

The Shape of Frontier Rule: Governance and Transition, from the Raj to the Modern Pakistani Frontier

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Abstract: *This essay examines British colonial debates about governance in India as a means of positing an analytical framework in which to address the current crises of governance in Pakistan's frontier. In light of the collapse of the antiquated system of tribal governance in the Federally Administered Tribal Areas (FATA), and the spread of insurgent Talibanization into the heart of the ethnically Pashtun settled areas, this analysis maps several possible transition paths for governance reform in both the tribal and settled regions, and argues for an incremental approach that minimizes risks to political stability.*

Much attention has been paid in recent years to the endemic problems facing Pakistan's North-West Frontier. Its present challenges include, inter alia, the collapse of the system of tribal governance in the Federally Administered Tribal Areas (FATA); the spread of insurgent Talibanization into the heart of the ethnically Pashtun "settled" areas; the rise of Islamist politics; and the overall weakening of the writ of the state.¹ These realities are commonly explained with reference to exogenous factors, such as the foreign involvement in the Afghan *jihad* in the 1980s and, more recently, the American intervention in Afghanistan in 2001. While these factors are indeed crucial to understanding the current crisis in the frontier, comparatively less attention has been paid to the internal, structural weaknesses of the state which have facilitated these problems. Behind the everyday realities of insurgency and religious radicalization lies a growing crisis of local governance.

In the argument which follows, I will first attempt to provide an historical and analytical grounding to this problem by surveying what I believe to constitute the two dominant axes of contention on questions of governance among British practitioners of empire from the late eighteenth to late nineteenth centuries in India. In order to sketch the ways in which their arguments often cut across one another in complex ways, this narrative will situate within the debates several of the more influential scholars and practitioners of the period: Henry and James Lawrence, Thomas Munro, Charles Cornwallis, Lord Dalhousie, and James Fitzjames Stephen among others.

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I will then argue that these very same lines of debate which were central to the imperial discourse on governance have essentially been carried forward from the nineteenth century into the post-colonial context and, as such, inform in striking ways modern debates concerning local government reform in Pakistan's frontier areas. In particular, it is my contention that these axes of debate provide a space in which to conceptualize possible transition paths for the restructuring of local government, both in the FATA and the settled areas. This analysis will conclude by addressing in detail two of Pakistan's most vexing security challenges in the frontier, namely: reforming the antiquated and dysfunctional Frontier Crimes Regulation (FCR) of 1901, which provides the basis of tribal governance in the FATA; and managing the transition to a devolved system of local governance in the settled areas (initiated by the 2001 Local Government Ordinance), which has unfolded concurrently with the startling rise of new threats from the Taliban and other militant Islamic actors.

Debating Discretionary Rule

The first axis of debate that occupied British thinking about governance is in many ways the richest and most clearly informed by political discourse in Britain. It was a debate, fundamentally, about whether the patterns of interaction between the state and the society should have as their fulcrum the individual administrator, or a more impersonal structure of state authority. On the one hand were those in a tradition that might be called personalist or paternal, who advocated a relatively unstructured and discretionary style of governance that sought to situate the locus of state authority in the personal charisma and power of the individual British administrator. This essentially romantic notion of governance more often than not came together with a conservative (critics might say, "unambitious") political philosophy, characterized by a certain cultural relativism, a deep Burkean suspicion of social change, and a deference to native institutions. As such, it tended to envisage the British project as – in Lynn Zastoupil's phrase – an "empire of opinion" in which perpetuation of British dominance was predicated on a recognition of the inherent limits of its own power, and a healthy respect for the role of local opinion.²

It is perhaps not immediately evident why, in the Indian context, a personalist or paternal style of governance would be so closely identified with this classically conservative view of culture and power. But in fact the two were functionally related, in that the institutionalization of Burkean restraint required above all that governance be carried out with a small footprint, and be characterized by the sort of adaptability of which ambitious systems of law are so often incapable. It was not that systems of legal governance were thought to be completely anathema to a culture of deference to local norms; the fear among this school of administrators, rather, was that an impersonal state apparatus would incline toward a form of administration that would, to the detriment of its own longevity, both overestimate its own powers and underestimate the capacities of its colonial subjects.

Over and against this personalist view of governance came a profoundly more ambitious, universalist, and structured ideology of the colonial state. This view was in large part the product of utilitarian thinking which drew on the liberal political philosophy of James Mill, Jeremy Bentham, and the thinkers of the Scottish Enlightenment. The utilitarian project as it pertained to India was ambitious in that it sought a re-creation

of society according to a rational calculus (the most good for the most people); it was universalist in that it consciously and without irony placed the definition of that utility in the hands of those who exercised power (that is, the British); and it was structured in that such a project of social change required a systemic engagement with the social order, and had little patience for what it saw as the haphazard freelancing that characterized personalist and discretionary forms of governance, particularly on the empire's frontiers.³

This vision of rule came to be bound up with the view that rational administration required the institution of a highly developed and impartial system of law. The legalists believed that it was law and law alone that was able to orient the exercise of authority toward consistent and rational ends. It was law alone that could serve as the vehicle through which British norms and institutions could find their place in the remote corners of the empire. And it was law alone that could counteract the corrosive influence of the Orientalist scholar-administrators, who by their patronizing of Brahmins, princes, and other petty "despots" perpetuated a system in India that – to the mind of the utilitarians – closely resembled the worst systemic injustices of the British polity.

These two visions of governance – one restrained, discretionary, and localized; the other ambitious, impersonal, and systemic – formed the poles of what was an ongoing debate among British administrators and intellectuals. Historically speaking, the personalist ideal is often associated with the early days of the Company Raj in the Indian heartland of the empire; and with the British governance of the more far-flung frontier territories in the second half of the nineteenth century. In these environments British governance lacked either the ambition or the capacity to institute "thick" forms of management, and thus relied on comparatively unstructured patterns of interaction with local populations. These patterns of personalist governance were, however, not confined to the early Raj and to the frontier alone: some of the best articulations of this view can be found in the early nineteenth century, and in the heartland of direct British rule. Here they come not as initial statements of principles about the ways in which the British *wished* to govern (this is, after all, decades after the establishment of the Company Raj), but as a reaction to emerging liberal and utilitarian ideas that posed a challenge to established, comparatively informal patterns of governance.

Munro, the Punjab School, and the Personalist Ideal

Thomas Munro, serving as governor of the Madras presidency in the 1820s, was on many fronts a forceful defender of this personalist ideal. He articulated his fear that the British were abandoning their Burkean restraint, and moving away from the sort of intimate, adaptive contact that formed the basis of effective governance. "We proceed," he wrote in 1824, "in a country of which we know little or nothing, as if we knew every thing, and as if every thing must be done now, and nothing could be done hereafter."⁴ He went on to criticize the introduction of "fanciful theories founded on European models," urged a careful investigation of the "condition and opinions of the inhabitants,"⁵ and argued for a flexible regime under which the system of governance (and principally, taxation) could adapt both to "the wants of the state and the circumstances of the people."⁶ He could be surprisingly sympathetic to the circumstances in which the indigenous peoples found themselves (writing didactically at one point to the Court of Directors in London that "We can never be qualified to govern men against

whom we are prejudiced”⁷), while at the same time expounding on the need for their reform. In Munro’s formulation, the benefits of a just system of law for the local population would be illusory “unless we endeavour to raise their character”; and unfortunately, the unwieldy and overly ambitious machine of British rule made that almost an impossibility.

The proximate cause of Munro’s angst was the imposition of the Permanent Settlement in the Bengal presidency under governor-general Cornwallis in the latter decades of the eighteenth century. Munro argued that the British toleration, and indeed establishment, of intermediary *zamindars* in Bengal ran against Indian tradition, and represented a crude attempt to map Whiggish British ideals onto a wholly foreign environment. Munro proposed and eventually implemented an alternate system in Madras, one that relied on local community organization and a more direct system of revenue collection by the peasant *ryots*. For the purposes of this discussion, it is worth noting that Munro went to extraordinary lengths to justify the *ryotwari* system – and his conception of “native juries” – as one that reflected local opinions and traditions.⁸ Whether or not that belief was historically justified, it suggests the extent to which he was concerned with preserving local institutions and exercising British rule with a firm but light touch. He was also deeply skeptical of Cornwallis’ legal reforms, not only on account of their attempt at standardization, but because that standardization ran counter (so he thought) to the extant traditions of the subjects.

If Munro was sympathetic to the personalist ideal of governance, the Lawrence brothers of the Punjab frontier represented perhaps its epitome. Working as administrators in the Punjab in the 1840s and 1850s, Henry and John Lawrence established what came to be known as the Punjab school of governance. It was characterized – particularly under the elder brother, Henry – by its freewheeling style. The Lawrence brothers and their team of young men who administered the northwest frontier embodied in many respects the classical Orientalist ideal: their notion of governance was, in essence, to embody through their very skill and charisma the authority of the British Raj, and they did so by leveraging their local knowledge and the extraordinary discretions afforded them by the Company administrators in Delhi and Lucknow.⁹ Their direction to subordinates was simple and concise: “Settle the country, make the people happy; and take care there are no rows!”¹⁰ Henry in particular displayed an open disdain for regulation, and his disciples operating in the far-flung corners of the empire were reputed on occasion to have “gone native,” acting almost as local princes, and in one memorable case becoming the object of a bizarre cult of personality.¹¹

Stephen and Authoritarian Liberalism

Against those who concluded that the sheer exigencies of governance on the frontier necessitated informal and highly deferential styles of rule, were theorists of empire who took from the British governance experience a wholly different set of conclusions. Writing in the 1870s, James Fitzjames Stephen argued forcefully for a structured, legally grounded, consciously aloof form of governance that did away with the Orientalist sentimentalisms of the past. While this philosophy of governance stood in stark contrast to the governance of the Punjab school, Stephen’s argument cannot be set directly against the kind of frontier rule embodied by the Lawrence brothers, as it originated in

a distinct historical and philosophical context.¹² Stephen was, for one, writing after the revolt of 1857, which had precipitated a critical reevaluation of the unstructured forms of governance under the Company Raj and had, in short order, resulted in a wholesale reformulation of the pattern of British rule in the subcontinent. Second, Stephen was writing within a utilitarian frame of reference, addressing his critique not so much to the administrator on the frontier as to the political philosopher in Britain; his work *Liberty, Equality, Fraternity* was a stinging critique of John Stuart Mill's *On Liberty*, and more broadly a criticism of the ways in which J. S. Mill had strayed from the pure Benthamite convictions to which his father James had more closely hewn.

Regardless of its audience, however, Stephen's writing was a fierce apology for an ambitious, forceful, structured style of governance that had as its core objective the systematic restructuring of social and political norms in India along British lines. On this point, he minced no words: "For these reasons I should amend Mr. Mill's doctrine thus: The utilitarian standard is not the greatest amount of happiness altogether . . . but the widest possible extension of the ideal of life *formed by the person who sets up the standard.*"¹³ For Stephen, that standard was an impersonal government with undiminished power – in the words of one scholar, an "authoritarian liberal" conception of the state.¹⁴ He argued that a strong government of that description was not incompatible with a structured system of law, but that it *was* incompatible with governance by personal charisma, and with the kind of divide-and-conquer tactics that were the mainstay of personalist governance on the frontier.¹⁵

Although the British patterns of administration defied simple binary categories – even within the most legal-rational systems, administrators by custom were granted significant discretionary authority – it is clear that this ongoing debate over the tension between governance-as-personality and governance-as-law, between discretionary rule and the impartial hand of regulation, engaged the British both philosophically and administratively over more than 100 years of encounters in India. Indeed, this debate often served as a close proxy for related disputes over the extent to which the British should exercise territorial and reformist ambitions; and the extent to which local institutions and values provided (either normatively or functionally) the best vehicles through which to rule.

Debating Mediated Rule

A second major debate which captured the attention of the British during this period operated at times on a different axis altogether – cutting across the two schools of thought outlined above. This debate centered on a different aspect of the interaction between state and society, namely, the degree to which British rule ought to be mediated. It posed a question about the ideal distance between state and society, and about how directly the British should attempt to interact with their colonial subjects.

Here the debate was polarized between those who advocated for indirect rule, and those who sought to place the British administrators in more direct contact with the people. The partisans of indirect or mediated governance often acted in the Whiggish tradition, which sought not only the preservation of traditional structures of social organization, but also the dispersal of authority in order to check the despotic use of power. Lord Cornwallis' attempt at establishing a *zamindari* elite in Bengal in the late

eighteenth century was a representation *par excellence* of this preference for indirect rule, and of the desire to see the formation of a kind of aristocracy through which the British could govern.¹⁶ (The fact that the *zamindari* system was arguably a British imposition and not an ancient institution diminishes the force but not the thrust of his argument.)

Thomas Munro made his career – and his legacy – in opposition to this policy of indirect rule. The dispute in which he involved himself, culminating in the 1820s, was not simply about styles of governance; it centered principally on the system of agricultural taxation and the means by which the government would structure the state to collect those taxes. Munro, a believer in a strong but deferential style of empire, nonetheless argued that the use of a relatively more direct community-centric taxation system that bypassed the *zamindars* was in the vital interest of the Raj. A less mediated form of engagement with the *ryots* reflected, he believed, a system that was more consistent with the social history of the region, and one that was more inclined to put the British in a sort of empathetic contact with their subjects.

Half a century later, another member of the so-called “empire of opinion” school would come to very different conclusions. Henry Lawrence in the Punjab, and most of his disciples, developed a strong preference for governing through the Sikh and tribal elites, and relying upon them to carry out much of the work of the state. Unlike Cornwallis’ questionable association of the *zamindars* with an ancient political economy, Henry Lawrence’s preference for indirect rule was arguably more attuned to the local sociology, and was influenced by the simple fact that, as a practical matter, he did not have expansive state resources at his disposal.

The Lawrence brothers, who generally stood together on the side of personalist governance, split bitterly on the question of indirect rule. While Henry favored a highly mediated form of administration exercised through the local Sikh elite, John worked to protect cultivators’ rights, weaken the hold of the Sikh establishment, and strengthen village communities.¹⁷ It was John’s view that ultimately prevailed in the Punjab, in part because he outmaneuvered his brother, and in part because governor-general Dalhousie was inclined toward a proactive interaction with the frontier territories – including development of infrastructure and vernacular education – that necessitated a hands-on approach.¹⁸

Dalhousie was something of a closet utilitarian, and his desire to extend the sphere of British authority over which to exercise reforms played a part in his ambitious – though not entirely authorized – annexation of the Punjab in 1849 (over the strenuous objection of Henry Lawrence), and his vigorous use of the Doctrine of Lapse as a justification by which to bring princely states under the direct rule of the Company. Wryly labeling himself “a despot for many radical changes,” Dalhousie combined a utilitarian vision of the good with a belief that only a strong government authority could bring about needed reforms.¹⁹ His view of authority emphasized its efficiency and immediacy: its hallmarks were to be “sustained promptitude of action” and “real responsibility.”²⁰

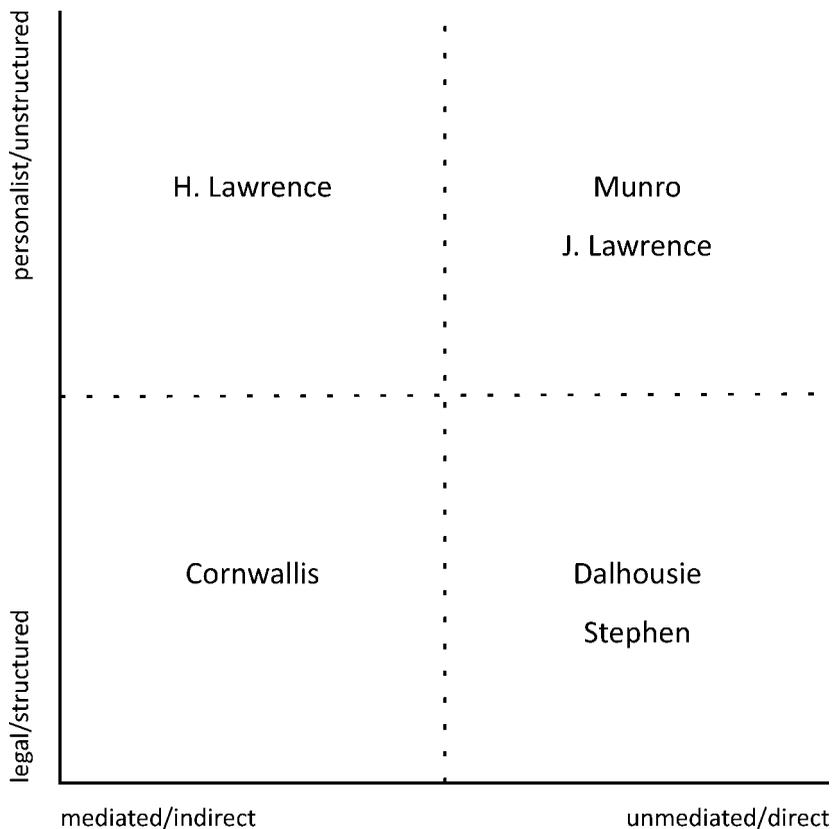
It is no surprise that the utilitarian-inspired vision of social change required for practical reasons less mediated engagement with the local society; one cannot easily restructure a state by proxy. Thus utilitarian thinkers like James Mill, and later James Fitzjames Stephen, often criticized indirect rule as being un conducive to the social reforms and legal regularization that they sought in Britain’s colonies. Stephen and

other utilitarian theorists of the Raj envisioned a state that was impartial, but very much immediate. Along with his criticisms of J. S. Mill’s drift toward sentimentalism, he assailed the younger Mill’s supposed tolerance of indirect rule, which he saw as a betrayal of the calculated and rationalized Benthamite ideal of governance.

The preference for direct rule on the part of scholars and administrators therefore came with strikingly different rationales. Theorists like James Mill and Stephen (and Dalhousie in the particulars of his administration) justified an unmediated style of rule on the basis of the requirements, as they perceived them, for enlightened utilitarian exercise of power; they dismissed outright the value of ancient institutions as simple barbarism. Munro’s opposition to indirect rule was for quite the opposite reasons: he feared the implications of an expansive exercise of British power, and saw the traditions of local governance and their “ancient” institutions as being both useful to the British, and worth defending as part of a broader philosophy of showing deference to local cultures.

The purpose of this brief survey has been to suggest that these two axes of debate – the personalist–legalist continuum, and the argument over the degree to which state–society interaction ought to be mediated – constitute a space into which fell much of the controversial discourse about the governance of empire. Mapped together (see Figure 1),

FIGURE 1
GOVERNANCE DEBATES UNDER THE BRITISH RAJ.



one can note the ways in which theoreticians and practitioners of empire both came into alliance and opposition over these questions. As simplistic as such a representation is, it speaks to the extent to which a handful of critical debates about governance were engaged repeatedly throughout the history of the empire in India as the British encountered both new geographies, and new political philosophies of rule.

Structures of Rule in the Modern Frontier

The British debates over these forms of governance naturally did not end after the uprising of 1857, nor even after independence 90 years later. In many respects they were recapitulated in arguments over the structure of local politics. In the post-colonial era, Pakistan has continued to grapple with problems of local governance, in part because it inherited such a wide array of governance systems.²¹ Narrowing our focus to the frontier areas of the northwest, which today comprise the North-West Frontier Province (NWFP) proper and the FATA,²² independent Pakistan has at various places and times lived with four major modes of governance:²³ 1) princely states, in which state authority was exercised indirectly through a local sovereign; 2) tribal administration under the FCR or similar extra-legal framework in which the political agent of the government wielded the authority of the state in constant negotiation with the tribes; 3) various forms of local administration in the settled areas pre-2001, mostly employing the so-called deputy commissioner (DC) system inherited from the British;²⁴ and 4) the so-called devolved system implemented by President Musharraf under the 2001 Local Government Ordinance (LGO).²⁵

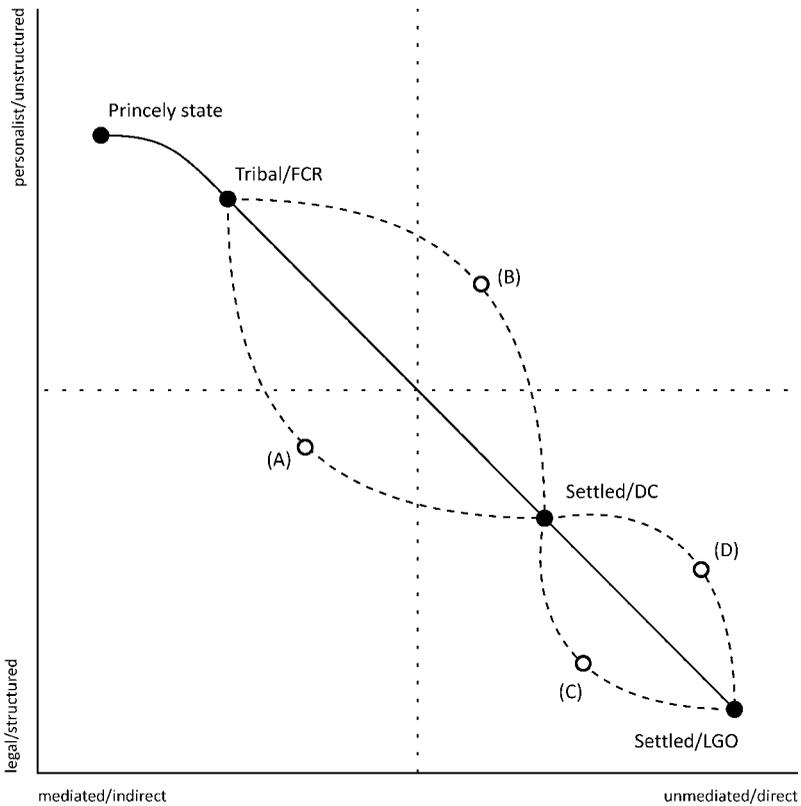
Mapping these models of local governance along the two axes of debate discussed above reveals a continuum of governance options that has characterized the modern Pakistani state (see Figure 2). These lines, stylized as they are, should not be read teleologically as an inexorable arc of progress; they can, however, generally be read from left to right historically, as a trend line mapping a movement toward more legalistic and less mediated forms of state–society interaction. It is worth noting that at any given time in Pakistan’s history, two or three of these systems have been extant, and transitions from one system to another have often been geographically piecemeal and, on occasion, non-monotonic.²⁶

Princely States and the FCR

The first two systems, those of the princely states and the FCR-style tribal management, are examples of highly unstructured personalist governance; both are also highly mediated (the former only somewhat more than the latter). They represent a paternalistic but distant vision of governance. And while by these criteria they might seem superficially to be related, their historical origins are quite different: the princely states in the frontier, while legitimized by the British, were essentially pre-existing forms of authority. The princely states of Chitral, Swat, and Dir were accepted as such by the British under a tributary system, and the last of these territories was fully incorporated into Pakistan only in 1969.

The tribal system of rule as it developed in the frontier, on the other hand, is often thought to be much older than it actually is: the British leveraged the institutions of tribal authority that existed in a comparatively egalitarian Pashtun society to invent a

FIGURE 2
FRONTIER GOVERNANCE UNDER THE MODERN PAKISTANI STATE.



highly mediated, discretionary form of rule that required of the Raj only a thin presence on the outposts of its empire. Whereas the neighboring Baloch tribal society is naturally hierarchical and thus comparatively easy to govern by proxy, the Pashtun tribes select leaders who are first among equals. The British used and eventually redefined this class of tribal *maliks* (elders) by positioning them as intermediate authorities, and providing them discretionary funds with which to reinforce their local influence.²⁷ The point of similarity between these two systems of governance is therefore less to be found in their intrinsic structures or histories than in their shared instrumental utility to the British administrators: ultimately, these two styles can be seen as similar insofar as they represent concessions to the realities of governance on the frontier, where the British sometimes operated far from their major garrisons, and were concerned preeminently with maintaining the frontier as a buffer against other powers.²⁸

The state of Pakistan chose to deal in different ways with these two inherited systems – gradually phasing out the princely states while retaining, with some adjustments, the FCR governance in the tribal areas. It was not unexpected that Pakistan would eventually do away with the princely states; indirect rule by a charismatic figure did not fit neatly into the post-World War II Westphalian system, which situated sovereignty

in the impersonal state, and which had devised more politically acceptable templates of indirect rule (the ever-convenient fiction of “local autonomy,” for example).

The decision to leave some liminal regions of the frontier under the hands-off FCR system is also explainable in part by the compulsions of the early Pakistani state. At the most basic level, Muhammad Ali Jinnah had promised at independence to respect the traditions and autonomy of the Pashtuns residing in the tribal areas.²⁹ There were, as well, structural and strategic reasons behind the state’s decision to leave tribal governance largely undisturbed. Newly independent, Pakistan had no pretensions of becoming a welfare state, and thus had little reason to be concerned that the tribal system practically precluded delivery of basic services. It was, furthermore, focused on its border with India, and was pleased to have a buffer region along the disputed Durand line with Afghanistan. For these reasons among others, the ethnic Punjabi and Mohajir elite in a sense adopted an essentialist rhetoric that framed the Pashtun tribes as being basically ungovernable – and this, ironically, after millions of Pashtuns had already been successfully assimilated into a robust system of local governance in the settled areas.³⁰ The result was the perpetuation of a tribal system, up to the present day, increasingly out of step with the reformist trends in the country at large.

Commissioners and Coordinators

The second two systems, operative in the settled areas, are largely the successors of the British style of rule that developed in the mid-nineteenth century, which institutionalized layered, hierarchical structures of governance grounded in codified law. The deputy commissioner system had a long and storied tenure; while considerably more structured than the FCR, it retained in the settled areas of the frontier much of its personalist flair (more so than did a similar system in parts of Punjab and Sindh).³¹ The reforms of 2001 led to a system even more structured and unmediated than the traditional deputy commissioner form of administration – one based on modern theories about local ownership and participatory governance.

The LGO reform promulgated in 2001 by President Musharraf was, from a substantive perspective, a response to two perceived problems in the local government system: first, that delivery of basic government services at the local level was ineffective and lacked grassroots ownership; and second, that the provincial bureaucracy and the commissioners in particular had accumulated too much discretionary power. The LGO devolved powers from the provincial level to lower tiers of government (districts, *tehsils*, and union councils); changed the deputy commissioner role to that of a much less powerful district coordination officer (DCO); and incentivized local forms of community decision-making.³²

Even though advocates of direct forms of governance under the Raj, such as Thomas Munro, were often more concerned with the upward flow of revenues than with the downward flow of services, there is a way in which the LGO reforms stand squarely within the reformist tradition of the utilitarian thinkers of the empire. The devolution reforms were scientifically designed, with the expert counsel of the World Bank, to move away from overly mediated models of service distribution and decision-making that ignored local forms of consultation. The state, particularly in the areas of health and education reform, had a robust social agenda and wanted to see a

government apparatus that was less removed from society, and which consequently stood a better chance of delivering services to the public at large.

Seen along the other, personalist–legalist axis, the LGO reforms represented a decidedly Whiggish notion of the exercise of state authority. Cornwallis, one might imagine, would have been pleased to see the complex array of institutional authorities established by the LGO, each accountable to other authorities, both laterally and vertically. As an attempt at separation-of-powers, the LGO was a major step beyond the deputy commissioner system, which concentrated authority in the hands of one man. In its attempt to counteract this form of petty despotism, the devolution reforms distributed power widely.

These substantive and structural considerations which lay behind the development of the LGO, as important as they were, must be seen in light of the state's broader political project of cultivating its own legitimacy. Musharraf's promulgation of the LGO, like Ayub Khan's "Basic Democracy" framework which came before it, was an attempt to build democratic legitimacy without actually having to cede significant power to rivals who operated at lower tiers of the political order. In this respect, the moves toward decentralized and rationalized forms of governance may be viewed as a recurring tactical feint by the central government to strengthen its democratic credentials in the face of both domestic and foreign opposition to martial rule. Indeed, while Musharraf frequently touted his devolution plan as an exemplary democratic innovation, local administrators and elected officials complained that the plan was yet another example of "controlled democracy," which did little to devolve the most important financial and political responsibilities to lower tiers of government.³³ For a state historically dominated by the military-bureaucratic apparatus, the introduction of nominally democratic reform measures provided a useful political cover for continued rule by established central authorities.

Today both the central and local governments are faced with two critical governance challenges in the frontier. The first involves transitioning the tribal areas to more regular settled forms of governance, a process to which, at least in principle, the new coalition government in Islamabad has committed itself. The second involves the devolution of local governance within the settled areas from the traditional deputy commissioner system to the devolved LGO system, a process which has been underway since 2001. It is my contention that the two broad axes of debate outlined in the above survey of British governance provide for each of these challenges a framework which may be useful in mitigating the destabilizing tendencies of structural reform.³⁴ This is particularly true given that both of these transitions in question involve movement along both axes of debate. As was noted above, these axes of debate do not, in fact, have to move hand in hand; each quadrant of Figure 1 is represented by a particular tradition, and one can imagine reforms that shift governance primarily along one axis at a time. The movement along both axes is interesting insofar as it creates a multiplicity of ways in which the transition can take place, and raises the possibility of intermediate states that might be used to facilitate structural change. It is in this multiplicity that the examples from the Raj can provide valuable analogues to the contemporary debate.

Reform of the Tribal Areas

The Frontier Crimes Regulation, which for all intents and purposes supersedes Pakistani civil and criminal law in the FATA, has changed little since its last major revision in 1901.³⁵ It provides for a system of governance under which a state-appointed political agent is granted broad authority to administer a given tribal agency by referring disputes to tribal councils and by exerting pressure on tribal leadership through financial incentives, threats of collective punishment, and various other inducements. In pursuit of a single “hostile or unfriendly” tribesman, for example, the agent is authorized to seize “wherever they may be found . . . all or any of the members of such tribe [and] all or any property belonging to them . . .”³⁶ The agent also retains discretionary power to expel from any given tribal area a person who “cannot give a satisfactory account of himself.”³⁷ This kind of broad authority granted to the agents of the state was first instituted as a means of combating rampant criminality in and around the tribal areas.³⁸ In spite of its dubious constitutionality, the FCR has remained the operative mode of tribal management for over 100 years.

Challenging the FCR

Following the victory of the Pakistan People’s Party (PPP)-led coalition government in the February 2008 elections, there have increasingly been calls for regularizing the system of governance in the tribal areas. There are several fundamental reasons why this transition is presently under consideration. First, the events of September 11, 2001 focused the attention of the international community on the dangers of “ungovernable spaces” into which, either *de jure* or *de facto*, the government’s writ does not extend.³⁹ The latest iteration of American counterinsurgency doctrine, for example, emphasizes the importance of safe havens to the operation of insurgent movements.⁴⁰ Regions like the FATA, in which the Pakistani state has little presence and possesses no ordinary legal basis for action, is precisely the sort of territory that concerns strategists who focus on containing global insurgencies. Not only is the state hampered by its physical lack of presence in the FATA, but longstanding tribal codes known collectively as *Pashtunwali*, which among other things demand the provision of hospitality to strangers, create social safe havens for criminal elements and anti-state insurgents.⁴¹

Second, the Pakistani army’s failed intervention in Waziristan in 2004, combined with actions taken by the neo-Taliban insurgents⁴² targeting political agents and tribal *maliks*, resulted in the collapse of the political agent system in several of the southern tribal agencies.⁴³ By bypassing the authority of the political agent when conducting armed operations in the FATA, the military inadvertently disempowered its traditional conduit of influence in the tribal areas. There is a recognition among some military and civilian leaders that it may be more profitable to move forward with FCR reforms than to attempt a reinvigoration of the now discredited political agent system.

Third, there have been calls both from within the FATA and from civil society movements in Pakistan to reform the FCR as a matter of civil rights.⁴⁴ The FCR system lacks basic civil protections; allows for collective punishment of individual crimes; and places extraordinary discretionary powers in the hands of the political agent, who often faces perverse incentives to collude with tribal elders for their mutual financial gain.⁴⁵ In light of the evident incongruities between the system of tribal governance

and the professed constitutional values of the state, there is widespread support within Pakistan for changing the current system. In a recent survey, fully 72 percent of the Pakistani public believed that the FCR should be modified or completely abolished.⁴⁶ Surveys taken within the FATA also show that more than 70 percent of respondents favor amending or abolishing the FCR.⁴⁷ These data suggest that, while there is not yet a consensus as to the precise direction of reform, the legitimacy of the FCR as a mode of governance is, at the very least, being called into question by the tribal population.

Lastly, political pressures have also contributed to recent proposals designed to reform the FATA system of governance. The Awami National Party (ANP), which received a plurality in the February 2008 NWFP provincial elections and formed a government with the PPP, has advocated for the integration of the FATA into the adjoining NWFP. The reasons behind this policy are in part ideological; the ANP represents a tradition of pan-Pashtun nationalism, and would like to see the ethnic Pashtun populations in the region come under a common system of governance. There is also a political and electoral calculus behind the ANP leadership's proposal, most notably its belief that the party would improve its standing in the NWFP assembly were the FATA areas to be integrated into the province.⁴⁸ The "integration" view, however, is not universally shared. There is another school of thought among tribal elders that the FATA should be kept separate from the NWFP and transformed into a new province, or granted a status similar to that of Pakistan's Northern Areas.⁴⁹

Transition Paths for the FATA

In the face of these collective pressures, Pakistan's Prime Minister Syed Yousuf Raza Gilani signaled in March 2008 his intention to abolish the FCR.⁵⁰ This decision is likely to initiate a lengthy process by which the state transitions the tribal areas from a paternalist, highly mediated system to an arrangement that more closely resembles the settled style of management in which the state has direct interaction with society, and in which the preeminent medium of that interaction is law. But the question remains: How can Pakistan bring about such a transition? And how can it do so in a manner that accords both with its national security and human development objectives? It is here that the British examples provide grist for comparison.

One option would be an attempt to transition directly to a settled system. It is worth briefly noting, however, that abrupt governance transitions did not always serve the British particularly well. Governor-General Dalhousie's ambitious reforms beginning in the late 1840s, which systematically replaced mediated governance and deference to customary law with a hands-on style of administration that sought to modernize the empire, arguably contributed at least in part to a governance crisis of some consequence – namely, the 1857 revolt and the subsequent dissolution of the Company Raj in favor of direct British rule. The dramatic annexations and reforms that took place in the decade prior to the rebellion arguably worked against the stability of the regime. This was a lesson that the British did not quickly forget. In the modern context, moreover, the Pakistani government is wary of this very dynamic, and has shown a notable lack of enthusiasm for any plan of transition in the tribal areas that is predicated on confrontation with the tribal elite class over the issue of their opposition to "intrusive" governance.

There is, thankfully, more than one approach to modernizing the FCR system. The fact that proposed reforms of the tribal areas involve movement along both critical axes of debate raises the possibility of intermediate states that could serve as waypoints in the gradual transition to “normalized” governance. One such path would retain for a time mediated forms of governance, while shifting the patterns of state–society interaction toward a system that is more codified and predictable (see A at Figure 2). In some ways this path would have resonances with Cornwallis’ attempt to govern both on the basis of a legal order, and through the mediated authority of an elite class. In the case of the tribal areas, this intermediate solution might involve gradual reforms to the FCR that expanded the domain of law and reduced the arbitrary powers of the state, but within that domain of law privileged the tribal *maliks* and gave them a role as the mediators through which the federal government executed fiscal and police authorities. In such a way, the state would gradually establish a new basis of authority (law) before trying to change the hierarchical patterns of state–society interaction.⁵¹

Under such an arrangement, for example, the state might extend the provision of basic civil rights; establish the foundation for contract law and other legal mechanisms which could encourage productive economic activity; and institute more robust judicial oversight. Sensitive issues of family law might for the time being be left to *qazi* courts or non-religious local institutions. The tribal *maliks*, once meeting certain qualifications, would have broad executive authority within this framework of law. There are various means by which such a system might be implemented. The FCR in its current form provides for Councils of Elders, which could be institutionalized and granted more expansive authorities. Alternately, the state could use the institution of the agency council, which was created in late 2004 (on a provisional basis) as a partially elected forum for promoting local governance, but which, at present, is little more than an institutional shell.⁵² Whether appointed or elected, these tribal leaders could then be granted a set of legally defined powers by which they are charged to keep order within their respective jurisdictions. Regardless of the particulars of such a system, the general principle would be to recognize, insofar as it were possible, existing patterns of tribal leadership, and at the same time bring the exercise of that leadership under the domain of law.⁵³

The advantages of this transitional state would be found in its ability to advance gradually the writ of law, while preserving a measure of the mediated rule to which the tribal communities have grown accustomed. A legal framework in the FATA could for the first time stipulate the basis on which the state had the authority to intervene directly in the affairs of the tribal community; this in and of itself would signal in useful ways the state’s interest in reformulating the norms of what constitutes legitimate intervention by the government. The disadvantages of such a transition path would include its propensity to calcify existing leadership structures, which may not be representative or effective; its incompatibility (at least in the near term) with the expansion of electoral mechanisms for leadership selection at the lower tiers of social and political life; and its continued reliance on comparatively unaccountable institutions through which to channel aid and basic social services. Broadly speaking, however, such a path could credibly serve as a stable waypoint bridging the antiquated FCR system and a more modern, accountable framework of local rule.

A second arc, tracing a much different path to the same objective (see B at Figure 2) would begin by first moving away from the highly mediated nature of governance in the tribal agencies, and only later transitioning toward an impartial legal framework. In this trajectory, the intermediate state would in some respects conjure up the style of Munro's governance in Madras: that is, a flexible paternalism that nonetheless attempts to recapture the efficacy of local institutions. Within the Pashtun tribal context, this might mean gradually abandoning the state's historical reliance on the *malik* class and instead preferencing a system in which the political agent would begin to engage the social order from the bottom up. This engagement might be accomplished through leveraging the traditional deliberative mechanism of the *jirga*, or by expanding the system of agency councils from the present one-tiered structure to a three-tiered structure analogous to the LGO system in the settled areas.⁵⁴ Only after this new structure took shape at the grassroots level and proved to be relatively stable would the arbitrary judicial and fiscal powers of the political agent be recalled in favor of a more stringent and impartial system of law. This is not to say that the state would ignore existing forms of tribal leadership, or that it would retain the most egregious provisions of the FCR. It is to say, rather, that as a matter of *emphasis* the state would privilege the development of local decision-making bodies which provide it direct contact with the tribal populations, and would seek to retain a strong executive presence with discretionary powers.⁵⁵

This arrangement would have the clear advantage of easing aside discredited members of the *malik* class without leaving the system devoid of a locus of authority. The discretionary powers of the political agent would be expanded into the governance sphere, until such a time as other political classes emerged – through, perhaps, an electoral or *jirga* process overseen by the political agent. The key advantage to this transition path would lie in its ability to facilitate local institutions of governance, and build a civic culture from the ground up. Such institutions could serve as vehicles for delivery of social services and external aid programs.⁵⁶ The problems inherent in such an approach lie in the potential unpalatability of retaining an intrusive political agent with broad discretion in areas of governance; and in the opportunity cost of undertaking a gradualist approach to the extension of legal norms, particularly in the area of civil rights. While this path may incur a somewhat high initial cost, the political agent-as-administrator would eventually be in a position to build up a functioning civil bureaucracy, and transition the basis of his decision-making from discretionary judgments to rules grounded in a prevailing legal order.⁵⁷

Intermediate States: The Malakand Case

Although each of these transition paths involves at least one notable downside, I would again contend that attempting to reform along both axes of governance at the same time can pose even greater risks to political stability. Malakand district in the NWFP provides an apt concluding example in this regard. Malakand has a long and complicated history: originally ordered under the FCR, it was changed in the 1970s into a provincially administered tribal area, and – under the guidance of the political agent – given a system of courts, and eventually an elected district council. The arrangement was modified somewhat following a 1994 Supreme Court decision

which overturned the Provincially Administered Tribal Areas (PATA) Regulation, which in turn sparked an uprising by the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM), a group seeking the establishment of strict Islamic law. After putting down the uprising, the government agreed to operate Malakand as a PATA region governed by *sharia* law (a program which has proven to be rather benign in its implementation).

Malakand has, in this sense, existed as a transitional region of one sort or another for over 30 years. During much of this time, its transition path hewed more closely to the second option described above: that is, the retention of a strong political agent (acting in the mold of a deputy commissioner) with broad discretionary powers, alongside the creation of courts and local elected institutions. This system faced a number of problems, but functioned relatively stably until the imposition of the 2001 devolution reforms. Those reforms increased the power of the local elected officials and diminished the status of the political agent, who took on the title of district coordination officer.

Malakand remained a hybrid form of governance (keeping, for example, a “levied” tribal police force rather than a professional one), but the 2001 change was notably destabilizing: by taking away the discretionary powers of the government representative while empowering through democratic means a politicized class of elected officials – and leaving ambiguous the question of who exercises final authority over police forces – the reforms led to a clear reduction in the ability of the state to respond decisively to radical Islamic groups and other religio-political actors. In this instance, the diminution of the political agent’s authority left a void that the weak and politicized elected institutions were unable to fill. As I will argue below, the same trend was equally pronounced in the settled areas following the LGO reforms. At a minimum, then, Malakand presents a cautionary lesson in the risks of reforming the local governance system without taking care to preserve a clear locus of authority over the critical mechanisms of state control.

The Governance–Development Nexus

There is one additional factor which must be accounted for in any serious discussion of governance reform in the FATA. Structural reform proposals for the tribal areas often overlook a fundamental question: what are the interaction effects between governance reform and development policy? This question has been explored at some length with respect to the settled areas, but has received only cursory treatment with regard to the FATA.⁵⁸ In the abstract, one might expect that each of the transition arcs described above would be conducive to certain models of development; the arc which initially privileges devolution and local representative institutions, for example, would both reinforce, and be reinforced by, community-oriented and participatory development models. As a practical matter, development sector planning for the FATA has in recent years somewhat outpaced planning for the governance sector. The FATA Sustainable Development Plan, for example, acknowledged the importance of governance in framing the FATA development goals, but demurred on any substantive discussion of that nexus.⁵⁹ And US policymakers, in spite of having initiated an ambitious aid program for the FATA of \$750 million over five years, chose until recently to keep

governance reform “off the table” in deference to the pre-February 2008 Pakistani status quo on the FCR.⁶⁰

In the absence of closely integrated governance and development reform plans for the FATA, the expected influx of development monies from the United States and other international donors over the next several years will result in *de facto* changes to the governance paradigm of the tribal areas. As the provision of aid to the FATA has in recent years had mixed effects – at times stabilizing and at times destabilizing – the net impact of these changes, if driven by the aid agenda, is unpredictable. I would argue that, regardless of which transitional template is chosen, it is critical that the governance and aid agendas be mutually reinforcing. Taking the first transitional arc outlined above, one might imagine a governance reform which charges the *maliks* with broad political responsibilities, qualified by a set of legal norms of equity and transparency; and a development program which, in turn, reinforces the *malik* system by using tribal leaders as conduits for aid delivery. Similarly, following the second arc, one might imagine a governance reform which creates new local, elected bodies through which aid can be delivered; and a development program which reinforces these nascent institutions by incentivizing new modes of political behavior (that is, participation in local bodies). This sort of coordinated effort could be implemented in phases, leveraging reforms in the more politically stable tribal agencies so as to create a demonstration effect to the tribal areas at large.

Reform of the Settled Areas

These debates regarding the tribal areas raise above all questions of sequencing, and of the desire on the part of the reformist state to maintain lines of continuity in the state–society relationship as systems of governance change. In many respects the second transition underway in Pakistan’s northwest frontier raises these very same questions of continuity, but casts them in a different light. The 2001 local government reforms, introduced for both the substantive and political reasons described above, had the effect of dramatically remapping the relationships among civil authority, the police, and elected politicians.⁶¹ Whereas the deputy commissioner system inherited from the British was top-down, discretionary, and based on mediated patterns of governance, authority under the LGO system was both more dispersed and less discretionary, with power devolved to elected leaders at various tiers of local government.⁶²

This simultaneous movement along two axes of governance, however, presented a real challenge to social and political stability. The devolved system in the frontier has been plagued with problems, the most serious of which has been the creation of a kind of governance that is simultaneously more rigid, and more diffuse. By changing at the same time both the subjects of authority (i.e., the district officers and their powers) and the objects of authority (i.e., the local councils and their welfare duties), the state found itself, in a sense, disoriented; it has in a number of cases been unable to deal effectively with emerging threats to law and order.⁶³ The effects, in fact, compounded each other: the elected agents of governance, the *nazimeen*,⁶⁴ became highly politicized, but could not easily be checked in the exercise of their authority because the politically neutral DCOs had been stripped of discretionary powers; police powers had been devolved, but since police had been granted little direct legal authority, they

could not make decisions independent of higher authorization. In one of the great ironies of the LGO, “devolution” of power in reality concentrated authority as never before at the highest levels of provincial governance.

Devolution and Destabilization

Though often unacknowledged, this reordering of local governance was in fact one of the key factors which facilitated the unchecked spread of an entrepreneurial neo-Taliban insurgency into the settled areas of the NWFP in 2006–07. In locations throughout the province – from Bannu in the south, to the Pashtun heartland of Charsadda and Mardan, to the troubled Swat valley in the north – the newly devolved system of local rule was unable to respond decisively to threats against the state, or against vulnerable communities such as religious minorities and women. With respect to the security environment, the negative effects of the devolution plan were evident in at least three ways.⁶⁵

In the first place, the devolution system impaired the ability of the government to respond quickly to emerging threats. The devolution of responsibility without authority concentrated decision-making at high levels, and slowed the overall response time of the government. Whereas the deputy commissioner once had latitude to act quickly under provisions designed to promote “maintenance of public order,” the DCOs under the new system were empowered for the most part only to issue recommendations, which then were to be cleared by the provincial home secretary and transmitted back down the chain of command – a process which often took weeks. The DCOs, rather than acting as decisive district administrators, saw their role diminished to the point where one official pointedly complained, “*Aaj kal main sirf dak khana hun*” (these days I am only a post office).⁶⁶ In an ordinary security environment, these negative effects of devolution might have been accepted as a reasonable trade-off in exchange for a system which was arguably more representative and conducive to balancing state and social interests. But in an environment in which insurgent actors were testing and challenging the writ of the state, such delays were incapacitating. Local institutions constitute a first line of defense against threats to state legitimacy and represent the *sine qua non* of any counterinsurgency program. Lacking the capacity to respond quickly to the takeover of state institutions – particularly in the Swat valley, where insurgents systematically captured police stations and key roads in November 2007 – the provincial government eventually found itself in a position in which only paramilitary and military action was sufficient to restore the writ of the state.⁶⁷

Second, the devolution reforms inadvertently politicized key policing functions of the state. Elected *nazimeen* were given responsibility for the maintenance of law and order, but were reluctant to exercise their authority in ways which might prove unpopular. Specifically, the presence of political representatives at the local level affiliated with religio-political parties such as the Jamaat-e-Islami and the Jamiat Ulama-e-Islam complicated the government’s response to insurgent threats, as these representatives held authority over the deployment of police units, and occasionally exhibited a reluctance to act against their co-religionists who violated the law or engaged in vigilante behavior. It was not uncommon to hear stories about *nazimeen* who, in the midst of leading protest rallies in their districts, were at the very same time responsible for overseeing the police officers charged with monitoring and containing those same

events.⁶⁸ The devolution plan not only gave rise to these evident conflicts of interest, but also created a system in which the district official could no longer serve as a buffer between the police forces and the public at large. The deputy commissioner once played an important mediating role in this regard, but with the advent of greater police independence under the LGO, it became more difficult to align police action with the overall objectives of the government.

Third, the reforms undertaken in 2001 had an adverse effect on the state's ability to manage the border regions located between the settled and tribal areas of the frontier. Prior to the LGO system, the provincial home secretary in Peshawar served as the link between the settled areas, the PATA, and the FATA. This critical link was broken in 2002 when, following the promulgation of the LGO, the government began transferring administrative oversight of the FATA from a special cell in the provincial government to a new FATA Secretariat in Peshawar. Although the establishment of the FATA Secretariat was justified, not unreasonably, on the grounds that it would improve the state's management of the tribal areas in both the security and development sectors, this seemingly obscure bureaucratic reorganization in fact handicapped the government's ability to deal with insurgent groups which crossed freely between settled and tribal regions.⁶⁹ In the area around Bannu in southern NWFP, for example, neo-Taliban groups moved frequently between Bannu city (governed under the LGO, with elected representatives from both mainstream and religious parties), the buffer areas of the Frontier Region Bannu (a territory with PATA status, nominally managed by the DCO), and North Waziristan Agency (part of the FATA, administered by the FATA Secretariat). By many accounts, this fragmentation of authority contributed to an environment which was conducive to the entrenchment of local insurgent groups, particularly in the border areas stretching from Peshawar in the north, to Dera Ismail Khan in the south.⁷⁰

Reclaiming State Authority

This collective set of problems which arose from devolving powers within the settled areas is, I would argue, a consequence of the attempt on the part of the Pakistani government to alter multiple axes of governance without considering the utility of intermediary states. A local government devolution plan could have followed one of the intermediate trajectories noted above: beginning, perhaps, with a Whiggish separation-of-powers at the district level to blunt the singular authority of the deputy commissioner, before attempting to alter the character of the most granular institutions; or, alternately, establishing and empowering local councils under the guidance of a commissioner who retained broad discretionary authority in order to manage the inevitable political and social consequences of that reform (See C and D, respectively, in Figure 2).

While there is an appreciation for the localization of state authority under devolution and the ways in which it has begun to improve service delivery, there is also a growing nostalgia for an earlier era of personalist rule in which the commissioner was able to act decisively and without the constraints of excessive regulation.⁷¹ Close observers of the local government system in the frontier have suggested that rolling back the reforms to an intermediate state (particularly the latter option, i.e. D at Figure 2)

would provide space for the growth of a civic culture with elected representatives, while retaining the state's ability to act quickly against emerging threats.

Indeed, the governments in Islamabad and Peshawar have begun reevaluating the LGO system in light of its performance since 2002, and proposing remedies to its most glaring structural flaws. In January 2008, NWFP Governor Owais Ahmad Ghani announced the establishment of Regional Coordination Officers (RCOs) who would be tasked with overseeing the government's law and order initiatives in both the settled and tribal areas.⁷² Two months later, the governor took another significant step in promulgating a revised version of the Code of Criminal Procedure; this revision codified the transfer of a number of important executive powers from the *nazimeen* to the DCOs.⁷³ Furthermore, the new coalition governments at the central and provincial levels have expressed their intention to revisit the LGO system, presumably for both administrative and political reasons.⁷⁴

The experience of the LGO reforms in the frontier since 2001 reinforces in many ways the core argument presented above, namely, that structural reforms which move too abruptly along both axes of governance are prone to bring about political instability. This argument should not be interpreted as a paean to centralized, undemocratic, discretionary administrative authority. On the contrary, it is obvious that a broader base of political representation at local levels, and a broader set of civil liberties grounded in a just system of law, contribute positively to effective and legitimate governance. It is most of all the sequencing and not the substance of these reforms which deserves the close scrutiny of the state.

Conclusion: The Virtues of Gradualism

The modernizing trends of local governance in contemporary South Asia owe much to the utilitarian vision of the late nineteenth century, for it was in many ways the sheer ambition of the British imperial project (and, later, the attempt at a welfare state) that drove local governance in the direction of more standardized, representative, and deeply rooted interaction with the society. While classical utilitarianism as a philosophy is read by moderns with suspicion as a discredited project predicated on a culturally hegemonic exercise of power, utilitarianism as an impetus for a certain style of rule lives on. In fact, "rule of law" and "devolution of power" are two of the most potent buzzwords of the modern science of governance, and form much of the theoretical underpinning of recent reforms in Pakistan's settled areas. So complete is the belief in progress toward devolved systems of law that there are hardly any truly conservative critics that stand in the tradition of Munro, who once famously griped that "the ruling vice of our government is innovation."⁷⁵

Given the scope and ambition of the modern nation-state, that is just as well. Even so, in the drive to implement programs of reform, countries like Pakistan would do well to consider the geographically and historically heterogeneous styles of British governance in the subcontinent. In the first place, as I have argued, these patterns of rule can provide a framework in which to deconstruct ambitious modern programs of reform into their constituent movements – toward law, and toward devolution. And, second, the diversity of governance styles demonstrates that there are viable intermediate states which can act as useful paths of transition on the road from personalist

and mediated governance to ever more structured, direct engagement with the citizenry. I have argued in particular that these intermediate states deserve our careful attention in the frontier, as projects which have attempted to reinvent government along both axes of reform have resulted in marked evidence of political instability.

This is more than simply an academic debate. The structure of local governance in the settled areas may well be a determining factor in the success of Pakistan's counter-insurgency campaign against the neo-Taliban and other religio-political movements which seek to destabilize the state. And in the tribal areas, enthusiasm for reform of the antiquated FCR may well lead to new systems of governance which, democratic virtues aside, are even less adept at dealing with insurgent actors. Already, ambitious reformers have proposed new frameworks for the FATA which, in key respects, are likely to lead to the very problems discussed above.⁷⁶

Modern states like Pakistan will continue to face pressures to reform their systems of local governance by instituting the rule of law, and by devolving powers to representative citizen bodies. Such reforms are ultimately important mechanisms by which the state can extend the sphere of individual liberties, and attend to the needs of the citizenry. My contention is, simply, that in moving to alter well-established, locally legitimate forms of government, the state should take care to pursue a gradual and carefully sequenced program of reform. In this critical exercise, Thomas Munro's concern with linking cautious and deferential governance to the ultimate stability of the state should come as a welcome warning to the modern reformer: beware, he wrote, the futility of the state that "cannot adapt its laws to the circumstances of the people."⁷⁷

NOTES

1. The "settled" areas is the name commonly given to those parts of the frontier in which the state has implemented regular forms of governance and taxation, viz., the districts which fall under the authority of the North-West Frontier Province and which are not considered to be tribal areas.
2. See Lynn Zastoupil, *John Stuart Mill and India* (Stanford: Stanford University Press, 1994), pp. 56ff.
3. For a summary of the utilitarian project, see Thomas R. Metcalfe, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1994), pp. 34ff.
4. Thomas Munro, "Minute on the State of the Country and Condition of the People," December 31, 1824, quoted in George Robert Gleig, *The Life of Major-General Sir Thomas Munro*, Vol. 3 (London: Henry Colburn & Richard Bentley, 1830), p. 320.
5. Quoted in Gleig, *The Life of Major-General Sir Thomas Munro*, p. 366.
6. Quoted in Gleig, *The Life of Major-General Sir Thomas Munro*, p. 364.
7. Philip Woodruff [pseud.], *The Men Who Ruled India: The Founders* (London: Jonathan Cape, 1954), p. 196.
8. For more on Munro, see Burton Stein, *Thomas Munro: The Origins of the Colonial State and His Vision of Empire* (Delhi: Oxford University Press, 1989).
9. Part of the mystique of the Punjab school comes from the fact that those discretions which they were not afforded, they occasionally seized.
10. Quoted in David Gilmour, *The Ruling Caste: Imperial Lives in the Victorian Raj* (New York: Farrar, Straus and Giroux, 2005), p. 161.
11. It was John Nicholson who occasioned the cult of Nikal Seyn. James Abbott, Herbert Edwardes, and other devotees of the Henry Lawrence school also governed with wide discretion on the frontier.
12. That said, Stephen would no doubt have approved of Governor-General Dalhousie's criticism of Henry Lawrence's frequent travels to far-flung frontier posts in 1850; it was Dalhousie's view that rational governance required a presence at headquarters, not dispensing summons in the field. See, e.g., Lionel James Trotter, *Life of the Marquis of Dalhousie* (London: W. H. Allen, 1889), pp. 71ff.
13. James Fitzjames Stephen, *Liberty, Equality, Fraternity*, ed. R. J. White (Cambridge: Cambridge University Press, 1967 [1873]), p. 228. Emphasis added.
14. Eric Stokes, *The Political Ideas of English Imperialism (An Inaugural Lecture)* (Oxford: Oxford University Press, 1960), p. 21.

15. See Eric Stokes, *The English Utilitarians in India* (Oxford: Oxford University Press, 1959), pp. 275–88.
16. Zastoupil, *John Stuart Mill and India*, p. 15. See also Metcalfe, *Ideologies of the Raj*, pp. 17–18.
17. Zastoupil, *John Stuart Mill and India*, pp. 144–146.
18. This is a charitable reading of Dalhousie's tenure; his detractors, and they are many, have decried his micro-management and disregard for local norms.
19. Quoted in Suresh Chandra Ghosh, "The Utilitarianism of Dalhousie and the Material Improvement of India," *Modern Asia Studies* Vol. 12, No. 1 (1978), p. 107.
20. Ghosh, "The Utilitarianism of Dalhousie," p. 102.
21. Pakistan inherited from the British not only the structure of these systems of governance, but their ethos as well. On Pakistan's adoption of the "vice-regal" tradition, see Khalid Bin Sayeed, *Pakistan: The Formative Phase* (Karachi: Pakistan Publishing House, 1960). On the state's use of "the pillars of the colonial system," see Seyyed Vali Reza Nasr, *Islamic Leviathan: Islam and the Making of State Power* (Oxford: Oxford University Press, 2001), pp. 41–47.
22. In accordance with the longstanding wishes of Pashtun nationalists in the NWFP, the province is slated to be renamed Pakhtunkhwa ("land of the Pakhtun").
23. This history glosses over the many varieties of governance that have been tried in Pakistan, including direct martial rule, as well as politicized attempts at reform such as the abortive "One Unit" policy implemented by Chaudhry Muhammad Ali in 1955.
24. It should be noted that several of these pre-2001 forms of administration, such as Ayub Khan's "Basic Democracy" program of devolution begun in 1959, also included local elections and representative governance.
25. The LGO was in fact promulgated as a set of province-specific ordinances. See, e.g., *The NWFP Local Government Ordinance, 2001 (Updated Version)* (Islamabad: National Reconstruction Bureau, 2007).
26. Note in particular the "regression" of Malakand division in 1994 from a provincially administered tribal area governed by the civil bureaucracy to a quasi-tribal region nominally governed by religious law. This came about as the result of a negotiated settlement between the government and the followers of Tehreek-e-Nafaz-e-Shariat-e-Mohammadi. The case is discussed further below.
27. For an explanation of the role of the *maliks*, see International Crisis Group, "Pakistan's Tribal Areas: Appeasing the Militants," December 11, 2006, pp. 4ff.
28. The British were concerned about regional threats to their hegemony, but also of course about great powers such as the Russians.
29. See Rashid Ahmad Khan, "Political Developments in FATA: A Critical Perspective," in P.I. Cheema and M.H. Nuri, eds., *Tribal Areas of Pakistan: Challenges and Responses* (Islamabad: IPRI, 2005), pp. 25–26.
30. This same essentialist argument is in evidence in some contemporary analyses of governance in the Pashtun areas. See, e.g., the otherwise excellent historical review by Thomas H. Johnson and M. Chris Mason, "No Sign until the Burst of Fire: Understanding the Pakistan–Afghanistan Frontier," *International Security* Vol. 32, No. 4 (Spring 2008), pp. 73ff.
31. The deputy commissioner in non-regulation provinces like Punjab was the analogue to the district officer in regulation provinces; in addition to the executive powers of the district officer, he was given authority as the district magistrate. For this reason, the post-colonial implementation of the deputy commissioner system in Pakistan – particularly in the northwest frontier – retained the tradition of a strong commissioner who served simultaneously in both of these roles. See Gilmour, *The Ruling Caste*, p. 160.
32. The bureaucratic lineage of the district coordination officer traces its roots back to the elite Indian Civil Service which operated in British India. Today, both district officers and political agents are generally drawn from the Civil Service of Pakistan's District Management Group (DMG). For a review of the history of the DMG's role in the bureaucracy, see Saeed Shafqat, "Pakistani Bureaucracy: Crisis of Governance and Prospects of Reform," *The Pakistan Development Review* Vol. 38, No. 4, part II (Winter 1999), pp. 995–1017. For an analysis of the LGO's impact on bureaucratic structures, see Saeed Shafqat and Saeed Wahlah, "Experimenting with Democratic Governance: The Impact of the 2001 Local Government Ordinance on Pakistan's Bureaucracy" in Charles H. Kennedy and Cynthia A. Botteron, eds., *Pakistan 2005* (Karachi: Oxford University Press, 2006).
33. The term "controlled democracy" was introduced by Pakistan's first president, Iskander Mirza, who argued for a gradual and carefully managed transition to democratic forms.
34. The analysis which follows is based largely on the author's interviews in NWFP with government officials and civil society leaders, 2005–07.
35. The first FCR, which was quite modest in scope, was promulgated in 1873, and was subject to minor amendments over the subsequent three decades. The 1901 regulation was considerably more comprehensive. For commentary on the original regulation, see Olaf Caroe, *The Pathans: 550 B.C.–A.D. 1957* (Karachi: Oxford University Press, 2006 [1958]), pp. 353ff. For the updated text of the 1901 regulation, see *The Frontier Crimes Regulation, 1901: Regulation III of 1901, as modified up to 31st October, 1971* (Peshawar: Government Stationery and Print. Dept., 1973). For commentary on the regulation, as well as official rules pertaining to its implementation, see Abdul Ghafoor Chaudhary, *The Law of Expediency*, 2nd ed. (Lahore: Hinaa Publications, 1965), pp. 78–490; and M. Farani, *The Jirga Laws* (Lahore: Pakistan Legal Publications, 1968), pp. 53–98.
36. *The Frontier Crimes Regulation, 1901*, §21(a). For a discussion of the mechanism by which the political agent carries out this authority, see Azmat Hayat Khan, "FATA (Federally Administered Tribal Areas of

- Pakistan),” in P. I. Cheema and M. H. Nuri, eds., *Tribal Areas of Pakistan: Challenges and Responses* (Islamabad: IPRI, 2005), pp. 95–97.
37. *The Frontier Crimes Regulation, 1901*, §36(b).
 38. See Willard Berry, *Aspects of the Frontier Crimes Regulation in Pakistan* (Durham, NC: Commonwealth Studies Center, Duke University, Monograph and occasional papers series, No. 3, 1966), pp. 28–32. The introduction of the FCR can be understood, at a deeper level, as an acknowledgement that the British judicial system was “hopelessly out of accord with Pathan sentiment,” particularly in the tribal territories. Caroe, *The Pathans*, p. 352.
 39. See, e.g., Peter Chalk, “Case Study: The Pakistani–Afghan Border Region,” in *Ungoverned Territories: Understanding and Reducing Terrorism Risks* (Santa Monica, CA: RAND, 2007), pp. 49–76; and Robert D. Lamb, “Ungoverned Areas and Threats from Safe Havens,” US Office of the Under Secretary of Defense for Policy, January 2008.
 40. See US Department of the Army, “Field Manual No. 3–24,” 2006.
 41. See Johnson and Mason, “No Sign until the Burst of Fire,” pp. 60ff.
 42. The term “neo-Taliban” refers broadly to the collection of self-described Taliban groups which have emerged in the frontier following 9/11; these groups do not necessarily have any connection to the original Taliban movement led by Mullah Muhammad Omar.
 43. The number of *maliks* killed in Waziristan over the last several years is estimated by some local observers to constitute less than 3% of the total. Even so, the targeted killings have dissuaded tribal elders from cooperating with the government. Author interview with an NGO leader working in the FATA, February 2008, Islamabad. See also Khalid Aziz, *Extending Stability to Pakistani Tribal Areas* (Peshawar: RIPORE, 2008), pp. 7ff.
 44. The FCR has been criticized by the Human Rights Commission of Pakistan, the legal community, and civil society groups. See, e.g., International Crisis Group, “Pakistan’s Tribal Areas,” pp. 7–9; Masood Rehman, “FSC seeks NWFP govt’s comments on FCR petitions,” *Daily Times*, January 30, 2008; and Asad Jamal, “A law that must go,” *The News*, April 6, 2008.
 45. For examples of the state’s use of FCR collective punishment provisions, see Human Rights Watch, “Pakistan: Protect Civilians From Fighting in North Waziristan,” March 6, 2006. For a discussion of the financial aspects of the political agent system, see Humayun Khan, “The Role of the Federal Government and the Political Agent,” in Cheema and Nuri, eds., *Tribal Areas of Pakistan*, pp. 109–111.
 46. C. Christine Fair, Clay Ramsay, and Steve Kull, “Pakistani Public Opinion on Democracy, Islamist Militancy, and Relations with the U.S.,” United States Institute of Peace, February 2008, p. 26.
 47. Due to the sampling difficulties posed by the security environment, this survey of over a thousand residents of the FATA is likely to have a significant selection bias. Naveed Ahmad Shinwari, *Understanding FATA: Attitudes Towards Governance, Religion and Society in Pakistan’s Federally Administered Tribal Areas* (Community Appraisal and Motivation Programme, 2008), p. 61.
 48. Elections have taken place in the FATA since the introduction of adult franchise in 1997, but these have been limited to seats for the national parliament. See Syed Iftikhar Hussain, “Inaugural Address,” in Cheema and Nuri, eds., *Tribal Areas of Pakistan*, p. 7. The ANP has also pushed for the extension of the Political Parties Act to the FATA, a mostly symbolic change which would formally permit party-based campaigning in the tribal areas. See, e.g., Ismail Khan, “Hoti pledges comprehensive dialogue to end militancy,” *Dawn*, March 28, 2008.
 49. “Provincial status for Fata demanded,” *Dawn*, May 31, 2008.
 50. Gilani’s speech was short on details, and drew both plaudits and criticism from leaders in the FATA. See, e.g., “PM decision on FCR attracts mixed reaction,” *The News*, March 30, 2008.
 51. This is not to say that Pashtun society is hierarchical, only that there exists a hierarchy of relations between the state, the tribal leadership, and the tribal population at large.
 52. It is telling that only 10% of respondents surveyed in the FATA associated the role of the agency councilors with local development, which is ostensibly one of their primary functions. See Shinwari, *Understanding FATA*, pp. 13, 77. See also International Crisis Group, “Pakistan’s Tribal Areas,” p. 12.
 53. Interestingly, the FATA survey showed that a narrow plurality of respondents (38.9%) supported the codification of the *jirga* laws, a step consistent with the governance transition path described here. The desire for regularized governance, however, went only so far; over 70% opposed the introduction of normal criminal and civil law into the tribal areas. Shinwari, *Understanding FATA*, pp. 70–71.
 54. The state has a long history of leveraging local mechanisms like the *jirga*, but this does not mean that state-initiated *jirgas* are inevitably seen as equally legitimate to other *jirgas*. In fact, when participants in the FATA survey were asked, “In your opinion what type of Jirga provides justice?” they responded overwhelmingly (by a ten-to-one ratio) in favor of the *qaumi* (“community”/ad-hoc) *jirga* as opposed to the *sarkari* (“official”/FCR) *jirga*. Shinwari, *Understanding FATA*, p. 63. See also Hassan M. Yousufzai and Ali Gohar, *Towards Understanding Pukhtoon Jirga* (Peshawar: Just Peace International, 2005).
 55. It is important to note that the forms of discretionary authority which are likely to prove useful to the executive may well change as a result of the political transformation which the state itself undertakes. For example, the provisions permitting collective punishment are useful only insofar as the state is operating through a system of mediated authority. In a governance transition focused on building local institutions from the bottom up, the use of collective punishment provisions would most probably undermine the overall security and development objectives of the state.

56. The use of Citizen Community Boards (CCBs) under the LGO system may provide an instructive analogy in this regard.
57. This is not to suggest that the political agent would act entirely on the basis of discretionary authority, apart from all law. The point, rather, is that if authority is being devolved to local institutions and new forms of political representation, it may be of value for the agent of the state to retain significant discretionary authority so as to deal with the implications – both foreseen and unforeseen – of this transition.
58. With respect to the settled areas see, e.g., World Bank and Government of NWFP, *Pakistan North West Frontier Province Economic Report: Accelerating Growth and Improving Public Service Delivery in the NWFP: The Way Forward* (World Bank, December 8, 2005); and Social Policy and Development Centre, *Social Development in Pakistan Annual Review 2006–7: Devolution and Human Development in Pakistan* (Karachi: SPDC, 2007).
59. *FATA Sustainable Development Plan (2006–2015)* (Peshawar: Civil Secretariat (FATA), Government of Pakistan, 2006).
60. One senior US official acknowledged that FATA reforms constituted “a huge gap in our policy.” To the credit of both the US and Pakistani bureaucracies, the subject of FATA reforms began to be seriously raised in late 2007 and early 2008 in bilateral forums. Author interviews, spring 2008, Islamabad and Washington.
61. For an excellent overview of the reforms and their impact, see Social Policy and Development Centre, *Social Development in Pakistan Annual Review 2006–7*.
62. The first generation of Pakistani district officers, notes Khalid Bin Sayeed, “had been brought up in the old British tradition of exercising maximum discretionary power within their Districts with minimum interference from Delhi or Lahore. In the Punjab and in the Frontier the prevailing view was that a Sahib was a Sahib and any nagging or interference in his administration by politicians was resented This tradition was kept alive during the formative period of Pakistan’s existence.” Sayeed, *The Formative Phase*, p. 384.
63. In many cases, the state was at a loss to deal with even the most mundane problems. Under the LGO, responsibility for sanitation was devolved to the union council level (the lowest tier of local governance), but the funds were not similarly devolved. The result, predictably, was messy. The failure of the LGO to deal with deep structural problems is taken up in Shahrukh Rafi Khan, Foqia Sadiq Khan, and Aasim Sajjad Akhtar, *Initiating Devolution for Service Delivery in Pakistan: Ignoring the Power Structure* (Karachi: Oxford University Press, 2007).
64. Plural of *nazim*, i.e., mayors.
65. The argument which follows draws from Joshua T. White, “Governance, Islamic Contestation, and Political Stability in Pakistan’s Frontier” (paper presented at “Political Transformations in Pakistan,” sponsored by American Institute of Pakistan Studies and Johns Hopkins School of Advanced International Studies, March 29, 2008, Washington, DC).
66. Author telephone interview with a former DCO from NWFP, March 2008.
67. The ineffectiveness of the local government system in dealing with the Tehrik-e-Nifaz-e-Shariat-e-Muhammadi insurgent movement in Swat can be seen from the overall pattern of the state’s response: following a prolonged period of virtual inaction, the government brought in helicopter gunships to attack the insurgents. The state, to say the least, did not show itself to be adept at utilizing all instruments of its authority in a rational, graduated manner consistent with established counterinsurgency doctrines.
68. Author interviews, NWFP, March 2006.
69. Politics aside, the problems inherent in bifurcating administration of the settled and tribal areas constitute a compelling rationale for gradually integrating the FATA into the adjacent frontier province, rather than preserving its status as a region administered under a separate channel of federal oversight. Olaf Caroe, who served as the last governor of the Indian NWFP, reflected years later on the challenge of administering this boundary: “The juxtaposition of the two societies, the settled and the tribal, posed in acute form the problem of securing the surrender of criminals It was a problem which was never solved.” Caroe, *The Pathans*, pp. 350–351. As a corollary, it would be logical to gradually integrate the PATA into the settled regions as well. See, e.g., Aziz, *Extending Stability*, p. 9.
70. In addition to the Bannu region, Darra Adam Khel (a PATA region near Peshawar) has proved to be a problematic point of interface between settled and tribal systems. See, e.g., Munawar Afridi and Abdul Sami Paracha, “Troops on the offensive in Darra, occupy militants’ stronghold,” *Dawn*, January 26, 2008.
71. It should be evident from the above narrative that while the commissioners were of course constrained by their legal mandate, they nevertheless had at their disposal greater discretionary powers than do the DCOs under the current LGO system.
72. See “Coordination offices for tribal areas, settled districts,” *Dawn*, January 19, 2008; and Riaz Khan Daudzai, “RCOs to cope with law, order in Fata, NWFP,” *The News*, February 5, 2008.
73. These changes, surprisingly, were welcomed by some *nazimeen*. Tellingly, one district *nazim* was quoted as saying, “Being a political person it was difficult for me to ban processions usually organised by political parties. Now that these powers have been taken away, we would not be required to take difficult administrative decisions.” Mohammad Ali Khan, “Nazims’ executive powers clipped: NWFP governor amends ordinance,” *Dawn*, April 3, 2008.
74. Proposed changes to the LGO in recent years have generally been perceived as critiques of President Musharraf. For this reason, changes to the devolution plan received little traction prior to the February 2008 elections in which Musharraf’s political status was notably diminished.
75. Quoted in Gleig, *The Life of Major-General Sir Thomas Munro*, p. 381.

76. The International Crisis Group has been a forceful advocate of FATA reforms. Its South Asia project director, Samina Ahmed, has argued rather unconvincingly that the expansive reforms proposed by the group “are not dramatic at all.” Samina Ahmed, “Appeasing the Militants” (presentation at the US Institute of Peace, March 28, 2007, Washington, DC). The recommendations proposed by Naveed Ahmad Shinwari are also problematic in their sequencing. He suggests that the office of the political agent be replaced with elected representatives, and that those representatives in turn oversee the political agents. He also recommends that *jirgas* be delegated judicial powers. The proposal, unfortunately, reads very much like the most discredited aspects of the devolution plan implemented in the settled areas. Shinwari, *Understanding FATA*, p. 92.
77. Quoted in Gleig, *The Life of Major-General Sir Thomas Munro*, p. 366.

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