NO-08 Jirga, jemaa and kris: the courts of mobile and stateless peoples

The permanent retreat of state capacity leaves a vacuum in dispute resolution, resource allocation, and the monopolization of violence. Historically, communities operating beyond the reach of a centralized state—whether due to geographic isolation, nomadic mobility, or active resistance to imperial taxation—have engineered sophisticated customary justice systems. These systems maintain social equilibrium without specialized police forces, prisons, or professional judiciaries. Instead, they rely on kinship networks, religious arbitration, collective liability, financial sureties, and the threat of social death.

This report provides an exhaustive analysis of four prominent customary courts: the Pashtun *jirga*, the Berber *jemaa*, the Kurdish *divan*, and the Romani *kris*. It evaluates their structural mechanics, historical vulnerability to capture by dark-triad individuals (characterized by narcissism, Machiavellianism, and psychopathy), and their viability as governance blueprints for post-collapse scaling. The analysis draws heavily on primary ethnographic records, historical documentation, and modern empirical comparisons between customary and formal state courts.

I. The Pashtun Jirga: Arbitration Under Arms

The *jirga* (or *shura*) is a traditional assembly of elders utilized predominantly by the Pashtun tribes of Afghanistan and Pakistan to adjudicate disputes under the customary code of *Pashtunwali*. Unlike state courts that prioritize punitive isolation and abstract legal truth, the *jirga* operates on restorative and compensatory principles. Its primary objective is to prevent the escalation of blood feuds between heavily armed, segmentary patrilineal groups.

Composition, Procedure, and Enforcement Mechanics

A *jirga* is convened on an ad-hoc basis when a dispute—ranging from land boundaries to murder—threatens social stability. Disputants agree on a panel of *jirgamaran* (respected male elders) and formally grant them *waak* (authority) to mediate and issue a binding resolution[1]. The procedure is deliberately exhaustive, relying on the gradual building of consensus to ensure both factions can accept the outcome without a catastrophic loss of honor.

To ensure compliance in a stateless, heavily armed environment, the *jirga* utilizes two distinct and potent enforcement mechanisms:

1. **Machalga (Financial Surety):** Before deliberations begin, both parties must deposit a substantial sum of money, livestock, or goods (*machalga*) with the *jirgamaran*. If either party subsequently breaches the final verdict or refuses to accept the ruling, their *machalga* is forfeited to the *jirga* or the broader community[1].
2. **Arbakai / Lashkar (Ancestral Militia):** In the absence of a standing police force, the *jirga* enforces its rulings through the *arbakai*, a traditional policing organization convened temporarily from the populace[1]. If a ruling is violently opposed, the *jirga* mandates a conscription ratio—historically one out of every five, or one out of every ten fighting-age men from each household in the village—to form a *lashkar* (militia)[4]. This militia is authorized to burn the offender's home, seize their property, or enforce territorial exile.

Empirical records underscore the severity of these sanctions. In one documented case, a *jirga* ruling against an unprovoked attacker stipulated the forfeiture of the attacker's house to the victim's family, a fine of one million Pakistani rupees, two sheep, and two years of absolute village exile for the attacker and all his male relatives[1].

Empirical Comparisons: Customary vs. State Courts

When the state is weak, corrupt, or collapsed, populations default to customary mechanisms. Extensive empirical data from Afghanistan provides a rigorous comparison between customary and formal state courts on metrics of speed, cost, and legitimacy.

According to longitudinal survey data collected by The Asia Foundation and other international observers, customary mechanisms historically resolved over 80% of disputes in Afghanistan, though participation rates fluctuate depending on regional stability and urban-rural divides[1]. The preference for the *jirga* is driven by structural efficiencies:

Metric	State Courts	Customary Courts (Jirga/Shura)
Speed	Agonizingly slow, prone to endless bureaucratic delays and case backlogs.	Rapid. Once convened, disputes are frequently resolved in days or weeks[7].
Cost	Exorbitant. Requires bribes, formal filing fees, and professional lawyers.	Cost-effective. Requires *machalga* and hosting costs (food for elders), but devoid of opaque rent-seeking[1].
Legitimacy	Low. Perceived as alien, corrupt, and disconnected from local moral realities.	High. Over 70% of Afghans surveyed expressed trust in local elders, valuing the freedom to choose arbitrators and the focus on restorative compensation[1].

SCALE LEDGER: Pashtun Jirga

Scale Rung	Status	Explanation
Household (4–10)	Operates	Paternal authority resolves immediate internal disputes; formal sub-jirgas are rarely required.

Hamlet/Band (30–50)	Optimal	Kinship ties are immediate; *arbakai* is easily mobilized through mechanisms of shame and honor.
Village (150–500)	Optimal	Functions smoothly via representative heads of lineages. High compliance secured via *machalga*.
Parish/District (1.5k–5k)	Functional	Requires delicate factional balancing. *Arbakai* levies (1-in-10) field highly potent, localized militias.
Town/Watershed (15k–50k)	Strained	Wealth disparities allow dominant factions to forfeit *machalga* and defy rulings with impunity.
Region (0.5M–5M)	Failed	Inter-tribal federations are strictly temporary (e.g., resistance to Soviet occupation) and dissolve post-threat.
Nation (50M–500M)	Captured	National-scale attempts (Loya Jirgas) are inevitably captured by warlords and foreign powers (see below).
Planet (8B)	Never Tried	Conceptually incompatible with planetary scales.

CAPTURE TEST: Pashtun Jirga

Vulnerability: Dark-triad traits (Machiavellianism, psychopathy) thrive by subverting the *jirga's* primary enforcement tools. Corrupt *jirgamaran* can intentionally engineer impossible verdicts to seize the *machalga* for personal enrichment, a known hazard when the deposit is not communalized[1]. Furthermore, immensely wealthy actors simply view the *machalga* as the

acceptable price of doing business, rendering the deterrent obsolete[1].

Historical Capture by Empire: The British Empire institutionalized the capture of customary law via the Frontier Crimes Regulation (FCR) of 1901[10]. The British utilized the collective responsibility principle of the *jirga* to punish entire tribes for the actions of individuals[12]. Under Sections 21 and 22 of the FCR, state-appointed *maliks* (tribal leaders) and Political Agents were granted draconian powers to blockade villages, demolish hamlets, levy ruinous fines on entire communities, and imprison tribesmen without trial for up to three years, backed by imperial military force[11].

The Failure of Scale: The 2002 and 2003 Loya Jirgas

The *Loya Jirga* (Grand Assembly) represents an attempt to scale the village-level consensus model to the national rung. Following the fall of the Taliban in 2001, the international community utilized this customary form to legitimize a new state architecture. The result was near-instantaneous capture by warlords.

The Emergency Loya Jirga (June 11–19, 2002) was intended to seat 1,450 delegates, including 160 women and 1,051 indirectly elected representatives from 362 districts[14]. However, an additional 500 uninvited delegates—primarily warlords and their armed retinues—forced their way into the proceedings[14]. The assembly was rapidly captured by foreign and domestic actors. U.S. envoy Zalmay Khalilzad intervened heavily, publicly pressing former King Zahir Shah (the popular favorite, supported by a petition of 800 delegates) to withdraw his candidacy to ensure the installation of the US-backed Hamid Karzai[14]. Warlords from the Northern Alliance (such as Marshal Fahim, Younus Qanuni, and Ismail Khan) dominated the resulting cabinet, utilizing intimidation, vote-buying, and telephoned death threats against civilian delegates[15].

The Constitutional Loya Jirga of December 2003 (502 to 504 delegates, including 114 women) formalized this institutional capture[20]. On December 17, 2003, Malalai Joya, a 24-year-old female delegate from Farah province, seized a microphone and publicly denounced the warlords[23]. She declared: "Why would you allow criminals to be present at this Loya Jirga, warlords responsible for our country's situation? [...] They might be forgiven by the Afghan people, but not by history"[23]. She later likened the parliament to a "zoo" filled with "dangerous criminals" and "world-known killers" who were using the "mask of democracy"[23]. Her microphone was promptly cut, and she was physically charged by armed mujahideen within the assembly, requiring UN security extraction[25]. This event conclusively demonstrated that when scaled to the national level without a neutral monopoly on violence, the *jirga* structure provides a veneer of traditional legitimacy for heavily armed, dark-triad actors to ratify their own supremacy.

Resistance Features: Resistance to capture relies heavily on the universal armed status of the male populace. If a faction attempts overt domination at the village level, the segmentary lineage system usually triggers a balancing coalition of weaker factions.

II. The Berber Jemaa: Village Republics and Colonial Codification

The *jemaa* (or *tajmat* / *djemâa*) is the traditional village council of the Berber (Amazigh) populations of North Africa, primarily active in the Kabylia region of Algeria and the High Atlas

mountains of Morocco. Operating in harsh, mountainous terrains historically beyond the direct taxation reach of the Arab-Islamic *makhzen* (state), the *jemaa* functioned as a fiercely egalitarian, democratic assembly of all adult males[27].

Composition, Procedure, and the Kanoun

The *jemaa* is governed by the *kanoun* (plural: *qawânîn*), a highly localized code of customary law distinct from standard Islamic jurisprudence (Sharia)[31]. Proceedings are public, and every male head of a household (*kharouba*) holds voting rights.

The most comprehensive codification of this system was executed by French colonial military officer Adolphe Hanoteau and appellate counselor Aristide Letourneux in their monumental three-volume 1872–1873 work, *La Kabylie et les coutumes kabyles*[32]. They documented an intricate matrix of fines ranging from a quarter of a real to 25 douros for civil infractions, property damage, and honor violations[35]. French sociologist Émile Durkheim subsequently used Hanoteau and Letourneux's work to argue that Kabyle society was the quintessential example of "mechanical solidarity"—a primitive society bound purely by identical beliefs and harsh punitive law[32].

However, modern scholarship reveals that Hanoteau, Letourneux, and Durkheim systematically distorted the reality of the *kanoun*. To aid French magistrates in administration, the authors force-fit fluid, oral precedents into the rigid, codified categories of the Napoleonic Code, artificially transforming flexible arbitration into rigid tribal statutory law[31]. In reality, the *kanoun* was highly adaptable, dealing extensively with complex agricultural contracts and commercial conventions that defied Durkheim's simplistic models of primitive solidarity[31].

The Igurramen: Arbitration by Saints

When disputes between rival lineages within or between villages paralyze the *jemaa*, the system relies on an external arbitration mechanism. As documented in Ernest Gellner's 1969 ethnography *Saints of the Atlas*, these societies utilized *igurramen*—hereditary holy men or "saints" possessing *baraka* (divine grace or magical prosperity)[36].

Based in neutral lodges (*zawiyas*), such as the one founded by Sidi Said Ahansal in 1397–1398, the *igurramen* did not possess coercive military power[38]. Instead, they acted as mathematically unaligned third parties. Their decisions were enforced by the mutual exhaustion of the feuding parties and the threat of supernatural sanction. This allowed fiercely proud, heavily armed segmentary tribes (such as the Ait Atta) to accept a verdict and back down without losing face[37].

SCALE LEDGER: Berber Jemaa

Scale Rung	Status	Explanation
Household (4–10)	Operates	Internal patriarchal control.
Hamlet/Band (30–50)	Optimal	Face-to-face accountability minimizes the need for

		severe *kanoun* enforcement.
Village (150–500)	Optimal	The primary domain of the *jemaa*. All adult males participate; calibrated fines enforce order.
Parish/District (1.5k–5k)	Functional	Federations of villages mediate through *igurramen* (saints) in neutral *zawiyas*.
Town/Watershed (15k–50k)	Strained	Requires complex, shifting alliances of *çofs* (moieties); highly prone to gridlock and feuding.
Region (0.5M–5M)	Failed/Captured	Defeated by French colonial armies (final conquest of High Atlas completed in 1933)[38].
Nation (50M–500M)	Never Tried	Conceptually antithetical to the hyper-local nature of the *kanoun*.
Planet (8B)	Never Tried	N/A

CAPTURE TEST: Berber Jemaa

Vulnerability: The requirement for near-unanimous consensus and the reliance on external *igurramen* for arbitration makes the *jemaa* vulnerable to divide-and-conquer strategies by sophisticated external actors who co-opt the arbitrators.

Historical Capture: Following a major defeat of French-allied forces in 1922, the French shifted tactics and began co-opting key Ahansal saints, appointing them as *caids* (state-backed chiefs) in 1923, effectively turning the neutral arbitrators into salaried agents of the empire[38]. The most devastating institutional capture was the French promulgation of the *Dahir Berbere* (Berber Decree) in May 1930[41]. The decree aimed to permanently cleave the Berbers from the Arab-Muslim majority by placing Berber territories under French criminal jurisdiction while formally recognizing the *jemaa* for civil matters[27]. This cynical codification captured the customary courts, stripping them of autonomy and turning them into low-level administrative appendages[28].

Resistance Features: The *jemaa's* highly decentralized nature historically made it resilient against total decapitation. The fierce egalitarianism of the assembly inherently resisted the rise of domestic autocrats. When the French imposed the *Dahir Berbere*, it triggered a massive, unified nationalist backlash that paradoxically strengthened the Moroccan independence movement, demonstrating that customary institutions cannot be cleanly excised from their cultural bedrock by foreign legislation[43].

III. The Kurdish Divan: Blood Feuds and the Delegation of Imperial Violence

Operating across the mountainous borders of modern Turkey, Iraq, Iran, and Syria, Kurdish customary governance revolves around the *divan* or *civat* (the tribal council or audience)[45]. Unlike the fiercely egalitarian Berber *jemaa*, Kurdish customary governance is highly stratified. It revolves around the absolute, coercive authority of the *Agha* (tribal chief) and the moral authority of the *Shaykh* (Sufi religious leader, frequently affiliated with the Naqshbandi or Qadiri orders)[48].

Customary Law and the Economics of Violence

Kurdish customary law relies on the maintenance of honor and the delicate balance of retaliatory violence. Dispute resolution predominantly deals with grazing rights, property theft, and blood feuds (*xwen*)[51]. A murder triggers an obligatory, inter-generational feud between lineages. To halt the cycle of reciprocal killings, a powerful *Agha* or a neutral *Shaykh* convenes a *divan*.

Resolution typically involves the payment of blood money or the institution of *berdel*—the reciprocal exchange of brides between the feuding families[52]. By intertwining the biological futures of the lineages, *berdel* forces a truce, though it explicitly commodifies women as instruments of conflict resolution[53]. The transmission of this customary memory and legal precedent was traditionally maintained by *dengbêjî*, an oral tradition of bards, which was critical in a society where literacy was low and the Kurdish language was frequently banned by regional states (e.g., in Turkey between 1924 and 1991)[47].

Anthropologists Martin van Bruinessen (*Agha, Shaikh and State*, 1992) and Lale Yalçın-Heckmann (*Tribe and Kinship among the Kurds*, 1991) document that this system was rarely autonomous; it was in constant, frictional dialogue with the surrounding empires (Ottoman, Safavid)[49]. The *Aghas* maintained control by extracting agricultural surplus from non-tribal peasants and distributing patronage to their armed retainers.

SCALE LEDGER: Kurdish Divan

Scale Rung	Status	Explanation
Household (4–10)	Operates	Intense patriarchal control.

Hamlet/Band (30–50)	Optimal	Sub-chiefs handle daily grazing and property disputes rapidly.
Village (150–500)	Optimal	The *divan* resolves intra-village disputes through the *Agha's* coercive capacity.
Parish/District (1.5k–5k)	Functional	Federations united under a paramount *Agha* or mediated by a Sufi *Shaykh*.
Town/Watershed (15k–50k)	Strained	*Aghas* engage in volatile, lethal competition for supremacy, resulting in chronic feuding.
Region (0.5M–5M)	Failed/Captured	Attempts to unite (e.g., Sheikh Ubeidullah's rebellion) collapsed due to internal tribal rivalries and state intervention[45].
Nation (50M–500M)	Never Tried	Kurds remained largely stateless, absorbed into modern nation-states (Turkey, Iraq, Iran, Syria).
Planet (8B)	Never Tried	N/A

CAPTURE TEST: Kurdish Divan

Vulnerability: The system relies entirely on the personal authority and martial strength of the *Agha*. A Machiavellian actor can easily capture the *divan* if they secure external funding and weaponry, allowing them to bypass customary checks and balances entirely.

Historical Capture: The absolute capture of Kurdish customary structures occurred in 1891, when Ottoman Sultan Abdulhamid II (nicknamed "Bavê Kurdan" or father of the Kurds) created the Hamidiye Cavalry[57]. Emulating the Russian Cossacks, the state armed specific Kurdish tribes and granted the *Aghas* military ranks, state salaries, and sweeping legal immunity from standard prosecution[59].

This injection of state resources completely destroyed the customary equilibrium. Shielded from

state prosecution and armed with modern rifles, the Hamidiye *Aghas* turned the *divan* into a tool of absolute tyranny. They violently expropriated land from weaker Kurdish tribes and utilized their state-sanctioned immunity to execute the massacres of Christian Armenians and Nestorians in the late 19th and early 20th centuries[48].

Resistance Features: The only historical check against a despotic *Agha* was the ability of tribesmen to "vote with their feet" and migrate to the protection of a rival *Agha*. Once the state closed off migration routes and backed specific chiefs with overwhelming force, this safety valve vanished, locking the population into subservience.

IV. The Romani Kris: Transnational Jurisprudence and Social Death

The *Romani kris* (or *Kris Romani*) represents a radical departure from the territorially bound systems of the Pashtuns, Berbers, and Kurds. It is an autonomous, non-territorial customary court utilized primarily by Vlax Roma subgroups (such as the Kalderash, Lovari, and Kelderari) dispersed across Eastern Europe, the Americas, and the global diaspora[62].

The Krisoniere and the Enforcement of Marime

The *kris* adjudicates internal disputes regarding property loss, territorial poaching between Roma groups, matters of honor, and broken labor agreements[64]. Cases are brought by the aggrieved party. A tribunal of *krisoniere* (respected male elders acting as judges) is selected by the parties from the community[64]. The *krisoniere* are not professional judges but hold significant moral weight. They are paid a modest fee—typically ranging from €100 to €200 per judge per case—which is divided evenly among the tribunal[66].

Lacking any territorial safe haven, prisons, or a physical police force, the *kris* enforces its verdicts through a potent psychological and social mechanism: *marime* (pollution, taboo, or banishment)[64]. The enforcement escalates based on severity:

1. **Glaba (Fine):** Minor offenses are punished with a financial penalty paid collectively by the offender's family, reinforcing kin responsibility[64].
2. **Temporary Marime:** Severe offenses result in social banishment. An individual declared *marime* is subjected to absolute social death[64]. Other Roma are forbidden from eating, drinking, or speaking with them; no marriages can be arranged for them or their children; and upon physical death, they are denied a funeral[64].
3. **Permanent Marime:** For the most egregious crimes, permanent *marime* means the person's blood is symbolically changed to *gaje* (non-Romani) blood. They are exiled forever from the "Gypsy nation," stripped of hospitality, protection, and identity[64].

Empirical Viability and Digital Adaptation

Recent empirical analyses by scholars such as Elena Marushiakova, Vesselin Popov, and international legal pluralists demonstrate the enduring vitality of the *kris*. A comprehensive dataset of 76 contemporary conflicts (2001–2022) revealed that 56 were resolved via a formal *kris* tribunal[66]. The average financial compensation ordered was €16,965, resulting in total tracked compensatory payments of €938,250 across the sample[66].

Notably, the system has adapted seamlessly to globalization. *Kris* hearings, traditionally

requiring physical assembly in a single day, are now frequently conducted via digital networks and video conferencing, coordinating transnational enforcement across continents while retaining the Romani language as the medium of adjudication[65].

SCALE LEDGER: Romani Kris

Scale Rung	Status	Explanation
Household (4–10)	Operates	Internal patriarchal control; *kris* is rarely invoked for internal family matters.
Hamlet/Band (30–50)	Optimal	Functions efficiently within localized *kumpania* (encampment/settlement).
Village (150–500)	Optimal	Highly effective within closed subgroups sharing the exact same pollution taboos.
Parish/District (1.5k–5k)	Functional	Scales across wide geographic areas provided the involved parties belong to the same meta-group (e.g., Vlax Roma).
Town/Watershed (15k–50k)	Strained	Trust boundaries break down. The *kris* is never used for disputes with non-Roma (*gaje*) or vastly divergent subgroups[65].
Region (0.5M–5M)	Failed	Cannot adjudicate across diverse populations. Lacks physical enforcement capacity.
Nation (50M–500M)	Failed	N/A

Planet (8B)	Functional (Niche)	Through digital communication, the *kris* manages a geographically planetary, but demographically tiny, network of transnational Roma[66].

CAPTURE TEST: Romani Kris

Vulnerability: A psychopath within the community cannot easily capture the *kris* through violence, as the community lacks standing militias. However, a Machiavellian actor can exploit the surrounding state legal system (the *gaje* police) to punish rivals, bypassing the *kris* entirely and weaponizing the state against the community[65]. **Historical Capture:** The *kris* is uniquely resistant to internal capture due to its decentralized, ad-hoc nature. However, historical state regimes—such as the Austro-Hungarian Empire under Empress Maria Theresa, the Ottoman Empire, and post-WWII Eastern Bloc communist regimes—attempted to obliterate the *kris* by instituting forced sedentarization, assimilation, and the criminalization of nomadism[67].
Resistance Features: The fluidity, strict orality, and non-territoriality of the *kris* have allowed it to survive state collapse, institutional slavery (in Wallachia and Moldova), and the Holocaust[65]. Digitalization has further inoculated the *kris* against physical disruption by hostile states[66].

V. Synthesis: Three Perspectives on Customary Justice

To accurately evaluate these mechanisms for a post-collapse architecture, we must separate the romantic mythology from the empirical reality.

1. What the arrangement's own people said it did:
Participants uniformly claim these courts uphold divine order, ancestral honor, and cosmic balance. Pashtuns view the *jirga* as the purest expression of *Pashtunwali*; Berbers view the *jemaa* and the *kanoun* as the shield of democratic freedom against tyrants; Roma view the *kris* as the guardian of purity (*romanipen*) against the polluted *gaje* world. In all cases, the courts are viewed as existential lifelines that define what it means to be human within their respective cultures.

2. What the record shows it did:
The historical record shows these systems successfully managed low-level resource and property disputes, prevented the complete annihilation of lineages through reciprocal blood feuds, and allowed stateless populations to survive centuries of imperial hostility. However, the record also irrefutably shows these systems were exceptionally brittle when confronted with modern state power. They were easily co-opted by empires (the British FCR, the Ottoman Hamidiye, the French Dahir) to enforce colonial extraction, morphing rapidly into instruments of local tyranny.

3. What modern scholarship infers: Modern scholarship views these courts as complex systems of "enforceable trust" and "network governance"[65]. They are sophisticated

game-theoretic mechanisms designed to align the self-interest of armed kin groups. They are not static, archaic artifacts of antiquity, but highly adaptable, evolving institutions—evidenced by the current digitalization of the Romani *kris*[66].

VI. The Strongest Case Against Customary Justice

The most profound critiques of these systems come from scholars of legal pluralism, transitional justice, and human rights, including Ali Wardak, John Braithwaite, Noah Coburn, and Deborah Isser. The strongest case against customary courts centers on three systemic failures:

1. **The Erasure and Commodification of Women:** Customary justice is overwhelmingly patriarchal. In the *jirga*, *jemaa*, and *divan*, women are entirely excluded from the adjudicative process. Worse, they are frequently utilized as currency to settle male disputes. The practices of *berdel* (bride exchange) in Kurdish law and *baad* (giving women as blood-price) in Pashtunwali highlight that these systems achieve peace by explicitly violating the bodily autonomy of women[6].
2. **Elite Capture and Wealth Bias:** While theoretically egalitarian (particularly the *jemaa* and *jirga*), these systems structurally favor the rich and heavily armed. In the *jirga*, wealthy disputants can simply forfeit their *machalga* and ignore the ruling if it displeases them[1]. In the *divan*, the *Agha* acts as both judge and warlord, rendering impartial justice impossible[49].
3. **The Naturalistic Fallacy:** There is a persistent romanticization of customary law as inherently noble, democratic, or harmonious. As Deborah Isser's foundational work (*Customary Justice and the Rule of Law in War-Torn Societies*, 2011) stresses, empowering these systems often inadvertently institutionalizes "poor justice for the poor," locking marginalized populations into systems lacking due process[7]. These are coercive mechanisms maintained by the credible threat of overwhelming violence (burning houses, tribal warfare) or absolute social annihilation (*marime*). They do not seek "truth"; they seek the rapid termination of violent friction to preserve the ingroup[1].

Conclusions and Post-Collapse Utility

10-Line Summary of Robust Findings

Customary courts (*jirga*, *jemaa*, *divan*, *kris*) excel at resolving disputes rapidly, cheaply, and with high local legitimacy compared to formal state courts. They function best at the village scale (150–500 people) where face-to-face accountability and kinship ties remain strong. Lacking police, they rely on alternative enforcement: financial deposits (*machalga*), temporary citizen militias (*arbakai*), or total social excommunication (*marime*). They are fundamentally restorative, not punitive, designed to halt blood feuds rather than determine abstract legal truth. However, they are systematically exclusionary, universally marginalizing women and vulnerable minorities. Furthermore, when external powers inject capital or modern weaponry into these systems, the egalitarian balance immediately collapses, leading to despotic capture by warlords or chiefs (*Aghas*, *Maliks*). Attempts to scale these consensus mechanisms to a national level (e.g., the 2002/2003 Loya Jirgas) inevitably result in capture by dark-triad actors masquerading under traditional legitimacy.

Contested or Open Questions

1. Can the extreme efficiency of social ostracism (*marime*) be divorced from the irrationality of religious pollution taboos, or does the efficacy of the sanction depend entirely on supernatural fear?
2. Is it possible to engineer a *jemaa*-style assembly that successfully resists capture by armed factions without relying on external, mystical arbitrators (like the *igurramen*)?
3. How can digital/transnational customary networks (like the modern *kris*) enforce rulings in a post-collapse environment permanently devoid of global telecommunications?

5 to 10 Sources to Read in Full

1. Gellner, Ernest. (1969). *Saints of the Atlas*.
2. van Bruinessen, Martin. (1992). *Agha, Shaikh and State: The Social and Political Structures of Kurdistan*.
3. Isser, Deborah (Ed.). (2011). *Customary Justice and the Rule of Law in War-Torn Societies*.
4. Hanoteau, Adolphe & Letourneux, Aristide. (1872-1873). *La Kabylie et les coutumes kabyles*.
5. Marushiakova, Elena & Popov, Vesselin. (2007). "The Gypsy Court in Eastern Europe," *Romani Studies*.
6. Yalçın-Heckmann, Lale. (1991). *Tribe and Kinship among the Kurds*.
7. Weyrauch, Walter O. (Ed.). (2001). *Gypsy Law: Romani Legal Traditions and Culture*.

Implementability after the Fall

Minimum Viable Version (MVV):

- **Household (4–10):** The system relies on internal patriarchal or matriarchal dictate; formal arbitration mechanisms are unnecessary at this scale.
- **Village (300):** A *jemaa*-style assembly of all adult stakeholders meets in a designated central space.
  - *Requirements to start:* A physical meeting place, a shared calendar (to ensure attendance), and an oral tradition of precedent.
  - *Mechanism:* Parties present cases; the assembly debates. A *machalga* (deposit of grain/goods) is held in escrow. Rulings are enforced via the threat of total social and economic exclusion.
- **District (3,000):** A *jirga*-style representative council.
  - *Requirements to start:* Literacy (for recording precedents across wider geographies), representatives from each village, and an ironclad agreement on conscription ratios.
  - *Mechanism:* If a village defies the council, an *arbakai* (militia drawn 1-in-10 from all other villages) is mobilized to enforce compliance.

The First Failure to Expect:

The immediate emergence of a despotic *Agha* or Warlord. A charismatic individual with dark-triad traits will amass a slight surplus of food or weapons, use it to hire a private retinue, and simply refuse to pay the *machalga* or abide by the assembly's rulings. Without a standing police force, the assembly will face an existential choice: back down and accept submission (thus destroying the court's legitimacy), or trigger a devastating civil war.

Principles

1. **The Principle of Financial Surety:** Dispute resolution systems operating without standing police forces require upfront, escrowed collateral (*machalga*) to guarantee compliance.
2. **The Principle of Social Annihilation:** In stateless environments, the threat of absolute social ostracism (*marime*) is a vastly more effective deterrent than the threat of physical incarceration.
3. **The Principle of External Arbitration:** Paralyzed, heavily armed segmentary factions require neutral, mathematically unaligned third parties (like the *igurramen*) to mediate without triggering honor-based retaliation.
4. **The Principle of Stratification by Arms:** Injecting external weaponry or capital into an egalitarian customary system immediately converts it into an autocratic, chief-dominated hierarchy (the Hamidiye effect).
5. **The Principle of Scaling Collapse:** Customary consensus courts that function efficiently at the village scale will, when artificially scaled to the national level, invariably act as theatrical rubber-stamps for the most violent and psychopathic factions.

Works cited

1. Informal Justice and the International Community in Afghanistan, https://www.files.ethz.ch/isn/163420/PW84-Informal%20Justice%20and%20the%20International%20Community%20in%20Afghanistan.pdf
2. Militarization, Extremism, and Marginalization: The Impact on, https://www.tdx.cat/bitstream/10803/693398/1/2025_Tesis_Shah_Syed.pdf
3. Institutionalizing Customary Dispute Resolution in Afghanistan, https://kb.osu.edu/bitstreams/305f57e4-f875-40e6-b8e7-9d3844db7cc8/download
4. Afghanistan's Political Struggles Explained | PDF - Scribd, https://www.scribd.com/document/666904971/Afghanistan-Political-Frailty-and-External-Inteference
5. Afghanistan in 2013: A Survey of the Afghan People, https://asiafoundation.org/wp-content/uploads/2026/09/Afghanistan_2013-Survey-of-the-Afghan-People.pdf
6. ADALAT Midterm Performance Evaluation - Rule of Law Ideas CoLab, https://www.ruleoflawideas.org/wp-content/uploads/2025/08/Afghnaistan-Adalat-MidTerm-Evaluation-20202.pdf
7. Customary Justice: From Program Design to Impact Evaluation, https://www.files.ethz.ch/isn/138082/CustomaryJustice1.pdf
8. AFGHANISTAN - UNDP Evaluation, https://erc.undp.org/evaluation/documents/download/19215
9. 14 Wardak, A Decade and a Half of Rebuilding Afghanistan.docx, https://opendata.uni-halle.de/bitstream/1981185920/124616/1/jals_volume_3_7491.pdf
10. Legal Plurality in Ex-fata: A Case Study of North Waziristan, https://file-thesis.pide.org.pk/pdf/mphil-development-studies-2021-junaid-iqbal-dawar--legal-plurality-in-ex-fata-a-case-study-of-north-waziristan.pdf

11. Governance Reforms in Federally Administered Tribal Areas (FATA, https://pu.edu.pk/images/journal/pols/pdf-files/14%20-%20ALTAF_22_2015.pdf
12. FCR - our failure to understand - The Express Tribune, https://tribune.com.pk/story/2627994/fcr-our-failure-to-understand
13. The Shape of Frontier Rule: Governance and Transition, from the, https://joshuatwhite.net/wp-content/uploads/2011/09/frontier_rule.pdf
14. 2002 loya jirga - Wikipedia, https://en.wikipedia.org/wiki/2002_loya_jirga
15. Afghanistan (1), https://fln.dk/media/w5ulptvk/afgh220.pdf
16. Analysis of New Cabinet Warlords Emerge from Loya Jirga More, http://www.rawa.org/loyajirga2.htm
17. Afghanistan: Post-War Governance, Security, and U.S. Policy, https://www.hsdl.org/c/view?docid=461435
18. (PDF) Conflictual Peacebuilding: Afghanistan Two Years after Bonn, https://www.researchgate.net/publication/37166497_Conflictual_Peacebuilding_Afghanistan_Two_Years_after_Bonn
19. THE BONN PROCESS, https://shibbolethsp.jstor.org/stable/pdf/resrep45990.6.pdf
20. SIGAR 21-18-LL Support for Gender Equality: Lessons from the U.S., https://cdn.website-editor.net/s/1b5702fdd318413bb1f2966b00a25a74/files/uploaded/SIGAR-21-18-LL.pdf?Expires=1790277101&Signature=J8h5A4D5jbjs-wqEqielM3mYcWsbUIjytQE57XEGdXg2F~2mY~4m1mW2bRLUqqT5oeQgUeiTRomzDw1jCGZ-eyBUuXQ~jbA7oiQlJgjSVupLkpEisCm0tWD~qcgTIZl4K~N~I8zWGnIN5FG44xbSXiuEiZ~iBoYH7q7bMq5LDYHPEkW5N8A2qqH9TP7~HqDsRXGd0CSdj7MOB1VlpNVGiy87DSewk2ZDH~x~pHSpBzfKWhsPW4fmd6nZ98P2StoM5qQ0BmnXgppIFFXKDZQ-FyRFRBWYvnckIYqYX85uBHXG5Oj8xM2JBaNPqOOjzW3FDeBO~XEQ12J-43~gHpMCaQ__&Key-Pair-Id=K2NXBXLF010TJW
21. The American War in Afghanistan A History (Malkasian, Carter) | PDF, https://www.scribd.com/document/618470224/The-American-War-in-Afghanistan-A-History-Malkasian-Carter-z-lib-org
22. The U.S. War in Afghanistan | Council on Foreign Relations, https://www.cfr.org/articles/us-war-afghanistan
23. “The Bravest Woman in Afghanistan”: Malalai Joya Speaks Out, https://www.democracynow.org/2007/6/19/the_bravest_woman_in_afghanistan_malalai
24. Joya Speech Breaks Wall of Silence, https://iwpr.net/global-voices/joya-speech-breaks-wall-silence
25. The brave and historical speech of Malalai Joya in the LJ - YouTube, https://www.youtube.com/watch?v=iLC1KBrwbck
26. An Analysis of Malalai Joya's A Woman Among Warlords, https://pdfs.semanticscholar.org/b581/ca486c396c3f295cae514712d3f7ebf60a0e.pdf
27. The Moroccan Soul: French Education, Colonial Ethnology, and, https://dokumen.pub/the-moroccan-soul-french-education-colonial-ethnology-and-muslim-resistance-1912-1956-0803217781-9780803217782.html
28. The Moroccan Soul - dokumen.pub, https://dokumen.pub/download/the-moroccan-soul-french-education-colonial-ethn

ology-and-muslim-resistance-1912-1956-0803217781-9780803217782.html
29. La-Kabylie-et-les-Coutumes-Kabyles-Hanoteau-Letourneux-Tome3, http://www.ayamun.com/La-Kabylie-et-les-Coutumes-Kabyles-Hanoteau-Letourneux-Tome3.pdf
30. La France a-t-elleeu unepolitique kabyle? - Accueil du site Les Tizis, https://lestizis.fr/Kabylie-Historique/Une%20politique%20kabyle-Ageron%20.pdf
31. A Taste for Law: Rule-Making in Kabylia (Algeria), https://www.cambridge.org/core/journals/comparative-studies-in-society-and-history/article/taste-for-law-rulemaking-in-kabylia-algeria/86E747DE0961D09B6F2DF4C90FD5D9C2
32. Hanoto vol.1 - Immateriel.fr, https://extraits.immateriel.fr/files/serve_book_preview/465340.pdf
33. Adolphe Hanoteau (X 1832, 1814-1897) : une passion pour le, https://journals.openedition.org/sabix/2560?lang=en
34. Adolphe Hanoteau (X 1832, 1814-1897) - OpenEdition Journals, https://journals.openedition.org/sabix/pdf/2560
35. La Kabylie et les coutumes kabyles, Volume 3 - Google Books, https://books.google.com/books/about/La_Kabylie_et_les_coutumes_kabyles.html?id=gjA-AAAAYAAJ
36. Guides of the Atlas - An Ethnography of Publicness, Transnational, https://www.transcript-verlag.de/shopMedia/openaccess/pdf/oa9783839461389.pdf
37. Gellner and Geertz in Morocco: a Segmentary Debate - Social studies, https://www.sociostudies.org/journal/articles/140489/
38. Ernest Gellner - Saints of the Atlas-ACLS POD (2008) | PDF - Scribd, https://www.scribd.com/document/694884375/Ernest-Gellner-%D9%80-Saints-of-the-Atlas-ACLS-POD-2008
39. Making sense of Moroccan tribal sociology and history, https://www.tandfonline.com/doi/pdf/10.1080/13629380108718433
40. An awkward chronology and a questionable genealogy: history and, https://www.tandfonline.com/doi/pdf/10.1080/13629380108718437
41. Amazigh Lat | PDF | Berbères | le Maghreb - Scribd, https://fr.scribd.com/document/269248070/Amazigh-Lat
42. 'nationalism' and the colonial situation in algeria under french rule, https://etheses.whiterose.ac.uk/id/eprint/11037/2/460006_vol2.pdf
43. Making Morocco: Colonial Intervention and the Politics of Identity, https://dokumen.pub/making-morocco-colonial-intervention-and-the-politics-of-identity-9781501704253.html
44. The Roots of Insurrection: The Role of the Algerian Village Assembly, https://www.cambridge.org/core/journals/comparative-studies-in-society-and-history/article/roots-of-insurrection-the-role-of-the-algerian-village-assembly-djemaa-in-peasant-resistance-18631962/5D7D4F57A9AE15644D4F6E3AC07DF774
45. THE KURDISH TRIBES IN THE OTTOMAN - İstanbul Üniversitesi, https://nek.istanbul.edu.tr/ekos/TEZ/ET005639.pdf
46. The Emergence of Kurdism with Special Reference to the Three,

https://search.proquest.com/openview/b69146cb9d9de676f971226c88982c3b/1?pq-origsite=gscholar&cbl=51922&diss=y
47. A World through Words: Dengbêjî, Kilam and Collective Memory, https://ediss.uni-goettingen.de/bitstream/handle/11858/14980/PhD-Dissertation.pdf?sequence=1&isAllowed=y
48. Martin van Bruinessen - DSpace Repository, https://dspace.library.uu.nl/bitstreams/1066d3e1-c91a-4711-9c2c-2da375021822/download
49. Agha, Shaikh, And State: The Social And Political Structures Of, https://dokumen.pub/agha-shaikh-and-state-the-social-and-political-structures-of-kurdistan-1856490181-9781856490184.html
50. Transformation of the Kurdish de Facto State into an Independent, https://search.proquest.com/openview/0ff7db460e710b64ec02db8e321f030e/1?pq-origsite=gscholar&cbl=51922&diss=y
51. Syria's Kurds: History, politics and society, https://masoudmanaf.wordpress.com/wp-content/uploads/2014/11/syrian-kurds.pdf
52. Havîna 2017 an, https://kurdishlo.org/pdf/learning/reziman.pdf
53. DERGİSİ 2. - Kürd Araştırmaları, https://kurdarastirmalari.com/uploads/2_dosya/kurd_arastirmalari_dosya2_-_nihayi_2.pdf
54. 100 Jahre Völkermord an ArmenierInnen und die KurdInnen, http://www.kurdologie.at/jahrbuch_2015.pdf
55. Die-Kurden-2004-2020.pdf - ResearchGate, https://www.researchgate.net/profile/Ferdinand-Hennerbichler/publication/349105523_Die_Kurden_2004-2020/links/60204efe45851589398c16e2/Die-Kurden-2004-2020.pdf
56. The Kurdish Nobility in the Ottoman Empire: Loyalty, Autonomy and, https://dokumen.pub/the-kurdish-nobility-in-the-ottoman-empire-loyalty-autonomy-and-privilege-9781399508636.html
57. The Kurdish Role in the Armenian Tragedy - Keghart, https://keghart.org/pogharian-kurdish-role-tragedy/
58. Ottoman Kurds - Wikipedia, https://en.wikipedia.org/wiki/Ottoman_Kurds
59. Kurds, states, and tribes - DSpace Repository, https://dspace.library.uu.nl/bitstreams/41b866cc-5650-4853-bdfb-f6fff7af5132/download
60. Kurdish-Armenian relations in the late Ottoman Empire, https://collections.lib.utah.edu/dl_files/4e/2b/4e2ba0d0819f9542820044d66041697cb437eca1.pdf
61. nestorians, kurds, and the state: the struggle to survive in the frontier, https://digitalarchive.library.bogazici.edu.tr/bitstreams/6bd2c2a9-3049-4b2d-b247-2aaa8fa3d9e4/download
62. Kris (Romani court) - Wikipedia, https://en.wikipedia.org/wiki/Kris_(Romani_court)
63. (PDF) The Gypsy Court in Eastern Europe - ResearchGate, https://www.researchgate.net/publication/262141966_The_Gypsy_Court_in_Easte

rn_Europe
64. (PDF) Romani kris in the United States - ResearchGate, https://www.researchgate.net/publication/258963152_Romani_kris_in_the_United_States
65. ROMANI STUDIES - Liverpool University Press, https://liverpooluniversitypress.co.uk/doi/pdf/10.3828/rost.2024.19?download=true
66. Kris in a Roma diaspora: New insights on transnational conflict, https://www.liverpooluniversitypress.co.uk/doi/10.3828/rost.2024.10
67. (PDF) Roma Culture: Problems and Challenges - ResearchGate, https://www.researchgate.net/publication/305298773_Roma_Culture_Problems_and_Challenges
68. Justice for the Poor - Mid Term Review, https://www.dfat.gov.au/sites/default/files/justice-for-the-poor-mid-term-review.pdf