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## LOCAL ARBITRATION AND CONFLICT DEFERMENT IN PUNJAB, PAKISTAN

*ABSTRACT:* In Pakistan different conflicts require different legal venues and different stages of the same conflict may require plural legal venues. Attempts by the Pakistan government to undermine traditional conflict arbitration have not eradicated these processes. This paper argues that none of the current legal venues available to Pakistanis is sufficient without recourse to the others. The three venues are Islamic law (shari'at), the Pakistani civil code and traditional arbitration systems in the form of jirga or panchayat (or their equivalents). While the first two may arguably be classified as modernist legal systems with compatible objectives, the third is distinctly different. Traditional arbitration serves collective interests for group harmony rather than addressing questions of "justice", as I will explain below. In this way, traditional justice systems enable Pakistan's polyethnic population, with competing ideologies and conflicts of interest, to contain disputes and tension in the face of extreme economic, environmental and political instability.

*KEY WORDS:* Conflict – Dispute – Legal pluralism – Arbitration – Pakistan – Punjab – Customary law

Conflict management in Pakistan provides a useful example of legal pluralism in practice. There are two state sanctioned legal domains, *shari'at* (the Islamic code of law) applicable to domestic affairs, and the civil and criminal codes of the Pakistani state which officially handle all other matters. Customary conflict resolution procedures, however, remain widespread and frequently employed. The resultant hybrid system offers some limited possibilities of addressing interests in more than one venue. This paper addresses some of the differences between these legal domains and why individuals adopt particular strategies when there is a choice of competing domains. My arguments are based on ethnographic research undertaken in northern Punjab, Pakistan in a landlord dominated rural area. Elsewhere (Lyon 2002) I have discussed ways of modelling some of the complexity of customary arbitration and intervention during conflicts; however, in this paper I confine the discussion to the importance of conflict deferment in customary arbitration. Ultimately I suggest that local

arbitration in Pakistani Punjab addresses collective desire for resumption of normative behaviours at the expense of individualised notions of "justice", though in some cases the two goals may be satisfied simultaneously.

Instability is one aspect of the kind of development (or underdevelopment) that Pakistan has undergone since independence. Landlords frequently bear the brunt of responsibility for Pakistan's underdevelopment. Urban Pakistanis seem fond of explaining to visitors that landlords impede development and intentionally keep the rural areas "backward" in order to maintain control. The relationship between landlords and peasants is seen as exploitative and unfair. Dispute settlement systems are said to be biased in favour of landlords, which leaves peasants without legal representation. A director at the World Bank expressed this dissatisfaction with Pakistani landlords in an article in *Dawn*, one of the major Pakistani daily newspapers:

... at the time of independence, Pakistan had a land tenure system in Punjab and Sindh dominated by *zamindars* and

*jagirdars*. Basically, the *zamindars* and *jagirdars* possessed large tracts of land and practised an exploitative system in which peasants were without legal protection and the forum of settlement of disputes was heavily biased in favour of the *zamindars* (Husain 1999).

Long before either overt Marxist or modern Western liberal economic theories surfaced in South Asian social sciences, however, landlords and the structures of power in the rural areas were subject to criticism. Sir Malcolm Darling, a British colonial administrator no less, wrote in the first half of the 20th century that "... the landlord is too often just a parasite" (1947: XXIX). He also accused landlords of being an impediment to agricultural development:

... the landlord who lives on his rents ... has little desire to develop his lands, as his rents are generally sufficient to maintain him in comparative ease, and more than this he does not usually desire. For him, therefore, agricultural development is less a matter of economic need than of *social obligation* (emphasis added; 1947: 257–258).

Darling's economic survey of the Punjab is highly instructive. His conclusions and recommendations would not be out of place within current debates in Pakistan on the best strategies for agricultural development; however, Darling's appraisal of landlords is ambiguous. While on the one hand he is generous in his criticism of absentee landlords, he recognises the social obligations incumbent on residential landlords. He writes that:

... a *good* landlord is a valuable addition to a countryside of peasants. He will finance his tenants at low rates of interest, perhaps charge no interest at all; he will settle their disputes, stand by them in times of stress, and lend them implements and make experiments which they cannot afford (1947: XXIX).

At the risk of being accused of being an apologist for rural elites, I want to focus on these "good" landlords and in particular their role in dispute settlement. Landlords, or *zamindars*, who live in the villages in which they own land, are part of those communities and have little choice but to respond to the communities' demands. Pakistani peasants do not seek "legal protection" from the government in the first instance because they know that it will not be forthcoming. They hesitate to go to formal courts because in most cases the objective of the courts is incompatible with the objective of the plaintiffs. Moreover, I disagree with Pakistani urbanite condemnations of landlords for one further reason; landlords provide the bridge for a society which is shifting from traditional patterns (disrupted by colonialism, wars, population explosion, radical economic transformations etc.) and emerging patterns of modernity, by which I mean a shift towards Weberian rational-legal authority. Without this bridge, the burden of transition would fall predominantly on the state, a burden for which it is currently ill-equipped.

Rural elites act as arbiters in local disputes. Their position as educated, literate members of the community in addition to their personal and family networks, which include police and other government officials, are an

important resource for villagers. At times this arbitration takes place within very formal indigenous structures and at other times it is very informal. Disputes between individuals or groups within the village may have serious ramifications on village harmony and so landlords feel responsible for containing tensions and defusing them. There is therefore a fundamental difference between the motivation of landlord dispute resolution and state court systems. Local arbitration seeks, above all, to defuse and defer conflict rather than actually bring about definitive resolution. State courts are unable to deal with parties that may not seem formally involved with a particular case and strive rather to arrive at decisions which, in principle, should put to rest particular disputes. I argue that far from resolving disputes between parties, local arbitration satisfies wider community needs for a suppression of conflict.

I contest the argument put forth by Ahmad (1977) that village "settlement" works due to "negative" sanctions but serves only to strengthen landlord interests. Ahmad argues that landlord intervention is corrupt and founded on the fear of negative sanctions (1977: 104–105). Ahmad's assessment of the case is not entirely wrong but he ignores the possibility that local level dispute resolution may not be governed by a sense of justice for individuals but rather a desire to prevent disputes from spreading to the wider community.

I will look at three cases of arbitration that illustrate some of the limitations of local arbitration as well as some of the strengths. All of these cases come from Northern Punjab in northeastern Attock District and are based on fieldwork conducted there between 1998 and 1999. The first case provides an example of a situation that highlights the overlapping jurisdiction of many conflicts. It involves a child custody case in the village in which the disputing parties were from different locations, one of which fell outside the direct sphere of influence of any one set of landlords. The second case is typical of the kinds of disputes that provoke formal arbitration council hearings (*jirga*). Land disputes between landlords must be contained or they risk causing disruption across all socio-economic layers of the village. This dispute demonstrates the palliative, yet inconclusive nature of *jirga* decisions. The final case study shows the clearest case of local arbitration functioning effectively. A relatively minor dispute, but one which had the potential to cause great disruption to economic activities in the area, was dealt with summarily by one of the landlords. Although the landlord who finally settled the conflict may have been pursuing his own objectives in allowing the dispute to arise at all, in the end he was able to contain hostilities sufficiently so that life could resume as before.

## CONFLICT RESOLUTION

From the early days of Malinowskian anthropology, anthropologists have recognised that analysing conflict can be a useful way of making sense of society. Llewellyn and

Hoebel (1941) argued that studying societies' methods for dealing with conflict is a useful way to understand the social norms and values. Gluckman (1955; 1965) and Bohannan (1957) examined conflict resolution for the mechanisms it provides society to reinforce and reproduce itself and its underlying values. Comaroff and Roberts (1981) suggest that there should not be a distinct sub-field such as legal anthropology; the law, they argue, is such an integral part of culture and society that it makes no sense to pretend that it can be studied in isolation. More recently, Caplan (1995) and Moore (1995), in critically re-evaluating the work of Gulliver and Habermas, have examined competing inductive and deductive approaches to the analysis of dispute. Either approach is in fact attempting to unravel other (i.e. non-legal) aspects of culture and society. Colson (1995), while arguing against the notion that dispute settlement is about a restoration of *communitas*, points out that the theatricality of dispute settlement renders it particularly compelling subject matter for both locals and anthropologists (see Zeitlyn 1994 for a case in which dispute resolution is used to help understand local religious practice). Disputes offer participants and observers a means to assess relationships and qualities, which may be unrelated to particular disputes. Conflicts offer opportunities to elucidate competing social models within a society. Conflict resolution studies and comparative law are therefore not necessarily primarily concerned with the law or with dispute negotiations, but rather with what these can tell us about more elusive cultural patterns.

To the extent that conflict may paradoxically serve both fusionary and fissionary roles, it should not necessarily be seen as something that individuals within a society might feel the need to completely eradicate. This is particularly relevant to the apparent absence of definitive conflict resolution in Punjabi arbitration in contrast to some other customary judicial processes. The Barotse, for example, may have striven for more definitive resolution. The Barotse judicial process, Gluckman says "corresponds with, more than it differs from, the judicial process in Western society" (1967: 80). There are, nonetheless, important similarities with the traditional legal process of Barotse land. The evidential phase of Barotse trials is remarkably similar to Punjabi dispute settlements:

In order to bring out all the facts that are relevant to this kind of dispute, the judges allow each party to recite the full tale of his grievances. The judges, who at the capital may number a score or more, helped by anyone else attending the session, cross-examine the parties as well as the witnesses these have brought. They call for further evidence. There is no paring down of the facts in advance for presentation to court, and any judge who knows the parties may contribute that knowledge; the fiction of judicial ignorance is missing in all respects ... (1965: 9).

In Punjab the notion of judicial ignorance is not only absent, it is antithetical to the principle which lends credibility to the proceedings. Judges, or arbiters, are presumed to have prior knowledge of the individuals and

facts involved. This is cited as one of the reasons they are more just. Like the Barotse, Punjabi arbiters allow participants the opportunity to air their grievances. This includes parties who may have no direct involvement in the dispute in question but who may be affected by the consequences of the dispute. Judges, or arbiters, are expected to interrogate the disputing parties and all witnesses. All information may be presented to the judges regardless of its conformity to formal requirements of inclusion (of which there are no firm rules). Finally, like the Barotse, the judges are expected to make use of all of their knowledge, including knowledge that may not have emerged from the trial, to arrive at a settlement which is perceived as fair.

Al-Krenawi and Graham, looking at a specific conflict-resolving ritual among the Bedouins, argue that mediation occurs in two ways. The first reinstates a "sense of mutually agreed upon justice" between individual disputants while the second restores "stability, order, and harmony to social relations" (1999: 163). They stress the potentially therapeutic benefits to participants in the ritual. In their case studies however, what is striking is that the *bisha* conflict-resolving ritual seems not to address any of the underlying causes of conflict.<sup>1)</sup> In both the Bedouin and Punjabi cases the potential for similar disputes remains open. Rather than resolving disputes, traditional arbitration councils seem to defer disputes for the benefit of the community or communities affected. The underlying goal of arbiters is not to see justice done – which they often have an extremely hard time enforcing in any event – but rather to effect a resumption of normal relations within the community. With this goal in mind it would seem that absolute concepts of "justice" or "right" are irrelevant (though certainly not irrelevant to the discourse of arbitration). This differs from the underlying goal of a legal system built, in large part, upon a British legal system that seeks to create a corpus of precedents which may play the role of law and which may be enforced by the executive arm of the State. Customary law, Quranic law, British law and post-independence Pakistani law co-exist and make the process of adjudication exceedingly complex. In part this plural legal system helps explain the existence of parallel legal structures and why any single legal structure in the country seems woefully inadequate to deal with all situations.

## LEGAL SYSTEMS

The formal legal system of Pakistan came out of the Islamic legal tradition (as practised in South Asia under the Moghuls)<sup>2)</sup> and the British legal tradition (as practised in the colonies).<sup>3)</sup> Since independence Pakistan has attempted to rid itself of customary law, in so far as the formal courts are concerned. The state's attempts at judicial reform<sup>4)</sup> of the legal tradition notwithstanding, Pakistani courts remain confusing and intimidating. This should be no surprise given the rather chaotic background from which they were

created. The state has implemented *shari'at* to govern domestic law. *Shari'at*, which began as a pragmatic attempt to cross cut indigenous loyalties both in Arabia and the peripheries of the Islamic world, today may be seen as a viable modernist legal code. The Pakistani state's adoption of the *shari'at* and British legal systems has left little room for customary law in the formal court system of Pakistan today. Effectively the only decisions that may be based on custom are those of the arbitration councils in the rural areas. Decisions based on customary law become problematic in urban situations where populations have come from a dozen or more different sub-cultures, each with its own customary law. The lack of uniformity between customary laws of different regions (even within one province) has served to undermine these traditional judicial systems in areas of intensive migration. Nevertheless, traditional justice in the villages remains common.

Chaudhary (1999) suggests that the role of traditional justice in Punjab has undergone dramatic change with modernisation. Prior to the introduction of the Basic Democracies Act, under Ayub Khan in the 1960s, the traditional system had both authority and power. Traditional punishments, he says, were effective. He lists these as ostracism, fear of disgrace, fines and a variety of other highly situational punishments (1999: 101–105). With the introduction of centralised justice, the traditional systems began to lose some legitimacy (though this did not happen immediately – he writes that the initial state sponsored adjudicators were not deemed respectable enough to replace traditional arbiters or judges – 1999: 107–108). As the villages become more embedded in capitalist market activities the authority of traditional systems has become even further eroded (1999: 108–110).

Local narrative accounts of arbitration suggest that these councils had more authority in previous generations. At the time that Barth, Eglar or Ahmad carried out their fieldwork (in the 1950s and 1960s), it may well have been that the traditional judicial system was significantly different to what exists today. I want to be very careful about making comparisons with the past since Pakistan has clearly undergone major changes over the past 30 years; however, I suggest that the role that I propose in this paper has probably always been an important aspect of traditional arbitration. That is, arbitration councils have probably always served to defer conflict thereby circumventing the need to resolve disputes. In the past, they may also have provided more definitive solutions, such as Gluckman suggests Barotse jurisprudence does, but with the introduction of state courts and police they have foregone this role, if indeed they ever had it. I suggest that like the Tiv (Bohannan 1967: 53), in Pakistan, any *corpus juris* which exists is a post-event construction (as far as I can tell only an activity of anthropologists) and does not serve to guide traditional arbiters or adjudicators.

The legal tradition of Pakistan since independence, for all its flawed, confusing and conflicting aspects, is an attempt to create a precedent that may act as guide in the

judicial process. It seeks to make absolute decisions in particular cases and then generalise from those cases. In so doing they establish an explicit blue print of "legal" and "illegal" and more philosophically "right" and "wrong". Moreover it has formal pretensions to neutrality which are not always achievable but are at least present. Decisions in Punjabi arbitration, as I will demonstrate, have a very different goal that is similar with the origins of the *shari'at* in Arabia and its application during the expansion of Islam but incompatible with what *shari'at* has become. Its goal is to facilitate normality within the community by preventing excessive disruption to groups and it may achieve this goal through partiality and pragmatism without fear of setting future precedent. The role of arbitration is to defuse the present situation; it is not to establish a principle by which all similar situations may be governed.

## CASE STUDIES<sup>5)</sup>

### Case One: Child Custody

The first case study illustrates one of the most serious shortcomings of arbitration. The failure of this case is due in part to a possible miscalculation in the *jirga* council selection but also to the fact that this was a case where loss was completely unacceptable to both parties. All compromises ended up being interpreted as a loss. Furthermore one of the parties who was by consensus in the wrong, was sufficiently financially independent and distant from the members of the *jirga* council that they felt they could take the risk of not complying with the *jirga* decision.

In Islam children are considered to belong to their father's family and religion. Fathers are deemed in all cases to be the "guardians" of their children; however, Islam recognises that in the interest of young children it is the mother who should care for them. In cases of separation or divorce the age at which children may be separated from their mother differs by sect from two to seven years of age and by custom often older (mid teens). The person caring for the child must be "sane, trustworthy and of good morals" (Pearl 1988: 92). In the event that the mother does not satisfy these requirements it may be necessary to remove young children from the mother's care and place them in the care of other female relatives – usually from the father's side. Equally if the father may be demonstrated to be insane, untrustworthy or of bad morals, he may lose his rights of guardianship. Within Islam, however, this would not necessarily mean that the children would be left with the mother and her family, but rather with other members of the father's family. In the event of the death of the father children may normally live with their mother until the age they would go to live with their father in cases of divorce. In the following case it was the mother who died, leaving her husband with a two-year old daughter.

Abdul, the father, was born and lived in a nearby village. His wife had come from one of the large cities in the area. The marriage had been arranged by the parents and while



they were not relatives they came from the same *qaum*.<sup>6</sup> When Abdul's wife became seriously ill, she returned to her parents' home in the city to recover. Abdul had only himself and his elderly parents in the house so they were not in a position to care for a toddler and an ill woman. When the woman died the little girl was in the care of her deceased mother's parents. In the Barelvi Islamic tradition prominent in rural Punjab, the bereaved should mourn for forty days during which time they are available in the courtyard of their homes to receive guests who come to pray with them. During this time Abdul had no sisters or sisters-in-law living nearby and his own mother was very old so it would have been difficult to care for his daughter during the mourning period. In addition Abdul said that he had hoped that caring for the daughter of their daughter would lessen the pain of his parents-in-law. Upon completion of the forty days of mourning Abdul sent word that he was ready to take back his daughter, at which point he was told that the little girl would remain with her maternal grandparents. Abdul arrived at the house and was barred entry. His in-laws yelled at him and chased him away from the house. Abdul's father, Javaid, became involved at this point and tried to persuade his son's parents-in-law to be reasonable and return the daughter. He reminded them of Islamic law and assured them that his household was prepared to care for the little girl properly. They also refused to be persuaded by Javaid.

Javaid decided that they needed the help of the local landlords, the *zamindars*. He first approached a younger Malik who was the son of the old Malik for whom Javaid had worked years before. Malik Saddiq listened to the situation and sent for Abdul to come tell the story again from his side. Malik Saddiq had already heard that there were problems from other sources but the situation was potentially quite volatile so he explained to me that it was essential to let every person have his or her say and to hear them all. When Abdul had given his side of the story Malik Saddiq then sent for a representative of the deceased woman's family. Her brother came to the village and accused Abdul of being a bad husband, bad father, a drug user and a drinker of *koopi*, the locally brewed grain alcohol. Therefore they had a right under Islam to keep the little girl. Prior to this case I had hardly spoken to either Abdul or his father so I had no idea what to make of these accusations. I knew many of the people who used drugs in the area and I had never heard Abdul's name mentioned among them nor had I ever seen him hanging out in the areas where those activities occur. Malik Saddiq dismissed the accusations out of hand. He claimed that he knew all the substance abusers in his village and Abdul was not one of them. Abdul was a hard-working man in the building trade. Malik Saddiq told me he could not comment on Abdul's qualities as a husband or a parent but he had never had cause to think that Abdul was abusing either his wife or his daughter and so in the absence of concrete evidence he was not prepared to take the charges seriously. The brother of the deceased woman left unpersuaded. In any

event the goal of that meeting was not to persuade him but rather to hear his family's version of events.

Malik Saddiq decided that the case required more experience and clout than he possessed and sent Javaid to his uncle, Malik Hafiz. Malik Hafiz was a retired police officer who had a good knowledge of Pakistani law, *shari'at* and local custom. He had served on numerous *jirga* councils and had served as arbiter throughout Punjab. He was seen to have the wisdom, maturity and authority to resolve a case as complex as this one. At this point more men from the village were brought in on the problem. Some of Malik Saddiq's and Malik Hafiz's elder sharecroppers were invited to review the problem and help in resolving it. Over the following two months parties from the village went to the nearby city and had long meetings with Abdul's parents-in-law and their family. After about five weeks they returned to the village and announced that the matter had been resolved. The grandparents of the little girl had agreed to return her in exchange for a return of the dowry. Many people told me that this was what the matter had been about all along. The in-laws had wanted to make some money out of Abdul and his family.

Abdul then had some of the dowry returned but not all. He explained to me that he would return the entire dowry when his daughter was returned to him. This was unacceptable to his in-laws however, who demanded that the entire dowry be returned prior to relinquishing control of the little girl. Opinion among many villagers was that the in-laws were not serious about submitting to the *jirga* nor did they have any intention of giving back the little girl. Since the in-laws did not live in the village there was little more that the landlord controlled *jirga* could do to them. The in-laws had their own patrons in the city and did not depend on village landlords to provide favours (such as jobs, food, references etc.). There was no one on the *jirga* council upon whom they depended sufficiently to cause them to comply with a *jirga* decision that they did not like.

Abdul and his father had few choices once it became apparent that the in-laws were not going to abide by the decision. They then took their case to the Pakistani courts system. They expect the process to take much longer than the arbitration process and be very costly; however, if the courts decide in their favour the police will enforce the decision in a way that village landlords, outside their sphere of influence, cannot.

This case could be seen as an outright failure of arbitration, however, it did provide a "cooling off" period for the father and his family. In the initial stages of that case the potential for violence was high in spite of the fact that neither side had a history of violence. The issue was extremely serious and generated a great deal of emotion at what was a very fraught time for everyone. The arbitration sessions lasted approximately two months and when a decision was reached disputants decided not to comply with the decision but instead to pursue the matter with Pakistani courts. From the point of view of the village which

had close ties to the father and his family this is far less disruptive than had he attempted to kidnap the child or in some other way take matters into his own hands. His own *biraderi* (patrilineage) would have been obliged to come to his aid at a time like that. This easing of tensions, however, did not eliminate them. The father may yet resort to kidnapping, at which time a new round of arbitration would no doubt take place to placate the man's in-laws and prevent the level of violence from increasing. In the village this case was seen as a failure because it did not result in Abdul retrieving his daughter and certainly it failed to achieve that. I argue, however, that if recovery of the little girl had truly been the goal of the arbiters, they might have accomplished it.

A special relationship exists between police and local elites in Pakistan. In rural areas police are acutely aware of the position that local elites hold. They rarely do anything to directly offend them. In one village in the area the police arrive at a landlord's home ostensibly to pay their respects and drink tea, but in practice to declare their intention of arresting someone in the village. At that point the landlord either tells them he has no problem with the individual in question being arrested or he would prefer the police let him handle the matter himself. The police are perhaps not entirely culpable in these situations. The police are more aware than most people that prisons and jails are bad places to put delinquents. Young men who simply have too much time on their hands or have some youthful angst may form lifelong patterns of criminality. A landlord, if he decides to take an interest in someone, can effectively control their behaviour by providing them work. If a landlord tells the police not to arrest someone then generally what he is saying is that he himself will provide the man with an activity that prevents him from wrongdoing and will assume the role of punisher if the need arises. That is the positive aspect of the relationship. A more negative effect of the close relationships landlords enjoy with the police is the ability some landlords have to get the police to do their punishing for them. When the offence is an offence against Islam or against the statutes of the State, then it is entirely appropriate for the police to be involved; however, there are a few landlords (not all by any means) who have enough influence with the police to get them to enforce unjust situations. The police have been used in the area to dislocate sharecroppers who were given deeds to land under President Z. A. Bhutto's land redistribution schemes. Under the law, ownership of the land was transferred to sharecroppers but no one easily gives up ownership of something that has been in their family for generations. Landlords resisted and connived their way out of most redistribution and what did manage to slip through the cracks is occasionally taken back with force – sometimes using the strong arm of the law.

Given that the landlords in the area and the police have such an intimate relationship, it would not then be difficult to imagine a scenario where Malik Hafiz asked the police to help enforce his decision. This would indeed be a rather

straightforward use of the police as the question of child custody is clearly defined in *shari'at* codes (which are the basis for Pakistani personal law). The deceased mother's parents had no evidence other than their own declaration that Abdul's character was immoral or that he was in any way insane. Even if they had, *shari'at* would still have proscribed that the daughter be placed with someone in Abdul's family, not the family of her dead mother. Had Malik Hafiz opted for this action then the level of negotiation would not have been between Abdul and his wife's family but rather between Malik Hafiz and the in-law's patrons. Malik Hafiz would have had to persuade the patrons of the grandparents that his actions were just, since he might have had trouble influencing city police officers to go against the wishes of their local patrons. To my knowledge Malik Hafiz never considered turning to the police, in any event he did not go to the police if he did consider it. He also restricted his appeals and decisions to the level of Abdul and his in-laws and did not include patrons of the in-laws. Without criticising Malik Hafiz or the other members of the *jirga* council, the implication is clear – their priority was never the fate of the child nor even Abdul. They became involved because they saw that one of their clients was about to find himself in a position in which his *izzat*<sup>7)</sup> and his family were being threatened and in that position men may feel they have few options other than violence. Had that situation turned violent, the police would have become involved and Abdul, who is considered by many, including myself, to be a good man, might have found himself in far more serious trouble. The pressure on his *biraderi* and his patrons to extricate him from trouble would be high and therefore potentially costly for everyone concerned. In short, the goal of the arbiters was the resumption of normative (i.e. non-disruptive and non-violent) behaviour on the part of Abdul and his closest relatives.

### Case Two: Land Dispute

The second case also involved a formal *jirga* council. In this situation, however, the results were more or less successful, though by no means did they produce a definitive end to the dispute. The dispute was between paternal cousins over three generations and multiple *jirga* sessions. The *jirga* decisions have been respected by all participants until something changes, at which point the dispute gets re-enacted with slight modifications.

At the turn of the 19th century there were only two real landlords in one of the villages in the area. These men, Malik Ali Khan and Malik Shafiq Khan, were related paternally and one of the men had married a sister of the other. This particular dispute arose after the death of these two men. The eldest sons of each of these men, Malik Khaled Khan and Malik Munawar Khan, both felt they had a legitimate claim to small plot of land approximately 25 *kanal* in area (8 *kanal* = 1 acre) which had not up till that time been cultivated. They could each trace a claim through their fathers, however, Malik Khaled's paternal claim was greater since his father had actually used the

land during his lifetime for livestock grazing. The second man, Malik Munawar, argued that the land had actually belonged to his mother's father who was also a paternal relative of his and that this double claim was stronger than Malik Khaled's claim. A *jirga* council was established and the two men ended their dispute peacefully. Malik Munawar's grandsons claim that the *jirga* had decided in his favour and Malik Khaled's grandsons argue the opposite. The land remained uncultivated and continued to be used only for grazing animals.

Malik Khaled had two sons; the elder was Malik Babar. Malik Munawar had five sons. Malik Munawar died in the 1950s and his sons, the eldest in his early 30s at the time, found themselves embroiled in a new attack on the land. At that time they were distracted by disputes between themselves on how to partition their land so perhaps they did not give the 25 kanal of disputed land enough of their attention. There was another *jirga* council that discussed the issue and, once again, prevented any violence and settled the matter. The sons of those men, however, disagree on what the *jirga* decided. The land again lay uncultivated and the men went back to dealing with more immediate problems.

Finally in 1997, one of Malik Munawar's grandsons, Malik Nadeem, made a bold move to establish once and for all that the land belonged to him, or at least had rightfully belonged to Malik Munawar (in which case he still needed to establish that the plot would have gone to his father and then to himself). He planted several hundreds eucalyptus trees on the border of the land that adjoined land that he was already disputing with his immediate paternal cousins. He managed to plant the trees quickly and quietly enough that Malik Khaled's son, Malik Babar, did not notice immediately. When Malik Babar discovered the manoeuvre he was furious. He demanded that the trees be removed at once. Malik Nadeem first argued that the land was his father's and his father's father's and he had the right. Malik Nadeem also argued that if Malik Babar had thought the land was his then he should have said something while the trees were being planted. Lack of a claim at the right time, Malik Nadeem argued, proved that Malik Babar was not convinced of his own claim.

The stories now become extremely contradictory; however, certain facts are agreed upon by all participants. One of Malik Nadeem's sharecroppers took his goats onto the disputed land to graze. There is some suspicion that Malik Nadeem had encouraged him to do that by telling him the land belonged to him. Malik Babar's son then captured some of the men's goats and locked them up. When the sharecropper came to recover the animals he was insulted and told that the animals would be sacrificed to Almighty Allah and given to the poor (this allegation is hotly contested but there is no question that by this time tempers were high). Malik Babar's son was called to his mother's sister's home (the mother of Malik Nadeem). She pleaded with him to return the goats because the sharecropper was a poor man and the dispute was between

Malik Nadeem and Malik Babar, not the sharecropper. As a favour to his aunt, Malik Babar's son told her to send the sharecropper to the buffalo stable and he would return the goats. When the sharecropper arrived he was not alone. He had several male relatives who were all extremely angry at the alleged insults and threats that Malik Babar's son had made earlier. They insulted Malik Babar and his family (again a contested allegation). Malik Babar's son then called his servants who chased the sharecroppers away. Malik Babar's son then got his automatic rifle and his pistol. He met Malik Nadeem at Malik Nadeem's buffalo stable and yelled at him. One version of the story is that Malik Babar's son pointed the rifle at Malik Nadeem and said he was going to kill him. Both Malik Nadeem and Malik Babar's son deny this and say that the rifle was not being pointed at anyone. Malik Babar's son says he told Malik Nadeem he was furious and Malik Nadeem had to punish his sharecropper, to which Malik Nadeem replied that the problem was between the sharecropper and Malik Babar's son. Malik Babar's son then said he was going to kill the sharecropper. Malik Nadeem then, allegedly, replied, "Then kill him! It's your problem, you deal with it!" Malik Nadeem claims he made no such statement and that Malik Babar's son has embroidered the story for my benefit. No matter which parts of the narrative actually happened, the following day Malik Babar and his son arrived at the police station to file a First Incident Report (FIR) against Malik Nadeem and his brother (who was not in the village during any of these incidents).

At this point the rest of the family realised that the entire situation was getting out of hand. Some of the elder relatives stepped in to pacify things. They agreed that a new *jirga* would be called to settle once and for all the fate of this 25 kanal plot of land. In the meantime, however, everyone had to calm down. The sharecropper and his family left the area, which eased tensions somewhat (there were no mysterious circumstances to this departure – they were not from the area originally so they moved on to another area where they had not made an enemy of one of the local landlords). The *jirga* council was made up of some members of the family, some other landlords from the area and one civil servant who worked for the National Agricultural Research Council. All members of the *jirga* had something to offer both participants, therefore refusal to abide by the council's decision would potentially have made some tasks much more difficult. The council met on the disputed land under the same tents that are used for wedding receptions. There was a generous meal provided by Malik Nadeem. The *jirga* decided that both men did indeed have a claim to the land but that Malik Nadeem had been trying to use the land and it was adjacent to land he had begun to cultivate heavily therefore he should get the land. Since Malik Babar had a rightful claim, however, he should be compensated. Malik Nadeem was ordered to pay Rs. 350,000 to Malik Babar and his brother. Both men were delighted with the decision and felt absolutely vindicated in their actions.



If the story stopped there then one could presume that *jirga* arbitrations had effectively resolved the situation. Malik Nadeem was supposed to pay the Rs. 350,000 within one month. He arranged afterwards with Malik Babar to pay within 6 months. After 6 months he still had only paid one tenth of the agreed price but had begun serious cultivation on the 25 *kanal* of land. Malik Babar began to put pressure on him through other family members to pay the money since the two men had stopped speaking to each other. Finally after almost a year Malik Nadeem paid the money that he owed to Malik Babar but not to Malik Babar's brother. In 1999 Malik Babar's brother died prematurely leaving a young son who was not in a position to pressure Malik Nadeem to pay the money. In addition this young man had very little training in being a "Malik" and so in the first few months after his father's death found himself besieged with requests for help from his father's, now his, sharecroppers. Malik Nadeem would never admit that he has no intention of paying and perhaps does not even believe that, however, there is no indication that he has any intention of paying quickly. If in ten year's time Malik Nadeem were to die and Malik Babar's nephew decided he wanted the land he would have a legitimate claim to half of the land from Malik Nadeem's son on the grounds that Malik Nadeem had failed to uphold his end of the *jirga* agreement. Malik Nadeem might be able to defend himself since he is an astute manipulator and negotiator, but his son will be in the same position that Malik Babar's nephew is in now – plagued by all the other responsibilities in a Malik's life and unprepared for an attack from one of the men that cared for him when he was a child. Although Malik Nadeem is quietly criticised for not paying the money promptly, no action is taken because he satisfied the most important part of the *jirga* decision – he paid the most volatile disputants, Malik Babar and his son. Furthermore, he is using the land in a way that increases his family's position in the area.

The goal in arbitrating the land dispute between Malik Babar and Malik Nadeem was not to make an ultimate decision of right and wrong. The situation between the two households was growing more tense by the day and people's *izzat* and their livelihoods were being threatened – both highly prized entities in Punjab and NWFP. The risk of actual violence had been realised, albeit through the kidnapping of animals. The risk of violence to people was high. Direct threats to kill people were allegedly made and the police were becoming aware that there were serious problems within the family. Once the police became aware, then it was a sure thing that other landlords in the area had learned of the dispute as well. The situation therefore threatened both intra- and extra-village harmony. Land encroachment is not restricted to family members after all. Landlords seem extremely eager to "absorb" small bits of land of their neighbours but are wary of encroaching upon the land of other powerful landlords. If that Malik family were busy feuding, however, the possibility of slipping something by them increased. From the point of view of

the other members of Malik Babar's and Malik Nadeem's *biraderi* the situation risked exploding in all of their faces. The fact that the same bit of land had been in dispute in previous generations was not in itself terribly exceptional and therefore probably not of immediate significance to the men asked to serve on the *jirga*. What mattered was that the disputants had arrived at a stage in which they needed help to find a way to avoid actually killing each other. For all the discourse of violence among landlords there is in fact a great reluctance to use it. For most problems the appearance of violence is sufficient but in some circumstances the appearance simply is not enough. It is on those occasions, I argue, when arbitration is most likely to be called. Many in the village felt that the case had been successfully resolved and yet Malik Nadeem had not paid all of the money even two years after the *jirga* decision. Success, however, is as much in the reconciliation of two powerful branches of a very close extended family. Within the landlord family there are still tensions but few people expect that the same plot of land will provoke any more disputes between those branches of the family for this generation. The young landlord who has not been paid is not in a position to contest Malik Nadeem and is unlikely to be in such a position in the foreseeable future. The land may be the centre of a dispute in the future but not at a precisely predictable time, at some vague time in the distant future (distant being perhaps ten years or more).

At the risk of being overly repetitive, I stress here that if the goal of village level arbitration were actual resolution of conflict, then this arrangement would be unacceptable. Once the young landlord will have accumulated his own power base, then it is almost certain that he will provoke a dispute in the future. Since the land is unquestionably being cultivated by Malik Nadeem's household, the issue will be even more complicated and torturous the next time (just as it was more complicated this time than in the previous generation). Arbitration served to defuse a tense situation without attempting to ask powerful men to do anything they would feel obliged to refuse outright. Two close relatives were given a solution that allowed each of them to maintain respect and "win" without actually having to do more than they were already prepared to do. Malik Nadeem complains of the high price that the *jirga* council set on the land, but since he paid just over half the sum and will pay the rest in dribs and drabs, in fact he has done quite well financially. It is as if he received an interest free loan to buy the land, and before he has paid off the loan the land will have appreciated in value to more than compensate his inconvenience. Malik Babar did receive his half of the money (though again much later than promised) and has in fact been released from the constant worry of keeping an eye on a bit of land he had no intention to cultivate.

The only losers are the sharecropper family which felt obliged to relocate, and the young landlord. The young landlord, however, can also be said to have won in a sense. He has found himself, like his father before him, often



trapped between the wishes of his elder relatives. His mother is also closely related to Malik Nadeem's mother and he is very closely related to Malik Nadeem. Malik Nadeem is one of the future "stars" of the village. Tense relations between Malik Babar and Malik Nadeem place the young man in a precarious position. Until he has established his own network of well placed civil servants, bankers, landlords, sharecroppers, etc., he must rely on the networks of his family. The more of those networks he has access to, the greater his chance of success as a landlord. The money he is owed for that 25 *kanal* is a small price to pay to have access to Malik Nadeem's network as well as Malik Babar's. In one sense arbitration has worked by defusing the situation, however, the arbiters and participants left enough latitude for participants in the dispute to raise the issue again at some as yet undefined time in the future.

### Case Three: Semi-formal Arbitration on Kidnapped Animals

The final case demonstrates how arbitration is only as useful as the position of the arbiter. It involves a violent flare up between sharecroppers over the right to graze animals.

A Pathan sharecropper, Gul Khan, had been told by his landlord, Malik Nawab, to protect the crop from grazing animals. The land had recently been opened to cultivation by the introduction of a tube well and an irrigation scheme. A Punjabi sharecropper, Manzar, had grazed his animals near there for years and unless his own landlord ordered him to stop, he was going to continue letting his animals graze there. Gul Khan's landlord did not speak to either Manzar or his landlord, who both lived in a different village, so the issue remained between the two sharecroppers. After several requests (according to Gul Khan), Gul Khan and his brother captured several of Manzar's cows. They locked them up in the courtyard of their house to make a point. They claim that when they captured the animals they had no intention of keeping them. Their goal was to get Manzar's attention and force him to realise that there would be trouble if he did not start complying with their request. Unfortunately when Manzar and his relatives arrived to claim back their cows, Gul Khan was not at home. His wife spoke to the men through the closed door. They insulted her (an allegation which Manzar and his relatives deny) and insulted Pathans (an allegation which they deny but something they did several times over the next few days with witnesses). They returned home to find some guns with the intention of returning to claim their cows. By the time they returned, however, Gul Khan and his brother were home and very angry that their ladies and their origins had been insulted. They exchanged gunfire but no one was hurt. Gul Khan sent his brother to their landlord to intervene, because at that point he felt he could no longer return the cows without a full apology, but he could not negotiate directly with Manzar, who had insulted his family honour, to get an apology.

Malik Nawab was away at a funeral in central Punjab so his brother, Malik Shafiq, became involved. Malik

Shafiq is a devout Muslim with a very good education and a liberal in his world view. He believes, like his elder brother, in listening to people. He listened to Gul Khan's brother and then sent for Gul Khan and Manzar to come to the village. Both men arrived with relatives and guns. They sat in the landlord's *déra* (or guest house) and glared at each other. Malik Shafiq listened to Gul Khan's version of events and then asked Manzar to tell what he thought had happened. Manzar began his version of the story by insulting Pathans and reminding Malik Shafiq that they were both Punjabis. Malik Shafiq listened carefully, but told him to forget about being a Punjabi in this situation. This debating lasted for around half an hour, with Malik Shafiq getting increasingly frustrated. Gul Khan wanted an apology. Manzar wanted his cows. Neither man would give the other what he wanted first. Finally Malik Shafiq interrupted Manzar and shouted at him. He told Manzar that he was a very stupid man and he wanted nothing more to do with him. Malik Shafiq shouted that he would let Gul Khan keep the cows. Manzar began to mumble placating words to the landlord but he stormed out, followed by a smiling Gul Khan and his brother.

For the next two days Gul Khan and his brother followed Malik Shafiq around as if he were the top *zamindar* of the area. Malik Shafiq paid little attention to them but he continued to think about arguments he could use with Manzar to persuade Manzar to apologise. Manzar and his relatives appeared again on the night that Malik Shafiq's elder brother returned home. Malik Nawab was told that there had been a dispute but his younger brother was handling it. He was delighted that his brother was taking an interest in family affairs and decided to let his brother resolve the issue himself. I was speaking with Malik Nawab in another *déra* when his brother and Gul Khan stormed in. They were yelling about how Manzar was an imbecile who refused to see what was right. Malik Nawab listened for a moment and realised that immediate intervention was required. He yelled at both men to be silent. He sent Gul Khan out of the room and asked his brother for details of the situation. When Malik Nawab heard the story he covered his eyes in exasperation. He ordered his brother to go order Gul Khan to release the cows. Malik Shafiq argued that Manzar had to apologise first. Malik Nawab yelled back that those cows were a man's living and that his family were suffering because he had said some harsh words in a moment of tension. He told his brother that it was not worth letting a family suffer just to get an apology for something stupid.

The younger brother left the room and I asked Malik Nawab why his brother had not made the same decision. He smiled and told me that he was used to modern ways and forgot that in this village a landlord had the power to make things happen. Landlords, he said, must decide what is fair and what is just, and if they can see clearly what must be done, then they have an obligation to their villagers to make sure it is done. In this case, he said, his brother had forgotten the bigger picture of village life and was

focusing on the small details of the case. He then assured me that in the city his brother was an excellent negotiator.

Of the cases I have presented, this is the one that comes closest to a real resolution. Although both the Pathan and the Punjabi involved are free to attack each other and perhaps may do so in the future, the second arbiter in this case demonstrated his lack of patience with their problems and his willingness to make an immediate decision which satisfied his objective of harmony. The landlord was the true winner in this case. Using his Pathan to do the dirty work, he was able to show the Punjabi sharecropper that continuing to allow his cows to graze on those plots would be more trouble than it was worth, however he remained outside of the fray. Had the Punjabi gone to their landlord to complain about another landlord, the situation may potentially have required more delicate handling, but an argument, even one with guns, between two men who have very little power, is not as serious a threat to the stability and smooth operation of the two villages concerned. This is even more true since one of the disputants was a Pathan and therefore had no real base from which to organise hostilities. He may have thought that the younger brother of the landlord would stand by him, but he must have had no illusions that the elder brother would. If he had lost the elder brother's support, then he and his family would have found themselves in search of another sharecropping arrangement and as he reported to me, that landlord may be irrational and have a temper, but he looked after his people if they obeyed him. His experience in NWFP had certainly taught him that there were worse situations. This case is the most blatant case of arbitration for the sake of group harmony. The younger brother, being urban educated and trained, was in fact seeking a redressal of wrongs and in so doing no doubt wanted to set a precedent which villagers could point to and understand the limits. He was seeking an absolutely "just" decision. This strategy is not the norm for village level arbitration, as was patently clear when Malik Nawab, who is village trained, intervened and made a decision which suited himself and all other villagers who might have got caught up in the escalated violence. In this case, he judged that he had enough of a hold over his Pathan sharecropper to enforce a decision. He also gauged, correctly as it happens, that his Pathan sharecropper was manipulating the situation for his own amusement and his anger had already cooled by the time he arrived on the scene. Since Malik Nawab decided that the potential for violence could be contained without the normal niceties of arbitration, he dispensed with them. This case might more accurately be defined as arbitration followed by intervention. Malik Shafiq had attempted to arbitrate a resolution, while his elder brother had simply intervened. Although it came closest, this case was still settled without a final resolution; it is rather an example or restoration of a certain kind of relations. The Pathan did not get his apology, so the animosity between them remains; as they continue to cultivate adjacent plots of land, the potential for flare ups remains. Malik Nawab clearly was not concerned about

future flare ups and perhaps felt that it was in his interest that the two groups do not become too friendly. The Punjabi sharecropper does, after all, work for a man who is a rival in the influence and power stakes that landlords take part in regularly.

## CONCLUSION: ARBITRATION IS NOT ABOUT RESOLUTION

Each of these cases illustrates both the strengths and weaknesses of local level arbitration. The result of each dispute may be considered a success if the objective of the arbitration was group harmony and resumption of normative behaviours. On the other hand, each case may be considered a failure if the objective is the application of "justice" in a manner which may be used to establish rules and sanctions in the future. Chaudhary (1999) suggests that traditional judicial systems may have once done this, but if so, that role has since been passed on to the state judicial system.

There is a flaw in the comparison of village arbitration with courts, though obviously the two are related. Upon examination of specific cases, it is clear that the overriding result of arbitration is geared towards group harmony. Notions of "justice" for an individual and the concept that there are "absolute wrongs" are noticeably absent. The objective in local arbitration, both the formal *jirga* councils as well as the semi-formal arbitration by landlords or other respected members of the community, is to avoid excessive disruption to the wider population. *Jirgas* are called when there is a risk that disputes may spill over and affect more than just the individuals directly involved. Intervention on the part of respected people is likewise requested when disputants find themselves in a position where maintenance of their *izzat* and/or their livelihood are seriously jeopardised and in order to preserve those things, they would be forced to commit an act which would expand the nature of the conflict.

Pakistani courts, at present, do not serve the role of maintaining community harmony. *Shari'at*, which governs family law, and the criminal and civil codes of Pakistan which grew out of the British tradition, ideally, operate on a very different premise. Courts could serve this role, however, it is incompatible with principles of modernity in the judicial process. I will not attempt to offer a complete definition of modernity here, as it would tend to distract from the point of the chapter, but whatever else modernity means it should include some notion of independent and neutral judicial processes that are codified and cumulative. That is, decisions handed down by courts should be made upon principles of law, and those decisions enter the juridical *corpus* which influences future court decisions. Courts are poorly situated to try and prevent disruption based on the predictions of the adjudicators. Furthermore, if they acted in a prejudicial manner that merely appeases the stronger disputant, while giving "honourable out" to

the weaker, then they would not serve the wider public interest. The presence of legal codes, such as *shari'at* and the Pakistani civil and criminal codes, offers partial tools to avoid prejudice in the judicial process, if they are applied in a systematic and neutral way.

State court systems, in Pakistan as in the West, aspire to ideals of modernity. Individual rather than collective needs are addressed. Decisions made by courts may not serve to resolve critical situations in a timely and expedient manner, but rather to establish precedent which exists above and beyond the needs of the day. The concept of modernity implies the rule of law and the impersonalisation, or de-personalisation of distributed responsibility. I allude here to Weber's "legal authority", which seems integral to modernity (1947: 329–341). Within a society striving for modernity, the occupant of the judge's chair is of little relevance (or should be) and what matters is that the role be fulfilled by an individual who has a grasp of the precedents and procedures involved. In truth, nowhere is this the case, and Pakistan is no exception. Pakistan floats uncomfortably between a state court system which seeks impersonal distributed responsibility and authority and a cultural system which stresses collectives and patronage where the people holding office represent the relationship networks which put them there. A problematic combination of "legal" and "traditional" authority.

Arbitration recognises that many people may have a "say" in a dispute and, further, recognises the need to get agreement from all affected parties. Arbitration does not require any fundamental agreement but rather an outward, public behavioural agreement. Disputants must walk away claiming satisfaction with the result regardless of what they may feel or think. Courts require no such compliance – only that disputants obey with the decision and if they do not, then courts have recourse to other State structures such as the police or, at times, the military. Ahmad's argument that villagers comply from fear rather than "voluntary obedience" disregards the protective role that landlords often play in the lives of very vulnerable people. Negative sanctions exist, to be sure, but the most severe negative sanction is in fact the withdrawal of aid rather than a concerted or directed negative campaign against non-compliant individuals. In the western ideal world the vulnerable would be protected by the State and not dependent on the personal intervention of the right person at the right time. In the reality of the Punjabi world, they do depend on intervention at numerous critical points. No individual is so powerful that he or she may simply rely on the rules or laws of the State for "justice", and no community is so unified, harmonious and economically sound that it can afford to let itself be torn apart by the conflicts that arise between constituent members.

To return to the criticism of landlords with which I began this paper, it is difficult to justify heaping condemnation and recrimination onto one class of Punjab's countryside. Landlords do not provide the legal protection to individuals that Dr. Husain (1999) seems to think they should; instead

they provide protection to groups, including their own. One could argue that the status quo, which is in effect what landlords are trying to maintain, serves only the interests of landlords, however, that ignores the voluntary participation of "peasants" and other poor villagers. The majority of villagers have a vested interest in seeing the status quo maintained, since it is through networks that problems are solved in Pakistan – not through laws or policies. Villagers reinforce the power of their landlords not because they are forced to do so, but because they can see the benefit of doing so. Moreover, it is in the interests of all members of this diverse polyethnic region and country that some powerful deferral mechanisms be in place. The competition between groups, whether ethnic or of some other type, ensures high levels of potential conflict; as well as necessitating high levels of accommodation. The same mechanisms for defusing and deferring tension between equivalently powerful and autonomous divided categories (such as ethnic groups or castes) may equally be employed in intra-group conflicts which may potentially spread to the wider society, thereby risking inter-group conflict. In regions where such potential exists, the application of modernist justice and application of the rule of law may not effectively address some very fundamental conflict issues.

## NOTES

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<sup>1)</sup> Their analysis of the bisha ritual may be misleading. Frank Stewart argues that Bedouin arbitration councils operate under very similar premises as courts in Europe. They strive for definitive conflict resolution whenever possible. They resort to this kind of ritual only when they are faced with cases in which there is insufficient evidence to arrive at such a verdict (personal communication 2000).

<sup>2)</sup> Islamic law was introduced in South Asia in the early 8th century when Mohammed bin Qasim conquered Sindh and under the Moghuls enjoyed varying degrees of application/enforcement (Pearl 1987: 20–21, Schacht, Bosworth 1979). The Islamic legal code which was introduced to South Asia was itself an overlay of Quranic law, as dictated by the Prophet Mohammed and the Caliphs Umar and Ali, on top of the customary law of Arabian tribes. The introduction of Islamic law was an attempt to replace tribal loyalties and affiliations with Islamic community loyalties and affiliations (Gilmartin 1988: 43–44), however, it did not so much replace customary law as bent it. In the early part of the Islamic era, adjudication was to some extent an ad hoc affair trying to cope with problems as they arose among the newly formed Muslim community (Pearl 1987: 1–7, Schacht, Bosworth



1979). This tradition of pragmatism continued as Islam expanded. Islam adopted some elements from Byzantine, Persian, Jewish and Roman legal traditions, and variation appeared geographically in how laws were enforced. Even within the Arabian Peninsula legal schisms appeared relatively early on (prior to the end of the Ummayyad dynasty 750 AD – Pearl 1987: 8). Given that Islamic legal codes were built upon arbitration in which the primary goal was the establishment of a new community, then refined and expanded in a pluralistic cultural and legal environment, the traditional arbitration councils in the Punjab would seem to be an ideal venue for the implementation of Islamic law. Indeed, there seemed to be little real conflict in the practice of *shari'at* and customary law in Pakistan until independence. Gilmartin (1988: 44) suggests that Islam provided the framework within which South Asian Muslims were able to accommodate "competing values" within a single idiom. The Punjab, up to independence, therefore had a history of giving equal weight to customary and personal law (depending on the religion of the person, personal law changed).

<sup>3)</sup> The British gave statutory recognition to custom in the Punjab Laws Act (1872). It stated that in questions of family, law decisions were to be made based on either applicable customs or "Mohammedan Law" (Pearl 1987: 34–35). British administrators felt it preferable to root their legal presence in indigenous kin based rules, rather than ones based on religion. To this end the British conducted a survey to find the universals of Punjabi custom and then established a code of customary law (Gilmartin 1988: 45–50).

<sup>4)</sup> Since independence Pakistan has attempted to reverse British efforts to codify customary law with the passage of several acts. First the Punjab Muslim Personal (*Shari'at*) Application Act of 1948, followed by the Punjab Muslim Personal Law (*Shari'at*) Application (Amendment) Act of 1951 which ruled that in all cases of succession involving Muslims, the decision was to be dictated by Muslim personal law (Pearl 1987: 37). Since those acts the government has attempted to strengthen the role of *shari'at* law in family matters by introducing *Shari'at* Benches in Provincial High Courts (1978), *Hadd* Ordinances which regulate relations between men and women (1979) (Pearl 1987: 239–243) and more recently the former Prime Minister Nawaz Sharif's attempts to pass the 15th amendment to the Constitution in order that "The Holy Quran and Sunnah of the Holy Prophet (peace be upon him) shall be the supreme law of Pakistan", expanding *shari'at* well beyond the scope of family law. The Constitution of the Islamic Republic of Pakistan (in abeyance since 12 October 1999), prior to the 15th amendment gives the Federal *Shari'at* Courts the power to examine laws at the jurists' discretion for compliance with Islamic law and repeal those deemed "repugnant to the injunctions of Islam" (Chapter 3A, Section 203D, Paragraphs 1–3). The State is striving for a modern judicial apparatus in which judges are guided by law and principle and in which their decisions may have far reaching implications in other areas.

<sup>5)</sup> I have used pseudonyms throughout this paper out of respect for the privacy of those involved.

<sup>6)</sup> *Qaum*. This may loosely be translated as caste or tribe. Islam rejects Hindu notions of caste, but Pakistani marriage preference

is *qaum* endogamy (preferably kin endogamy). *Qaum* is frequently a disputed category and members of *qaum* which are designated as occupational castes (barbers, cobblers sweepers etc.) often deny that this is their *qaum*; nevertheless, the majority of marriages do occur within these categories (see Fischer, Finkelstein 1991).

<sup>7)</sup> *Izzat* is usually translated as honour. I understand this concept to be a reflection of an individual's ability to control him or herself and those around them. A person with no control over anyone else (or themselves) cannot "do" good *izzat*.

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