

**MULLAS AND MALIKS:
UNDERSTANDING THE ROOTS OF
CONFLICT IN
PAKISTAN'S FEDERALLY
ADMINISTRATED TRIBAL AREAS**

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DEDICATION

This thesis is dedicated to the memory of Hakim Taniwal, late Governor of Paktya province, Afghanistan, whose courage, selfless service and dedication to peace set an example of leadership in a trying hour, and whose tragic assassination is a stark reminder of the challenges that remain.

“He is gone on the mountain,
He is lost to the forest,
Like a summer-dried fountain,
When our need was the sorest.”

—Sir Walter Scott, *Lady of the Lake*

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Introduction

The U.S. governments' 2002 National Security Strategy marked an abrupt shift in U.S. foreign policy. In a document laced with eloquent expressions of fervent optimism, the U.S. government buried the concept of deterrence in favor of a forward-reaching policy intended to pre-empt terrorist strikes and widely expand U.S. military and development assistance to nations at risk of collapse. The new approach maintained that "weak states, like Afghanistan, can pose as great a danger to our national interests as strong states," further adding that "poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders."¹ In language reminiscent of President John F. Kennedy's 1960 inaugural address, President Bush vowed that the United States would "stand beside any nation determined to build a better future by seeking the rewards of liberty for its people."²

Central to the realization of this ambitious foreign policy vision was the primacy of *stabilization operations* as a tool to thwart aggression, restore order to hostile areas and resuscitate weak states, such as Afghanistan, where Al Qaeda leadership sought sanctuary beginning in 1998.³ As an expansion upon previous conflict resolution experiences in the Balkans, Central America and Africa, the evolving doctrine of stabilization operations calls for a combination of coercive (primarily military) and developmental actions, with the latter serving to create the conditions necessary for long-term success. Developmental actions tend to focus on four "pillars" recognized as the base for a stable, productive state: (1) security, (2) governance

¹ The White House, "The National Security Strategy, September 2002," <http://www.whitehouse.gov/nsc/nss/2002/> (accessed 11 April 2008).

² Ibid.

³ U.S. Army, "Field Manual 32.91," under "Chapter 8: Stability Operations," <http://www.globalsecurity.org/military/library/policy/army/fm/3-21-91/c08.htm> (accessed 11 April 2008).

and participation, (3) economic and social well-being, and (4) justice and reconciliation.⁴ Each intervention faces a myriad of challenges, including the coordination of development, allocation of resources, and the management of expectations, locally and internationally. In addition, conflicts often transcend national boundaries and have inherent historical dimensions that make comparisons unreliable.

Afghanistan became the first test of the ambitious the U.S. *forward policy* shortly after the 2001 invasion that toppled the Taliban regime. Despite the initial success from 2001-2004 (specifically in disarmament and demobilization of the warlords), a dearth of local and international security forces in strategic areas of the south and east allowed the Taliban and its allies to regroup. While some networks continued to operate from within Afghanistan, others retreated to the tribal areas of Pakistan, turning it into the staging ground for a new phase of conflict that defied borders and severely undermined international efforts to stabilize Afghanistan.

Beginning in 2001, a mix of Taliban and Al Qaeda fighters, as well as numerous other criminal and insurgent organizations, took advantage of the antiquated governance structure of Pakistan's Federally Administered Tribal Areas (FATA) to launch attacks in Afghanistan and more recently, within Pakistan itself. The deteriorating security situation enabled violence to spread to other areas of Pakistan, resulting in several spectacular attacks in major Pakistani cities. A particularly devastating suicide attack at a political rally in Rawalpindi in December 2007 killed Benazir Bhutto, candidate for Prime Minister from the Pakistani People's Party (PPP), as well as hundreds of supporters. In response to the escalating violence, the U.S. government, with

⁴ U.S. Department of State, *Post Conflict Reconstruction Essentials Tasks Matrix* (1 April 2005), <http://www.state.gov/s/crs/rls/52959.htm#preface> (accessed 13 April 2008). *The Brookings Institution* defines weak states as "countries that lack the essential capacity and/or will to fulfill four sets of critical government responsibilities: fostering an environment conducive to sustainable and equitable economic growth; establishing and maintaining legitimate, transparent, and accountable political institutions; securing their populations from violent conflict and controlling their territory; and meeting the basic human needs of their population." Rice, Susan E. and Stewart Patrick, "Index of State Weakness in the Developing World," Brookings Institution, 2008.

the cooperation of Pakistani President Pervez Musharraf, increased its military presence in the region and launched aid programs designed to support the four pillars of stability operations, albeit on a much narrower scale than in Afghanistan. Officials from both nations continue to debate the scope and nature of U.S. involvement in this volatile region.

The ongoing conflict in Pakistan may present the greatest challenge yet to prevailing U.S. policies presupposing that the right combination of diplomatic, developmental and military interventions will stabilize weak states. Even the most well-resourced stabilization programs sometimes fail because their architects (often political appointees with first-class academic pedigrees but limited field experience) do not grasp the complex cultural and historical problems. Consequently, diplomats, politicians and generals devote too few resources to the wrong areas. As the experience in Afghanistan demonstrates, inexperienced outsiders and ineffective local leaders often waste resources on secondary and tertiary issues, creating new, unintended problems that expand the situation's complexity. The present conflict in Pakistan's border region offers a daunting challenge to all those engaged in resolving it, both within Pakistan and on the international stage.

This thesis is not a critique of U.S. policy vis-à-vis Pakistan's FATA. Rather, this paper serves as a historical preface for those interested in understanding the deep roots that feed the seemingly endless conflict in Pakistan's Federally Administered Tribal Areas, in the North-West Frontier Province (NWFP). As a USAID Field Program Officer serving with a Provincial Reconstruction Team in Gardez, Paktya province, Afghanistan, from 2004 – 2005, I worked with a variety of local and national officials. Together, we designed and implemented projects to extend the ability of the Afghan government to provide services and reduce the operational space for anti-government elements by creating partnerships between rural communities and their government. Despite our location a mere 60 miles from the Pakistani border (albeit an arduous

six-hour drive) and despite common knowledge that the most lethal insurgent networks in southeast Afghanistan relied upon secure bases across the Pakistani border, myself and my U.S. military and civilian colleagues knew little about Pakistan's tribal areas. Like our Afghan counterparts, we took our instruction from Kabul, not Islamabad. Yet the tribes we worked with considered the Pakhtuns across the border to be cousins. Clearly, something in our state-based approach to stabilization was amiss. Forbidden from going within five kilometers of the border, my knowledge of Pakistan's tribal areas developed primarily from stories told by Afghan friends and colleagues, many of whom lived in the tribal areas for years as refugees and knew the region intimately. But the anecdotes I heard only raised more questions. To our regret, Pakistan's tribal areas remained an enigma to all of us serving in the Southeast region. I wrote this thesis in hopes of shedding light on the historical reasons for conflict in this troubled region.

Despite heightened media attention on Pakistan, misunderstanding abounds regarding the nature and effectiveness of the atypical political system that has governed the FATA since 1901. Characterizations of the FATA as *semi-autonomous* and *tribal*, prevalent among not only western scholars but many Pakistanis, continue to feed a vision of wild tribes living in an uninterrupted prehistoric state that has changed little over the centuries. These characterizations not only obscure the complex reality but may also lead to myopic policies with disastrous long-term results. Understanding the roots of conflict in the FATA requires an examination of the region's history and culture as well as the FATA administration's impact on the area's social, political and economic development.

This thesis begins by outlining the dimensions of the present conflict in Pakistan, in terms of its scale, actors and immediate origins. The following section, *Contemporary Views*, explains some of the prevailing thoughts regarding the longer-term causes of conflict in the FATA. The following two sections, *Overview of the FATA* and *Pakhtun Social Organization*, examine the

present state of the FATA, the social organization of the Pakhtun tribes and the historical ties between the Pakhtuns of Pakistan and Afghanistan. This section also attempts to demystify the oft-misunderstood concept of *tribalism* among Pakhtuns. The next section, *Evolution of the FATA and the Maliki System* focuses on the impact of the British expansion in the northwest frontier. It addresses several crucial questions, beginning with the FATA's Afghan roots. Why did the British treat this region so differently from the rest of India? What were the British goals in the FATA and why did they create this unusual administrative framework? Most importantly, what was the impact of the British presence and how did the maliki system address British interests? The following section, *The Rise of Pakhtun Nationalism* analyzes the changing motivations of local actors in the FATA and the adjacent districts of the NWFP. This rise had important implications for the British and the Pakistani state that succeeded them.

The following sections, *Economic and Social Change in the FATA* and *Impact of the Maliki System on the Pakhtunwali* examine the FATA administrative system, primarily since 1947. These sections address several central questions. The FATA system professes to respect tribal custom, but which customs and how? To what degree was the system *autonomous*? Did the system impose *tribalism*, or simply reflect the prevailing social organization in its governance structure. Is the FATA system uniquely suited to govern an inherently tribal society, as many claim? How did the relative power of maliks and mullas change under the FATA system? What were the social, economic and political effects of this system on the Pakhtun customs it purported to respect? To what degree was the region static, in social, economic or political terms? Finally, in reflecting upon the lessons learned thus far, the final section, *The Veneer of Stability*, addresses why the Pakistani government did not reform the FATA administration and how the impact of the FATA's administrative system contributed to the radicalization of the FATA in the 1980s and 1990s.

Pakistan's Present Predicament: War Returns to the Tribal Areas

President Musharraf's decision to send a brigade of Pakistani troops into the Shawal valley of North Waziristan in September 2001 marked a dramatic change in Pakistani policy in the FATA. Although the local population initially welcomed Musharraf's troops in their mission to protect against the Afghan Northern Alliance, their goodwill did not last.⁵ Two years later, 70,000 Pakistani troops battled tribal militants and a core-cadre of foreign fighters that fled Afghanistan after the fall of the Taliban regime. However, rather than eliminate the foreign militants and restore control, the Pakistani military stirred a hornet's nest. Despite some limited success fighting militants in South Waziristan in late 2004, mounting casualties and declining Army morale led the Pakistani military to negotiate a cease-fire and withdrawal. Fighting resumed however in July 2005, after Baitullah Mehsud, a revered militant leader from South Waziristan, accused the government of breaking the terms of the truce.⁶ Nearly a year later, after suffering thousands of additional casualties, in September 2006, the Pakistani military negotiated yet another truce with the militants, facilitated by tribal elders.⁷

The subsequent truce lasted just ten months, collapsing in July 2007, just as President Musharraf confronted a new crisis with militants in Islamabad's Red Mosque.⁸ Violence in the FATA escalated, as Baitullah Mehsud led the capture of 250 Pakistani soldiers in August 2007. By October, Islamic militants overran much of the Swat valley, for the first time extending their

⁵ Ashkok K. Behuria, "FATA: The New Epicenter of Terror," *Journal of Peace Studies* 9, no. 3 (May-June 2002), <http://www.icpsnet.org/description.php?ID=218> (accessed 11 April 2008).

⁶ Carlotta Gall and Ismail Khan, "In Pakistan, Doubts Over the Fight in Tribal Areas," *The New York Times*, 12 February 2008, <http://www.nytimes.com/2008/02/12/world/asia/12pakistan.html?scp=1&sq=In+Pakistan%2C+Doubts+Over+the+Fight+in+Tribal+Areas&st=nyt> (accessed 11 April 2008).

⁷ David Rohde, "Pakistani Troops Battle Militants Near Afghanistan," *The New York Times*, 17 March 2004, <http://query.nytimes.com/gst/fullpage.html?res=9E00EED91431F934A25750C0A9629C8B63> (accessed 11 April 2008).

⁸ Ismail Khan, "Pakistan Sends Tribal Leaders to Salvage Truce Broken by Taliban," *The New York Times*, 17 July 2005, <http://www.nytimes.com/2007/07/17/world/asia/17pakistan.html?pagewanted=print> (accessed 11 April 2008).

reach into the settled areas of the NWFP (the districts outside the tribal areas). Led by Maulana Fazlullah, an Islamic cleric dubbed “Mulla Radio” for his illegal broadcasts against the government, approximately 500 militants established a parallel government in fifty-nine villages of Swat and imposed Shariah law.⁹ Although Pakistani military forces gradually pushed back the militants and re-established control, violence continued.¹⁰

Perhaps more ominous for Musharraf’s government, in mid-December 2007, representatives from forty different militant groups across the NWFP joined together to form Tehrik-i-Taliban Pakistan (the Pakistani Taliban Movement) and elected Baitullah Mehsud as their leader.¹¹ Yet Mehsud’s constant conflict with the Pakistani government led to a split between him and Mulla Omar, leader of the Afghan Taliban, reported to be operating from a base in Quetta, Baluchistan. Mulla Omar reportedly “sacked” Mehsud in late 2007 due to his obstinacy, replacing him with Afghan commanders Abdul Wali in Bajaur Agency and Ustad Yasir in Khyber Agency, in an effort to focus operations against NATO forces in Afghanistan.¹² Mehsud also reportedly faced difficulty maintaining the unity of the militant bands of the Tehrik-i-Taliban, with militants from the Ahmadzai Wazirs resisting his attempts to use their territory as a base of support. Other militant leaders, including Hafiz Gul Bahadar in North Waziristan and Faqir Muhammad in the Bajaur Agency, favored cooperation with the Pakistani government.

Despite the militants’ internal squabbles, Mehsud’s forces continued to inflict damage on the Pakistani military in South Waziristan, launching attacks on the forts of Razmak and Ladha, in early January 2008, cutting off the military’s supply lines. On 16 January, a *lashkar* (local

⁹ Ismail Kahn, “Militants Draw New Front Line Inside Pakistan,” *The New York Times*, 2 November 2007, <http://www.nytimes.com/2007/11/02/world/asia/02pakistan.html> (accessed 11 April 2008).

¹⁰ The Associated Press, “Tribesmen Killed in Northwest Pakistan,” *The New York Times*, 8 January 2008, <http://www.nytimes.com/aponline/world/AP-Pakistan-Militants.html> (accessed 11 April 2008).

¹¹ Nicholas Schmidle, “Next-Gen Taliban,” *The New York Times Magazine*, 6 January 2008, <http://www.nytimes.com/2008/01/06/magazine/06PAKISTAN-t.html> (accessed 11 April 2008).

¹² Syed Saleem Shahzad, “Ceasefire: A Lull Before The Storm,” *Asia Times Online*, 9 February 2008, http://www.atimes.com/atimes/South_Asia/JB09Df01.html (accessed 11 April 2008).

levy of tribal militia) of approximately 1000 militants led by Mehsud captured Sararogha Fort after successive rocket attacks.¹³ Two days later, in an effort to regain the initiative in the tribal areas, Pakistani forces launched a massive offensive operation against Mehsud's forces and established an economic blockade over South Waziristan while artillery and jets pounded suspected militant positions. Nevertheless, Mehsud remained an illusive target, as Pakistani commanders failed to capture the militant leader in a covert operation that same month. After weeks of fighting, both sides suffered heavy casualties and reached a stalemate. By 7 February, Afghan Taliban commanders Sirajuddin Haqqani and Maulvi Bakhta Jan persuaded Mehsud to remain in Afghanistan while they negotiated a cease-fire with Pakistani officials, who were keenly aware of the approaching national elections and public opposition to military operations in the tribal areas that many Pakistanis believed Musharraf conducted at the behest of the Bush administration.¹⁴ Pakistan's acting interior minister, Hamid Nawaz Khan, attempted to portray the cease-fire as the successful outcome of the governments' military operations. "They start asking for negotiations themselves after they find themselves weak due to the military operation."¹⁵

Meanwhile, officials in Washington prepared plans to expand Pakistani-U.S. cooperation by reviving the tribal system. The plans included training for the paramilitary Frontier Corps and other militia groups as well as increased financial support of tribal elders, including those of the Shinwari and Afirdi tribes of Khyber Agency, in return for protection of supply convoys to NATO forces in Afghanistan.¹⁶ In addition, the U.S. Agency for International Development announced a \$750 million five-year development plan in coordination with the Pakistani

¹³ BBC, "Militants overrun Pakistan fort, BBC, 17 January 2008, http://news.bbc.co.uk/2/hi/south_asia/7191200.stm (accessed 11 April 2008).

¹⁴ Shahzad, "Ceasefire: A Lull Before The Storm."

¹⁵ Gall and Khan, "In Pakistan, Doubts Over the Fight in Tribal Areas."

¹⁶ Shahzad, "Ceasefire: A Lull Before The Storm."

government, designed to win the allegiance of the local population.¹⁷ The Pakistani government also gave the CIA limited permission to strike Arab and other foreign jihadists with un-manned Predator aircraft, but rebuffed U.S. requests to target indigenous Pakistani militants, some of whom may still be receiving funds from Pakistan's intelligence agencies.¹⁸ However, the cumulative effect of these actions appears unlikely to pacify the region. Indeed, the roots of the FATA's security and development problems extend back much farther than the current conflict.

The system of patronage provided by the FATA administration and the impact of the Afghan jihad fomented a culture of crime supported by the proliferation of weapons that was endemic throughout the tribal areas by the 1990s. The lack of effective governance in the FATA and its proximity to the towns and cities of the NWFP has created a cycle of violence where criminals, including drug-traffickers and kidnappers, seek refuge from the maliks (tribal chiefs), who oblige for a fixed price. Since the FATA is beyond the writ of the provincial administration, the NWFP's 34,000 poorly trained and equipped police force cannot pursue them.¹⁹ The porous border with Afghanistan further complicates the search for criminals. In addition to the subsidies paid to tribal leaders, the government provides the FATA with free electricity—an expense that represents thirty-percent of the average household costs in the rest of Pakistan. To ensure loyalty, political agents turned a blind eye to smuggling on the Afghan border, creating a burgeoning economy of illicit goods and prosperity for the system's

¹⁷ Steven Lee Myers, David E. Sanger and Eric Schmitt, "U.S. Considers New Covert Push Within Pakistan," *The New York Times*, 6 January 2008, <http://www.nytimes.com/2008/01/06/washington/06terror.html?pagewanted=all> (accessed 11 April 2008); Jane Perlez, "Doubts Engulf an American Aid Plan for Pakistan," *The New York Times*, 12 December 2007, <http://www.nytimes.com/2007/12/25/world/asia/25pakistan.html> (accessed 11 April 2008).

¹⁸ Mark Mazzetti and Eric Schmitt, "U.S. Military Seeks to Widen Pakistan Raids," *The New York Times*, 20 April 2008, <http://www.nytimes.com/2008/04/20/world/asia/20pstan.html?ex=1366430400&en=d38df6feb0fcbcd&ei=5088&partner=rssnyt&emc=rss> (accessed 20 April 2008).

¹⁹ Behuria, "FATA: The New Epicenter of Terror."

benefactors.²⁰ In a nation beset by ethnic divisions, political instability and deep insecurity among the nations' elite, the FATA remains an unyielding and perilous anachronism.

Contemporary Views on the Roots of Conflict in the Tribal Areas

Many scholars and policy analysts attribute the current conflict to a breakdown in the traditional order resulting from events in the 1980s and 1990s. Dr. Marvin G. Weinbaum, Scholar-in-Residence at the Middle East Institute and former Afghanistan and Pakistan analyst at the Bureau of Intelligence and Research at the U.S. Department of State, argued this widely accepted view in testimony to the Armed Services Committee in October 2007.

Behind [the current instability] is the dismantling of a system of political control through the gradual destruction of legitimate political structures. Previously, the *malik*—the secular leader of the village or tribe—was the local political authority. He was elected by a *jirga* in the village and through an Islamabad-appointed political agent received government funds and handled relations with the state. The *mulla*—the local religious authority—was clearly subordinate, and in most cases completely apolitical. However, from the regime of General Zia ul-Haq onward, the state started to fund the mullas directly, giving them financial independence. Over the years the mullas took on an enhanced political role in the tribal community and gradually became more powerful than the malik. With new resources and status, the local religious figures were able to emerge.²¹

Dr. Weinbaum is not alone in his portrayal of the causes of instability in the FATA. Current Pakistani and U.S. policy makers continue to view the FATA administration of the FATA with romantic nostalgia for its perceived effectiveness in governing a historically ungovernable region. Pakistani officials schooled in the British frontier system remain especially wedded to the methods and *tribal* perspective of their former colonial masters. Khalid Aziz, a former chief secretary of the NWFP, argued as late as 2004 that the FATA administration could still be made to work if the Pakistani military retreated to tactical areas as the British had in 1923 and allowed the political agent of each agency to “operate through an elaborate

²⁰ Ibid.

²¹ Dr. Marvin G. Weinbaum, “Counterterrorism, Regional Security, and Pakistan’s Afghan Frontier,” in testimony to the U.S. House of Representatives Armed Services Committee, Washington, D.C., 10 October 2007, http://armedservices.house.gov/pdfs/FC101007/Weinbaum_Testimony101007.pdf (accessed 11 April 2008).

intelligence network based on his tribes.” Aziz admits only the need for minor changes, including “a need to brush up the watch and ward policy, based on the use of good tribal intelligence,” but otherwise demonstrates the government’s continued reliance on the methods developed by the British more than a century ago.²²

The impact of Pakistan’s Directorate for Inter-Services Intelligence (ISI)²³ operations to support Afghan mujahedeen and radical deobandi Islamist mullas in the 1980s, followed by the ISI’s careful nurturing of the Taliban in the 1990s is an important proximate cause of the conflict in the tribal areas. However, the ultimate cause is rooted in the structure of the British tribal administrative system that Pakistan continues to employ.

At best, the British tribal administrative system was useful as an ad-hoc, temporary measure, to provide a semblance of security to a region that British officials deemed too troublesome to govern directly and not worth the expense. The stability the system achieved was always fleeting and often illusive. While the British designed the system to respect certain aspects of Pakhtun custom, it suffered from inherent flaws. The system could not adapt to the changing socio-economic conditions that affected the power of local actors that the political agents depended upon. Over the long-term, the system undermined the legitimacy of the tribal maliks by converting them into a privileged hereditary class that was at odds with the egalitarian tradition espoused by the *pakhtunwali*. The system never effectively secured the tribal areas and

²² Khalid Aziz, “Fallout of the Wana Operation,” *Dawn*, 7 August 2004, <http://www.dawn.com/2004/08/07/op.htm#4> (accessed 11 April 2008).

²³ The ISI is the largest and most powerful of Pakistan’s three main intelligence agencies, with internal and external responsibilities. It was founded in 1948 by a British officer, Major-General R. Cawthome, then Deputy Chief of Staff of the Pakistani Army. President Ayub Khan expanded the ISI in the 1950s, making it an instrument of military and civilian leaders to monitor domestic politics. Reportedly, the ISI has 10,000 members, not including informants and under-cover assets. “Directorate for Inter-Services Intelligence,” <http://www.globalsecurity.org/intell/world/pakistan/isi.htm> (accessed 14 April 2008).

the Pakistani government simply inherited the administrative system after the partition from India in 1947.

Since independence, Pakistan's military and civilian leaders have suffered from a perpetual perception of insecurity, brought on by unyielding separatist tensions, rapid population growth, a lack of economic opportunities and constant preoccupation with the threat from India, with whom Pakistan has fought three wars. Continuing internal instability, caused by frequent military coups and the dominance of political parties by elite families, inhibited successive governments from experimenting with meaningful political reform in the tribal areas and elsewhere in Pakistan. As a result, the Pakistani government allowed the FATA administration to become entrenched in its colonial past and never developed plans to integrate the tribal areas politically into the rest of the country. While the development of civil-society throughout Pakistan is anemic, the Pakistani government's adherence to the British system prohibited even meager civil-society development in the FATA. The momentous consequences of this policy now present a grave threat to the Pakistani state itself.

Overview of Pakistan's Federally Administered Tribal Areas

Pakistan's Federally Administered Tribal Areas, located along the Afghan border in Pakistan's NWFP, is governed by the Frontier Crimes Regulation (FCR), a series of laws enacted in 1901 by Lord Curzon, British Viceroy of India.²⁴ The FATA is roughly the size of Belgium, covering an area of 27,220 square kilometers, and according to a 1998 census has a population of approximately 3.2 million (see maps in appendices 1-3).

Article 246 of the Constitution of Pakistan divides the tribal areas into seven *Tribal Agencies* and six *Frontier Regions* (FR), which are smaller tribal areas located between the

²⁴ Rizwan Hussain, *Pakistan and the Emergence of Islamic Militancy in Afghanistan* (Burlington, Vermont: Ashgate Publishing Limited), 36.

agencies and the districts of the NWFP.²⁵ The seven Agencies are Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan. The Frontier Regions consist of Peshawar, Kohat, Tank, Banuu and Dera Ismail Khan. The tribal areas have representation in the National Assembly and the Senate, but remain under executive control of the governor of the NWFP and the President. No law of the provincial assembly applies in the tribal areas without the approval of the governor and the President. In addition, no law of the national assembly applies unless directed by the President, who also has the discretion to decide which portions apply and make amendments.²⁶

Although the Pakhtun tribes of the tribal areas take great pride in their long history of defeating would-be invaders, the lack of natural resources and scarcity of fertile land has made the tribes economically dependent on the government and the population of the settled areas around Peshawar.²⁷ The hilly geography of the FATA encompasses three primary terrain zones: (1) isolated hills best suited for nomadic and pastoral life, (2) small hill plateaus that permit small garden and terrace cultivation, and (3) small “hill-girt river valleys—one valley almost cut off from another and hence inward looking—where agricultural production depends upon the utilization of river water by organized labor.”²⁸

According to available socio-economic data, the population of the FATA is among the poorest of the planet. Nearly 60% of the population lives below the poverty line and the literacy

²⁵ Government of Pakistan, Ministry of States and Frontier Regions, “Background of Federally Administered Tribal Areas,” under “Information and Services,” http://www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=41&cPath=552_558&ContentID=4479 (accessed 11 April 2008).

²⁶ Government of Pakistan, National Reconstruction Bureau, “The Constitution of the Islamic Republic of Pakistan,” under “Article: 247 Administration of Tribal Areas,” http://www.nrb.gov.pk/constitutional_and_legal/constitution/ (accessed 11 April 2008).

²⁷ R.O. Christensen, “Tribesmen, Government and Political Economy on the Northwest Frontier,” in *Development Studies and Colonial Policies*, edited by Barbara Ingham and Colin Simmons (Totowa, NJ: Frank Cass & Co. Ltd., 1987), 176.

²⁸ Ahmad Hasan Dani, “The Pathan Society: A Case Study of a Traditional Society, its Disintegration and the Process of Modernization,” *Journal of Asian Studies* 1, no. 2 (1978): 48-49.

rate is 17% (29% percent for males and barely 3% for females), compared to the national literacy rate of 43%. Nearly 82% of land is unsuitable for cultivation.²⁹ Although 80% of the population relies on agriculture for their livelihood, illicit activities in kidnapping and smuggling of drugs, automobiles and virtually any kind of electronic device represent a large and growing segment of the local economy.³⁰ Infrastructure development also lags, with roads per square kilometer in the FATA trailing the rest of the country by 50%. Medical care is also limited. The FATA's population per doctor ratio is six times that of the rest of the country and the population per hospital bed is 50% higher.³¹

The Pakhtun tribes encompass a large swath of territory that covers south and east Afghanistan and northwest Pakistan.³² Many Pakhtuns refer to the region as the *Roh*.³³ Pakhtuns traditionally dominated the Afghan kingdom and the word *Afghan* itself is originally a Persian term for the Pakhtuns, and thus historically, applies as much to the tribes in the Peshawar plain as those in what is today Afghanistan.³⁴ Most of the Pakhtun tribes are divided between two large groups. The *Durrani*s (formerly known as *Abdalis*) cover southern Afghanistan, including Kandahar and Helmand, as well as parts of the Pakistani province of Baluchistan. They evolved in western Afghanistan, with Herat and Kandahar as their cultural centers. The eastern Pakhtuns, the *Ghilzai*, encompass tribes that now populate most of eastern Afghanistan

²⁹ Government of Federally Administered Tribal Areas, "Socioeconomic Indicators," <http://www.fata.gov.pk/index.php?link=9> (accessed 15 January 2008).

³⁰ Behuria, "FATA: The New Epicenter of Terror."

³¹ Government of Federally Administered Tribal Areas, "Socioeconomic Indicators."

³² The name *Pakhtun* is pronounced with a hard, guttural "kh" in the northern areas and a softer "sh" in the south and east. The Hindi word, which is common south of the Indus and which the British also adopted, is "Pathan." See Sir Olaf Caroe, *The Pathans*, xiv.

³³ The *Roh*, which in Pashtu means hills or mountains, refers to the 'hill country' that runs the length of the Pashtun belt. According to George Grierson, British linguist and folklorist, "The Roh is defined by the historian Firishta as the country extending, from north to south, from Swat and Bajaur to Siwi and Bhakar, and from east to west, from Hasan Abdul to Kabul. It includes Kandahar." G.A. Grierson, *Linguistic Survey of India* (Calcutta: Superintendent Government Printing, 1921) [reprinted: Delhi, Motilal Banarsidass, 1968], 5-6.

³⁴ Grierson, *Linguistic Survey of India*, 5-6.

and Pakistan's NWFP. Few Pakhtuns today identify themselves as either Ghilzai and Durrani. However, the division carries important historical meaning, since the two groupings of tribes often vied for political control of Afghanistan and each developed differently.

The Ghilzai, who occupy the mountainous terrain of the Suleiman Mountains and the low-land areas extending to the Indus River, have better preserved tribal structures than their Durrani cousins.³⁵ Individual tribes and sub-tribes, known as *khel*, further divide the Ghilzai. The Pakhtuns of this region tend to identify themselves not as Ghilzai, but as members of their particular tribe or subtribe (see map, appendix 2). However, tribal identities are constantly evolving, so it is difficult to apportion distinct identities to populations based on geographic or political boundaries. For example, the Wazir and Mehsud tribes claim to have originated from the same founder, Wazir. Thus for many years, the Mehsud carried *Wazir* as a second name, signifying their lineage as a Wazir sub-tribe. The Wazirs today are divided into the sub-tribes of Alizi, Bahlolzi and Shaman-Khel, who themselves are further divided into smaller clans and families.³⁶

The British arbitrarily divided the Pakhtuns by the creation of the Durand Line in 1893, which became the modern border between Afghanistan and Pakistan. On paper the Durand Line divided tribes such as the Mohmand, Afridis and Wazirs. However, on the ground, the border is often only recognizable along major road crossings. In addition to the tribal division caused by the Durand Line, agency borders also divided the tribes. Some scholars attribute the roots of

³⁵ Sir Olaf Caroe, *The Pathans* (New York: St. Martin's Press, 1958), 419; James W. Spain, *The Way of the Pathans* (New York: Oxford University Press, 1972), 25.

³⁶ Akbar S. Ahmed, "Pukhtun Tribes in the Great Game," in *Afghanistan and the Frontier*, ed. by Fazal-ur-Rahim Marwat Khan and Sayed Wiqar Ali Shah Kakakhel (Peshawar, Pakistan: Emjay Books International, 1993), 192.

conflict in the region in part to the competition such division created between tribes as they fought over scarce resources.³⁷

A *political agent*, appointed from the elite *Pakistani Civil Service* (derived from the *Indian Civil Service* established by the British Raj), is the government's judicial and executive authority in each agency. According to Pakistani scholar Akbar Ahmed, who served as the Political Agent of South Waziristan during the 1970s, the position of the political agent is unrivaled in "power, prestige and glamour."³⁸ As the most powerful official in the agency, the political agent's primary responsibilities are supervising development and administering justice in accordance local tribal traditions.³⁹ Traditionally, a small staff of assistant political agents and other administrators support the chief political agent in an office usually situated in an old British fort dating to the early 20th century (see appendix 5). In addition, members from the local police (khassadars) as well as the Frontier Scouts, a local militia, report to the political agent.⁴⁰

The continuity of traditions from British to Pakistani administrators is striking. The agency headquarters for South Waziristan, at Wana, is a notable example. In the Scout's mess hangs a portrait memorializing the first Commandant of the South Waziristan Militia, Lt. Col. R.H. Harman, killed by a Mehsud tribesmen in 1905. Pakistani officers refer to the western gate as the "Durand Gate" and call the main picket, situated on hill overlooking the entire garrison, "Gibraltar." Camp officials treat visiting Pakistani officers as honored guests, with ritualistic ceremonies in the Scout's mess featuring bands dressed in kilts and playing bagpipes. Although

³⁷ Hassan Abbas, "Profiles of Pakistan's Seven Tribal Agencies," *Terrorism Monitor* 4, no 20 (19 October 2006), <http://www.jamestown.org/terrorism/news/article.php?articleid=2370168> (accessed 11 April 2008). For more information on the Durand Line and its present influence, see Brian Spooner, "Afghanistan and Pakistan: Cultural Heritage and Current Reality," International Center for Middle Eastern - Western Dialogue, <http://www.caorc.org/hollings/reports/2005-05-Afghan-Pak.pdf> (accessed 13 April 2008).

³⁸ Akbar S. Ahmed, *Social and Economic Change*, 43.

³⁹ Sher Muhammad Mohmand, "FATA (Federally Administered Tribal Areas of Pakistan): A Socio-Cultural and Geo-Political history," (Peshawar, Pakistan: s.n., 2003), iii.

⁴⁰ Abbas, "Profiles of Pakistan's Seven Tribal Agencies."

the Pakistanis no longer serve liquor in the mess, the regimental silver remains, and the “Quarter Guard,” displays battle honors won against the Wazir and Mehsud tribes in the bloody years of the early twentieth century.⁴¹

Pakhtun Social Organization

Pakhtun tribes across Pakistan and Afghanistan share similar characteristics and social norms, characterized by the *Paktunwali*, or ‘way of the pakhtuns,’ which is a form of tribal law and tradition. The Pakhtunwali covers the basic customs of Pakhtun behavior, including treatment of guests, autonomy of the adult male and the use of *badal* (revenge) as a reaction to death, injury or insult. Although Islamic tenets of faith are important to the Pakhtun way of life, they often do not prevail over the Paktunwali. One example is the female inheritance of property, which Islam mandates but the Paktunwali does not. As anthropologist Jon W. Anderson explains, the “Ghilzai assert that Islam is essential to their definition of self, while at the same time asserting that their culture is contrary to it.”⁴²

Akbar Ahmed’s analysis of the Pakhtunwali presents the concept of *Tarboorwali*, literally, *the enmity of brother's sons* (or cousin-rivalry), as an important force in determining societal structure, because it limits the development of political hierarchy. As cousins compete for scarce resources in a patrilineal society, coalitions form that offset those with too much ambition, re-establishing the social balance. Cousins compete against cousins, yet in the face of an external foe, where “there is a clear-cut clan or tribal alternative to choose from, the closer kin may be supported.”⁴³ While Ahmed attempts to establish *Taboorwali* as the basis for the

⁴¹ Ahmed, *Resistance and Control in Pakistan*, 30.

⁴² Jon W. Anderson, “Doing Pakhtu: Social Organization of the Ghilzai Pakhtun” (PhD diss., University of North Carolina, Chapel Hill, 1979), 76. The extension -wal, means “to live in a place or be located under its designation.” Anderson explains that the term pakhtunwali connotes “both genealogical and physical space—places are named for the putative founders who are accorded the ancestors of its proper proprietary inhabitants.”

⁴³ Ahmed, *Resistance and Control in Pakistan*, 24.

Pakhtunwali, *cousin-rivalry* itself may in fact only be a symptom of the violence that is endemic to the principle of *badal*.⁴⁴ Cousin-rivalries may extend to clan rivalries, which challenge the strengths of identities between units (i.e., tribes, subtribes, clans, etc). While anthropologists may debate whether *taboorwali* is an underlying cause or effect, the tendency to seek revenge contributes to the lack of centralized authority and probably helps limit sharp divisions of rank or status.

Most scholars have adopted Ahmed's classification of the NWFP Pakhtuns between *nang* and *qalang*. The *nang* (honor, or the ideal-type) dominate the FATA while the *qalang* (rentier, or tax) mostly live in the settled areas. *Nang* tribes primarily live in areas with inhospitable terrain that limits the size of land-holdings and access to the outside world. As *nang*, they tend to represent the 'ideal-type' of the Pakhtun tribesman, which is more egalitarian and adheres closer to the Pakhtunwali. *Qalang* tribes tend to live in valleys that support intensive agriculture on large tracts of land and have become more feudal in their social structure. Since the feudal *khans*, the land-holding elite, tend to dominate the *qalang* tribes, their social structure is more centralized and hierarchical. According to Ahmed, *qalang* tribesmen view *nang* with unease and respect, due to their fierce demeanor and reputation. For the *nang* tribesman, "his is a political world; a world of action and force."⁴⁵ While the *qalang* tribes of the settled areas gradually became integrated into feudal kingdoms and eventually the political entity of Pakistan itself, the *nang* tribes of the remote highlands turned inwards and remained fiercely independent, holding onto their traditional way of life.⁴⁶

The Pakhtun tribes that dominate the FATA and concern this analysis share additional characteristics that help explain their present social organization. Lineage structures are more

⁴⁴ Charles Lindholm, review of *Pukhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society*, by Akbar Ahmed, *The Journal of Asian Studies* 41, no. 1 (November 1981): 164.

⁴⁵ Ahmed, *Resistance and Control in Pakistan*, 27.

⁴⁶ Ibid.

important to their identity than land holdings because lineage determines privileges such as the right to carry a gun or speak in a *jirga*. In addition, Pakhtuns name their villages after the senior living elder rather than a geographical or historical feature. Thus generation recall, or the ability of each household head to trace his lineage back to the founding father, is common among the Pakhtuns. In contrast, ancestral memory carries little significance among village societies in the India sub-continent.⁴⁷

Pakhtun tribes are also acephalous, i.e., they do not have a chief or head of the whole tribe. *Chiefs*, to the extent they may exist, are only in charge of their segments or households. In addition, limited individual land ownership in the FATA helps maintain a degree of socio-political equality. The democratic nature of the Ghilzai Pakhtuns also favored the process of decision making through the *jirga*, a council of elders that meets to settle disputes and decide collectively on important issues. Nevertheless, socio-political equity is still limited. Succession occurs exclusively through the male line and women have no rights of inheritance or property ownership.⁴⁸

Traditional characterization of *nang* and *qalang* tribal cultures is a helpful framework to understand the differences between Pakhtuns in the NWFP, yet oversimplifies the cultural landscape. The degree to which the FATA is truly autonomous compared to the settled areas is open to question, considering the government subsidies the FATA receives and the wide powers given to the political agent under the FCR. Some critics also contend that feuds and attacks of revenge and honor may actually be more common in the settled areas than in the supposedly more *autonomous* tribal areas.⁴⁹ Ahmed claims that his training as an anthropologist enhanced

⁴⁷ Ibid, 21.

⁴⁸ Ahmed, *Social and Economic Change*, 17.

⁴⁹ Charles Lindholm, review of *Resistance and Control in Pakistan* by Akbar S. Ahmed, *Man* 28, no. 4 (Dec., 1993) 825; Jon W. Anderson, review of *Pakhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society* by Akbar S. Ahmed, *American Ethnologist* 8, no. 2 (May 1981): 401.

his skills as a political agent. However, it appears that his experience as a political agent affected his anthropological studies as well, since his writings tend to portray the Pakhtun society in a manner that is coherent with the administrative governance structure he served.

Evolution of the FATA and the Maliki System

The anomaly of the FATA today has its origins in the nineteenth-century struggle between Britain and Russia known as “The Great Game,” a cold-war rivalry fought over Central Asia and the Caucasus, pitting their respective empires against one another in a struggle for domination. The Pakhtun homeland in the mountainous border region between Afghanistan and British India became a major crossroads of the conflict.

Afghanistan’s national identity owes much to Ahmad Shah Abdali (who later took the name *Durrani*), the first ruler of an Afghan state and founder of the Sadozai dynasty that ruled from 1747 until 1819.⁵⁰ The Durrani chiefs crowned Ahmad Shah as king in 1747, in recognition of his military leadership and perhaps in part because he hailed from the relatively weak Sadozai clan, which presumably would have facilitated his removal from power.⁵¹ However, Ahmad Shah gradually consolidated his position by the use of land grants to the Durrani chieftains and ruled until 1772. Although Ahmad Shah took a number of steps to unite the country politically and economically, the monarchy still resembled a loose confederation of tribes and khanates with rather weak central authority.⁵² Ahmad Shah attempted to strengthen his political control and reduce his reliance on the tribal chiefs by creating a standing army and embarking on an expansionist policy, leading nine campaigns against Moghul India and

⁵⁰ Ahmad Shah Abdali was from the Popalzais tribe, a sub-tribe of the Sadozai clan of the Durrani Pakhtuns. The Barakzai are another major clan of the Durrani. Afghanistan’s second dynasty, led by the late King Zahir Shah, hailed from the Muhammadzai clain, a sub-tribe of the Barakzai.

⁵¹ Vartan Gregorian, *The Emergence of Modern Afghanistan, Politics of Reform and Modernization, 1880-1946* (Stanford, California: Stanford University Press, 1969), 46.

⁵² *Ibid*, 48.

capturing the territories of Kashmir, Sind and the Western Punjab. In 1756 he sacked Delhi and by 1761 the Afghan kingdom extended from eastern Persia to northern India and south to the Arabian Sea.⁵³

Ahmad Shah's son, Timur Shah, attempted to lessen his dependence on the Durrani tribes by moving the capitol from Kandahar, where the Durrani dominated, to Kabul, which had a mostly Tajik population. Kabul was also strategically located on the main trade route from Central to South Asia, which allowed for better administration of the expanding Afghan territory. Nevertheless, Timur was unable to create sufficient central authority to override the powerful chiefs among the Barakzai, the most powerful of the Durrani tribes. In addition, numerous marital alliances, which he initiated to stabilize his rule, ultimately left a troubling problem of succession upon his death in 1793, when numerous sons (as many as sixty according to some accounts), contended for the throne and shattered the delicate system of tribal alliances. For most of the next twenty-five years, Afghanistan remained fragmented as Timur's sons Shah Zaman and later Shah Shuja competed for the throne with chiefs from the Barakzai, who ruled their separate regions in relative isolation.⁵⁴

Yet it was Napoleon's invasion of Egypt in 1798 that first aroused British concern for India's northwest frontier, beginning a century of expansion that reached into Afghanistan and culminated with the Durand Line and the formation of the North-West Frontier Province.⁵⁵ Napoleon contemplated several plans to invade India, including a joint-expedition with Paul I of Russia via Afghanistan. In response, the British government and the East India Company began studying frontier regions that they had previously ignored. In 1809, the British envoy to Kabul, Lord Mountstuart Elphinstone signed a pact with Shuh Sujah, the Afghan ruler, agreeing upon

⁵³ Ibid, 49.

⁵⁴ Ibid, 49-51.

⁵⁵ Ibid, 91.

joint action in the event of any Franco-Persian incursion. While Napoleon never succeeded in forming the alliances necessary for an invasion, Britain remained concerned with the growing Russian power in Central Asia. Throughout the nineteenth century, the Czar extended Russia's rule south through Central Asia, eventually capturing the khanates of Kazan, Astrakhan, the Crimea, Khiva, Bukhara, Tashkent, Samarkand, and Kokand. Russian influence in Persia and Afghanistan also appeared to be growing. While Russia tried to placate Britain with assurances of only commercial aims, the British government remained skeptical. For its part, Russia was also wary of British intentions, and became especially concerned with British plans for a "Central Asian Confederation."⁵⁶

Afghanistan remained torn by warring tribes after the exile of Shah Shuja in 1813, until Dost Mohammad Khan (1826-38, 1842-63), the youngest among the Barakzai brothers and governor of Ghazni, became the ruler of Kabul, and gradually consolidated his rule over Kabul, Ghazni, Jalalabad, and Charikar. However, the internal divisions of the previous twenty-five years caused the loss of much of the lands captured under the Sadozai dynasty, exposing the Afghan kingdom to growing threats of Sikh power in the Punjab, Persian expansion in the east and Russian movement in the Kirghiz steppes.⁵⁷

Britain was primarily interested in concluding a commercial treaty with the Afghan and Sikh kingdoms that would stabilize their frontier. However, Dost Mohammad insisted that any agreement was contingent upon the British aiding him to recover Peshawar and its dependencies.⁵⁸ Britain's new viceroy to India, Earl Auckland, rejected the Amir's proposal and warned him against maintaining any relations with Russia or Persia. Auckland's insulting reply further insisted that Peshawar belonged rightfully to the "great ally Maharaja Ranjit Singh,"

⁵⁶ Ibid, 103.

⁵⁷ Ibid, 74.

⁵⁸ Ibid, 100.

leader of the Sikh kingdom, and that Britain only recognized the rights of local leaders, thus denying the recognition of Afghanistan as a state.⁵⁹

British-Afghan relations continued to deteriorate until 1839, when Auckland decided to move against Dost Mohammad and restore Shah Shuja to the Afghan throne as a means ensuring British control. Auckland also wanted to prevent Persia from annexing Herat, which the British believed would open Afghanistan to greater Russian penetration. A British invasion force quickly occupied Kabul, installed Shah Shuja on the throne and made Dost Mohammad a British prisoner in India.⁶⁰ However, the massacre of 4,500 British troops and 1,200 camp followers during their return to India in 1842 resulted in Shah Suja's assassination by his Afghan enemies. A second British invasion of Kabul later that year freed the remaining prisoners and burned the great bazaar. The British, however, decided that occupying Afghanistan was not worth the cost, and restored Dost Mohammad to the throne in 1843, where he ruled for the next twenty years.⁶¹

The British home government advocated a stationary policy to Lord Dalhousie, the new viceroy, advising that he establish relations "of a defensive character" with Afghanistan in order to create an effective buffer against Russian encroachment.⁶² Treaties between the British and the Afghans in 1855 and 1857 established mutual respect for their possessions and enabled Dost Mohammad to extend his reign as far west as Herat and protect his borders against Persia and Russia. However, the British refused to recognize the Amir's claims to control over the tribal

⁵⁹ Arnold Fletcher, *Afghanistan; Highway of Conquest* (Ithaca, New York: Cornell University Press, 1965), 16.

⁶⁰ Gregorian, *The Emergence of Modern Afghanistan*, 51.

⁶¹ Ibid, 82.

⁶² J.F. Standish, "The Persian war of 1856-1857," *Middle Eastern Studies*, vol. 3, issue 1 (October 1966): 21. According to Standish the Secret Committee wrote, "We also feel that in Afghanistan is to be found the most effectual barrier against Russian encroachment in whatever direction the Russians might attempt to advance on India; and that it cannot but be important for our interest in India that the barrier against any attempt at aggression on the part of Russia should be as far as possible from our frontier."

belt (extending to Peshawar) and remained concerned about a possible Afghan invasion of the British-controlled Sikh kingdom.⁶³

Meanwhile, in Afghanistan, following the death of Dost Mohammad, his son, Shir Ali (1863-67, 1869-79) took the throne and maintained generally peaceful relations with the British, whose Russia-phobia declined as the Russian Tsar focused on the Crimean conflict. With advocates of the *stationary policy* holding sway in London, in 1873, Russian and British diplomats negotiated an agreement on a buffer zone in Central Asia that neither country would enter. Russia recognized the northern and northwest frontiers of Afghanistan and both countries recognized certain areas of non-intervention. However, the agreement collapsed when Russia occupied Khiva, Bukhara and Khokand over the period 1873-76. Russia's assurances that Afghanistan lay beyond their desired sphere of influence fell on deaf ears in Britain just as memories of the 1842 disaster faded. For its part, Russia felt that a demonstration of strength in Central Asia would raise British security concerns in India, resulting in more British accommodation on issues in Europe. However, the new conservative government in London responded assertively by adopting a *forward policy* for British India.⁶⁴

Tensions between Afghanistan and Britain over British desires for a permanent guarantee of influence in Afghanistan finally erupted in the second Anglo-Afghan War, from 1878-80. The British overthrew Amir Shir Ali, replaced him with his son, Yakub Khan and imposed the terms of the Treaty of Gandamak in 1879 (known to Afghans as "the condemned treaty").⁶⁵ The new treaty ceded Afghanistan's claims to the Michni and Khyber passes and control over the tribes

⁶³ Gregorian, *The Emergence of Modern Afghanistan*, 104.

⁶⁴ Ibid, 110.

⁶⁵ Ahmad Shah Mohabbat, "Pakhtun National Self-Determination: The Partition of India and Relations with Pakistan." (PhD diss., Graduate School of St. Louis University, 1979), 52.

connected with them.⁶⁶ It also established a permanent British representative at the court in Kabul and secured the Afghan Amir's agreement to follow the advice of the British viceroy in India on matters relating to foreign relations.⁶⁷ Mobs of Afghans responded by massacring the new British envoy in Kabul, Lord Cavagnari, and his entire mission just seven weeks into their stay. This led to yet another British invasion, and subsequently, the British Government of India's (GOI) annexation of the areas ceded to the British in the Treaty of Gandamak. However, the return of the Liberals to power in Britain ended the forward policy in favor of a more limited approach that advocated a "well-defended Indian frontier and an independent Afghanistan under British political control."⁶⁸ The violent Afghan resistance to British rule and the Liberals' termination of the forward policy compelled the British to withdraw by October 1880, although not before the out-going British viceroy, Lord Lytton, managed to install Abdur Rahman on the throne in July.⁶⁹

The laws that govern the FATA today originated in the policies that the British adopted to manage the tribes during the nineteenth century. In India, as in other British colonies, the British created an administrative framework that utilized local power structures to achieve political objectives at minimal cost. Rather than overturning local rulers, the British preferred to convert them into proxies with limited self-rule. The policies that the British eventually institutionalized in the FATA's administrative system evolved gradually, as the British penetrated India's northwest frontier. Regardless of whether the advocates of the *close border* or *forward* policies held sway, the GOI's primary objective on the frontier remained countering

⁶⁶ Khyber Gateway: Pashto Resources, "Treaty of Gandamak, 1879," under "History: Treaties and Letters," <http://www.khyber.org/pashtohistory/treaties/gandamaktreaty.shtml> (accessed 11 April 2008).

⁶⁷ Gregorian, *The Emergence of Modern Afghanistan*, 110.

⁶⁸ Ibid, 117.

⁶⁹ Mohabbat, "Pakhtun National Self-Determination," 56. The treaty of Gandamak was subsequently nullified by the British.

the threat of invasion by the Afghan tribes, the Russians or both. The mountainous border region formed a buffer, but several strategic passes provided natural invasion routes. Among the conquerors that traveled these passes to enter India were Alexander the Great and the Afghan King Ahmad Shah Durrani. Some British officials maintained that India's best protection would be a defensive line of forts running from Kabul to Kandahar, through Ghazni, on the Afghan side of the mountains. However, the experience of the two Afghan wars convinced the GOI that this was impractical. The GOI instead focused on opening and securing the key passes.⁷⁰ However, securing these passes meant dealing with the unruly Pakhtun tribes that inhabited the area. To gain their cooperation and moderate their behavior (e.g., limit tribal raids on the settled areas), British officials experimented with inducements and punishments. Encounters with the tribes of the Khyber pass in 1849 provided some early lessons in tribal negotiation.

After enduring numerous attacks on convoys traveling through the Khyber pass, in 1849 the British offered the Adam Khel Afridis an annual allowance (a monetary payment) to keep the pass open and refrain from attacking caravans. The Afridis, far too eager to profit from the trade passing through their area, quickly reneged on the bargain, prompting the British to turn to the neighboring Orakzai tribe, offering them the same arrangement. The Orakzai then feuded with the Afridi, so the British turned to the Bangash, which then led to a feud between all three tribes. Eventually, the British discovered that the Kuki Khel Afridis (an Afridi sub-tribe), who held the entrance of the pass, were the culprits. Beginning with the Kuki Khel, the British successfully employed a system of collective responsibility that held the entire tribe responsible for the acts of a few.⁷¹ Robert Warburton, political agent in the Kyber from 1882 to 1896, developed this into the 'Khyber system,' which held that the British would not interfere with the tribes provided that

⁷⁰ Hugh Beattie, *Imperial Frontier: Tribe and State in Waziristan* (London: Curzon Press, 2002), 154.

⁷¹ Spain, *The Way of the Pathans*, 56.

the tribes did not interfere with the pass or any other British interest.⁷² In addition to punitive measures (blockades, fines and destruction of crops and property), British officers also tried to emulate the special relationship that Kabul fostered by granting the tribes special privileges. The British administration formalized these measures from 1871-1876 into the Frontier Crimes Regulations (FCR). However, despite some short-term successes, the Khyber system could not subdue the tribes and proved costly to maintain. It did not help that the Afghan Amir continued to compete for the loyalties of the Pakhtun tribes stretching to the Peshawar plains and exploited the Anglo-Russian rivalry to enhance his diplomatic position.⁷³

In Waziristan, British officers constantly devised new schemes to establish indirect rule, but were exasperated by the tribes' fierce resistance. In the immediate years prior to the Durand agreement, the British established military outposts on the frontier and attempted to gain tribal cooperation to open and protect the Gomal and Tochi passes that led to Ghazni, Afghanistan. Robert Bruce, Deputy Commissioner of Dera Ismail Khan District (1888-90) and Commissioner of the Derajat Division, Punjab Province (1890-96), adopted a system developed by Sir Robert Sandeman, Chief Commissioner of Baluchistan Province (1877-1892), and previously district officer of Dera Ghazi Khan (1866-1876).⁷⁴

Sandeman, with Bruce as his deputy, successfully pacified the Khanate of Kalat and opened previously closed routes in Baluchistan through a system of "penetration and occupation."⁷⁵ Sandeman worked with Baluch chiefs and maliks, offering payment for specific services, most importantly raising levies to man cantonments and protect key routes for the British administration. Sandeman's forces also built a road network that linked cantonments at

⁷² Beattie, *Imperial Frontier: Tribe and State in Waziristan*, 154.

⁷³ Gregorian, *The Emergence of Modern Afghanistan*, 156.

⁷⁴ Howell, Evelyn Berkeley, Sir, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe* (Simla, Government of India press, 1931), [reprint, New York: Oxford University Press, 1979], 14.

⁷⁵ *Ibid*, 12.

tactical points in Kalat and the surrounding region. In return for their support, he allowed the Baluchi chiefs and maliks limited self-rule, in accordance with the FCR. As was the practice elsewhere on the frontier, designated British political agents organized jirgas to settle disputes and address issues critical to British interests. However, the linchpin to the touted *Sandeman System* was the concentration of British forces that could quickly move by way of the new roads to quell disturbances and support the chiefs and maliks against challenges to their authority.

In late 1889, Sandeman held a large jirga at Appozai (Fort Sandeman) in the Zhob valley of Baluchistan, inviting all the surrounding tribes, including the Mehsuds and Wazirs, the Pakhtun tribes that dominated Waziristan (see map, appendix 3). At the conclusion of the jirga, in early January 1890, the tribes agreed to keep the Gomal pass open in return for allowances.⁷⁶ Adhering to the Sandeman system, Bruce arranged allowances to the tribal maliks in return for a tribal levy for militia service in cantonments built along routes to the key passes. Wary of Afghan interference in their Waziristan plans, the Viceroy, Lord Lansdowne, informed the Afghan Amir that “the Gumal scheme was of strategic and political benefit to the British Government and therefore to be blessed, that it was nevertheless no menace to himself and was anyhow none of his business.” The Afghan Amir sent no formal reply.⁷⁷

Although 1890-91 passed largely without incident in Waziristan, Bruce’s introduction of the maliki system encountered increased resistance the following year. In May 1892, a force of 100 Afghan cavalry under the command of an Afghan official, Sirdar Gul Mohammad Khan, appeared in Wana, exhorting the Mehsuds and Wazirs to “sever all connections to the British Government and accept allegiance to the Amir.”⁷⁸ The appearance of the Afghan Sirdar split the

⁷⁶ Howell, *Mizh: A Monograph on Government’s Relations with the Mahsud Tribe*, 12-13. Caroe, *The Pathans*, 398.

⁷⁷ Howell, *Mizh*, 13.

⁷⁸ Sir Richard Isaac Bruce, *The Forward Policy and its Results* (New York: Longmans, Green, and Co., 1900), 253.

leading maliks into pro-Afghan and pro-British factions, which contributed to increased violence against the British.⁷⁹

In the summer of 1892, a group of five Mehsud tribesmen murdered a British Public Works Department officer, as well as five *sowars* and a *sepoy* from the British India Army.⁸⁰ According to Bruce, the murders were partially instigated by a Mehsud malik of the Abdullai sub-tribe who the British inadvertently excluded from the allowance scheme developed after the 1889 jirga. Remarkably, Bruce managed to persuade the tribes to surrender those involved and then had them tried, convicted, sentenced to jail and fined.⁸¹ The application of British law against Mehsud tribesmen sparked outrage among some Mehsud elders, especially Mulla Powindah, a revered religious leader. Sir Evelyn Howell, who served in Waziristan as a Political Agent and Resident from 1905-1926 and wrote what is perhaps the most vivid account of the British experience during this period, described the Mulla as “the dominant factor in Mehsud politics in this period,” underscoring the threat of religious leaders to the British and the maliks who cooperated with them.⁸²

The indignant Mulla and his allies retaliated by murdering the maliks responsible for the surrender of the convicted tribesmen.⁸³ Shocked at this affront to his authority, Bruce pressed the tribal leaders to punish the murderers of the maliks themselves, to no avail. The British administration of the Punjab recommended a punitive expedition against the offenders, but the GOI declined, preferring instead to focus efforts on demarcating the frontier. The GOI instructed Bruce “to continue his communications with the tribal jirgas, with the object of procuring, if possible, the punishment of the murderers of the maliks by the tribes themselves.” These efforts

⁷⁹ Bruce, *The Forward Policy and its Results*, 254.

⁸⁰ *Sepoys* and *sowars* were native infantry and cavalry, respectively, recruited to serve in the British Indian Army.

⁸¹ *Ibid*, 311.

⁸² Howell, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe*, 42.

⁸³ *Ibid*, 14.

failed however, and in the absence of greater military support, Bruce could not fully implement the Sandeman system in Waziristan.⁸⁴

Sir Henry Durand, foreign secretary to the GOI, viewed the deteriorating situation on the Afghan frontier with dismay and warned the viceroy of the potential dangers if the border dispute was not resolved. In order to compel the Afghan Amir to settle the border question in Britain's favor, Lord Lansdowne threatened to withhold a shipment of arms that Abdur Rahman desperately needed to quell a hazara rebellion in central Afghanistan. Unwilling to risk a war with Britain, the Afghan Amir agreed to accept a British boundary-making mission, led by Durand, in 1892. After fruitless negotiations with Durand to recognize Afghan sovereignty over the tribal belt, on 12 November 1893, Abdur Rahman reluctantly accepted the division that became known as the *Durand Line*. Although the Durand Line's immediate purpose was only to establish "spheres of influence," it became the international boundary between British India and Afghanistan.⁸⁵ Yet for the tribes, the Durand Line infringed on their sovereignty. Most did not consider themselves subject to anyone's rule.

The British followed the agreement by stepping up their penetration of the frontier. In Waziristan, in 1894 the British government decided to occupy Wana permanently. Bruce began an expedition for this purpose, but quickly met resistance. Mulla Powindah sent letters to Bruce requesting the release of the Mehsud prisoners jailed since 1892 and warning against a permanent occupation of Wana. Bruce rebuffed the Mulla, stating his refusal "to open any negotiations with him except through the representative tribal jirga."⁸⁶ The mulla replied by launching a 2,000-strong tribal lashkar (a tribal levy of militia) against the Wana camp just before dawn on 3 November 1894, penetrating the camp's perimeter before being driven back.

⁸⁴ Howell, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe*, 15.

⁸⁵ Gregorian, 158.

⁸⁶ Bruce, *The Forward Policy and its Results*, 268.

Through the intervention of other, relatively friendly Wazir sub-tribes, the Mulla eventually agreed to disband his lashkar, though he continued to cause problems for the British.⁸⁷

The spate of violence convinced Bruce that his list of official maliks was flawed. To correct the apparent inequities, in 1895 Bruce created a more elaborate list that divided the maliks into five classes according to “the measure and extent of their influence.”⁸⁸ Frustrated by his inability to control the Mulla through the tribal maliks, Bruce also decided to induce him to accept an allowance. The Mulla agreed, providing that he was paid in secret.⁸⁹ In recognition of his influence, his allowance was three times that of any malik. Unbeknownst to the British, the Mulla also received a regular allowance from Nasarullah Khan, brother of the Afghan Amir, who still coveted the lost territory in the Roh.⁹⁰ Not lacking in vainglory, the Mulla Powindah, who earlier studied at a madrasa in Bannu, declared himself *badshah* (king) of the *taliban*, provoking fear among the pro-British maliks.⁹¹ Meanwhile, the unrest sparked by the Durand agreement spread to the other tribal areas.

British efforts to demarcate the border sparked the 1895-1897 uprising, involving numerous tribes, including the Mohmand, Afridi, Wazir and Urakzai. While the Mehsud did not participate in this particular revolt, the cross-border Wazirs, perhaps encouraged by Mulla Powinda, attacked British garrisons at Miranshah and four other locations shortly after establishment of the North Waziristan Agency in 1895.⁹² The uprisings led to the mobilization of 100,000 British and Indian troops who conducted seven expeditions against the tribes through

⁸⁷ Ibid, 15.

⁸⁸ Ibid, 18.

⁸⁹ Caroe, *The Pathans*, 401.

⁹⁰ Ibid, 404.

⁹¹ Beattie, *Imperial Frontier: Tribe and State in Waziristan*, 155.

⁹² Ibid, 157.

1898, costing the British thousands of casualties and millions of pounds.⁹³ In total, from 1859 to 1903, the British led fifty-three expeditions against the border tribes, sometimes attacking with as many as sixty-thousand men against a single tribe.⁹⁴

In Waziristan throughout the 1890s, the British continued their attempts to gain tribal cooperation by working with the maliks. Despite British efforts to hold the Mehsud maliks accountable for all offenses in their territory, small groups of tribesmen continued to attack British interests and commit acts of thievery. Most of the Mehsud maliks attributed the misdeeds to Mulla Powinda's faction. Lamenting their situation, the maliks complained to the British that "they were between the devil and deep sea. And the devil seemed to be drawing near."⁹⁵ The Mullah remained the British administration's chief antagonist until his death in 1913, and the stabilization of Waziristan remained a fleeting goal for each successive political agent.⁹⁶

The uprisings and rampant thievery that persisted throughout the frontier concerned British India's new viceroy, Lord Curzon (1899-1905). Shortly after assuming his post, Curzon toured India's northwest frontier and became convinced that the frontier defense policy was deeply flawed. Curzon felt that the thousands of British troops posted along the frontier unnecessarily provoked the tribes and drained British resources.⁹⁷ Rather than agree to the construction of additional forts, Curzon decided to withdraw British forces to the rear and recruit local tribal militias commanded by British officers to police the frontier. 11,000 British troops withdrew, leaving behind 4,000 who oversaw the formation of tribal levies known as the

⁹³ Robert Nichols, "Settling the Frontier: Land, Law and Society in the Peshawar Valley, 1500-1900" (Karachi: Oxford University Press, 2001), 226; Mohabbat, "Pakhtun National Self-Determination," 77.

⁹⁴ Mohabbat, "Pakhtun National Self-Determination," 85.

⁹⁵ Howell, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe*, 22.

⁹⁶ *Ibid*, 42.

⁹⁷ David Gilmour, *Curzon: Imperial Statesman* (New York: Farrar, Straus and Giroux, 2003), 196.

Khyber Rifles, the Samana Rifles and the Kurram militia. Curzon's actions brought a respite of tranquility to the some parts of the frontier and substantial savings for the British.⁹⁸

Curzon also changed the political structure of the frontier, creating the North-West Frontier Province out of the Punjab in 1901. Within the NWFP, Curzon created two distinct territories, one comprising the settled, low-land districts, where the government authority was rather effective, and the other, comprising areas where the British believed that the tribes' warlike nature and the inhospitable terrain made the area too difficult to govern under the district system.⁹⁹ The two-tier administrative system placed the settled areas of the NWFP under the provincial Chief Commissioner while the viceroy governed the tribal areas through the political agents. Also in 1901, the British issued a revised FCR that granted new powers, including judicial authority, to the political agents, the administrative officials who governed the tribal areas. The FCR also granted the political agents the magisterial power to institute a jirga of appointed tribal elders. While the political agents often relied on the jirga to settle tribal disputes, they also used them as cover to implement coercive measures against any tribe or individual who was causing a problem in the eyes of the British colonial administration.¹⁰⁰ Yet the method of implementing this system, especially in Waziristan, remained a matter of debate.

During Curzon's frontier expedition of 1900, John Gordon Lorimer, assistant to the new viceroy, wrote an official letter to the Punjab Government questioning whether Bruce's maliki system was workable. "With reference to the future management of the tribe... the Government of India will only observe that the best method of dealing with the Pathans of Waziristan appears to be still a matter for experiment."¹⁰¹ W.R.H. Merk, Commissioner of the Derajat (1900-1905),

⁹⁸ Ibid, 198. British expenditures on military operations in the frontier dropped from £4.5 million from 1894 – 1898 to only £250,000 during Curzon's rule.

⁹⁹ Behuria, "FATA: The New Epicenter of Terror."

¹⁰⁰ Ibid.

¹⁰¹ Howell, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe*, 29.

acted upon Lorimer's doubts in 1900, declaring Bruce's maliki system impractical due to the democratic nature of the Waziristan tribes. Instead, Merk made allowances due to the entire tribe rather than selected maliks, while also holding the entire tribe accountable for offenses, rather than individuals. After the tribes failed to agree to pay their outstanding bill of damages (totaling Rs. 60,0000), in December 1900 Merk instituted a blockade, preventing them from accessing markets in the settled areas. At a jirga held in March 1902, the tribes relented, agreeing to pay the fine and return stolen cattle and rifles obtained from raids. Merk responded by paying allowances to approximately 1,500 tribal males at the jirga.

However, Merk's abandonment of the maliki system proved short-lived. His successor, P.W. Johnston, decided that Merk's plan was not only expensive but extremely dangerous, since a jirga several thousand strong presented a grave security challenge.¹⁰² Thus, Johnston created a "conglomerate scheme," which re-established the maliks at a higher allowance and continued lesser payments to a limited number of other male tribesmen.¹⁰³ Although Lord Curzon begrudgingly accepted the new scheme, his official response indicated his exasperation.

No patchwork scheme—and all our present schemes, blockades, allowances, etc., are mere patchwork—will settle the Waziristan problem. Not until the military steam-roller has passed over the country from end-to-end will there be peace. But I do not want to be the person to start that machine.¹⁰⁴

Curzon was not alone in his recognition of the failings of the maliki system. Howell also commented on the inherent difficulty of creating a list of representative maliks.

To begin with, the rapacity of the Mehsuds is insatiable; to go on with, tribal society is not static, and a list that is perfect to-day will be imperfect next week; finally, the distribution list is regarded as a warrant of precedence, and no race of men that has ever existed has ever been reasonable over questions of precedence, as perhaps the records of other hills besides those of Waziristan could testify.¹⁰⁵

¹⁰² Caroe, *The Pathans*, 402.

¹⁰³ Howell, *Mizh: A Monograph on Government's Relations with the Mahsud Tribe*, 35.

¹⁰⁴ *Ibid*, 36.

¹⁰⁵ *Ibid*, 18.

As Curzon predicted, the system proved ineffective over the long-term at stemming resistance to British rule. From 1857 to 1947, tribesmen murdered four of thirty-four British political agents. One even took his own life out of utter frustration in his efforts to subdue the tribes.¹⁰⁶ Despite its flaws, this *patchwork* system became the basis for the administration that governs the tribal areas to this day.

The Rise of Pakhtun Nationalism

As the 20th century dawned, new leaders rose to challenge British authority in the FATA, and waves of conflict continued to plague the British administration. The rebellions of 1919-1923, sparked by the third Anglo-Afghan war, brought a renewed surge of violence to the frontier, as tribal lashkars conducted 1,191 raids into the occupied districts of the settled areas.¹⁰⁷ Among the rebellious Pakhtuns, a new form of Pakhtun nationalism began to emerge, led by leaders such as the Faqir of Ipi and Abdul Ghaffar Khan (also known as the Frontier Ghandi). While the two were allies throughout their campaigns against the British, they employed strikingly different means.

The Faqir of Ipi was perhaps the British's most implacable foe in the FATA during the final decades of British rule. He remained a champion of the Pakhtun cause even after the British departure in 1947. During the 1930s, the Faqir was so troublesome to the British that they stationed 50,000 troops in the FATA, aided with air force and artillery assets—more British troops than were stationed in the rest of the entire Indian subcontinent.¹⁰⁸ The Faqir's tactical genius on the battlefield made him an almost mystical figure among many tribes, and earned the enmity of the British, who nicknamed him "The Scarlet Pimpernel of Waziristan" for his

¹⁰⁶ Mohabbat, "Pakhtun National Self-Determination," 136.

¹⁰⁷ Ibid, 151.

¹⁰⁸ Behuria, "FATA: The New Epicenter of Terror."

unpredictability and ability to evade capture by hiding among the friendly Madda Khel Wazirs. Although the Faqir won several stunning successes against British forces, interrupting their lines of communications and causing great expense to the colonial administration, the prevalence of tribal and clan divisions prevented him from uniting their considerable strength under one command—circumstances that the British keenly used to their advantage.¹⁰⁹ The inter-tribal rivalries combined with the British system of paying tribal maliks for their cooperation resulted in frequent desertion from the Faqir's tribal lashkars and increasing reliance on tribesmen from across the Durand Line.¹¹⁰ Nevertheless, while the increased British military commitment perhaps rectified the earlier failure to fully implement the Sandeman system during Bruce's tenure, it did not lead to pacification.

Abdul Ghaffar Khan, son of a privileged family of the Mohammadzai tribe in Peshawar, shared the Faqir's desire to expel the British, but advocated nonviolent means to protest British rule. Despite these differences, the Faqir of Ipi made common cause with Ghaffar Khan, who became the most ardent proponent of an independent *Pashtunistan*, separate from British India, encompassing all the lands of the Pakhtun people. His form of "humanitarian nationalism" was averse to the traditional Pakhtun aristocracy with whom the British administrative system carried favor in the settled areas. He instead sought a political consensus based on the equality of the common man, promoting education as a transformative means to create a society with open participation in the political process. His overtly nationalistic goals led him to unite his Khudai Khadmatgar Party ("Servants of God," also known as the "Red Shirts") with the Hindu-led Congress Party, whose foremost leader, Mohandas Ghandi, Ghaffar greatly admired. Ghaffar Khan believed deeply in social reform through education as a precursor to the development of

¹⁰⁹ Milan Hauner, "One Man against the Empire: The Faqir of Ipi and the British in Central Asia on the Eve of and during the Second World War," *Journal of Contemporary History* 16, no. 1 (1981): 192.

¹¹⁰ Ian Talbot, review of *Waziristan, the Faqir of Ipi, and the Indian Army: The North West Frontier Revolt of 1936-37* by Alan Warren, *The American Historical Review* 106, no. 4. (October 2001): 1340.

political consciousness that would resuscitate the Pakhtun people and sustain their freedom and democracy. Khudai Khadmatgar Party members pledged twenty-percent of their incomes to the party and dedicated themselves to providing free services to the communities of the NWFP in spite of British harassment.¹¹¹ Members bought their own uniforms—red for men and black for women—and trained rigorously to endure long marches to protest British authority.¹¹²

Ghaffar Khan's decision to unite with the Congress Party was anathema to the virulently anti-Hindu Muslim League Party led by Mohammad Ali Jinnah, who was less concerned about independence from Britain and than avoiding Hindu domination. When Hindu-Muslim tensions erupted in communal riots during the latter half of the 1920s, Ghaffar Khan preached Hindu-Muslim unity against British imperialist rule.¹¹³ His party continued to lead non-violent protests throughout the 1930s, despite the efforts of the British authorities in Peshawar to silence the Khudai Khadmatgar leaders with mass arrests and violent crackdowns on peaceful demonstrators that left hundreds dead.

Although Ghaffar Khan enjoyed wide-spread popularity among the Pakhtuns, the British did not allow him to enter the FATA, where the Faqir of Ipi and other tribal leaders continued to lead a violent rebellion against the British. Both leaders shared the goal of independence from British rule, despite the dramatically different means they employed. While the British limited the ability of the Khudai Khadmatgar Party to organize within the FATA, the British were unable to shake their resolve nor prevent their influence from spreading.

In 1947, Britain decided to settle the future of India through a national referendum, but the choices did not serve the goals of Pakhtun nationalists. Rather than chose between joining

¹¹¹ Abdul Ghaffar Khan, *My life and Struggle*, autobiography of Badshah Khan, as narrated to K. B. Narang. Translated by Helen H. Bouman. (Delhi, Hind Pocket Books, 1969), 94.

¹¹² Eknath Easwaran, *Nonviolent Soldier of Islam: Badshah Khan, A Man to Match His Mountains* (Tomaes, California: Nilgiri Press, 1999), 112-113.

¹¹³ Mahadev Haribhai Desai, *Two Servants of God*, (Delhi: Hindustan Times Press, 1935), 31, 46.

India or the newly created Pakistani state, Ghaffar Kahn and the Khudai Khadmatgar Party rejected the referendum.¹¹⁴ Ghaffar Khan's alliance with the Hindu-dominated Congress Party and his decision to reject the referendum forever cast him in a shadow of suspicion in the eyes of Pakistan's Muslim League-dominated government.

The FATA and the Birth of Pakistan

The birth of Pakistan brought little change to the people of the FATA, as demonstrated by the Constitutions of 1956 and 1973, which enshrined the FCR of 1901 as the FATA's legal code.¹¹⁵ The most important legal change came only recently, in 1996, when the Pakistani government extended universal adult suffrage to the FATA. However, the ban on political parties remains. Article twenty-five of the Constitution declares all citizens equal before the law, but excludes the tribal areas, where the high courts of Pakistan also have no jurisdiction.¹¹⁶ The endurance of the legal structures that govern the FATA for more than nearly sixty years after the British withdrawal is due to distinct forces on both the local and national stages, whose entrenched interests grew more powerful with time.

One cause for the system's perpetuity lies with the insecurity of the Pakistani state itself, whose weak national identity is constantly threatened by ethnic and sectarian tensions. Ethnic divisions nearly led to civil war on several occasions, from 1947 to 1951, as the Muslim-League leadership that dominated Pakistani's early government struggled to maintain a unified nation. Pakistan's continual crisis of self-identity has made the endurance of the tribal belt as a semi-autonomous region under central government authority a necessity. Events in the tribal areas at

¹¹⁴ Dinanath Gopal Tendulkar, *Abdul Ghaffar Khan: Faith is a Battle* (Bombay, Popular Prakashan, 1967), 446.

¹¹⁵ Government of Federally Administered Tribal Areas, "History of FATA."

¹¹⁶ Government of Pakistan, "The Constitution of the Islamic Republic of Pakistan."

Pakistan's birth illustrate the complex challenge the central government faced as it inherited the British legacy.

Due to the Afghan-Mogul conflict of prior centuries, the Pakhtun Muslims of the NWFP viewed the Indian Muslims with suspicion and were therefore less susceptible to entreaties of communal Muslim brotherhood espoused by the Muslim League. Furthermore, in the NWFP, the League's image for the average Frontier Muslim was that of the party of the elite—the pro-British Khans and large landholders that the Khudai Khadmatgars undermined with their egalitarian message.¹¹⁷ Yet despite the Khudai Khadmatgars' popularity, the Muslim League made significant inroads in the NWFP during the 1940s by exaggerating the Hindu threat, especially after riots in northern India in 1946. Jirgas of Afridi and Waziri tribesmen both stated their aversion to a Hindu-dominated state in meetings with British viceroy Lord Mountbatten in 1947.¹¹⁸

Despite a boycott led by the Ghaffar Khan's Khudai Khadmatgars, the British held a referendum in the NWFP in July 1947 to determine whether the province would join India or Pakistan. The absence of the Khudai Khadmatgar Party ensured low voter turnout and enabled the Muslim League polling staff to use fraudulent means to ensure an overwhelming victory in favor of Pakistan.¹¹⁹ Shortly thereafter, in November 1947, a group of tribal representatives from the FATA signed the *instruments of accession*, pledging their allegiance to Pakistan. Upon becoming Pakistan's Governor-General upon independence in 1947, Jinnah ordered the withdrawal of government forces from the tribal areas and pledged to respect the tribes' independence and preserve their allowances in return for their allegiance.¹²⁰ That same year a

¹¹⁷ Sayed Wiqar Ali Shah, *Ethnicity, Islam and Nationalism: Muslim Politics in the North-West Frontier Province, 1937-1947* (Karachi: Oxford University Press, 1999), 245-47.

¹¹⁸ Ibid, 216.

¹¹⁹ Ali Shah, *Ethnicity, Islam and Nationalism*, 226.

¹²⁰ Beattie, *Imperial Frontier: Tribe and State in Waziristan*, 211.

lashkar of more than ten thousand tribesmen fought valiantly in the Kashmir at the behest of the Muslim League-led government and in defense of Islam.¹²¹

Despite the NWFP's accession to Pakistan, Pakhtun nationalists continued to menace the Pakistani state for the next decade. The Faqir of Ipi and Ghaffar Khan both rejected the results of the referendum and continued to press for an independent Pashtunistan. Ghaffar Khan protested the legitimacy of Pakistan in a speech to Parliament in 1948, where he stated, "I have been watching the administration of Pakistan but I could not find any difference between this administration and that of the British."¹²² Shortly thereafter, the newly anointed Muslim-League leaders of the NWFP arrested Ghaffar Khan, charging him with "sedition" and "intended collaboration" with the Faqir of Ipi. The NWFP governor sentenced Ghaffar Khan to jail, where he remained until 1954.¹²³ Meanwhile, the Faqir of Ipi continued his attacks, seizing the North Waziristan village of Datta Khel in 1948 and with the support of pro-Pakhtunistan leaders in Afghanistan, organized attacks on Pakistani territory in the early 1950s.

Afghanistan was a fervent supporter of the Pakhtun nationalists as the FATA transferred to Pakistani control. Afghanistan's rulers, led by King Zahir Shah (1933-1973), maintained that the Durand Line only marked spheres of influence, not an international boundary, yet the British refused to negotiate. Afghan Prime Ministers Shah Mahmood (1946-1953) and Sardar Muhammad Daud (1953-1963) openly supported the Pashtunistan cause, creating tensions between the two nations that became enmeshed in the geopolitics of the Cold War. Afghanistan was the only nation to veto Pakistan's entry into the United Nations and Afghanistan's loya jirga of 1949 declared the Durand Line invalid (a position that each succeeding government has

¹²¹ Spain, *The Way of the Pathans*, 16.

¹²² Tendulkar. *Abdul Ghaffar Khan*, 454.

¹²³ "Abdul Ghaffar Khan, 98, a Follower of Gandhi," *The New York Times*, 21 January 1988, <http://query.nytimes.com/gst/fullpage.html?res=940DE2DC143CF932A15752C0A96E948260> (accessed 11 April 2008).

maintained). In August 1949, a group of Afridi tribesmen met in Tirah Bagh in the Khyber Agency, to declare an independent Pashtunistan and appeal to the United Nations for recognition. The Afghan government pledged its support by declaring 'Pashtunishtan Day' an national holiday in Afghanistan.¹²⁴ That same month a jirga of Waziristan tribes traveled to Kabul to secure the assurance of Afghan assistance.¹²⁵

Tensions between Pakistan and Afghanistan climaxed in March 1955, when the Pakistani government announced the "one unit" policy, a decision to merge the four provinces of West Pakistan into one administrative unit, in theory to balance power between East and West Pakistan. The day following the announcement, mobs in Kabul sacked the Pakistani Embassy and raised the Pakhtunistan flag. Mobs also attacked Pakistani consulates in Jalalabad and Kandahar. A few days later, mobs in Pakistan retaliated by burning the Afghan consulate in Peshawar. Soon, a jirga from South Waziristan and a gathering of maliks from North Waziristan, claiming to represent 10,000 North Waziristan tribesmen, asked the Pakistani government for permission "to march on Kabul to avenge the national honor."¹²⁶ The Pakistani government retaliated against Daud's government by suspending their diplomatic relations and closing trade routes.¹²⁷ Relations between the two countries did not improve significantly until after Daud's removal and successive mediation efforts led by the U.S.

The Pashtunistan debate encouraged a defensive posture within Pakistan that focused on securing the border region by relying upon the maliki system to maintain the tribes' support and

¹²⁴ Hussain, *Pakistan and the Emergence of Islamic Militancy in Afghanistan*, 65.

¹²⁵ Fazal-ur-Rahim Khan Marwat, Ka Ka Khel and Sayed Wiqar Ali Shah, "Faqr of Ipi," in *Afghanistan and the Frontier* (Peshawar, Pakistan: Emjay Books International, 1993), 262.

¹²⁶ Ibid.

¹²⁷ Hussain, *Pakistan and the Emergence of Islamic Militancy in Afghanistan*, 71.

marginalize the influence of provocateurs such as the Faqir of Ipi.¹²⁸ By all accounts, Pakistan facilitated a relatively peaceful transition in the FATA. While the Pashtunistan question created hostile relations between Afghanistan and Pakistan, acts of violence were isolated. Although Pakhtun nationalists such as the Faqir of Ipi continued to support Pakhtun independence, the British withdrawal weakened the call for jihad that was a crucial motivating factor in the past.

According to the Sir Olaf Caroe, Governor of the NWFP (1946-47) and an official of the Indian Civil Service from 1919 until the partition, by 1947, the Pakhtuns had “learned to look unmistakably to the east for education, service and all the higher things in life; the social, economic and political ideas of the Durrani have become to them an anachronism.”¹²⁹ Caroe’s claim is probably an exaggeration, given his sympathies for the Muslim League. Nevertheless, the eventual peaceful acceptance of Pakistan by Ghaffar Khan and other Khudai Khadmatgar leaders indicates that despite their political differences, the realities of trade and geography made Peshawar, and thus Pakistan, the cultural and economic center for most Pakhtuns of the NWFP.¹³⁰

While the issue of Pashtunistan dissipated after the 1950s, the central government remained wary of stoking separatist passions, as illustrated by the government’s rejection of local demands to re-name the NWFP *Pakhtunkhwa*, meaning “Pakhtun Area.”¹³¹ The current FATA conflict undoubtedly makes the military leadership especially mindful of this risk and probably explains the lack of open consideration by Musharraf’s government for abolishing the colonial system and absorbing it into the rest of the NWFP.

¹²⁸ When the Afghanistan government ceased subsidies to the Faqir in 1958, he reportedly discarded the Pakhtunistan flag and retreated to a cave at Gurwek, North Waziristan, where he died in 1960. See Khan Marwat, Ka Ka Khel and Ali Shah, “Faqir of Ipi,” 263.

¹²⁹ Caroe, *The Pathans*, 437. The British administration replaced Caroe as governor with General Sir Robert Lockhart shortly before the partition due to accusations of bias in favor of the Muslim league.

¹³⁰ Sayed Wiqar Ali Shah, *Ethnicity, Islam and Nationalism*, 224.

¹³¹ Behuria, “FATA: The New Epicenter of Terror.”

Economic and Social Change in the FATA

A century of British rule in the NWFP initiated important social and economic changes that accelerated under the auspices of the Pakistani government after 1947. Despite its static political administrative system, the FATA was hardly immune to these forces. Dramatic increases in population, commerce and employment opportunities after 1947 further integrated the Pakhtun tribes of the agencies with their cousins in the settled districts and the Pakistani government administration itself. The pressures of change throughout the tribal areas also created new fissures in society between those who benefited from the maliki system's patronage and who did not. The maliks, the *lungi holders* and the political agents became stalwart defenders of the system, seeking to accelerate social and economic development provided that it did not challenge their power base.¹³² Selective patronage based on tribal lines not only created powerful interests to thwart prospects for reform, but also created stark inequities that stood in contrast to the concept of *pakhtunwali* that the FATA purported to support. The system's purported legitimacy, based on respect for local custom, was eroding.

Continuing migration and demographic changes impacted the FATA's social and economic development. Historically, local ecological conditions were an important factor in development of the Pakhtuns of the tribal areas (see map, appendix 4). Most hill tribes were dependent on trade with their cousins in the fertile valleys on either side of the Hindu Kush, in Afghanistan and Pakistan. Thus, movement between the highlands and the settled areas was a constant phenomenon well before the arrival of the British. Many hill tribes adapted to the seasonal changes in the mountains by migrating to low-land areas with their herds in cooler months and returning to the higher areas in summer, a trend that continued under British rule.¹³³

¹³² Lungi holders were of lesser status than maliks, but were similarly appointed by the government and entitled to a stipend. See *Impact of the Maliki System*, page 49.

¹³³ R.O. Christensen, "Tribesmen, Government and Political Economy on the Northwest Frontier," 184.

While the census estimates of British frontier authorities are not reliable for precise population figures, the data available indicates demographic growth at least equivalent with the administrative districts, and perhaps a doubling of the population between 1849 and 1911.¹³⁴ Relatively laissez-faire British economic policies (in comparison to the Sikh ruler predecessors) stimulated an increase in trade and cultivation in the administrative districts. While the tribal areas were probably not affected directly, the British hoped that the increased commercial activity between the hill tribes and the administrative districts would help integrate them through the influence of “self-interest and civilization.”¹³⁵ The British encouraged this development by sometimes using access to markets in Peshawar as a bargaining chip in negotiations. Yet the increase in commercial activity proved insufficient to tame the tribes.

Relentless raiding of British outposts awakened the British to the security implications of large numbers of tribesmen lacking economic opportunities. Continuing a process begun elsewhere in India, British officials vigorously recruited the tribal Pakhtuns into the Indian Army and created local militia forces such as the Frontier Corps, which were based in the tribal areas and placed under the authority of the political agents.¹³⁶ However, military recruitment proved unsustainable, especially after the outbreak of frontier revolts during World War I, when many Pakhtuns sided with Ottoman Turkey.

Following the transfer to Pakistani rule, the FATA’s population growth accelerated, increasing nearly 85% from 1951-1972, from 1.3 to 2.4 million.¹³⁷ The reduction in political violence in the FATA combined with rapid population growth further accelerated the natural process of integration between the tribal areas and the settled areas of the NWFP. Migration

¹³⁴ Ibid.

¹³⁵ Ibid, 183.

¹³⁶ Ibid, 185.

¹³⁷ Ibid, 188.

increased dramatically after 1947. In South Waziristan alone, Ahmed estimates that by 1979, 20,000 - 30,000 men moved to the settled areas, to other urban centers such as the port city of Karachi and to the Gulf States to earn income which they sent as remittances to their families.¹³⁸ While existing anecdotal evidence suggests that the impact was substantial, it also demonstrates how the political administration allocated migrant work opportunities, reserving the most lucrative roles for the maliks.

Almost every malik... had a male relative from the extended family working abroad. As obtaining a visa is expensive and difficult, the malik's connections with the government prove helpful.¹³⁹

Tribal maliks also used their expanding wealth to build new roads and schools throughout the region. Mehsud tribal leaders from Waziristan, for instance, opened transport businesses in districts such as Tank and Dera Ismail Khan and sent their children to schools and universities in Peshawar.¹⁴⁰ Given the continued dearth of educational opportunities in the FATA, the opportunity for a tribesman to study at the university level must have been a special privilege indeed.

The FATA's economic linkages to the settled areas undermined its geographic distinction. Indeed, the meager pace of development in the FATA mirrored challenges in other parts of Pakistan. Despite periodic growth spurts, mostly due to U.S. aid during the Cold War, disparate economic development was a growing problem for all of Pakistan. Disproportionate defense spending and constant political instability made economic development a slow and difficult process for the entire nation.¹⁴¹ Land reform was an especially controversial and challenging goal of succeeding military and civilian governments.

¹³⁸ Akbar S. Ahmed, "Pukhtun Tribes in the Great Game," in *Afghanistan and the Frontier* (Peshawar, Pakistan: Emjay Books International, 1993), 209.

¹³⁹ Ahmed, *Resistance and Control*, 97.

¹⁴⁰ Khan Marwat, Ka Ka Khel and Ali Shah, "Faqr of Ipi," 262.

¹⁴¹ Ayesha Siddiqi, "Pakistan: Political Economy of National Security," in *Pakistan: Democracy, Development and Security Issues*, ed. by Veena Kukreja and M.P. Singh (London: Sage Publications, 2005), 134.

President Muhammad Ayub Khan (1958-1969) assumed power in a military coup, believing that parliamentary democracy in Pakistan was too unstable to address needed reforms.¹⁴² Although land reform was prominent on Ayub Khan's agenda, his efforts largely failed because the big landlords took advantage of numerous exemptions to protect their property, including provisions to protect Army officers who formed an important constituent base. Much of the land that was redistributed was uncultivable.¹⁴³

Few of Ayub Khan's reforms impacted the tribal areas, and those that did tended to reinforce the existing administrative system. One such effort, the *Basic Democracies* plan, was a direct attack on the political parties who Ayub Khan blamed for Pakistan's governing crisis. While Ayub Khan designed the Basic Democracies plan to create a system that was more responsive local needs, he also desired a party-less representative system that he could control. The plan created a four-tier structure where local union councils, representing 4,000 – 15,000 people elected a leader, a *Basic Democrat (BD)*. The BDs then comprised higher levels councils with appointed officials who served as an electoral college and a means of communication between the government bureaucracy and the people.¹⁴⁴ While the BDs' role also included addressing local development issues, in the tribal areas the BDs simply became a new generation of maliks, appointed by the political agents of each agency.¹⁴⁵ Even where government reform was concerned, the tribal area's administrative system remained the only conduit, through selective patronage.

¹⁴² Lawrence Ziring, *The Ayub Khan Era, Politics in Pakistan, 1958-1969* (Syracuse, N.Y.: Syracuse University Press, 1971), 10.

¹⁴³ Ibid, 19.

¹⁴⁴ M.Rafique Afzal, *Pakistan: History & Politics, 1947-1971* (New York: Oxford University Press, 2001), 231.

¹⁴⁵ World Bank, "Traditional Structures in Local Governance for Local Development: A Case Study of Pakhtun Residing in NWFP & FATA, Pakistan," <http://info.worldbank.org/etools/docs/library/153053/Pakistan.pdf> (accessed 11 April 2008).

Incomplete land reform and continuing economic distress escalated into open conflict in the settled areas of the NWFP by the early 1970s. Landlords and tenants in the districts of Peshawar, Mardan, Swat as well as the Malakand Agency, clashed repeatedly. The *Pakistan Forum* chronicled one such clash in 1971:

“On July 3, 1971 the Pakistani Forum reported that a police force of 1500, armed with machine guns and automatic rifles fought an almost twenty-four hour -long battle with peasants possessing crude rifles and scanty ammunition.”¹⁴⁶

A peasant leader of the Mazdoor-Kisan Party (Peasant-Worker Party), Afzal Bangash, characterized the conflict as one of class struggle rather than tribal in nature, citing the diverse tribal makeup of the peasants in various districts and the deep inequality they faced.

“The peasants really have no tribe or anything like that. If they are ejected from a place they walk along and spend the night wherever it comes. They work wherever they can find a job.”¹⁴⁷

Bangash also reported that 25% of the peasants in the Charsadda District, bordering the Mohmand Agency, were Mohmand while the majority were Muhammadzai, who also dominated the landed class, the *khans*. In Dir district, he reported that all of the peasants were Utman Khel, a tribe that dominates neighboring Bajaur Agency and the Malakand District.¹⁴⁸ The struggles of the Mazdoor-Kisan Party evokes images of the earlier struggles of the *Khudai Khadmatgars*, whose support base also included peasants who felt oppressed by the large landowners.¹⁴⁹

Adherence to a discrete distinction between the *nang* and *qalang* tribes would place Afzal Bangash clearly within the *qalang* designation, as a member of the Bangash tribe, located in the Kohat District of the NWFP. However, the Bangash share this district with members of other tribes, including the Syyed, Afridis, Orakzai, Awan, Shinwari, Gilanis, Banurian, Sheikhan and

¹⁴⁶ “P.F. Investigative Report: Sarhad Peasants under Attack,” *Pakistan Forum* 2, no. 9/10 (June - July 1972): 19.

¹⁴⁷ Afzal Bangash, “Afzal Bangash Speaks: Class Struggle, Not a Tribal War,” *Pakistan Forum* 2, no. 9/10 (June - July, 1972): 14.

¹⁴⁸ Ibid, 14.

¹⁴⁹ Caroe, *The Pathans*, 433.

Paracha and Niazi, many of whom would belong to the *nang* designation. The town of Kohat, in the district center, sits just miles from the Orakzai Agency, which is easily accessible by bus.¹⁵⁰

Clearly, the diversity of the tribes in the settled districts is indicative of the ongoing process of migration that dramatically increased in the post-Independence years. The commonly understood division between *nang* and *qalang* is ideally suited to the administrative framework that governs the FATA, but is of limited use in understanding local perceptions of legitimacy. While the tribal areas did not have large landowning *khans*, the role played by Pakhtun tribesmen (ostensibly of the ideal-type *nang*) in these disturbances, reveals the failing of a system that assumed a static tribal structure. The migrations and gradual integration between Pakhtuns of the tribal and settled areas of the NWFP decreased the importance of tribal identity and forged new relationships that did not necessarily depend on upon the *pakhtunwali*.

The pace of development aid to the tribal areas increased during the Presidency of Zulfikar Ali Bhutto (1972-1977), whose populist message promised to “override the authority of the Tribal Sardars, the Waderas, and the Maliks.”¹⁵¹ Rumors swelled in 1977 that Bhutto had announced adult franchise for the tribal areas—an act that would have severely undermined the maliks’ position. Yet the rumors proved untrue, and the maliks maintained their exclusive and highly lucrative role as the conduits of development projects. Writing about his experiences as the political agent for South Waziristan in the 1970s, Ahmed highlights the pivotal role of the maliks in all development schemes:

Because the government is eager to open up new areas, it is prepared to placate the malik whose authority would allow a development scheme to be implemented. Unfortunately, work on the projects is often shoddy, but profits are large.¹⁵²

¹⁵⁰ Khyber Gateway: Pashto Resources, “The Orakzai Agency,” <http://www.khyber.org/pashtoplaces/orakzai.shtml> (accessed 11 April 2008).

¹⁵¹ Ronald J. Herring, Zulfikar Ali Bhutto and the “Eradication of Feudalism” in Pakistan, *Comparative Studies in Society and History* 21, no. 4. (October 1979): 519-557.

¹⁵² Ahmed, *Resistance and Control*, 98.

The cooperation between the maliks and the administration increased their mutual dependence. Tribes such as the Mehsuds, who fought the British for generations, saw their sons become part of the political administration in the tribal areas and the NWFP, including the coveted office of the political agent. Others became army generals or even national assembly representatives for the tribal areas.¹⁵³ To illustrate the extent of convergence between the tribes and the Pakistani government, the current NWFP Governor, retired Lt. Gen. Ali Jan Orakzai, a member of the Orakzai tribe and a FATA native, leveraged his relationships with North Waziristan tribal elders to negotiate the 2006 truce, which subsequently collapsed.¹⁵⁴ Not only did the FATA administrative system co-opt many tribal leaders over succeeding generations, it sometimes merged with them. Unfortunately, this convergence created new fissures that are increasingly difficult to resolve.

Impact of the Maliki System on the *Pakhtunwali*

Writing in 1981, Ahmed reveals the degree that the Pakistani elite adopted the British mindset in addition to the administrative structure governing the FATA. He attributes the political agents' ability to assume much broader mandates after 1947, including organizing development planning, to the acceptance by tribal leaders of the agents as "fellow countrymen" instead of foreign occupiers. Although he portrays the FATA political administration as flawed, he maintains that the tribes' inherent *nang* condition makes it ideally suited to their "tribal" nature, provided that the political agent acts *justly*, i.e., within the *pakhtunwali*. Ahmed holds the principle of non-interference with the Pakhtunwali in high regard. Yet the system itself undermined the concept of basic democracy that Ahmed explains as central to the

¹⁵³ Ahmed, "Pukhtun Tribes in the Great Game," in *Afghanistan and the Frontier*, 208.

¹⁵⁴ The Institute for Conflict Management, *South Asian Terrorism Portal*, "North-West Frontier Province Timeline-2006," <http://www.satp.org/satporgtp/countries/pakistan/nwfp/timeline/2006.htm> (accessed 11 April 2008).

Pakhtunwali.¹⁵⁵ The maliki system, which depended on the prestige of the maliks to compel tribal obedience, had no formal process to determine what made a malik effective. Rather, the political agents or their superiors made such decisions at their discretion. As Howell lamented nearly 100 years ago, the political agents' lists of maliks were often wrong, or at least required constant updating. It appear that the Pakistanis made significant attempts to improve the system.

Nowhere is there evidence of a vetting process for maliks, nor an attempt to study the underlying societal changes that affected their legitimacy over time. In fact, both the political agents and the maliks had important reasons to maintain the status quo. The corruption of the maliks combined with other societal and economic changes fostered perceptions of inequality and corruption that average tribesmen, aware of the greater freedoms of their cousins in the settled areas, had difficulty tolerating. While the system did not create the anarchy that pervades today, it shaped the environment that allowed it to spawn.

As both the executive and highest judiciary official in each agency, the political agent has the power to appoint maliks to serve as his intermediaries to the tribes. Under the FCR of 1901, each malik is entitled to a stipend and has the right to serve in the Electoral College,¹⁵⁶ the Agency Council to become a member of a *jirga*.¹⁵⁷ Maliks can also act as government contractors, a role that enables them to profit financially from government-funded development projects.¹⁵⁸ Prior to the arrival of the British, maliks were respected elders of their respective tribal segments, essentially living links in the genealogical chain. The British initiated the patronage of maliks to gain their allegiance and ensure the continuation of the tribal social system they encountered. In the settled areas, the British took a similar approach, using

¹⁵⁵ Lindholm, Review of *Pukhtun Economy and Society*, 164.

¹⁵⁶ Prior to the extension of universal suffrage to the FATA in 1996, maliks were the only tribesmen with the right to vote in the national assembly.

¹⁵⁷ World Bank, "Traditional Structures in Local Governance for Local Development."

¹⁵⁸ Ahmed, *Social and Economic Change*, 49.

patronage to make the Khans instruments of the colonial administration and thereby preserve the feudal social system.¹⁵⁹

Officially, each clan, or community, nominates maliks to serve as its representative based upon their distinct leadership qualities and the strength of their relationships with the administration.¹⁶⁰ These maliks are also registered with the agency. However, under the FCR, the political agent has great latitude in appointing maliks, and over time, the number of maliks has proliferated. While some maliks have true patriarchal authority, others do not even live in the tribal areas and have little or no influence over their section. In addition to the maliks, there are *Lungi-holders*—individuals appointed by the government and entitled to a stipend.¹⁶¹ There are three hierarchical levels of maliks, each of which are hereditary and have different degrees of privilege: (1) those appointed during the British era, (2) those appointed under President Ayub Khan during the 1960s under Ayub Khan's *Basic Democracies* plan (3) those appointed *malik* or *lungi* by the Political Agent and approved by the Governor of the NWFP.¹⁶²

The maliki system undermined traditional Pakhtun customs in several ways. The creation of privileged positions with hereditary rights was fundamentally at odds with the socio-democratic Pakhtun customs. The lure of privilege and benefits led to a rapid increase in maliks over the decades, giving rise to the saying that “every man is a malik unto himself,”¹⁶³ and diminishing their representativeness.¹⁶⁴ Available data on the number of maliks and lungi per

¹⁵⁹ Behuria, “FATA: The New Epicenter of Terror.”

¹⁶⁰ Sohail Abdul Nasir, “Al-Qaeda's Operational Corridor on the NWFP,” *Terrorism Monitor* 4, no. 6 (23 March 2006), <http://www.jamestown.org/terrorism/news/article.php?articleid=2369938> (accessed 11 April 2008).

¹⁶¹ World Bank, “Traditional Structures in Local Governance for Local Development.”

¹⁶² Ibid.

¹⁶³ Ahmed, *Resistance and Control in Pakistan*, 23.

¹⁶⁴ As an example, the official website of the FATA lists the Khyber agency, with a population of 546,730, as having 24 Maliks and 3630 Lungi holders. Each malik receives an annual stipend of Rs. 1,811,619. However Ahmed, writing in 1983, estimates one malik per one hundred people in South Waziristan. See: Governemnt of the FATA, <http://www.fata.gov.pk/index.php> (accessed 16 January 2008) and Ahmed, *Resistance and Control in Pakistan*, 26.

agency and FR is incomplete. As an example, the official website of the FATA lists the Khyber agency, population of 546,730, as having 24 maliks and 3630 lungi holders, with each malik receiving an annual stipend of Rs. 1,811,619.¹⁶⁵ However Ahmed, writing in 1983, estimates that South Waziristan (1972 population of 307,514) had one malik per hundred people and further cautions that while every malik claims to speak for an entire tribe, most do not even control their extended family group or clan.¹⁶⁶

The elders themselves appear conscious of their corruption, yet unable to resist its allure.

Ahmed recounts a common sentiment of tribal elders:

We have been corrupted in the offices [soliciting the political agent]. We spend days chasing a petty gain. It is against the dignity of the tribe and that of the elder. In the village we are different. We are real Pakhtuns.¹⁶⁷

Even the English word “political” takes on a negative connotation in Pakhtun culture. In the Pakhtun tongue, being *potical*, implies falsehood and deceit.¹⁶⁸ According to Ahmed, the maliki system created new modes of deviant behavior that were abhorrent under the pakhtunwali but became permissible given the new incentives.¹⁶⁹ The corruption eroded the maliks’ perception of legitimacy for many tribesmen. Decades of increased social and economic integration with the settled areas awoke the FATA tribesmen to the spreading democracy of the settled areas, while the maliks became more detached and less concerned with the interested of the communities they represented.¹⁷⁰

¹⁶⁵ Government of Federally Administered Tribal Areas, “Historical and Administrative Profile of the Khyber Agency,” <http://www.fata.gov.pk/index.php?link=19> (accessed 15 January 2008).

¹⁶⁶ Ahmed, *Social and Economic Change*, 49.

¹⁶⁷ Ahmed, *Resistance and Control in Pakistan*, 26.

¹⁶⁸ Ibid, 24.

¹⁶⁹ Ibid.

¹⁷⁰ Ahmed, *Social and Economic Change*, 49.

The Veneer of Stability and Current Problems in the FATA

The social and economic changes that occurred under the FATA administration system help explain much of the current conflict and instability emanating from the region today. The British colonial administration and the Pakistani government alike share blame for the systems' failures. The British created a system to limit the costs of the violence stemming from the border region and to protect their India possession from Russian encroachment. Their primary interest in the northwest frontier was ensuring security of lower India, not governance of remote frontier areas. The Pakistani government, beset with internal instability, the lingering paranoia of separatist movements and the external threat of the enemy India, continued to employ the British system in the FATA. But Pakistan's adoption of the FATA system was more than simply a legal formality. Many Pakistani officials also adopted British colonial prejudices regarding the nature of the hill tribes living there.

The decline in armed uprisings following the British withdrawal created a veneer of stability that temporarily cloaked the system's failures and decay. The lack of a viable, legitimate political alternative that could empower disaffected elements in the FATA helped create the conditions for extremist elements to form. Studies by numerous scholars and government officials devote attention to the ISI's active recruitment of mullas for the Afghan jihad and the expansion of *deobandi* madrassas during the 1980s and 1990s. News reports tend to ascribe the present violence to the ascendance of the mullas at the expense of the tribal maliks. Yet most of these authors fail to recognize the decay that the system endured prior to this period.

Among Pakhtuns, mullas rely on their organizational skills and moral authority through Islam to maintain their positions as respected leaders of their communities. The mulla's primary responsibilities lie in organizing the village mosque and officiating at the Islamic *rites of*

passage.¹⁷¹ Although mullas are secondary to the lineage elders and are not recorded in the genealogical lineage, the position of respect that they enjoy enables them to become rebellious figures, especially on matters pertaining to the defense of Islam. Numerous religious leaders, in addition to the Mulla Powinda and the Faqir of Ipi, led rebellions throughout the frontier's history.

The conscious actions of the Pakistani intelligence agencies in the 1980s to stoke the mullas to jihad in Afghanistan revived a tradition of rebellion that Moghul, Sikh and Hindu kingdoms learned to fear during previous centuries of conflict. Clearly, the decisions to fund madrassas promoting radical *deobandi* ideology, to provide financial inducements to ulema promoting jihad and to welcome foreign Islamic radicals, inflamed the region with a religious fervor not seen since the era of the British Raj. Although the spread of Al Qaeda-inspired radical Islam adds a different global dimension to the present conflict, Pakhtun history is ripe with examples of rebellions inspired by mullas and other spiritual leaders.

The present surge of Islamic-inspired rebellion may simply be a modern reincarnation of violence in a region that no government has controlled in the modern sense. The CIA and ISI operations of the 1980s succeeded largely because the FATA had already undermined the legitimacy of tribal maliks through patronage. While the maliki system decayed, Pakistan failed to plant the roots of civil society institutions in the FATA that could have better channeled desires for change. Although many authors describe the region as "autonomous," in practice, the authority of the political agent far exceeds that of his judicial and executive equivalents in the settled areas. Indeed, it is not unreasonable to speculate that had the region had been left truly autonomous, perhaps the tribal maliks, bereft of their hereditary exclusivity and patronage, would retain more authority and control than they do today. A comparison of the FATA with the

¹⁷¹ Ahmed, *Resistance and Control in Pakistan*, 26.

region of Greater Paktya (the four provinces of Paktya, Paktika, Khost and Ghazni) in Afghanistan helps illustrate the corrosive impact of the FATA administration had on the legitimacy of tribal structures.

In contrast to the intrusive system that administered the FATA, the tribes of Greater Paktya maintained a special administrative status until the 1979 revolution. As late the 1950s, the tribes of Greater Paktya refused to allow the government to build schools and roads in their territory. The Afghan government never exerted the level of influence upon Greater Paktya that the Pakistani and British regimes exerted over the FATA. On the contrary, the Afghan central government was largely dependent on the tribes for its survival. To maintain their good graces, the Afghan regime exempted the tribes of Greater Paktya from military service and paid them special tributes.¹⁷²

To this day, many tribes of Greater Paktya maintain a geographical and intra-tribal cohesiveness that does not exist among the Durrani Pakhtuns of the south. In addition, these tribes have maintained the *arbakhai*, a tribal police force, which the tribal elders still have the legitimacy and authority to levy. During the 2005 Afghan national elections, in Paktia province alone, the tribally-based *arbakai* provided more than 1,200 security personnel spread across polling stations, dwarfing the local Afghan police, who numbered barely 300 across the province. While the integrity of the traditional tribal structures of Greater Paktya varies, its survival is remarkable. Pakistan, in contrast, can count on no such indigenous tribal system to support its campaign to root out extremism in the FATA.¹⁷³

While civil society development in Pakistan has always been weak, the active prohibition of political parties, newspapers, judicial institutions and even universal suffrage (prior to 1996)

¹⁷² Sebastien Trives, "Afghanistan: Tackling the Insurgency, the Case of the Southeast Region," *Politique Etrangère* 1, (2006), 107.

¹⁷³ It may be necessary to reiterate that local militias such as the *Frontier Corps*, are instruments of the state, and not tribally-based. In contrast, the *arbakhai*, where it exists, is directly accountable to the tribal jirgas, and not any one individual. Historically, the Afghan government does not have authority over the *arbakhai*.

made the antiquated administration ill-prepared to channel the desire for change in the FATA. The increasing power of the mullas is unsurprising, considering that the ulema is one of the few institutions that the FCR permits. The ulema's successful role in the jihad in Afghanistan and the greater perception of purity they enjoyed, resulting from their exclusion from the administration of the tribal areas, endowed them a sense of legitimacy that the tribal maliks had long lost.

As political participation spread through the tribal areas since the extension of universal suffrage in 1997, the mullas became the prime beneficiaries. The ulema's active support of the Taliban, with ISI backing, combined with the Pakistani military's inept operations in the tribal areas that resulted in numerous civilian casualties, only enhanced the standing of the mullas and their supporters. During the 2002 parliamentary elections, Jamiat Ulema-e-Islam (J.U.I.), an Islamist party that has openly supported the Taliban, formed a national coalition, Muttahida Majlis-e-Amal (MMA). The MMA joined five other Islamist parties and garnered ten percent of the vote nation-wide, empowering them to form governments in Baluchistan and the NWFP.¹⁷⁴

Yet individually, the mullas exhibit different strains of religious ideology which weakens their unity over tactical decisions. Disagreement over whether to participate in the 2008 national elections caused a collapse of the M.M.A. in December 2007. As the violence continues unabated throughout the NWFP, J.U.I. party leaders such as Maulana Fazlur Rehman face division within their ranks between those who wish to make Pakistan an Islamic state through democratic means versus the radical elements represented by Tehrik-i-Taliban Pakistan, the Pakistani Taliban Movement, who eschew any participation in the political process. While Rehman claims that he is the only leader capable of dealing with the younger radicals, recently, Pakistani intelligence agencies discovered his name on a hit list created by the same Afghan and

¹⁷⁴ Schmidle, "Next-Gen Taliban."

Pakistani Taliban that he claims only he can deal with, and “bring back from the fire.”¹⁷⁵

Perhaps the mullas are equally prone to the effects of *tarboorwali*.

Conclusion

The causes of conflict in the FATA today have their roots in a complex succession of historical events that began with the British colonialization of India and continued under British-trained Pakistani administrators. Under British rule, the FATA region itself, encompassing extraordinarily inhospitable terrain and lacking any significant natural resources, was only important strategically as the gate to India’s northwest frontier. The British designed a system that would minimize their costs of maintenance while protecting India from external aggression. Dissuaded from goals of conquest by their two ignominious defeats in Afghanistan in the 19th century, the British followed a script they had successfully employed elsewhere in the British Empire. They attempted to learn how the local power structures worked and developed an administrative system that manipulated those networks for their own ends. Their previous experiences convinced the British that their system was the most efficient means to administer the troublesome region.

However, as Curzon and Howell recognized nearly a century ago, the administrative system was mere patchwork, and had negative long-term consequences for the legitimacy of local leaders. The system’s fundamental flaw was that by co-opting the traditional tribal leadership they undermined the social dynamics that were essential to its legitimacy and effectiveness. The tribal system, corrupted by the activities of the political agents, became less and less workable, until eventually, tribal maliks became hereditary rights holders which was antithetical the ideals of the Pakhtunwali. Furthermore, unlike in the settled districts of the NWFP, the British colonial authorities did not introduce reforms to enable greater local

¹⁷⁵ Ibid.

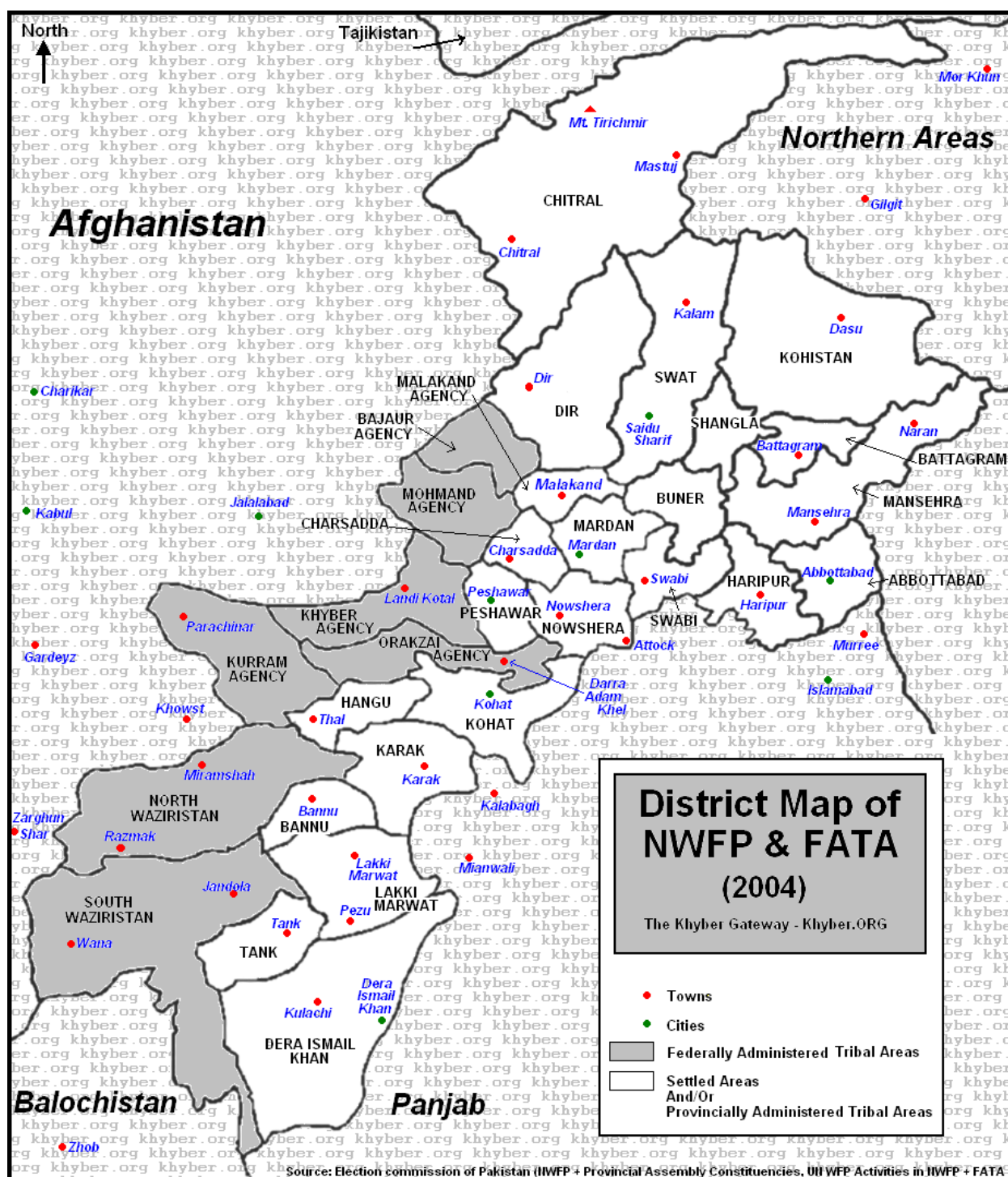
representation and more responsive governance. The FATA remained encapsulated in a legal code that prevented the development of civil society that occurred elsewhere in the country. The cycle of violence that permeated the FATA until the end of British rule in 1947 also contributed to the political stagnation. Yet ironically, the British failure to evolve the FATA's system of governance contributed to the persistence of violence. By co-opting the tribal structures, the British created a static system that could not adjust to the deep social and economic change occurring throughout the region. Like the British, Pakistani officials viewed the tribal areas with awe and romantic nostalgia. Officers serving on the frontier considered themselves heirs to a legacy; power-brokers in an ingenious system that governed people they believed were inherently *tribal*.

The proliferation of maliks under Pakistani rule meant that their influence varied greatly. The system also continued to rely to an extraordinary degree on the judgment of the political agents, whose viewed their work through the lens of the tribal system. Although many maliks and lungi-holders prospered, the FATA's economy remained stagnant. The population grew, leading to increased migration and economic integration with the settled areas, where Pakhtuns from the FATA encountered social and political change that was strikingly absent in the tribal areas. Like their British predecessors, successive Pakistani governments effectively ignored the region because their leaders, even Pakhtuns like President Ayub Khan, continued to view the region as distinct from the rest of Pakistan. The maliks' legitimacy continued to erode as they became more wealthy and self-interested and averse to reforms that would threaten their power. A virulent form of political Islam eventually grew to fill the void.

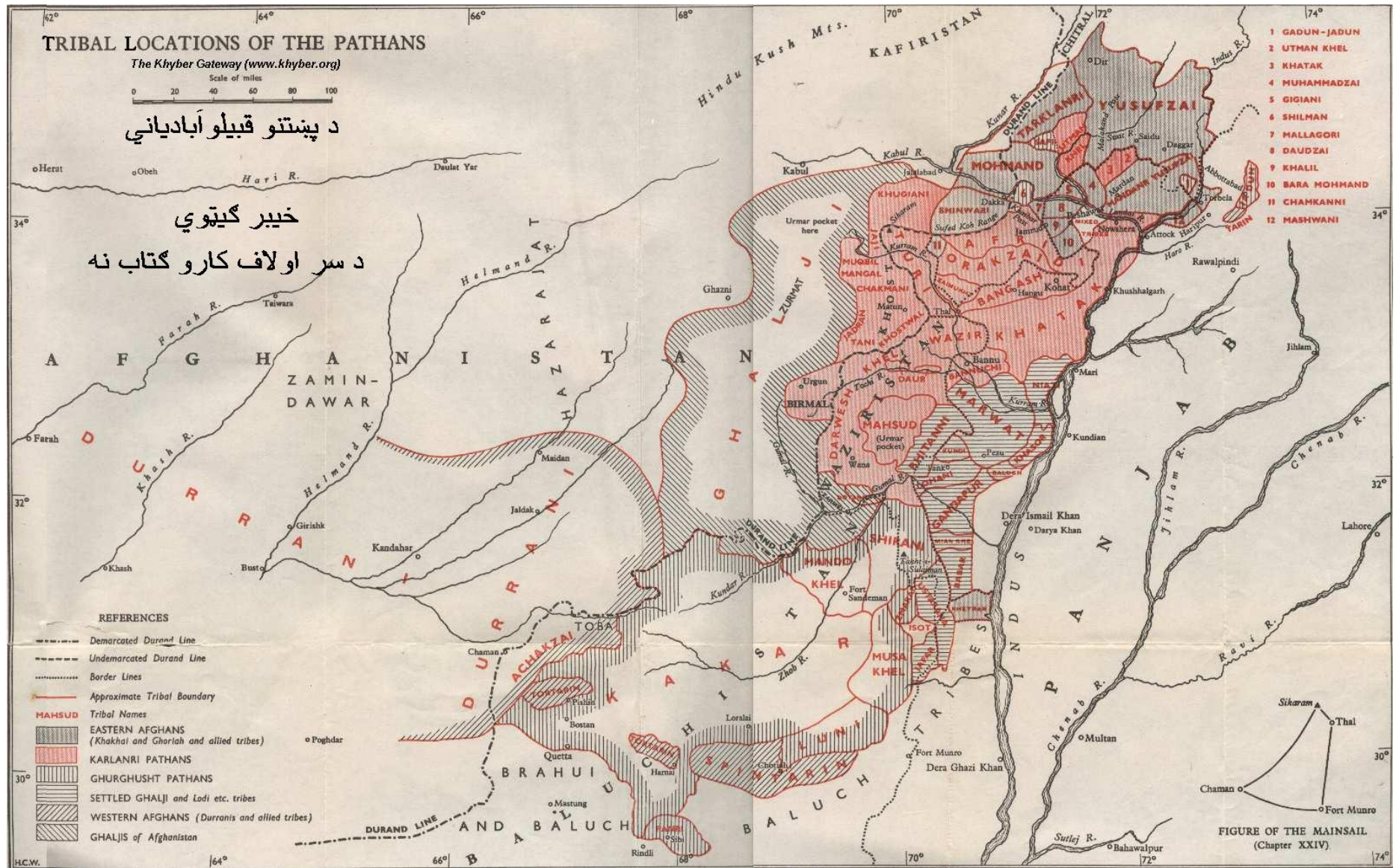
Reforming the FATA is an immensely complex task that Pakistan appears especially ill-prepared to undertake. Despite the FATA's unusual political system and history, it is emblematic of Pakistani's fundamental paradox of a secular state built upon a religion. In

addition to the challenges of ethnic and sectarian tensions, Jinnah's original call for *Islamic* unity now appears to be splitting the country, as Islamic extremists wage an increasingly successful insurgency against the Pakistani government. Many of the FATA's economic and social challenges also plague other parts of Pakistan. Baluchistan, an ethnically divided province between Pakhtuns in the east and Baluchs in the west, has endured decades of poverty and conflict between rebellious Baluch tribesmen and the Pakistani government. The lack of civil society development is also not unique to the FATA. Many Pakistanis complain that life in the settled areas is hardly secure and justice is far from impartial. Pakistan suffers from widespread corruption and dysfunctional government institutions that competing elites, military and civilian alike, have not addressed. Political party development throughout Pakistan is also anemic. Pakistani political parties, like many throughout South Asia, are still largely fiefdoms of the families that run them, e.g., the Bhutto, Chaudhry and Sharif clans. Sadly, sixty-one years after independence, Pakistan has failed to resolve its most troubling internal divisions and contradictions.

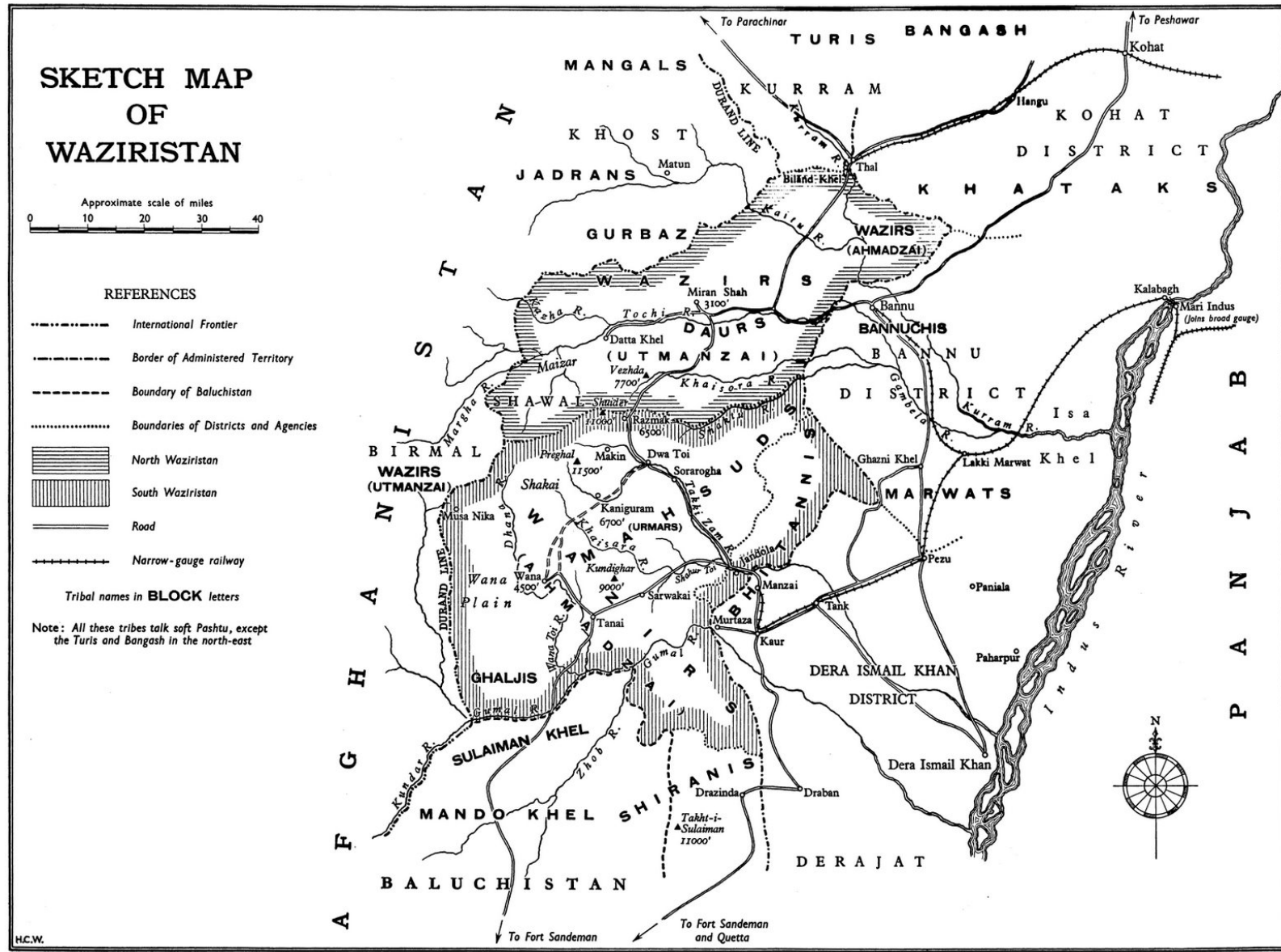
Successful resolution of the conflict emanating from the FATA is a central goal of the Pakistani government and its western allies, but the challenge is extremely complex. Developing policies to stabilize the FATA requires understanding the root causes of the seemingly relentless pattern of conflict in recent years. This analysis of the British and Pakistani FATA administration system illustrates the dangers wrought by unintended consequences of outside interventions. Clearly, the origins of the current conflict in the FATA extend far beyond the events of the 1980s. By attempting to manipulate local power structures to serve short-term security goals, the FATA's governing system caused the erosion of the local customs it purported to preserve, creating the conditions that feed the region's instability today.



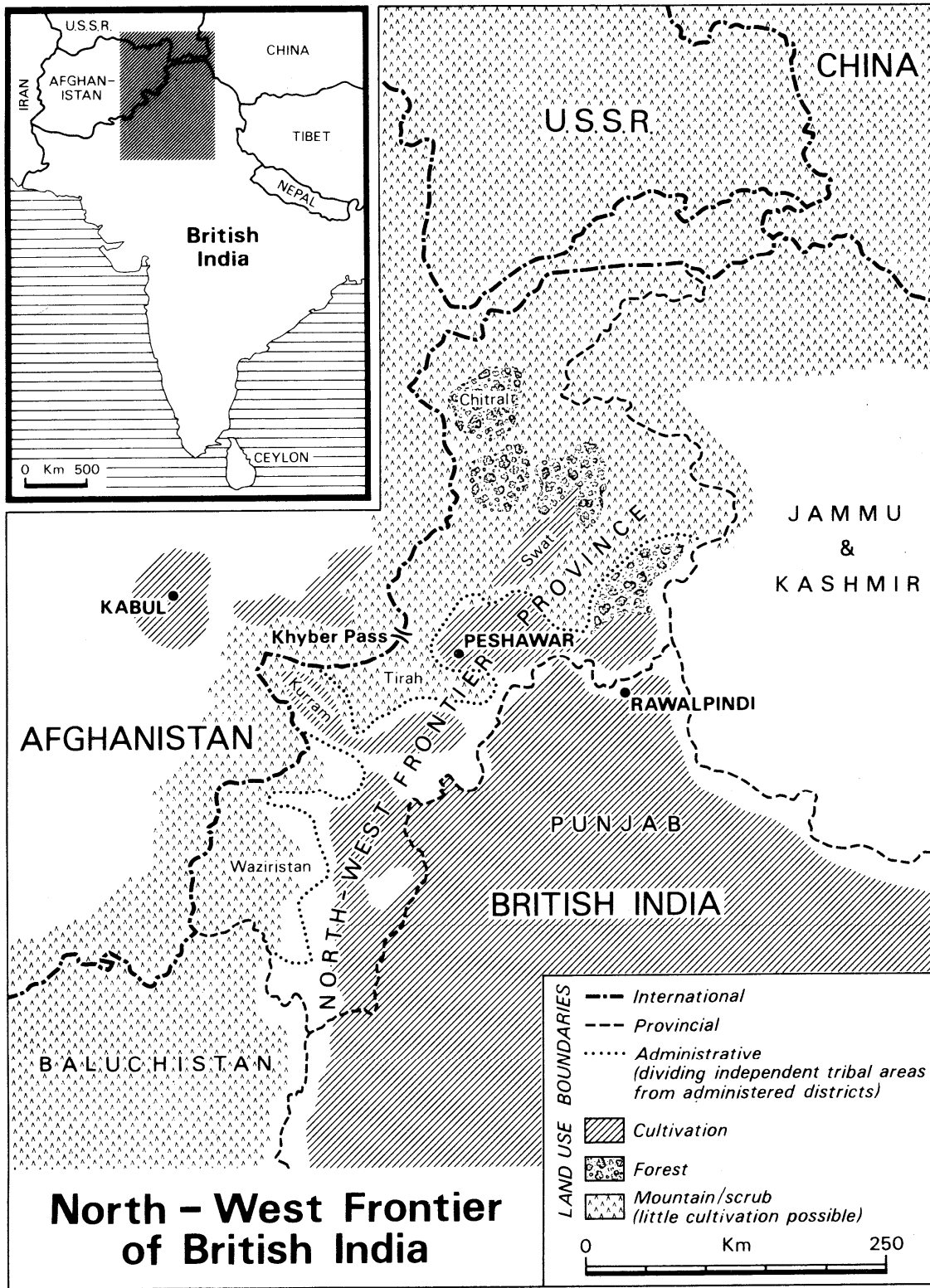
Appendix 2: Tribal Locations of the Pathans



Appendix 3: Sketch Map of Waziristan



Appendix 4: North-West Frontier, Terrain Map



Appendix 5: Photographs



Above: The Wana Fort, South Waziristan (Source: Khyber.org)



Above: Pakistani border outpost, South Waziristan (Source: The New York Times)

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