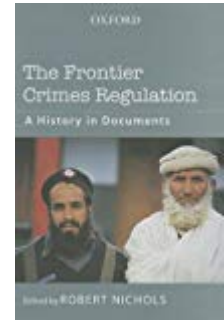


Robert Nichols. *The Frontier Crimes Regulation: A History in Documents.* New York: Oxford University Press, May 1, 2014. xxviii + 265 pp. \$39.95, cloth, ISBN 978-0-19-906673-5.



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As the British expanded their colonial grip over the Indian subcontinent in the nineteenth century and took the Punjab from the Sikhs in 1849 they were confronted with a problem of administration: how to deal with the acephalous self-governing Pakhtun (Pathan) tribal populations who inhabited territories over which the British claimed sovereignty but did not wish to administer directly. By 1886, where Robert Nichols begins this book, a clear consensus had emerged within the colonial administration in Peshawar about the need to create a separate administration and set of laws to deal with what they called frontier crimes. These included retaliatory murders that were a product of the blood feuds endemic to the region, violence stemming from perceived slights on a group's honor (mostly focusing on issues relating to women's behavior), and looting raids made against villages in British administered territory by tribes beyond their direct control. What made frontier crimes different from ordinary crimes was that the perpetrators were acting in accord with their own cultural val-

ues and that their actions had the tacit acceptance of the local population—sometimes even its overt approval. With the exception of bandit attacks on property, such crimes were not willingly reported to British authorities and witnesses generally refused to testify against those held in custody after they were arrested. The communities often knew very well who the perpetrators were because taking revenge and protecting honor demanded accepting public responsibility for the acts to get credit for them. Yet without such testimony it was not possible to bring effective court prosecutions. Nor was a legal system designed to arrest and punish individuals particularly well suited to deter collective criminal actions taken by groups in which the individual taking the action was acting as an agent rather than an instigator.

While understanding the social reasons behind these acts, the British nevertheless felt an obligation to reduce the level of violence (particularly homicides) in the territories of the Pakhtun tribal areas they oversaw. It was to this end that the British first promulgated the Punjab Frontier

Crimes Regulation in 1887. The law was revised and amended in 1899 to address perceived administrative defects, its expansion to include a larger number of tribes along the then recently demarcated frontier with Afghanistan, and to provide even greater coercive authority to officials dealing with the rising problem of religiously inspired rebellions against British rule. With the separation of the Northwest Frontier Province from Punjab in 1901 the law was renamed Frontier Crimes Regulation (FCR) and has remained in effect from that time onward, last being amended by the government of Pakistan in 2011.[1] The FCR excluded those unadministered territories and people from the regular legal system and its regulations applied to whole groups rather than individuals. It accepted the use of local legal principles and forms of dispute resolution as long as these did not cross any red lines (such as homicide). The key to the FRC's enforcement were British political agents assigned to oversee such tribal groups. They were vested with strong authority that commingled both judicial and executive power in a single office. Their role—as the title implies—was primarily political rather than bureaucratic and these agents were powerful participants in, and shapers of, local politics.

The FRC replaced the existing court system and laws current in the so-called settled areas and in its place created a new system of *jirgas* in which respected members of the community (three to six usually) would be constituted to judge the case and mete out punishments (or impose settlements) on those found guilty. While such *jirgas* were rooted in a long-standing Pakhtun tradition of resolving disputes through mediation and arbitration, these were different. They were appointed by British officials and convicted offenders were handed over to the state that could jail, exile, or even execute them. These *jirgas* also handled trade and property disputes where one of the parties was from the unadministered territory. One key difference between this system and that of the regular law courts was that

punishments were not restricted to individual offenders but extended to their families, communities, and in some cases entire tribes. The use of such collective punishments was deemed necessary particularly when the guilty individuals had fled beyond the reach of British authority.

Nichols does not attempt to write an analysis of this law and its evolution but rather has selected key original documents from the archives in Peshawar (memoranda, draft regulations, administrative reports, and surveys) that throw light on the process that led to the final version of the Frontier Crimes Regulation. These are presented in chronological order and allow us to see how and why (in their own words) the British developed such a policy initially and their attempts to refine the regulation when its implementation fell short or had unintended consequences. It also clearly displays the tension common in any bureaucratic organization between those on the front lines and their seemingly slow-witted superiors in the home office. Part of the book's charm is Nichols reproduction of the typography and layout of the original memos and regulations that is certainly familiar to anyone who has used such archives but is usually eliminated when such texts are published. (This was a no simple task, as anyone attempting to format documents for publication that lie outside the default parameters of your word processing program can attest.) The peculiar Dickensian forms of citing older discussions and reports, a highly legalistic style of amending regulations and forms of argumentation are themselves cultural artifacts that deserve some attention—if only because they have maintained a long half-life that still influences legal and bureaucratic practices in today's South Asia.

The first memoranda that led to creation of the FCR take aim at revenge homicides, which were labeled an affront to Britain's civilizing mission. The record of violence also made administrators in Peshawar look far worse than others elsewhere in Punjab. Punishing murderers with

severe enough sanctions to discourage the practice of blood feud was therefore their first priority but this proved remarkably difficult. Where evidence was not strong enough for convictions the defendant had to be released, but he was not free of the charge for another three years to allow the case to be reopened if witnesses or other evidence could be found during that period. Some argued that such cases should never be closed, but that created more problems than it solved since the lack of finality was a source of tension within the community. In part because it was recognized that blood feud murderers had social support, the penalty was not hanging but transportation to the Andaman Islands and imprisonment there for seven years. While the British expectation was that such a fearsome penalty would make people think twice about taking revenge, later memos complained it had the opposite effect. Pakhtun men considered seven years' exile a reasonable penalty to pay for a sweet revenge killing that restored a family's honor. Local political officers complained that after the first set of convicted offenders began returning home to a hero's welcome, it so shamed those who had not yet taken revenge that such killings increased. The penalty was therefore doubled to fourteen years.

Civil cases were undertaken by councils of elders modeled on the tribal jirga system. Although appointed by the political agent, they followed Pakhtun customary practices. (The book's last chapter provides an example of how the British attempted to document these in an official manner.) Many of these jirgas dealt with questions of compensation in disputes over cancelled engagements and elopements. Since, if left unresolved, these could result in blood feuds it was important to work out settlements of compensation that recognized the importance of maintaining honor in the process. Reading through these many cases makes it clear that Pakhtun women in the tribal areas during the nineteenth century often displayed far more agency than has been generally recognized. While such women may well have

constituted only a rebellious minority, it is clear that such rebellions were by no means rare.

Jirgas (and political agents) also dealt with commercial disputes and arranged compensation for attacks by bandits. In those cases the FRC relied on its power to levy collective punishments from offending communities to gain compensation or cooperation. A community could be fined to pay for the actions of some of its members whether or not they had cooperated with them. Thus it was not necessary to determine which individual or group carried out a raid as long as their tribe could be identified and held responsible. Part of the logic behind this was that groups would have more incentive to rein in bad actors if the whole community was held responsible for their actions. Later revisions of the code made exceptions to such collective punishments when it was realized that in closely related communities victims and perpetrators were often members of same extended kinship group. Punishments could be quite draconian because the FRC allowed the political agent to burn the houses and seize the property of offenders and their relatives. They could also fine communities and impose trade embargoes on whole districts that did not comply. These trade restrictions applied not only to the tribal territory but to all members of that tribe as well, regardless of where they lived.

The original impetus to create the FCR was to maintain internal order and allow local forms of dispute resolution to receive formal recognition, but its later iterations gave more attention to punishing communities for their support of revolts against British colonial rule. It went to great lengths to empower political agents with penalties like house demolition and trade sanctions for political crimes. The revised FCR added new sections to facilitate the arrest and exile of known troublemakers who attempted to raise rebellions in the name of jihad. Its writ was also expanded to ban non-Pakhtuns (or Pakhtuns from across the border in Afghanistan) from residing or traveling in

the frontier regions if they were deemed security threats. Of course posting bans and enforcing them were two different things. Indirect rule meant that British political agents had the least influence precisely among those communities most opposed to their rule and most likely to harbor insurgents and to join with them.

Even when successful military campaigns were mounted against such rebels (and the number and size of these revolts had grown substantially by the end of the nineteenth century), their top leaders were rarely captured. Capital punishment of those convicted of rebellion presented another problem. Normal practice required that the bodies of executed prisoners be released to their families for burial, but in political cases this was deemed inadvisable as such men were labeled martyrs and their graves became shrines for those opposed to the British. Nichols's extracts of the debate on this has a ghoulish exchange in which political officers debate the need to have a stronger "after death" punishment as a deterrent. All agreed that bodies of such rebels should no longer be returned to their home villages but split on whether it would be more offensive (and repugnant to the living) to bury the corpses within the prison's non-hallowed ground without Muslim burial rites or to burn the bodies and scatter the ashes to the winds. A few political agents expressed a longing to employ the Afghan Amir Abdur Rahman's terrifying (but by implication uncivilized) punishment of blowing such offenders from the mouths of cannons—an irony since this was a mode of execution first introduced to the Afghans by the British earlier in the century.

The final version of the FCR is a sophisticated document that attempts to appreciate local cultural norms and political structures in order to create a stronger degree of colonial order. As such it should be only of historic interest; after all, the British departed the subcontinent in 1947. However, Pakistan, the independent successor state to the British raj in the frontier region, made no at-

tempt to abolish this colonial artifact but rather adopted it wholesale. British political agents may have departed but they were replaced by Pakistani political agents who used the same set of regulations and administrative structures to oversee the renamed Federally Administered Tribal Areas (FATA). Few, except for the Pakhtuns who lived there, considered it an anomaly that a newly independent country would continue to treat some of its erstwhile citizens as colonial subjects—deprived of rights to politically organize and subject to the rule of political agents rather than the rule of law. Of course it is a truism to note that few governments of any type find it easy to renounce tools that enhance their power. And British colonial codes dealing with the suppression of political dissent have all too often been carefully nurtured by successor states whose founders were prosecuted by them. After almost seventy years of independence in Pakistan, however, perhaps it is time to abolish rather than amend the FRC and end the last vestige of British colonialism there. This would undoubtedly reduce the relevance of *The Frontier Crimes Regulation: A History in Documents* to policymakers—a move bad for sales—but would mark an improvement for the people on whom it is still inflicted.

Note

[1]. For full text of the current version, see <http://www.slideshare.net/fatanews/frontier-crimes-regulation-1901-amended-2011-english-16663284>.

If there is additional discussion of this review, you may access it through the network, at
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