [higher education] sector"). Politics and excessive bureaucracy, operating typically under the guise of Ministry regulations, also discourage young professors, who are exposed to overseas graduate legal education and interactive teaching methods, from engaging in research and scholarship. See, e.g., Swenson & Sugeran, *supra* note 22, at 137.

98. Cf. Ruyeen Rahnush, *Bazaare Garme Foroshe Payan-namehaye Tahsili dar Afghanistan* [*The Hot Market for Academic Dissertation Sales in Afghanistan*], BBC PERSIAN (Nov. 5, 2019), <https://www.bbc.com/persian/afghanistan-50279737> (last visited Mar. 2, 2020).

Besides chapters and other archaic materials, textbooks from other countries—particularly Iran—permeate Afghan universities.<sup>99</sup> According to an Afghan leader, “Kabul University [the country’s most famous academic institution] won’t have anything else” without Iranian publications.<sup>100</sup> The widespread use of Iranian textbooks in Afghan law schools, which is an enduring tradition,<sup>101</sup> is disconcerting given the differences in the legal regimes and the potential politicization of Afghan institutions.<sup>102</sup>

The proliferation of private universities churning out law graduates has further compounded the predicament.<sup>103</sup> The rapid supply of newly minted legal professionals subject to the myriad deficiencies in the legal education system has raised alarms about quality control at these institutions, and the ability of the new generation of lawyers, prosecutors, and judges to advance the rule of law in the country.<sup>104</sup> These mounting concerns about the state of Afghan legal curriculum prompted the establishment of a unique project at Stanford Law School.

### III.

#### THE AFGHANISTAN LEGAL EDUCATION PROJECT (ALEP)

The Afghanistan Legal Education Project (ALEP) was founded at Stanford Law School to respond to the manifold and pressing curriculum issues plaguing Afghan legal education. Launched in 2007, ALEP has developed innovative legal textbooks that critically analyze Afghanistan’s rapidly changing legal landscape. The legal curriculum developed by ALEP has been taught at the American University of Afghanistan (AUAF), and increasingly used by other institutions across the country and globally.

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99. See Hakimi & Jensen, *supra* note 73, at 94. The influence of Iranian textbooks is not limited to law schools. See, e.g., Roehrs, *supra* note 85, at 14 (Iranian textbooks “make up a large proportion of the books at Afghan universities” more generally). Various factors explain the prevalence of Iranian textbooks in Afghanistan including the two neighbors’ shared history, culture, religion, and language (Farsi/Dari); the conspicuous dearth of materials produced by Afghans; Iran’s domination of scholarship and literature in Farsi; the Iranian academic training of many Afghan faculty especially those in legal academia; and Iran’s considerable ideological-political influence in Afghanistan.

100. Alireza Nader et. al., *Iran’s Influence in Afghanistan: Implications for the U.S. Drawdown*, RAND CORP. 13 (2014).

101. See, e.g., Weinbaum, *supra* note 75, at 43 (observing that “[a]side from a few (often politically and culturally suspect) Iranian books, no law texts in Persian [were] available” in Afghan law schools approximately forty years ago).

102. See, e.g., Wagdy Sawahel, *Iran, Saudi Arabia vie for influence over Afghan HE*, UNIVERSITY WORLD NEWS (Dec. 15, 2017), <https://www.universityworldnews.com/post.php?story=201712141208319> (last visited Mar. 2, 2020) (highlighting concerns about the politicization of Afghan universities by Iran).

103. For a detailed assessment of the state of private higher education in Afghanistan, see generally Ibrahimi, *supra* note 87.

104. For an analysis of the mounting quality concerns at private universities, see *id.* at 14-15. Some private institutions have opened without even registering with the Ministry of Higher Education. *Id.* at 15.

While still relatively nascent, AUAF's law program has gained a reputation as an emerging center of excellence in legal education in Afghanistan.<sup>105</sup> In deviating from the flawed model of legal education elsewhere, AUAF's law program has emphasized, *inter alia*, a student-centered pedagogy and legal skills development. At the heart of the program's success, however, lies its innovative legal curriculum developed in close collaboration with ALEP.

The process of developing ALEP textbooks is an iterative adaptive endeavor and has evolved over time. Leveraging institutional resources and the experience of similar curriculum development projects in other regions, ALEP has refined and systematized this process in recent years.<sup>106</sup> Central to ALEP's efforts have been its bottom-up approach and close collaboration with Afghan legal experts, scholars, practitioners, and other stakeholders throughout the textbook drafting process.<sup>107</sup>

This strong engagement with local experts and implementers is not limited merely to discussions on the intricacies of Afghan legal doctrines. It also addresses other salient considerations in curriculum development such as cross-cultural literacy and communication strategies. ALEP textbooks are replete with examples and instructional tools that reflect the local context. While the content is "Afghanized," in consultation with Afghan partners and experts, the curriculum also infuses strategic adjustments where appropriate.<sup>108</sup> The systematic integration of Afghan perspectives has been crucial to ALEP's work and mission of training the next generation of Afghan legal professionals.

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105. For an in-depth analysis of the AUAF law program, see Hakimi & Jensen, *supra* note 73.

106. ALEP operates under Stanford Law School's Rule of Law Program. The Rule of Law Program has led similar legal curriculum development projects in other developing and transitional countries including Iraq, Rwanda, Timor-Leste, and Bhutan.

107. Afghan faculty, experts, and other stakeholders are deeply involved in the textbook development process. Afghan partners determine textbook priorities and initial outlines, and they also research and vet the various iterations of the work throughout the drafting process. The close engagement of local actors and experts throughout the various stages—from setting the goals to implementing and evaluating the results—is crucial to the success of international legal education reform initiatives. Such close collaboration also strengthens connections between practitioners and faculty from both countries, provides necessary professional development and capacity building of local academics to use the new curriculum and methodology, and promotes the sustainability of the reforms through securing local buy-in. Cf. Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 4 CLINICAL L. REV. 465, 492, 497 (2007-2008) (emphasizing the importance of close interaction with local stakeholders on legal reform projects). See also Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59(1) J. LEGAL EDUC. 60, 95 (2009) (observing that "grassroots legal transplants [as opposed to centralized and top-down approaches] show greater promise for improving and reforming legal education" in China).

108. For instance, gender portrayals in ALEP textbooks do not follow the traditionally hierarchical and patriarchal depiction that Afghan students are systematically exposed to. See, e.g., Carrie Spector, *Portrayal of Afghan women and girls in primary school textbooks varies based on ruling powers, Stanford research finds*, STANFORD NEWS SERVICE (Nov. 6, 2017), <https://news.stanford.edu/press-releases/2017/11/06/textbooks-influew-afghan-females/> (last visited Mar. 2, 2020). Rather, ALEP textbooks provide examples portraying women in leading positions, such as judges and business owners, instead of being relegated to conducting chores.

The next section examines how ALEP's curriculum development efforts support the legal education system and thus contribute to building a robust legal profession from the ground up in Afghanistan. A legal profession that fulfills its legal obligations helps enhance trust in the justice system, augment the state's legitimacy, and promote a rule of law culture in society.

#### IV.

##### PROMOTING THE RULE OF LAW THROUGH LEGAL CURRICULUM REFORM

When developing curriculum for legal education, it is important to begin with the end result in mind.<sup>109</sup> What are the key goals of legal education? At a high level, the overarching goals are aspirational and visionary—for instance, championing justice and upholding the rule of law.<sup>110</sup> To advance those broader objectives, however, legal education must equip graduates with the requisite knowledge, skills, and values to serve as competent and ethical lawyers capable of meeting the challenges of the legal profession.<sup>111</sup>

Law schools function as gatekeepers to the legal profession. As such, there is a direct nexus between the quality of legal education in inculcating the appropriate competencies and the legal profession's capacity to fulfill its overarching mandate to uphold the rule of law. Safeguarding the rule of law is an uphill battle when legal professionals lack the required knowledge, skills, and integrity. When a prosecutor's misunderstanding of the new Criminal Procedure Code prejudices the accused, a lawyer's poor advocacy skills harm the client in a commercial dispute, or a judge is swayed by bribes or political pressure, the society's trust in the legal institutions erodes. While proper legal training may not present an elixir for Afghanistan's multifarious woes, it can help mold a strong and independent legal profession that can restore confidence in the justice system and strengthen the rule of law.

In designing legal curriculum for Afghan audiences, ALEP has kept these core objectives of legal education in mind. The next sections explore how ALEP's curriculum promotes substantive knowledge, practice skills, and professional ethics in training the next generation of Afghan lawyers.<sup>112</sup> As with other innovative and systemic legal education reforms, ALEP's curriculum

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109. See, e.g., AALT WILLEM HERINGA, *LEGAL EDUCATION: REFLECTIONS AND RECOMMENDATIONS* 13 (2013) (emphasizing the importance of considering the goals of legal training at the outset and analyzing how these goals can help inform the structure and content of legal training).

110. *Id.* at 101 (noting that promoting the rule of law is an overarching goal of legal education).

111. The importance of gaining competency in knowledge, skills, and ethics is underscored, for instance, in the American Bar Association's accreditation standards regarding the objectives and learning outcomes of legal education programs. See AM. BAR ASS'N, *Standard 301: Objectives and Standard 302: Learning Outcomes*, in *STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019-2020* 15, (2019), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf) (last visited May 16, 2020).

112. See *infra* Parts IV.A.-D.

development efforts constitute a long-term and cost-effective strategy to advance the rule of law in Afghanistan.<sup>113</sup> In doing so, ALEP's work also addresses arguably the most pressing challenge facing Afghan legal education: the scarcity of up-to-date and rigorous pedagogical materials.

#### A. Narrowing the Resource Gap

As discussed earlier, the “[ir]relevance of university curricula” is a systemic hurdle across Afghan higher education.<sup>114</sup> Accordingly, curriculum reform is a crucial component of any serious quality assurance effort in universities.<sup>115</sup> Assessments of tertiary education in Afghanistan have underscored the need to conduct “regular and recurring curriculum review and modernization activities.”<sup>116</sup> The pressure to upgrade the curriculum in law schools is especially acute in light of the burgeoning legislative reforms since the adoption of the 2004 constitution.

ALEP has been a pioneer in the development of legal curricula critically analyzing the post-2004 legal system in Afghanistan. So far, ALEP has published eleven textbooks exploring the rapidly changing legal and regulatory landscape in Afghanistan.<sup>117</sup> The whirlwind pace of legislative reforms, along with the iterative adaptive nature of ALEP's work driven by local needs, has necessitated regular updating of ALEP's publications. Nine more publications will be produced over the next few years.<sup>118</sup> ALEP has also published English translations of key Afghan laws including, *inter alia*, the Civil Code<sup>119</sup> and the Commercial Code.<sup>120</sup>

Given the conspicuous lack of updated resources on Afghan law, ALEP's publications have helped numerous stakeholders and organizations make sense

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113. See *infra* Part IV.E.

114. World Bank, *supra* note 86, at 39.

115. *Id.* at 35.

116. *Id.* at 9.

117. These include: *An Introduction to the Laws of Afghanistan* (4<sup>th</sup> Edition), *Constitutional Law of Afghanistan* (2<sup>nd</sup> Edition), *Criminal Law of Afghanistan* (2<sup>nd</sup> Edition), *Law of Obligations I (Contracts)*, *Law of Obligations II (Civil Responsibility)*, *Property Law of Afghanistan*, *Legal Ethics in Afghanistan*, *Commercial Law of Afghanistan* (2<sup>nd</sup> Edition), *International Law for Afghanistan*, *Legal Methods I: Thinking Like a Lawyer*, and *Legal Methods II: Legal Practice*.

118. The upcoming publications include: *Commercial Law of Afghanistan* (3<sup>rd</sup> Edition), *Advanced Topics in Commercial Law of Afghanistan*, *International Law for Afghanistan* (2<sup>nd</sup> Edition), *Property Law of Afghanistan* (2<sup>nd</sup> Edition), *Criminal Law of Afghanistan* (3<sup>rd</sup> Edition), *Advanced Topics in Criminal Law of Afghanistan*, *Labor Law of Afghanistan*, *Administrative Law of Afghanistan*, and *Legal Ethics in Afghanistan* (2<sup>nd</sup> Edition).

119. CIVIL CODE (English Translation), Official Gazette No. 353 (1977) (Afg.), AFG. LEGAL EDUC. PROJECT (Sept. 2014), <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/Civil-Code-of-Afghanistan-ALEP-Translation.pdf>. ALEP is currently working on a revised translation of the Civil Code which will be published in the near future.

120. COMMERCIAL CODE (English Translation), Osolnama No. 115 (1955) (Afg.), AFG. LEGAL EDUC. PROJECT (Nov. 2014), <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/Commercial-Code-of-Afghanistan-ALEP-Translation.pdf>. A new translation of the Commercial Code will be released by ALEP as well.

of Afghanistan's new legal matrix. To facilitate access, ALEP's publications are widely available free of charge on its website.<sup>121</sup> The textbooks are published initially in English, and subsequently translated into Dari and Pashto. The English publications are designed primarily to meet the AUAF law program's needs, where the language of instruction is mainly English.

An English language legal curriculum in Afghanistan serves several essential purposes. It prepares Afghan students and legal professionals for an increasingly globalized legal practice.<sup>122</sup> Indeed, even domestically, one of the challenges in instituting justice sector reform has been the shortage of local professionals with strong English language skills.<sup>123</sup> Moreover, given the lack of materials in Dari and Pashto, English proficiency will significantly expand the range of resources available to Afghan legal professionals. It will also help prepare Afghans for graduate legal studies abroad. Of course, ALEP's textbooks also serve as valuable, rare resources for non-Afghans to comprehend the country's pluralistic legal system.

To ensure greater access to its resources, ALEP has also been translating its publications into the vernacular languages. Indeed, many local institutions including law schools and other entities in public, private, and non-profit sectors have been using ALEP's textbooks to better understand Afghanistan's evolving legal and regulatory landscape.<sup>124</sup> ALEP textbooks have also been used by the Afghan judiciary.<sup>125</sup>

Legal education would be hamstrung without the right resources and learning materials. Knowledge of the law, the most foundational objective of legal education, requires appropriate instructional materials that reflect the realities of Afghanistan's post-2004 legal order.<sup>126</sup> Access to updated legal textbooks is an indispensable first step to ensuring that aspiring legal professionals acquire the necessary knowledge and understanding of the country's laws—a critical facet of legal competence—to uphold the rule of law in Afghanistan. ALEP's publications on Afghan law make a vital contribution to narrowing this urgent resource gap.

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121. ALEP publications, protected by Creative Commons licenses, are available on the organization's website. AFG. LEGAL EDUC. PROJECT, <https://law.stanford.edu/alep> (last visited Mar. 2, 2020).

122. Cf. Rosa Kim, *Globalizing the Law Curriculum for Twenty-First-Century Lawyering*, 67(4) J. LEGAL EDUC. 905 (2018) (highlighting the need for internationalizing legal education and equipping law students with global competency).

123. See, e.g., USIP Report, *supra* note 72, at 10 (bemoaning the dearth of qualified Afghans in justice sector projects who are proficient in legal English to facilitate the implementation of reforms).

124. Hakimi & Jensen, *supra* note 73, at 95.

125. ALEP's constitutional law textbook, for instance, has been used in training new Afghan judges. The Afghan Supreme Court's website has also displayed some of ALEP's publications in the past. ALEP Quarterly Data (on file with author).

126. For an overview of the post-2004 Afghan legal system, see generally ALEKSEYEVA ET AL., *supra* note 30.

*B. Building Critical Thinking and Analytical Skills*

Besides legal knowledge, fostering robust critical inquiry and analytical skills is arguably the most important goal of legal education.<sup>127</sup> Laws may be ambiguous, contradictory, outdated, silent, and plagued with other flaws. Navigating these uncertain legal waters effectively requires solid analytical skills. These competencies are a fundamental aspect of “thinking like a lawyer”—the legal education’s perennial pledge.

Critical thinking is the core analytical skill undergirding other crucial, derivative legal competencies such as writing, research, advocacy, creative and solution-oriented thinking, communication skills, and ethical lawyering. Strong critical thinking enables lawyers to engage in the legal process assertively.<sup>128</sup> It makes them inquisitive, proactive, and effective advocates—qualities that are imperative for an independent legal profession tasked with protecting fundamental rights and checking government abuse of power. It is hard to imagine how legal professionals can restore confidence in the justice system and defend the rule of law without the ability to think critically about the law.

Despite their importance, analytical skills are largely ignored in Afghan higher education. A key reason for this systemic oversight is the absence of standards on student learning outcomes.<sup>129</sup> Instead of designing benchmarks that emphasize key learning outcomes such as analytical skills, rote learning dominates.<sup>130</sup> Indeed, student learning is almost entirely based on “memorization at the expense of students’ intellectual development.”<sup>131</sup> Furthermore, instructors exhibit little tolerance for critical inquiry.<sup>132</sup> In many cases, students who propose new ideas are “discouraged and humiliated in front of their peers.”<sup>133</sup>

Legal education is no exception to this broader rote-learning model. Legal pedagogy “consists almost exclusively of formal lecturing and memorization” rather than developing a critical understanding of the law.<sup>134</sup> Student engagement is minimal.<sup>135</sup> It is thus no surprise that Afghan law students are “ill-prepared for

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127. See, e.g., HERINGA, *supra* note 109, at 17-18 (listing analytical and critical thinking atop the list of competencies that law schools should teach).

128. See, e.g., Hamoudi, *supra* note 22, at 132.

129. World Bank, *supra* note 86, at 33.

130. The pervasive rote-learning model in Afghan tertiary education is an extension of the same systemic deficiency in primary and secondary education in the country.

131. Ibrahimi, *supra* note 87, at 7. Students are required to learn by heart the “decades-old lecture notes (called ‘chapters’),” which are often “the only educational materials distributed to the [students].” *Id.* By design, student success in class “depends largely on the degree to which they can memorize and conform to the standards of the chapters.” *Id.* at 7-8.

132. This stems from various factors including the hierarchical Afghan culture, poor pedagogy, and generally limited teaching capacity. The dearth of critical thinking during class is by no means limited to Afghanistan. See, e.g., Erie, *supra* note 107, at 79 (noting that Chinese law professors “prefer questions to be asked one-on-one after class” due to notions of “respect” and “saving face”).

133. Ibrahimi, *supra* note 87, at 8.

134. See, e.g., Swenson & Sugerman, *supra* note 22, at 138.

135. *Id.*

either critical or creative thinking.”<sup>136</sup> The system trains and rewards passivity and undue deference—perilous attributes in future legal professionals charged with safeguarding the rule of law.<sup>137</sup> Afghanistan’s legal profession is in dire need of lawyers and judges who possess robust analytical skills.

Recognizing this endemic flaw in Afghan legal education, ALEP has been emphasizing critical thinking throughout its curriculum. At the outset, overarching learning outcomes are determined for all ALEP textbooks with particular emphasis on building critical thinking skills.<sup>138</sup> Indeed, ALEP underscores the significance of critical inquiry in legal education by devoting an entire chapter to this topic in its very first publication: *An Introduction to the Laws of Afghanistan*.<sup>139</sup>

Analytical thinking is further embedded and honed in ALEP textbooks through pedagogical models such as Bloom’s taxonomy of educational objectives.<sup>140</sup> Bloom’s taxonomy identifies specific cognitive learning objectives to be considered in designing curriculum. These learning goals include knowledge, comprehension, application, analysis, synthesis, evaluation, and creation—in that order. The sequence of these learning objectives is important; they move from simple to complex learning, and from lower to higher levels of cognitive functioning.<sup>141</sup>

ALEP textbooks employ a variety of instructional tools to advance these learning objectives and enhance critical thinking skills. Discussion questions are a common theme in all ALEP textbooks, providing ample opportunities for interactive conversations and varying perspectives on legal issues.<sup>142</sup> In addition,

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136. Rosenbaum, *supra* note 22, at 9.

137. *Cf.* Hamoudi, *supra* note 22, at 132 (stressing the negative consequences of reliance on highly deferential, lecture-based instruction for law students).

138. Building the curriculum with learning objectives in mind enhances student learning. *Cf.* Gerald F. Hess, Michael Hunter Schwartz & Nancy Levit, *Fifty Ways to Promote Teaching and Learning*, 67(3) J. LEGAL EDUC. 696, 710-11 (2018) (underlining the importance of having learning objectives for every course).

139. ALEKSEYEVA ET AL., *supra* note 30, at 198-228.

140. BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS. HANDBOOK I: COGNITIVE DOMAIN (Longmans 1956).

141. MARY ELLEN LEPIONKA, WRITING AND DEVELOPING YOUR COLLEGE TEXTBOOK: A COMPREHENSIVE GUIDE TO TEXTBOOK AUTHORSHIP AND HIGHER EDUCATION PUBLISHING, 146 (Atlantic Path Publishing, 2nd ed. 2008).

142. *See, e.g.*, the following discussion questions from ALEP’s textbook, *An Introduction to the Laws of Afghanistan*, regarding notice provisions:

“1. What are the most reliable ways of informing a person in Kabul about a court claim? Would this differ in the provinces? What might be the most reliable way to provide notice in rural areas?

2. Since the Civil Procedure Code dates back to 1990, some of its provisions might seem outdated today, such as the use of telegraphs to provide notice. How might technology improve the court’s ability to inform a party of a pending claim? Should courts use Facebook or the internet to provide notice? Why or why not?” ALEKSEYEVA ET AL., *supra* note 30, at 175.

*See also* the following sample discussion questions on the presumption of innocence principle:

the textbooks provide numerous examples, case studies, comparative legal perspectives, hypothetical and research exercises, and other pedagogical techniques to promote these learning objectives.<sup>143</sup>

Besides learning legal doctrine and specific code provisions, ALEP textbooks teach students to think analytically and apply their knowledge to real-world issues.<sup>144</sup> In learning to critically analyze the law, students evaluate existing legal frameworks by identifying potential ambiguities, contradictions, and flaws within the rules; exploring the rules' underlying policy rationales; and assessing their compatibility with the realities on the ground.<sup>145</sup> Moreover, inculcating innovative thinking is also an important goal of legal education.<sup>146</sup> To that end, ALEP textbooks help students develop a creative and solution-oriented legal mindset through various instructional tools including problem-solving activities, regulatory reform analysis, drafting exercises, and comparative law discussions.<sup>147</sup>

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“1. Why does criminal law in Afghanistan contain a presumption of innocence? What are the moral reasons? The practical reasons?

2. It is often said that it is better for ten guilty persons to escape than for one innocent person to suffer. Do you agree? Why or why not? What about one hundred guilty persons? One thousand?

3. In Islam, the principle of *istishab*, or the principle of continuity, is a presumption in the law of evidence that a state of affairs known to exist in the past continues to exist until the contrary is proved. How does the presumption of innocence connect to the principle of *istishab*?” *Id.* at 183.

143. See *infra* notes 144, 145, 147.

144. The following are brief examples of application exercises from ALEP's textbook, *An Introduction to Legal Ethics in Afghanistan*, concerning lawyers' duties under the *Advocates' Law*:

“Taj is accused of a crime that receives a great deal of public attention. He needs a lawyer but has no money. Lawyer Nangyali agrees to defend Taj in his case and suggests that, rather than paying a fee, Taj should sign an agreement which gives lawyer Nangyali the right to write a book about the case after it is over. If Taj agrees to this deal, will Nangyali's act of publishing all information about the case be considered a breach of the duty of confidentiality?” AZIZI ET AL., *supra* note 47, at 129.

“Wahal is the only living child of Ramin, age 83. Ramin's main asset is a 51% partnership interest in Kashana, Ltd., a wealthy real estate company that owns and operates residential development land in Kabul. Wahal is married to attorney Badria. One of Badria's regular clients, Fawad, asks Badria to represent him in negotiating the sale of 3,000 hectares of property to Kashana Ltd. which is represented by its own lawyer in the matter. May Badria represent Fawad?” *Id.* at 164.

For more illustrations, see also ALEKSEYEVA ET AL., *supra* note 30, at 148, 166, 173, 175, 187 (providing hypotheticals and various application exercises to enhance comprehension and analytical skills).

145. See, e.g., ALEKSEYEVA ET AL., *supra* note 30, at 141, 156, 157, 192-93 (exploring the underlying policy rationales of rules regarding sentencing and evidence, assessing the gap between the law and the practice concerning marriage registrations, and analyzing the compatibility of marriage rules with the constitutional principle of non-discrimination).

146. HERINGA, *supra* note 109, at 87 (legal education should train students to be able to reflect on new issues and try to contribute to solutions with new ideas and suggestions).

147. See, e.g., ALEKSEYEVA ET AL., *supra* note 30, at 18, 196 (providing opportunities for drafting exercises and assessing proposals for regulatory reforms).

One of ALEP's pedagogical tools in developing evaluative and creative thinking is the deployment of comparative law inquiries.<sup>148</sup> Relevant comparative exposure is instructive for at least two reasons. First, pertinent comparative law perspectives can help shed light on ambiguous or unaddressed areas of Afghan law.<sup>149</sup> Despite regulatory reforms, Afghanistan's legal system remains fairly underdeveloped. Even new laws and regulations are rife with vagueness, gaps, and drafting problems. Moreover, the country's pluralistic legal system—a confluence of civil, Islamic, and customary legal traditions—makes the task of navigating Afghan legal issues more complex.<sup>150</sup> Comparative law methodologies illustrate how other relevant jurisdictions address similar legal issues,<sup>151</sup> which can help inform and enrich domestic laws.<sup>152</sup>

Second, comparative inquiry promotes a “more comprehensive understanding and greater intellectual agility in law.”<sup>153</sup> Exposure to other legal systems provides a broader, nuanced, and more critical appreciation of the law.<sup>154</sup> Learning about different approaches to similar legal issues sharpens analytical skills, and enhances the ability to differentiate between specific idiosyncrasies of a legal system versus the more general and relevant features.<sup>155</sup> Comparative inquiry also makes lawyers more creative and adept in handling complex legal questions.<sup>156</sup> These skills, in turn, facilitate effective communication with lawyers from other jurisdictions.<sup>157</sup>

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148. See, e.g., *id.* at 52, 115 (comparative law discussions concerning Egyptian and Turkish approaches to similar legal issues in Afghanistan).

149. Indeed, “[i]t is impossible to fully appreciate the strengths and weaknesses of one’s national law [ . . . without knowing . . . ] how similar problems are dealt with in other countries.” Charles Manga Fombad, *Comparative Research in Contemporary African Legal Studies*, 67(4) J. LEGAL EDUC. 984, 989 (2018). In addition, Afghanistan’s increasing global integration necessitates a better understanding of trans-border and comparative law issues in order to interact effectively with international partners and stakeholders. See also Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 GERMAN L. J. 877, 887-88 (2009) (highlighting the increasing importance of adapting legal education to growing globalization and internationalization by incorporating comparative and international perspectives).

150. Afghanistan is characterized by legal pluralism. Its legal landscape remains the theatre of constant interaction (and at times contestation) among different legal traditions—civil law, *Shari’a* jurisprudence, and customary practices—within a single political framework. For a discussion of the interplay between various sources of law in Afghanistan, see ALEKSEYEVA ET AL., *supra* note 30, at 43-55.

151. Relevant jurisdictions would include Islamic legal systems such as Turkey and Egypt that, like Afghanistan, are influenced considerably by the *Hanafi* school of jurisprudence. The pertinence of a particular jurisdiction is also issue dependent. Non-Islamic legal systems, for instance, may provide interesting comparative perspectives on issues that are not addressed by *Shari’a* such as certain aspects of international law, commercial law, labor law, or intellectual property law.

152. HERINGA, *supra* note 109, at 107.

153. Kai Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 B.U. INT’L L. J. 331, 334 (1998).

154. *Id.*

155. Fombad, *supra* note 149, at 990.

156. Schadbach, *supra* note 153, at 344.

157. *Id.* at 347.

Alignment between instructional materials and classroom pedagogy is important.<sup>158</sup> As the primary teaching materials in the AUAF law program, ALEP textbooks drive the pedagogy in AUAF law classes. Unlike the rigid and dogmatic lecture-based instruction at other law schools, ALEP curriculum's emphasis on critical thinking skills facilitates an interactive, student-centered learning environment at AUAF. Encouraged to engage critically with the content, students participate actively in class discussions. The discussion questions, case studies, exercises, and other learning aids increase the effectiveness of teaching and retention of legal knowledge.<sup>159</sup> In addition to enhancing learning, such interactive pedagogical approaches equip future legal professionals with the right mindset to advocate for the rule of law.<sup>160</sup>

### C. Developing Practice Skills

Legal competence entails more than just knowledge of the law and “thinking like a lawyer.” It also demands practical legal skills crucial to a legal professional's day-to-day interactions with clients, disputing parties, and the justice system at large—that is, “acting like a lawyer.” A lawyer's inability to communicate effectively with clients, a prosecutor's poor advocacy, or a judge's unfair decision due to deficient reasoning slowly chips away at the trust in the justice system.

Law schools, therefore, must ensure that their curriculum is relevant to the practical demands of the legal profession. This fit between curriculum design and market needs is underscored in the evaluations of the Afghan tertiary education system.<sup>161</sup> Various studies and scholarship have also highlighted the value of legal skills training through experiential and clinical education.<sup>162</sup> Skills

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158. HERINGA, *supra* note 109, at 86.

159. *Id.* at 78-79. In practice, adopting interactive pedagogical methods in contexts where passive and rigid learning approaches dominate, such as Afghanistan, is difficult. It is also more taxing for faculty, many of whom are often unfamiliar with such learner-centered instructional methods. Nevertheless, it is a much-needed reform in legal education. The experience of AUAF and other institutions that have been using ALEP materials suggests that such a shift is feasible.

160. Various studies have highlighted the importance of using interactive learning methods to improve student learning. See, e.g., James Bradshaw, *University students fare better with interactive learning, study finds*, THE GLOBE AND MAIL (May 12, 2011), <https://www.theglobeandmail.com/news/national/university-students-fare-better-with-interactive-learning-study-finds/article579698/> (last visited Mar. 2, 2020). See also World Bank, *supra* note 86, at 33 (“University students are best taught through learner-centered, inter-active pedagogical methods”).

161. See, e.g., World Bank, *supra* note 86, at 7, 9 (noting “[a] curriculum that is relevant to the economic needs of a country is a mark of a quality higher education system.” As such, universities, including law schools, must “ensure that their curricula better reflect the needs of the workplace.”).

162. See, e.g., Hamoudi, *supra* note 22, at 132 (emphasizing the important educational value of clinical legal education in Iraqi law schools); Robert L. Jones Jr., *Integrating Experiential Learning into the Law School Curriculum*, 7 ELON L. REV. 43, 3 (2015); Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181, 186-87 (2015); Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984) (describing critical self-reflection following experiential learning as the best kind of education).

training helps students better grasp otherwise abstract, esoteric legal doctrines. In short, integrating skills training with doctrine in every course, where feasible, is viewed as the “best way to maximize our students’ learning and to prepare them to practice law.”<sup>163</sup>

The dearth of skills training, however, is a prevalent problem in legal education globally. Assessments of law schools in the United States and Canada, for instance, have decried the inadequate attention to “teaching students how to use legal thinking in the complexity of actual law practice.”<sup>164</sup> This concern is reflected in the American Bar Association’s recent requirements for law school accreditation that emphasize experiential learning.<sup>165</sup>

Afghanistan is no exception to this global challenge. As discussed earlier, rote-learning dominates Afghan law schools. Didactic lectures and memorization run rampant while experiential learning is practically non-existent. The poor state of primary and secondary education further compounds the problem. Indeed, many university students lack even the basic fundamentals such as proper reading and writing skills, rendering the Afghan predicament especially acute.<sup>166</sup>

Unsurprisingly, then, foundational legal competencies, such as legal writing, are woefully deficient.<sup>167</sup> Core legal skills such as reasoning, analysis, and research are rarely taught.<sup>168</sup> While legal clinics have slowly been introduced at some universities, such clinical programs operate in silos and are divorced

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163. Leah M. Christensen, *The Power of Skills: An Empirical Study of Lawyering Skills Grades as the Strongest Predictor of Law School Success (Or in Other Words, It’s Time for Legal Education To Get Serious About Integrating Skills Training Throughout the Law School Curriculum If We Care About How Our Students Learn)*, 83(3) ST. JOHN’S L. REV. 795, 796 (2012).

164. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law (Summary)* 6 (Jossey-Bass 2007), [http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf) (last visited Mar. 2, 2020).

165. See AM. BAR ASS’N, *Chapter 3: Program of Legal Education*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015 (2014), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf) (last visited Mar. 2, 2020) (Standards 303 and 304 include requirements relating to experiential learning). Even President Obama has advocated for more practical experience. See Peter Lattman *Obama Says Law School Should be 2, Not 3 Years*, N.Y. Times, at B3 (Aug. 23, 2013) (arguing that the third year of law school should be replaced with professional legal experience).

166. Ibrahim, *supra* note 87, at 15 (for instance, one private university lost nearly half of its students within two years after students failed major examinations due to lacking basic pre-university academic skills).

167. According to a recent study conducted at six major Afghan public universities, the legal writing skills of students were rated at 5-10 percent. Claire Anderson, *Better Legal Education Key to Strengthening Rule of Law in Afghanistan*, THE ASIA FOUNDATION (Feb. 22, 2017), <https://asiafoundation.org/2017/02/22/better-legal-education-key-strengthening-rule-law-afghanistan/> (last visited Mar. 2, 2020). The only pseudo-structured tool for legal skills development in most Afghan law schools is the so-called “monograph,” which is essentially a major research paper requirement. Due to the dearth of legal skills training, monograph submissions are generally poorly written and fraught with other issues. Hakimi & Jensen, *supra* note 73, at 101.

168. Armytage, *supra* note 69, at 192.

from the main curriculum.<sup>169</sup> Moreover, the lack of coordination and collaboration among donors and implementers has further hampered the effectiveness of clinical programs.<sup>170</sup>

ALEP has designed specific curriculum on legal skills development to help tackle this gaping hole in Afghan legal education. ALEP's two textbooks on *Legal Methods* teach law students a variety of critical lawyering skills.<sup>171</sup>

*Legal Methods I* equips students with basic professional competencies such as legal reasoning skills. Students learn to craft arguments through reasoning based on rules, analogy, custom, policy, and principles. Moreover, students learn the nuts and bolts of conducting legal analysis, legal research, and the basics of legal writing. *Legal Methods II* builds on these foundational competencies and addresses more advanced skills. These include conducting client interviews and counseling, drafting legal memoranda and briefs, and oral advocacy.

The *Legal Methods* curriculum entails numerous hypothetical and simulated exercises, role-plays, and mock trials to help students practice and sharpen these fundamental lawyering competencies. In addition to the *Legal Methods* textbooks, other ALEP materials also provide various learning aids and exercises designed to foster legal skills development.<sup>172</sup>

These skills-based textbooks are integrated and sequenced within ALEP's broader curriculum, and serve as essential foundations for further professional training.<sup>173</sup> They complement and inform other practice-based classes at AUAF such as live clinics, moots, and procedural courses.<sup>174</sup> Providing such structured legal skills training before diving into advanced experiential classes is especially

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169. See, e.g., Rosenbaum, *supra* note 22, at 3 (stressing the importance of harmonizing and incorporating clinical programs within the broader legal curriculum). Unfortunately, Afghan universities face "serious bureaucratic and practical challenges in enacting full clinical models." Dominique Day, *Legal Aid Assessment and Roadmap*, THE ASIA FOUNDATION, 58 (2017). For instance, the Herat University legal clinic does not entirely operate under the official university structure (it is managed by external staff rather than university faculty). *Id.* at 57. In addition, some clinics are run through partnerships between NGOs (such as The Asia Foundation) and universities. While working under the supervision of external lawyers inside court compounds, university students do not even earn credits for such NGO-administered clinical work. *Id.*

170. Rosenbaum, *supra* note 22, at 16-17.

171. ALEP's *Legal Methods* curriculum is offered as six credits of core classes at AUAF.

172. See, e.g., ALEKSEYEVA ET AL., *supra* note 30, at 18, 148, 166, 173, 175, 187, 196.

173. In promoting skills-based education, ad-hoc, transient, and piecemeal approaches are not effective. Instead, experiential learning should be integrated within the broader curriculum in a thoughtful and systematic way. For instance, before rolling out a clinical program, it is important to lay out the necessary groundwork through well-designed skills-based courses. *Cf.* Rosenbaum, *supra* note 22, at 5. In other words, clinical education must not be "divorced from the rest of the curriculum or confined to one professor's *ad hoc* course load or an NGO-directed slideshow." *Id.* at 6.

174. AUAF's success in international moot court competitions has been in key part due to the curriculum's structure and appropriate integration of skills training. For instance, students in AUAF moot court teams had developed a solid foundation in legal research, writing, and advocacy skills through the *Legal Methods* classes before participating in these competitions. See, e.g., *2016 AUAF Vis Moot Team Makes History*, AFG. LEGAL EDUC. PROJECT (Mar. 17, 2016), <https://law.stanford.edu/2016/03/17/2016-auaf-vis-moot-team-makes-history/> (last visited Mar. 2, 2020).

important given the myriad shortcomings of Afghan legal education outlined earlier. Moreover, the *Legal Methods* curriculum's preliminary exposure to skills development increases the educational value and efficacy of other experiential learning initiatives such as live clinics for students (and clients).<sup>175</sup>

Given the scarcity of legal professionals with strong practice skills, the Afghan legal market recognizes AUAF law students' superior professional competencies. Indeed, legal employers and other organizations in public, private, and non-profit sectors covet AUAF law graduates.<sup>176</sup> Effective legal skills instruction enhances the confidence of legal professionals to serve as competent advocates. It arms them with the necessary aptitudes to check government abuse of power, protect fundamental rights, and fight injustice. In doing so, a thoughtfully designed legal curriculum enables the legal profession to engender greater trust in the justice system.

#### D. Fostering Legal Ethics and Professionalism

An ethical legal profession is paramount to a rule of law society. The principles of impartial dispute resolution and accountability to the law are core pillars of the rule of law, and impossible to uphold if lawyers and judges are improperly influenced. Furthermore, the independence of the legal profession, including its privilege of self-regulation, requires commitment to high ethical standards and professionalism—the essence of “being a lawyer.”<sup>177</sup> Given this significance, legal ethics has been deemed the most important subject in law school.<sup>178</sup>

The urgency of legal ethics instruction is especially more pronounced in countries such as Afghanistan where corruption is endemic. The Afghan justice

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175. Rushing live clinical programs, without having the necessary foundations in place, can be problematic for students *and* clients. Lack of basic legal skills and student maturity, even for upper year students, can pose significant challenges in competently handling live client affairs. Cf. Hamoudi, *supra* note 22, at 124. That is why AUAF's clinical program was available primarily to senior students who had completed both *Legal Methods* courses along with relevant substantive law pre-requisites.

176. AUAF law graduates have held positions such as senior officials in the Office of the President of Afghanistan (e.g., deputy spokesperson and deputy special assistant to the President); legal advisors, managers, and specialists in various ministries and government agencies; director in the Attorney General's Office; deputy director of the Afghanistan Center for Commercial Dispute Resolution; executive directors and managers of leading nonprofits; program managers in international organizations; and lawyers and consultants at leading law firms in the country. ALEP Quarterly Data (on file with author).

177. If lawyers act unethically by, for instance, pursuing their own self-interest over the public interest, the rationale for the legal profession's self-regulation is undermined. Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L. J. 719, 721-22 (1998).

178. *See id.* Legal ethics instruction, however, has garnered inadequate attention historically. *See, e.g.,* Deborah L. Rhode, *International Legal Ethics: The Evolution of a Field*, 42 FORDHAM INT'L L. J. 219, 220-221 (2018) (highlighting the historical disinterest in and disdain for legal ethics instruction in the U.S.). Even recent assessments of U.S. and Canadian legal education have bemoaned the inadequate concern with teaching professional responsibility. *See* Sullivan et al., *supra* note 164, at 6.

sector, in particular, is notorious for graft.<sup>179</sup> Even recent bold judicial reforms to combat corruption—such as establishing the Anti-Corruption Justice Center (ACJC)—have garnered more criticism than praise.<sup>180</sup> Indeed, rampant corruption in the formal justice system is one of the major reasons for the prevalence of informal dispute-solving processes such as *shuras* and *jirgas*.<sup>181</sup> Many Afghans view the informal justice system as more fair, trusted, and effective at delivering justice vis-à-vis state courts.<sup>182</sup> While some Afghans may have misperceptions about the role of lawyers,<sup>183</sup> legitimate concerns about the impartiality of justice sector officials also dissuade many from retaining formal legal representation.<sup>184</sup>

Another related challenge concerns the independence of the bench, particularly from the executive branch. Assessments of the judiciary have highlighted Afghan judges' perturbing lack of appreciation of the principles and practice of judicial independence.<sup>185</sup> This is reflected, *inter alia*, in the undue proximity of the bench to executive organs, particularly the Office of the President.<sup>186</sup> Such judicial attitudes—real or perceived—are especially alarming against the historical backdrop of Afghanistan's "rule by law" tradition where

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179. According to a recent study, Afghans viewed the courts as the most corrupt institution in the country. TABASUM AKSEER ET AL., THE ASIA FOUNDATION, AFGHANISTAN IN 2018: A SURVEY OF THE AFGHAN PEOPLE, 119 (Tabasum Akseer and John Rieger eds., 2018), <https://asiafoundation.org/publication/afghanistan-in-2018-a-survey-of-the-afghan-people/> (last visited Mar. 2, 2020). See also *The Rule of Law in Afghanistan: Key Findings from the 2018 Extended General Population Poll*, WORLD JUSTICE PROJECT, 10 (2018), [https://worldjusticeproject.org/sites/default/files/documents/WJP\\_Afghanistan\\_Report\\_Reduced%20%281%29.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP_Afghanistan_Report_Reduced%20%281%29.pdf) (last visited Mar. 2, 2020) (Afghans viewed judges and magistrates as the most corrupt authorities). Unsurprisingly then, Afghans regard the judiciary as the least trustworthy institution. *Id.* at 7. Moreover, Afghans believe that corruption is the most urgent problem plaguing the criminal justice system. *Id.*

180. Both the ACJC and the Attorney General's Office have been criticized for not taking graft seriously. See, e.g., J.P. Lawrence, *Afghan anti-corruption program is corrupt, US officials say*, STARS AND STRIPES (Nov. 9, 2018), <https://www.stripes.com/news/afghan-anti-corruption-program-is-corrupt-us-officials-say-1.555894> (last visited May 16, 2020).

181. According to a recent survey, 77 percent of Afghans opted for informal dispute resolution mechanisms instead of formal justice institutions such as courts. *The Rule of Law in Afghanistan: Key Findings from the 2016 Extended General Population Poll & Justice Sector Survey*, WORLD JUSTICE PROJECT, 7 (2016), <https://worldjusticeproject.org/sites/default/files/documents/Rule%20of%20Law%20in%20Afghanista%202016%20-%20Archived%20PDF.pdf> (last visited Mar. 2, 2020).

182. AKSEER ET AL., *supra* note 179, at 122.

183. Tim Craig, *Afghanistan's justice system is moving faster — maybe too fast*, WASH. POST (May 31, 2015), [https://www.washingtonpost.com/world/asia\\_pacific/afghanistans-justice-system-is-moving-faster--maybe-too-fast/2015/05/28/38e99638-fe70-11e4-8c77-bf274685e1df\\_story.html](https://www.washingtonpost.com/world/asia_pacific/afghanistans-justice-system-is-moving-faster--maybe-too-fast/2015/05/28/38e99638-fe70-11e4-8c77-bf274685e1df_story.html) (last visited Mar. 2, 2020) (according to a prominent Afghan judge, "most Afghans are scared of lawyers" and view the "[defense] lawyer the same as the guy prosecuting them").

184. WORLD JUSTICE PROJECT, *supra* note 179, at 30 (very few Afghans hire lawyers to represent them in court). See also Craig, *supra* note 183 (in a high-profile criminal case in Kabul, only 3 out of 49 suspects had legal representation).

185. See, e.g., Armytage, *supra* note 69, at 198, 201.

186. *Id.* at 198.

neither the bench nor the bar functioned independently from the Kabul-based autocrats.<sup>187</sup>

ALEP's textbook, *An Introduction to Legal Ethics in Afghanistan*, presents the first critical discussion of legal ethics in Afghan legal education. The textbook forms the core curriculum for AUAF's Professional Responsibility class. ALEP and AUAF take teaching legal ethics very seriously; that is why, for instance, the Professional Responsibility curriculum is a mandatory three-credit course for law students. The curriculum explores Afghanistan's *Advocates' Law* (the key legislation governing lawyers' conduct),<sup>188</sup> the Afghanistan Independent Bar Association (AIBA), and other key legal ethics rules including AIBA's Bylaws and Code of Conduct.<sup>189</sup>

Through the curriculum, students are introduced to fundamental legal ethics principles such as independence, integrity, competence, confidentiality, and eschewing conflicts of interest. In addition to gaining knowledge of the rules of professional conduct, the curriculum helps students critically engage with and reflect upon ethical dilemmas that confront lawyers in practice through hypothetical problems, application exercises, discussion questions, and other instructional tools.<sup>190</sup> Moreover, legal ethics instruction is not just limited to this particular textbook. Given the significance and broad scope of the topic, discussion of legal ethics is woven into other ALEP textbooks and AUAF classes as well.<sup>191</sup>

Promotion of the rule of law is an express, overarching objective of the Afghanistan Independent Bar Association (AIBA).<sup>192</sup> AIBA's Code of Conduct

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187. Building public confidence in the justice system requires utmost diligence to not only eschew impropriety, but also the appearance of impropriety. Perception of judicial conduct also matters. See, e.g., O'Connor, *supra* note 2, at 5-6.

188. ADVOCATES' LAW, Official Gazette no. 934 (2007) (Afg.).

189. Established in 2008, AIBA is the key entity regulating lawyers in Afghanistan. See INTERNATIONAL BAR ASSOCIATION, *The Establishment of the Afghan Independent Bar Association (AIBA)*, [https://www.ibanet.org/Human\\_Rights\\_Institute/Work\\_by\\_regions/Asia\\_Pacific/Afghanistan.aspx](https://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Asia_Pacific/Afghanistan.aspx) (last visited Mar. 2, 2020).

190. See, e.g., the following brief excerpts from ALEP's *Legal Ethics* textbook concerning lawyers' duties under the *Advocates' Law* and the AIBA Code of Conduct:

"Your client is a doctor who comes to you and admits that he made a mistake during a surgery on one of his patients. He tells you that no one knows about the mistake and that the patient is fine now. He further tells you that, should the patient develop any type of health problem as a result of your clients' mistake, there is almost no chance to trace it to your client. Your client asks for your advice on how to handle this situation. How would you advise this client?" AZIZI ET AL., *supra* note 47, at 29.

"According to Article 5 of the AIBA Code of Conduct, an advocate should report any misconduct of her colleagues and employees to the AIBA. What if complying with this rule requires that a lawyer must share some confidential information with the AIBA? In your opinion, which of these two duties (the duty to report misconduct or the duty of confidentiality) should prevail?" *Id.* at 119.

191. See, e.g., ALEKSEYEVA ET AL., *supra* note 30, at 122-24 (discussing the role of lawyers in the Afghan justice system including ethical principles such as the duty of confidentiality).

192. AIBA Bylaws, art. 2(1) (2009) (Afg.).

urges lawyers to observe the “rule of law and ethical standards.”<sup>193</sup> These aspirations of ethical commitment must move beyond mere rhetoric. Given the public’s negative perception of the legal profession in Afghanistan, a culture of ethics and integrity is necessary to infuse trust in the justice system. Teaching legal ethics seriously is a critical step towards fulfilling that promise.

*E. Investing for the Long-Term—Cost-Effectively*

There is no quick fix for Afghanistan’s myriad rule of law woes. Lasting reforms in the justice sector, which is a critical variable in the rule of law matrix, necessitate foundational interventions. Top-down and transient attempts at justice sector reform that do not address underlying causes—particularly the deficient legal education system—will remain fleeting in impact. The quest for the rule of law in transitional states such as Afghanistan hinges, *inter alia*, on a vanguard of properly trained legal professionals who are committed to fidelity to the law. Developing that new generation of lawyers and judges is only possible through systemic reforms in the legal education system that are implemented iteratively from the ground up,<sup>194</sup> which is a long-term investment.<sup>195</sup>

ALEP’s curriculum development efforts constitute an important contribution to that long-run investment strategy. ALEP’s innovative textbooks are already being taught by a growing number of Afghan law schools.<sup>196</sup> In addition to benefiting law students, the instructional materials and pedagogical approach can help develop the capacity of legal educators to teach effectively.<sup>197</sup> The curriculum can serve as a platform to train Afghan instructors and academics in interactive teaching-learning methods and curriculum design.<sup>198</sup> Beyond law schools, other stakeholders in the justice sector, including Afghan judges, have also used ALEP publications. In addition, a panoply of various organizations and

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193. AIBA Code of Conduct, art. 10 (2009) (Afg.).

194. Effecting systemic reforms in legal education requires an iterative and incremental approach. *Cf.* Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67(2) J. LEGAL EDUC. 376, 407-09 (2018). *See also* Hakimi & Jensen, *supra* note 73, at 112-13.

195. *See, e.g.*, USIP Report, *supra* note 72, at 9 (“major gains in the quality of administration of justice can only be achieved if investments are made in the preparation of the next generation of legal professionals” by addressing the “dismal state” of the legal education system). *See also* Armytage, *supra* note 69, at 203 (stressing the need to re-focus from short-term “emergency training” to a long-term strategy of building the foundations of the legal education system). In the short run, given the dominant (and flawed) traditional approach to legal pedagogy, innovative legal education reforms may face resistance, especially by senior faculty. *See, e.g.*, Ibrahim, *supra* note 87, at 8 (senior faculty, who often wield more power, may be resistant to such reforms for various reasons including their own job security concerns). *See also* Hamoudi, *supra* note 22, at 123, 130-31 (highlighting resistance by senior faculty against introducing clinical legal education in Iraqi law schools).

196. Hakimi & Jensen, *supra* note 73, at 95.

197. Capacity development of young and mid-career academics is crucial to strengthening the quality of university education. *Cf.* World Bank, *supra* note 86, at 27.

198. These are some of the core areas for the capacity building of young and mid-career faculty. *Id.*

individuals in public, private, and non-profit spheres have been increasingly utilizing ALEP's materials to navigate Afghanistan's evolving legal system.<sup>199</sup>

Legal education has a profound impact on society.<sup>200</sup> As a pioneer in developing Afghan legal curricula, ALEP's work, and its wide-ranging beneficiaries, will leave a lasting legacy for the legal profession in Afghanistan. The growing community of legal professionals shaped by these innovative resources—lawyers, prosecutors, judges, and educators—will serve as agents of change and will inevitably have ripple effects on the justice sector and wider society.<sup>201</sup> In the long-term, an expanding cadre of lawyers and judges equipped with strong critical thinking skills, practical legal competencies, and ethical training will boost confidence in the legal institutions and contribute to a rule of law culture in Afghanistan.<sup>202</sup>

In addition to the enduring impact of well-designed legal education initiatives on the rule of law, such reforms are highly cost-effective. For instance, the cost of the AUAF law program over a ten-year period will be approximately equivalent to the cost of deploying ten soldiers to Afghanistan for just one year.<sup>203</sup> Given the large sums of money invested in Afghanistan, whilst stability and the rule of law remain elusive, the Afghan government and the international community must give innovative and cost-effective approaches serious consideration.<sup>204</sup>

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199. Hakimi & Jensen, *supra* note 73, at 95.

200. Rigorous legal training has produced new generations of robust legal professionals who have changed the course of their countries' histories. *See, e.g.*, Martin Boehmer, *Legal Education Reform: How the Academy at Chuquisaca Forged Argentina's Founding Elite*, 63 J. LEGAL EDUC. 373 (2014) (arguing that high-quality legal education was a key factor in nurturing a cadre of accomplished lawyers well-versed in critical inquiry and legal skills who eventually led Latin America to independence from Spain).

201. Graduates of the AUAF law program, for instance, have already begun making their mark on the Afghan justice sector. AUAF law alumni, especially women, are working on myriad legal issues in key roles in the government, private, and nonprofit fields across Afghanistan. *See* Hakimi & Jensen, *supra* note 73, at 105-06. The new generation of legal professionals will have a crucial role in the legal empowerment of the broader society, particularly disadvantaged populations, by engaging with other stakeholders such as civil society groups. For an in-depth analysis of the importance of a bottom-up, grassroots approach towards educating, mobilizing, and empowering the community to advance the rule of law, *see generally* Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (Carnegie Endowment for Int'l Peace, Democracy and Rule of Law Project Working Paper No. 41, Oct. 2003).

202. *See also* MARY MCCLYMONT & STEPHEN GOLUB EDS., MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 186 (Ford Foundation 2000) (noting that legal education reforms "can have a multiplier and long-term impact on initiatives to strengthen or reform laws and legal institutions" in China).

203. Hakimi & Jensen, *supra* note 73, at 114. *See also* Larry Shaughnessy, *One soldier, one year: \$850,000 and rising*, CNN (Feb. 28, 2012, 5:50 PM), <http://security.blogs.cnn.com/2012/02/28/one-soldier-one-year-850000-and-rising/> (last visited Mar. 2, 2020).

204. Efforts to build the rule of law in Afghanistan have faced numerous challenges including the state actors' lack of commitment to reform; failing to treat democracy and justice as top priorities; and problems in strategy, implementation, and coordination of rule of law assistance. Geoffrey Swenson, *Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed*, 42 INTERNATIONAL SECURITY 114, 134, 146-49 (2017).

## CONCLUSION

Building and sustaining a rule of law society requires a collective belief in and fidelity to this ideal.<sup>205</sup> Planting and cultivating such cultural belief is a daunting task—especially where such a norm has been elusive.<sup>206</sup> Since its formation in the mid-eighteenth century, Afghanistan has experienced episodes of “rule by law,” “rule of *man*,” and “rule of *gun*”—much more so than the rule of law. The challenge for conflict-affected countries like Afghanistan is, thus, enormous.

But there is still hope. Legal education can play a critical role in inculcating a different cultural belief through a new generation of competent and ethical lawyers. As an investment in the future of the legal profession, legal education reform must be a core pillar of any credible endeavor to revamp the justice sector.<sup>207</sup> Failing to prioritize legal education reform will severely hamper, and ultimately undermine, efforts to strengthen the rule of law.<sup>208</sup>

ALEP’s undertaking, on its own, will not be a panacea for the country’s substantial legal education and justice sector troubles especially considering other historical, political, and security variables at play.<sup>209</sup> Given the magnitude and urgency of the challenges, however, ALEP has made a vital contribution to creating a springboard for systemic legal education reform in Afghanistan.

ALEP’s work has helped fill a major void in Afghan legal education. ALEP textbooks are amongst rare resources critically analyzing the rapidly evolving legal and regulatory landscape in Afghanistan. In addition to providing much-needed updated resources on Afghan law, ALEP’s curriculum is designed to produce legal professionals imbued with critical thinking, practice skills, and professional values and integrity—imperative competencies for advocates charged with injecting confidence in the justice system and defending the rule of law. AUAF’s innovative law program, driven by ALEP’s curriculum, has

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205. Tamanaha, *supra* note 6, at 246.

206. Societal attitudes towards the law are negative where the legal profession is “perceived to be corrupt and inept,” or when “the content or application of the law is seen to be unfair.” *Id.* at 247.

207. Cf. Corbin Lyday & Jan Stromsem, *Rebuilding the Rule of Law in Post-Conflict Environments*, UNITED STATES AGENCY FOR INT’L DEV., 25 (May 2005), [https://www.usaid.gov/sites/default/files/documents/1866/USAID-Post\\_Conflict\\_ROL\\_508.pdf](https://www.usaid.gov/sites/default/files/documents/1866/USAID-Post_Conflict_ROL_508.pdf) (last visited Mar. 2, 2020) (stressing the importance of producing a new generation of legal professionals to effect meaningful reforms).

208. Unfortunately, legal education is often the neglected step-child of rule of law reform. This is due to various factors including donors’ preference for short-term projects with immediate payoff and easily measurable results. See, e.g., David Pimentel, *Legal Education as a Rule of Law Strategy: Problems and Opportunities with U.S.-Based Programs*, 22 U.C. DAVIS J. INT’L. L. & POL’Y. 41, 45-48 (2015).

209. See, e.g., Nick Grono, *Rule of Law and the Justice System in Afghanistan*, INT’L CRISIS GROUP (Apr. 28, 2011), <https://www.crisisgroup.org/asia/south-asia/afghanistan/rule-law-and-justice-system-afghanistan> (last visited Mar. 2, 2020) (highlighting other systemic rule of law challenges in Afghanistan including political, accountability, and constitutional hurdles). Moreover, custom and tradition are natural adversaries to change. Instituting reforms, especially systemic ones, will not be readily embraced by the old guard that wields considerable influence in the academy and beyond.

already left an indelible imprint on Afghan legal education and the wider justice sector. A growing number of Afghan law schools and other institutions in various sectors are adopting ALEP's materials and approach.

Much work still remains in improving legal education and, thereby, developing a robust legal profession in Afghanistan. Hopefully, ALEP's pioneering work in legal curriculum development can serve as an impetus for wider efforts in promoting a rule of law culture from the ground up in Afghanistan and other transitional societies.