

Jirga - A Traditional Mechanism of Conflict Resolution in Afghanistan

Ali Wardak
University of Glamorgan, UK

Abstract

This paper examines the institution of jirga, its main forms, and the different social contexts in which each form operates as a mechanism of conflict resolution in Afghanistan. It is argued that jirga as a traditional Afghan institution is closely bound up with the social and economic realities of every day life in Afghanistan and is deeply rooted in the culture and history of the people of the country. The focus of analysis, in this paper, is the Pashtun model, which is more elaborate and emulated to varying degrees by non-Pashtun Afghans (Carter and Connor 1989; Glatzer 1998). It is argued that jirga as a time-honoured institution does not only resolve many local, tribal, and national conflicts efficiently and in cost-effective ways, but also acts as a powerful channel of communication among the people of Afghanistan. It, therefore, plays a central role in strengthening social solidarity among Afghans and contributes significantly to the maintenance of social order in Afghan society. However, the extent of the effectiveness of jirga as a mechanism of conflict resolution depends on the extent to which it is perceived as legitimate by the various segments of the Afghan population. It is maintained that there is a continued need for jirga in resolving many contemporary local, tribal and national conflicts in post-war Afghanistan. But, at the same time, this traditional Afghan institution needs to adapt to the new global cultural milieu that is being created by the forces of globalisation; it needs to be a more inclusive institution that represents both men and women and to be more sensitive to the universally accepted principles of Human Rights. Both past and current experiences show that there is reason to believe that jirga has the capacity to bridge tradition with modernity and to face the challenges of the 21st century.

Introduction

Conflicts are as old as human societies themselves. Historically, individuals, social groups and societies have disputed and competed against one another over scarce commodities and resources - land, money, political power, and ideology. They have even fought one another and bitterly sought the elimination and/or subjugation of rivals, in order to control these resources and commodities. But at the same time, human societies and groups have found their own ways and means for averting and/or resolving conflicts. The existing body of literature confirms that the nature and causes of conflicts and the mechanisms for resolving them are deeply rooted in the culture and history of every society; they are in many important ways unique to them. *Panchayat* in India (Baxi and Gallanter 1979; Moore 1985), Mediation Committees in China (Li 1978; Clark 1989), and *jirga* in Afghanistan (Carter and Connor 1989; Elphinstone 1992; Olesen 1995; Gletzer 1998) that operate as informal mechanisms of conflict resolution differ from one another significantly. More importantly, all these traditional forms of conflict resolution are fundamentally different from the ways conflicts are resolved in much of the Western world (Reichel 1998).

These comparative social facts would seem to support the philosophical position of cultural relativists who have long argued that the nature of all social phenomena, including conflicts and their resolution, are relative and culturally specific (Harris 1968; Spiro 1986). While this

viewpoint has a solid foundation in philosophy and social theory, the nature of human relationships in the 21st century has been radically changing with the increasing globalisation of economic, social, and political relationships among nations. (Robertson 1992). Cultural relativists may need, at least in some important ways, to rethink their position vis-à-vis the realities of social relationships in the 21st century. Since conflicts are a form of social relationships (though negative), they are bound to become more globalised and so are their resolutions.

Indeed, the complex global nature of the September 11 terrorist attacks in the USA, their global sources and causes, and the global efforts to respond to terrorism (and to its causes) confirm this. These developments are certainly pointing to the fact that the time has arrived when people from different cultures and civilisations will have to engage with one another as equal partners in the resolution of national and international conflicts and in understanding their causes; it is time that different cultures learned from one another and contributed to the emerging 'global culture' that is reflective of its numerous constituent elements, widely shared and ethical. *Jirga* – a traditional mechanism of conflict resolution in Afghanistan – has a strong potential to contribute to this culture. This paper, after defining the concept of *jirga* and examining its status as a national Afghan institution, will focus on an analysis of *maraka*, *qawmi jirga*, and *loya jirga* as the main forms of traditional conflict resolution in Afghan society. But first, it is important to place the subject under examination in the general context of the current social and political situation in Afghanistan that has been strongly shaped by nearly a quarter of a century long conflict in the country.

The Impact of War on Afghan Society

Since the Soviet military intervention in Afghanistan in 1979, the country has been used as battlefield between competing global and regional powers and groups - a battlefield between the former Communist USSR and the Capitalist West (mainly the USA) in the 1980s; a battlefield between Pakistan, the Arab Gulf countries, on the one hand, and Iran and Russia in the 1990s on the other; and more recently a battlefield between foreign Muslim fundamentalist groups and a right-wing US administration. In this process of rivalry, Afghanistan's main immediate neighbours infiltrated deep into Afghan politics. With competing interests in the country, they created their client factions/warlords and sponsored them militarily, financially and politically. These factions had gradually become so dependent on their foreign sponsors that they saw Afghanistan's interests through the eyes of these foreigners. The neighbours also exploited Afghanistan's existing ethnic and religious composition and justified their interventions on the grounds that they had common religious and ethnic ties with their clients. Thus the armed conflict, which continued for several years even after the defeat of the (former) Red Army, resulted in the extensive destruction of Afghanistan's economic, political and social infrastructure. The Western world, particularly the USA, which financially, politically and militarily supported the Afghan *mujahedin* (Islamic warriors) and lured the Soviets to invade Afghanistan (Breziniski 1998, Cooley 2002), almost completely abandoned the ruined country after the Red Army was defeated.

The destruction of the country's economic infrastructure, particularly, provided opportunities for the foreign players and their client Afghan warring factions to exploit the situation in seeking their strategic goals and sectarian interests at the expense of the Afghan population. The almost total collapse of Afghan pre-war economy gradually resulted in the emergence of a 'war economy' (Rubin 1999) - economic conditions that mainly centred on the manufacturing, repair, use and smuggling of weapons and ammunition, on the one hand, and on the smuggling (and production) of illicit drugs and national treasure on the other. What is particularly important to

mention is that the 24 year long conflict also resulted in a generation of young people who were largely deprived of gaining educational qualifications and other useful skills. This 'war generation' of thousands of young people has also been deeply traumatised by the war - many lost their parents, relatives and homes. This situation enabled the various factions to recruit their fighters from this war generation so that the conflict in which they had a stake continued. Fighting for one or the other warlord provided these young men with a source of income, social status, and a way of channelling their young energies. More importantly, this situation provided the opportunity for foreign Muslim fundamentalist groups - mainly the *Al-Qa'ada* - to use Afghan soil as headquarters for terrorist activities against other nations. There now exists an increasingly convincing body of evidence, which links the Afghanistan-based *Al-Qa'ada* to the 11 September terrorist attacks on New York's Twin Towers and on other targets in the United States.

The September 11 terrorist attacks, which deeply shocked the world, appear to have had a strong impact on global policy, particularly on US's policy towards Afghanistan. These events seem to have convinced US policy makers that the social, political and economic environments that breed terrorism are no longer confined within the national boundaries of nation states. Instead, they have clear transnational manifestations, and therefore, such environments need the attention of the international community. Indeed, the current international military engagement, economic reconstruction plans, and the political stabilisation of Afghanistan, are partly, aimed at the re-integration of Afghanistan into the global community. These efforts may, for the first time in the past 24 years, provide common grounds between the interests of the international community and the interests of the ordinary Afghan people. Central to political stabilisation and to the re-establishment of social and political order in Afghanistan is the institution of *jirga* - one of the least researched aspects of Afghan culture and society.

The Concept and Definition of Jirga

According to the Pashto Descriptive Dictionary (1978: 1272) *jirga* is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people; it also means consultation according to this source. The word *jirga* is also used in Persian/Dari. According to *Ghyathul-Lughat* (1871:119) it is derived from *jirg*, which means a 'wrestling ring', or 'circle', but is commonly used to refer to the gathering of people. Other scholars believe that the word *jirga* originates from Turkish where it has a very similar meaning to those in Pashto and Persian/Dari (Faiz-zad 1989: 5). These meanings of *jirg* and *jirga* strongly reflect the rituals and processes of the Pashtun traditional tribal *jirga* where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues. Rubin (1995: 42), a prominent scholar, describes the institution of *jirga* in this way: 'The *jirga* includes all adult males and rules by consensus. In theory, a *jirga* can be convened at any level of tribal organisation, from the smallest lineage to an entire confederation. *Jirgas* are most commonly held at the lineage level, but there are larger tribal or even inter-tribal *jirgas* as well, at least among the eastern Pashtuns.' While this description depicts almost all the important aspects of this traditional Afghan social institution, Rafi (2002: 6) a contemporary Afghan scholar, has formally defined the concept and says that *jirga* is '... that historical and traditional institution and gathering of the Afghans, which over the centuries, has resolved our nation's all tribal and national political, social, economic, cultural and even religious conflicts by making authoritative decisions'.

Despite the generic nature of this definition, it provides a comprehensive framework for the various dimensions of the institution of *jirga*, the different levels at which it operates as a mechanism of conflict resolution, and the kinds of conflicts that it is designed to resolve. The

jirga is a traditional institution that is more strongly bound up with the tribal economy and society of the Pashtuns of Afghanistan who estimatedly constitute around half of the total Afghan population (Dupree 1980; Canfield 1986; Hayman 1992; Glatzer 1998; Wardak 2003). It is, therefore, more commonly and effectively used as a mechanism of conflict resolution among the Pashtuns as the authors of an important field study - 'Contemporary Afghan Councils' - state:

The prototype in Afghanistan, the *jirga*, is the product of Pashtun tribal society and operates according to the dictates of the *pashtunwali*, an inclusive code of conduct guiding all aspects of Pashtun behaviour and often superseding the dictates of both Islam and the central government. Thus, in the tribal Pashtun areas, local *jirga* settles (nearly) all issues, unless assistance is requested from another tribe or the government. (Carter and Connor 1989: 7)

Indeed, *jirga* has over the centuries, operated as an important mechanism of conflict resolution among the Pashtuns, and has contributed to the maintenance of social order in the rest of the Afghan society both in direct and indirect ways. But, the centrality of *jirga* in the resolution of tribal conflicts in accordance to tribal customs has, sometimes, been interpreted as a challenge to the authority of the central state. It has, therefore, been considered as a rival to the state by certain governments in Afghan history. However, despite attempts by certain Afghan governments to expand their formal control throughout the country - through the pre-emption of the village *malik* (a liaison person between the government and the local people) system, the introduction of district and rural development councils, the imposition of Marxism, and theocracy - the Pashtun social institutions, including the *jirga*, have remained relatively intact. This has been particularly the case with those Pashtun areas that had strong tribal structures and were located far from urban centres. In large urban centres, however, where non-Pashtuns and Pashtuns were mixed, or where non-Pashtuns predominated, the central government was able to assert its formal authority more fully. In these parts of the country, most conflicts were resolved by formal agencies of the Afghan State. The pre-war Afghan legal system was broadly based on Western (particularly French) conception of 'legality' and the principles of Islamic jurisprudence, mainly on the *Hanafi* School (Kamali 1985). It generally reflected a balance between Islamic teachings, Afghan tribal traditions (customary law) and modern legal norms. The administration of this legal system, however, involved long delays, bribery and corruption. Judges and magistrates particularly had a reputation of corruption. Many Afghans in rural areas tried to avoid contact with state legal institutions and preferred their conflicts to be resolved by *jirgas* outside the courtroom (Wardak 2002).

Jirga as a National Afghan Institution

This description of *jirga* may be taken as implying that it was an exclusive Pashtun tribal institution that operated as a mechanism of conflict resolution only in non-urbanised (or less urbanised) Pashtun populated areas in the south and east of Afghanistan. Many warlords and faction leaders, who claim to be championing the rights of different ethnic and tribal groups in Afghanistan, have particularly promoted this view during the past 24 years of Afghan civil conflict. However, there is emerging evidence which shows that *jirga*, or its equivalents, are used as informal mechanisms of conflict resolution in rural or less urbanised areas where Afghan Tajiks, Hazaras, Uzbaks, predominate as the main (or sole) ethnic group (See Farhadi 2000; Malekyar 2000; Hashemi 2000). What is striking in these accounts is that there are close similarities between the Pashtun *jirga* and the non-Pashtun *shura*. Carter and Connor (1989) confirm that among Afghan Tajiks, Hazaras and Uzbaks, *jirga*-like councils, which are commonly referred as *shura*, operated as a mechanism of conflict resolution. These Afghans dealt

with relatively less serious conflicts, problems and issues informally through *shura* which, Carter and Connor (1989: 9) operationally define in this way: 'A *shura* is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.' This description would seem to indicate that *shura* and *jirga*, are fundamentally very similar Afghan informal (non-state) mechanisms of conflict resolution that operate in varying social and tribal contexts. In fact, many of the concepts and techniques such as '*ozrkhahi*', '*nagha*', '*molamat*', '*ras-e-qaum*', '*reeshsafidan*' that are used in the process of dispute settlement among Afghan Hazaras (Malekyar 2000: 62 – 71) are the exact equivalents (in *Dari* language) of those used in the process of the Pashtun tribal *jirga*.

Carter and Connor (1989) further add that, unlike the strongly institutionalised and egalitarian *jirga*, the *shura*, which has been significantly militarised during the past 24 years of Afghan war, is more like a short-term advisory council of elders, landlords, *khans* and military commanders without clearly defined rules. Also the *shura* often deals with civil conflicts and military issues, the resolution of which is strongly influenced by landlords, *khans*, and more recently by warlords and military commanders. More importantly, Carter and Connor's (1989: 10) study further reveals that because of these reasons and because of Pashtuns' expertise in conflict resolutions, as well as due to their large population size and dispersion through much of Afghanistan, '...it was not uncommon for a non-Pashtun groups to request local Pashtun elders hold a *jirga* to settle a non-Pashtun conflict, suggesting that the Pashtun *jirga* traditionally had more impact than its non-Pashtun counterpart, the *shura*.' In these situations, even non-Pashtuns refer to these processes of conflict resolution as *jirga*.

This field observation clearly indicates the fact that Afghans, whatever their ethnic/tribal origin, have over the centuries emulated each other's behaviour - Pashtuns, Tajiks, Hazaras, Uzbaks, Turkmans and other Afghan ethnic and tribal groups have all made their unique contributions to Afghan culture that is more than the total sum of its constituent parts. The contributions of Tajiks to Afghan arts and literature, the Hazaras and Qizelbashes' contributions to civil society and urban entrepreneurship, the Uzbek and Turkman's contribution to trade and commerce, and the important contributions of smaller Afghan ethnic and tribal groups have all printed their stamp on what is today referred to as Afghan culture. Despite the relative under-representation of Hazara, Uzbek and Turkman cultural traditions at national level, the richness of Afghan national culture owes much to this centuries old multi-cultural fusion among the various tribal/ethnic cultural traditions in Afghanistan. This situation has, in turn, contributed to the development of cross-tribal and cross-ethnic national institutions that can only be called Afghan. This is clearly manifested in the fact that the institution of *jirga* has been translated into the national political life of Afghan society - the two houses of Afghan parliament have been named as *wolasi jirga* (Lower House) and *mashrano jirga* (Upper House) and the periodically held grand Afghan assembly as *loya jirga*. Thus, whatever the origin of *jirga*, and whatever the extent of its prevalence as a mechanism of conflict resolution among various Afghan ethnic/tribal groups, it has national currency.

Traditional Structures of Authority and Levels of Jirga

The notion of 'authority' has been extensively discussed by classical as well as modern social and political thinkers. It has been described in different ways depending on the form of authority that is exercised in a specific social context. In order to understand the different forms of authority and the ways they apply to the institution of *jirga*, it is important to draw on Max Weber's (1964) work in which he distinguished three forms of authority: a, 'traditional', b, 'rational-legal', and c,

'charismatic' authority. Charismatic authority, according to Weber is a kind of exceptional (or divine) endowment of grace that is imputed by followers to leaders. Contemporary examples of this form of authority may be the authority of Mahatma Ghandi, Martin L. King, and Ayatollah Khomeini. Legal-rational authority, on the other hand, according to Weber is the authority of highly organised groups such as that of the modern state. And finally traditional authority for Weber is the semi-political decisions made by chiefs of tribes in societies where formal processes of governance do not exist, or are not fully institutionalised. These concepts will be used to theoretically inform the discussion about the exercise of authority in the processes of conflict resolution in Afghan society.

Although the main structure of authority in Afghan society include the extended family, the locally based clan (or sub-tribe), the tribe, large ethnic group, and the state (Wardak 2002), for the purposes of this paper I will focus on the ways authority is exercised within the context of *jirga*. However, before examining the main social contexts within which 'public' conflicts are dealt with by *jirga*, it is important to mention that most conflicts that are considered 'private' are resolved within the Afghan extended family that the Pashtun refer to as *kahol* and the Tajik and Hazaras as *khanawada*, or *khanadan*. Afghans consider this patriarchal social unit where two or more generations of blood-related relatives live together in a *Kayla/qal'a* (usually a mud and stone built Afghan Castle) or in a cluster of adjacent houses, as 'the cornerstone of society'. The oldest man in the family - grandfather/father - is the undisputed figure of authority. The fact that grandfather/father controls the family's shared sources further strengthen his position as the main figure of authority, which is also strongly sanctioned by Islamic teachings. Because of these reasons, father/grandfather plays a decisive role in the resolution of disputes that are considered 'private'

Thus, a great deal of potentially serious disputes, relating to domestic violence, divorce, inheritance, arrangements of marriages are settled within the 'private' sphere of the Afghan extended family without the involvement of local/tribal or state institutions. In this way, many potentially serious conflicts are screened at the familial level; they are dealt with on the spot before becoming a public problem, and a burden on other societal institutions - one of these societal institutions is *jirga* that is examined at local, tribal and national levels, below.

I: Maraka - Local Jirga

The concepts of *jirga* and *maraka* (often pronounced *mraka*) as informal mechanisms of conflict resolution among the Pashtun of Afghanistan are often used interchangeably. However, some Afghan experts on the subject make an important distinction between the two. Atayee (1979: 39) says that 'The difference between *maraka* and *jirga* is that the *jirga* is to investigate and settle problems of small importance. Members of *maraka* are elders of the various *psha* (*plarina*) of one *khel*. The *jirga* considers and settles problems of great importance and its members are the elders of various *khels* concerned.' (See also Rafi 2002). The fact that members of *maraka* comprise of elders of one *khel* (often a single village-based kinship group) clearly indicates that it is generally a local village institution. Therefore, I will use the term *maraka*, throughout this section, to refer to the micro-level village (or inter-village) based local mechanism of conflict resolution.

The social organisation of *maraka* as a local village-based institution will be further examined later in this section, but first it is important to describe the social and cultural context within which it operates as a mechanism of conflict resolution in Afghanistan. The most immediate context within which *maraka* operates is the kinship group that is referred to among Afghan

Pashtuns as *khel*. According to Atayee (1979) *khel* is a sub-section of a *tabar*, tribe. A *khel* comprises several immediate kinship groups that are called *pllarina* (or *plarganey*). A *plarina* includes several extended families, or *kahols*, that are related to one another by a common ancestor, and whose members have intense reciprocal relationships among themselves. Thus, *plarina* represents the smallest unit of tribal formation and the most immediate kinship group of distant relatives who refer to one another as cousins. Members of several *plarinas* (or a *khel*) usually live in a single *kalay*, village, and normally share public facilities such as the mosque, water spring, mill, and water canals etc. But, members of a large size *khel* may live in more than one *kalay*. Occasionally, a very large *khel* may comprise of tens of smaller *khels*, and therefore form a tribe in its sown right. An example of this is the Suleimankhel branch of the Ghalzai Pashtuns. However, what is crucial to the current discussion is that it is the village-based *khel* within the context of which, ‘public’ matters - as opposed to ‘private’ matters that are dealt with by *kahol* and *plarina* - are settled by a *maraka*.

Maraka as a local institution of conflict resolution, is closely related to the social and economic organisation of *kalay*. As the overwhelming majority of Afghans are agricultural farmers, it is mainly the agricultural farm, the orchard, the water-spring and canal, the water-mill, animal husbandry, vineyard, orchard and the manufacturing of basic agricultural tools around which *kalay* is socially and economically organised. The average Pashtun *kalay* is a small socio-economic unit that normally consists of a several clusters of extended families whose members are usually related to a common ancestor. The average size of *kalay* may range from about 50 to 200 individuals. It is generally a self-sufficient socio-economic unit within which people are not only related to one another through blood ties, but also through general reciprocal relationships. They reciprocate agricultural tools, goods, gifts, favours and services. At a *plarina* level, the norms of reciprocity are governed by *trabgani*. *Trabgani* refers to the established patterns of behaviour which guides members about who to co-operate with, who to compete with, who to marry, and in a word how to live as *tarboor* - an equal and respectable member of the kin group; it is both a source of cohesion and divisive rivalry among members of a *plarina* in different circumstances (*Trabgani* is mistakenly interpreted as rivalry/enmity by some writers including Rubin 1995). However, at a more general level, it is *pashtunwali* that guides the normative aspects of social relationships (including reciprocal relationships) among members of the *khel*, and constitutes an important aspect of the social order of *kalay*. As will be examined in more details in the next section, *pashtunwali* refers to the general code of behaviour for a Pashtun as an autonomous and respectable member of society. It is important to mention that some prominent Afghanologists assert that *pashtunwali* has, to varying degrees, influenced other Afghan tribal and ethnic groups too. According to Dupree (1980: 127) ‘The values of the Pashtun and the Muslim religion, modified by local customs, permeate in varying degrees all other groups.’ This is also confirmed by Newell and Newell (1981: 23) who say that *pashtunwali* ‘...has influenced other groups within the country who must deal with similar environment and social realities.’

It is this social and economic context of the *khel* and *kalay* within which *maraka* operates as a mechanism of conflict resolution. The existing body of literature shows that *maraka* has not been defined formally. However, looking at the different aspects and elements of *maraka* as outlined in this literature, it may be described as *a local institution of dispute settlement that incorporates a prevalent (time and space-bound) narkh, institutionalised rituals, and a body of marakachian whose prikra about a dispute (or problem) is binding on the parties involved*. This description indicates that *narkh*, institutionalised rituals, *marakachian* and *pikra* constitute the fundamental elements of *maraka*. Thus, an assembly of a *khel*’s members without the materialisation of one, or more of these elements may be considered as an ordinary gathering rather than as a *maraka*.

Narkh refers to the centuries-old body of the civil and penal tribal ‘customary laws’. While these ‘laws’ are totally unwritten, they are part of the collective consciousness of *kalay*. This is summed up in the Pashto proverb ‘*De watan na wowza kho de narkh na ma waza*’, which means that ‘you may abandon your tribe/homeland, but you can not abandon *narkh*.’ This implies that these customary laws have profound existence in the minds of local people. However, it is the *narkhey* (expert of *narkh*) who has a detailed knowledge of these laws, their applications and related procedures. According to Atayee (1979:67) the best known *narkhs* are the *Ahmadzai narkh* and the *Razmak narkh*. The *Ahmadzai narkh* has two versions, namely the *Esa narkh* and the *Musa narkh*. While the first is considered as strict and precise, the second is more general, but sufficiently flexible to suite different situations. Some *khels* and tribes in eastern and southern Afghanistan have developed their own *narkhs* that are more applicable to their local social and economic conditions. Nevertheless, the *Ahmadzai* and the *Razmak narkhs* are generally followed as sources of reference among the Pashtuns of Afghanistan. In fact, *narkh* at a more general level, reflects the fundamental values and norms that are associated with *pashtunwali*.

However, *narkh* has to be placed in the social context of a specific conflict and thoroughly discussed by *marakachain*. The latter refers to all the *mashran* (elders), *speengiri* (people with grey beards), and *speenpatkian* (people with white turbans, which means *mullahs* here) who form the main body of *maraka*. As mentioned earlier, while *mashran* and *speengiri* represent various *plarinas*, *speenpatkian* join them, in order to bless the *maraka* and to lead the religious aspect of the *maraka* rituals. *Mashran* and *speengiri* are rarely religious leaders, but they often have a working knowledge of ‘folk Islam’, especially of the general principles that relate to conflict resolution. Although, some *mashran* and *speengiri* are normally experts in *narkh*, they may be accompanied by a *narkhey* who often belongs to a different *khel*. This is to ensure that the relevant customary laws are properly and fairly applied.

Institutionalised rituals form a necessary, but less important element of *maraka*. The nature and quality of *maraka* rituals vary in accordance with the nature of the issue that is dealt with and with the kind of technique of conflict resolution that is used. For instance, the rituals of *roggha* (reconciliation/mediation) in a criminal case are different from those of a *roggha* in non-criminal disputes. In addition, since *maraka* mostly deals with civil and relatively less serious criminal matters - such as violation of one’s local grazing rights, water rights, disputes over agricultural farm or on its boundaries, feuds over symbolic resources between members of a *khel*, and relatively minor bodily harm - its related rituals are not as elaborate as those of a tribal *jirga*. Nevertheless, *maraka* is normally held in a specially designated open and public place or in the village mosque, especially during winter. Only some *marakas* that involve sensitive local issues are conducted secretly without the participation of ordinary people. Some *marakas* are scheduled for the arrival of *Eid* (the first non-fasting day after *Ramadan*, and the day of pilgrimage of *Makka*). Since *Eid* is a day of communal joy and celebration, it is a uniquely appropriate occasion for sharing the joy among all members of the village including the disputants. The *maraka* usually starts by the recitation of verses from the holy *Qura’an*, and ends with *du’a* (prayer); both rituals are led by the *speenpatkey*.

Depending on the physical location of the place where a *maraka* is held, *marakachian* form the inner circle of the gathering; ordinary members of the village sit in an outer circle. While ordinary people are allowed to listen to the proceedings, they normally do not get involved in the actual discussions. However, the ordinary participants are not just spectators. Instead, they carefully observe the *jirga* process; their presence is a reminder to the *marakachian* that the village is watching what they say and what they decide on. Thus, *maraka* is a multi-dimensional process of communication between the various parties involved - it is not only a form of communication between the disputants, and among the disputants and the *marakachian*, but also a

communication among all of these and the apparently silent village. This complex process of direct and indirect communication among members of the village functions as the main source of its social cohesion as a unified community - it reaffirms that *kalay* has a shared morality, the violation of which is not acceptable. It also ensures that the violator must pay the price for his/her violation, so that the actual harm inflicted (on the victim) and the symbolic damage caused to the moral order of the village are compensated.

A very important aspect of *maraka* is *pikra*, which means *maraka*'s final decision (ruling) about the settlement of a specific conflict. The nature of *pikra* varies in accordance to the specific form of *maraka*. According to Atayee (1979) there are two forms of *maraka*. The first one is called '*wak maraka*', which is empowered to investigate, discuss, and make *pikra* (decision/verdict) about a case in the absence of the disputants. The second is called '*De zhabi shorawalo maraka*' which, summons the disputant parties who present their cases, arguments, and witnesses throughout the process of *maraka*. In the latter form of *maraka*, *marakachian* try to find common grounds between the disputants and resolve the conflict in such way that is acceptable to both parties. It is mainly the 'traditional authority' (based on personal qualities, social status, and leadership skills) of *marakachian*, which plays a central part in achieving a *pikra* that is satisfactory to both parties. Persuasion through invoking the fear of *Allah* and threat to the *nang aw namos* - collective honour - and to the unity of *khel* are used as important techniques in this process. But in *wak maraka*, the *pikra* is final and binding on the disputants' behaviour after it is announced. In this latter form of *maraka*, the disputant parties and the village generally trust the use of what Wrong (1979) calls the 'competent authority' (based on the individual's recognised expertise and skills) of the *marakachian*. Should any of the parties choose not to adhere to the *pikra*, he/she may face *ratal* - a collective social boycott by the whole village. In addition, the disobedient may be ordered to pay *nagha* (fine/compensation) to the other party. Occasionally, members of the village may burn his/her house.

However, if the disputants and *khel* see a *pikra* as unfair it may be rejected. This often happens when a wrong *narkh* is applied. This is called *kog-narkh*, which means the application of a wrong *narkh*, or the misapplication of the prevalent *narkh*. In this situation, the dissatisfied party must have the support of the *khel*, in order to be able to appeal to another *maraka*. If the second *maraka* proves that a *kog-narkh* has been applied, then *marakachian* lose their reputation and the right to participate in future *marakas*. They also have to pay *tawan*, compensation, to the parties (especially the dissatisfied party). This clearly shows that the legitimacy of both the processes and the outcome of *maraka* is central to its institutional status as a local mechanism of conflict resolution. Indeed, legitimacy is central to the social order of the village and to its functioning as a social group. But, legitimacy is often subjectively assessed in the wider context of Afghan culture, an issue that will be further examined in the next two sections.

II: *Qawmi Jirga* - *Tribal Jirga*

As mentioned earlier, *maraka* and *jirga* involves very similar processes and techniques of conflict resolution, and therefore, the two concepts are often used interchangeably by writers as well as by ordinary people. The former is often a local village based institution, dealing with less serious local issues. The latter, as a tribal institution, deals with more important issues that are central to the social order of the tribe. Thus, before an examination of the ways that *qawmi jirga* operates as a mechanism of conflict resolution, it is important to look at the social context of this traditional institution - the tribe - and the ways its social boundaries are drawn.

Despite the fact that exploring the nature of tribe and delineating its social boundaries in the context of the multi-ethnic Afghan society is a highly complex issue, some Afghanologists have attempted to do so. Tapper (1983: 4) a British anthropologist describes tribe in the context of Afghan society in this way: '*Tribe* may be used as loosely of a localized group in which kinship is the dominant idiom of organization, and whose members consider themselves culturally distinct (in terms of customs, dialect or language, and origins)'. While this description outlines key features of the Afghan (mainly Pashtun) tribal formation at a general level, its fuller and more precise understanding is a highly complex issue. This is mainly because the social boundaries of the Afghan tribe fluctuate vis-à-vis other tribal, or sub-tribal units to which it relates from the roots of the tree, or from the above. A large tribe often has dozens of sub-tribes whose members may see themselves as belonging to each, some, or all of the sub-tribes in different social situations (co-operative, competitive, confrontational) and identify with each accordingly. For example Kaisarkhel, with an estimated several thousand members in eastern Afghanistan, is a branch of Suliemankhel, which in turn, is a branch of the Ghalzai Pashtun tribe. While all members of Kaisarkhel are also Suliemankhels, they are automatically Ghalzais; but the level of their tribal identification and the manifestation of their tribal loyalty would vary from one social situation to another.

Because of the complex nature and the overlapping social boundaries of the tribe, the term is used in the present context, to refer to: *any level of lineage based social formation the members of which trace their roots to a common ancestor, see 'themselves' as one unit in relation to 'others' in a specific social situation, but do not necessarily have face-to-face and direct reciprocal relationships*. While this description excludes a local village-based *khel*, it does include all the various levels of tribal formations. Of course, this description is not intended to resolve the complexities of the nature and boundaries of the tribe; it only aims at providing a context for the examination of *qawmi jirga*. Thus, describing the Afghan Pashtun tribe in this way, *qawmi jirga* may be held at any level of these tribal formations as a mechanism of conflict resolution.

However, before examining the main techniques and processes that the *qawmi jirga* involves, it is important to mention that its main constituent elements - *narkh*, *marakchian (jirgamaran)*, institutionalized rituals, and *prikra*, (or *tarun*) - are not fundamentally different from those of *maraka*. The fact that *qawmi jirga* deals with serious and important conflicts and issues within the tribe (such as murder, disputes over land, water canal, water-spring, etc.), or between tribes (disputes over communal land, mountains, mines, jungle/woods, and the murder of fellow tribesman by a member of another tribe), and the fact that it operates at a higher level of tribal formation, means that its social organization is more structured. For example the *marakchian* of a *qawmi jirga* (who are called *jirgamaran* in this context) include prominent representatives of all of the tribe's various *khels* who have proven qualities of leadership. These qualities include a proven record and reputation of *milmopalana* (hospitality), possession of good family *nang aw ghairt* (honour), large number of men in the family, bravery in war, political influence within the government, verbal eloquence and regular sound judgments in *jirgas*. Also, the *speenpatkian* in this case must be well-known regional religious leaders rather than local *mullahs*. Similarly, the other important element of *qawmi jirga*, the *narkh*, is more strictly applied in accordance with the tenets of *pashtunwali*. This Pashtun code of behaviour is described by one pair of Western Afghanologists in this way:

“In addition to the basic requirements of Islam, Pashtuns observe the code of *Pashtunwali*. It is simple but demanding. Group survival is its primary imperative. It demands vengeance against injury or insult to one's kin, chivalry and hospitality toward the helpless and unarmed strangers, bravery in battle, and openness and integrity in

individual behaviour. Much honour is given to Pashtuns who can successfully arbitrate the feuds that are endemic among them. Fines and blood money are devices frequently used to limit violence among rival families. *Pashtunwali* is a code that limits anarchy among a fractious but vital people.”

(Newell and Newell 1981: 23)

Members of the *qawmi jirga* sit in a circle, in a specifically designed place, which may sometimes have a flag. This physical organization of the *jirga* helps create a social atmosphere where people see each other as equals. Glatzer (1998: 176) describes the egalitarian nature of *qawmi jirga* in this way: ‘According to tribal equality, every free and experienced free male person of the tribe has the right to attend, speak and to decide.’ Indeed, there is no hierarchy of speakers and no chairman in the *jirga* process. The deliberations of *qawmi jirga* may take days depending on the complexity of the issue and on reaching a satisfactory decision. Throughout this period, tribal leaders, or other well wishers host *qawmi jirga*. These special hospitality arrangements according to Atayee (1979: 57) are called *maray*, or *tkala*. The *jirga’s prikra* (also called *tarun* when the conflict is inter-tribal) is based on consensus rather than on a majority vote. While this ‘make, or break’ procedure seems to be closely related to the absence of a modern democratic culture and structure, lack of economic resources and the very high illiteracy rate (more than 80%) in Afghanistan, it sometimes results in the break down of the *jirga*. In this case, tribal leaders reassert their authority and the *jirga* is reconvened. *Qawmi jirga* can be reconvened three times. Decision of the third *jirga* is final and must be implemented - after all, the *jirga* is considered by members of the tribe what Elphinstone (1992: i - 215) has described as the ‘internal government’.

As there seems to be more importance attached to the group rather than to the individual in Afghan society, the social survival of the tribe plays an important role in reaching *prikra*. In a murder case, for example, *jirgamaran* carefully weigh up the advantages and disadvantages of alternative punishments - *badal* (direct vengeance), *khoonbaha* (blood money), the marriage of a woman from the *par’s* (blameworthy/ convicted person) tribe to the victim's close relative. The primary concern in this case is to strike a balance between preventing the conflict from becoming a tribal enmity of revenge killing and the restoration of collective tribal honour. Therefore *khoonbaha*, in most murder cases is preferable to *badal*; and the former is more commonly used. It is important to mention that in the case of accepting *khoonbaha*, relatives of the victims are directly involved in the *jirga* process and in pardoning the murderer. This settlement is also encouraged by Islamic law in specific types of murder (A’uda 1964). One of the main purposes of the involvement of the victim's relatives in the *jirga* decision is to persuade them not to pursue revenge that may involve the whole tribe. Interestingly, in the last option of responding to murder, the offender and the victim's relatives (or their respective tribes) are not only reconciled by *jirga*, but become (new) relatives by marriage. But, the individual - a woman in this case - often pays the price for the tribe’s social survival in this patriarchal group-oriented society. This practice is not only in direct conflict with Afghan legal norms, but also a violation of the principles of Human Rights. This and the exclusion of women from *jirga* process are a reflection of the patriarchal social structure of Afghan society.

An important feature of *qawmi jirga*, especially in the case of murder and bodily harm is the reconciliation of the feuding parties, and the reintegration of the offender back into the tribe. This is very clearly manifested in *nanawate*. Although the term *nanawate* is described by Dupree (1980: 126) as ‘the right of asylum and the obligatory acceptance of a truce offer’, its more precise meaning is seeking forgiveness/pardon and the obligatory acceptance of a truce offer (Atayee 1979: 65-67). It also refers to the whole body of people who make up this group of mediators. This happens when *qawmi jirga* makes a *prikra* that relatives of *par* send a *nanawate* to the victim’s house. This consists of a group of people that include *speengiri*, *torsary* (female

relatives of the offender holding a *Quran*) and *speenpatkian* alongside with offender's close relatives (and sometimes the offender himself) who bring a sheep and flour to the victim's house. The sheep is often slaughtered at the door of the victim's house. Then, members of *nanawate* ask for permission to enter the house. Once inside the house, they seek pardon on behalf of the offender. As it is against the principles of *pashtunwali* to reject a *nanawate*, the victim's relatives pardon the offender and the two parties are consequently reconciled. This reconciliation process is called *rogha*. What is crucial in this ceremony is that the offender is reaccepted to the tribe after he is publicly held responsible and told that what he/she has done is wrong. But at the same time, he/she is treated with respect as a fellow tribesman. This might be an example of what Braithwaite (1989) calls "re-integrative shaming" - a shaming of the offender, which is followed by re-accepting him/her into the community. Contemporary criminological literature shows that this form of shaming is more effective in reducing crime than 'disintegrative' shaming that labels the offender as different, evil, and excludes him/her from the community.

However, despite the cost-effectiveness and efficiency of *qawmi jirga* as a mechanism of conflict resolution in Afghanistan, it is not completely immune from the illegitimate influences by some *jirgamaran* (Noelle-Karimi 1988: 38). This may include nepotism and illegitimate lobbying. In such situations, the *pikra/tarun* is often rejected. If the *jirga* is not reconvened soon, the disputant parties may take matters into their own hands. This, in turn, could have serious consequences for the tribe as a whole and may result in continued feuding and revenge killing. Continued bloodshed in a tribal context, sometimes, further results in inter-tribal warfare. In such situations, the central government and its agencies of social control often get involved - a prospect that tribe people fear most. This is not only because that the tribesmen do not like officialdom and state interference in their affairs, but also the state justice system is expensive, slow, and has a reputation for corruption.

Like *maraka*, *qawmi jirga*, serves as an important channel of communication, not only between those who are directly involved in the process, but also between the main actors and the whole community of fellow kinsmen. It is a communication that is central to the social survival of the tribe as a cohesive group that is bonded together not only by blood ties, but also by *pashtunwali* - a code of behaviour that has a profound existence in the collective mind of the tribe; it is seen as unwritten 'constitution' of the tribe. But, what is more important about this process is the legitimacy and moral validity of the *jirga's pikra*: it is binding on the behaviour of the parties only when it is arrived at fairly and is in accordance to the tenets of *pashtunwali*. The legitimacy of *pikra*, to a significant extent, depends on the ways it is perceived as such. It is mainly the 'traditional authority' of the *jirgamaran* that is crucial in creating this perception. It is extremely difficult for a disputant to go against a *jirga* decision. Should any of the parties choose not to adhere to the *pikra*, he/she may be ordered to pay *nagha* (fine/compensation) to the other party. He/she may also be required to pay the expenses that have been incurred by holding the *jirga*. In more severe cases of non-adherence, the decisions of *qawmi jirga* are enforced by *arbakian* (Atayee 1979; Glatzer (1998; Rafi 2002). *Arbakian* are normally young unmarried male members of the tribe who have the responsibility to implement *jirga* decisions. *Arbakian* may, sometimes, be asked to burn the house of the offender. But, such actions are in conflict with the Afghan state law. It is mainly this aspect of *qawmi jirga* and 'customary law' that creates tension between the state and tribe in Afghanistan. As the state and its role in conflict resolution are issues that lie within the sphere of macro-level national issues, they will be examined in the context of *loya jirga*.

III: *Loya Jirga - Grand National Assembly*

Loya jirga is a Pashto phrase that consists of two words – ‘*loya*’ which means 'grand', and ‘*jirga*’ which means gathering, or 'assembly'. *Loya jirga* in Afghan political culture means a ‘grand assembly’ of Afghan tribal leaders, elders and others who gather, in order to discuss vital national issues and make collective decisions. For centuries, Afghanistan has convened *loya jirgas*, and therefore, the whole terminology is deeply rooted in Afghan culture and history. The best known *loya jirga* in Afghan history is the one held in 1747 in Kandahar during which various Afghan tribes selected Ahmed Shah Durrani (Ahmad Shah Baba) as the first king of modern Afghanistan; he then laid down the foundation of the modern Afghan state. Also, the 1964 and 1976 *loya jirgas* have special place in Afghan modern history as women representatives, for the first time, participated in them. In 1964, four women were appointed to the advisory drafting committee of the proposed constitution; in 1976 women formed 15 percent of the members of the *Loya jirga*.

Loya jirga is only held periodically, in order to, decide on important national issues that are central to the social and political order, sovereignty and national unity of Afghanistan. According to Roashan (2001: 4) some of the main reasons for the convening of a *loya jirga*, in the history of modern Afghanistan, have been selection of a new ruler, declaration of war or adoption of treaties of peace, adopting a constitution, and deciding on the status of the country vis-à-vis global conflicts and political/military blocks. Indeed, the chronology of *loya jirgas* in Afghan history shows that one or more of these reasons necessitated the convening of *loya jirgas* in different social, political and economic circumstances.

Central to the success, or failure of a specific *loya jirga* in Afghan history has been its legitimacy. Legitimacy in this context means the extent to which the Afghan population believed in the entitlement of a *loya jirga* as a national body of their representatives empowered to act on their behalf and the extent to which its decisions were binding on their behaviour. In the absence of modern democratic culture in Afghanistan, legitimacy often meant what political theorists described ‘moral’ or ‘normative’ legitimacy as differentiated from ‘legal’ and ‘empirical’ legitimacy (Marquior 1980). This is to say that the degree of the legitimacy of the various Afghan *loya jirgas* varied in accordance to the extent to which people perceived them (subjectively) and accepted them as legitimate in different circumstances. It is, of course, very difficult to objectively measure the legitimacy of the various *jirgas* that have been held in modern history of Afghanistan. However, few Afghans would doubt the legitimacy of the 1747 *loya jirga* in Kandahar and the 1922 *loya jirga* in Paghman to mention only two; and despite criticism from respected Afghan anti-establishment politicians (Ghobar 2001), the 1964 and 1976 *loya jirgas* in Kabul were generally accepted as legitimate. The main sources of the legitimacy of these *jirgas* appear to be, among other things, the ‘traditional’ as well the ‘charismatic’ authority (Weber 1964) of the elders and leaders who participated in them; they were perceived as the nation’s rightful representatives to these grand assemblies.

However, not all *jirgas* in Afghan history have been successful in achieving their goals. The *Loya jirgas* held by the Afghan Marxist government in the 1980s have been massively rejected; and so was the *mujahedin* government’s *shura - i- ahl al-hal wal a’aqd*, (the phrase means something close to the council for the making and unmaking of laws/decisions). It appears that these all lacked legitimacy in the eyes of the Afghan people as both the Marxists and the *mujahedin* attempted to manipulate the *jirgas* that they held and to use them as vehicles for imposing totalitarian governments on the people of Afghanistan. In the case of the *mujahedin*, they even tried to replace the whole institution of *loya jirga* by a highly vague idea of *shura - i- ahl al-hal wal a’aqd*. This concept, which had no solid grounding in Afghan culture and history, was interpreted in ways that served only the political interests of the ruling theocratic regime. As

the imposition of a totalitarian system of governance is inherently at odds with the nature of the egalitarian institution of *loya jirga*, these attempts drastically failed. The failures of the Afghan Marxists and the *mujahedin* to give the people of Afghanistan the right to choose their rulers have had catastrophic consequences for Afghanistan. Olesen (1995: 303) sums up this failure and states: 'So far, the 'Islamic Revolution' threatens to be as fatal to the Afghan population as the Saur Revolution [Afghan Marxist] was.' Few Afghans, indeed, would disagree with this conclusion.

The 2002 *Emergency Loya Jirga*, based on the Bonn Agreement (December 2001), was considered as one of the most important events in Afghan history; it was seen as an essential first step towards peace and the establishment of a new democratic political order in Afghanistan. However, the *Emergency Loya Jirga* was held in circumstances in which war-lords and faction leaders, who have a well-documented history of political corruption and serious abuses of human rights (Amnesty International Annual Report on Afghanistan - 2002; Human Rights Watch Report, April 2002; Human Rights Watch Report, October 2002), dominated military and political power in the country and continue to do so. New evidence that is unearthed by Human Rights organisations as well as UN investigations reveals that hundreds of Taliban POWs who surrendered to Northern Alliance warlords in November 2002 were suffocated to death and then buried in mass graves in the *dasht-e leili* desert. Interestingly, this well documented report suggests that these mass killings happened while US Army Special Forces personnel were co-ordinating the military activities of Northern Alliance forces against the Taliban in the North of Afghanistan (Newsweek, August 26, 2002: 16 - 25).

The continued military and political dominance of these warlords seriously affected the credibility of the process and the legitimacy of the final outcome of the *Emergency Loya Jirga*. There are credible reports, which show that the Afghan warlords made successful efforts to influence the Emergency Loya Jirga process in their favour, so that they could stay in power (Human Rights Watch, June 10, 2002). There is evidence, which shows that the warlords have even manipulated the existing demographic data about the population of Afghanistan in their favour. In addition, the Procedure for the Election of the Members of the *Emergency Loya Jirga* (2002: Art. 14, Chap. IV) explicitly states that those who '... have been involved in spreading and smuggling narcotics, abuse of human rights, war crimes, looting of public property and smuggling of cultural and archaeological heritage... in the killing of innocent people' are not eligible to participate in this historic grand assembly. Most of the powerful warlords who are accused of serious acts of human rights violation occupied the front seats in the *Emergency Loya jirga*. The chairperson of the independent Afghan Human Rights Commission - Ms Sima Samar - told the *Guardian* (13/62002) that 'This is not democracy. This is a rubber stamp. Those with power have already decided every thing. This *jirga* includes all the warlords. None of them has been left out.' These comments by a high ranking Afghan woman politician (former vice-president and minister for women's affairs) about the unlawful influence of those with guns and money over the Emergency Loya Jirga process is a reminder to them that the lessons from the history of Afghan *jirgas* must not have been lost - successful *loya jirgas* have always given preference to the long-term interests of the people of Afghanistan over the short-term sectarian interests of individuals and factions.

Furthermore, according to an authoritative report by the International Crisis Group (30 July 2002), the final outcome of *Emergency Loya Jirga* about the composition of the new Afghan Transitional Authority was largely shaped by the warlords, who interestingly had the support of the US and UN, rather than by the Emergency Loya Jirga delegates. This undemocratic practice has been reported widely by the press. Daily Telegraph's Phillip Smucker (June 20, 2002) who observed the final fateful session of the Emergency Loya Jirga that was to vote on the

composition of the new Afghan Transitional Administration reports that: ‘Before delivering his list and asking for the snap show of hands, Mr Karzai sounded almost contrite. “I am sorry and I hope that you will forgive me – those whose voices have not been heard. I know, I believe that this government will not be acceptable to all of you, but I hope that it will be acceptable to at least some of you.” But, the show of hands instead of casting votes, and the acceptability of the new cabinet only to some, neither conforms to the spirit of the traditional *loya jirga*, nor to the principles and values of modern democracy and the Bonn Agreement. However, many Afghans would agree that President Karzai, indeed, was in a very difficult position in balancing the need for pragmatism (in accommodating demands from the warlords) and remaining faithful to the institutional principles, values and spirit of the *loya jirga*. Democrats in the Afghan Interim Administration, indeed, were in very weak position as compared to the warlords who dominated political and military power. But, at the same time, the historic opportunity that the *loya jirga* provided to the people of Afghanistan to express their will freely, was equally of great actual and symbolic importance. This was particularly so as the Afghan people were promised that the Emergency Loya Jirga was to shift political power from the hands of those with guns and money to a popularly elected Afghan Transitional Administration. President Karzai’s (im) balancing act that preferred pragmatism over long-term stability inherent in remaining faithful to institutional principles and to the will of the nation will be the focus of judgement by the people of Afghanistan in the years to come.

Of course, this is not to deny that holding this *jirga* after 24 years of continuous war in Afghanistan was not an immensely difficult task. The convening of the *Emergency Loya Jirga* was only made possible with the hard work of thousands of patriotic Afghans and with the political, logistic and financial support of the UN and the international community. It was a rare opportunity that was presented to the people of Afghanistan, and therefore, the expectations were justifiably high. This is precisely the reason that it should have delivered what was expected and promised by national and international powerbrokers. Nevertheless, what is important from a sociological point of view is the fact that the *Emergency Loya Jirga* that brought together hundreds of Afghans from the various parts of Afghanistan and the world, in very difficult circumstances, is still an important achievement in its own right. This *jirga*, for the first time in the past 24 years, provided a hugely important channel of communication between the different segments of Afghan society – a channel of communication between warlords and ordinary people; between men and women; between different tribes and ethnic groups; between Islamists and secularists, and between royalists and their opponents. It provided a forum where the previously silent victims of the conflict were able to express their deeply held feelings. As Jonathan Steele reported from the Emergency Loya Jirga ‘Taj Kakar and a group of women delegates confronted the former president of Burhanuddin Rabbani. ‘Why have you killed and raped our women? Why do we have so many widows in this country?’ she asked. The startled political leader of the Northern Alliance whose forces helped destroy large parts of Kabul in the 1990s, had no answer.’(The Guardian 13 June 2002).

Of course, the former president's reply to the women delegates’ questions and paying attention to their grievances would have been helpful in further facilitating the process of communication among the people of Afghanistan. But, even his non-reply in the social context of this public forum was a form of communication – avoiding to answer such a serious criticism by Afghan women delegates is likely to be interpreted as the lack of a satisfactory reply, or rejection of the criticism as unfounded. In either case, the encounter was a form of communication as it was watched by many *jirga* delegates and heard and read about by thousands of Afghans inside and outside Afghanistan. It was not only a communication between the female Afghan delegates, and the former president, but also between the two parties and the apparently silent onlookers - the watchful Afghan society. The fact that this form of verbal communication has been made

possible, instead of 'communication' through the exchanges of bullets, is a significant first step towards the peaceful resolution of conflicts at a national level. Indeed, communication is the first necessary step in the process of the resolution of any conflict peacefully; it also plays an important role in social integration (Habermas 1987) and in strengthening social solidarity in society (Durkheim 1984). If ordinary Afghans were allowed to communicate with one another peacefully, this in turn, would gradually lead to the creation of a culture of tolerance, accommodation and mutual respect. The rule of law, instead of the rule of guns and money, is likely to be the logical outcome of such a culture. The *loya jirga* as a well-established social institution has proven that it has the capacity to provide this culture - a culture with which the practitioners of the centuries old processes of *maraka* and *qawmi jirga* are familiar.

However, the full capacity of the *loya jirga* and its potential to become a more inclusive institution needs to be further explored. In the modern (or more accurately post-modern) era, it needs to learn from other cultures. As mentioned in the introduction, no nation including the Afghans, live any more in isolation from the influences of other cultures today. The increasing globalisation of economic, social and political relationships among nations make Afghanistan as much part of the 'global village' as any other nation. The Afghan *loya jirga* is bound to become part and parcel of the culture of the 'global village'. At this junction of Afghan history, *loya jirga*'s most important historical mission is to help lay down the foundation of an open and inclusive political order in Afghanistan - a political order that not only represent the aspirations of the various tribal, ethnic and religious groups in Afghanistan, but also the aspiration of the country's most oppressed citizens, Afghan women. Afghan women, who form more than the half of the total population of Afghanistan, have not only suffered much in the course of the long armed conflict, particularly under the repressive theocratic regime of the Taliban; they have also been the innocent victims of structural and cultural violence for centuries. A fuller reintegration of Afghan women into the political life of the new Afghanistan will not only be a hugely important step towards the establishment of a new Afghan democratic political order, but also a test of its legitimacy.

The experiences of contemporary democratic nations have shown that the expression of critical political opinion by citizens - as individuals, pressure groups, social movements, political parties - help those in power learn from constructive criticism and improve their performance. But, a prerequisite of a democratic political order is the creation of a social, political, and economic environment that is conducive to a meaningful and open communication among members of society. The new Afghan Transitional Administration (whatever the degree of its legitimacy) has the historical responsibility of demilitarising Afghan politics and helping to lay down the foundations of a new participatory social and political order - a social and political order that is acceptable to all Afghans and one in which they all have a stake as equal citizens. Such a political order must have the capacity to serve as the basis for a fairer and more inclusive society and to ensure long-term peace and political stability in Afghanistan. Despite the disappointment caused by illegitimate influences over the process and outcome of the *Emergency Loya Jirga*, the people of Afghanistan still expect the patriotic Afghan leaders/forces and the fair-minded international players to free them from the situation of being held as hostages at the hands of warlords. They pin hopes on the forthcoming *Constitutional Loya Jirga* and have great expectations from it. The costs of failure to meet these expectations may be too high to afford both for Afghans and for the international community. There still exists an opportunity for the international community to help Afghans resolve their conflicts through the exchange of ideas, rather than through the exchange of bullets.

Conclusion

What has been discussed in this paper shows that *jirga* is deeply rooted in the culture and history of Afghanistan. It is strongly bound up with the social and economic realities of Afghan society and is closely connected with the social order of the Afghan village, tribe, and the society as a whole. The *jirga*, its norms, techniques and processes define the indigenous ways Afghans resolve their local, tribal and national conflicts, and is therefore, an important aspect of Afghan national identity. It is an Afghan social institution that has profound existence in the minds of the Afghan people. Contrary to those who dismiss the importance of *jirga* as a tool of peace making in Afghanistan (Noelle-Karimi 1998), it is a time-honoured institution that has a proven record of resolving conflicts at different levels in Afghan society. At the same time, it has a promising potential to resolve these conflicts even better in the future. In addition, successful *jirgas* in the history of Afghanistan have shown that the institution is a powerful mechanism of communication of Afghan nationhood among the various, tribes, ethnicities, and religions of the nation – it is a source of national unity and social solidarity. The extent to which *jirgas* have been successful in resolving local, tribal and national conflicts has always depended on the extent to which the people of Afghanistan perceived them as legitimate.

However, the Afghan *jirga* as a traditional institution at the dawn of the 21st century, is entering a new era of the transformation of relationships among individuals and societies at national and global levels – an era of the globalisation of social, economic and political relationships among nations and individuals. The *jirga* is no longer a mechanism of conflict resolution within the context of the Afghan village, tribe and nation alone. It is also a part of the 'global village' in which different cultures and civilisations, today, interact. The *jirga* must be prepared to face the challenges of the 21st century and to adapt to its new social, economic, and political milieu; it needs as much to learn from other cultures, as they need to learn from it. It particularly needs to be a more inclusive institution that represents both men and women as equal citizens of Afghan society. The Afghan *jirga* has the potential to bridge tradition with modernity; it has the capacity to express traditional values in a modern setting.

Bibliography

Amnesty International, *Annual Report 2002 – Afghanistan*: <http://web.Amnesty.org>

Atayee, I. (1979) *A Dictionary of the Terminology of the Pashtun Tribal Customary Law and Usages*, Kabul: The Academy of Sciences of Afghanistan.

Auda, A. (1968) *Al-Tashri'a Al-Jenaiee Al-Islami*, Bietut, Dar Al-Fikr al-Islami.

Baxi, U. and Gallanter, M. (1979) 'Panchayat Justice: An Indian Experience in Legal Access', in *Access to Justice*, edited by Mauro Cappelletti and Bryan Garth, Milano: Giuffrè ed. Vol. 3, pp. 314 - 386.

The Bonn Agreement (2001), Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, Bonn, December 2001.

Braithwaite, J. (1989) *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press.

Brezeznski, Z. (1998) 'Les Revelations d'un Ancien Conseiller de Carter', in *Le Nouvel Observateur*, January Issue 15 – 21, Paris. (The Interview was translated into English by David Gibbs 2000, 'Afghanistan: The Soviet Invasion in Retrospect' in *International Politics* 37, No. 2).

Canfield, R. (1996) 'Ethnic, Regional, and Sectarian Alignments in Afghanistan'. In *The State, Religion and Ethnic Politics: Afghanistan, Iran, Pakistan*, Ed. by A. Banuazizi and M. Weiner, New York: Syracuse University Press.

Carter, L. and Connor, K. (1989) *A Preliminary Investigation of Contemporary Afghan Councils*, Peshawar: ACBAR.

Clark, J. (1989) 'Conflict Management Outside the Courtroom in China' in *Social Control in the People's Republic of China*, edited by Ronald Troyer, London: Prager Press.

Cooley, J. (2002) *Unholy Wars*, London: Pluto Press.

Dupree, L. (1980) *Afghanistan*. Princeton: Princeton University Press.

Durkheim, E. (1964) *The Division of Labour in Society*, New York: Free Press.

The Daily Telegraph, June 20, 2002.

Elphinstone, M. (1992 originally published in 1839) *An Account of the Kingdom of Caubul*, Karachi: Oxford University Press.

Farhadi, R. (2000) 'Tajikane Afghanistan wa Qadamhaie Ashti Bain Aishan' in *Qadamhaie Ashti wa Masauliate ma Afghanistan*, Kabultec: Falls Church, VA.

Faiz-zad, M. (1989) *Jirga Haie Bozorge Milie Afghanistan*, Lahore.

Ghobar, M. (2001) *Afghanistan dar Maseer –e- Tareekh*, (Vols. one and two), Peshawar: Maiwand Publishing Centre.

Ghyathul-Lughat (1871) Edited by Maulana Gheyathoddin, Kanpur Press: New Delhi.

Glatzer, B. (1998) 'Is Afghanistan on the Brink of Ethnic and Tribal Disintegration?' in *Fundamentalism Reborn? Afghanistan and the Taliban*, edited by William Maley, New York: St. Martins.

The Guardian, June 13, 2002: pp. 14.

Habermas, J. (1984) *The Theory of Communicative Action, Vol.1, Reason and Rationalisation of Society*, Boston: Beacon Press.

Harris, M. (1968) *The Rise of Anthropological Theory*, New York: Thomas Y and Crowell.

Hashemi, M. (2000) 'Qadamhaie Ashti Baine Uzbakan', in *Qadamhaie Ashti wa Masauliate ma Afghanha*: Kabultec: Falls Church, VA.

Human Rights Watch - *Report 10 June 2002*, 'The Warlords are Plotting a Comeback': www.hrw.org

Human Rights Watch - *Report April 2002*, Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan, Vol. 14, No. 2 (C).

Human Rights Watch, October 2002 Report, Afghanistan: ALL OUR HOPES ARE CRASHED – Violence and Repression in Western Afghanistan, Vol. 14, No. 7 (C), www.hrw.org

Hyman, A. (1992) *Afghanistan under Soviet domination* (Third Edition), Hampshire: Macmillan

International Crisis Group (2002) 'The Afghan Transitional Administration: Prospects and Perils', July 30, Brussels.

Kamali, M. (1985) *Law in Afghanistan: A Study of Constitutions, Matrimonial Law and the Judiciary*, Leiden: E.J. Brill.

Li, V. (1978) *Law without Lawyers*, Boulder, CO: Westview.

Malekyar, S. (2000) 'Qadamhaie Ashti wa Solh dar Ananaie Hazarahaie Afghanistan' in *Qadamhaie Asshti wa Masauliate ma Afghanha*, Kabultec: Falls Church, VA.

Merquior, J. (1980) *Rousseau and Weber: Two Studies in the Theory of Legitimacy*, London: Routledge and Kegan Paul.

Moore, E. (1985) *Conflict and Compromise: Justice in an Indian Village*, New York: New York University Press.

Newsweek, (2002) 'The Death Convoy of Afghanistan', 26 August Issue, pp. 15 - 25

Noelle-Karimi (1998) 'The Loya Jirga – An Effective Political Instrument?' in *Fundamentalism Reborn? Afghanistan and the Taliban*, edited by William Maley, New York: St. Martins.

Newell, N. and Newell, R. (1981) *The Struggle for Afghanistan*. London: Cornell University Press.

Olesen, A. (1995) *Islam and Politics in Afghanistan*, Curzon: Surrey.

Pashto Descriptive Dictionary (1978), Kabul: The Academy of Sciences of Afghanistan.

Procedure for the Election of Members of the *Emergency Loya Jirga* (2002), Afghan Interim Authority, Kabul.

Rafi, H. (2002) *Loya Jirga*, Peshawar: Aman Publishing LTD.

Reichel, P. (1998) *Comparative Criminal Justice Systems*, Prentice -Hall: New York.

Roashan, R. (2001) 'Loya Jirga: One of the Last Political Tools for Bringing Peace in Afghanistan', IAS, www.intitute-for-afghan-studies.com

Robertson, R. (1992) *Globalisation: Social Theory and Global Culture*, Sage: London.

Rubin, B. (1999) 'The political Economy of War and Peace in Afghanistan', A paper presented at the meeting of the Afghanistan Support Group, Stockholm, Sweden.

Rubin, B. (1995) *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*. New Haven, Conn.: Yale University Press.

Spiro, M. (1986) 'Cultural Relativism and the Future of Anthropology', *Cultural Anthropology* 1: 259 - 286.

Tapper, R. (1983) *The Conflict of Tribe and State in Iran and Afghanistan*, Croom Helm: London.

Wardak, A. (2002) 'Structures of Authority and Establishing the Rule of Law in Post War Afghanistan', a Paper Presented at Establishing the Rule of Law and Governance in Post Conflict Societies, Conference Organised by Harvard University, the United Nations Association – USA, and Koç University, Istanbul, July 11 - 14.

Wardak, A. (2003) 'The Tribal and Ethnic Composition of Afghan Society' in *Afghanistan: Essential Field Guides to Humanitarian and Conflict Zones* (Second Edition), edited by Edward Girardet & Jonathan Walter, Geneva: Crosslines Ltd.

Weber, M. (1964) *The Theory of Social and Economic Organisation*, Ed. by Parsons, T., New York: Free Press.

Wrong (1979) *Power: Its Forms, Bases and Uses*, Basil Blackwell: Oxford.