The Journal of Asian Studies Vol. 74, No. 2 (May) 2015: 369–389.
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The Frontier Crimes Regulation and Frontier Governmentality

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From the invention of imperial authority along the North-West Frontier of British India, subjects were divided between the "civilized" inhabitants populating the cultivated plains and the "wild tribes" living in the hills. The problem of governing this latter group, the "independent tribes," proved a vexed one for the British Raj. The mechanism developed by imperial administrators to manage the frontier inhabitants was the Frontier Crimes Regulation (FCR), first promulgated in 1872 and still in effect today. The FCR was designed to exclude the Frontier's inhabitants from the colonial judiciary, and more broadly the colonial sphere, encapsulating them in their own colonially sanctioned "tradition." Exploring the use of the FCR as an instrument of governance from its first inception into the twentieth century, this article argues that it was key to shaping the nature of frontier rule, which in turn shaped the very nature of the colonial state itself.

Introduction

In the spring of 1934, the Official Gazette of the Colony and Protectorate of Kenya published a notification that the Special Districts Administrative Ordinance would henceforth apply to the northern frontier areas abutting Somaliland (National Archives, London 1934). The ordinance effectively separated the tribes of this area from the colonial body politic, and most importantly from the colonial judiciary. The inhabitants of this frontier were to be governed by their own "traditions," authentic cultural practices considered such by the state. This attempt at fashioning administration to local circumstances and ruling colonial subjects indirectly through indigenous institutions was driven by a number of factors. In the age of imperial austerity that marked colonial governance globally during the 1930s, ruling indirectly was more often than not a euphemism for ruling on the cheap. Imperial hegemony could be projected through local leaders rather than the expensive apparatus of the colonial state. Further, administrators believed such indirect rule more effective, as it mediated colonial control through local institutions and personnel with embedded legitimacy in indigenous society. Colonial authorities thus proverbially killed two birds with one stone—economizing and embedding rule along the imperial frontier.

The objects of such rule, namely the people inhabiting barren spaces on the periphery of empire, were invariably "tribal." They were neither interested in nor ready for "civilization"—the currency with which the colonial state justified its rule. Not only were these tribes unprepared to be tutored in the civilization embodied by the colonial

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https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

state, more importantly they needed to be protected from the corrupting influences of colonial society. Encapsulated in their own traditions, the tribes were immune to the debauchery, not to mention the dangerous potential for politicization, latent in colonial modernity. Though a novel administrative tool to authorities in Nairobi, the Special Districts Administrative Ordinance was by no means unique. It effectively created the frontier as a reservation for the semi-nomadic natives inhabiting this imperial periphery. Such reservations, spaces of juridical exception, not only were widespread throughout the British Empire, but became globally ubiquitous as European imperialism expanded. Indeed, the Special Districts Administrative Ordinance had a previous avatar as the Frontier Crimes Regulation (Rattigan 1903) along the North-West Frontier of British India.

The Frontier Crimes Regulation (FCR) is arguably one of the most important but least known pieces of colonial cultural and political engineering. Not only did it have an intra-imperial life, more importantly the ideas underlying it both informed and were informed by interimperial practices prevalent around the world during the latter half of the nineteenth century. The Regulation crystallized understandings of space, sets of administrative practices, and norms of rule, which collectively constituted a constellation of power I have called "frontier governmentality" (Marsden and Hopkins 2011, 51–73). This frontier governmentality was crucial not only for frontier administrators and inhabitants, but equally for the imperial project as a whole, for the ways it conceived, understood, and exercised power on its so-called "periphery" ultimately shaped the colonial state itself. The Regulation offers an alternative model of sovereignty, subjecthood, and, in the postcolonial age, citizenship. Rather than the consistent application of a universal law, rhetorically the aspiration of modern nation-states, the FCR continued the tradition of legal pluralisms and layered sovereignties defining colonial regimes (Benton 1999). Just as frontier governmentality, which both produced and was itself produced by the Regulation, defined the colonial state, it continues to be equally defining of the postcolonial state as well.

The Frontier Crimes Regulation was predicated on ideas of space and governance common throughout much of upland Asia, as well as similarly situated "borderland" regions around the globe. Many to whom the Regulation and its Kenyan counterpart applied had much in common with the inhabitants of "Zomia"—upland Southeast Asia —recently discussed by James Scott (2009).[1] However, the experiences of the frontier inhabitants with state authorities were not so much about retreat and avoidance as about the creation of alternative modes of sovereignty and rule that interacted with a colonial order. The interaction had a fundamentally transformative effect on both parties, though not in equal measure. Through it, the peoples of the frontier were constructed as imperial objects while at the same time the colonial state developed modalities and norms of governance—frontier governmentality—that rendered it decidedly different from its metropolitan cousin. As imperial objects, the tribes stood in a markedly different relationship with the state than its colonial subjects. While the Crown's claims on its subjects carried with them the possibility for reciprocal claims on its promises, no such mutuality existed for its objects.[2] Instead, their "independence" allowed the state to exploit

[1]See also the special issue of the *Journal of Global History*, "Zomia and Beyond," 5, no. 2 (July 2010).

[2]The language of loyal subjecthood was the language early colonial nationalists, especially Indian nationalists, used to press their case.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

them unencumbered by the limits, however fleeting, of law. The space of the frontier facilitated this creation of objecthood. The frontier was an ideational space where processes of encounter, encapsulation, and traditionalization central to the European colonial enterprise created "peripheries"—both places and people—around the world.

The Frontier Crimes Regulation was uniquely important for both the construction of frontier governmentality and more broadly the imperial project for a number of reasons. Firstly, the FCR was widely replicated across the British Empire. Other bodies of law, most prominently the Indian Penal Code, had similar imperial lives. However, the FCR was a particularist piece of legislation, designed to deal with a specific space and people—the North-West Frontier and its tribes—rather than establish a universal legal regime backed by the sovereign's monopoly of violence. Secondly, though the FCR evolved as a response to the challenges British Indian administrators faced on the North-West Frontier, the "problems" it addressed were by no means unique. Indeed, many frontiers on the edge of European and neo-European empires evinced the same combination of tribalism, nomadism, and violence that marked British India's North-West Frontier. Thirdly, the FCR represented the colonial state's vision of political order along the frontier, speaking not only to its political ambition and conceptual understandings of this space, but also to its administrative capabilities. By examining the FCR and contemporary manifestations of similarly situated reservation systems and frontier rule, we are offered a uniquely telling view of the colonial state itself, radically at odds with the narrative of a hegemonic, universalizing power (cf. Guha 1997).

The North-West Frontier and the Frontier Crimes Regulation

British administration of India's North-West Frontier was predicated on a particular understanding of the Frontier and its inhabitants, which found a convoluted, but nonetheless durable administrative expression. Rather than a clear line—a border—dividing independent and sovereign states, the Frontier presented a zone. In this zone, imperial pretensions to power, not to mention the daily exercise on which they rested, unevenly manifested themselves. There was a certain point, somewhere along the ridges surrounding the various passes into the Afghan kingdom, where the administrative power of the Raj definitively ended.[3] Conversely, its full might was exercised in the plains and vales where settled agricultural populations, easily taxed, were present. As one administrator wrote, "The fact is, that the territory in possession of the British Government runs up to the very foot of the hills which have, for obvious reasons of convenience, been called the frontier . . . " (National Archives of India 1880). Between these settled districts and the ridgeline, which in 1893 became the border between Afghanistan and British India, lay the so-called "tribal areas." These were inhabited by "independent" tribes who were nonetheless under British rule, but not control. The British thus created a bifurcated frontier, with an administrative one marking the end of colonial rule, and a political one marking the end of imperial rule. The space between these boundaries, though

[3]Its claim to political authority beyond this point, however, remained until the Third Afghan War (1919), after which Afghanistan claimed full sovereign independence, including control over its own foreign relations.

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ruled by the colonial state, was in fact an imperial space. Consequently, the inhabitants of this space were not colonial subjects like the Indians of the South Asian plains, but rather were imperial objects.[4]

The absence of the colonial state's exclusive sovereign control of the tribal areas in ways resembled the arrangements it made with the princely states within British India. Here, through treaty relationships, the Raj abjured its sovereignty for paramountcy, allowing native princes the right to rule within their fiefdoms while claiming exclusive rights over foreign relations, defense, and communications (Copland 1982). Such arrangements gave rise to what some scholars have variously referred to as the "layered sovereignty," or suzerainty (e.g., Benton 2010; Stoler 2006). It many ways, the Raj's sovereign prerogatives on the Frontier resembled its assertion of paramountcy vis-à-vis the princely states. Yet the tribal areas were different. The Raj had no treaty relationship with recognized princes here.[5] Instead, it maintained the pretense that the tribes inhabiting this realm were "independent." At the same time, however, it insisted on the limits of that independence.[6] Further, while British authority over the princely states was recognized both de jure and de facto, it was contested in both senses along the Frontier. Indeed, the Raj itself demonstrated a marked ambivalence in its assertions of power here.

One might understand British actions along the Frontier as demonstrating sovereign assertions not simply of a different degree, but rather of an altogether different kind. The colonial state evinced a distinctive sensibility of sovereignty when juxtaposed with the metropole. While the modern Westphalian state sought to assert a monopoly over legitimate forms of violence within a discrete territory, the colonial state sought to assert paramountcy over a limited ambit of violence within a discrete set of relationships, some but not all of which were territorial. The state's vision of violence in the colonial context was more contestable and circumscribed than in the metropolitan one. While in the latter, legitimacy was defined by and encapsulated in law, an exclusive prerogative of the sovereign, in the former authority over the norms of governance were shared, though by no means equally. Where sovereign European states increasingly saw challenges to their authority, colonial states demurred. And they did so not simply out of a self-recognition of their own weakness, but also out of their understandings of power conditioned by local political cultures.

Nowhere was this distinct colonial sense of sovereignty on display more clearly than along the Frontier. By the latter part of the nineteenth century, British control here had become firmly established and self-confident. Consequently, the time had come to

[4]A similar process was concurrently taking place on the North-East Frontier, with the creation of a bifurcated frontier zone and the differentiation of its inhabitants as hill, versus plainsmen (Misra 1998).

[5]There were, however princely states in the area with whom the Raj did have treaty relations. These included Khelat, Dir, Swat, and Chitral.

[6]Lord Landsdowne, the former viceroy and then speaking as secretary of state for India in Parliament in 1898–99, insisted: "To talk of tribal independence was a little misleading. There could be no complete independence in the case of people who had not the power of transferring their allegiance in any direction they pleased. That power was not given to the frontier tribes, and it was better, therefore, not to speak of them as independent. That condition of qualified independence was very common all through the Borders of India" (quoted in Bruce 1900, 342).

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formalize, rationalize, and bureaucratize their administration here, in keeping with similar developments throughout peninsular India. The tradition of administration resting on the discretion of local officers, best personified by the Punjab School, inevitably waned (Talbot 1991). The institutions of rule utilized in other parts of India were extended to the Frontier, including the judicial and revenue structures. Yet the shortcomings of these structures quickly became apparent to those called upon to establish and exercise them. A new administrative response was required for what remained, essentially, a political problem.

The Frontier Crimes Regulation was the Raj's response. It adapted the administrative musculature of the colonial state to the unique challenges of the Frontier. The Regulation codified the lessons of previous generations of frontier administrators into colonial law. It also drew upon the experience of colonial rule in other parts of India, most conspicuously the Criminal Tribes Act of 1871. The Criminal Tribes Act formalized the administrative collectivization of punishment, which had been steadily taking shape since the 1830s and W. H. Sleeman's prosecution of Thuggee (Yang 1985). The Frontier Crimes Regulation and Criminal Tribes Act fit the much wider phenomenon of communal governance undertaken by the ethnographic state. Colonial subjects were treated as members of discrete communities, with the interface between the state and subjects mediated by these communities. Such enumerated and regulated groupings served as categories of control for the colonial state.

The Regulation deployed such categories of control to police and tame the Frontier, most importantly "Pathan" and "Baluch" to whom the FCR automatically applied.[7] While the Regulation referred to Pathans and Baluch as "classes," colonial officials and ethnographers considered them "tribes" (cf. Titus 1998).[8] In the eyes of administrators, the concept of "tribe" provided an indigenous self-understanding of community, which served as the basis of local identities. Defined by common ancestry and genealogy, it was, in most cases, self-evident and self-elective (Lorimer 2013). The British believed that in recording tribes' membership in the census and in the numerous administrative ethnographies that blossomed after the middle of the century, and by collectively policing and punishing tribes through the FCR, they were simply replicating indigenous categories of identity. Yet colonial use of these categories was constitutive of local social realities, rather than simply descriptive of them. Amongst the Pathan and Baluch, genealogies were in the main remembered orally.[9] Writing down these genealogies denuded hitherto fluid social identities of their fungibility (Hopkins 2007, 251–52).[10] Thus the way indigenous self-understandings were transcribed into the corpus of colonial knowledge severely curtailed their potential for change, narrowing the meanings and membership of "tribe."

While "tribe" presented a seemingly neat ethnographic category, the meaning of this term was far from settled, even within the "official mind" (Skaria 1997; Xaxa 1999).

[7]"Pathan" was the colonial nomenclature for the Pashtun/Pukhtun.

[8]Interestingly, they were referred to in the census as "classes" (British Library, India Office Records 1903).

[9]This was in fact noted by colonial ethnographers (Hodson [1937] 1987, 105).

[10]This phenomenon was by no means unique to either the Pashtun or the Frontier. Referring to the inhabitants of Gilgit, Martin Sokefeld writes, "Today, peoples sometimes argue that they belong to a certain qom because it has been *written* that they do so" (Sokefeld 2005, 966, emphasis in original).

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"Tribe" was a category of governance employed across British India, as well as globally. Consequently, what constituted a tribe, how membership was ascribed, and the cultural connotations it carried were all contextually dependent and varied widely. In Africa, colonial administrators saw tribes as a source of social stability, whereas in India they were the source of venality (Vail 1989). Even within British India, "tribe" carried varied meanings depending on where it was deployed. On the North-East Frontier, colonial administrators had to deal with the uplift of "primitive tribals" like the Nagas (Robb 1997). On the central Indian plains, the settlement of itinerant wanderers who collectively indulged in "criminality" was paramount (Freitag 1991). While on the North-West Frontier, the "noble" Pathan, with traditions of independence and a spirit of republicanism, could not be policed through the colonial state's normal administrative instruments (Elphinstone [1815] 1991). Despite these radically different understandings of tribe—overladen with ideas of "primitiveness," "criminality," and "noble savagery"—all shared a similar epistemology of otherness to which the inhabitants of these spaces were subject.

One of the ways in which the colonial state differentiated the multiple meanings of tribe and those to whom it was ascribed was the use of the word "tribal." Ajay Skaria has discussed the different connotations of "primitive" and "savage" in colonial discourse, with the former requiring uplift while the latter reflected a nobility inherent in the state of nature. He refers to a "celebration of wildness"—something clearly evident in colonial discourse about the Pathans (Skaria 1997, 739). While the forest peoples of central and western India, as well as the hill peoples of northeast India were and continue to be described as "tribal," the inhabitants of the North-West Frontier were never considered such. The marks of primitiveness defining the former—the absence of writing and religion—were missing in the case of the latter.[11] As importantly, successful diasporic communities of Pathans present throughout north India fundamentally shaped South Asian images of the Pathans (Green 2008). Further, the differential use of "tribe" and "tribal" was dependent on the success of colonial violence and rule against these respective groups. The tribes of the North-West Frontier, though bloodied, remained unbowed, making their dismissal as "primitive" subjects problematic.

Nonetheless, the colonial state considered the frontier tribes less advanced than their settled neighbors. Movement made colonial officials uneasy; mobile populations proved difficult to control, and even more difficult to tax. They thus represented a debit rather than a credit in the imperial ledger. Their "traditions" and "customs," products of the deep recesses of a forgotten antiquity, prevented tribes from progressing into modernity with the rest of the colonial subjects of British India. "Traditions" and "customs," though creations of a specific, yet impossible to pinpoint moment of history, were static and unchanging. Thus the tribes were simultaneously trapped in the ether of the past while existing outside of time. In rendering "tribes" timeless, the colonial state negated any recognition of the effects of its rise on these people. Yet many of their nomadic practices resulted from modern colonial policies strictly regulating land-use and property rights, not ancient custom and tradition. Paradoxically, it was precisely these traditions and

[11]Both the Pathans and the Baluch had long literary and religious traditions as active participants in the Indo-Persianate and Indo-Islamic spheres they inhabited.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

customs that the colonial state employed to better govern the tribes of British India and thus bring them into "modern civilization."

The Raj sought to rule the inhabitants of the North-West Frontier by traditions and customs that were familiar, and thus presumably more legitimate to them. But the colonial state first had to identify those indigenous practices. Fortunately for the Frontier administrators, by the time the FCR came into being, the British had nearly seventy years' experience of encounter during which to both refine and entrench their understandings of this space and its people. Those understandings were based on Mountstuart Elphinstone's original portrait of the Afghan inhabitants of the Frontier—what I term the "Elphinstonian episteme" (Hopkins 2008, 12–33). The British conceived and depicted the Frontier tribes as "anarchic," essentially opposed to the centralized order of the state (Scott 2009). Consequently, the colonial state looked less for ways to govern than to manage these people.[12]

The means by which to manage the Frontier was the Frontier Crimes Regulation. Initially promulgated in 1872, it was reissued in 1887 and again in 1901 to correct perceived failings. Each version reflected not only the contemporary politics of its moment of passage, but also the evolving attitudes of colonial administrators regarding ideas of tradition, identity, and punishment. While the general thrust of the Regulation remained essentially unchanged, the specifics sharpened with each subsequent issuance. The steel frame of the Raj was thus reinforced with legal girders in 1887 and 1901 as the new versions of the Regulation became both more detailed and draconian. Collective punishment was central to all three versions of the FCR. Blockades were given legal sanction and structure (British Library, India Office Records 1872, §1).[13] Likewise, collective fines against communities found harboring criminals or suppressing evidence in a criminal case were imposed (§3). The 1872 Regulation banished tribes from British territory if they threatened to pursue a blood feud (§4). The 1887 Regulation went further, allowing the Deputy Commissioner (DC) to intervene directly into tribal society. Any disputes "likely to cause a blood-feud" could be referred to either a Council of Elders or a colonial court to prevent its outbreak (Punjab Frontier Crimes Regulation 1888, §10[1]). Specifically targeting Pathans, this blood feud jurisdiction reflected the colonial state's belief that "[t]he criterion of tribal unity resides . . . in the obligations of blood revenge" (Hodson [1937] 1987, 106). Regarding punitive sanction, the 1887 and 1901 versions enhanced the punishments the Deputy Commissioner and the Council of Elders could impose, allowing for whipping and transportation in addition to fines (Rattigan 1903, chap. 3, §§3–20). Further, the 1901 Regulation banned the erection of public meeting houses, known as *chauks* or *hujras* (§33). Tribes were liable to punishment for their failure in the *nanbati chaukidar* community policing system (§35[1]). Exclusion and banishment orders could include persons who the Deputy Commissioner deemed "dangerous fanatics" (§36[a]).[14]

[12]Further, the strategic imperatives of the "Great Game" limited the Raj's ambitions for order along the Frontier (e.g., Johnson 2003).

[13]A similar policy was followed on the North-East Frontier with the Inner Line Regulation (1873). Like the FCR, the Inner Line Regulation also limited the movement of colonial subjects into tribal territory through a permit system.

[14]"Fanatical" violence was specifically targeted by the Government of the Punjab in the Murderous Outrages Act, first promulgated in 1867.

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The most important element of the Regulation was its creation of an alternative judiciary for the tribes, one "almost hermetically separated from the ordinary court structure" (Tanguay-Renaud 2002, 555). DCs could refer tribe members accused of murder or "other heinous offence[s]" to adjudication by elders according to "Pathan or Biloch usage" on the grounds of insufficient evidence for conviction in colonial courts or that ordinary procedures would prove inexpedient (British Library, India Office Records 1872, §6). The 1887 Regulation further refined this idea of a tribal judiciary, specifying a "Council of Elders" consisting of "three or more persons according to the Pathan, Baluch or other usage as the Deputy Commissioner may in each case direct" (Rattigan 1899, §3(1)). The Regulation thus usurped a "traditional" mechanism of justice. Yet its reliance on the dispensation of justice by tribal members, appointed by the Deputy Commissioner, rendered the colonial state the ultimate arbiter of tradition.

The Council of Elders, known as a *jirgah*, was believed by colonial authorities to be an authentic tribal institution ubiquitous along the Frontier. While many of the Pathan tribes along its more northerly reaches were familiar with this "tradition," the Baluch in the south were not (Marsden and Hopkins 2011, 70). Moreover, for many Pathan tribes, *jirgahs* were less formalized institutions of tribal governance than consultative bodies of tribal opinion. Their form and purpose were highly varied, with some tribes regularly calling *jirgahs* of *maliks* and *khans*, while others held them rarely, but allowed all male members to participate. The rules of the *jirgahs* were also highly individuated, with some relying on *rawaj* (local customary law) to resolve disputes, while others employed precepts of the *Pashtunwali* (Pashtun tribal code), or even the *shariah*(Marsden and Hopkins 2011, 69–72). The effect of the Frontier Crimes Regulation was the standardization of the form if not the substance of *jirgahs*, at least as a judicial institution of tribal governance. Thus in relying on "tribal tradition" for local governance, the colonial state radically altered that "tradition," and in places imposed it on the Frontier's inhabitants.

While the Regulation in the main was explicit about the institutions of tribal justice and punishments, it remained silent as to what exactly constituted an offense.[15] Most offenses were those of the Indian Penal Code (IPC). But such use of the IPC contradicted the Regulation's ostensible deference to "Pathan and Baloch usage."[16] There was one notable derogation from the IPC: the FCR's treatment of adultery (British Library, India Office Records 1872, §8). Paradoxically, the procedure and punishment for adultery was brought into the colonial courts, while other crimes were excluded from them. In doing so, the Regulation simultaneously abrogated ideas of collective punishment for adultery while reinforcing it for other transgressions. Colonial stereotypes of Pathan violence, honor, and masculinity lay at the heart of the FCR's treatment of adultery. By making this the one crime directed into colonial courts, the colonial state asserted a clear claim over the regulation of sex within Pathan communities, justifying it by reference to the tribes' "irrational" propensity to violence. As a consequence, it denuded the Pathan males not only of their power, but more damningly, their honor. A Pathan who could not fulfill *badal*—the prescripts of revenge—may speak Pashto, but he could not

[15]This was also true of the Customary Law Codes the colonial government went to great lengths to compose. These Codes almost exclusively dealt with matters of civil law (see, e.g., Lorimer 2013).
[16]The annual reports included tables that broke down crimes according to the relevant section of the Indian Penal Code.

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do Pashto.[17] He was therefore not a real Pathan. The state thus subjugated Pathans to colonial authority in the most intimate way possible.

Few adultery cases ever reached the colonial courts. One such case, however, was *Bhola Ram v. Emperor*, where a Hindu resident of the Muzzafargah District was accused of adultery.[18] The case applied the FCR, a culturally conditioned response to governing the Frontier's Pathan and Baluch tribes, to Hindus "ordinarily resident of those districts." In extending the Regulation to a Hindu in a case of adultery, a section of the FCR specifically targeting Pathan ideas of honor, the Raj imploded the categories of difference on which it constructed its rule. Yet *Bhola Ram*'s underlying premise—that Indians could be rendered Pathans through long exposure to tribal norms—was by no means unique. According to A. H. Benton, Sessions judge in Peshawar, "Most of the inhabitants are Pathanised sufficiently to render it desirable that the Regulation should apply to them. This is the case even with Hindus, some of whom have their blood feuds and commit murders just like Pathans" (National Archives of India 1887a).[19] If Hindus along the Frontier could be "Pathanised," the foundations of colonial difference must themselves be unstable.

Over time, the Regulation became both more institutionally defined and more severe, reflecting broader trends taking place throughout British India. The later versions of the law more clearly delimited the composition of the Council of Elders, its authority, and its powers of punishment. The Council of Elders' increased punitive sanction—moving from the authority only to impose fines in the 1872 Regulation to the ability to order floggings and transportation for up to fourteen years in the 1901 version—likewise reflected changing ideas of criminal justice espoused by the colonial state. Criminal sanction became more disciplined as well as more punitive (Sherman 2010). Interestingly, these later versions of the Regulation also created limits to the arbitrary authority of the DC, requiring the regular submission of written reports. The written record provided the only formal check on the FCR's excesses (Berry 1987, 3, 39). The paper Raj asserted its authority over the personal Raj. This move fit the narrative that colonial governance replaced the irrational personal dictates of Oriental despots with the rational institutional channels of colonial bureaucrats.

The reliance on the moderating effect of records underlines the importance of the colonial archive and its creation of colonial knowledge. By recording, and thus knowing, the imperial state could control. In most instances, this maxim applied to subject populations, but here paper was more effective at establishing the hegemony of the colonial state over its agents rather than its subjects, or in this case its objects. This was therefore about the self-discipline of the state in the true Foucauldian sense. DCs regularly submitted detailed reports about the operation of the FCR in their respective districts, complete with tables quantifying tribal criminality and the state's response (e.g., Gordon-Walker 1886). Yet the records themselves reveal a striking paradox of colonial administration along the Frontier. The Council of Elders were not required to keep

[17]On the idea that Pathan identity was predicated on performance (i.e., "doing Pashto"), see Barth (1969).

[18]Bhola Ram v. Emperor, AIR 335 (1915).

[19]There was ongoing debate about how to define both "Pathan" and "Baluch." One suggestion was to consider all speakers of Pushtu as Pathans (National Archives of India 1888b).

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any written record of their proceedings or judgments; this task fell to the DC who was ultimately responsible for both. The colonial rule of law was therefore constituted by its own record.

Violence, the FCR and Colonial Epistemologies of Otherness

Colonial authorities in Peshawar, and indeed throughout the Frontier, were particularly concerned about the inherent violence of the tribes, especially the Pathans living beyond the settled districts. Amongst the most outspoken was George Elsmie, a judge of the Peshawar Sessions court. According to Elsmie, violence plagued Peshawar and its surroundings (Elsmie 1908). The criminal justice system was wholly incapable of dealing with the problem. Indeed, the workings of the colonial judiciary here were farcical in Elsmie's eyes. Murder rates climbed unabated. The evidentiary standards of colonial courts ensured that successful prosecutions proved difficult. As few as one in six were convicted (British Library, India Office Records 1887). The Pathans' valuation of violence, and killing in particular, when perpetrated in pursuance of a blood feud made gathering incriminating testimony—the key evidence used in colonial courts—nigh impossible (National Archives of India 1871, 1887b). Punishments meted out on those actually convicted had little deterrent effect (British Library, India Office Records 1886b). Further, the indigenous population abused the court systems in pursuance of personal vendettas, much like the Raj's colonial subjects on the plains.[20]

Elsmie was one of the principal protagonists advocating for the creation of institutions for the administration of justice less alien to, and thus presumably more effective within Frontier tribal society. Though the 1872 version of the Regulation attempted precisely that, it was found wanting. Thus, in 1886, Elsmie was asked to head a commission to draft a revision of the Regulation (British Library, India Office Records 1886a; Elsmie 1908, 326–27). At the core of Elsmie's analysis lay ideas of indigenous violence that he, along with most colonial officials, believed to be the elixir of Pathan manhood. While on the one hand, administrators reviled the seeming celebration of violence amongst the Pathans, which prevented civil order and thus civilized society, on the other they, especially military officers, looked upon the Pathans' particular combination of violence, honor, and masculinity with respect (Ahmed 1979). This stood in stark contrast to their disdainful attitudes towards the effeminate Bengali, who were at the time beginning to challenge colonial authority (Sinha 1995).[21]

While the languages of violence and irrationality were rhetorically central justifications of the Frontier Crimes Regulation, they were far from the only ones. Their visibility obscures other drivers of colonial actions in this sphere, and consequently misconstrues the origins, purposes, and effects of the Regulation. Contrary to the arguments of Elsmie et al., the origins of the Frontier Crimes Regulation lay not in the dysfunctional

[20]The fear of colonial administrators that Pashtuns and other frontier inhabitants may "game the system" marks an interesting contradiction in colonial policy. On the one hand, Pathans were considered uncivilized. Yet on the other, they proved readily adept at exploiting legal loopholes to their advantage, like many other inhabitants of the subcontinent (see, e.g., Beverley 2013).
[21]Ajay Skaria (1997, 734) refers to the "gendering of wild tribes."

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

operations of the colonial judiciary, but rather in the most basic operation of any state, colonial or otherwise—taxation.

The original version of the Frontier Crimes Regulation was an outgrowth of, and built upon, the Hazara Settlement Rules of 1870 (National Archives of India 1870).[22] These rules, which established the legal lines of ownership and property for one particular area of frontier space—the Hazara district—were the colonial state's initial attempt to create a colonial rule of property here (cf. Guha 1963). The FCR was thus a criminal regulation whose origins lay in property rules.

The sequencing of these laws followed the pattern established elsewhere in British India, where the Indian Penal Code (1861) was preceded by the three revenue settlements employed by the East India Company.[23] The Hazara Settlement Rules and the Frontier Crimes Regulation represented a continuation of the same pattern. The former defined the colonial state's understanding of local concepts, practices, and institutions of property. It then sought to assign rights over such now-defined property to colonial subjects who lived on the Frontier. Once established, those rights required the protection of the colonial state, either epistemically through the judicial system or physically through colonial policing. The Frontier Crimes Regulation institutionalized both avenues. In terms of epistemic violence, the FCR subjected disputes with the potential for violence to colonially mediated arbitration in the form of *jirgahs*. In terms of actual violence, it codified the practices of collective punishment that marked cross-border governance prior to its inception.

The attempt to clearly delineate property rights in the form of the Hazara Settlement Rules, and the use of that delineation as the foundation of criminal law in the FCR, was part of a larger colonial project that sought to integrate and subjugate those within the sphere of the colonial economy to the rule of a new global economic order. By creating judicial linkages, and exclusions as the FCR did, these laws bound the frontier tribes to the colonial economic sphere. This was more directly and explicitly undertaken through other contemporary administrative practices, such as the recruitment of frontier tribe members into tribal militias to police the Frontier (Marsden and Hopkins 2011, 49–74). Additionally, like their predecessors, the Sikhs and the Mughals, the British relied heavily on subsidies to frontier tribes to maintain order, a practice that created its own inequitable economy of power. Finally, the recruitment of Pathans into imperial

[22]Sections 11–15 of the Rules are the relevant portion that formed the basis of the 1872 version of the Frontier Crimes Regulation. In particular, §14 foreshadowed the employment of *jirgas*, stating: "Where a person is accused of murder or other heinous offence, and proof is not forthcoming, but the parties agree to abide by the Pathan usage of awarding money compensation for injuries, the Deputy Commissioner may cause the case to be decided according to such usage, and cause such decision to be carried into effect as if it were a sentence of a Court."

The Hazara Settlement Rules were themselves an outgrowth of the Agror Valley Act III of 1870. There was considerable debate within the Government of India about these rules, which were enacted by the Government of the Punjab. Not only was there a question as to whether the lieutenant governor of the Punjab had the legal authority to make such rules, but also the Viceroy Lord Mayo, as well as other central administrators, felt the rules to be overly draconian (National Archives of India 1870).

[23]The IPC was, of course, preceded by a number of other penal codes, some of which were in effect at the time of the Permanent Settlement.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

circuits of labor, both around British India and throughout the Empire, integrated the frontier inhabitants into the burgeoning global economy atop which Britain sat (Nichols 2008).

Collectively, these practices led to significant injections of cash into the Frontier economy over time. In so doing, they fundamentally reshaped Frontier society as economic relations between the tribes themselves, not to mention with the colonial state and the colonial subjects in the settled districts, became increasingly monetized. Yet it was not only monetization that mattered. New forms of credit emerged and became embedded here, wielded by new economic actors, in particular Hindu *bania* merchants acting as moneylenders.[24] The emergence of these new forms of credit and the introduction of a new class of rentiers to the Frontier displaced existing patterns of exchange. Authoring a new credit and political economy of the realm caused significant social and economic dislocations, leading to greater resistance against the colonial apparatus of control, as well as instability within the tribes themselves (Hanifi 2011).[25] It was also central to frontier governmentality, as it subjected the tribes to the new realm of regulation and governance, namely the political economy (Foucault 1991).

The combination of colonial legislation and administrative practice—the FCR and the tribal militia system respectively—had a defining effect on the social and economic fortunes of the Frontier's inhabitants. On the one hand, the Frontier Crimes Regulation effectively excluded the tribes from the spaces of the colonial state. Blockades, codified by the Regulation, physically barred them from entering the settled districts. At the same time, the elevation of *jirgahs* as a tribal court system excluded them from access to the colonial judiciary. On the other hand, the tribal militia system drew its recruits into the colonial economy by monetizing their labor, as did the subsidy policies that injected cash into tribal economies through local *maliks* and *khans*. Yet simultaneously, the restrictions placed on them by the FCR meant these newly minted economic objects of empire could not fully participate in the colonial economic sphere. They were thus rendered dependent on the colonial economy while at the same time being largely excluded from it.

The pernicious effects of this exclusion and dependency were doubly damning, as many of the tribes living beyond the administrative frontier of the settled districts had agricultural lands in those districts. The blockades thus severed the frontiers inhabitants not only from colonial markets, but more importantly from their own agricultural lands.[26] Colonial administrators were well aware of this and believed it made blockades all the more effective. In the words of one administrator, "coercion is discriminating mercy, which the instructions of government inculcate" (National Archives of India 1850). Colonial administrative techniques thus put the economic squeeze on the frontier tribes, immiserating them to compel compliance. Such practices of governance, as well as the theories of economy and violence underlying them, were a core aspect of frontier

[24]There is a long history of violence against *bania* merchants along the Frontier, much of it clothed in religious rhetoric. The so-called "Hindustani Fanatics" regularly kidnapped and often killed these merchants (Marsden and Hopkins 2011, 78).

[25]Such economic dislocations have a modern counterpart with the migration of Frontier inhabitants to Pakistan's cities, and further abroad. For a discussion of the effect these migrations and their associated remittances have on tribal structure, see Abou Zahab (2013).

[26]This was also colonial governing practice in the North-East Frontier (Sikdar 1982, 21–22).

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governmentality. In the end, however, it simply encouraged their further recalcitrance against frontier administration.

Taken as a whole, these practices of frontier governmentality rendered the tribes a new and different type of specimen. Not fully colonial subjects like other South Asians inhabiting the British-administered areas of India, they were imperial objects. They were made reliant on the colonial sphere through a multiplicity of linkages spawned by colonial law, administrative practice, and economic policy. However, those linkages acted unidirectionally. Economically dependent upon though physically blocked from the colonial sphere, they occupied a liminal space the colonial state conceived as the "frontier." Further, they were denied access to the venue where other colonial subjects contested their claims as subjects of the Crown, namely the courts. Thus, rather than being constituted as justiciable colonial subjects, they were rendered non-justiciable imperial objects. These were people who were acted upon. The Crown owed them nothing, and underlined this position by maintaining the conceptual, political, and legal fiction of their "independence."

In sum, when excavating the origins of the Frontier Crimes Regulation, it is necessary to look beyond the obvious administrative calculations of the colonial state. While the FCR was an attempt to create structures of indirect rule through indigenous traditions defined by the state, it was much more than that. The Regulation fundamentally differed from other exercises of power practiced by the ethnographic state in the late nineteenth century, such as the decennial census (e.g., Dirks 2001). Whereas the latter focused on the production of colonial subjecthood through the rule of difference, the former looked to manufacture imperial objecthood through the elevation of and encapsulation by tradition. Frontier governmentality, relying upon and reproducing this idea of imperial objecthood, rested on a different understanding of sovereignty than that ascribed to the colonial state's modernizing face. Indeed, the colonial state did not maintain a singular sensibility of sovereignty, but rather espoused multiple, often competing, and sometimes contradictory sensibilities, the application of which varied with time and place. As importantly, contemporary ideas of political economy played a central role in the genesis of the Frontier Crimes Regulation. The Frontier Crimes Regulation in many ways constituted the economy as a separate sphere of action and governance (Foucault 1991, 99–104; Mitchell 2002, 54–79). The Regulation facilitated the partial absorption of the Frontier into an emerging globalized capitalist economy being constructed in the waning days of the late nineteenth century.

Reach of the Regulation

The exercise of the FCR is revealing of the colonial state in multiple ways. The Regulation's application to tribal areas was based on inhabitants' ethnic identity rather than the state's claims over territory. It thus abjured a territorial claim to jurisdiction there, which would undermine its insistence that these were indeed "independent" tribal areas, instead extending its reach to all tribes. The Regulation was to be applied in its totality to all "Pathans and Biluches [*sic*]," including those in the tribal areas, as well as "such other classes as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare subject

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thereto" (Rattigan 1899, §1[4]). According to the Regulation, "The word 'class' . . . includes any persons who may collectively be described in a notification . . . as persons subject to all or any of the provisions of this Regulation" (§1[6]). This presented an imperial tautology in its purest form. The Regulation could, on extension, be applied to notified classes, those classes being constituted by such notification.

Later notifications extended these classes to include "tenants, servants, clansmen, or retainers of any kind" as well as "[a]ll persons . . . accused of being jointly concerned in the commission or abetment of an offence with persons of the preceding classes" (National Archives of India 1888a). Notably, the additional classes enumerated by the Notification were differentiated, in the main, by their economic activity. The equivalence here between occupation and class-cum-social status mirrored a similar intellectual exercise visible in other examples of administrative categorization, most prominently the Punjab and all-India censuses. Moreover, it points towards the creation of the political economy as a space of governmentality in which "tribal" identities were inscribed.

Ultimately, the Raj applied the FCR to virtually the entire population of the Frontier, in both British and Afghan territory. This presented an inversion of extra-territorial jurisdiction whereby the British Indian state claimed the right to regulate and try the subjects of another state, as well as subjects of no state (the "independent tribes") residing outside British territory. The claim of jurisdiction over both Afghans and members of independent tribes reflected the attitude of the Raj towards these spaces as political entities. Unlike the princely states within its domains, British India considered them separate, sovereign, and independent. Yet it did not consider that independence "real," or rather equivalent to that enjoyed by European states (e.g., Curzon 1907, 40). Indeed, in the case of the "independent tribes" there was no state to speak of, a fact that again underlines the odd liminality of the frontier in the imperial imagination.

The expansive yet opaque wording of the Regulation, in both its 1887 and 1901 forms, created a number of potential problems of definition for the colonial state.[27] The assertion of the Regulations' jurisdiction over the tribal areas beyond the formal frontier of the settled districts inserted the legal and administrative manifestations of the colonial state into a space formerly occupied exclusively by its political one. Without clear boundaries marking the limits of the state's power, the administrative state entered an empyrean world which it had little understanding of and even less control over. While British influence carried as far as the Hindu Kush, British administration stopped somewhere just beyond Peshawar, but no one was quite clear where. It was not until the Durand Line in 1893 that some form of administrative limit was agreed in principle. But even after this agreement, the space intervening between the end of "civilization" at the foot of the hills and the international boundary on the crest of one of their ridges remained remarkably ill-defined.

The jurisdictional heads and application of the Regulation, based in persons rather than places, reveals the colonial state's highly uneven territorialization of power. While elsewhere in the Indian subcontinent, the Raj sought to clearly delineate the physical space over which it ruled—to territorialize its powers—along the Frontier such a drive

[27]Indeed, the colonial judiciary ruled that the Punjab Government's initial Notification for the 1887 Notification was faulty and vacated it (National Archives of India 1888c). The Government quickly reissued the Notification and made its effect retroactive (National Archives of India 1890).

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was at best muddled.[28] The FCR applied to classes of people whose physical location was of secondary importance. The lack of a clear demarcation between settled districts and the abutting tribal areas, not to mention the late delineation of the boundary with Afghanistan, further underlined the colonial state's seeming territorial indifference. Yet while the specifics of place do not seem to have been the foremost concern of imperial administrators in this instance, the idea of space—one that could be ethnically delimited if not topographically demarcated—do. The colonial state was deeply involved in a process of frontier-making and bordering along its North-West periphery. This entailed an inscription of power over people through collective identities delimited by colonial understandings of culture. While the bordering of the Frontier ultimately assumed a territorial expression, it was a consequence rather than a cause.

Imperial Life and Postcolonial Afterlife

The Frontier Crimes Regulation had an important imperial life, and continues to have a significant postcolonial afterlife. Apart from the Regulation's three incarnations along the North-West Frontier, it had multiple manifestations throughout Britain's global empire. Within British India, its first replication was in the Baluchistan Agency, where it was promulgated in unmodified form in 1890 (Baluchistan Code 1890).[29] Its "success" in the North-West quickly drew the attention of colonial administrators in India's North-East. There, they used the FCR as the template for the Chin Hill Regulations of 1896, as well as those for the Kachin Hills, in order to govern the "wild tribes" of the these tracts (British Library, India Office Records 1897, 1898). Despite the distance, as far as frontier administrators were concerned the administrative principles were the same. Such was obviously the sense of Kenyan administrators as well in passing the Special Districts Administrative Ordinance.

What is striking is not simply the FCR's interimperial spread throughout a geographically diverse and culturally catholic empire, but its replication in similarly situated and similarly conditioned spaces. These frontiers of empire presented a common set of challenges for imperial administration, and were in large part commonly conceived as liminal spaces whose inhabitants were imperial objects as opposed to colonial subjects. Yet these spaces were not inherently such. Rather, they were constructed to be so. The similar cultural dispositions, social institutions, and administrative challenges the colonial state found in these locales were not the consequence of a lack of modernity or common tribal past. Instead, they were the products of the processes of imperialism, which rendered these places peripheries. The economic dislocations caused by European colonialism, the corpus of colonial knowledge that actively constructed and maintained them as tribes/tribal, and the administrative calculus that these people would simply be too expensive to govern combined to exclude these frontiers from the colonial enterprise while nonetheless binding them to the imperial project. In each case, colonial authorities opted to govern frontier inhabitants through their own traditions, purposefully occluding

[28]On the territorialization of power, see Edney (1990) and Hopkins (2008).
[29]The FCR was previously extended to the Baluchistan Agency at the time of its creation in 1876 (British Library, India Office Records 1876).

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

them from the structures and spheres of formal administration. At the same time, they thickened the web of ties binding them to colonial economic order, and thus the emerging global imperial economies. In so doing, frontier dwellers were created as objects to be acted upon, devoid of the obligations latent in the status of colonial subject.

These imperial objects were almost invariably corralled into discrete physical spaces where they could be blockaded. These spaces were in fact reservations. Framed in this way, the experiences of the tribes of British India's North-West Frontier assume a hue familiar to many other inhabitants along the peripheries of empires. The Native Americans of the American West likewise lived on a frontier where they were rendered imperial objects. The US government, treating them as "independent nations," made treaties with these people and forcibly placed them on reservations where they could live by their own "traditions." However, doing so destroyed the previous lifeways of indigenous peoples, making them dependent on government aid distributed through the local agent. Likewise, the nomadic tribes of Kenya's northern frontier districts were encapsulated by administrative practices that relied on colonially mediated "traditions." The "independence" was a fiction the colonial state upheld, while at the same time they were drawn into the exploitive embrace of the colonial economic sphere. Such peoples were both the creations and the victims of frontier governmentality.

The Frontier Crimes Regulation stands as a testament not simply to common administrative strains running through Britain's global imperial project, but rather to both underlying assumptions about frontier peoples and the processes that rendered them such. They were just as present on the American Great Plains as they were in British India's North-West Frontier, or indeed Kenya's northeast. More importantly, the story of the FCR points us towards a larger story about the construction of the frontier as a spatial, political, and administrative category. The frontier, through its conceptualization and subsequent administration, inflected itself onto the formation of the colonial, and perhaps even modern state forms becoming globally ubiquitous in the late nineteenth century. The practices of statecraft perfected here were reingested into the heartlands of state authority, from where they were redeployed in like circumstances. The replication of the FCR meant the frontier governmentality that produced it was likewise replicated around the world. As importantly, these practices and this frontier governmentality carried within them certain understandings of power and assumptions regarding its exercise formed at the limits of imperial authority that conditioned the state's view of itself.

Most important of these understandings and assumptions were the sovereign sensibilities that were both formed and exposed along the imperial frontier. Scholars of international relations increasingly talk of a "post-Westphalian world" where the unitary sovereignty of the nation-state is being challenged, undermined, and eroded from within and without (e.g., Glanville 2013). Yet this story is nothing new. For all the nation-states at the heart of the Westphalian system—France, Britain, the United States—had formative frontier experiences, many in their colonial realms. The transmission of ideas, personnel, and practices between metropole and empire was not a one-time, one-way event, but rather a dynamic exchange that waxed and waned. Just as British identity and national sense of purpose, captured through the poetry of Rudyard Kipling, was forged on the North-West Frontier, so too was the nature of American exceptionalism, as well as its sovereign practices, authored in its inexorable westward expansion. Perhaps it is better to think of the "post-Westphalian order" as the rebirth of a frontier order.

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In addition to the FCR's imperial life, it has had a lasting postcolonial afterlife. In modified form, it remains in force today in the Federally Administered Tribal Areas (FATA) of Pakistan along the Afghan border, composed of the former tribal agencies of the Raj. These areas continue to be run by political agents charged with roughly similar duties and powers as their British predecessors. Its creation of peoples as objects has carried over into the postcolonial setting of the Pakistani state. A number of critics charge that a significant part of the problem of the frontier is Pakistan's continued treatment of the people of these areas as second-class citizens, with limited rights and access to the normal judicial and administrative apparatus of the Pakistani state (International Crisis Group 2006). Pakistan's administration of the region under a modified Frontier Crimes Regulation indicates its inability and its unwillingness to extend its formal administration to the area (Rumi 2012). The violence of the last few years, combined with the low esteem in which many of the tribes hold the Pakistani state, does not bode well for a peaceful integration of these areas in the near future.

Yet the postcolonial importance of the FCR is greater than simply its continued use in Pakistan's FATA. The real legacy of the Regulation is its conceptual one. How it has framed the frontier and the people inhabiting this space, as well as the administrative and political structures used to govern both, remains paramount. This creates a disjuncture between the historically grounded reality of contemporary postcolonial states and the normative expectations of them created by political science and modernization theory. Filling that disjuncture is the narrative of "state failure," a hollow analytical frame increasingly applied to the states subject to the legacy of the FCR and more broadly frontier governmentality (Clunan 2010).[30] Rather than embracing such simplistic approaches, we need to reevaluate our understandings and expectations of postcolonial states.

Both colonial Kenya's Special Districts Administrative Ordinance and British India's Frontier Crimes Regulation on which it was based have proven resilient in the postcolonial era.[31] These pieces of colonial legislation were the outworkings of certain ideas of space and people—of the imperial frontier and its tribal inhabitants—which the colonial imagination was in the perpetual process of refining. They were at one and the same time reflective of and constitutive of a new form of rule—a frontier governmentality. Far from being forgotten spaces of the periphery, these frontier spaces were definitional of the colonial state itself. The way they were conceived and governed had a formative influence on the colonial center. Until we fully recognize and appreciate this, our understanding of the colonial experience, and its postcolonial shadow, will inevitably remain incomplete.

Acknowledgments

I would like to thank a number of organizations for their support in the research and writing of this article. Much of the research on which this article is based was supported

[30]See also Martin Sokefeld's (2005) discussion of "postcolonial colonialism."
[31]The Special Districts Administrative Ordinance was repealed in 1997, while the Frontier Crimes Regulation remains in effect, in modified form, in the FATA, as well as in parts of the Provincially Administered Tribal Areas (PATA).

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

by a generous grant from the Leverhulme Trust (UK). I have also benefited from the financial and intellectual support of the Asia Research Institute of the National University of Singapore, the Woodrow Wilson International Center for Scholars, and my home institution of the Elliott School at the George Washington University.

List of References

Archival Sources

British Library, India Office Records, London. 1872. "The Frontier Crimes Regulation." The Punjab Government Gazette. V/11/2779B.

——. 1876. C. U. Aitchison, Foreign Department – (Political), November 2. L/P&S 7/11, vol. 217, 309–20.

——. 1886a. L. W. Dane, Officiating Registrar Chief Court, Punjab, to Young, Secretary to Government, Punjab, July 29. L/P&J 6/202, vol. 776, 311–24.

——. 1886b. W. M. Young to the Officiating Commissioner and Superintendent, Peshawar Division, February 15. L/P&J 6/202, vol. 776, 307.

——. 1887. Correspondence, May 12. L/P&J 6/202, vol. 776, 295–301.

——. 1897. Regulation No. V of 1896: The Chin Hills Regulation, 1896, with Rules Framed Thereunder, and Notifications, May. L/P&S 18/B146.

——. 1898. Regulation No. I of 1898: A Regulation to Amend the Kachin Hill-Tribes Regulation, 1895. May. L/P&S 18/B147.

——. 1903. Administration Report of the Northwest Frontier Province from 9th November 1901 to 31st March 1903. NWFP Administration Reports. V/10/370.

National Archives, London, Colonial Office Records. 1934. "Special Districts Administrative Ordinance." The Official Gazette of the Colony and Protectorate of Kenya. CO 542/32, 417.

National Archives of India, New Delhi, Foreign Department. 1850. Maj. H. P. Burn to Lumsden, August 30. Secret Consultations, vol. 15.

——. 1870. Notification, June. Political A, vol. 170.

——. 1871. Lepel H. Griffin, Offg. Secy. to the Govt., Punjab, to Secy. to Govt. of India, Foreign Department, September. Political A, vol. 206.

——. 1880. Appendix A: Extract paras. 3 to 10 and 20 to 24 from Frontier Memorandum, May. Political A, no. 186.

——. 1887a. A. H. Benton, Sessions Judge, Peshawar Division to the Commissioner and Superintendent, Peshawar Division. Frontier A, no. 118.

——. 1887b. Regarding the State of Crime in the Peshawar Division, July. Frontier A, vol. 103-23, K. W. No. 1.

——. 1888a. Henry M. Durand, Secretary to the Government of India, Foreign Department, to the Secretary to the Government of the Punjab, January. Frontier A, no. 30.

——. 1888b. W. G. Waterfield, Commissioner and Superintendent, Peshawar Division, to the Deputy Commissioner, Kohat. Frontier A, no. 16.

——. 1888c. Empress vs. Muhammad Umar Khan, et. al. Frontier A, no. 146.

——. 1890. Regulation No. IV of 1889. Frontier A, no. 45.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

Other Sources

Abou Zahab, Mariam. 2013. "Kashars Against Mashars: Jihad and Social Change in the FATA." In *Beyond Swat: History, Society and Economy Along the Afghanistan-Pakistan Frontier*, eds. Benjamin D. Hopkins and Magnus Marsden, 93–106. London: C. Hurst & Co.

Ahmed, Akbar. 1979. "Colonial Encounter on the North West Frontier Province." *Economic and Political Weekly* 14(51–52):2092–97.

The Baluchistan Code. 1890. Calcutta: Office of the Superintendent of Government Printing.

Barth, Fredrik. 1969. "Pathan Identity and Its Maintenance." In *Ethnic Groups and Boundaries: The Social Organization of Cultural Difference*, ed. Fredrik Barth, 117–34. London: George Allen & Unwin.

Benton, Lauren. 1999. "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State." *Comparative Studies in Society and History* 41(3):563–88.

———. 2010. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge: Cambridge University Press.

Berry, Charles Allen. 1987. *The Secret of Vatican Hill*. Harbor City, Calif.: Allen & Nuri.

Beverley, Eric Lewis. 2013. "Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire." *Comparative Studies in Society and History* 55(2):241–72.

Bruce, Richard Isaac. 1900. *The Forward Policy and Its Results: Or Thirty-Five Years Work Amongst the Tribes on Our North-Western Frontier of India*. London: Longmans, Green and Co.

Clunan, Anne L. 2010. "Ungoverned Spaces? The Need for Reevaluation." In *Ungoverned Spaces: Alternatives to State Authority in an Era of Softened Sovereignty*, eds. Anne L. Clunan and Harold A. Trinkunas, 3–16. Stanford, Calif.: Stanford University Press.

Copland, Ian. 1982. *The British Raj and the Indian Princes: Paramountcy in Western India, 1857-1930*. Bombay: Orient Longman.

Curzon, George. 1907. *Frontiers: The Romanes Lectures 1907*. Oxford: Clarendon Press.

Dirks, Nicholas. 2001. *Castes of Mind: Colonialism and the Making of Modern India*. Princeton, N.J.: Princeton University Press.

Edney, Matthew. 1990. *Mapping an Empire: The Geographical Construction of British India, 1765-1843*. Chicago: University of Chicago Press.

Elphinstone, Mountstuart. [1815] 1991. *An Account of the Kingdom of Caubul*. 3rd ed. 2 vols. Karachi: Indus Publications.

Elsmie, George R. 1908. *Thirty-Five Years in the Punjab*. Edinburgh: David Douglas.

Foucault, Michel. 1991. "Governmentality." In *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, eds. Graham Burchell, Colin Gordon, and Peter Miller, 87–104. Chicago: University of Chicago Press.

Freitag, Sandra. 1991. "Crime in the Social Order of Colonial North India." *Modern Asian Studies* 25(2):227–61.

Glanville, Luke. 2013. "The Myth of 'Traditional' Sovereignty." *International Studies Quarterly* 57(1):79–90.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

Gordon-Walker, T. 1886. *Report of the Administration of Criminal Justice in the Punjab and Its Dependencies during the Year 1885*. Lahore: W. Ball & Co.

Green, Nile. 2008. "Tribe, Diaspora, and Sainthood in Afghan History." *Journal of Asian Studies* 67(1):171–211.

Guha, Ranajit. 1963. *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement, Le monde d'outre-mer passe et present. Primiere serie: Etudes XIX*. Paris: Mouton & Co.

——. 1997. *Dominance Without Hegemony: History and Power in Colonial India*. Cambridge, Mass.: Harvard University Press.

Hanifi, Shah Mahmoud. 2011. *Connecting Histories in Afghanistan: Market Relations and State Formation on a Colonial Frontier*. Stanford, Calif.: Stanford University Press.

Hodson, T. C. [1937] 1987. *India Census Ethnography, 1901-31*. New Delhi: Usha.

Hopkins, Benjamin D. 2007. "The Bounds of Identity: The Goldsmid Mission and the Delineation of the Perso-Afghan Border in the Nineteenth Century." *Journal of Global History* 2(2):233–54.

——. 2008. *The Making of Modern Afghanistan*. Basingstoke: PalgraveMacmillan.

International Crisis Group. 2006. *Pakistan's Tribal Areas: Appeasing the Militants*. Crisis Group Asia Report no. 125. Islamabad/Brussels: International Crisis Group. http://www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/125_pakistans_tribal_areas___appeasing_the_militants.pdf (accessed January 20, 2015).

Johnson, Robert A. 2003. "'Russians at the Gates of India?' Planning the Defence of India, 1885-1900." *Journal of Military History* 67(3):697–743.

Lorimer, J. G. 2013. "Customary Law of the Main Tribes in the Peshawar District." In *The Frontier Crimes Regulation: A History in Documents*, ed. Robert Nichols, 194–253. Karachi: Oxford University Press.

Marsden, Magnus, and Benjamin D. Hopkins. 2011. *Fragments of the Afghan Frontier*. New York: Columbia University Press.

Misra, Sanghamitra. 1998. "The Nature of Colonial Intervention in the Naga Hills, 1840-80." *Economic and Political Weekly* 33(51):3273–79.

Mitchell, Timothy. 2002. *Rule of Experts: Egypt, Techno-politics, Modernity*. Berkeley: University of California Press.

Nichols, Robert. 2008. *A History of Pashtun Migration, 1775-2006*. Karachi: Oxford University Press.

"The Punjab Frontier Crimes Regulation, 1887." 1888. In *The Punjab Code: Consisting of the Unrepealed Bengal Regulations, Local Acts of the Governor General in Council, and Regulations Made under the Statute 33 Victoria, Cap. 3, in Force in the Punjab*, 390–405. Calcutta: The Superintendent of Government Printing.

Rattigan, H. A. B., ed. 1899. "Regulation No. IV of 1887: The Punjab Frontier Crimes Regulation." In *The Bengal Regulations, the Acts of the Governor-General in Council, and the Frontier Regulations, Made under the Thirty-third of Victoria, Chapter Three, Applicable to the Punjab with Notes and an Index: Vol. III Containing Acts from 1887 to end of 1895, and Punjab Frontier Regulations from 1870 to 1893*, 2835–51. Lahore: Civil and Military Gazette Press.

——. 1903. "Regulation No. III of 1901: The Frontier Crimes Regulation." In *The Bengal Regulations, the Acts of the Governor-General in Council, and the Frontier Regulations, Made Under the Thirty-third of Victoria, Chapter Three, Applicable to the Punjab with Notes and an Index: Vol. IV Containing India Acts from 1896 to*

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press

1902, Punjab Acts from 1898 to 1902 and Frontier Regulations 1901, 559–77. Lahore: Civil and Military Gazette Press.

Robb, Peter. 1997. "The Colonial State and Constructions of Indian Identity: An Example of the Northeast Frontier in the 1880s." *Modern Asian Studies* 31(2): 245–83.

Rumi, Raza Ahmad. 2012. "Pakistan: Ungoverned Spaces." CIDOB Policy Research Papers, Barcelona Centre for International Affairs, Barcelona. http://www.cidob.org/en/publications/stap_rp/policy_research_papers/pakistan_ungoverned_spaces (accessed January 22, 2015).

Scott, James C. 2009. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven, Conn.: Yale University Press.

Sherman, Taylor C. 2010. *State Violence and Punishment in India*. London: Routledge.

Sikdar, Sudatta. 1982. "Tribalism vs. Colonialism: British Capitalistic Intervention and Transformation of Primitive Economy of Arunachal Pradesh in the Nineteenth Century." *Social Scientist* 10(12):15–31.

Sinha, Mrinalini. 1995. *Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century*. Manchester: Manchester University Press.

Skaria, Ajay. 1997. "Shades of Wildness: Tribe, Caste, and Gender in Western India." *Journal of Asian Studies* 56(3):726–45.

Sokefeld, Martin. 2005. "From Colonialism to Postcolonial Colonialism: Changing Modes of Domination in the Northern Areas of Pakistan." *Journal of Asian Studies* 64(4):939–73.

Stoler, Ann Laura. 2006. "On Degrees of Imperial Sovereignty." *Public Culture* 18(1): 125–46.

Talbot, Ian. 1991. "British Rule in the Punjab, 1849-1947: Characteristics and Consequences." *Journal of Imperial and Commonwealth History* 19(2):203–21.

Tanguay-Renaud, Francois. 2002. "Post-colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan." *Singapore Journal of International and Comparative Law* 6:541–96.

Titus, Paul. 1998. "Honor the Baloch, Buy the Pushtun: Stereotypes, Social Organization and History in Western Pakistan." *Modern Asian Studies* 32(3):657–87.

Vail, Leroy. 1989. "Introduction: Ethnicity in Southern African History." In *The Creation of Tribalism in Southern Africa*, ed. Leroy Vail, 1–20. Berkeley: University of California Press.

Xaxa, Virginius. 1999. "Transformation of Tribes in India: Terms of Discourse." *Economic and Political Weekly* 34(24):1519–24.

Yang, Anand. 1985. "Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of Northeast India." In *Crime and Criminality in British India*, ed. Anand Yang, 108–27. Tucson: University of Arizona Press.

https://doi.org/10.1017/S0021911815000030 Published online by Cambridge University Press