



The Jirga

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In the frosty morning, Police Inspector Nader Kahn trudged from his office along the road to the other side of the village. Each step cracked into the mud through the thin layer of ice that had formed overnight. The snow-covered Hindu Kush Mountains rose serenely and powerfully around him. A few patches of snow on the semi-arid landscape left an alternating pattern of brown and white. The Inspector rubbed his gloved hands together to stay warm. The cup of tea he had before leaving warmed him only a little and made his breath all the more steamy in the morning air.

The Inspector dreaded his mission that morning. He was the local police authority for the village, and it was his job to enforce the laws of Pakistan. This was the area he grew up in and spent his whole life. He knew everyone, and everyone knew him. Mostly this made his job easy; a lot of his police work was simply acting as the adult between two disputing parties and getting them to settle down. Arrests and formal legal proceedings were rarely needed. Most of the crimes committed in the area were minor: thefts, fights, etc. Today's business was more serious. He was required to make an arrest, something he rarely needed to do.

The Inspector walked the main road, which bisected the earthen huts that made up the village. Steam rose from the primitive roofs as the occupants prepared tea and breakfast for the day. The Inspector could name the family in each of the homes: all of their names and their ancestor's names. Two tribes, referred to as khels in the local language, inhabited this area in close proximity. Relations had always been good between the two khels. It was the Inspector's job to make sure this remained the case.

He arrived at the house of the Suspect whom he was supposed to arrest. The Inspector knew already that he would not be there. In fact, he knew that his mission this morning was nothing more than a show for his superiors to make it look like he tried to enforce the state laws. Still, he knocked on the corrugated metal door with a clang. Almost immediately the door opened. The Suspect's mother stood before him smiling politely despite the situation. He'd known her all his life.

"Welcome, Inspector," she said enthusiastically. "Nice of you to come. Please come in for tea."

"I am sorry, but I can't," Inspector Khan replied, trying to be nice.

The Suspect's mother's smile drooped a little. She tried to hide it. "Yes, I understand. Still, you must come out of the cold."

"No, thank you." The Inspector looked up at the clear blue sky. A sky that always appeared vast and endless in the high altitudes of the Hindu Kush, although he'd never known any other type of sky. He took off his cap and scratched his head hoping to delay the inevitable next question: "Is Ibrahim here?"

"You know that he is not," Ibrahim's mother responded.

The Inspector avoided the direct truth, "Do you know when he'll be back?"

"He won't be back," the mother replied with a straight face.

"Do you know where he is?"

"I don't."

They regarded one another for a moment. The Inspector wanted to be serious, but mostly he felt sorry for her. He considered pushing the questioning further but knew it was hopeless.

"Have a good day." The Inspector turned and walked away from the home, thankful that his unholy task was almost done for the day, one more errand to run before he could return to the police station. Twenty yards up the road in another hut was a man clanging on the side on the motorcycle with a mallet. The machine shop was open early for those who needed repairs before the workday began. The Inspector approached the owner of the shop where the Suspect worked; the Suspect was nowhere in sight.

The shop owner stopped his hammering and greeted the Inspector "Good morning, Inspector."

"Good morning. Did Ibrahim come into work today?"

"No, I'm sorry, he didn't," said the owner.

"You don't happen to know where he is?"

"I don't know that either." There was a pause. "Would you like some tea?"

"No, thank you. I must get back to the station."

The Inspector turned and walked down the muddy road back to his office. He felt like he had done his job or at least tried to. A conflicted sense of duty to the laws of Pakistan or to the customs of his people weighed heavily on his conscience. He didn't know what was right.

The Inspector walked back to the hut that served as the police station, only to find a government jeep parked out front. He had been looking forward to the warmth of being inside and being done with his odious task, but the jeep foretold of more trouble for him. He opened the door and found the Deputy Superintendent waiting for him inside.

"Good morning, Nader," the Superintendent said.

"Good morning, Zalmay," replied the Inspector cautiously. The Superintendent was his superior in the province and also the malik for the

area. The malik was the liaison between the Pakistani government and the local khel leaders. His visit was unexpected. Although, the Inspector feared it had something do with the business of the morning.

“You understand why I am here?” began the Superintendent without preliminaries.

“Yes, I am aware. I just returned from going to arrest the suspect.”

“And he was no where to be found, right?”

“That’s exactly right.”

“I am afraid that’s not good enough. The suspect needs to be arrested. I realize that you’re sympathetic to the local customs of law and justice, and the government tries to give leeway to such local rules, but this is a murder, not the theft of a goat. The laws of the state supersede those of the khel authority. Are you aware of your duty here?”

“I am aware, but—” the Inspector tried to find the right words. He didn’t want to say outright that he sympathized with the traditional rules of justice. “But...I am not sure if he could be found, nor do I think it’d be best for the community or relations between the two khels if he is arrested and tried by the state.”

“Don’t forget that I too am from this area,” returned the Superintendent. “But our opinion is irrelevant. Murder suspects cannot be tried by a Jirga. Pakistan wants to move into the modern world and to a modern justice system. The Jirga has been outlawed for a reason. Sure, we look the other way and let the local Jirga handle small matters, but for elevated crimes such as murder,” he paused. “These are a matter for the state to handle.”

“Zalmay, with all due respect, I fear the locals will not accept the decision of the Pakistani court. For us, locking someone up for life is not what we consider justice. Both khels will feel dishonored. The convict’s khel will feel like they lost a member forever, and the khel of the murder victim won’t feel like they received their just compensation for their loss. There will be no reconciliation. It will lead to more strife. These are two khels here who have lived in peace for a long time.”

“You don’t think that I am already aware of everything you are saying,” said the Superintendent, raising his voice. “There is going to be some strain transitioning from the Pashtun Jirga to a modern, world-recognized justice system. The people will learn to respect and accept the new system of law. In the meantime there’ll be some growing pains.”

“Is this new justice better or more right than our system that has existed for hundreds of years?” demanded the Inspector.

“Inspector, watch yourself. Don’t forget you are talking to a superior,” snapped the Superintendent.

“I am sorry,” said the Inspector, calming down. “I just don’t feel like this is the right decision. Many people feel that modern justice is just another colonial intrusion into their lives by the British and the Americans. Many are

already fed up with the war and the bombing of civilians. This may just lead to insurrection. Perhaps the government should wait until the Americans leave neighboring Afghanistan before getting rid of the Jirga.”

“That’s a lofty opinion for a local police inspector,” said the Superintendent half mocking Inspector Khan. “We both have to take orders from the state. There are flaws with the Jirga system that maybe you don’t understand here in the mountains. I have been to the West. I have lived in big cities like Islamabad. The Jirga makes Pakistan look antiquated, like we’re a tribal backwater. Women are not treated fairly in the Jirga system. They cannot participate in the Jirga, and in a murder case, such as this, women are often used as a payment for compensation to the victim’s family. We cannot allow this any more. You are an officer of Pakistan. You have a sworn duty to the laws of the state. If you want to keep your job, you’ve got no choice.”

The Inspector sighed and looked around his office. The walls were covered with certificates conferring upon him authority to enforce the laws of Pakistan.

“When are they going to convene the Jirga to try the Suspect?” asked the Superintendent.

“In the next few days, I suppose. I can find out. I’ll go see Bacha, one of the khel leaders. He’ll be the one putting it together.”

“Go see him now. Tell him that Jirgas are illegal, and if he convenes the Jirga then you will have to arrest him too.”

“You can’t mean that, Superintendent. Bacha is the most respected man in this region. There’d be a riot.”

“I do mean it. If you need more officers to support you, then I will provide them. If you don’t execute your duty then you will be fired.”

The Inspector hung his head in thought. The Superintendent stood up and put his hand on the Inspector’s shoulder. “I understand your conflict. You’re doing this for your country’s future.” The Superintendent picked his hat up off the table and put it on, testing it to make sure it was on snugly. “Call me tomorrow to report.” The Superintendent walked out the police station and into the cold. Inspector Khan stood in his office...alone.

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Inspector Khan walked out of his home after lunch and into the afternoon sun. It was still freezing cold, but the direct rays of sunlight warmed him. The thin air in the high altitude refused to hold any heat, consigning everyone back to the cold whenever they left the sunlight.

The unpleasantness of the Inspector’s duties haunted him. He had delayed making the trip out that morning to see Bacha, the khel leader and the man who would convene the Jirga to try Ibrahim for murder. Bacha was probably in his late 70’s. He wore a beard, as all wise men do. Like Bacha’s father before him and his father’s father before that, he came from a long line of village sages and khel leaders. He was the type of man who always had a carefully

weighed answer, which always seemed wise beyond any man and whose wisdom seemed to come from beyond.

Bacha lived just a short distance away from the cluster of huts that made up the village. It was a small farm where Bacha's family had lived for generations. The Inspector approached the hut and knocked on the door. Bacha's wife answered and invited him to enter. Bacha sat in the corner drinking tea. He looked up at the Inspector with a smile, "Good morning, Nader. Or do I call you 'Inspector' today?"

"I am afraid that it's Inspector today."

"Well, Inspector. You're here about Ibrahim and the Jirga. Correct?" The Inspector did not reply. "Sit down," bade Bacha. "Would you like some tea?"

"Yes, I'll take some." Bacha's wife poured some tea for the Inspector. He took a sip and stared at Bacha for a moment, hesitant to start the conversation. "I got a visit from my superior this morning. He knows that you're planning to try Ibrahim with a Jirga. I have been to Ibrahim's house and work to arrest him, but as expected, he was not there."

"Yes, so I heard," replied Bacha.

"Then you are well aware that I have a duty to perform?"

"I am aware of your duty, and you are aware of mine," said Bacha calmly.

"Although I come from here, I have sworn to uphold and enforce the laws of Pakistan. Therefore, I must arrest Ibrahim. You must tell me where he is."

"It's no secret," began Bacha. "He's with his cousin."

The frank sincerity in which Bacha delivered this information dumbfounded the Inspector. "That's it. You just tell me where to find him."

"You have your duty to perform, and so do I," repeated Bacha. "The Pashtun traditions of the village and the two khels that live here demand that a Jirga be convened to try Ibrahim. As the leader of our khel, it is my responsibility to follow this tradition. You have a responsibility too. Although, I feel you will not arrest Ibrahim today because you understand what is right."

"And what is right, Bacha? There is a modern world out there. We have TV, phones, and some places have Internet now. Does our old Jirga system work in the new world? Pakistan wants to be part of this new world. Don't we want to too?"

"We are not necessarily Pakistani," replied Bacha. "We are Pashtuns. Pashtunistan covers areas in Afghanistan and Pakistan. Our culture, laws, and the Jirga have been around for hundreds of years. Foreigners come and go with their laws and customs, each of them convinced that their system is the best. The British came and went. The Russians came and went. The Americans, the UN, and NATO are here now, but they'll go someday too. Through all that, the Jirga system survives."

"Don't you think that maybe the Jirga system could use some retooling? A few changes towards modernization?"

“That is for us to decide. The Pakistani government has not sought to work within our system but outlawed it out entirely. Is the Pakistani system really justice if it’s not accepted by the people? No system of law survives without the willing participation of the population. The people here will not accept for Ibrahim to be arrested and tried under Pakistani law. If Ibrahim is found guilty, then he must be properly punished under the Jirga system. Only then can reconciliation between the khels take place. Will there be justice if our two khels are plunged into strife with both sides feeling wronged?”

“My superior has instructed me to enforce the laws. I must go arrest Ibrahim, and if you have the Jirga, I’ll be forced to arrest you too.”

“Then you must do what you need to do,” responded Bacha. “The Jirga will be tomorrow at noon. You should be there as a member of the village.” Bacha calmly sipped his tea.

The Inspector knew it was time for him to leave. He put down his cup of unfinished tea. “I must go now,” he said.

The Inspector thanked his hosts and walked out of Bacha’s hut into the cold. He looked at the mountains and then stared at the way toward Ibrahim’s cousin’s house for a long time, frozen. Then he turned and walked back to his home and his family.

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Inspector Khan hardly slept a wink. His troubled mind forced him to stare at the roof all night. Grateful when dawn finally arrived, he got up, dressed, walked to the police station, and made himself a cup of tea. In a few minutes, he’d have to call the Superintendent and tell him the situation. The phone sat heavy on the table, loaded with questions. The Inspector told himself to just rely on the truth. He picked up the phone, dialed the Superintendent, told him the Jirga would be at noon that day, and told him that he would take care of it. After he hung up, an eerie silence filled the police station. For the whole morning, he received no visitors and no phone calls. He leaned back in his chair.

Just before noon, the Inspector stepped out of the police station and into the bright, warm sun. Every shop had closed, and everyone was making their way toward the site of the Jirga. The outdoor spot was marked with a flag in an open, flat area in the main gathering place for the village. All those who lived within walking distance were there and standing in a small crowd facing the flag. Around the flag sat a group made up only of men. There was Bacha and three others. These were Jirgamaran, the tribal elders who would conduct the Jirga and would decide the matter. Two of the Jirgamaran were from Ibrahim’s khel, and the other two were from the victim’s khel. Both tribes accepted that this was fair. The rest of the circle consisted of male members of the victim’s family and the accused’s family. Sitting with his family was the Suspect, Ibrahim. His nervous eyes looked uneasily around the circle. The crowd of villagers stood around in observation. No one spoke.

Inspector Khan gently pushed his way to the front of the crowd and the edge of the circle. Everyone watched him awaiting his next move. He locked eyes with Bacha. Inspector Khan simply folded his arms and stood his ground but did not act.

Bacha looked up at the sun and determined it was noon. Without speaking, he gestured to begin. Bacha spoke first and led the group in prayer. He finished the prayer and announced, "Will the aggrieved family please come forth?"

The victim's father rose from the sitting position and stood in the circle. The father appeared neither angry nor nervous. "What is your grievance?" asked Bacha.

"Four days ago, Ibrahim, murdered my son, Zahir," began the father motioning toward the accused. "We ask the Jirga that justice be done."

Another of the Jirgamaran asked the father, "Do you have a witness?"

"Yes, my youngest son, but since he is so young, I can relate what he told me."

"Continue," said the Jirgamaran.

"Ibrahim was on our farm fixing a broken plow. Our son was outside working near where Ibrahim was doing the repairs. He says that Zahir came out of the house to check on the plow and pay Ibrahim for his work. The two men began arguing about the cost. He couldn't hear everything, but he knew what was happening. The argument soon became a fight, and before anyone could step in, Ibrahim had swung a chain from the plow and struck Zahir across the face. When I came over, Zahir was already dead."

"Was Ibrahim defending himself?" asked one of the Jirgamaran.

"I don't know," said the father sheepishly, "but my son, Zahir, had no weapon when I found him."

"Is there a history of dispute between your son and the accused?" asked another Jirgamaran.

"We are all aware of the history," said the father truthfully. "This was not the first argument between them," answered the father, fearing he'd said too much.

"Is there anything more you wish to add?" asked Bacha.

"No sir. Other than, I have lost my eldest son and my ablest worker."

"You may sit," instructed Bacha. He turned to Ibrahim and indicated for him to rise. Ibrahim self-consciously rose to his feet and stood in the middle of the Jirga. "Do you wish to defend yourself?" asked Bacha.

"Yes," said Ibrahim; his eyes darted among the Jirgamaran.

"Go ahead," said Bacha evenly, cueing him to speak.

"I came to Zahir's farm to fix the plow again. Zahir was angry because he said that I did not fix it right the first time. The blade kept coming loose. When I looked at the plow, there was more wrong than just the blade. The

whole support needed to be replaced. It was rusty, and they had let it wear through. Zahir came out of the house and asked me why I was taking so long and how come I couldn't fix it right. I told him they needed a new support. He called me a liar and told me that I was a thief who was trying to cheat them out of their money. I tried to show him the problem, but he wouldn't look. He just kept yelling at me. So I grabbed his sleeve to pull him closer to the plow so he could see I was telling the truth. This made him angrier, and he slapped my hand off his sleeve and pushed me away. I stumbled and nearly fell down. He lunged at me and had his hands around my neck. I pushed him away and then..." Ibrahim's voice broke. He lowered his head and stared at the ground, "I grabbed the chain from the plow. It was the nearest thing I could reach. Then I struck him across the face. I only wanted to keep him away from me. I never meant to kill him."

"You struck him with the chain after you pushed him away?" asked one of the Jirgamaran.

Ibrahim hesitated and simply said, "yes."

"Had he lunged at you again?"

"No," said Ibrahim, "but he was about to. I could tell."

"You two have had problems in the past?" asked Bacha.

"Everyone has. Zahir has a temper. Everyone in the village knows this."

Bacha looked at the other Jirgamaran to see if they had any more questions. The other Jirgamaran gestured that they had none.

"Is there anything more you wish to add?" asked Bacha.

"No, sir."

"Then we will talk. Please sit down."

The Jirgamaran stood up and walked away from the circle, the flag, and the crowd and moved to a nearby open shelter where they sat around a table and were served hot tea. The Inspector stood at a distance with the crowd and watched them discuss the matter; the crowd had their own conversations about the Jirga. No one spoke to the Inspector. The Jirgamaran sipped their tea and steadily deliberated amongst themselves. Their conversation appeared cordial with each of the Jirgamaran speaking in turn and not interrupting one another.

After about 30 minutes, the Jirgamaran stood up from their tea. The villagers quickly silenced their conversations and considered the men as they walked back to the flag and took their previous seats within the circle. Bacha spoke first, "The Jirga has reached a decision." Bacha paused, turned to the Inspector, and held his glance. The crowd awaited a reaction, but the Inspector, hemmed in by the crowd, stood and held his countenance but did nothing. Having made his point, Bacha looked away and continued. "Will the accused please rise and stand in front of the Jirga?"

Ibrahim rose to his feet, this time with more apprehension than before.

“Ibrahim, the Jirga has reached a consensus and finds you guilty of murder with certain mitigating circumstances. The village is aware that the victim, Zahir, has a temper and has had trouble with many people. You had a right to defend yourself, but Zahir attacked you with his bare hands. This is not the first time you and he have fought. In the past, the result has been a few bruises or a black eye. When you grabbed the metal chain and swung it at an unarmed man you used deadly force that killed him. The Jirga accepts that you had no intent to kill him. The Jirga also accepts that you were defending yourself, but the community cannot tolerate when deadly force is used against someone in an ordinary fight. The result speaks for itself. Zahir is dead. And while we know he had a history, he did not deserve to die. Zahir’s father has lost a son, an heir, and the number one worker on his farm. As such, the Jirga feels that the punishment is *khonbaha*: The family will receive 10 percent of your wages for the next five years, and you must work 10 hours a week on Zahir’s father’s farm for five years. The goal of the Jirga and this punishment is the reconciliation of your two families and the two *khels*. By serving this punishment, the Jirga hopes for you pay for your crime and receive forgiveness. Zahir’s family will receive money for their loss and your labor will replace the work lost on Zahir’s father’s farm until one of the younger brothers matures. Ultimately, the Jirga wants you to be received back into the community, and the peaceful relationship between the two *khels* to continue.”

Bacha turned his head and addressed Zahir’s father directly. “Do you consider this a just punishment and compensation for your loss?”

Zahir’s father stood, looked at the crowd, and answered, “Yes, I accept the decision of the Jirga.”

Bacha then turned to Ibrahim’s father and asked, “Do you consider this punishment and compensation just?”

Ibrahim’s father stood up and replied, “Yes, we accept the decision of the Jirga.”

“Then the Jirga decision is final,” closed Bacha. The proceeding over, the crowd murmured amongst themselves. The families of the convicted and the victim spoke cordially with one another.

The Inspector stood alone, feeling overruled and powerless, but satisfied nonetheless. Just then, the crowd silenced and shushed one another. It became very quiet. Someone in the crowd pointed in a direction. The Inspector followed the man’s gaze and saw a cloud of dust rising up off in the distance. A vehicle was approaching. With the crowd silent, the jeep’s motor could be heard roaring distantly toward the village. No one said a word, but the Inspector knew that the Superintendent was coming. In this valley among the Hindu Kush Mountains, the vehicle could be seen approaching from far away. It took three minutes before the vehicle reached the village. Everyone remained silent. The jeep stopped in front of the crowd. The Superintendent and four men in uniform quickly got out. The Superintendent stepped authoritatively

from the vehicle and strode toward the Inspector. The villagers parted to make way for him.

“What is happening here, Inspector?” demanded the Superintendent. “Have you arrested these men?”

The Inspector swallowed hard, regained his strength, and stared into the Superintendent’s eyes. “The matter has been decided,” he declared.

The Superintendent didn’t need to ask any more questions. “I knew you weren’t going to follow orders.” He looked at the elders who were clearly the Jirgamaran. “Which one of you is Bacha?” demanded the Superintendent.

“I am,” Bacha responded.

“Who is the accused?”

There was silence. Then Ibrahim stood forth, “I am.”

“Arrest them both,” ordered the Superintendent to his men.

“You can’t do that,” Inspector Khan interjected. “The matter has been resolved. The Jirga decided the punishment and both families and khels have been reconciled.”

The Superintendent stared at Inspector Khan incredulously, “Remember who your superior is and what your job is? Take these men away,” the Superintendent said to his men. The officers took both Bacha and Ibrahim and shoved them into the jeep. The astonished crowd shouted and argued with the police officers.

The Superintendent turned back toward Inspector Khan and in a less angry and more reasonable voice said, “I know this was hard for you, but we have a duty to the country. Pakistan will move into the future. These people will learn about justice.” The Superintendent got into his jeep and drove off.

Already, the crowd had formed into two sides: A khel one side and a khel on the other side. One man picked up a stick. Another picked up a rock.

