

Mashar versus Kashar in Pakistan's FATA

Intra-tribal Conflict and the Obstacles to Reform

ABSTRACT

In 2016, Pakistan introduced a five-year plan to repeal the Frontier Crimes Regulation of the Federally Administered Tribal Areas and integrate the region into the Khyber Pakhtunkhwa Province. The political conflict between *mashar* (elders), who are advantaged by the law, and *kashar* (youth), who are disadvantaged by it, has been an obstacle to reform. This article also demonstrates that this conflict has been an endemic feature of the law since its establishment by British authorities in 1901.

KEYWORDS: Pakistan, British colonialism, FATA, intra-ethnic conflict, political reform

INTRODUCTION

After emerging from over a decade of living under a barrage of US drone strikes, Pakistani military operations, and Taliban attacks, Pakistan's Pashtun community has begun to make its political voice heard, in a movement popularly dubbed the Pashtun Spring. In early 2018, thousands of Pashtun tribesmen gathered in the streets of Islamabad to protest the stereotyping and targeting of their ethnic kin by the government. These protests, branded the Pashtun Long March, came in the wake of the January 2018 killing of a 27-year-old Pashtun shopkeeper, Naqeebullah Mehsud, by police in Karachi, who claimed he was a Taliban militant. The *New York Times* reported that that the incident "appears to have been a staged gun battle."¹ Mehsud's death reverberated among a population already racked with

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1. Mehreen Zahra-Malik, "In Pakistan, Long-Suffering Pashtuns Find Their Voice," *New York Times*, February 6, 2018.

Asian Survey, Vol. 58, Number 6, pp. 1136–1159. ISSN 0004-4687, electronic ISSN 1533-838X. © 2018 by The Regents of the University of California. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/AS.2018.58.6.1136>.

frustration at their treatment by the government, especially Pashtun from Mehsud's home in the Federally Administered Tribal Areas (FATA).

For FATA, the colonial-era Frontier Crimes Regulation (FCR) that governed the region until May 2018 was a major obstacle to the pursuit of civil and political rights. The law severely curbed the rights of FATA inhabitants, permitting the government to enact collective punishment against an entire family or clan for the actions of an individual, displace villages or seize property without compensation or explanation, and arrest individuals for up to three years without charging them with a crime. Activists also argued that the government abused its wide-ranging powers under the law as part of recent counterterrorism operations. Nasirullah Khan Wazir, of South Waziristan Agency (District) and a member of the Pakistan Tehreek-e-Insaf (Movement for Justice) party, stated, "FCR is a black law dating back to the colonial era. . . . It is inhuman and tribesmen have consistently been rejecting it. Tribesmen no longer want to live under its tyranny."²

As FATA rebuilt after years of conflict, the government's plan for gradual repeal of the FCR and integration into neighboring Khyber Pakhtunkhwa (KP) Province was opposed by FATA residents, who expressed two broadly competing positions. One side advocated maintaining the political status quo and adhering to traditional tribal structures. The other side pushed against the government's gradual approach, urging an expedited integration into KP. To understand the opposition to the government's plan, it is necessary to analyze how the law's framework, emblematic of the British policy of indirect rule, engendered and institutionalized long-term intra-tribal political competition and conflict.

During the nineteenth and early twentieth centuries, Britain pursued policies of indirect rule in a number of its African and Asian colonies, ruling through local elites based in ethnic or communal identities. Indirect rule was not one single system but encompassed a variety of approaches and legal frameworks.³ For dealing with geographically isolated and difficult-to-administer border areas, the British relied on a hybrid system of administration,

2. Zulfiqar Ali, "Protest Rally: Tribesmen Call for FATA's Merger," *Express Tribune* (Karachi, Pakistan), January 5, 2017.

3. Lauren Benton, "Colonial Law and Cultural Differences: Jurisdictional Politics and the Formation of the Colonial State," *Comparative Studies in Society and History* 41:3 (1999): 563–88; Adnan Naseemullah and Paul Staniland, "Indirect Rule and Varieties of Governance," *Governance* 29:1 (2016): 13–30.

co-opting local elites by institutionalizing their position according to local tradition and sharing political, administrative, and judicial authority with them to maintain law and order.⁴ The British colonial governments, ever conscious of their finances, found this strategy more financially and administratively efficient in governing vast territories with minimal deployment of British administrators. It also ensured that elites' interests would be in step with the broader colonial project.

On the other hand, this approach often prompted distrust and resentment by non-elites of the elites, who were now associated with the external power structures of colonial rule, to which the rest of the population did not have access and from which they could not benefit. The ethnic elites were seen as acting in their own self-interest. This contributed to the increased awareness of relative deprivation *within* ethnic groups.⁵ And this awareness led to various political movements and even intra-ethnic violence attempting to undermine the political status quo that disadvantaged non-elites.

In the North-West Frontier of India, the British colonial government implemented the hybrid system of the FCR by recognizing the authority of Pashtun tribal elders, known as *mashar* or *maliks*,⁶ and granting them allowances and other financial incentives. This law, however, had little consideration for the rights of broader Pashtun society, known as *kashar* (youth) and consisting of the youth, the poor, and junior or powerless lineages within the tribe. The maliks, thus, have been advantaged under the FCR, cementing their interest in perpetuating the political status quo, which grants them status and privileges, especially during periods of broader political change. The *kashar* have consistently challenged the political status quo, which disadvantages them and denies them political and civil rights. They have advocated a repeal of the FCR and an opening up of the region to the developments and rights granted to the broader nation. The current debate within FATA on the process of repealing the FCR is a reflection of the

4. Benjamin D. Hopkins, "The Frontier Crimes Regulation and Frontier Governmentality," *Journal of Asian Studies* 74:2 (2015): 369–89; Adnan Naseemullah, "Shades of Sovereignty: Explaining Order and Disorder in Pakistan's Northwest," *Studies in Comparative International Development* 49 (2014): 501–22.

5. Ted Robert Gurr, *Why Men Rebel* (Princeton, NJ: Princeton University Press, 1970); Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).

6. Both terms mean elder, but malik has come to be associated with government-recognized elders while *mashar* is a broader term referring to all elders of the tribe, who are not necessarily recognized as maliks.

political competition between these two segments of Pashtun society, created by the law itself. Although the period under study encompasses an incredibly turbulent century of political change, both the British colonial and Pakistani governments maintained the FCR and its underlying provisions, leading to a consistent pattern of intra-tribal conflict and demonstrating the durability of institutions and their impact on society.

THE 1901 FRONTIER CRIMES REGULATION

The British colonial government implemented the FCR as a means to deal with the rebellious Pashtun tribes in India's mountainous northwestern border region. It was a more comprehensive law that superseded earlier versions.⁷ During the 1880s and 1890s, the political leadership in Calcutta increasingly recognized that costly military deployments to the region were doing little to maintain law and order.⁸ The presence of the military was seen as a provocation by local tribesmen, who reacted with violence, as in the 1897 Frontier Revolt.⁹ Under the FCR, the policy of relying on the military to assert political control was changed "in favour of a policy of employing the tribes themselves as far as possible to protect our military interests."¹⁰ Lord Curzon, the British viceroy, wrote on August 27, 1900, that the new policy of indirect rule was meant to "promote a spirit of local harmony and co-operation by the enlistment, in the service of the British Government, but in the defence of their own country, of the wild but not intractable inhabitants of these regions."¹¹

In 1902, Lord Curzon traveled north to Peshawar, the capital of the newly established North-West Frontier Province (NWFP),¹² to give an account of

7. Christian Tripodi, *Edge of Empire: The British Political Officer and Tribal Administration on the North-West Frontier, 1877–1947* (London: Routledge, 2011).

8. "Proposed Formation of a North-West Frontier Agency: Minute by His Excellency the Viceroy on the Administration of the North-West Frontier," File No. 37, Foreign Department, Government of India, September 1900, National Archives of India, PR_00000400977.

9. "Disturbances on the North-Western Frontier," File No. 1897_1_233, Foreign Department, Government of India, November 1897, National Archives of India, PR_000003009653; "Field Operations: Reports of Progress of Events with the Waziristan Field Force," File No. 1895_447_644, Military Department, Government of India, 1895, National Archives of India, PR_000003009652.

10. "Proposed Formation," 17.

11. *Ibid.*, 25.

12. The North-West Frontier Province was renamed Khyber Pakhtunkhwa in 2010 to more strongly connect the province with Pashtun identity and culture.

the frontier policy at a *darbar* (tribal court) of approximately 3,000 tribal leaders. In his address, he assured them that the British would recognize the existing authority of the tribal elders and respect their independence. The elders would receive “tribal allowances for keeping open the roads and passes, such as the Khyber and Kohat Passes and the Chitral Road, for the maintenance of peace and tranquility, and for the punishment of crime.”¹³ However, the elders would operate under the threat of military force. Curzon warned, “We are ready enough to leave you in possession. But if you dart out from behind the shelter of your door to harass and pillage and slay, then you must not be surprised if we return quickly and batter the door in.”¹⁴

The FCR operated through the *jirga* (council of elders), composed of a tribe’s officially recognized maliks. The traditional *jirga* can consist of 1,000–2,000 men, with its large number of participants somewhat of a guarantee against corruption. Consensus is a necessary condition for decisions, given the potential for disagreements devolving to violence. The function of the *jirga* is necessarily political, making decisions of great importance for the tribe in addition to dealing with matters of law and order. This role was of particular importance given the likelihood of blood feuds stemming from the Pashtun code of honor, *pashtunwali* (the way of the Pashtun), which, alongside hospitality, emphasizes revenge. And despite great respect for the *jirga* in Pashtun society, its decisions can be subject to a referendum from the rest of the tribe.

The traditional *jirga*, in which all the elders of the tribe are included, is distinct from the *jirga* system operating under the FCR. The *jirga* under the FCR is more of a jury system allowing government-recognized maliks to make decisions on matters of law and order, drawing on *pashtunwali*, *riwaj* (tribal custom), and *sharia* (Islamic law) in their decisions. The Frontier Regulations Enquiry Committee outlined the differences of the FCR’s *jirga* in its 1931 report:

[The *jirga*] is nominated by us. . . . It is composed of a small number of men, rarely more than fifteen. . . . They are responsible to no one except to their own consciences and to the officer who receives their verdict. . . . It is sometimes not difficult to bribe a small number of men, and there are no strong or effective

13. Lord Curzon in *India: Being a Selection From His Speeches as Viceroy & Governor-General of India, 1898–1905* (London: Macmillan and Co., 1906): 423.

14. *Ibid.*, 422.

checks upon faction spirit beyond those supplied by the individual knowledge of the officer nominating the jirga and the objections of the parties to the case.¹⁵

The selection of maliks was based partly on loyalty to the government. Ghulam Qadir Khan Daur, from North Waziristan Agency and former political agent (PA) of Orakzai Agency, wrote in 2014 of the British-era jirga, “Where the leading elder was not supportive of the administration he was ignored and someone loyal to the government in the Khel [clan] was made the malik.”¹⁶ The maliks would also receive an allowance, known as a *lungi*, from the government, which was viewed not just as a financial benefit but also as a sign of honor and status.¹⁷

Under the FCR, the local British representative was the PA, reporting directly to the governor general. This position of PA was originally conceived as a chief administrator for each of the five tribal agencies (there are now seven) created along the Durand Line marking the British India/Afghanistan border in the late 1890s. His orders were to represent British interests among the tribes under his charge, and his authority was backed by a militia of local tribesmen. Under the FCR, the PA had almost unlimited legal authority in his agency; he was chief of police, judge, and executioner. The PA was also responsible for granting and revoking the status of malik. Given the extent of his formal authority, the tribes would often refer to the PA as *badshah* (king).¹⁸

As a result of the practical limitations of government authority in the frontier and the great internal autonomy enjoyed by the tribes, the PA often was forced to work through the tribe’s structures to achieve substantive results, largely relying on negotiation and reputation to gain cooperation from the elders. His strategy would alternate between “the carrot and the stick.”¹⁹ The PA had formal legal authority for the use of naked force, either by the local militia or by regular military forces, to assert his authority. The

15. *Report of the Frontier Regulations Enquiry Committee* (Simla: Government of India Press, 1931): 24–25.

16. Ghulam Qadir Khan Daur, *Cheega: The Call* (Ballingslov, Sweden: Wisehouse, 2014): 46.

17. *Lungi* is the Urdu word for a thick colored turban, which is the headdress that maliks wear and has come to symbolize the position.

18. Akbar Ahmed, *The Thistle and the Drone: How America’s War on Terror Became a Global War on Tribal Islam* (Washington, DC: Brookings Institution Press): 60.

19. Akbar S. Ahmed, *Pukhtun Economy and Society* (London: Routledge, 1980): 310–11.

use of force, however, was a tacit admission of the failure of his political acumen among the tribes under his charge and could harm his reputation, causing future security challenges. The threat of force was often more effective in gaining the support of the tribes than its actual use. The Mehsud tribe in South Waziristan Agency have a proverb, “The political agent should brandish his sword but should not use it.”²⁰ He also would rely on a patronage system through selection of the recognized maliks and the allocation of government allowances to pressure the maliks to cooperate in matters of law and order.

The undemocratic FCR’s sole purpose, in the eyes of the British administration, was the maintenance of law and order. This stemmed from fears of Russian encroachment in this strategic border area. In a 1904 speech in Guildhall, in London, Lord Curzon argued that with

a land frontier 5700 miles in length, peopled by hundreds of different tribes . . . a single outbreak at a single point may set entire sections of that frontier ablaze. Then, beyond it . . . are the muffled figures of great European Powers, advancing nearer and nearer, and sometimes finding in these conditions temptations to action that is not in strict accordance with the interests which we are bound to defend.²¹

To promote British interests in the North-Western Frontier, Lord Curzon saw this approach as more expedient and effective than the high costs of direct control, given the geographical and cultural context of the region. Olaf Caroe, the British governor of NWFP, echoed this rationale in defending the implementation of the FCR, writing that the “law of one civilization cannot be applied to a society with utterly different standards without the most dire results.”²² British authorities found the FCR to be successful in maintaining law and order and avoiding delays in legal proceedings.

At the creation of Pakistan in 1947, Muhammad Ali Jinnah, the leader and founder of an independent Pakistan, withdrew the military garrisons from the Durand Line, seeing the British policy of “forward defense” as a needless provocation, and maintained the FCR. In particular, the new state of Pakistan

20. Omar Khan Afridi, *Mahsud Monograph*, Tribal Affairs Research Cell, Home and Tribal Affairs Department, Government of NWFP, 1980, 49.

21. *Lord Curzon in India*, 37.

22. Olaf Caroe, *The Pathans: 550 B.C. – A.D. 1957* (Karachi, Pakistan: Oxford University Press, 1958): 355.

was concerned with relations with Afghanistan, which challenged Pakistani membership in the UN given its claim to the Pashtun-populated FATA and NWFP. Afghanistan sought to take advantage of Pakistan's post-independence instability and sow discord in the region, allying with India in the process. Though the popularity of a "Pashtunistan" is debatable, it was enough of a threat to convince the Pakistani leadership, ever conscious of protecting their newly established borders, to maintain the status quo in FATA and keep the maliks loyal to the new government. They feared disrupting the precarious balance in the region and allowing Pashtun nationalism to push the tribes further into the arms of their ethnic kin across the international border.²³

The FCR under Pakistan maintained the position of the PA, with its extensive powers, and the authority of the maliks. The law further denied FATA residents the basic constitutional rights possessed by other Pakistanis—appeal, *wakeel* (lawyer), and *daleel* (argument)—the right to appeal a conviction, the right to legal representation, and the right to present evidence to argue one's case. And legal punishments were decided by unelected jirgas, without trial by jury and with no recourse for appeal. Pakistan added to the FCR that residents could be arrested or ordered to be handed over to the government by tribal elders without a crime being specified; failure to comply could make the elder subject to punishment.

The 1973 Constitution legally recognized 37,000 maliks, 10% of FATA's population. Anthropologist Akbar Ahmed, who served as the PA of Orakzai and South Waziristan Agencies, observed during fieldwork in Mohmand Agency in the 1970s the privileges provided to the maliks and the political influence they carried:

The official Maliks in time have grown in wealth with the official favours they receive and a cleavage within society is becoming perceptible. The Malik receives special financial allowances in addition to those meant for his subsection; only he is allowed to vote for candidates to the National Assembly; he receives quotas for food rations at special prices (sugar, tea, flour); he is given the choice of appointing tribal levies (*kassadars*) from his section (he usually appoints his sons); he gets all building contracts in his Agency (which he often sub-contracts); his signature, along with that of three other Maliks, attests as to whether a person is a genuine Mohmand and eligible for a domicile

23. Adeel Khan, "Pukhtun Ethnic Nationalism: From Separatism to Integrationism," *Asian Ethnicity* 4:1 (2010): 67–83.

certificate which is essential for scholarships and service quotas, etc.; and, of current relevance, groups of Maliks form lobbies to decide who may be given visas for employment abroad, mostly in the Arab states.²⁴

These hereditary maliks were also the only individuals permitted to vote in elections. Universal suffrage was only granted to FATA residents in 1996, and political parties were not allowed to campaign in the region until 2013. Independent candidates, mostly maliks, have dominated elections. In the 2013 general election, for example, independent candidates in FATA constituencies received 57.4% of the vote, as opposed to 17.1% for all constituencies.²⁵ However, maliks' impact on policy was limited given the government's control over their selection. Afrasiab Khattak, leader of the Pashtun-nationalist Awami National Party, recognized in 2016, "The all-powerful political administration could usually get the maliks' approval for virtually anything. . . . The PA could simply withdraw their privileges and bring the maliks to their knees in no time if they dared go against his wishes during elections."²⁶ Their influence was limited even when elected to office. A FATA representative in parliament reiterated, "We just sit in the national assembly; we cannot often express our opinion about FATA, let alone legislate."²⁷

Since the early twentieth century, local voices have recognized the negative aspects of the law and opposed it in part or in its entirety. In 1917, for example, as an expansion of the FCR into the Punjab Province was being debated, a local Punjabi newspaper referred to the law as "a retrograde measure which [was] neither in consonance with progressive notions of jurisprudence, nor consistent with the conditions and sentiments of the people."²⁸ Throughout this debate, local political leaders in Punjab condemned the law as an unsuitable "regression" in criminal law and a "most unjust regulation."²⁹ Given the lack of rights afforded to residents under the FCR's jurisdiction, Khadija Begam Ferozuddin of NWFP's Bannu District stated in 1922, "The

24. Ahmed, *Pukhtun Economy and Society*, 143.

25. See <<https://hamariweb.com/pakistan-election/general/2013/>>.

26. *Pakistan's Tribal Areas: Appeasing the Militants*, International Crisis Group Asia Report No. 125, December 2016, 10.

27. *Ibid.*, 11.

28. "New Punjab Crimes Bill," *The Tribune* (Lahore, British India), May 27, 1917.

29. "Great Britain and Punjab Compared," *The Tribune* (Lahore, British India), October 29, 1913; "Jirgah Trial," *The Tribune* (Lahore, British India), April 23, 1913; "Punjab Legislative Council: The Frontier Crimes Regulation: Mr. Shah Nawaz's Speech," *The Tribune* (Lahore, British India), August 6, 1921.

TABLE 1. Development Indicators for the Federally Administered Tribal Areas (FATA), Khyber Pakhtunkhwa (KP), and Pakistan

<i>Indicator</i>	<i>FATA</i>	<i>KP</i>	<i>Pakistan</i>
Literacy (percent, 1998)			
Both sexes	17.42	35.41	43.92
Male	29.51	51.39	54.81
Female	3.00	18.82	32.02
Population per doctor (2003)	7,670	4,916	1,226
Population per bed in health institutions (2003)	2,179	1,594	1,341
Roads (per square kilometer, 2003)	0.17	0.13	0.26

SOURCE: Imtiaz Sahibzada, *Federally Administered Tribal Areas (Strengthening and Rationalization of Administration)*, Draft Report, Government of Pakistan, April 2006, 63–65.

Frontier Crimes Regulation and the Jirga system are the two crying evils in the Judicial administration in vogue here.”³⁰ In the same year, the Bar Association of NWFP’s Kohat District argued for the repeal of the FCR and the extension of the judicial system used in the Punjab.³¹ In 1924, the Kohat Working Committee advocated the repeal of section 23 (the collective-responsibility clause).³² In 1931, the Bannu Bar Association, in its plea for repeal of the FCR, argued that the conditions of the law itself were responsible for an increase in crime.³³

Contemporary Pakistani human and civil rights organizations have similarly critiqued the undemocratic provisions of the FCR and the negative impact it has had on Pashtun society in FATA in regard to lack of development.³⁴ Table 1 shows the development indicators for FATA and the disparities with neighboring KP Province and the broader Pakistani state.

In the 1957 ruling in *Toti Khan v. District Magistrate Sibi and Ziarat*, the High Court of West Pakistan found that the use of unelected jirgas for

30. “North-West Frontier Province Problem,” *The Tribune* (Lahore, British India), May 20, 1922.

31. “The Frontier Committee: Amalgamation Favoured by Kohat Bar,” *The Tribune* (Lahore, British India), May 23, 1922.

32. “Refugees Viewpoint: Rejected Terms,” *Times of India* (Bombay, British India), December 24, 1924.

33. “Plea for Repeal of the Frontier Regulations,” *Times of India* (Bombay, British India), July 9, 1931.

34. “FCR: A Bad Law Nobody Can Defend,” Human Rights Commission of Pakistan, Peshawar Chapter, July 2005; International Crisis Group, *Pakistan’s Tribal Areas*, 7–9.

criminal cases violated the 1956 Constitution's article on equal protection under the law.³⁵ Previously, the 1954 ruling of the court in *Khan Abdul Akbar Khan v. Deputy Commissioner Peshawar* opposed a jirga's ruling under the FCR with a similar rationale.³⁶ In explanation of the court's 1954 ruling, Justice Kayani stated that the FCR was effectively "racial discrimination and is as open to criticism as discrimination between a Negro and a white man."³⁷ In 1979, the Shariat Bench of the Balochistan High Court found the FCR and its discriminatory practices to be contrary to the teachings of Islam, arguing that

Islam invalidates discriminations on the basis of caste, creed, colour, social status, place of birth or of residence. . . . In particular, 'Justice' as far as it concerns the decision of cases, both of civil and criminal nature, has to be administered on the basis of equality with all religiousness. . . . Accordingly, all discriminatory laws are against the injunctions of Islam."³⁸

In 2011, President Asif Ali Zardari amended the FCR through presidential order, which placed limits on the collective-action clause and the powers of the PA. However, these reforms led to little substantive change on the ground and left the underlying framework of the law in place.³⁹

THE FCR AND INTRA-TRIBAL CONFLICT

The FCR sharpened internal divisions within tribal structures by institutionalizing the role and the privilege of the malik and disenfranchising the kashar, exacerbating social, economic, and political inequality. This engendered distinct and often competing political interests within the tribe. Tensions between these two social groups emerged in the years immediately following the implementation of the FCR, especially surrounding the conditions of the

35. *Toti Khan v. District Magistrate Sibi and Ziarat* (PLD 1957 W.P. Quetta 1).

36. *Khan Abdul Akbar Khan v. Deputy Commissioner Peshawar* (PLD 1954 Peshawar 100).

37. Shaheen Sardar Ali and Javaid Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives* (Surrey: Curzon, 2001): 53.

38. Tilmann J. Roder and Naveed A. Shinwari, "Pakistan: *Jirgas* Dispensing Justice without State Control," in Matthias Kottler, Tilmann J. Roder, Gunnar Folke Schuppert, and Rudiger Wolfrum (eds.), *Non-state Justice Institutions and the Law: Decision-Making at the Interface of Tradition, Religion and the State* (Basingstoke, UK: Palgrave Macmillan, 2015): 44.

39. Ibrahim Shinwari, "FCR Reforms: Nothing on the Ground," *Dawn* (Karachi, Pakistan), January 6, 2015.

selection of the maliks and the endowing of privileges among men apt to abuse them.

In 1906, British political officers operating in South Waziristan Agency reported that it was hard to identify the “really representative men” of “influence” to appoint as maliks. They further saw that the distribution of allowances and privileges created “soreness” among the “men of no importance [who] were left out.”⁴⁰ In 1909, the district magistrate of Kohat also recognized the difficulty of attracting representative men of influence to serve as malik under the FCR. He wrote, “The difficulty of obtaining men suited by their integrity and intelligence to perform the work of these informal juries has been increasingly felt in the past year. The work is unpopular and distasteful to the best men while persons of a lower stamp of character are too apt to regard employment in jirgas as a valuable asset to their income.”⁴¹ The Frontier Regulations Enquiry Committee recognized in 1931 that the jirga “does not derive its weight from any inherent importance possessed by the individuals composing it, but from the fact that they derive an authority from the administrative head of the district.”⁴²

Those disadvantaged by the legal system often leveled accusations of incompetence and corruption against the maliks, now associated more with government interests. Captain R. H. Jay, the joint deputy commissioner of Mardan District in NWFP, stated, “One of the chief reasons for the unpopularity of the Frontier Crimes Regulation is that unsuitable persons are made members of the jirga.”⁴³ At a 1921 Punjab Legislative Council meeting, one citizen challenged the qualifications of the maliks serving on jirgas under the FCR, finding them “generally ignorant of the law” and stating that “some of them are quite illiterate and cannot follow proceedings.”⁴⁴ In 1922, a representative of the Hindu community, though recognizing some merits of the law, similarly opposed it because of the low caliber of men that held status under it, citing instances of corruption between the accused and the appointed maliks. He stated that the jirga system “was suited to the peculiar conditions of this

40. “Mahsud Affairs,” Nos. 167–218, Government of India Foreign Department, September 1906, National Archives of India, Repository II, PR_000003009663, 7.

41. *Report on the Administration of Criminal Justice in the North-West Frontier Province for 1909* (Peshawar: North-West Frontier Province Government Press, 1909): 8.

42. *Report of the Frontier Regulations Enquiry Committee*, 26.

43. *Report of the Frontier Regulations Enquiry Committee*, 28.

44. “Punjab Legislative Council: The Frontier Crimes Regulation: Mr. Shah Nawaz’s Speech,” *The Tribune* (Lahore, British India), August 6, 1921.

province. But those who sit on it were dishonest and were drawn from hangers-on of officials.”⁴⁵

In the early 1920s, the president of the Frontier Sabha, members of the Abbottabad Bar, and the Peshawar Bar Association also accused jirga members under the FCR of corruption.⁴⁶ The Frontier Provincial Muslim League shared this sentiment in 1940.⁴⁷ Given these accusations, former PA Ghulam Qadir Khan Daur in 2014 stated that the maliks “were considered thieves and thugs by their kinsmen and were never trusted as leaders.”⁴⁸ British political reports from the frontier outlined rebellious behavior by the “younger tribesmen” and reported conflict between the kashar and maliks, even citing incidents in which the maliks were attacked.⁴⁹

Once granted the political status of malik, however, men were motivated to maintain the political status quo of the *maliki* system, especially during periods of broader political change. They resisted any changes to the FCR system that would alter or take away their allowance and their *izzat* (honor).⁵⁰ During debates in the early 1930s about upgrading the North-West Frontier to the status of a full province, for example, the North-West Frontier Province Subjects Committee noted the entrenched political interests of the elite:

In speaking of the general desire for a full measure of provincial autonomy . . . the Khans⁵¹ of the province, some of whom have wielded great influence in the position of tribal leaders and who include many of the principal landholders, have not always been favorably disposed to political change. The representative of the Khans' Association, however, giving evidence before us emphatically supported the main political demand described above. He coupled that support with a strong plea for special representation for the Khans in

45. “Frontier Committee,” *The Leader* (Allahabad, British India), May 20, 1922.

46. “Frontier Enquiry Committee,” *The Tribune* (Lahore, British India), May 27, 1922; *Report of the Frontier Regulations Enquiry Committee*, 27.

47. “Police Post Set on Fire: Tribal Outrage on Frontier,” *Times of India* (Bombay, British India), February 13, 1940.

48. Daur, *Cheega*, 46.

49. “Political Report,” File no. 14/30-K.-W, Home Department, Government of India, 1932, National Archives of India, Repository II, PR_000003037453, 220; “Report Addressed to the Foreign and Political Department on the N.W.F.Pr and Tribal Situation from May to Aug 1930,” Home Department, Government of India, 1930, National Archives of India, Repository II, PR_000003032589, 379.

50. “Mahsud Affairs,” 77.

51. Khan is a title for Pashtun elites within NWFP, often bestowed on large landowners. These elites would also be selected to serve as maliks.

the new legislative council, or even for the creation of a second chamber. We think it may be said that the Khans are prepared to give their full support to the new constitutional proposals, provided their own legitimate interests and special position receive adequate recognition.⁵²

During the Partition of 1947, maliks again advocated maintaining the political status quo in Pakistan, complete with their government allowances. This is evidenced in a speech Jinnah gave to a tribal jirga at Government House in Peshawar on April 17, 1948, just months before his death from tuberculosis. He assured the gathered maliks:

You expressed your desire that the benefit, such as your allowances and khassadari [militia stipend], that you have had in the past and are receiving, should continue. Neither my government nor I have any desire to modify the existing arrangement except in consultation with you so long as you remain loyal and faithful to Pakistan.⁵³

Following the creation of Pakistan, the kashar, referred to as “political have nots,”⁵⁴ continued to oppose the maliki system and advocate abolishment of the FCR. One kashar of the Halimzai clan in Mohmand Agency stated in the late 1970s, “Our Maliks . . . get a large amount from the Government. They do not give it to the poor, if they helped me, I will not leave my village. They Maliks are of the British reign. Now is Pakistan so these should be elected on votes. We poor have no right of vote. We have no ration share.”⁵⁵ Tehreek-e-Qabail (Movement of the Tribesmen), an organization opposed to the maliki system and demanding adult franchise, was formed in the 1970s from among the kashar. This organization, however, had little impact and was disbanded.⁵⁶

Kashar were also pushing for an opening up of FATA, to connect them to broader developments in the state and improve economic mobility. This

52. *Report of the North-West Frontier Province Subjects Committee* (Calcutta: Government of India Central Publication Branch, 1931): 2–3.

53. “The Frontier Policy of Pakistan: M.A. Jinnah’s Address to the Tribal Jirga at Government House, Peshawar, 17 April 1948,” in *Quaid-i-Azam Mohammad Ali Jinnah: Speeches and Statements as Governor General of Pakistan, 1947–48* (Islamabad: Ministry of Information and Broadcasting Directorate of Films and Publications, 1989): 239.

54. Ahmed, *Pukhtun Economy and Society*, 144.

55. *Ibid.*

56. *Ibid.*, 312; Akbar S. Ahmed, *Social and Economic Changes in the Tribal Areas* (Karachi: Oxford University Press, 1977): 49.

pitted them against the maliks, for whom such changes threatened their status and financial benefits. As an example of this, these two groups took opposing sides on government road projects, with kashar supporting the construction of roads and the economic opportunities they would bring, and maliks opposing them.⁵⁷ However, under the FCR, the region was kept in stagnation for decades by restricted access and development. Given the lack of opportunity among the disenfranchised class, many sought labor opportunities outside their agency, some even leaving Pakistan to pursue work in the Gulf States.⁵⁸ This exodus increased their interactions beyond FATA and exposed them to broader Pakistani society. It also sharpened their awareness of the deprivation of FATA in comparison to other Pakistani provinces.

The mullahs, largely emerging from the kashar, became ascendant in tribal politics beginning in 1979 as the American CIA, working with Pakistan's powerful Inter-Services Intelligence (ISI), provided support for the *madrasah* (religious school) network in FATA to wage jihad against the invading Soviet forces in Afghanistan.⁵⁹ Mullahs in FATA were outside the power structures and carried no political authority, especially in the jirga, where they had no role beyond leading prayers. They were often impoverished and financially dependent on the maliks. While much research has focused on external factors contributing to the rise of militancy in the region, mullahs have long challenged the maliki system, using religious rhetoric to bypass the authority of the malik.⁶⁰ Now, with resources independent of the increasingly marginalized maliks, the mullahs used this opportunity to challenge their political authority within FATA.

The post-9/11 violence similarly emerged along the fault lines of the social division between malik and kashar. After the American invasion of Afghanistan in 2001, Pakistan dispatched its regular military forces to FATA to catch militants fleeing across the Durand Line. This was the first official military presence in the region since Jinnah removed the garrisons in 1947. Pakistani military operations, along with the increasing number of US drone strikes after 2004, were a catalyst for violence committed by various Pakistani

57. Ahmed, *Pukhtun Economy and Society*, 340.

58. *Ibid.*, 345–55.

59. Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001* (London: Penguin Books, 2004).

60. Akbar S. Ahmed, *Resistance and Control in Pakistan*, rev. ed. (London: Routledge, 2004); Naseemullah, "Shades of Sovereignty."

Taliban groups, largely formed of local mullahs and other members of the kashar. The Taliban groups, especially the Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan, TTP) led by kashar of the Mehsud tribe in South Waziristan Agency, deliberately drew on religion to target and replace the traditional pillars of authority that had historically disadvantaged them, such as the elders, the maliki system based in the jirga, the system of *nikkat* (ancestor) defining distribution of resources and privileges among tribes, and pashtunwali. Political and strategic analyst Shuja Nawaz refers to the kashar leadership of the TTP as “tribal entrepreneurs” challenging the tribal hierarchy.⁶¹ They saw a sharia-based Islamic government as a replacement for the traditional tribal structures on which the FCR rested. The late political scientist Mariam Abou Zahab argues that this conflict dates back to the social movement of kashars challenging the tribal hierarchy in the 1970s and 1980s, taking advantage of the broader social and political turmoil in the region.⁶² While this period saw the traditional maliki system undermined, the dissatisfaction among the kashar with the maliks’ status under the FCR and conflict between the two predate this period, having been present since the law’s earliest years, as demonstrated above.

Many of the Pakistani Taliban’s targets were the recognized elders; by 2012, 800 had been killed in FATA in increasingly brazen attacks. This was described as a “virtual decapitation of the tribe itself.”⁶³ Faced with the choice of relinquishing their authority to the TTP or being killed, many fled FATA instead. In 2008, for example, the TTP beheaded four elders in Bajaur Agency who publicly opposed the Taliban in a jirga, and targeted a jirga in Orakzai Agency with a suicide bomber, killing over 100 people, after the elders decided to form an anti-Taliban *lashkar* (tribal militia).⁶⁴ The military had been “collaborating with the maliks to form lashkars to counter the movement waged by the rural poor under the guise of Islamism.”⁶⁵ The PAs,

61. Shuja Nawaz, *FATA—A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan*, Center for Strategic and International Studies, Washington, DC, January 2009, 22.

62. Mariam Abou Zahab, “Kashars against Mashars: Jihad and Social Change in the FATA,” in Benjamin D. Hopkins and Magnus Marsden (eds.), *Beyond Swat: History, Society and Economy along the Afghanistan-Pakistan Frontier* (Oxford: Oxford University Press, 2012): 51–62.

63. Khalid Aziz, “Conflict & Fata Institutions,” *Dawn* (Karachi, Pakistan), March 16, 2012; Ahmed, *The Thistle and the Drone*, 77.

64. Imtiaz Gul, *The Most Dangerous Place: Pakistan’s Lawless Frontier* (New York: Viking, 2009): 108.

65. Sartaj Khan, “Changing Pashtun Society,” *The News* (Karachi, Pakistan), January 14, 2010.

whose power was already diminished by the presence of the military, were similarly in danger, with many forced to live and work outside their agencies. As the tempo of violence increased in FATA, local residents were forced to flee their homes, living for years in exile in Pakistan's major cities. In this chaos, the foundational structures of the FCR were devastated.

THE FATA REFORMS COMMITTEE AND THE TRIBAL AREAS RIWAJ ACT

In recent years, the Pakistani government has worked to resettle to their homeland FATA residents who had been displaced by the conflict. It reports that since 2009 over 1.4 million people have returned to their homes.⁶⁶ They have faced many challenges to rebuild their lives—reconstructing their destroyed homes, dealing with IEDs littered across the region, and other remnants of a decade of war. The government similarly faced the challenge of building trust between the government and displaced persons and bringing FATA into the mainstream to prevent future unrest and conflict.

In November 2015, then-Prime Minister Nawaz Sharif created the FATA Reforms Committee, headed by Sartaj Aziz, adviser to the PM on foreign affairs, to provide recommendations for reforming FATA's administration and political status. Other members of the committee included the governor of Khyber Pakhtunkhwa, minister of states and frontier regions (SAFRON), adviser to the PM on national security, minister for law and justice, and federal secretary of SAFRON. Nine months later, the committee released its report, outlining a five-year transition period to repeal the FCR and merge FATA with the neighboring KP Province, placing FATA residents under the regular judicial system of Pakistan.⁶⁷ They saw this as the only viable option. The committee had considered other options, such as maintaining the status quo with increased development activities, creating a FATA council patterned after that of Gilgit-Baltistan (an administrative unit of northern Pakistan with semi-provincial status) and making FATA into a separate

66. *Global Overview: People Internally Displaced by Conflict and Violence*, Internal Displacement Monitoring Centre, May 2014, 74.

67. *Report of the Committee on FATA Reforms*, Ministry of States and Frontier Regions, Government of Pakistan, Islamabad, August 2016, <<http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>>, accessed March 15, 2018.

province. Against the idea of creating a separate province, the committee reported concerns about the new province's ability to generate the resources and trained manpower to operate autonomously.

As part of the gradual process of full repeal, the Tribal Areas Riway Act would replace the FCR in the interim period, leading to integration with KP. The Riway Act would maintain the jirga system for civil and criminal matters, with elders appointed by a judge and deciding cases according to tribal custom. Their defense for retaining the jirga was that "its repeal would be resisted and will destabilize the social order, which is undesirable." Further, they saw this system as resembling the internationally accepted jury system.⁶⁸ The act also would eliminate the FCR's collective-responsibility clause, making each individual the sole responsible party for their actions. The elimination of this unpopular aspect of the FCR, however, would be introduced "in phases in such Agencies or their parts where it is convenient and it will be so notified."⁶⁹ This plan would also ensure additional funds for a 10-year comprehensive development plan and allow an increase in security forces until the integration process is complete. In a bid to restrict uncontrolled entry into the region, which has been exploited by Afghan militants, Pakistan is also strengthening border security with the construction of fencing along the 2,600-kilometer international border supported by 420 small forts. The Pakistani federal cabinet officially approved this plan in March 2017. Yet, it still required a vote in parliament.

DEBATING REPEAL OF THE FCR

While formulating the government's plan for reforming the legal and political framework of the region between December 2015 and May 2016, the FATA Reforms Committee held a series of consultations in each tribal agency with stakeholders representing different groups within Pashtun society—including tribal elders, media representatives, *ulema* (religious leaders), traders' unions, and youth groups. In these meetings, the committee noted the contrasting positions of the mashar and kashar in regard to repeal of the FCR. In their August 2016 report, they wrote, "There was a wide consensus on integration of FATA with Khyber Pakhtunkhwa, however tribal

68. *Ibid.*, 10, 36.

69. *Ibid.*, 36.

elders . . . wanted to retain the present special status. It may be noted that political parties, youth, businessmen, educated classes were clearly in favor of integration of FATA into Khyber Pakhtunkhwa and also argued for an extension of the writ of the Superior Courts.”⁷⁰ The committee recognized the political interests of the maliks as an obstacle to integrating FATA into KP, given that “tribal Maliks . . . have many privileges and benefits from the existing semi governed system.”⁷¹

In the consultation with a jirga in Bajaur Agency, the elders expressed continued support of the FCR because it is “based on tribal Rewaj [Riwaj] and provides speedy justice.” They also said that repeal of the FCR would “be harmful for the tribal region.”⁷² Elders in Khyber, North Waziristan, and Orakzai Agencies similarly supported the FCR and the tribal jirga system. In Khyber Agency, the elders favored the continuation of the FCR but were receptive to amendments within the framework of the law. Some elders also advocated increasing the role of the youth in the FATA reform process.

The elders of the Ahmadzai Wazir of South Waziristan Agency were an exception. They expressed opposition to the FCR and supported integration with Khyber Pakhtunkhwa as a result of their rivalry with the neighboring Mehsud tribe and the issue of nikkat, which grants them a smaller share of resources and positions of influence than the Mehsud, who are a majority in the agency.⁷³ The Mehsud tribal elders, on the other hand, argued that the FCR was created in line with tribal customs and supported a continuation of the maliki system. They argued that “any change must be in accordance with tribal customs and traditions and with due consultation of the tribal people.”⁷⁴

After the federal cabinet approved the committee’s plan to integrate FATA into KP, a number of maliks expressed their opposition. In March 2017, a grand jirga of tribal elders representing all seven agencies protested the government’s plan, arguing that it is an imposition from the government without referendum by the local population.⁷⁵ In December 2017, jirgas in

70. Ibid., 6.

71. Ibid., 33.

72. Ibid., 62.

73. Ahmed, *Resistance and Control in Pakistan*, 18–19.

74. *Report of the Committee on FATA Reforms*, 68.

75. Abuzar Afridi, “Tribesmen Oppose FATA Merger Plan,” *Express Tribune* (Karachi, Pakistan), March 6, 2017.

Khyber Agency and Mohmand Agency similarly announced opposition to the merger plan, arguing that it would lead to unrest in the tribal areas and eventual loss of their tribal identity. Later the same day, there was a protest at the Khyber Gate by khassadars (local militia members) against the plan, which would replace them with a regular police force.⁷⁶ Malik Abdul Ghaffar Koki Khel of Khyber Agency defended the FCR by stating, “We are afraid of corrupt police investigations and slow judicial system, it would be an ugly form of government for the tribal population. . . . We have a pure and speedy justice system, the traditional jirga—and since centuries the inhabitants trust it!”⁷⁷

The leaders of the Jamiat Ulema-e-Islam (F) (Assembly of Islamic Clerics, JUI-F) and Pakhtunkhwa Milli Awami Party (Pashtun National Party) political parties have also been against the merger with KP, given their entrenched electoral interests and history of electoral success within FATA, which a merger would threaten. They have advocated that FATA be given the status of a separate province. The JUI-F chief, Maulana Fazlur Rehman, stated in November 2017, “Outsiders should not be given the right to decide the fate of tribal people. I am of the firm opinion that a referendum should be held to decide the future status of FATA instead of merging it with KP.”⁷⁸ JUI-F Senator Hafiz Hamdullah Jan stated the following month at a public meeting, “The JUI-F believes that separate province of FATA is the best solution to the problems of tribesmen and no one would be allowed to indulge in political point-scoring on this issue.”⁷⁹

But in the FATA Reforms Committee’s consultations, the civil society delegations representing non-malik voices in FATA unanimously rejected the FCR and supported integration with KP. At the December 2015 consultation in Bajaur Agency, the delegation argued that the FCR “did not protect rights of the population and supported only the privileged class and maliks.”⁸⁰ This opinion was echoed in subsequent consultations in other tribal agencies. In Kurram Agency, the kashar noted the great inequality between FATA and the

76. “Fata Jirgas Oppose Merger Plan,” *Express Tribune* (Karachi, Pakistan), December 15, 2017.

77. Abdur Rauf Yousafzai, “FCR: To Be or Not to Be?” *Friday Times* (Lahore, Pakistan), January 27, 2017.

78. Rehmat Mehsud, “Referendum Should Decide FATA’s Fate: Fazlur Rehman,” *Daily Times* (Lahore, Pakistan), November 5, 2017.

79. “Fata as Province Best Option for Tribesmen,” *Dawn* (Karachi, Pakistan), December 25, 2017.

80. *Report of the Committee on FATA Reforms*, 62.

rest of Pakistan, calling for abolishment of the FCR, extension of the laws of the settled areas, and the establishment of a university in FATA.

Much of the current younger generation grew up outside FATA during the time their families were displaced from the violence between the government and the Taliban; they saw the opportunities available to the broader nation. As they have returned to their homes, these young people have increasingly advocated a repeal of the FCR system, in opposition to the maliks. Pakistani journalist Rehmat Mehsud, from South Waziristan Agency, stated

After getting education at urban centers of Pakistan, now [the youth] are demanding the same facilities back at home. The educated class of FATA is not ready to compromise on their constitutionally mandated rights. . . . [They are] now asking questions as to why facilities are not available to them [that are] being enjoyed in the rest of country. They want a total repeal of FCR, access to justice system and all constitutional rights.⁸¹

In a February 2017 survey by the FATA Research Centre in Islamabad, 74% of respondents in FATA supported integration with KP, with 68% demanding full abolishment of the FCR.⁸²

After the cabinet's approval of the FATA Reforms Committee's plan in March 2017, many kashar organizations expressed opposition to its gradualist approach. The All FATA Students Forum, along with the All FATA Political Parties Alliance, called for the expedited integration of FATA into the neighboring province by the 2018 general elections in order to ensure repeal of the FCR. All FATA Students Forum president Farhad Ali argued that this move is necessary for "peace and the sustainable development of tribesmen."⁸³ Their position was supported by the Pakistan Tehreek-e-Insaf party, which gained control of the provincial government of KP in the 2013 elections. These groups have also expressed doubt over the Tribal Areas Riway Act, which maintained the jirga system of appointed maliks and was ambiguous in regard to the elimination of the collective-responsibility clause. They feared it could simply become another version of the FCR and similarly be used to

81. Email correspondence with author, March 29, 2018.

82. *Governance Reforms in FATA: A People's Perspective*, FATA Research Centre, Islamabad, February 1, 2017, <<http://frc.org.pk/breaking/governance-reforms-in-fata-a-peoples-perspective/>>, accessed April 10, 2018.

83. Anwarullah Khan, "All Fata Students Forum, an Association of Tribal Students Has Expressed Dismay over Delay Reforms," *Bajaur Times* (Khar, Pakistan), July 5, 2017.

disenfranchise the kashar. Zohra Yousaf, head of the Human Rights Commission of Pakistan, stated, “We are worried that citizens will be deprived of their fundamental rights if the state wants to keep the customary laws and the jirgas to adjudicate these laws.”⁸⁴

Despite the federal cabinet’s approval, the government withdrew the Riway Act in September 2017, given the widespread opposition.⁸⁵ In its place, President Mamnoon Hussain in May 2018 signed into law the FATA Interim Governance Regulation, following approval by parliament. It repeals and replaces the FCR and is meant to be an interim step toward integrating FATA into KP, “within a timeframe of two years”—according to the government, but left unspecified in the law.⁸⁶ It maintains the jirga system and its reliance on tribal custom for civil and criminal cases. These cases are by referral from the deputy commissioners (the renamed PAs) of the redesignated tribal districts, who appoint jirga members, are in charge of sentencing, and can banish troublesome individuals from the district or bar them from traveling to settled districts. It provides an appeal process for tried individuals, but without referencing the Supreme Court or high court system. Further, it declares that civil courts are unable to challenge the legality of government actions within FATA. Under the regulations, the government is able to relocate villages for security reasons, guaranteeing compensation for the inhabitants.

Many groups in the region expressed opposition to this new regulation. Tribal elders criticized the law for repealing the FCR without consulting them. In June 2018, maliks in the Khyber region announced that they would challenge the new law and press for its repeal, arguing that locals were not consulted during the process of repealing the FCR, in violation of promises by government officials.⁸⁷ FATA youth activists with the Pashtun Tahafuz (Protection) Movement, however, saw the new regulation as another version of the FCR, reliant as it is on the same jirga system and with no defined schedule for merging the region with KP. A network of women’s rights

84. Monawar Shah, “Proposed Reforms Fail to Extend Rights to Pakistan’s Tribal Areas,” *Radio Free Europe/Radio Liberty* (Prague, Czech Republic), August 29, 2016.

85. Riazul Haq, “Fata Reforms: Govt to Withdraw Rewaj Act, Senate Told,” *Express Tribune* (Karachi, Pakistan), September 20, 2017.

86. Iftikhar Firdous, “Interim Rules for FATA Mere Eyewash,” *Express Tribune* (Karachi, Pakistan), May 14, 2018.

87. “Elders to Move Court against Fata Interim Governance Regulation,” *Dawn* (Karachi, Pakistan), June 12, 2018.

organizations in the region, Takrah Qabailee Khwenday (Brave Tribal Sisters), also criticized the new law as simply a cosmetic change of the original FCR, maintaining the power of the PA under the new title of deputy commissioner. The network's founder, Rukhshinda Naz, called the law "old wine in a new bottle."⁸⁸

CONCLUSION

Institutions can have a durable impact on shaping and defining the political interests of social groups, especially when they provide asymmetric access to political power.⁸⁹ The structure of the FCR and the recognition of the maliks' political and legal authority was bound up with the colonial government's singular goal of maintaining law and order in a strategic border region, ignoring the long-term negative implications. It has similarly been viewed by the Pakistani government as an expedient means of countering any unrest in FATA, especially during counterinsurgency operations since 2001.

The institutional features of the FCR, however, created durable inequalities in Pashtun society, engendering political competition and conflict between the advantaged mashar and the disadvantaged kashar. This has resulted in competing positions over reforming and repealing the legal framework of the FCR. The mashar advantaged under the FCR want to maintain the political status quo, while the disadvantaged kashar have consistently wanted to change it. And these conflicting positions are reproduced in their reactions to the Pakistani government's gradualist plan for repealing and replacing the FCR.

This analysis helps our understanding of how the institutional legacy of colonialism continues to shape political interests and conflict in postcolonial societies. It further demonstrates that understanding intra-group conflict and how subgroups interact differently with state political systems both help to explain variations in political interests within the community. The internal conflict within FATA also has broader implications, given that this strategic region is bound up with Pakistani security and regional issues related to Afghanistan. As has been demonstrated in recent years, unrest in FATA can spill out of its borders and impact the broader state and region. Despite

88. "Tribal Women Activists Protest against Fata Interim Governance Regulation," *Pakistan Today* (Lahore, Pakistan), June 13, 2018.

89. Charles Tilly, *Durable Inequality* (Berkeley: University of California Press, 1998).

efforts by the government to mainstream FATA, reform is still a work in progress. Conflict in the region over the direction of this reform process could still derail it as political leaders representing different parts of society pursue their often conflicting political interests.