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Image: Antonio De Lauri

## IS THERE LEGAL PLURALISM IN AFGHANISTAN? NOTES ON INJUSTICE AND ACCESS TO JUSTICE

### AUTHOR

**Antonio De Lauri**

Research Professor,  
Chr. Michelsen  
Institute

This NCHS paper examines the use of the term legal pluralism in Afghanistan and argues that where access to justice is particularly difficult or neglected, social actors face an *absence* rather than a *plurality* of legal orders.

In both academic analyses and legal practice, the notion of 'legal pluralism' has been interpreted as the co-presence of different legal orders within defined social realms, ranging from small social groups to states and to international fora. The Afghan normative 'system' is generally described as characterised by legal pluralism, where different normative orders coexist, namely customary norms, *shari'a*,<sup>[1]</sup> state laws and principles deriving from international standards of law (e.g., human rights). In this paper, I question the straightforward use of the term legal pluralism in Afghanistan by arguing that, in conditions where access to justice is particularly difficult or neglected, social actors face a condition of *absence* rather than a *plurality* of legal orders. My observations build on research carried out in Afghanistan since 2005, in the context of which I have been able to study law in practice, the impact of the humanitarian apparatus and the devastation brought by war.

## JUSTICE, INJUSTICE AND PLURALISM

In October 2007,<sup>[2]</sup> while I was in Kabul doing fieldwork, my friend Basir asked me for some advice. An Afghan attorney who had helped me several times as a research assistant, Basir had just been hired as a national advisor to the Afghanistan Justice Sector Support Program. At his own initiative, he wanted to conduct a study concerning the criteria used in Afghanistan by international donors to devolve the hundreds of millions of dollars per year to the various agencies, nongovernmental organisations and civil society organisations involved in the so-called 'reconstruction of Afghanistan'. It was an important topic but, unfortunately, we were unable to develop it into a larger research project.

A few months later, while on a return trip to Kabul, I met again with Basir. As we were preparing an interview for a judge of the primary court, Basir showed me the results of a few interviews he had conducted in Kabul on people's opinions of justice. His questions were open-ended ("What does justice mean to you?", "What do you think of justice in Afghanistan?", "What do you think about the judges' work?") and his interview style was unstructured, allowing informants to explore their own feelings and perceptions. Of particular interest to me was talking through the findings with Basir as he expressed his own opinions on the matter.

According to Basir, justice cannot be defined by a simple formula – what justice *is* can never be said with certainty – and Basir's findings provided valuable insight into how informants set out to describe in different ways the idea of justice. To explain his own position, Basir provided a list of illustrations that would strictly link justice to *fairness*,<sup>[3]</sup> for example, "justice is when parents treat their sons and daughters in the same and correct way." More determinist, and surely sadder, was his opinion on the general situation of justice in Afghanistan: "You know, my friend, in Afghanistan they have deprived us of justice." 'They' turned out to be a complex mix of internal and external political actors, while Basir's understanding of justice boiled down to a terribly simple equation: "The fact is that I know what justice is because I have suffered from injustice." Almost a year later, another Kabul-based Afghan lawyer described it to me thus: "Justice is measured by the ability to make up for a suffered injustice. [...] A person realises there is a justice system when they can rely on specialised institutions to remedy an injustice."

As Laura Nader maintains, when we speak of justice we are prone to vague definitions, which becomes even more complicated when we refer to particular injustices or afflictions. [4] Indeed, the basis on which to assess the relationship between justice and injustice is always the terrain of lived experience. Whereas the philosophy of law or teleological explorations of justice can fly high in the world of ideas and visions, the ways these are transformed into practice reveal the real nature of the relationship between justice and injustice.

To the extent that justice and injustice can be understood through the lens of concrete circumstances, in Afghanistan as elsewhere, a series of religious, customary, legal and moral implications merge to define the sphere of the social actor's interpretations of issues such as tolerable behavior, right and wrong, good and evil, and so on. There exists a complex substratum of values, rules, beliefs, habits and procedures that reflect the cultural and psychological grammar through which the feeling of injustice is experienced and expressed by social actors. What gives this sense of injustice its legitimacy, however, is its public recognition, that is, the possibility for someone else to recognise such injustice. Lawrence Rosen has argued that justice "occupies a middle ground between the public and the private." [5] Consistently, what is essential is the legitimacy of one's sense of injustice in the context of multi-scale identity and belonging, from the family to the neighborhood, the social group, the state and beyond (as in the case of international courts)

The result is that the sentiment of injustice is intrinsically bound to external or public recognition. Injustice is an interpersonally based phenomenon that is experienced through and can be explained in terms of social relations. Again, according to Rosen, the Islamic idea of justice "depends on the good opinion, the proven trustworthiness born by a network of consequential social ties, the common design that is forged with other believers." [6]

Indeed, the practice of reciprocal recognition of justice and injustice is enacted in the public arena. Interpersonal recognition represents, therefore, the first step in trying to oppose injustice. Together with this recognition, however, there must exist the opportunity for individuals to succeed in accessing the social and legal institutions responsible for the resolution of injustice – an opportunity that is highly limited in the Afghan context.

In following several legal cases in the past 17 years addressed in the courts of Kabul, in the offices of prosecutors (*saranwal*), in the offices of organisations that provide legal assistance, in police districts, households or customary assemblies, I have witnessed the normative articulation in place in the everyday experience of justice and injustice.

Saber Marzai, prosecutor for the 11th district in Kabul, told me a few years ago:

It is improbable that a case is brought to the official legal system without having first passed through discussions and decisions of various members of the family and suggestions of elders. If a woman comes in this office because the husband beats her, the first thing that one asks her is if she tried to talk to her family, or to her husband's family. In this way the woman can avoid other problems. Solving a problem in court or in a *jirga* or within the family is not a question of choice. Sometimes it can be dangerous to tell others about a family problem, it can cause violent reactions – even very violent. Many people do not think it is a good idea to reveal family problems to strangers. It is better to talk to an uncle than a policeman, who might even ask for money. I saw many women who were beaten by their father, their husband or their brothers because they conferred with the police, or came here directly. [...]

If you think about the problem of corruption and the fact that many prosecutors and judges have not even studied law you can easily understand how difficult it is for a poor person to have a just trial. I should not tell you these things. [...] If we speak of civil cases, then I can tell you that people come back and forth. Then they might solve the problem on their own, which is sometimes better. When something serious like a homicide occurs, it is a different story. [...] Think about your hand. When you catch something, all your fingers move. In fact, when a person has a problem to solve, a set of rules become active at the same time. Of course, rich and poor people face their problems in a different way. Many people do not have a choice. In front of a crime, they behave in their own way. It is as if their hands were in a plaster.

This situation might have worsened with the Taliban takeover in August 2021, partly because one of the effects of the chaotic evacuations and regime change was the dismantling of the judiciary. In June 2020, I interviewed the judge Anisa Rasooli, the first woman ever to be nominated to the Supreme Court in Afghanistan's history. During the interview, Rasooli stated: "I believe that the Afghan judicial system is regaining its decency. There are still problems, but considerable progress is being implemented. If the current situation continues, I am optimistic about the future of the judiciary in Afghanistan. However, if this trend is interrupted because of conflict or political and social unrest, then no one knows what the future of the judicial system will be. I really hope this will not happen."<sup>[7]</sup> One year later, the disruption that Rasooli feared became a reality, and she left the country in the messy evacuations that followed the Taliban's return to Kabul.

Rasooli is not the only judge to have left the country. I recently interviewed another woman judge, Tayeba Parsa, who believed her life would constantly be at risk under the Taliban and therefore decided to escape to Europe. Several others followed the same path. In the past year, I have received many requests for help from Afghan judges who feel they are in constant danger given the position they previously held and who fear the Taliban's retaliation. When I asked Parsa about the current situation of the judiciary in Afghanistan, she said that, to her knowledge, several of the judges who haven't left the country have been fired or are being threatened by the Taliban. "The judiciary has lost all its professional judges and is now conducted by illiterate and inexperienced people, and society at large will bear the cost," she said, adding with anguish that "women have been eliminated from the judiciary. Having women in the judiciary was a great achievement that was lost so quickly."<sup>[8]</sup>

To be sure, the Afghan judiciary was far from perfect or even well-functioning even before August 2021.<sup>[9]</sup> Moreover, some Afghans say there is less corruption today.<sup>[10]</sup> The massive legal reconstruction promoted and enhanced by the international community between 2001 and 2021 was not particularly successful, partly because of the incapacity to understand the dynamics of justice in Afghanistan. From 2001 onwards, a broad reconstruction process of Afghanistan was promoted and implemented by a myriad of international organisations and state foreign actors whose humanitarian and development goals were impossible to separate from political interests in the region and military occupation.

Throughout the reconstruction process, there was a widespread tendency to legitimise all external social and legal interventions in the name of modernisation, while at the same time producing an image of Afghanistan as a society stuck in its own traditions and resistant to externally imposed “improvements.”[11] All this occurred in a context that is commonly described as legal pluralism,[12] and where the blame is often put on Afghanistan for its inability or unwillingness to embrace the rule of law.[13]

My key point here is that in order to concretely experience the dimension of pluralism, the relevant normative orders need to be clearly identifiable and accessible for the majority of the population. In Afghanistan, however, pluralism is not inherent to this fundamental dimension of accessibility; rather, it concerns the interplay of meanings, experiences, values and logics of power which occur in the very moment people face matters of a normative nature (e.g., conflict resolution, mechanism of compensation, decision-making). This multiplicity is structured, in the first instance, as a space of negotiation and compromise where injustice is directly linked to a series of factors, which may include (i) the impossibility of accessing judicial institutions in a free and autonomous way; (ii) the impact of humanitarian policy on state institutions – in the sense that this aid is perceived by Afghans as foreign interference; (iii) the social hierarchies that both customary and state institutions tend to reproduce; (iv) the link between state institutions and warlords; (v) the corruption rampant in courts and prosecutors’ offices and among policemen; (vi) the inefficiency of justice sector institutions as a result of limited human and infrastructural resources; (vii) the radicalisation of certain customary practices determined by the logic of violence; and (viii) the extreme politicisation of religious dogma and of legal claims.[14]

This list shows how deeply these problems are connected to one another. When examining issues of pluralism, it is thus essential to reflect on the concrete options available to individuals to address perceived injustices. In Afghanistan, the inaccessible pluralism has a lamentable consequence: that of compelling the weakest segments of the population to take the law into their own hands. The many Afghans living in extremely disadvantaged socioeconomic conditions rarely appear before the customary assemblies, known as *jirga* and *shura* (especially in Kabul),[15] and when they do, the decisions of their elders serve as a reminder of the importance of social status in the resolution of conflict. At the same time, in the courts, the Kafkaesque bureaucratic system, which previously was compromised by corruption and political pressure, and which now has been deprived of much competence, continues to expand the gap between social feelings of justice and judicial decisions. Arguably, increasing recourse to (and often the radicalisation of) some customary practices at the family or inter-family level is directly connected with the impossibility of resolving problems and disputes within the judicial and customary institutions (theoretically) set up with this aim. The relationship between tradition and customary norms therefore is not able to explain on its own all the implications and the current value of certain practices that do not simply represent legacies of the past or of specific cultural schemes, but rather refer to a contemporary tension between forms of power, models of justice and structural injustices. The story of Marzia,[16] whom I met while she was undergoing a rehabilitation period in hospital when she was eighteen, shows how the inter-family management of disputes can be radicalised outside the value system of social groups and outside Islamic precepts.

At the age of eleven, Marzia witnessed a crime committed by her older brother, who was nineteen at the time. The brother stabbed a peer to death during a quarrel. He was then arrested and condemned to serve his sentence in the Pul-e-Charkhi prison. Marzia was questioned by the police but she did not appear in court. After six years, when Marzia was seventeen years old, her brother was released from prison, and at that point problems arose with the family of the young man he had killed. Between threats and physical altercations, the quarrels went on for a few months until Marzia's father, following a meeting between some members of the two families, decided to give his daughter to the family of the victim as compensation for the loss they had suffered years earlier.[17] Informed of her father's decision, Marzia tried to convince him to change his mind; she begged her mother not to let her go then finally, in desperation, doused herself in petrol and set herself on fire. The quick intervention of her brother saved her life, but he could not prevent the flames causing burns on ninety percent of the girl's small body. Her extreme gesture convinced her father to cancel the agreement and also had the effect of placating the spirit of revenge of the family of the murdered boy. At the time of our encounter, Marzia still lived with her family. Although in this case Marzia's brother had been arrested and sentenced, the whole process and outcomes did not mitigate the anger and tension between the two families. Nor did they believe their problems could be solved in other ways, for instance in a court or *jirga*, especially because both families are very poor. Marzia's father commented to me: "We almost killed our own daughter. I don't know if God can forgive us."

The relationship between human rights, injustice and pluralism varies based on one's degree of access to the means and institutions of justice. According to a former police officer I interviewed in October 2022 in Jalalabad, "a lot of men believe they respect the *shari'a* and our traditions when they take some decisions, for example regarding their daughters or a quarrel with someone else, but most of the times they don't, they do it their own way and they just make things worse." Access to justice means providing everyone with an opportunity to address problems in a way that feels legitimate and, at the same time, is structured on norms and principles that protect individuals and social groups.

It is worth mentioning here that the success of the Taliban movement in the 1990s was partly due to the emphasis they placed (and still place) on justice in their rhetoric – and in their exercise of power. Nowadays, the issue of justice is not only a core element of legal reforms (for example, the possibility of a new constitution), but it also represents a political theme in the configuration of the Taliban government in the international arena.

## THE ROLE OF LAW

There can be no legal pluralism unless the essential condition of access to justice is put into daily practice. Such an assumption, albeit universally potentially valid, is also radically dependent on context. As I was talking with a Taliban commander in Logar in October 2022, the issue of 'justice' came up. The commander said: "There is plenty of injustice in Afghanistan. With God's will, we can help the people. [...] Justice and law are the same thing for me."

I pointed out that much of the injustice may be inflicted by the Taliban themselves. He disagreed, and he argued that corruption was the norm in the previous government and judiciary. I reiterated that many honest judges had escaped in fear of retaliation by the Taliban. Since I was there to talk about the experience of war, the discussion soon turned in a different direction. One thing he mentioned, which I would like to reflect on briefly here starting with some preliminary considerations, is the idea that justice and law can be considered as the same thing.

Ideas and feelings of justice and injustice are intimately linked to historical processes as well as to cultural and social transformations. It is difficult to come up with a coherent definition of 'justice' based on the history of Western thought<sup>[18]</sup> or the historical trajectory of Muslim tradition,<sup>[19]</sup> let alone to develop an organic and intercultural understanding of the meanings and empirical dimensions of the concept of justice, which reflects the spiritual, psychological and social substrates of different human groups. As the anthropological literature shows,<sup>[20]</sup> historically there was not a unique category of 'justice' explicative of all the attributes assigned to the concept by different cultures and societies. At the same time, alongside this indispensable variability, the contemporary world presents conditions of 'togetherness' and simultaneity among human societies that prompt non-localist reflections on justice and injustice.

A member of the Taliban who is now chief of police district 11 in Kabul told me in October 2022: "We administer justice in a way that gives back Afghans their pride and identity." The same day, a woman I met at the orthopedic centre of the International Committee of the Red Cross told me she doesn't think she will be "able to survive famine and the fear of the Taliban." As our conversation went on, we wondered how much injustice a human being can handle.

On the global scale, both acts of invasion by states and acts of violence by terrorist groups are carried out in the name of justice. At a local level, a judge in Kabul told me in May 2013:

It is a kind of paradox that the government and international organisations implement their projects under the flag of justice while at the same time many Afghans reject these interventions and criticise legal reforms, arguing that they do not respect justice. [...] The profound dilemma judges have to face is the gap between justice and its legal and practical translation. Right now, in Afghanistan it is possible to observe what happens when a government aims to create the bases of its legitimacy by monopolising justice. It is a foundational moment, a starting point. But we still don't know where it will lead us. [...] For a Muslim, justice ultimately belongs to God; yet the problem remains if in order to implement a justice system we need to betray a sort of social feeling of justice and we eventually need to use force.

This last consideration on the part of the judge recalls an earlier debate informed by Walter Benjamin and Jacques Derrida. For Benjamin, "[t]he task of a critique of violence can be summarised as that of expounding its relation to law and justice."<sup>[21]</sup> It could thus be argued that – conversely – the starting point for reflecting on justice must first and foremost be recognition of the affirmation of violence and its criteria of legitimacy. Derrida further asked: How can we distinguish between the force of law and forms of violence that we inevitably deem unjust?<sup>[22]</sup> What is the difference between a force that is just, or at least considered legitimate (not only an instrument at the service of the law, but the very essence of the law itself), and unjust violence?

Derrida's perspective induces us to distinguish between law – and thus the legal order – and justice as 'other' than law. So, what kind of violence is 'just' violence – and hence tolerable? What relationship exists between institutionalised violence and that practiced by an individual? Benjamin cautioned us to simplify the debate by breaking it down into an analysis of means and ends. The meaning of the distinction between legitimate and illegitimate violence is not immediately obvious. The misunderstanding in natural law by which a distinction is drawn between violence used for just and for unjust ends must be emphatically rejected. Rather, it has already been indicated that positive law demands of all violence a proof of its historical origin, which under certain conditions is declared legal or sanctioned.[23]

Following Benjamin, we might see justice not merely as in opposition to the force of law or to legal violence, but more appropriately as the very dimension in which judgment is suspended. When justice is clearly distinct from the force of law, it emerges as the epilogue of violence. . In this 'vision', justice is something desirable but at the same time unattainable. The experience of justice thus becomes an experience of the impossible that remains beyond the reach of everyday lived experience while yet defining its horizons of meaning. Once immersed in history, justice sets the parameters of its own power, that is to say, of its ability to generate effects on social life. Recreated in each individual fragment of social practice and celebrated in the places in which the law expresses its maximum power of determination (tribunals, prisons, customary institutions, etc.), the social sense of justice thus eludes the eternal and manifests itself in its temporariness, tied to a particular time and to a particular order of significance.

In this way, justice as a 'vision' becomes actionable and applicable: embodied in a corpus of social rules and regulations, justice ceases to be a promise to become a force itself. However, justice takes the reverse path too: at a certain remove from human error, it stands as the ultimate truth and unattainable to humans. We can aspire to no more, therefore, than a tendency towards justice, a continuous tension between its absence and its presence. Justice does not belong to the univocal but to the manifold; not to one but to all. This results in an inevitable disintegration of the ideal of justice into countless different conceptions that, in the global political landscape, may potentially be exploited for different purposes, each of which will inevitably be presented as demanded by a true and 'just' justice: this is how the manifold gives shape to the univocal.

Now, what is the role of law in the relationship between justice and injustice? More specifically, what configuration can law take today in the Taliban's justice apparatus? To the extent that the law is seen as a source of injustice – in other words, to the extent that the law betrays its purpose and departs from its desirable tendency (which can never be completely satisfied) towards the collective ideal of justice – a practical and ideological short circuit is generated whose main effect is that the ideal of justice becomes thinkable only outside the law. The illusion of justice vanishes, leaving a vacuum to be filled by forms of violence that are presented as necessary evils required to remedy the injustice being suffered. The force of law, at this point, is no longer legitimate (because it is no longer functional to the promise of justice), and to persist it must become even more violent, even more unfair. And when law is deprived of social legitimacy, it no longer reflects accepted values, but only the force it can itself deploy. Here the anti-value potential of law emerges as a process that demolishes the promise of justice.

The law is therefore emptied of its value content; and this emptying movement in turn alters the social construction of justice and values, which defines both the limits and the potential of human action. More specifically, what is altered are the limits to using the force of law. Thus, the violence that we can identify in law is directly proportional to the distance that we can identify between law and social legitimacy. For instance, an unjust law, to be imposed, must be more violent, more compelling than a law that is considered socially legitimate. Whenever the force of law is seen as alien by social actors, it needs to be excessive in order to be effective. This is how the law can become not only a manifestation of legal and political power, but also a source of violence: its violent imposition gives rise to violent reactions.[24]

The current Taliban legal infrastructure oscillates between an attempt at legitimacy based both on their interpretation of Islamic law and Pashtun identity and on an excess in the use of force (see, for instance, the threat of public executions).[25] This dangerous oscillation is vulnerable to extreme consequences should the search for legitimacy fail. In other words, a lack of legitimacy could potentially lead to the implementation of extreme violence by the Taliban government.

## CONCLUSION

In the wake of the short-lived 'enthusiasm' (from the perspective of some international donors and countries) in 2001 for a new era for Afghanistan, an efficient legal pluralism was seen as a defining feature of the country. [26] Yet this idea never became a reality. According to Adam Baczko, "a recurring error in recent work on Afghanistan is the assumption that Afghans have a specific view of the law, stemming from their tribal or ethnic character, from a preference for the local level or from a rejection of the state.

These stereotypes, dating back to British colonisation, have justified the many justice programmes that are interchangeably described as customary, informal, local, or tribal." [27] More attention to the dimension of access to justice rather than doctrines of law could have led to better outcomes, at least according to a prosecutor I interviewed in Kabul a few years ago: "As experts debate the consistency of Afghan laws and rules with human rights, things remain the same for people who have no means to claim for justice." [28]

Under the Taliban, legal pluralism may become even more inaccessible and further compromised by the attempt to control all spheres of law and normative practice, something that was previously seen when, for example, the Taliban imposed the presence of their *mullahs* in local *jirgas* and *shuras*. [29] Uncertainty about the future of justice in Afghanistan continues to be prevalent as the essence of pluralism remains out of reach for the majority of the population.

*Antonio De Lauri is a Research Professor at the Chr. Michelsen Institute. He is also the Editor-in-Chief of the Public Anthropologist Journal and the Director of the Norwegian Centre for Humanitarian Studies.*

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## FOOTNOTES

- [1] "The origin of the term Shari'ah is in the Qur'an Verse 48: Chapter 5 in which Allah (swt) declares that for all humans, He has provided Shari'ah and Minhaj. The latter is the plural of *Manhaj*, which is a clear pathway to 'well-being, goodness, and thriving existence,' while the former constitutes the network of rules of treading the path." Hossein Askari, H. and Mirakhor, A. 2020. *Conceptions of Justice from Islam to the Present*. Palgrave Macmillan, p. 10.
- [2] See also De Lauri, A. 2012. *Inaccessible Normative Pluralism and Human Rights in Afghanistan*. FMSH, Working Paper Series, n. 21.
- [3] On justice as fairness see, for instance, Rawls, J. 1985. Justice as Fairness: Political not Metaphysical. *Philosophy and Public Affairs*, 14: 223–251.
- [4] Nader, L. 2008. Giustizia, diritti umani e sentimento d'ingiustizia. In: De Lauri, A. *Giustizia*. Antropologia, Vol. 8, Ledizioni.
- [5] Rosen, L. 2002. *The Culture of Islam: Changing Aspects of Contemporary Muslim Life*. University of Chicago Press, pp. 68–69.
- [6] *Ibid.*, p. 69.
- [7] De Lauri, A. 2020. Women Judges in Afghanistan: An Interview with Anisa Rasooli. CMI Insight, <https://www.cmi.no/publications/7268-women-judges-in-afghanistan-an-interview-with-anisa-rasooli>.
- [8] De Lauri, A. 2021. The Judiciary and the Evacuation: Interview with Afghan Judge Tayeba Parsa. Public Anthropologist, <https://publicanthropologist.cmi.no/2021/11/29/the-judiciary-and-the-evacuation-interview-with-afghan-judge-tayeba-parsa/>.
- [9] See also Hakimi, M.J. 2021. The Judiciary and the Rule of Law in Afghanistan. *Judicature*, 105(3): 24–29.
- [10] Hassina Syed, at the Nobel Peace Prize Forum in Oslo, 11 December 2022.
- [11] De Lauri, A. 2021. The Evacuation of Judges and the Future of Justice in Afghanistan. Norwegian Centre for Humanitarian Studies, <https://www.humanitarianstudies.no/the-evacuation-of-judges-and-the-impact-on-justice-in-afghanistan/>.
- [12] The literature on legal pluralism in Afghanistan is rich. Some recent interventions include Choudhury, N. 2017. Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom. *Asian Journal of Law and Society*, 4: 229–255; Singh, D. 2019. The Management of Legal Pluralism and Human Rights in Decentralized Afghanistan. *The Journal of Legal Pluralism and Unofficial Law*, 51(3): 350–380; Terpstra, N. 2020. Statebuilding, Legal Pluralism, and Irregular Warfare: Assessing the Dutch Mission in Kunduz Province, Afghanistan. *Peacebuilding*, 8(3): 300–320; Henderson, S. and Muller, L. 2022. Afghanistan's Forgotten Boys: Legal Pluralism and Impunity. *Global Responsibility to Protect*, 14(4): 409–431; Swenson, G. 2022. *Contending Orders: Legal Pluralism and the Rule of Law*. Oxford University Press.
- [13] An example among many is Sevastik, P. 2020. Rule of Law, Human Rights and Impunity: The Case of Afghanistan. *Hague Journal on the Rule of Law*, 12: 93–145.
- [14] De Lauri, *Inaccessible Normative Pluralism and Human Rights in Afghanistan*.
- [15] The customary assembly is a social institution, popular throughout the country, which has nearly the same role for all Afghans, even if it differs slightly in relation to some functions. They are not permanent institutions but are created when there are important decisions to be taken (at the level of the community) or conflicts to be solved (e.g., conflicts between families). Given the problem of corruption within judicial institutions and difficulties to access them for very poor people, the (inter)familial sphere remains in many cases the only possible recourse to solve a problem or to settle a quarrel. But where – like in Kabul – customary practices clash with other social phenomena such as unemployment, lack of accommodation, or alienation from one's social group, the result is the detachment between social practices and the system of values recognised by the social group. Furthermore, *jirga* and *shura* are directly linked to dynamics of prestige, wealth and honor, and therefore in Kabul they are not often instituted to solve disputes involving marginal members of the community.
- The word *jirga* is a Pashto term also used among non-Pashtun groups. Usually, however, non-Pashtun people use the term *shura*, which derives from the Arabic word *mashwara* (to ask, to consult). Among the Hazaras, the term *ulus* (literally 'people' or 'soldiers') is commonly used to indicate the assembly.
- [16] De Lauri, A. 2012. *Afghanistan: Ricostruzione, ingiustizia, diritti umani*. Mondadori.

[17] This form of compensation is often described as *bad*; see, for instance, Saeed, L. 2021. Legal Pluralism in Afghanistan. In: *Islam, Custom and Human Rights*. Springer, pp. 23–64; De Lauri, A. 2013. Law in Afghanistan: A Critique of Post-2001 Reconstruction. *Journal of Critical Globalisation Studies*, 6: 4–29.

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[21] Benjamin, W. 1969. Critique of Violence. In: *Reflections: Essays, Aphorisms, Autobiographical Writings*. Schocken Books, p. 277.

[22] Derrida, J. 1994. *Force de loi*. Éditions Galilée.

[23] *Ibid.*, pp. 279–280.

[24] De Lauri, A. 2014. Law as an Anti-value: Justice, Violence and Suffering in the Logic of Becoming. *Anthropology Today*, 30(3): 22–25.

[25] United Nations 2022. Afghanistan: First Public Executive since Taliban Takeover, 'Deeply Disturbing' Says UN Human Rights Office. <https://news.un.org/en/story/2022/12/1131487>.

[26] Swenson, *Contending Orders*.

[27] SciencesPo 2021. *Winning War Through Law in Afghanistan? Interview with Adam Baczko*, <https://www.sciencespo.fr/cei/en/content/winning-war-through-law-afghanistan-interview-adam-baczko>.

[28] De Lauri, *Afghanistan*.

[29] Nojumi, N., Mazurana, D. and Stites, E. 2009. *Life and Security in Rural Afghanistan*. Rowman and Littlefield.

