PRESERVING GYPSY CULTURE THROUGH ROMANI LAW IN AMERICA

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The appearance of Romaniya or Gypsy law in legal literature is of extraordinary moment for jurisprudence and the comparative study of law. This autonomous body of law, existing unnoticed among dominant legal systems, has been invisible to legal scholarship and provides a considerable challenge to established ways of thinking.[1]

INTRODUCTION

This paper focuses on Gypsy[2] law, known as Romaniya, as it operates among the Vlach[3] Roma in the United States. This thousand-year-old oral ethics code has been carried by the Roma people to forty countries and several continents. The different Romani speaking people developed variations on a Romani legal culture which, at its base, enforces very strict social norms. The main purpose of this paper is to explore this legal culture's role in ensuring order while preventing Roma assimilation into the host society.

Romaniya (pronounced "ro-ma-NEE-ya") is designed to handle all disputes in the Roma community. The Vlach Roma, who migrated from Eastern Europe to the United States and Canada in large numbers in the last century,[4] use a tribunal known as the *Kris* (pronounced "crease") as the ultimate authoritative judicial body. The *Kris* is presided over by judges who serve as mediators and arbitrators over a dispute. Although different "Gypsy" groups such as the Romanichaals of Britain, the Kaale of Finland, and the Sinti of Germany employ other mechanisms such as feuding, revenge, gossip, and throwing curses to resolve disputes, all these related groups use their laws

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1. Walter Weyrauch, *Romaniya: An Introduction to Gypsy Law*, 45 AM. J. COMP. L. 225, 225 (1997).

2. I shall generally use the word Rom (singular person) or Roma (group) instead of "Gypsy" in this paper, since the latter is an external designation given by English speakers who incorrectly believed the ethnic group originated in Egypt. Other "Gypsy" groups related to the Eastern European Roma are the Sinti in Germany, the Kaale in Finland and Spain, and the Romanichaals in Britain. The Paavi, commonly known as Irish "Travellers," are not ethnically related to the Roma, but share some common practices with the other groups.

3. Vlach, derived from the word Wallachia, shows Rumanian influence on the Roma. *See* Thomas Acton et al., *Theorizing Gypsy Law*, 45 AM. J. COMP. L. 237, 247 (1997).

4. *See* Ronald Lee, *The Vlach Roma Gypsies and the Kris-Romani*, 45 AM. J. COMP. L. 345, 358 (1997). It is important to note that different culturally related "Gypsy" groups have separate dispute resolution mechanisms. Other groups, such as the Romanichaals in England, the Paavi in Ireland, and the Kaale, share the same origins and culture as the Rom people, but do not employ a Kris Romani to resolve disputes. *See* Acton et. al., *supra* note 3, at 248-49. The words "Rom" or "Roma" are often used to refer to the Vlach Rom of Eastern Europe. *See id.* at 247.

to enforce "remarkably similar conceptions of morality, property, cleanliness and honor."[5] With these four aims of law in mind, I will restrict my study to the enforcement of Romaniya among the Vlach Roma in the United States in order to test its power to enforce norms and compare its interactions with United States law.

Part I provides a background in the Romani language, and explains the various names for the Roma and related groups in different societies. Part II describes the Roma propensity for cultural survival despite a thousand year history of movement and migration from India westward to the Middle East, Northern Africa, Europe, and the Americas. During the past millennium, the Roma and related groups have faced severe persecution and host hostility in the countries in which they reside, sometimes resulting in execution, expulsion, or slavery for various Roma communities.[6] Despite enormous resentment from host societies, the Roma have established themselves successfully in every nation in which they reside.

Sociologist Marlene Sway theorizes that the Roma are an exceptionally successful "middleman minority" group, because they are "able to develop and perpetuate a cultural heritage involving a high degree of ethnocentrism and adaptive skills which enable them to improve or maintain their competitive resources."[7] Unlike typical middleman minority groups living among host societies, such as Chinese laundry workers and Asian Indian hotel operators, Sway describes Roma in every society as a "middleman minority par excellence,[8] because nomadism and illiteracy among the general population keep the Roma from assimilating into any host society.[9] However, as the American and Canadian Roma communities become increasingly less nomadic, more settled, and "multicultural,"[10] it will be the highly regulated and inventive Roma economic practices and adaptive legal system that will continue to ensure the vitality of Roma society.

Part III of this paper provides examples of three spheres of inter-ethnic dispute resolution handled by the Romani *Kris*—issues of defilement, economic territoriality, and violence—and how such disputes are handled formally and informally within the community and in relation to outside authority. Parts III.A and III.B provide an introduction to the strict ethical and hygienic codes which govern Romani life. Alternately referred to as Romani

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5. *See* Acton et al., *supra* note 3, at 247.

6. *See A Timeline of Romani History*, The Patrin Web Journal (visited Apr. 22, 2000) <http://www.geocites.com/Paris/5121/timeline.htm>.

7. MARLENE SWAY, FAMILIAR STRANGERS 17 (1988).

8. *Id.* at 112.

9. *See id.* at 124.

10. "Multicultural" refers to American and Canadian Roma communities incorporating other Roma and Roma-related clans into them that have recently immigrated from other parts of the world.

"culture,"[11] "religion,"[12] and Romani "law"[13] in anthropological and legal literature, these codes are thought to be divinely inspired and to require strict adherence. Any person who deviates from these rules risks being sentenced as *marime* (pronounced "mah-ree-may" which means "impure") by the tribunal, which can result in official ostracism from all Roma communities everywhere.[14] This "social death" is not only restricted to the sentenced person but extends to the sentenced person's entire family.[15] This section discusses how the threat of such a sentence by the *Kris* keeps Romaniya a vital, powerful deterrent to assimilation and thus operates recognizably as "law."[16] However, deviation and ostracism do occur and this section also tackles issues of how Roma leaders and community members sometimes work with the host society's governance structure to keep the outcasts from harming the legitimate Roma community.

Part III.C discusses the Roma use of economic territories to avoid economic competition between Roma families engaged in the same line of work. This practice ensures that each family has an opportunity to profit in a given area, because Roma cultural survival is "tightly interwoven with their economic survival."[17] Since most of the disputes which go before the *Kris* are complaints about other Roma infringing on designated economic territories, this section provides rich examples of how Romaniya works both within and independently of the official United States' governance structures to ensure economic, and thus cultural, survival.

Part III.D discusses how the Roma legal system handles acts of violence. Physical violence against another person is generally prohibited among Vlach Roma, and consequences for such acts are serious. If not resolved between the parties, serious acts of assault on another Rom will be deemed marime by a *Kris* and result in a party's expulsion from the Roma community. As a result, assault and murder continue to be extremely rare among the Roma.[18] Romaniya does not have an official sanction for murder except for expulsion from the ethnic group.[19] Acts of violence against *gaje* (pronounced "guy-

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11. *See* Robert Redfield, *The Folk Society*, 52 AM. J. SOC. 293 (1947).

12. *See* SWAY, supra note 7, at 17.

13. *See* Walter Weyrauch & Maureen Bell, *Autonomous Lawmaking: The Case of the Gypsies*, 103 YALE L.J. 323, 325 (1993).

14. Interview with George and Jimmy Kaslov and Larry Otway, Lawyer's Committee for Roma Rights and Recognition, in New York, NY (October 15, 1998) [hereinafter First Interview]. George and Jimmy Kaslov, the Roma I interviewed as well as the majority of Roma in this country and Canada, belong to the Kalderash ("coppersmiths") nation of Vlach Roma.

15. *See* Weyrauch & Bell, *supra* note 13, at 358-59.

16. *Id.* at 369.

17. SWAY, *supra* note 7, at 95.

18. *See* First Interview, *supra* note 14.

19. *See id.*

zhay" meaning "outsiders" or "non-Roma") by Roma are governed by the American legal system and such instances are even rarer than inter-ethnic violence among law-abiding Roma. Renegades, who are no longer either governed by Romaniya or considered Rom, are responsible for most serious crimes, which are unfortunately ascribed to Roma in general by *gaje* society. This section looks at how community leaders and judges use their influence to keep both law-abiding Roma and renegades under control.

Theorizing about a system of justice can be difficult when the group is generally very private and insular. Weyrauch and Bell suggest that

> any study of the internal laws of the Gypsies must inevitably reflect the research difficulties of studying Gypsies generally. . . . [T]he memory of severe persecution may affect the willingness of Gypsies to share confidential information on their law . . . [which] plays a crucial role in maintaining cultural identity and integrity against an onslaught of foreign cultural influences.[20]

I realize that anthropologists have an agenda that is often at odds with their subjects' interests. Considering severe historical Roma persecution by host societies and the Romas' understandable preference for anonymity, I have only used the names of Roma who have either given me permission to do so or used names that have already been published in other sources.

I based my research on academic journals and texts about the Vlach Roma legal system, mostly written by non-Roma scholars. However, writings by Ronald Lee[21] and Ian Hancock,[22] two scholars from Roma-related groups, were especially helpful in perceiving Romani law as fluid rather than static. Additionally, interviews with George Kaslov, a Roma *Krisnitorya*, or judge, and Larry Otway, an advocate for the recognition of Roma legal rights, also helped me understand how Romaniya adapts to changing circumstances, especially when other formal systems become involved in a dispute. My research indicates that Romaniya is a well-respected, positive force within the Roma community. In most cases, the informal Vlach Romani system of dispute resolution is successful in resolving disputes. In cases where the parties do not respect Romaniya, or the formal American system exercises jurisdiction over a matter, Roma leaders can still exert some influence through the American system. This success and influence makes Romaniya an integral part of Roma non-assimilation into the host society, which allows the Roma

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20. Weyrauch and Bell, *supra* note 13, at 339.

21. *See generally*, Ronald Lee, *The Vlach Roma Gypsies and the Kris-Romani*, 45 AM. J. COMP. L. 345, 358 (1997).

22. *See generally*, IAN HANCOCK, THE PARIAH SYNDROME: AN ACCOUNT OF GYPSY SLAVERY AND PERSECUTION (1987).

to retain a competitive edge in economic endeavors and enforces cultural survival.

I. BACKGROUND OF ROMANI LANGUAGE

The Roma speak a language known as Romanes or Romani (as it is known in English), which is a Sanskrit-based language related to the Indian languages of Punjabi and Hindi.[23] Scholars are currently working on a standardized written form of this language.[24] Rom, which means "man," is the singular male person, Romni is the singular female person, Roma[25] is plural, and Romani (which can also be spelled "Romany") is the English adjective for someone or something belonging to this group. I avoid using the term "Gypsy" in this paper, except in directly quoted material. Most Roma believe this term is pejorative because it was used by the English to describe Roma and Romanichaals[26] whom they mistakenly believed originated from Egypt. Roma never used the word Gypsy to identify themselves to other Roma.[27] Other derivations from the word Gypsy in English have also acquired negative connotations. The phrase "to gyp" someone or something means to steal or swindle, connoting the stereotypical criminality that follows the Roma and related groups in every society. Other European languages have their names for the Roma and related groups as well, such as Tsignas, Tigan, Zigneur, and Gitanos.[28] However, most Romani groups, such as the Sinti (in Germany), Roma (in Eastern Europe, United States, and Canada), Kaale (in Finland and Spain), and Romanichaals (in England) prefer to be called by their "ethnonym" rather than these external designations.[29]

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23. *See A Brief History of the Roma, The Patrin Web Journal* (last visited Apr. 22, 2000) <http://www.geocites.com/Paris/5121/history.htm>. Most Romanes or Romani terms will be italicized in this text. However the most frequently used words, such as "Roma" or "Rom," will be in regular typeface.

24. *See* Ian Hancock, *A Glossary of Romani Terms*, 45 AM. J. COMP. L. 329, 329 (1997).

25. I prefer to use "Roma" to designate the plural group, although many scholars use "Rom" to mean singular man and plural group, as will be evidenced by quoted material in this paper.

26. Romanichaals are the Rom who settled in England. They speak a variety of Romani in which the vocabulary is like that of Romanes, but the structure of the language mimics English.

27. *See* First Interview, *supra* note 14.

28. Of all the externally applied words, the German "Zigneur" is considered especially disrespectful and derogatory because of the Nazi extermination of 80% of Eastern European and German Roma. *See* SWAY, *supra* note 7, at 33, 42-45 (describing the atrocities committed by the Nazis against the Rom during WWII)

29. *See* Hancock, *supra* note 24, at 334.

II. MOBILITY, ADAPTATION AND RESILIENCE

Who are the Roma?
Do you recognize us? We're the sheep of India
Shorn for a thousand years, resigned to outrage.
We are the traders, dealers, craftsmen,
Withered in the shadow of history.

Now we have learned the paths of the forest.
We have learned to shoot, we aim straight.
If I am not for myself, who will be for me?
In not this way, how, and if not now, when?

Our brothers have gone to heaven
Through the chimneys of Dachau and Treblinka.
They have dug themselves a grave in the air.
Only we, a quarter, have survived.

For the hour of our submerged people
For revenge and to bear witness, who will be for me?
If not this way, how, and if not now, when?
. . . Each of us carries the hope of a free life
That will not be shattered by the gauja . . . [30]

A. Early Beginnings in India

The Roma homeland can be traced to the modern state of Punjab in northwestern India until the eleventh century A.D.[31] Some sources believe that the nomadic craftspersons and entertainers known as the Luri or Zott people, recorded as early as the fourth century A.D., are the ancestors of the people we now call Rom or Roma.[32] However, recent scholars have brought this theory into question.[33] The earliest information believed to be accurate on Roma ancestors emerges about six hundred years later about the Dom people, who earned their living as "musicians, dancers and entertainers of all sorts" as well as metalworkers because they were "the only group in ancient India to work with iron, a metal considered dangerous according to Indian

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30. RAY SMITH, *Opre Roma*, *in* INDEX ON CENSORSHIP 4 (1998).
31. *See A Timeline of Romani History*, *supra* note 6.
32. *See id.*
33. *See* Interview with George Kaslov and Larry Otway, Lawyer's Committee for Roma Rights and Recognition, in New York City, N.Y. (Jan. 17, 1999) [hereinafter Second Interview].

religious belief."[34] Accounts show that the Dom were never agricultural.[35] Persian Poet Firdausi documented twelve thousand Dom sent to Persia at the end of the ninth century A.D. by King Shankal of India.[36] The Dom may have been the ancestors of the groups that eventually migrated east to northern Africa and north to Europe.[37]

Around 1000 A.D., more Roma began to leave India in waves. Although the reasons for the group beginning to migrate from India are not clear, one theory is that these early people were among the Rajput Kshatriya[38] soldiers commissioned to fight the Islamic King Mahmud of Persia when he invaded northwestern India between 1001-1026 A.D.[39] Mahmud, who came from an area known as Ghazni[40] now in eastern Iran, took half a million slaves in his victory.[41] Like the group before them, the captives were taken back to Persia, from where they may have adopted their own form of the Persian diwan, which in Romanes became the Divano, an informal decision-making body consisting of community elders who offer advice to disputants.[42]

A recent theory by Indian scholar, Shyamala Devi Rathore, links the Roma to the modern Ghor people, who migrated to southern India at about the same time as King Mahmud's Muslim invasion and retained a northern Indian language very close to *Romanes*.[43] She theorizes that the Ghor and the Roma ancestors were the same people who went separate directions at the time of the invasion.[44] India currently counts twenty-three million Roma or Roma-related people among its population.[45] Approximately twelve or thirteen million Roma are dispersed worldwide outside of India.[46]

Migration continues to be a hallmark of Roma society because of persistent persecution by governments and citizens of the societies in which they settle. Over one thousand years ago, the Roma moved westward across the Middle East and northern Africa to Europe, and eventually to the New World.

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34. SWAY, *supra* note 7, at 31.

35. *See id.*

36. *See id.* at 32.

37. *See id.*

38. *See id.* "Kshatriya" is a Sanskrit word for a Hindu caste of warriors from northern India. *See id.*

39. *See A Timeline of Romani History*, *supra* note 6.

40. *See id.* The Roma could have developed the word, *gaje* (plural) or *gajo* (singular), meaning "non-Roma" or "outsider" from "Ghazni." The word originally meant "barbarian."

41. *See id.*

42. *See* Lee, *supra* note 4, at 360-61.

43. *See* WE ARE ONE PEOPLE (1998).

44. *See id.*

45. *See A Timeline of Romani History*, *supra* note 6. They call themselves by various names, and are known as Banjaras in the Hindi language.

46. *See Brief History of the Roma*, *supra* note 23.

B. Movement Westward to the Middle East, Europe and the Americas

The Roma who eventually reached Persia left in two groups—one group migrated toward Syria, Palestine, and Egypt, and the other group moved toward Armenia and Greece.[47] The former group spread from the Middle East to northern Africa. Around 1300 A.D., the latter group undertook the second great migration, known as the *Aresajipe*,[48] from the Middle East to Europe.[49]

From the time of their arrival in Europe, the Roma and other related groups faced severe persecution often in the form of "anti-Gypsy" laws, which prescribed death, slavery, or expulsion for any "Gypsy."[50] Cruel punishments such as mutilation or hunting Roma for sport continued into the 1800s.[51] Wallachia, in present day Rumania, forced Roma into five hundred years of slavery, which greatly influenced the Romani *Kris* tribunal.[52] Efforts at cataloging names, addresses, and other information about Roma for either extermination, sterilization, or forced assimilation continued in Europe into this century, as exemplified by the Nazi extermination of 1.5 million Roma and Sinti in what is known as *O Porraimos* ("the Great Devouring").[53]

Despite brutal hardships, the Romani, Sinti, Romanichaal, and Kaale cultures continue to survive and adapt to changing circumstances. Much of this success can be attributed to a steadfast belief in divinely ordered rules of morality and purity that set them apart from all outsiders, known as *gaje*. Despite clear economic dependence on outsiders who buy their goods and services, these rules enforce ethnocentrism, group cohesion, and separation between group members and members of the host society. These rules also guard against dishonesty or economic competition between members of the group.

All Roma and Roma-related groups have developed informal legal mechanisms to enforce the societal rules about morality, economic territories, cleanliness, and honor.[54] The Finnish Kaale, for example, use a system of private vengeance called "blood-feuding," in which "individuals are responsible for asserting their own rights, and the rights of family dependents

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47. *See* SWAY, *supra* note 7, at 32.

48. *See Brief History of the Roma*, *supra* note 23.

49. *See* SWAY, *supra* note 7, at 32.

50. *See id. See also A Timeline of Romani History*, *supra* note 6.The nations which prescribed banishment or death included France (1427 and 1561), Switzerland (1471), Spain (1492), Sweden (1515 and 1637), Holland (1526), Portugal(1526), Denmark (1537), Scotland (1541), Bohemia(1549), Lithuania(1557), England (1562), and German states such as Berne (1646) and Brandenburg (1686).

51. *See A Timeline of Romani History*, *supra* note 6.

52. *See* Acton et al., supra note 3, at 247-48.

53. *See A Timeline of Romani History*, *supra* note 6.

54. *See* Acton et. al., *supra* note 3, at 240.

who are weaker than they are, or friends or kin who are unjustly outnumbered."[55] There is no authority within the group to whom one appeals for justice, and appealing to outsiders is generally unacceptable.[56] This system requires the wronged person to demand satisfaction from the wrongdoer, and, if not satisfied, allows the wronged person to resort to violence to get justice.[57]

Among the Romanichaals, to not defend your or your kin's rights is to be "ladged," or shamed, in the community.[58] When one person has wronged another by community standardsthe wrongdoer must avoid the other until proper reparations are arranged.[59] However, in both Romanichaal and Kaale communities, the norms are well understood and individuals generally avoid actions which will provoke someone to defend their infringed rights.[60] Acton, Caffrey, and Mundy rightly point out that the "blood-feud" system rarely involves bloodshed: "the characteristic social control mechanism in this system is therefore enforced avoidance; violence and killing are rare occasional ultimate sanctions needed to keep the whole system in being."[61]

Alternatively, the Vlach Roma developed a unique public tribunal model as their highest level of justice for resolving disputes.[62] While many Roma-related groups utilize the informal *Divano* gathering to mediate disputes, only the Vlach Roma developed the *Kris* tribunal that handed out mandatory sentences.[63] Five hundred years of slavery in Rumania forced the Roma into a settled life and significantly affected the racial makeup of many Rumanian Roma.[64] However, their language and the unwritten practices that define their lives as Roma remained intact.

This period brought about a very important change in Romani law, which resulted from a slow adoption of Rumanian village dispute resolution systems.[65] The Roma began using both formal and informal gatherings of elders and *Krisnitorya* (judges) to mediate and arbitrate disputes, instead of the system in which disputes were handled through "blood-feuding" or by throwing curses on the other party. Members of the *Kalderash* and *Machavaya* nations of Vlach Roma brought this legal model with them when they immigrated to the United States and Canada in large numbers in the late

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55. *Id.* at 241.

56. *See id.* The Kaale and Romanichaals do not appeal to outside authorities to control wrongdoers within the community, except in clearly defined instances such as drug-dealing.

57. *See id.*

58. *See id.*

59. *See id.* at 243.

60. *See id.*at 242.

61. *Id.*

62. *See* Acton et. al., *supra* note 3, at 241.

63. *See id.*

64. *See id.*

65. *See* Lee, *supra* note 4, at 361.

nineteenth and early twentieth centuries.[66] These groups, who have been in the United States and Canada for nearly a century, have become *Rom-Amerikacha* and *Rom-Kanadacha*, who all follow the same basic customs and legal practices.

Vlach Roma are structured into four significant groups, from which the individual derives identity for his or her entire life. Roma are designated by specific *natsiya*, or nations[67]—the *Kalderash*, *Machavaya*, *Shooriya* and *Lovari*.[68] The *Kalderash* and *Machavaya natsiya* are prevalent in the United States, although recent immigration of other Roma and non-Roma Gypsy groups has effected their social, economic, and legal structure.[69] The nations are further subdivided into extended family kin groups known as *vitsya*, which provide a man or woman with "personal name, family name, social status, and significant relationships throughout life."[70] The last level of kinship organization is the *familiya*, which includes family members in both direct consanguine lines and is the basic unit of organization in the Roma community.[71]

An important level of social organization which is not restricted by nations or kinship groups is the *kumpaniya*, which basically is all the *vitsya* located in a bounded geographical area.[72] The *kumpaniya* is the community in which a *familiya* works and lives, and in which its collective rights are protected.[73] It forms the basis for determining all occupational rights in the Vlach Roma community.[74]

Sociologist Marlene Sway theorizes that the Roma are an exceptionally successful "middleman minority" group, because they are "able to develop and perpetuate a cultural heritage involving a high degree of ethnocentrism and adaptive skills which enable them to improve or maintain their competitive resources."[75] Sway believes that the factors which make the Roma a "middleman minority *par excellence*"[76] are the Roma's extensive social network and control, their divinely inspired reason to stay apart from

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66. *See A Timeline of Romani History*, *supra* note 6. Slavery did not end in Rumania until 1856. The end of slavery is known as the *Slobuzenja* in Romani history. *See id.* "Gypsies" and "Egyptians" have been present in the Americas in small numbers for centuries. The first recorded "Gypsies" came to the New World as early as Christopher Columbus' fourth voyage.

67. *See* Anne Sutherland, *Complexities of U.S. Law and Gypsy Identity*, 45 AM. J. COMP. L. 393, 394 (1997) [hereinafter Sutherland, *Complexities*].

68. *See* First Interview, *supra* note 14.

69. *See id.*

70. *Id.*

71. *See id.*

72. *See id.*

73. *See id.*

74. *See id.*

75. SWAY, *supra* note 7, at 17.

76. *Id.* at 112 (emphasis added).

the host society, their economic territoriality, and their a distinct legal culture.[77] This paper takes the last factor, Romaniya, and explores its ability to strengthen and regulate the other factors and prevent assimilation into the host society.

III. VLACH ROMA LAWMAKING AND THE PRESERVATION AND INTERNAL REGULATION OF ROMA SOCIETY IN AMERICA

> *To outsiders, the Gypsies appear to be a lawless people who circumvent non-Gypsy law whenever possible. In reality, Gypsies are governed by the strict dictates and practices of romania, which is preserved and adjudicated by the most respected members of the community. Since Romany is an unwritten language, there is no codification of the Gypsy laws; instead an oral tradition is handed down from generation to generation.*[78]

Romaniya governs the social and economic organization of Vlach Roma in the United States.[79] Literally translated, Romaniya means "the way of the *Rom*."[80] The particular form of Romaniya practiced by the Vlach Roma in Eastern Europe and the United States draws heavily upon the Rumanian village justice practiced during the Roma enslavement in Rumania.[81]

Among the American and Canadian Roma, disputes arise mainly over economic territory and marital rights, although a *Kris* occasionally hears "public policy" cases which substantially affect the Roma way of life. A dispute can progress through several informal levels before advancing to a tribunal. Negotiation between the parties is usually the first step in the process, often with assistance from members of their *familiya*, or extended family.[82] If the parties cannot reach an agreement by discussing the problem amongst themselves, and the problem is economic in nature, the dispute is mediated by a *Rom Baro* ("big man" of a particular *vitsya*), sometimes referred to as a *Shato* ("Big Shot"), an important male Rom who is in charge of bringing the parties to a satisfactory resolution.[83]

For serious violations of the pollution code or matters that are spiritual or involve family life, the *Divano* (informal gathering) of wise male elders

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77. *See id.* at 113-18.
78. *Id.* at 76 (internal citations omitted).
79. *See id.*
80. *Id.*
81. *See* Lee, *supra* note 4, at 360-61.
82. *See* Second Interview, *supra* note 33.
83. *See id.*

may be called to advise the parties of their rights.[84] Ronald Lee, a Canadian scholar,[85] describes a *Divano* proceeding in the following way:

> A Divano is usually held at the home of a third party unrelated to either the plaintiff or the accused. Local patriarchs will be invited to attend and offer their advice. . . . [T]he patriarchs . . . hear both sides of the story, question witnesses and arrive at what they feel is a just solution. At a formal *Kris*, this is what would happen anyway, except that in a *Divano*, the elders can only offer their advice and urge the two sides to accept their solution. . . . Most *Kris* are preceded by a *Divano* (unless they involve pollution offenses) and it is usually when the two sides cannot reach an agreement that a *Kris* ensues.[86]

Most Romani-related groups have rough equivalents of the *Divano* dispute resolution mechanism.[87] The word *Divano* may be derived from the Persian "diwan" ("council of state") and appears to be a much older system than the Vlach Roma *Kris*.[88] Although the *Kris* operates like the Indian "panchayat" ("village council"), researchers have traced its origin to the "justice system employed by . . . Rumanian villagers" during five hundred years of Vlach Roma slavery.[89]

If a matter cannot be resolved informally, it will be heard before a formal *Kris*.[90] The *Kris* consists of a tribunal of wise men from the community who are specifically called together to mediate or arbitrate a particular matter in a neutral location.[91] This *Kris* has the power, in the most serious of circumstances, to excommunicate a party and the party's entire family from the community.[92]

The *Kris-Romani* is closed to *gaje* eyes.[93] Both parties in a dispute must agree upon a neutral location and the *Krisnitoriya* (judges) who will hear the dispute. All judges and audience members at a *Kris* are adult males.[94] If a

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84. *See id.*

85. Ronald Lee is *Romanichaal*. While he is not Vlach Romà, he is not considered a *gaje* either.

86. Lee, *supra* note 4, at 360 (emphasis and consistent spellings added).

87. *See id.* at 360-61.

88. *See id.* at 361.

89. *Id.*

90. *See id.* at 360.

91. *See id.*

92. *See id.* at 361 n.19.

93. *See* First Interview, *supra* note 14. Very few *gaje* have ever observed a *Kris* proceeding. Jan Yoors, a *gaje* scholar who traveled with Vlach Roma from the *Lovari* nation in Europe in the 1940s, is an exception. *See* JAN YOORS, *Gypsy Lore Society, in* LOWARI LAW AND JURISDICTION 1-18 (1941).

94. *See* First Interview, *supra* note 14.

woman has been accused of an offense, she may represent herself or ask her husband, father, or brother to represent her at the tribunal.[95]

Any legal discussion must take place in a formalized version of *Romanes*, which is different from everyday conversational *Romanes*.[96] *Romanes*, like Latin, includes declensions that "allow the speaker to combine word stems in complex and poetic new ways."[97] The orator, who can be a party, his or her representative, a judge, or an audience member, makes use of colorful metaphors and creative presentation of well-known stories to make his point.[98] English is not allowed in the proceeding and audience members will hiss and shout at participants who accidentally lapse into the *gaje* language.[99]

Lee writes an excellent descriptive account of Rom-Vlach *Kris* proceeding as he has observed it:

> Each *Kris* has a supreme judge, who may or may not be local and a body of advisory elders. Once both litigants have agreed through their spokesmen (*swatasha*) which judge is acceptable, he will suggest a small group of his peers whom he feels are best qualified according to their availability to sit with him, provided they are acceptable to the litigants.... As well as the advisory body, any adult male Rom can attend the *Kris* and offer suggestions, question witnesses, argue testimony and offer advice if this is considered constructive by the supreme judge. It is the responsibility of the supreme judge to hear all the evidence, become informed of the facts and then ask the opinions of his advisory body before making the final decision. A *Kris* can often be a lengthy affair and the defendant usually has to provide food and drink during the proceeding. Often relatives of the litigants will call long distance on a pay phone in the place where the *Kris* is being held to learn how the matter is progressing in their impatience to remain abreast of the trial. Once a verdict is reached, it will be known all over the U.S. and Canada by relatives of those on trial.
>
> During the trial, there is much shouting and it is up to the supreme judge to impose order. The Rom, as a rule, are volatile and emotional, and when pleading issues or trying to elicit support they often get carried away. Often, a judge will ask a Rom to leave the *Kris* to compose himself and then return after cooling off outside for a while. The Rom have a saying for this: *Gelotav te avel*—"He

95. *See id.*
96. *See* RENA C. GROPPER, GYPSIES IN THE CITY 84 (1975).
97. *Id.*
98. *See id*
99. *See* Second Interview, *supra* note 33.

> departed in order to re-arrive." While some judges will not allow the assembled Rom to drink alcoholic beverages during the trial, some do, while others restrict the Rom to beer only. But the Rom are always allowed to smoke and the air soon becomes [filled] with the reek of cigarettes, pipes, and king-sized cigars. The accused will try to gain as much sympathy and support as he can for his case by turning to face the assembled Rom instead of the judge. Some will go through childish antics to gain support, kneeling down, pleading and indulging in other theatrical displays of emotion, trying to get the assembled Rom to voice support for their case which they hope will influence the judge.
>
> Periodically some delivery person will arrive with food and drink and there will be a halt in the trial while the Rom refresh themselves. Soon, the floor will be littered with cigarette and cigar remains, food scraps, paper, empty cans and other debris. Both litigants will have kinsmen and friends who will act as advisors, and periodically, they will go into a huddle as the case progresses. Sometimes a teenage boy will enter the room and yell at his father: *Tate, akardyas o Gazho pala o- mobili*—"A customer called about the (used) car." This man will then leave and take care of business at the pay phone. When he returns, he will have to be briefed on what transpired during his absence.[100]

Romani law is intimately tied into religious beliefs and social order. Strict taboos are the most important forces maintaining Roma social order. Ritual cleanliness and abhorrence of physical violence are extremely important concepts in the Vlach Roma worldview, and are enforced by a strong fear of shame (*lahzav*) or expulsion from the community.[101] One's honor (*pahkiv*) and reputation extends to his or her whole *familiya*, and thus provides more incentive not to deviate from social norms.[102]

The following sections will discuss three types of disputes controlled by Romaniya: ritual defilement, economic disputes, and acts of physical violence. These disputes can be controlled by informal recommendations by a *Shato* or *Divano*, group censure, or through formal *Kris* proceedings.[103] For those social renegades who are no longer controlled by these mechanisms, Romaniya is enforced by appealing to *gaje* authorities to punish these

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100. Lee, *supra* note 4, at 380-81.
101. *See* First Interview, *supra* note 14.
102. *See id.*
103. *See id.*

individuals and protect the legitimate Roma community.[104] The following examples help illustrate these various enforcement mechanisms.

A. Ritual Purity and Defilement

> *The ideology of defilement . . . is pervasive to Rom categories of belief and thought, and extends to all areas of Rom life in some way, underwriting a hygienic attitude towards the world, themselves, and others. Pollution ideas work on the life of Rom society, especially in the sense of symbolizing certain dangers and expressing a general view of the social order. Lines are drawn between the Gypsy and the non-Gypsy, the clean and the unclean, health and disease, the good and the bad which are made obvious and visible through the offices of ritual avoidance.*[105]

A major component of the Roma worldview is the concept of being clean (*vuzo*, pronounced "voo-zoh") versus being polluted (*marime*, pronounced "mah-ree-may").[106] The upper and lower parts of the body, separated at the waist, are ritually significant.[107] Ritual pollution occurs when a lower part of the body comes into contact with a zone designed to be occupied by the pure, higher part of the body.[108] Scholar Carol Miller notes that, "[n]umerous rituals of avoidance dramatize the different character and what the Rom understand to be naturally disparate and opposing functions of the two body areas. Any contact between the lower half of the body, particularly the genitals, which are conceptually the ultimate source of *marime*, and the upper body is forbidden."[109]

This concept of pollution uses the lower body zone to represent sexuality, marriage, and birth.[110] Sexual activity and anything related to blood, birth, and other lower body functions are all powerful, mysterious, and ritually defiling concepts.[111] Although the birth of a child is a very joyous occasion in a Roma family, certain ritual rules must be carefully followed for the first few weeks after a child is born.[112] A child is *marime* until he or she is six-weeks-old because the child is still tainted with childbirth, which is the result of sexual

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104. *See id.*

105. Carol Miller, *American Rom and the Ideology of Defilement*, *in* GYPSIES, TINKERS, AND OTHER TRAVELLERS 41 (Farnham Rehfisch ed., 1975).

106. *See id.*

107. *See id.* at 41-42.

108. *See id.* at 42.

109. *See id.*

110. *See id.*

111. *See* Second Interview, *supra* note 33.

112. *See id.*

activity.[113] Except for the mother, who shares a heightened state of *marime* with her child, all hands must be washed after handling this young child.[114] After six weeks, both male and female children are entirely *vuzo* until they marry, and have no ability to defile themselves or anyone else by their actions.[115]

Marriage is seen as the onset of a person's sexual life.[116] An extremely strong prohibition exists in Vlach Roma communities against premarital sex, which can result in a young person's *familiya* being thrown out of the community, or at the very least, make the young person unmarriageable in any kind of respectable family if the deed is discovered.[117] This taboo applies to both young men and women; however, while young males may sometimes be secretly encouraged to have some sexual experiences with *gaje* women without getting caught by elders in the community, young women are generally never allowed such experimentation among Vlach Roma.[118]

After marriage, the Roma consider any part of the body below the waist on both genders to be *marime*.[119] At this point, a female becomes *vuzo* from the neck up and *marime* from the shoulders down.[120] At marriage, the male becomes *marime* from the waist down and remains *vuzo* from the waist up.[121] The arms and hands are considered transitional on both genders, since they can be either *vuzo* or *marime* depending on when the hands were last washed.[122] This transitional state "permits the hands the necessary task of ministering to both body regions."[123]

Anytime a *vuzo* part of the body comes into contact with a *marime* part of the body, the *vuzo* part must be washed.[124] Rom will always wash their hands after they take off shoes.[125] Men's hats and women's headscarves will always rest on a high shelf or other special place, and can never be left on a sofa or a chair or on the floor, because these places come into contact with *marime* parts of the body.[126] Men and women each have separate bars of soap

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113. *See id.*
114. *See id.*
115. *See id.*
116. *See id.*
117. *See id.*
118. *See id.*
119. *See id.*
120. *See id.* Weyrauch and Bell report different information—they write that both males and females become *vuzo* from the waist up and *marime* from the waist down. *See* Weyrauch & Bell, *supra* note 13, at 348.
121. *See* Second Interview, *supra* note 33.
122. *See id.*
123. Miller, *supra* note 105, at 43.
124. *See* First Interview, *supra* note 14.
125. *See id.*
126. *See id.*

and towels for the face and the body, and children have their own bars of soap.[127] Although the children are technically *vuzo*, parents often buy them separate bars of soap to instill the habit of making the distinction later in life.[128] If it can be avoided, a Rom woman should not live in an apartment above a Rom man because her feet will always be over his head.[129] No adult is ever allowed to stand on a table, which is designed for "high" activity such as eating food.[130] Walking over an object often means that the object is "no good" and must either be thrown away or, if possible, disinfected or washed.[131] Marlene Sway describes the concept of *marime* as "the dividing wedge between the Gypsies and all other people; its laws influence every aspect of life, from sexual relations between husband and wife to financial dealings with the out-group. A highly complicated concept, marime means both pollution and rejection."[132] The relationship between these zones of the body structure the way that the Roma relate to one another and to *gaje*. The concepts of *vuzo* and *marime* are widely understood and respected among the Roma.[133] Although the specific rules mentioned above may be considered aspirational at times or be relaxed in private, most Roma clearly understand what types of transgressions will put them before a *Kris*.[134]

The code regulates several aspects of sexual behavior and includes the role of men and women in Roma society. Sexual relations are neither openly discussed nor alluded to in groups of Roma in different age or gender categories.[135] Certain gestures, such as yawning, are also inappropriate, because they suggest that one is "thinking about going to bed."[136] Daughters often do not tell mothers they are pregnant because of the obvious correlation between sexual intercourse and pregnancy. In Roma conversation, the question "Where were you found?" is the appropriate way to ask where one was born.[137]

Sexual activity is only allowed between married persons, and the couple is expected to observe all the rules against mixing *vuzo* and *marime* body zones.[138] Sex is restricted to contact between the reproductive organs only.[139]

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127. *See id.*
128. *See id.*
129. *See id.*
130. *See id.*
131. *See id.*
132. SWAY, *supra* note 7, at 53.
133. *See id.*
134. *See id.* at 53-56.
135. *See* MILLER, *supra* note 105, at 42 n.3.
136. *Id.*
137. *Id.*
138. *See id.* at 43-44.
139. *See id.* at 44-45.

Weyrauch and Bell note that "[s]exual mores are rigorously enforced and a wife's complaint of 'shameful practices' is ground for annulment as well as a sentence of *marime* and banishment of the husband."[140]

While Roma sexual life and childbearing are taboo subjects, they are also very much the social norm. Heterosexuality and a desire to be married and have children are considered the *kuntari*, or correct balance for young Roma men and women.[141] The birth of a child is cause for celebration because the child is a new member of the father's family and the child's mother transforms into a full member of her husband's family.[142] For this reason, celibacy and women who cannot bear children are seen as "out of balance."[143] Homosexuality is also considered aberrant and is prohibited by Romaniya.[144] Although I found no formal study on the situation of homosexuals in Roma society, it is likely that homosexuals either conform with the expectations of the family and Roma community or leave the community for the *gaje* world.[145]

Along with the aforementioned prohibitions, any discussion or allusion to bathroom functions is also strictly prohibited.[146] Lee notes that:

> In mixed company, if a [Rom] wishes to find out where the washroom is, he will ask another Rom something to the effect of . . . "Where do you feed the horses?" which in a Rom camp in the nomadic days, implied the "washroom." A woman will simply ask another woman . . . "Where do the ladies go?"[147]

Roma will often pay *gaje* to install new toilets in housing or apartments they are renting, even though they will only be staying for a few months, because

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140. Weyrauch & Bell, *supra* note 13, at 348.

141. *See id.*

142. *See id.*

143. Lee, *supra* note 4, at 363. Lee made the following observation:

> At the pilgrimage to St. Arne de Beaupre in the late 1980s, I saw two gay Rom feasting at a small table on the church camping ground. They were shunned and avoided by all the other Rom pilgrims who told me that they were *pampuritsi* (gays) from the U.S. They had a few non-Gypsy guests at their table and seemed oblivious to the other Rom. Gays and lesbians among the Rom conform to the norms demanded by the group. They marry and put up the front of a heterosexual existence to remain in the Rom community or they leave and live in the non-Gypsy world.

Id.

144. *See* Weyrauch & Bell, *supra* note 13, at 348.

145. *See* Lee, *supra* note 4, at 363.

146. *See id.* at 364.

147. *Id.* at 365.

they are keenly aware of the defiling nature of a toilet used by *gaje* in the past.[148]

Situations in which Roma are not allowed or not able to follow the social codes are generally very distressing for them. *Gaje* institutions, such as schools, and especially prisons, are terrifying places because Roma beliefs are not accommodated.[149] The threat of *gaje* prison, in which a person must sleep only a few feet away from a toilet, is so strong that Rom are known to plead to anything a *gaje* authority wants in order to avoid jail.[150]

While some activities are theoretically defiling, years of living in major cities have made some practices more common and accepted.[151] For example, while Roma still do not generally dine with *gaje* and prefer to prepare their own food, they will eat out on occasion.[152] The invention of disposable paper cups, napkins, plates, and plastic cutlery allows Roma to serve *gaje* in their homes; it also makes it easier for them to eat out since they know that the tableware will only be used once and then thrown away.[153]

B. The Kris-Romani and the Marime Code

If unresolved between the parties, a serious *marime* violation must go before a formal *Kris*. While other types of disputes can officially be resolved at more informal levels of dispute resolution, a *marime* violation is a direct circumvention of a closely-guarded Romaniya belief, and its resolution is critical to whether a Rom or Romni can continue to be part of the Roma. A *Kris* is designed to be an expensive and shaming (*lahzav*) experience for a wrongdoer, and as such, is an effective deterrent from further unacceptable acts.[154]

Ronald Lee writes that, compared to its importance thirty years ago in parts of Canada, "the *Kris*-Romani is not what it used to be in terms of its ability to administer problems that arise in the Rom-Vlach community."[155] While he notes a tendency for younger Roma to resort to non-Gypsy courts for certain dilemmas, the *Kris* remains the only resort for Rom accused of a pollution offenses in the United States and Canada.[156] In this instance, it is all-

148. *See* First Interview, *supra* note 14.

149. *See id.*

150. *See* Sutherland, *Complexities*, *supra* note 67, at 402.

151. *See* First Interview, *supra* note 14.

152. *See id.* When I was interviewing George and Jimmy Kaslov and Larry Otway for this paper, we ordered from a Chinese restaurant.

153. *See id.*

154. *See* First Interview, *supra* note 14.

155. Lee, *supra* note 4, at 360.

156. *See id.*

powerful because "only the *Kris* can reinstate a Rom accused of being defiled or polluted by a *marime* agent or action" into the Roma community and ethnic identity.[157] In addition, because *gaje* courts do not have any equivalent to the pollution code and are not involved in these cases, the code's existence is generally not known to the *gaje*, which is another protective mechanism from outside interference.[158]

In her article, Carol Miller uses examples of two kinds of defiling offenses which help illustrate how Romaniya works both through an informal community standard and a formal (*Kris*-based) community standard.[159] Unlike disputes over economic territories or familial disputes, *marime* issues skip the *Divano* and go straight to the formal *Kris*.

The following Case Studies illustrate the workings of community justice and give some insight into the roles and powers ascribed to females and males in American Roma society. Case Studies One and Two involve defilement brought on by a Roma agent, and Case Studies Three and Four involve defilement brought on by a *gaje* agent.[160]

1. Case Study One

> A Rom cursed a Romni during an argument. The Romni said that she defiled him. No Kris was held on this matter. The community refused to acknowledge that the Rom had become marime, largely because the offense was insufficient to justify isolation.[161]

In general, Rom are very careful to avoid becoming a *marime*, or try to rectify the situation as soon as possible. However, women have sometimes been known to use their exclusive ability to make a Rom man *marime* for strategic reasons.[162] Case Study One is a classic case of a woman using her "skirt-sweeping" power to defile a man. If a woman lifts her skirt high enough to expose herself, all men in the room are immediately *marime*. Lifting the skirt or "sweeping" the skirt is used to basically curse a man and can only be revoked by the woman herself or through a *Kris* which will clear his name. Women have been known to stop a serious argument between two men by using this technique, since they each had to immediately seek help from a wise man to convince the woman to lift the "curse of pollution" from them.[163]

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157. *Id.*
158. *See* First Interview, *supra* note 14.
159. *See* Miller, *supra* note 105, at 54.
160. *See id.*
161. *Id.*
162. *See* First Interview, *supra* note 14. A Rom man cannot make another Rom man *marime*. *See id.*
163. *See id.*

Skirt-sweeping is now frowned upon among Roma law-keepers in the United States and Canada. The instances of women defiling men for little reason had increased so dramatically in the late 1960s and 1970s that *Kris* proceedings all over the United States and Canada began to rule that both parties would be *marime* until the *Kris* resolved what happened between them.[164] Even a temporary sentence of *marime* deterred women from using this technique and skirt-sweeping or tossing is now rare.[165]

In this case study, the community agreed that the man did not deserve to be defiled for his offense, and thus a *Kris* was not necessary to determine whether he was *marime*. It is likely that a *Kris* would have required both parties to be *marime* if the woman had defiled him without good cause. Their act of not calling for a *Kris* saved both parties from this danger.

2. Case Study Two

> A Rom beat up the wife of another Rom; Romni said she defiled her attacker. Kris decision to isolate the Rom and his four brothers' households from the community for one month.[166]

Case Study Two, however, is a situation where the community demanded a *Kris* for the man's offense. Compared to Case Study One, his offense was more serious because it involved physical violence against another person. This *Kris* determined that the Romni was justified in defiling her attacker (although his act towards her would have been enough to warrant his sentence) and held his whole family temporarily *marime*.[167] Even after the official sentence is over, the community will probably be slow to accept the man and his brothers back into the community.[168]

3. Case Study Three

> A Rom married a gaje and lived with her part of the time, returning to his Romni wife occasionally. In this case, the Kris threatened marime unless he left his gaje wife. When he failed to comply, the community began commensal isolation. During his five years of

164. *See* Lee, *supra* note 4, at 362.
165. *See id.*
166. Miller, *supra* note 105, at 54.
167. *See id.*
168. *See* First Interview, *supra* note 14.

> isolation, only his brothers received him in private. Marriage to another Romni began the reinstatement process.[169]

Romaniya prohibit marriage to *gaje*.[170] However, if a *gaje* woman adopts the Roma dress and social practices, she may come to be slowly accepted in certain communities.[171] Community acceptance is much less likely if a Romni marries a *gaje* man since children are born to a father's side of the family.[172]

This example is another type of situation in which the community opinion controlled whether and when to accept a Rom into the community again. Here, community opinion supported the *Kris*' decision to excommunicate the man because his actions were harming a Romni, as well as the community's reputation.[173] The Rom could only be reinstated by divorcing both wives and finally marrying another Romni.[174]

4. Case Study Four

> A Rom married a gaji, but stayed with his Romni wife most of the time. The Kris' decision split because the defendant denied the gaje relationship and the Romni backed him up. One segment of the community refused him clearance as a Rom and isolated him for three years.[175]

Case Study Four is unusual because the Romni will not admit that her husband is doing anything wrong. Some members of the *Kris* believe her and some do not. In this situation, certain members of the community who believe the man is guilty will treat him as if he was sentenced *marime*. Group censure sends a powerful message that circumventing Romaniya is unacceptable, even if no formal sentence has been passed upon a person.

C. Economic Relations

> *[Rom] relations with gaje are of an opposite nature to their economic relations with each other. Economic relations between Rom are based on co-operation and mutual aid, and it is generally*

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169. Miller, *supra* note 105, at 54.
170. *See* First Interview, *supra* note 14.
171. *See id.*
172. *See id.*
173. *See id.*
174. *See id.*
175. Miller, *supra* note 105, at 54.

> *considered immoral to earn money from other Rom. The gaje are the only legitimate source of income and skill in extracting money from them is highly valued in Rom society.*[176]

According to Romaniya, all Roma have the right to earn a living.[177] The Roma practice a strict form of economic territoriality, which allows members of a *kumpaniya* to work free from competition from other Roma.[178] This is accomplished by "divid[ing] cities, counties, states, and entire countries into units of money-making potential" and assigning each territory to a particular *kumpaniya*, which includes groups of Rom *vitsya* or *familiya* living in a certain geographical areas.[179] The United States, for example, looks very different on a Roma economic map. Although the United States covers a vast area, nearly the entire country has already been carved up into urban and rural zones, which are further divided and spaced so that each zone is owned by a particular *vitsya*.

Most of these zones contain one *ofisa*, or fortune telling establishment, which forms the center of Roma economic activity and produces the main income for each family. Fortune telling is the most lucrative Roma profession in the United States and Canada, and "territories are economically assessed by their ability to support a fortune telling parlor. . . ."[180] The entire family contributes to the success of the operation. A Romni, her adult daughters, and daughters-in-law often work together as reader-advisers in the fortune telling enterprise. Her husband and adult sons are responsible for conducting all official business for the *ofisa*, including paying bills and advertising for the parlor.[181] Very young and very old family members also help bring in customers whenever possible.

Roma encourage the *gaje* belief that they have special soothsaying abilities, although they do not practice fortune telling among themselves.[182] Roma believe in magic and healing powers, but telling fortunes for one another is considered *bee-baxt*, or very bad luck. Roma women have no trouble with telling fortunes for *gaje*, however, and often "[b]ased on what the fortunetellers hear in their parlors, it is difficult to convince them there are non-Gypsies who do not commit incest, adultery, homicide, unethical business

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176. Anne Sutherland, *The American Rom: A Case of Economic Adaptation*, *in* GYPSIES, TINKERS, AND OTHER TRAVELLERS, 21 (Farnham Rehfisch ed., 1975) [hereinafter Sutherland, *The American Rom*].

177. *See* SWAY, *supra* note 7, at 88.

178. *See id.* at 88-89.

179. *Id.*

180. *Id.* at 91.

181. *See id.* at 92.

182. *See id.* at 5.

practices, or a myriad of other anti-social behaviors."[183] This business practice in itself is enough to dissuade Roma from leaving the community for the *gaje* world.

It is also an important business principle among Roma to be multi-occupational.[184] Other common male occupations among the *Kalderash* include buying, fixing-up, and reselling used automobiles and boats, body and fender work, blacktopping driveways, and roofing.[185] Among the *Machavaya*, selling real estate is common, although this occupation is not subject to rules of territoriality.[186] Seasonal work, such as blacktopping, farm labor, or entertaining at circuses and fairs, provides supplementary income. Women also supplement their fortune telling income by receiving welfare checks for their families and working as entertainers.[187] All these occupations must be undertaken within the designated economic territory itself, or by permission of the *Shato* of the region within which the group wishes to work. While these territories are strictly drawn, they are not entirely fixed, and many participants try to negotiate for larger and better territories before the *Kris*-Romani.[188]

1. Roma Measures to Protect Economic Territories

The *Shato* (also called *Baro*) is the economic head of a *kumpaniya*, which includes a group of Vlach-Rom working in a territorial area over which they have exclusive right to certain Roma economic practices.[189] The *Shato* is always a male selected from within the *kumpaniya* to represent the group's economic interests. The *Shato*'s role is distinct from the elders who are responsible for the moral and spiritual well-being of the group, although an elder *Shato* may attain such a status.[190] The *Shato* is generally literate and responsible for getting to know important *gaje*, such as police officers, mayors, and newspaper reporters, ensuring smooth and friendly relations with them. Often such important *gaje* are invited to wedding celebrations so that they can "get to know" the community.[191] The *Shato* plays a very important role in counteracting the negative stereotypes about Roma, often perpetuated by popular mythology or by the "gypsy squads," police units designed to

183. *Id.*

184. *See id.* at 110.

185. *See id.* at 92.

186. *See id.*

187. *See id.* at 96, 103. *See also* Sutherland, *The American Rom*, *supra* note 176, at 26 (describing the woman's role in providing economic support for her family).

188. *See* SWAY, *supra* note 7, at 89.

189. *See* Lee, *supra* note 4, at 347.

190. *See id.* at 346.

191. Sutherland, *The American Rom*, *supra* note 176, at 20-21.

monitor Roma activity in every major American city where the Roma reside.[192] Along with putting a friendly and familiar face on the community, the *Shato* can also use his relationship with the *gaje* to protect his community's economic interest from other Roma, as Case Study Six demonstrates.

The most common Roma dispute occurs when a group of Roma violates the rules of economic territoriality by encroaching on a particular *kumpaniya* territory.[193] When this occurs, any member of the *kumpaniya* has a right to bring the wrongdoers before a *Kris*. In most cases, the *Kris* orders the party to stop the unlawful behavior or risk being sanctioned *marime*. Since the *Kris* is designed to be a deterrent to future unlawful behavior, a Rom's first encounter with the tribunal "is designed to be a very humiliating experience."[194] This process and the risk of a *marime* sanction is usually enough to deter any further unlawful encroachment. The following example provided by sociologist Marlene Sway demonstrates how such a process works in an economic encroachment situation.

a. Case Study Five

> [W]hen a Los Angeles Kalderash woman was discovered telling fortunes at a hot dog stand in someone else's territory, she was brought before the *[K]ris*, publicly shamed and then ordered to move her family's residence out of the territory. She was given three weeks to move. When after three weeks she could not find a place to live, she petitioned the *[K]ris*, asking for an extension. At the extension hearing, witnesses who had functioned as spies for the *[K]ris* during the three-week intervening period testified that the woman had kept her word and had ceased telling fortunes in the designated area. Owing to this good behavior, the woman was granted a generous extension to find suitable housing elsewhere, with a sworn promise that she would continue to obey the wishes of the *[K]ris*.[195]

This example shows how the power of the *Kris* can successfully avert economic encroachment without imposing indiscriminate sanctions for not meeting the ordered time requirement. Carol Miller put it best: "The

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192. Similar to "mob squads," these police "experts" keep track of Roma activity, which is assumed to be underhanded or criminal.

193. *See* SWAY, supra note 7, at 89.

194. *Id.*

195. *Id.*

sanction's clear intention in the context of 'keeping Gypsies good to other Gypsies' is to modify behavior, not to outcast indefinitely."[196]

While most economic cases are settled by a *Kris*' warning or decision, cases arise in which outcast Roma (who would no longer be referred to as Roma) refuse to listen to the *Kris* and threaten the economic territories or reputations of the legitimate Roma. Sway notes that these "renegades" are Roma and members of their family who have been sentenced *marime*.[197] In these instances, a *Shato* uses his influence with the *gaje* to exert control over the renegades.[198] Often a Shato achieves this control by "reporting" activities of "wayward Gypsies" to police or social workers.[199] For example, a *Baro* or *Shato* of a community may report a renegade to the *gaje* because of an unpaid parking ticket.[200] Sway explains the strategy behind this:

> The offense of not paying parking tickets is considered minor by everyone's standards, Gypsies and non-Gypsies alike. However, the motivation behind a chief's gesture like that one is to discipline a recalcitrant tribe member who is breaking the Gypsy law code either socially or economically. If the chief can succeed in getting the *gaje* official to force this renegade into court and make him pay his tickets and a fine, then this chief has communicated to the renegade and all members of his ethnic group that he has obtained power beyond the *[K]ris* and traditional means of sanction.[201]

A Another natural place for a *Baro* or *Shato* to focus his attention when appealing to the *gaje* for help in controlling renegades is by alleging welfare fraud. The following example by Marlene Sway illustrates such a scenario.

b. Case Study Six

> One Gypsy chief reported a couple for welfare fraud when he learned that they were collecting multiple benefits under assumed names. The couple, living in the chiefs territory without permission and not belonging to his *kumpaniya*, was nevertheless trying to work and live in his territory "illegally." The situation was intolerable to the chief for several reasons. First, the couple never paid him a call of respect when they came into town; this obvious lack of Gypsy protocol was both a glaring insult to the

196. Miller, *supra* note 105, at 53.
197. *See* SWAY, supra note 7, at 82.
198. *See id.* at 82-83.
199. *Id.* at 86.
200. *See id.* at 85.
201. *Id.* at 85-86.

> chief and his followers and an act of open defiance. Second, the couple was indeed carelessly committing welfare fraud. This behavior endangered their own financial security as well as the security of the entire *kumpaniya*.
>
> The chief, who knows the welfare code thoroughly despite his inability to read and write, makes certain that everyone in his *kumpaniya* is honest with the welfare department. Since this couple's behavior was so deviant it was unlikely they would respond to traditional authority, the chief had no choice but to report their misconduct to the welfare official with the statement: 'Please check out these Gypsies. I think they are cheating the welfare department, and it hurts me since you people have been so nice to us.'[202]

In this example, the welfare department revoked the couple's benefits after finding them guilty of welfare fraud. To the Roma community, another group of renegades had been successfully averted from entering their territory. Sway notes that "[t]he chief, through Gypsy-style diplomacy, had restored the community's stability, averted a potential problem, and maintained his authority."[203]

Gaje police and social workers may or may not be aware that Roma leaders often have a very specific reason to turn other Roma in for legal violations. Sway notes that "I have not encountered one *gaje* in any position of authority, minor or major, who realized the peccadilloes that chiefs report to them have nothing at all to do with the actual offense they are trying to remedy."[204] On the other hand, Anne Sutherland, in her study on Roma society in a small California town (which she fictitiously names "Barvale" to protect Roma identities) reports:

> [*Gaje* authorities] often know that they are being used to settle a feud, enhance a particular leader's power, or to make money . . . . However, even when they do know the full significance of the events, there is usually little they can do about it. Both police and social workers see their role as agents of the law. If a man takes out a warrant on another or gives even slight evidence of welfare fraud, it must be investigated, even if it is known that this is being done for another reason.[205]

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202. *Id* at 86.
203. *Id.* at 86-87.
204. *Id.* at 85.
205. ANNE SUTHERLAND, GYPSIES: THE HIDDEN AMERICANS 112 (1975).

Regardless of the their knowledge of the situation, *gaje* authorities are bound by their law to investigate the reported matters, and depend on the *Shato* or *Baro* for insight into the Roma community, which is otherwise impenetrable for *gaje*. Many police officers come to believe that their influence is keeping the Roma community "honest." The relationship between Roma leaders and *gaje* authority figures is purposefully constructed so that both parties derive benefit from the relationship.

D. Code Against Physical Violence

Physical assault continues to be relatively rare among the Vlach Roma in America. Nevertheless, when such a case arises between Roma, it is traditionally taken straight to a *Kris*. Unlike marital and economic disputes, which are effectively resolved by informal mechanisms like group censure, or by a *Shato* or *Divano*, an act of violence is seen as a threat against all Roma.[206] Such actions must be dealt with in a very serious forum and a sanction of expulsion is a real possibility for crimes of violence.[207]

Situations of violence especially delicate and complicated for Roma because they can be prosecuted under both United States and Roma law. If a Rom commits assault and battery and it is brought to law enforcement's attention, the United States will assert jurisdiction over the matter.[208] Although the host society's intervention on a matter does not replace the Roma community's need for a *Kris*, its intervention can sometimes force the *Krisnitori* (judges) and community leaders to be creative to resolve the dispute.[209] George Kaslov provided the following situation that recently came before a *Kris* in his community, which illustrates how judges from the *Kris* took matters into their own hands to resolve an alleged assault dispute.

1. Case Study Seven

> X and Y, two young men in their twenties, had been arguing for months over whether Y had stolen X's brother watch. Y said that he had nothing to do with the theft. One night the men had been drinking and got into an argument in the bathroom of a New York City nightclub. Punches began flying. In a few minutes, the fight, which now included several young Rom, spilled out onto the street.

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206. *See* First Interview, *supra* note 14.
207. *See id.*
208. *See id.*
209. *See id.*

> One young man, Z, who had jumped in on the fight, was taken away by ambulance.
>
> X, Y and the other young men confessed the details of the altercation to their elders. Several *Krisnitori* met with X, Y and Z's parents to discuss the best course of action. The group decided to immediately surrender the men to the New York City Police Department because of the extremely violent nature of the fight, and for fear that the police would investigate the entire community looking for the wrongdoers.
>
> Shortly after this time, five of Z's brothers and male cousins started following X's young male relatives in their cars. One of X's relatives, V, felt very threatened by their presence and called the police to accuse them of attempting to choke him, which was a very serious but fictitious charge. The police immediately took the five men into custody, although they denied any wrongdoing.
>
> Two *Krisnitori* took it upon themselves to settle the matter between the five men and their accuser. *Krisnitori A* and *Krisnitori B* both separately spoke with V. From several conversations, they determined that V falsely charged the men. In his next meeting with V, *Krisnitori B* said to V, "you have to remember, they did not do it." V did not deny that he had been lying, and asked what to do next to resolve the dispute since the men had already been taken into police custody.
>
> *Krisnitori B* then spoke to the other parties and asked what they wanted out of the situation. At first, the parties wanted a lot of money to settle the dispute and pay off the lawyers they had retained. *Krisnitori B* knew that this was more money than they needed and more money than V possessed. He asked them what they needed to finally resolve the dispute. They asked that the charges be dropped and that V offer an apology to them for the harm they had suffered in the community. The *Krisnitori* encouraged V to drop the charges and apologize to each of the men. Thus the matter was resolved internally.[210]

Case Study Seven brings up two issues: 1) why the Roma elders and *Krisnitori* appeared to intervene in the dispute between V and the five Rom, but not in the dispute between X and Y; and 2) what roles the *gaje* and Roma legal systems play in influencing each other in this situation. Although no

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210. First Interview, *supra* note 14.

formal *Kris* has taken place for any of these disagreements, Romaniya is still clearly working to administer justice by community standards.

Physical violence is considered a crime against God, the Universe, and all Roma people.[211] Weyrauch and Bell report that "Gypsies consider crimes of violence ... as crimes against Romani society as a whole and therefore *marime*."[212] Such persons can only be re-admitted into the community by the "forgiveness of the offended party, the passage of time or by a . . . *Kris*-Romani."[213] These situations required the leaders and *Krisnitori* to take community welfare into account to protect the individuals from the ultimate *gaje* sanction, imprisonment.[214]

The two young men who got into the fight became *marime*. X and Y readily admitted to the altercation.[215] Upon meeting about the fight between X and Y, the elders and the young men's parents felt that since physical violence erupted between the men, what would happen to them was beyond the elders' control.[216] They knew that because the young men were Roma, the incident would catch police attention, leading to a search of the community.[217] As a result, the elders made a decision to save the community from police investigation, of which Roma are wary because of historical persecution by *gaje*.[218]

On the other hand, the *Krisnitori* were able to intervene when V falsely accused Z's five relatives.[219] In that instance, the parties disagreed on what happened and the *Krisnitori* had a strong feeling that V made the accusation out of fear and not because of anything that actually happened to him.[220] Even while the young men were in police custody, the *Krisnitori* worked with the parties to craft a solution to the problem.[221] He sensed that this situation was the unfortunate result of too much posturing by the young men, and could easily be resolved by a mediated discussion.[222] Thus the *Krisnitori* successfully resolved the dispute, circumventing *gaje* authority's ability to judge the matter. Despite X and Y's violent actions and *gaje* authority's

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211. *See id.*
212. Weyrauch & Bell, *supra* note 13, at 351.
213. *Id.*
214. *See generally*, Sutherland, *Complexities*, supra note 71.
215. *See* First Interview, *supra* note 14.
216. *See id.*
217. *See id.* Whether there is an actual legal basis in *gaje* law for such an arrest is not given in the facts.
218. *See id.*
219. *See id.*
220. *See id.*
221. *See id.*
222. *See id.*

interference, the young men were still entitled to a *Kris* to determine their status and punishment.[223]

With regard to the possibility of punishment in the *gaje* system, Roma community leaders would likely exert control over the situation by counseling the parties to plead whatever was necessary to avoid jail time.[224] Being imprisoned in a *gaje* jail would certainly make the men *marime*.[225] Once a person has been sent to jail for an extended period of time, he or she is considered *marime* because jail houses are ritually unhygienic.[226] The experience is also very traumatic for Roma since they have no right to their own food, they must sleep in the same room with a toilet, and *familiya* visits are rare.[227] In order to save the young men from this terrifying experience, community leaders use their influence with *gaje* to find out how to avoid jail (even for a short period of time) and counsel the young men accordingly.[228]

Even when the leaders feel they must turn a matter over to the *gaje*, whether to punish economic renegades or to protect the community from unwanted investigation, Roma leaders and judges still subtly guide what happens to their community members.[229] In this manner, they are key players in their community's self preservation in a *gaje* world.

CONCLUSION

During the past millennium, the Roma and related groups have faced severe persecution and host hostility in the countries in which they reside, sometimes resulting in execution, expulsion, or slavery for various Roma communities.[230] Despite enormous resentment from host societies, the Roma have established themselves successfully in every nation in which they reside. Their ability to resist assimilation into various host societies can partially be attributed to their belief in the Roma legal and spiritual system known as Romaniya.

Romaniya is a well-respected, positive force within the Vlach Roma community in America. In most cases, the Vlach Roma system of dispute resolution, which includes both informal and formal mechanisms, successfully resolves disputes in the community. In cases in which the parties do not

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223. *See id.*

224. *See* Sutherland, *Complexities*, supra note 67, at 402. *See also* First Interview, *supra* note 14 (George Kaslov discussed at length the fear factor surrounding imprisonment.)

225. *See* Sutherland, *Complexities*, supra note 67, at 402.

226. *See id.*

227. *See id.*

228. *See id.*

229. *See id.*

230. *See Timeline of Romani History*, *supra* note 6.

respect Romaniya or where the formal American system exercises jurisdiction over a matter, Roma leaders can still exert some influence through the American system. Romaniya is an integral part of Roma non-assimilation into the host society, which allows the Roma to retain a competitive edge in economic endeavors and enforces cultural survival.