

<http://researchspace.auckland.ac.nz>

ResearchSpace@Auckland

Copyright Statement

The digital copy of this thesis is protected by the Copyright Act 1994 (New Zealand).

This thesis may be consulted by you, provided you comply with the provisions of the Act and the following conditions of use:

- Any use you make of these documents or images must be for research or private study purposes only, and you may not make them available to any other person.
- Authors control the copyright of their thesis. You will recognise the author's right to be identified as the author of this thesis, and due acknowledgement will be made to the author where appropriate.
- You will obtain the author's permission before publishing any material from their thesis.

To request permissions please use the Feedback form on our webpage.

<http://researchspace.auckland.ac.nz/feedback>

General copyright and disclaimer

In addition to the above conditions, authors give their consent for the digital copy of their work to be used subject to the conditions specified on the [Library Thesis Consent Form](#) and [Deposit Licence](#).

Property Rights, Contracts, and Development

*A Study of the Traditional Institutions of the Federally
Administered Tribal Areas (FATA) of Pakistan*

Faheem Mohammad

*A thesis submitted in partial fulfilment of the requirements for the degree of PhD, The
University of Auckland, 2012.*

Abstract

As a recipe to stem the tide of militancy in the region in the aftermath of 9/11, the Federally Administered Tribal Areas (FATA) of Pakistan received unprecedented local and international focus on development. This thesis argues that framed under the pressing exigencies of the 'War on Terror', the on-going multi-billion US dollar development plan for the region betrays insufficient understanding of the Pukhtun tribal society and side steps the reality of the traditional institutions while aiming for institutional change through exogenous means. The thesis highlights the perils of such a development approach in FATA's traditional society, and, as a prerequisite for viable development, underscores the vital need for an alternative approach, one that does not confront the traditional institutions of the region.

Towards the latter objective, the study embarks on an exploratory journey to unravel the normative characteristics and role of the traditional informal institutions of FATA in economic exchange or contracts. The study attempts to reveal the hazards in exchange and how the parties are able to stabilise their contractual relationships within the parameters defined by the traditional institutions in order to achieve mutually beneficial gains. Guided by a conjoint theoretical framework based on the Ostrom-Williamson governance approaches, the study first explores the traditional property rights regime to identify its normative principles and enforcement mechanisms. It then moves on to explore the dynamics of its functioning in two contracting domains of commonly owned mineral resources (common-pool resources) and private property. The study reveals that the traditional institutions are fairly robust particularly in relation to the former and thereby commercial enterprise therein holds a promise for the much desired economic turnaround of the region without hazard prone exogenous measures.

Acknowledgements

All praise to the Almighty for had it not been for his boundless mercy I would not have been where I am today. I am gratefully indebted to my Supervisor Associate Professor Kenneth Jackson for his support and guidance in this study. His interest in my work was a source of great encouragement and always pushed me to do better. Ken's support extended beyond academics and is gratefully acknowledged. This research would not have reached fruition in New Zealand had he not supported my application for financial support from the Faculty of Arts at a time when it was needed the most. I am also grateful for the support from Cornelia Bluefield, the Development Centre's Administrator, in those testing times. Her jovial nature and helpful attitude made my stay at the Centre comfortable and will always be remembered. At the same time I also thank the Dean Faculty of Arts for her kindness and confidence in my abilities. I am also thankful to Dr Yvonne Underhill-Sem for her co-supervision of this study and for bearing with my always untimely intrusions in her work. Her guidance and support, especially in the finally stages of this research have been of great help.

I also thank fellow scholars at the Centre for their help and contribution in this research. My friend and colleague Nasir Khan needs special mention in this regard. I benefited from his insightful comments and invaluable suggestions. Asif Saeed Khan has been wonderful company throughout and has always been forthcoming in help and support. I would also like to thank my other colleagues, Julio Escalante, Sheila Siar and Akiko, for their camaraderie over all these years.

Many people assisted with this research in the field in Pakistan. My special thanks go to Mr Zubair Qureshi, Additional Secretary, FATA Secretariat, for his hospitality and invaluable guidance in my fieldwork. I also thank Mr Usman Gul, Additional Director Projects, FATA Secretariat, for his help and support at the Secretariat. I am also thankful to Mr Tahir Khan, Director, and Mr Sadaat, Deputy Director, Mines and Minerals FATA Secretariat. The help of Mr Ashfaq Khan, Director, and Senior Geologist Mr Ihsan Afridi, Pakistan Mineral Development Corporation is also acknowledged. Mr Khalid Khan, Manager Industries at FATA DA offered invaluable insights on FATA industries. His help is gratefully acknowledged. I also owe a huge debt of gratitude to my friends Fawad Shah, Shahid Shah, Saeed Khan and Zar Bakht, for their company and help in reaching respondents in FATA at a very turbulent time. My friends, Syed Husnain Naqvi and Muhammad Sulayman, PhD candidates at the Department of Computer Science University of Auckland also deserve special mention. Had it not been for their technical assistance, I would not have been able to compile this thesis for submission to the Graduate Centre in time. I will remain indebted for their help and support in the final phase of this research.

Last and on a personal note, I have been extremely fortunate to have the support of my family. My children, Parkha, Zarmina and Mohammad waited patiently all these years for me to complete this study and never complained. I am thankful for their patience and sincerely hope that I would be able make amends in future and give them my best attention. Special

thanks to my mother and father for their encouragement all along. Their prayers and blessings have been an asset on this long journey.

Table of Contents

Abstract.....	iii
Acknowledgements.....	iv
List of Figures.....	viii
List of Tables.....	ix
List of Acronyms and Abbreviations.....	x
Chapter 1. Introduction.....	1
1.1. Warrior Tribes, Tribal Republics and the Limits of Control in the Borderland.....	2
1.1.1. Genesis of the Tribal Administration on the North-Western Borderland.....	4
1.1.2. Understanding the Pukhtun of the Hills.....	11
1.2. The Tyranny of Normative Development Paradigms, FATA, and the Alternative within NIE.....	14
1.3. Research Contributions.....	19
1.4. The Structure of the Thesis.....	20
Chapter 2. The Challenge of Development at the Edge.....	23
2.1. The Naivety of Development Planning in FATA.....	24
2.1.1. A Saga of Six Decades of Development in FATA.....	26
2.2. The New Development Paradigm: NIE and the Hazards of Optimism in FATA.....	38
2.2.1. The Complexity of Institutional Environment in FATA.....	47
2.3. Conclusion.....	55
Chapter 3. The Theoretical Framework.....	58
3.1. The Two Prongs of Governance: The Collective and Individual Action Arenas.....	59
3.1.1. Determinants of Successful Self-governance: Ostrom’s Governance of the Commons Approach.....	61
3.1.2. Securing Stability of Exchange at the Individual Choice Level: Williamson’s Governance of Contracts Approach.....	65
3.1.3. The Attributes of Transactions as Determinants of Contract Governance.....	68
3.2. Scoping the Research Problem with the Help of the Ostrom - Williamson Approach.....	74
3.2.1. The Contours of the Conjoint Theoretical Framework Relevant to FATA.....	76
3.3. Conclusion.....	79
Chapter 4. The Research Methodology.....	81
4.1. The Research Paradigm and Research Strategy.....	81
4.1.1. The Design Characteristics of the Case Study.....	83
4.2. The Methods of Data Collection.....	85
4.3. The Data Analysis.....	91

4.4. Conclusion	94
Chapter 5. The Architecture of the Property Rights Regime in FATA	95
5.1. The Rationale and the Substance of Property Rights in <i>Pukhtunwali</i>	95
5.1.1. The Role of Genealogy, Psychology and Ecology.....	99
5.2. The Enforcement Dimension of the Property Rights Regime.....	116
5.2.1. Normative Features of the Dispute Resolution System: The Troika of <i>Jirga</i> , PA and the FCR.....	119
5.2.2. The Sanctions “For” and “By” <i>Jirga</i>	123
5.3. Conclusion	127
Chapter 6. The Emerging “New-Commons” of FATA: The Case of Mineral CPRs in FATA.....	130
6.1. The Shattered Myth of Resource Scarcity: The Emerging Mining Communities of FATA and the Obligatory Pragmatism of External Institutions.....	131
6.1.1. “You Own the Land Not the Minerals”: The “Legality” of Mining in FATA.....	135
6.2. The Form and Substance of Contracts in FATA CPRs.....	137
6.3. The Likely “Slips between the Cup and the Lip”: The Dynamics of Contract Governance in FATA.....	142
6.3.1. Rising Up to the Occasion: The Likely Challenges and Responses on the Road to Collective Action	142
6.3.2. On Costs and Governing the Costs	147
6.3.3. What Makes Stability a Reality: The Tangible Props of Contract Stability	152
6.4. A Likely Road Map Ahead	158
6.5. Conclusion	161
Chapter 7. Battling the Odds of Exchange: The Case of Manufacturing Firms in FATA.....	164
7.1. An Endangered Fruit of the “Freedoms”: The Manufacturing Landscape of FATA.....	165
7.1.1. The Stigmatic Underpinnings of Manufacturing Industry in FATA.....	167
7.2. The Contours of Contracts and Contract Enforcement in Private Enterprise	171
7.2.1. The <i>Ex-ante</i> and <i>Ex-post</i> Enforcement Dimensions	176
7.3. The Rising Costs and the Improbable Governance.....	183
7.4. Conclusion	191
Chapter 8. Conclusion.....	194
8.1. Summary of the Main Research Findings	195
8.2. The Message for State Sponsored Development in the Region.....	198
8.3. Reflection on Research, Contributions and Some Future Research Directions	200
References.....	202
Annexures	220

List of Figures

Figure 1-1: Pukhtuns in Pakistan and Afghanistan	3
Figure 1-2: Map - FATA in Focus	8
Figure 2-1: The Pukhtunwali Complex.....	52
Figure 3-1: The Simple Contracting Schema.....	70
Figure 5-1: The Pukhtun Universe.....	103
Figure 5-2: <i>Nikkat</i> Chart* of Shabi Khel Mahsuds in SWA.....	108
Figure 5-3: Map - Tribal Boundaries of Pukhtun Tribes	109
Figure 6-1: The Mineral Landscape of FATA	132
Figure 7-1: Constraints Faced by Industry in FATA	191

List of Tables

Table 1-1: Salient Characteristics of the Nang and Qalang Societies Compared	14
Table 2-1: Industries Setup by FATA DC	30
Table 3-1: Design Principles Illustrated by Long-enduring CPR Institutions	63
Table 4-1: Selection Criteria of Respondents	86
Table 6-1: Year Wise Production Chromite, Coal & Marble in FATA.....	134
Table 6-2: Average Rates of Coal per 10 Ton (Rs)	156
Table 6-3: Average Rates of Marble* per Ton (Rs)	156
Table 6-4: Average Rates of Chromite per Ton (Rs).....	157
Table 7-1: Industries in Agencies by Period of Establishment	167

List of Acronyms and Abbreviations

ADP	Annual Development Programme
APA	Assistant Political Agent
CPR	Common-Pool Resource
DC	Deputy Commissioner
DFID	Department for International Development
FATA	Federally Administered Tribal Areas
FATA DA	FATA Development Authority
FATA DC	FATA Development Corporation
FCR	Frontier Crimes Regulation, 1901
FR	Frontier Region
NIE	New Institutional Economics
NMP	National Mineral Policy
NWA	North Waziristan Agency
NWFP	North West Frontier Province
PA	Political Agent
P&D	Planning & Development Department
PT	Political Tehsildar
Rs	Pak Rupees
SAFRON	Ministry of State and Frontier Regions
SDP	Sustainable Development Plan 2006-15
SWA	South Waziristan Agency
TACCI	Tribal Area Chamber of Commerce and Industry
USAID	United States Agency for International Development

Chapter 1. Introduction

We often hear the phrase that ‘9/11 changed the world’. Metaphoric as it may sound, the statement does not exaggerate the enormous tangible and intangible dimensions of that fateful day as events flowing from the tragic incident are still unfolding. The aftermath of the event rippled across the world affecting urban as well as rural life in many nations. The event also catapulted the Federally Administrated Tribal Areas of Pakistan (FATA), a virile, historically significant yet obscure and remote tribal region on the north-western border of Pakistan, and its inhabitants, Pukhtuns¹ of the semi-autonomous ‘hill tribes’, to the centre of global anti-terrorism agenda.

While a military operation to ‘flush out’ extremist elements from the area commenced on the heels of 9/11, and is still continuing, a long term strategy in this regard envisages social change through development intervention in the region. An unprecedented 2 billion dollar (US) development package was announced with much fanfare and a sizeable chunk of this has been dedicated to fast track economic development in the region (FATA, 2006). However, in a manner quite typical of such grandiose schemes, the initiative is marred by insufficient knowledge of the vital institutional parameters of the Pukhtun tribal society and consequently risks failure the signs of which are already visible (Group, 2012). Evidently, this does not augur well for the stability of the entire region—Afghanistan and Pakistan.

The current development approach essentially views development as contingent on supplanting the traditional informal institutions with formal institutions or in other words, seeks an ‘institutional change’ in the region. Apparently the approach draws theoretical inspiration from the theory of institutions put forth under the banner of the New Institutional Economics (NIE). However, it overlooks the many caveats and pitfalls strewn on the path towards the purported change. Exogenous institutional change is deemed a tricky enterprise by many pioneers of NIE who advise that it needs to be carefully deliberated in the light of the socio-political and cultural environment of a particular society (Alston, 1996, p. 25; Eggertsson, 2005, p. 5; North, 2005, p. 51). Even a cursory glance at the history of the region (undertaken in the section below) reveals that the prospects of success of such a design in a socio-political and cultural milieu as complex as that of FATA could be bleak.

¹ Pukhtuns are known variously as Pashtuns or Pathans.

Underscoring the shortcomings in the current development approach, this research argues for the need for a deeper understanding of the functioning of the informal economic institutions or property rights regime of FATA. It seeks to advance such an understanding by means of a qualitative exploratory inquiry whereby the conditions as well as potential avenues of beneficial economic outcomes are revealed. Insights from within NIE, which thrives on its ability to accommodate non-conventional wisdom, are utilised for the purpose. I elucidate the specifics in detail after a look at the socio-political context of this research in the section below.

1.1. Warrior Tribes, Tribal Republics and the Limits of Control in the Borderland

FATA today comprises of seven special administrative districts known as Political Agencies (henceforth Agencies) and six tribal territories known as Frontier Regions (henceforth FRs)². Geographically, running from north to south these Agencies straddle the Durand Line, the international border between Pakistan and Afghanistan. FATA is roughly the size of Maryland in the US with an area of 27,220 square kilometres, and population wise the size of New Zealand with an estimated 4 million people³. The region is predominantly homogenous being inhabited by several kindred Pukhtun tribes sharing, by and large, similar cultural and social traits.

It is pertinent to note that Pukhtuns are generally regarded as one of the largest tribal groups in the world with an estimated 25 million members in Pakistan and 15 million across the border in Afghanistan (Nuemann, 2007; Thomas & Mason, 2008; Nawaz, 2009, p. 2)⁴. However, for reasons of cultural and behavioural differences that have emerged over time, the common notion of treating all Pukhtuns as one homogenous group is recognized as misleading by experts (Centre, 2009). The majority of Pukhtuns live outside FATA and have been more or less ‘encapsulated’ by the larger state systems in both Pakistan and

² The Agencies: Bajaur, Khyber, Kurram, Mohmand, Orakzai, North Waziristan and South Waziristan. The FRs: Bannu, D.I.Khan, Kohat, Lakki, Peshawar and Tank. See Annex—A for major tribes inhabiting these Agencies.

³ According to the National Population Census of 1998 the population of FATA is around 3.18 million (see Annex-A) but the census figure is questioned for its accuracy and the problem is not only the instant census. Data regarding FATA has traditionally been viewed as of doubtful integrity (USAID, 1990c, p. 8; DA, 2010, p. 19). The figure of 4 million is based on guestimates by development professionals working in the area.

⁴ Pukhtuns constitute around 42% of Afghanistan and are an ethnic majority there whereas their number in Pakistan is around 15%.

Afghanistan. However, the Pukhtun tribes of FATA are a different story. They have perpetuated their existence largely in an ‘un-encapsulated state’ by being intractable and successfully resisting attempts at political control by outside powers. They even succeeded in preserving their culture and traditions of self-rule during the colonial period. A twofold categorisation of Pukhtun tribes on these grounds is advanced (Ahmed, 1976, 1977, 1980a, 1991) and will be elaborated later in discussion⁵.

Figure 1-1: Pukhtuns in Pakistan and Afghanistan



Source: (Nawaz, 2009)

On independence, the Pukhtun tribes of FATA preferred inclusion in Pakistan on an understanding that their traditional autonomy allowed by their treaties with the British would be maintained. Pakistan responded by adopting the British pattern of limited administration and guaranteeing continuity of the status quo through constitutional safeguards and that

⁵ The credit of highlighting analytically significant differences between the Pukhtun tribes goes to Ahmed (1976).

remains the position to date (Ahmad Khan, 2005, pp. 25-34; Khan, 2008)⁶. The writ of the parliament, law of the land and courts do not extend to FATA. The absence of formal law and institutions of state in FATA has had many critics in the past and present and has earned the region some fascinating titles such as: “*Yaghistan*” (literally land of insolence or the rebellious) (Ahmed, 1977, p. 24; Haroon, 2007, p. 30)⁷; “the wild west” (Gordon, 2005; Schmidle, 2008); “the vanishing point of jurisprudence” (Behuria, 2007); “no man’s land” (Rakisits, 2008), etc. Some even dub it as the “last free place on earth” (Moynahan, 1976 cited in Ahmed, 1980, p. 93).

1.1.1. Genesis of the Tribal Administration on the North-Western Borderland

The control of the north-west frontier has remained a strategic compulsion for the rulers of India since times immemorial as it was through this area that the fertile Indus plains and the areas beyond could be accessed with relative ease by the invading armies from the Central and Western Asia. In comparison with secure natural boundaries on all other sides, several mountain passes in the otherwise impregnable Hindu Kush and Suleman mountain ranges virtually served as gateways to India leaving the north-western tracts the most vulnerable chink in the armour of Indian defence (Johnson, 2003; Khan, 2005a, pp. 12, 54)⁸. A glimpse at the history of India is enough to reveal that this weakness has not gone unexploited and has

⁶ Legally, all the treaties between the tribes and the British stood abrogated after the transfer of authority to Pakistan from the British. To bridge over this legal issue, the Indian partition plan of 3rd June 1947 stipulated fresh agreements to be negotiated with the appropriate successor authority. In the wake of these legal and political changes, the natural concerns amongst the tribes regarding their status in the future political and administrative set up were assuaged by the leadership of Pakistan by guaranteeing the continuance of all pre-independence privileges and benefits to the tribal people in the new state. The new treaties as required under the partition plan were signed with the tribes in 1947. Assuming direct jurisdiction over these areas the Governor General of Pakistan issued a series of notifications in pursuance of the agreement with the tribes declaring tribal areas as part of Pakistan with effect from 15th of August 1947. The issue was hence successfully resolved with the tribes in the back drop of significant interference by the Afghan government which had evinced renewed interest in the area on the eve of power transfer by the British in India (Ahmad Khan, 2005; Khan, 2008).

⁷ The term was common during the 19th century and is believed to have been coined by Amir Abdur Rehman, the ruler of Afghanistan (Haroon, 2007, p. 30).

⁸ On mountain passes in the north-west see Martin (1879), Markham (1879), Walker (1862), Holdich (1881, 1901). There are at least 111 points in the north and 229 crossing points in the south which are used daily by smugglers and common tribesmen alike (Thomas & Mason, 2008). Amongst the passes that allow large armies to march through, the Khyber, Tochi, Gomal and Bolan are pertinent. The Khyber Pass in the north is the most important as it offers a direct route on to the plains of India. For this reason it is, and historically has been, the busiest route even during peace times carrying trade between India and Afghanistan and Central Asia beyond. Next in importance is the southernmost Bolan Pass which offers not so direct a route as the Khyber Pass but is strategically important nonetheless. The British during the 19th century regarded this pass a key to Indian defence (Miller, 1977, p. 5).

always kept the rulers in India on their heels⁹. As a result, the Indian frontiers have oscillated frequently between the Indus and the Oxus in search for a viable line of defence (Khan, 2005a).

Though the British did not descend on India through the traditional routes in the north-west, and in this sense theirs is an exception to the general pattern noted above, once in India, they faced a similar dilemma of defence in the north-west. This is manifest from the debate during much of the 19th century as to whether “it would be easier to guard the plains against the mountains or the mountains against the invaders from without” (Khan, 2005a, p. 68). The most likely invaders this time around were Russians who were seen as outmanoeuvring the British in the contest for political and economic influence in the vast swath of territory lying between Russia and the British India¹⁰.

The formal British domination of the north-west frontier region succeeded the fall of the Sikhs in the Punjab in 1849 but even before this, the expanding influence of the Russian empire and a fledgling Afghan state caught between the two great powers were already dictating inevitable choices (Ewart & Howell, 2001, p. 4; Johnson, 2003)¹¹. An aggressive concern for defence led the British across the Hindu Kush and into their first war with Afghanistan in 1839. This was followed by a second war under similar compulsions in 1878. In the period between the annexation of the Punjab and the 2nd Anglo-Afghan war, defence paranoia remained at its peak. However, by the turn of the century the British had achieved a viable line of defence in the north-west as they were able to delimit the otherwise hazy

⁹ Alexander came down to the plains of the Punjab around 327BC by marching through the Khyber Pass in the Hindu Kush. Following Alexander, Mahmud of Ghazna and then Mohammad Ghuri made numerous forays into India through the passes of the Hindu Kush. Babur, the founder of the Mughal dynasty in India is another example who invaded the Indian plains through the Khyber Pass. See Caroe (1958); Spain (1963).

¹⁰ Whether Russians actually had the capacity to mount an invasion of India hardly mattered to the English rulers of India. Such was the state of British fears and sensitivities about India that even an accidental blink towards the subcontinent was enough to spread panic “and deprive otherwise keen-minded British statesmen of rudimentary common sense” (Miller, 1977, p. xv). The British sought to keep the Czarist Russia at bay by creating a buffer zone between the British India and Russia. In an allusion to the murky politics and secret agendas, this super power contest is euphemistically dubbed in literature as ‘The Great Game’. See Hopkirk (1990) for the fantastic saga of the so called Great Game.

¹¹ Johnson (2003) offers a well rounded discussion on the subject. Also see (Khan, 2005a; Khan, 2010). Diverse opinions about best course options for defence crystallised in the emergence of two contrasting policy doctrines known as the ‘stationary school’ and the ‘forward school’. The stationary school was against extension of the British authority beyond the old Sikh Frontier and the forward school advocated the opposite. The latter eventually became the principal approach on the frontier but was abandoned after the tribal uprisings of 1897-98 in favour of a softer approach popularly known as the ‘modified forward policy’ based on the notion of peaceful penetration in the tribal area. The policy remained in place till the end of British rule. See Warburton (1975, p. 334), Wazir & Mohmand (1995, p. ix) and Khan (2010).

borders of their Empire with Afghanistan and reorganise administration of the tribal areas. The moves ensured a reasonable extent of political and strategic control over the gateways of India.

The British control of the north-west was eventually formalised through an agreement on delimitation of the borders in 1893 and thus came into being the ‘Durand Line’ between Afghanistan and British India, named after the architect of the agreement Sir Mortimer Durand (Khan, 2005a, p. 144). Twenty five hundred kilometres in total length, this boundary follows the crests and troughs of some of the highest mountains in the world for roughly 3/4th of its length before dropping into the deserts where the current borders of Pakistan, Iran and Afghanistan meet. Although the north-west of British India was finally delimited, the new border generated a lingering controversy since it cut across the Pukhtun tribes. This continues to plague relations between Pakistan and Afghanistan even today¹².

With the limits of the Indian borders in the north-west finally defined, attention was focused on the administration of the tribal region along the length of the Durand Line from north to south. Dividing the region into five districts styled as Agencies¹³, the British applied administrative principles in this region that were quite distinct from the administrative norms employed in the so called ‘settled districts’ of British India¹⁴. Though all along the border various shades of this administration were applied with considerable degrees of success, the part roughly in the middle section of the Durand Line continued to pose major problems to the British till the very end of their rule in India. Here the British had to station around 2/3rd of their entire military strength of the north-west for effective control (Khan, 2005a, pp. 24-25) costing India half of its annual budget (Toynbee, 1961). Inhabited by several warlike Pukhtun tribes, this part includes the present day FATA (see Annex-A for Agency wise detail of tribes). In order to effectively manage this middle section, the British created a separate

¹² See Nuemann (2007) for a brief overview of the border dispute between Pakistan and Afghanistan. See also Ahmed (1973); Marwat, Khel, & Shah (1993), and for a staunch Pukhtun nationalist perspective on the issue, Mohabbat (1979).

¹³ A start was made in 1879 with the creation of the Political Agency of Khyber. This was followed by the setup of the Kurram Agency in 1892 after the area was ceded by the Afghan government. Finally the Durand line demarcation in 1894, following the agreement of 1893, brought the remaining tribal areas on the border under British control. The Durand line settled the legality of political control of the tribal region in favour of the British. During the period 1895-96, the three Agencies of Malakand, the North and the South Waziristan were created and the process of tribal reorganization was completed (Obhrai, 1983, p. 68; Hart, 1985, p. 108; Wazir & Mohmand, 1995, p. ix).

¹⁴ The term ‘settled districts’ refers to the districts where revenue settlement has taken place and signifies government’s legal and administrative writ and controls.

administrative entity in the north-west following the precedent of Baluchistan. This was done in 1901 by creating the North West Frontier Province (NWFP)¹⁵. The new province was constituted by severing from the Punjab the four trans-Indus districts of Peshawar, Kohat, Bannu, Dera Ismail Khan (DIK), the cis-Indus northern district of Hazara and the five Agencies of Khyber, Kurram, South Waziristan, North Waziristan and Malakand (Baha, 1978, pp. 20-25).

Governance of the tribal region was a challenge of no small measure. The British realised that in case of failure here the political costs would be enormous in terms of loss of prestige and weakening of grip on the other parts of India (Johnson, 2003). The dilemma was that the ground realities—inhabitable terrain, hostility of the tribes to foreign rule, and an unreliable neighbourhood—demanded a different political and administrative approach in the area, one at variance with that employed in the settled districts of British India. Moreover, weak revenue potential of the area made direct governance a hugely costly proposition (Toynbee, 1961; Beattie, 2002, p. 164). From the British point of view, here the governance strategy needed to be flexible enough to avoid direct confrontation with the tribes yet at the same time sufficiently tenacious to impose a degree of order as and when required. Consequently, in a departure from the standard British approach in India, the policy finally adopted was a combination of persuasion, incentives and coercion (Beattie, 2002, pp. 24-29; Group, 2006, p. 2; Rakisits, 2008).

The tribes were assured of their autonomy in return for their pledges to the effect that they would not side with the enemies of British India, conduct raids or shelter fugitives of law from the British administered territories. As an economic incentive, the government undertook to pay the tribes subsidies and allowances but this was made contingent upon their good behaviour and satisfactory discharge of ‘watch and ward’ obligations in the territories controlled by them. Treaties in writing were made with the tribes to this effect¹⁶ and a special code of law ‘The Frontier Crimes Regulation’ (FCR), derived from and based on certain key norms or traditions sanctioned by the centuries old unwritten Pukhtun code of conduct known as *Pukhtunwali*, was enacted to regulate the state-tribe relationship. The norms of territorial and collective responsibility of the tribes, taking hostages in case of violations and damage to

¹⁵ NWFP has been renamed recently as Khyber Pakhtunkhwa. I use the old nomenclature in this thesis for the sake of consistency with the existing literature.

¹⁶ For the treaties relating to the tribes of FATA see Yunas & Taizai (2006)

property and dispensation of justice through council of elders (*jirga*)¹⁷ were hence made the cornerstones of the FCR (Aziz, 2005). Of these norms, territorial and collective responsibility is singularly important from the point of view of border defence. Under this norm the tribe is held collectively responsible for a crime committed by any of its members and furthermore it is also responsible for any crime committed within its territory (Beattie, 2002, pp. 24-29). The tribes have been adhering to these norms in their own inter and intra-tribal matters for many centuries.

Figure 1-2: Map - FATA in Focus



Source: (Nawaz, 2009); see Annex-A for major tribes of FATA

¹⁷ The term has been spelled variously by different authors in the early literature as *jargah*, *jirgah* or even *jeergah* but *jirga* is the commonly preferred usage. *Jirga* literally means a gathering of people and the term has similar connotations in Dari and Turkish languages (Wardak, n.d).

In order to oversee the performance of the tribes in accordance with the treaties, a Political Agent (PA) armed with the requisite executive and judicial powers was appointed in each Agency but the PA's authority was limited to areas labelled as 'protected territories'. These mainly included all roads in the tribal region, government buildings and installations in major towns. On ground however, the authority of the PA did not exceed beyond 100 yards on either side of a major road (Ahmed, 1980b, 2011). The extent of the protected territories was hence quite limited and a small percentage of the total area. Areas outside the protected territories were designated as 'tribal territories', and in these large spaces the tribes were free to govern their day to day affairs in accordance with *Pukhtunwali* without any outside interference (Aziz, 2005; Group, 2006, p. 6; Khan, 2010; Ahmed, 2011).

In times of crisis, the PA's authority had the essential backing of military and para military units which were garrisoned in designated areas. Under normal circumstances, and for the conduct of day to day business within an Agency, the PA relied on *Khassadars*, a police force drawn from the local tribes of the Agency (Khan, 2005b), tribal intermediaries or *maliks*, skills of diplomacy and a policy of rewards and punishments best described as a 'carrot and stick' approach. Material benefits from the government were contingent on good behaviour of the tribes. In defaulting cases, suspension of subsidies, allowances, salaries of the *Khassadars*, blockade or taking hostages and impounding property, or even military reprisals if required, were a set of options available with the administration to force a recalcitrant tribe to comply with the terms of its treaties with the government (Beattie, 2002, pp. 24-29, 165-168).

However, notwithstanding these pressure levers, a PA had to rely primarily on 'political' means to discharge his functions. The limits of colonial authority in the tribal land were pragmatically realised. Cultivating personal rapport with the tribes, patient negotiations and political manoeuvres to navigate through the challenges to law and order were the norms of governance here. The Agency administration was therefore distinct from the settled districts where the counterpart of the PA, the Deputy Commissioner (DC), represented full central authority of the state being a magistrate as well as a revenue collector backed by written laws and an elaborate bureaucracy for enforcement of the writ of law. A PA, in contrast, had to rely on custom and precedent in order to administer his charge. The preponderance of informality or politics as a main tool of administration in an Agency is signified by the term

‘Political’ attached as a prefix to the administrative nomenclature of the tribal region. (Ahmed, 1980a, pp. IV-V).

An important factor in denying the British a firm grip on the tribes was the intensely democratic and egalitarian nature of the Pukhtun society. Chiefs, as found elsewhere in tribal societies, could have made the tribes more amenable to controls but Pukhtuns of the hill tribes had no room for such forms of traditional authority. Although *maliks* existed, they were not tribal chiefs in the traditional sense of the word. A *malik* merely enjoyed a certain degree of influence within his tribe and not authority as such (Holdich, 1899b; Warburton, 1975, p. 329; Ahmed, 1977, p. 16; 1991, p. 23)¹⁸. Moreover, given the intense egalitarian nature of the hill tribes, even those with a reasonable degree of influence were very few (Holdich, 1899b; *Imperial Gazetteer of India: North-West Frontier Province*, 2002). On its part, the colonial administration did try to shore up the authority of ‘friendly *maliks*’ through conscious official patronage but with little success. Despite all efforts, rarely if ever, did influence of a *malik* extend beyond his particular section of the tribe (Howell, 1979, pp. 11-28)¹⁹.

Owing to a zealous watch maintained by the tribes against encroachments on their traditional freedom, the British control of the region remained tenuous at best. The sheer number of military reprisals undertaken by the British against the tribes in the pre-independence period proves the point. Sixty two such forays were made between 1849 and 1899 alone (Baha, 1978, p. 5). The position improved somewhat in the subsequent period as the British abandoned their aggressive policy (see F.N. 11) but on the whole there was no end to trouble till the very end of the British rule in India²⁰. Tribal hostility abated only when Pakistan took over from the British. A coreligionist in the driving seat seemed to have soothed the restive tribes. However, more helpful was the constitutional assurance by the new state that it would not impose direct rule unless the tribes petitioned for it (see F.N. 6). Since the tribes have shown no inclination in that respect so far, apart from some territorial reorganisation of the Agencies, the limited pattern of tribal administration contrived by the British has remained

¹⁸ Ahmed (1991) points to the proliferation of *maliks* to support this point. For instance, South Waziristan tribes are represented by 1000 *maliks* in official *jirgas*. Roughly a Wazir *malik* represents 200 and a Mahsud *malik* 340 people of all ages and sex. There are around 35500 *maliks* in FATA roughly around 10% of the population (Group, 2006, p. 10).

¹⁹ Egalitarian and democratic trends are relatively more pronounced in the Wazir and Mahsud tribes in the two southern Agencies of FATA. See Ahmed (1991); Howell (1979).

²⁰ See Marsh (2009) for hostility to the British in the north-west and its implications for the colonial administration.

intact²¹. Renamed as the Federally Administered Tribal Areas, the pre-independence five Agencies and several buffer areas between the Agencies and the settled districts are currently a total of seven Agencies and six Frontier Regions (FRs) (see Figure 1-2: Map-FATA in Focus).

1.1.2. Understanding the Pukhtun of the Hills

The Pukhtun tribes of FATA have had no respect for any law but their own tribal code, *Pukhtunwali*. As these tribes successfully lived this ideal by keeping the outside powers at a safe distance, they are believed to be in a league of their own and distinct from other Pukhtun tribes in Pakistan and Afghanistan (Ahmed, 1976, 1977). The term *Pukhtunwali* is literally interpreted as the way of the Pukhtuns (Spain, 1995, p. 39). It is an informal or unwritten code of conduct based the notions of equality, honour and shame in the Pukhtun society. Composed of numerous tenets covering all aspects of life, it demands unswerving allegiance from a Pukhtun.

Although generally all Pukhtuns try to adhere to *Pukhtunwali*, it is practically not possible for the Pukhtuns living outside FATA to abide by the latter's stipulations under all circumstances. The formal state institutions rival *Pukhtunwali* and constrain the essential freedoms required to act in accordance with its dictates. Ahmed (1976, pp. 73-83; 1977, pp. 20-22) posits a twofold classification of the Pukhtun tribes to account for such fundamental differences that have emerged within the Pukhtun society. He links the sanctity of *Pukhtunwali* to encapsulation by the larger state systems and highlights deep structural causes that account for the varying performance of Pukhtun tribes in this respect.

In Ahmed's view, the ideal social structure of the Pukhtun society is that of an acephalous tribal society organised into small, patrilineal segmentary groups²², with this ideal largely perpetuated under ecological conditions of scarcity. Scarcity of resources fan agnatic rivalries

²¹ A major administrative change in the post-independence period pertains to the Malakand Agency which was handed over to NWFP in 1970 and is no longer part of FATA. Apart from this, all other changes have been on account of territorial readjustments within the Agencies. For instance, Mohmand Agency was created in 1951 by elevating the status of the Mohmand tribal region attached with Peshawar district. In 1973, as a result of further territorial adjustments within the tribal areas, two new Agencies, Bajaur and Orakzai, were carved out (Ahmed, 1977, p. 23; Hart, 1985, p. 108).

²² Acephalous literally means headless. The term is used in sociology and anthropology to indicate the absence of centralized leadership or sources of authority such as chiefs. Segmentary is from segment and refers to a splintering of the tribes into smaller branches or divisions/groups over a period of time. This is discussed in detail in Chapter 5.

at the individual as well as collective levels which checks sharp divisions of rank and status from emerging. No one can grow in wealth and power to an extent that significant inequalities are created in the society. The result is an egalitarian society and the tribal society of FATA approximates this ideal. The conducive ecology of scarcity underwrites and perpetuates *Pukhtunwali* in its near true or ‘ideal’ form in these hill tribes (Ahmed, 1976, pp. 74,76)²³. Alternatively, in the Pukhtun tribes that moved out of their scarce ecological habitat and settled in relatively fertile plains, this ideal social structure was eventually lost. Affluence resulting from surplus production created inequalities and prompted social stratification with the emergence of a rent exacting class, more or less on feudal lines. The presence of a feudal class made the society vulnerable to the pressures that “an encapsulating [state] system can bring to bear” and these tribes eventually lost their freedom (Ahmed, 1976, p. 78)²⁴.

Ahmed uses the prefix ‘*nang*’ (literally honour which lies at the heart of *Pukhtunwali*)²⁵ to differentiate the tribes that have been able to retain their traditional egalitarian social structure from those that have not. For the latter, Ahmed adopts the prefix of ‘*qalang*’ (literally rent or taxes associated with a rentier class) indicating social stratification along class lines. Though *Pukhtunwali* may still be regarded as an ideal even in the *qalang* society, it may not be practically possible to live this ideal in all its hues and shades (Ahmed, 1976, pp. 73-76). The state institutions—law and courts; police; bureaucracy etc.—challenge the legitimacy of *Pukhtunwali* by offering an alternative formal legal arena. The *nang* and *qalang* societies therefore represent two distinct social, political and economic categories in the Pukhtun world (Hart, 1985, p. 15). The salient social, political and economic characteristics of the two Pukhtun societies are reflected in Table 1-1 below.

Within the larger tribal universe, the socio-political characteristics of the *nang* tribes resemble those classified as Group B tribes in a seminal study on African political systems by

²³ History reveals that deviations from this ideal form may occur at times when the society is under crisis. Emergence of a charismatic leader who wields ‘authority’ and disturbs the otherwise acephalous nature of the tribal social structure is not rare in tribes. Such instances do not seem to outlive the crises however. See Ahmed (1991) for one such example in South Waziristan. History offers other examples of charismatic leadership in crisis situations such as the Fakir of Ippi and Mullah Powindah. See Hauner (1981); Howell (1979) and Marwat, et al (1993) for these personalities.

²⁴ The state succeeded in gaining foothold in these small Pukhtun principalities by exploiting the internal hierarchies of Khans and Nawabs to its advantage. Examples of Dir and Swat states are pertinent in this regard. See Lindholm (1982).

²⁵ The concept of *nang* in *Pukhtunwali* is not on all fours with the Western notion of honour. It may be regarded as the Pukhtun notion of honour. Discussion on *Pukhtunwali* and its precepts in the subsequent chapter elaborates on the concept of *nang*.

Fortes, M. and Evans-Pritchard, E. E. (1970 cited in Ahmed, 1977, p. 13). As opposed to the Group A tribes, having centralized authority, judicial institutions and standing armies (as in the case of Zulus of South Africa); the tribes in Group B lack these forms of authority and institutions that create sharp divisions of rank, status or wealth. The result is however not chaos but what is referred to in literature on tribal societies as ‘ordered anarchy’. The Neur in north-east Africa serve as a famous example of Group B type tribal societies (Ahmed, 1977, p. 13).

According to Ahmed, while the strategy of forceful encapsulation of the *nang* tribes failed, what could be termed as economic penetration in the post-colonial phase was allowed²⁶ but “*the terms and pace were set*” by the tribes themselves. This is distinct from encapsulation which assumes the reordering of vital features of the traditional social organisation (settlement patterns, marriage rules, lineage politics and agnatic rivalries etc.) through alternate formal institutions (1980b, p. 4 ; emphasis added). The tribes are hence not averse to development, provided if it comes on ‘their’ terms and not the terms ‘dictated’ by the state, an outsider in their perception. The possibilities of endogenous change over time therefore do exist, as is the case in all traditional societies. However, the prospects of speeding up the process of change through a vigorous development agenda that assigns the state a more controlling role could not be more dismal anywhere else than here, the *nang* case. I shed some light on the said development agenda in the next section as well as introduce the essential specifics of the research approach adopted in this study.

²⁶ See discussion in Chapter 2.

Table 1-1: Salient Characteristics of the *Nang* and *Qalang* Societies Compared

The <i>nang</i> society	The <i>qalang</i> society	The <i>nang</i> society	The <i>qalang</i> society
Hill areas	Plain areas	Warriors participating in raids	Warlords organizing battles
Largely un-irrigated	Largely irrigated	Acephalous tribal society organised in lineage based segmentary groups	Autocephalous village organisation under Khan within larger acephalous society
Pastoral tribal economy	Agricultural feudal economy	Dispersed fort-like hamlets and nucleated settlements	Densely populated villages with tendency towards urbanization
No rents or taxes	Rents and taxes	Emphasis on <i>nangwali</i> or the code of honour	Emphasis on ‘ <i>tarboorwali</i> ’ or agnatic rivalry
Mainly ‘achieved’ status of ‘elders’	Mainly ‘ascribed’ status of ‘Khans’	<i>Jirga</i> as an institution representing interests of the entire population or tribe	Selective <i>jirga</i> memberships from amongst the landowning class only
Existing in Un-encapsulated state (outside of the larger state systems); reliance on the informal traditions	Encapsulated within the larger state system; reliance on written traditions	Egalitarian social organisation	Hierarchical social organisation

Source: adapted from Ahmed (1976, pp. 82,83; 1977, pp. 21,22)

1.2. The Tyranny of Normative Development Paradigms, FATA, and the Alternative within NIE

The economic success of the West has inspired development theory and practice to no ordinary degree²⁷. Since the birth of international development paradigm²⁸, replication of the Western path of success has been a preferred recipe for the economic woes of the developing world. Driven by mainstream or neoclassical economics, Rostow’s “The Stages of Economic Growth”(1959)—predominantly focussed on production and production possibilities to

²⁷ Economic growth and development may not be entirely the result of deliberate policies. There is abundant historical evidence to show that development does not follow a linear path. See North (1990, 2005). Even in the case of the West, it is generally argued that its economic rise was an unintended consequence of certain developments that were not aimed at material progress yet these stimulated economic growth. While roots of the thought can be traced to Weber (1958), see Lal (1998) who links the rise of Europe as an economic power to developments in the domain of religion.

²⁸ This refers to the genesis of the paradigm of international development after World War II with the creation of specialised global development institutions such as the World Bank and the IMF with the specific agenda of fostering development in the Third World.

increase the per capita incomes in the developing world²⁹—can be seen an exemplar of this development paradigm. The global economic agenda turned a blind eye to the all-important role of social institutions. Although in general terms, social and cultural explanations of under-development in the Third World were not lacking in the academic world following the influential twentieth century thesis by Weber (1958), with various shades of the argument repeatedly surfacing in the late twentieth century³⁰, the credit of bringing the role of social institutions to the centre of the development agenda truly belongs to NIE.

NIE's ascendancy in recent times marks an end to the nonchalant attitude of mainstream economics towards the role of social institutions in economic development. With economists finally drawn towards institutions and institutional causes of economic inefficiency, the practical implications for international development policy and practice are not hard to imagine given their near absolute control and domination of this domain. Some even argue that their growing fascination with the theory that they had dismissed in the past as 'mere details' is because it affords them a chance to redeem their failed orthodox economic theories. "[T]hey can argue that their policies and theories were never wrong, and did not work only because the countries that implemented them did not have the right institutions for the "right" policies to work" (Chang, 2006 p. 2).

Unfortunately, despite the preponderance of NIE in global development policy and practice (Brett, 1993; Cameron, 2000), there is not much difference in the outcomes of development. These remain far from encouraging, contrary to the immense enthusiasm generated by NIE. The main controversy and dilemmas stem from an inclination in the practice of NIE towards exogenous institutional change that can be traced back to one of its pioneers, Demsetz (1967). Ubiquitous failures in this regard urge the need for a greater foresight of the possibilities beyond those that the theory is commonly known to portend (Fitzpatrick, 2006). Fortunately, and as a testimony to its great intellectual diversity, NIE does not close its doors on rival explanations. It has come to incorporate wide ranging and diverse insights within its folds and thus has the potential to unravel the complexities of institutions in a society. This thesis

²⁹ See Chapter 1 in Eggertsson (2005) for insightful discussion on growth theory and its implications for the Third World development.

³⁰ Weber argues how protestant, and in particular Calvinist values, helped in pursuit of capitalist ideals of rational pursuit of material well being. Various shades of this argument can be traced in Hofstede (2001); Hofstede & Hofstede (2005). The periodic World Values Surveys (Inglehart, 1997; Inglehart & Welzel, 2005) also tend to reinforce the traditional argument in various ways.

relies on two such explanations or approaches from within the folds of NIE to address the research problem in FATA. I explain this below after a brief look at the main premise of NIE.

NIE focuses on economic exchange, the hazards in exchange and the institutions that help mitigate the hazards. It underscores that expropriation (without due compensation) of property rights is the main hazard in exchange situations. The likelihood of such hazards threatens the stability of exchange relationships and thus limits the possibilities of mutually beneficial economic gains for the parties in exchange. NIE highlights the role of property rights in exchange stability: the fact that the structure and performance of the institution of property rights has a nexus to exchange stability. In this view, an efficient property rights system is one that is able to assure the parties that low cost remedial action(s) is possible in case rights are expropriated in exchange. This assurance and the remedy provided serves to stabilise contracts which in turn lead to outcomes that are beneficial for all the parties concerned (Demsetz, 1967; Barzel, 1989; North, 1990; Eggertsson, 1996).

Seen from this angle, Western institutions of property rights are regarded as the main reason behind the economic ascendancy of the West. The *grundnorm* of the Western property rights system is assignment of property rights on private basis through formal law and its protection through the judicial and enforcement apparatus provided by the state (Williamson, 2000, 2002). In order to achieve economic development, the economic rationale underlying the theory of institutions (Property Rights Theory) seem to posit similar property rights arrangements in situations where these are lacking (Demsetz, 1967). Consequently, traditional informal property rights regimes in the Third World have not only come under flak, altering these institutions have become a fetish in economic reforms (Chang, 2006). This is despite the need for caution ardently advocated by some experts in the NIE tradition due to the practical limitations of reforms in this regard (Libecap, 1989; Eggertsson, 1990; North, 1990; Williamson, 2000; Eggertsson, 2005; North, 2005).

Institutional change has proven to be a highly complex phenomenon as demonstrated by invariable failures of institutional reforms in the developing world (Fitzpatrick, 2006; Benjaminsen, Holden, Lund, & Sjaastad, 2008). Finding ways to work towards reasonable outcomes within the existing institutional arrangements, in expectation of endogenous changes over time, is evidently a hazard free alternative. However, perhaps the apparent simplicity of the economic rationale of ‘change’ is too enticing to allow the policy makers to look elsewhere for feasible alternatives. FATA presents a similar scenario.

FATA received unprecedented development attention in the aftermath of 9/11. Entitled “The Sustainable Development Plan” (SDP), the plan envisages a wide array of socio-economic interventions in its nine year term period from 2006 till 2015 (FATA, 2006). Following on the heels of major reforms in the key implementing bureaucracy, the plan is portrayed as the much awaited panacea for the social and economic problems of the region. It is peppered throughout with buzz words of modern development jargon that one would not ordinarily find objectionable. On a closer look however, many of its claims turn out to be contradictory in terms and betray a lack of essential understanding of the tribal society. The plan emphasises quick economic transformation with the ultimate objective to integrate FATA into the national mainstream. To facilitate this, it identifies and aspires to a host of legal and regulatory frameworks (FATA, 2006, pp. x, xviii, 16, 18; see Annex-D for issues and strategies in SDP). A recent government sponsored study recommends the extension of almost all the laws found in Pakistan to the region (DA, 2011). Wide ranging institutional changes are thus clearly deemed as the means towards the end.

In view of the abundant empirical evidence from all around the developing world, the hazards of an exogenous agenda of institutional change for development could hardly be exaggerated in the FATA context. The writ of formal state institutions has been kept in check in that region as the *nang* tribes fervently defend their freedom and abide only by *Pukhtunwali*. Contrary to the general perception about tribal societies in literature (Sahlins, 1968; 1969 cited in Ahmed, 1980, p.4), history demonstrates that they have not been passive recipients of exogenous pushes in the form of development (Ahmed, 1980b, p. 4). The overview of the region’s socio-political context in Section 1.1 illustrates this clearly. The informal code of *Pukhtunwali* provides for a system of rights and duties in civil as well as criminal matters and prescribes a mechanism for the adjudication of disputes and enforcement of decisions. Pursuing institutional change in such a milieu is, understandably, a high risk proposition. Moreover, success of any exogenous institutional reform agenda requires an acute understanding of the functioning of existing institutions as a basic prerequisite. Prepared in haste under intense international pressure and the exigencies of the ‘War on Terror’, the current development plan visibly flounders in this respect.

This thesis seeks to address the prevailing knowledge gap in relation to the traditional economic institutions of FATA. It focuses on the property rights regime of FATA with the

purpose of advancing an understanding of the reality of economic exchange³¹ in that context. For this purpose it looks for a theoretical guide within the folds of NIE and finds that the approaches developed by Williamson (1975, 1985, 2005) and Ostrom (1990; 1994; 1997) are relevant to the complexity of exchange and exchange scenarios (settings or domains) in FATA .

In FATA, as elsewhere in traditional informal property rights regimes, the two principal configurations of resources are collective ownership and private ownership by the tribal communities and their individual members respectively. Pastures; water resources; forests; mines or mineral resources etc. are generally held in common and serve as examples of the former whereas the latter category is self-evident. The parallel existence of commonly owned resources in FATA creates two principal exchange or contracting scenarios. A contract between the parties could either be in relation to the use or appropriation of commonly owned resources (referred to as common pool-resources in literature (e.g., Ostrom, 1990)) or alternatively in relation to the privately owned resources not related to the former. For the purpose of this research, the focus is on mineral resources representing one contracting scenario and privately owned manufacturing firms as the second scenario.

Ostrom (1990) challenges the popular notion that left to their own devices communities are unable to craft feasible arrangements to govern resources held in common. In her view, self-governance of resources owned in common is possible and communities can consciously create such arrangements, especially in circumstances where individuals have “considerable autonomy to self organise” (Ostrom & Walker, 1997, p. 43). Based on her wide ranging empirical work, she identifies a set of essential facilitating conditions pertaining to the characteristics of the resource system, the group concerned and the larger (formal) institutional environment of the state (Ostrom, 1990, p. 90).

Williamson on the other hand focuses on the ‘micro’ level of the execution of contracts in a given institutional setup. In his view, the presence of formal property rights institutions (laws delineating property rights and enforcement mechanisms of the state) are not a guarantee that rights will not be expropriated in exchange. These do not supplant the utility of informal action or ‘private ordering’ by the parties to resolve emerging disputes in contracts. The latter is commonly the most preferred option as it is least costly. Williamson stresses that stability

³¹ The notion of exchange includes spot exchanges as well those that involve a future promise or liability. The latter are termed as contracts. Exchange is used in generic sense in this research. The focus is on contracts. See F.N 11 in Chapter 3.

of contracts depends on the ability of the parties to resolve their contractual disputes in a cost effective way. Of interest to this research is Williamson's classification of the alternative modes of governance of contracts on the threshold of bilateral dependency in contracts. Within this scheme, the hybrid governance or relational contracting mode is of particular relevance to the FATA context (Williamson, 1979; 1985, pp. 30-35; 2000).

I use insights from the two approaches conjointly to explore contracts in the two scenarios described above. Ostrom's approach helps in understanding the dynamics of self-governance in commonly owned mineral resources and the common dilemmas involved. Williamson's approach allows me a deeper look into contract performance in the two scenarios. According to his scheme, the governance mode relevant to FATA context is relational. This is due to the operation of bilateral dependency in contracts primarily on account of the informal nature of the property rights of FATA (Williamson, 2005). Contractual relations will be stable as long as parties are able to 'private order' their emerging contractual disputes, in other words, as long as the parties are able to afford the costs of relationship. The importance of relational contracting for traditional settings has already been emphasized in literature (North, 1991; Greif, 1993; Landa, 1994). However, Williamson's scheme is more analytical. Looking at contracts in this manner reveals the conditions under which contract stability obtains within the *Pukhtunwali* institutional environment of FATA.

Since this research is designed with an intent to reveal the "rules of the game" as well as the "play of the game" (Williamson, 2000, p. 599), a reasonably telling picture of the otherwise insufficiently appreciated FATA property rights regime emerges when the two main contracting scenarios outlined above are contrasted. It becomes evident that avenues of beneficial economic gains do exist within the informal institutional framework of FATA and that the tribes can devise viable mechanisms to self-govern their mineral resources. Even partnership contracts in this sector also appear to demonstrate a greater potential for stability. Commercial activity in the mineral sector thus holds promising prospects for an indigenous economic turnaround in the region, provided it is encouraged sagaciously.

1.3. Research Contributions

The study makes several contributions. First of all, it tries to fulfil an important gap in literature on the economic institutions of the area. The available literature on the area is predominantly ethno-political in nature so this study may be termed as a first step in

advancing knowledge about the institutions of the region from an economic perspective. It seeks to highlight ways in which informal institutions are delivering reasonable economic benefits in FATA, and alternatively, also the ways in which their performance is strained and hindered in that respect. Insights generated could inform and benefit economic development policy in the region.

In terms of theoretical contribution, the research undertakes a conjoint application of Williamson and Ostrom's approaches to explore the problem of exchange stability in a traditional society. This adds a cutting edge to the analysis of informal institutions and the performance of contracts in such settings.

The thesis searches the confluence of the traditional informal institutions in FATA with the modern development approaches through the instrument of NIE. Its originality lies in digging out the advantage within the informal institutions of FATA through empirical data collection and utilizing the evidence so collected towards a framework for development derived within NIE. In doing so, the shortcomings of applying a development framework based on traditional economic principles are also highlighted.

For FATA, the thesis on the one hand highlights the problems inherent in bypassing the informal institutions within its socio-economic and political structure in a development approach, and on the other, offers a way out of how these informal institutions could be taken aboard in any developmental agenda. For an area pregnant with critical implications for both national and international peace, such an approach is not only vital, but in many ways unavoidable from at least two essential angles. First, to give people reason to identify with, own and participate in a development project. Second, to prevent the area from slipping into the hands of extremist elements, who will be all the more eager to take advantage of yet another development failure.

1.4. The Structure of the Thesis

This thesis is organised in eight chapters. Chapter 2 provides a comprehensive, contextual foundation to the thesis that aims to highlight the challenge of development in the complex social environment of FATA and the traditional failure of development planning in the region. For this purpose it outlines important facets of the history of development in the region and highlights the salient features and limitations of the current development plan (SDP). It also discusses the theory of institutions to understand the theoretical underpinning

of the latter and explicates the fundamentals of *Pukhtunwali* to underscore the many perils of the approach. The chapter concludes with a general statement of the research problem in FATA.

Chapter 3 identifies the theoretical framework guiding this research. Two approaches within NIE, Ostrom's and Williamson's, are found pertinent in this regard. These approaches are explored for their relevance to this research and specific research questions are identified. A conjoint theoretical framework is then configured to answer these research questions. Chapter 4 describes the methodology and the research design adopted in this research. Chapter 5 discusses the normative characteristics of the property rights regime in FATA. It explains the nature and substance of property rights in FATA in the light of historical evidence. Discussion encompasses both the rules and the enforcement mechanisms.

Chapter 6 pertains to the first exchange scenario. In this chapter, contracts are examined in relation to commonly held resources and the dynamics of contract stability is explored. Chapter 7 follows a similar agenda for the second exchange scenario pertaining to private manufacturing firms in FATA. Finally, Chapter 8 presents a summary of the insights derived from this research in relation to the two exchange scenarios as well as generally in relation to the property rights regime of FATA. It also recaps the main contributions of this research and makes some recommendations for future research.

Chapter 2. The Challenge of Development at the Edge

This chapter highlights the insufficiently appreciated complexity of development in FATA. The aim is to emphasize the need for an objective understanding of the predominantly informal institutional set up in FATA before the recent development agenda, that seems to target these institutions aggressively in the aftermath of 9/11 under designs of rapid social change in the conflict prone region, aggravates the existing complexity by way of further uncertainty. I focus in particular on the economic development component of this development agenda and argue that in accordance with the recent trend in global development programmes, the current initiatives rest on optimistic theoretical foundations supplied by the traditional Property Rights Theory of NIE. In this view, formal institutions are seen as imperative for economic development. But the approach has many caveats, particularly in the strong traditional setting of FATA. I will look at development in FATA from the theoretical perspective that underpins it and use a description of the social milieu of FATA to highlight the pitfalls.

The chapter is divided into three sections. Section 2.1 looks at the underlying objectives of the post 9/11 development policy in the region that have led to the currently unfolding Sustainable Development Plan 2006-2015. In order to highlight the change in approach towards FATA, an overview of the history of six decades of development in FATA is presented. The focus in is on the performance of a specialised agency, the FATA Development Corporation (FATA DC), entrusted with the task of managing economic development initiatives in the region. I argue that beyond the commonly known and tangible reasons for the failings of FATA DC, its failures were also compounded by intangible factors i.e., the less understood institutional constraints of the Pukhtun society. Thereafter the discussion reverts to the recent development plan and highlights that despite a break from the past, it rests on undue optimism without sufficient understanding of the informal institutional matrix of FATA. Section 2.2 elaborates this point with reference to NIE and the social landscape of FATA. Finally, the research intent is underscored and the need for an appropriate theoretical framework to shed light on the economic functioning of FATA institutions is stressed. Section 2.3 presents conclusions of the chapter.

2.1. The Naivety of Development Planning in FATA

In a style that has become customary for development reports, an introductory section of a report by an international development institution projects the development scene of FATA on the eve of a major turning point in policy towards that region in the following manner:

In FATA's dry, sparse, hilly, and resource poor landscape, poverty is endemic and pervasive. Indeed, FATA is the most impoverished region in Pakistan, lagging behind the rest of the country in nearly all socioeconomic comparisons. The population numbers approximately 3.14 million, or 2.4% of Pakistan's total population, and accounts for 3.4% of the country's land area. The population of FATA is totally rural in character. Government estimates show that as much as 60% of FATA households are below the poverty line¹. The region has a literacy rate of 17.4% and a primary school participation rate of 41.3%, which are significantly lower than the national averages of 45% and 77%, respectively. A mere 44% of the population has access to clean drinking water, as compared to 75% for the neighboring North-West Frontier Province (NWFP). The situation of women is even more difficult, as they live under conservative socio religious conditions... Almost all (97%) are illiterate, and have very limited opportunities for employment outside the home... Only 7% of the land is under cultivation, of which about half is irrigated... Employment opportunities are limited... Transportation infrastructure development in FATA is rudimentary... Fully one third of the area is inaccessible because of poor communication links and refusal of some groups to allow access to outsiders [an allusion to self-governance and autonomy] (ADB, 2002, pp. 1,2).

Beyond the most obvious, the tangible socio-economic parameters, generic statistical depictions of the above type hardly convey the underlying complexity and challenges of development in FATA. True, yet oversimplified, development lag on such parameters is commonly attributed to inadequate physical resource allocations, amplified by an inhospitable social environment and lack of government control (Division, 2002; Group, 2006; Talbot, 2008), dimensions that in FATA's case are quite apparent from the above quote. Alluding to a shift in government policy in order to rectify the situation and bring the region at par with other parts of the country, the same report portends, “[t]he system of governance is changing as part of federal government policy, which will inevitably affect their historical autonomy” (ADB, 2002, p. 2). An aggressive agenda of social change through proactive economic and political intervention is clearly the prescription that has found favour with those at the helm of affairs in line with the customary approach to the problems of development in traditional societies.

¹ According to the \$ 1 a day income threshold commonly adopted in the case of developing countries.

Pressure on Pakistan to bring the region within the ambit of normal law of the land kept on mounting in the aftermath of 9/11. The traditional autonomy enjoyed by FATA, dubbed as ‘lawlessness’, is increasingly seen as a major reason for economic deprivation, and as a consequence, militancy in the region (Group, 2006; Markey, 2008; Talbot, 2008; Marten, 2008). Inspired by the logic that economic empowerment alone could deliver the region from a growing wave of militancy, one could discern a sense of urgency about the matter gripping those at the helm of affairs. For instance, a top government body tasked with identifying potential economic initiatives in the region expresses the prevailing sentiments in the following words:

Only by making a real and dramatic change in the lives of ordinary people can we achieve the desired results. Small, incremental, piecemeal economic intervention is lost in the overall politico-economic milieu of FATA. **Need of the hour is an Economic blitz-krieg, a mini “Marshall Plan”** [for the region] **in the next five years which would...leave no one [in FATA] untouched...** However time is a luxury that we cannot afford. If anything we are already late (Annex-20 in Sahibzada, 2006, appended in this thesis as Annex-B; emphasis in original)².

Indeed since 2002, developments concerning FATA started unfolding at quite a rapid pace. To streamline development planning and to target the ‘poverty of development’ accumulated over a period of around six decades of ‘lax colonial style administration’ in FATA; a new FATA secretariat was created, followed in 2006 by another organisation, the FATA Development Authority (FATA DA). In the same year, the curtain from the government’s so called ‘Economic blitz-krieg’ or ‘Marshall Plan’ was also finally lifted. A 2 billion USD medium term development plan, the Sustainable Development Plan (SDP) 2006-15 (henceforth SDP), prepared with the technical assistance of, and backed by pledges of financial support from foreign development agencies, the IUCN, DFID and USAID among others, was announced as ‘a new way forward’ in FATA, amidst much fanfare and optimism regarding the planned outcomes (2006, p. X; Talbot, 2008). Still pending is a decision regarding the political integration of FATA with Pakistan which has been mired for the time being due to exigencies of active conflict in the region.

² The undated document annexed in Sahibzada (2006) entitled “Economic Initiative for the Federally Administered Tribal Areas (FATA)” was prepared by the Minister for Industries and Special Initiatives for FATA (Sahibzada, 2006, p. 81). The importance of this report can be judged from the fact that almost all its recommendations for FATA, including the resurrection of a reformed version of FATA DC (FATA DA), were subsequently adopted by the government.

Optimism is writ large on SDP. While outlining a schema for swift catching up on the development lag of FATA, the authors of the report claim to have learnt from the past failures. In reality however, the claim is inspired by misconceived notions of a purported change that an aggressive intervention agenda might foster in the region. The complexity of development in FATA appears to have been assumed away under the sweeping tide of optimism engendered as a consequence. The SDP is currently half way through its nine year period, or almost at the conclusion of its first phase, but there are no palpable signs of an economic turnaround yet. If anything, the shortcomings of SDP do confirm that there is more to the failures of development in FATA than those appreciated by the policy makers. A critical look at the history of development in the region undertaken in the following section will serve to illustrate this point besides providing an essential backdrop to the latest development initiatives.

2.1.1. A Saga of Six Decades of Development in FATA

The historical synopsis of the region in the previous chapter highlights that the geostrategic importance of the region, coupled with a very limited resource potential, and fierce resistance of the tribes to control by an outside power were the three critical determinants of the imperial policy in the region. Development was deterred by a combination of these factors but most of all, the resolute posture of defiance adopted by the tribes to all the so called ‘civilizing’ moves by the colonial power. Unlike the aboriginal tribal communities elsewhere in the colonial world, the Pukhtun tribes of the north-western borderland were not passive recipients of colonial intervention (Ahmed, 1980b, pp. 4,5). Even the most benign form of colonial penetration in the shape of education was fiercely resisted. Facilities of education and health were limited to a few main towns where troops were stationed and these too were quite rudimentary (Khan, 1972, p. 34). In some areas such as the Mohmand Agency, not even a single school existed prior to independence in 1947 (Ahmed, 1980b, p. 321). The British could only pin their hopes on a long term development probability; the likelihood of a change in future brought around by enhanced interaction of the tribes with the settled areas through a network of roads primarily built for defence purposes. Roads remained a major instrument of penetration and development even in the post-independence period, as noted by Ahmed (1977, pp. 57-60; 1980b, pp. 338-341).

On the creation of Pakistan, the scenario changed dramatically. The ‘infidels’ were gone and with them also the *raison d'être* of tribal hostility. The new state was based on an Islamic

ethos shared in common with the tribesmen thus providing a foundation for amity in relations. However, this change could not be capitalised on straightaway for a host of reasons. The lack of a concrete development policy for the region for over two decades after independence is one of the most commonly attributed reasons, although in a sense this is simplistic³. In all fairness, it was beyond the financial and technical capacity of the nascent state to bolster its image through beneficial socio-economic development initiatives in the region and cash on the high tide of goodwill that prevailed at the time⁴. There were too many post-independence problems and too few resources to cater for the development needs in this region. It is generally believed that a window of opportunity that presented itself on independence was thus lost.

In line with the neoclassical economic theory and practice of the time, a tradition of comprehensive multi-year national development plans was initiated in Pakistan in 1955. In this view, economic development in the developing world is essentially seen in terms of stimulating growth through appropriate resource allocations. While the focus remains on the tangible aspects of development such as provisioning of the inputs, and the means to transform these into marketable products to earn profits and enhance the per capita incomes, the need for planning and regulation is considered instrumental. A preferred solution for overcoming technological limitations in this regard is the pivotal role assigned to the state. Given its monopoly on resources and technical expertise, it is believed that the state could stimulate growth by playing a lead role by venturing into commercial enterprise itself if required⁵.

The tribal areas were included in the country's first five year plan (1955-60), but the lack of a detailed sector wise plan for the area when this plan was prepared, meant only a lump sum of 100 million rupees was allocated. The amount remained unutilized till the end of the plan period as due to technical and bureaucratic constraints no sector wise plan for the tribal areas

³ Since it assumes that the tribes would have readily condoned such an involvement by the state.

⁴ There was an acute shortage of technical and professional staff in the public sector at the time. See (Khan, 1972).

⁵ This is affirmed by the first five year plan in the following manner:

Planning in the present stage of our society means the formulation of programmes and policies designed to lead it by a consciously directed and accelerated movement from a largely technological backward and feudalistic stage into the modern era of advanced technology now on the threshold of atomic age... Economic development is a part of this general process of social change, and planning signifies our intention to influence, regulate and adapt it along the lines desired by us (Pakistan, 1955, pp. 1-2).

could be made for the tribal areas. The second five year plan (1960-65) addressed this issue as by that time, the planning process for the tribal areas was streamlined to some extent but there was a significant drop in the funds allocated. An allocation of 67.220 million rupees was made in accordance with a sector wise plan targeting ten sectors: agriculture; animal husbandry; forestry; fisheries; education; health; housing; industry; irrigation and roads. The subsequent five year plan (1965-70) enhanced the size of the development allocation to the region to 120 million rupees, an increase of around 78%, but unfortunately this plan could also not be fully implemented due to the 1965 Indo-Pak war contingencies. The main focus under all these plans remained on sectors such as agriculture, irrigation, forestry and roads where more than 70% of the budget was spent followed by the social sectors of education and health making up for the balance 30%. A pertinent point to note is that these allocations were for the entire tribal region of the north-west and not specifically for FATA⁶.

The '70s heralded the first change for FATA in terms of a development focus as signs of the FATA specific development strategy started showing. Representing a major change in the development approach towards FATA, a second important era in the development history of FATA commenced from the year 2002. Specifics of both the periods are touched upon in this discussion.

A major feature of FATA specific development arrangements during the '70s was the creation of a specialised agency for economic development of FATA. FATA Development Corporation (FATA DC; henceforth Corporation), an autonomous body, was created in 1970 to spearhead specific economic development initiatives in addition to the social sector development initiatives in the region that were being carried out through the respective provincial line or nation building departments of NWFP.

The Corporation had a charter for the assessment of potential for economic development; conducting surveys and feasibility studies for development projects in FATA and the execution of development schemes in sectors such as industry, agriculture, horticulture, land development and reclamation, minerals, water and power (Khan, 1972, p. 48). Practically however, the Corporation's activities remained limited to three sectors: water, minerals and industry (Sahibzada, 2006, p. 35; Interviews E 5, E 13). Although it completed a number of schemes in these sectors, its worst failure was in the industrial sector and its greatest success

⁶ The allocations were for the entire tribal belt of NWFP including the tribal areas that were merged with the settled areas from time to time in the post-independence period. These included the former princely states of Amb in Hazara Division and the states of Dir, Chitral and Swat in Malakand Division (Khan, 1972, p. 2).

in the mineral sector. The latter was not on account of the number successful mining projects undertaken in the region but on account of laying the all-important ground work for such projects. It conducted extensive geological surveys covering 23000 sq.kms (or 85% of the area of FATA) which eventually led to the discovery of 19 minerals of commercial importance in the region (Badshah, 1994, pp. 1-2; Division, 2002, p. 70; Sahibzada, 2006, pp. 35-36). Today the sector is a hub of commercial activity and holds tremendous potential for growth in the future. Ironically however, judging from the investments made in the three sectors, the mineral sector remained the least favoured with the policy makers. Till the year 2002, it received just 95 million rupees, or 3.1% out of the total development allocations of the Corporation at 3046 million rupees. The water sector remained a top priority, accounting for around 90% of the funds followed by the industrial sector at 4.76% (Sahibzada, 2006, pp. 36-37).

As for the Corporation's performance in the water sector, its annual reports claimed considerable success in surface and ground water management through channels, dug wells, flood protection etc. However, validity of the claims is disputed and this sector was also one marred the most by endemic corruption which eventually proved to be its nemesis. When I invited a comment from a respondent, an ex-employee, on the performance of the Corporation in the water sector, he laughed off the authenticity of the reported figures:

The figures are exaggerated; they do not represent reality on ground. Independent verification by the donors or outside authorities has traditionally remained a big issue in FATA... [The] visits of external authorities were often put on hold for security reasons and ultimately cancelled out of frustration (Interview E 13).

The worst failure of the Corporation was however in the industrial sector. The objective in this sector was to encourage industrial activity in the region in order to foster employment opportunities and fast track economic development but a lack of industrial entrepreneurship was seen as the main hurdle. This limitation required the Corporation to step in and set up industrial units, demonstrate successful commercial operations and attract potential private investors. It was hoped that the experiment would boost confidence of the investors and instigate a chain of commercial investments in the region.

Table 2-1: Industries Setup by FATA DC

Agency	Date of Commercial Operations	Title of Unit	Investment (Rs. M)	Project Outcome
Bajaur	Sept. 1988	Oil Expelling and Refining Plant	19.720	Sold for Rs.9.0 million in Oct. 1993
Mohmand	Sept. 1977	Mohmand Glass	6.147	Closed in July, 1979
Khyber	July 1976	Bara Ghee Mills	26.552	Transferred to a public sector corporation (GCCP) in 1978 which sold it onwards to a private party in 1992
Khyber	Aug. 1976	Bara Cigarettes	13.686	Sold for Rs.10.30 million in July 1992
Khyber	Feb. 1980	Mullagori Marble	12.908	Sold for Rs.9.350 million in Feb. 1996
Kurram	Mar. 1977	Kurram Fruit Products	7.388	Sold for Rs.4.750 million in Oct. 1993
North Waziristan	Oct. 1975	Tochi Valley Match Factory	11.878	Sold for Rs.11.90 million in June 1995
North Waziristan	Aug. 1978	Tochi Wollen Mills	15.808	Sold for Rs.7.80 million in Jan. 1996
North Waziristan	Feb. 1982	Mir Ali Looms	2.879	Sold for Rs.3.10 million in Oct. 1993
South Waziristan	Dec. 1978	South Waziristan Tanneries	14.350	Closed in May, 1982
South Waziristan	Oct. 1979	South Waziristan Footwear and Leather Goods	13.686	Closed in May, 1985

Source: (Badshah, 1994; Sahibzada, 2006; DA, 2010)

In all, eleven industrial units were set up in the six Agencies at a capital cost of 145 million rupees but the Corporation was never able to demonstrate successful commercial operations. Intermittent closures were routine as the Corporation struggled with losses and numerous other administrative issues in keeping the units afloat. Although seven units were eventually disinvested, huge concessions had to be offered to lure the buyers. On the whole the Corporation recovered only 1/3rd of its investment (see table above) and suffered a huge blow to its prestige. Unfortunately even the disinvested units could not remain viable for long and had to be closed down by the private owners. Hence FATA's experiment with externally stimulated neoclassical development came to a naught.

The inventory of reasons for the failure of the industrial initiative in FATA is quite long. Commonly cited reasons include technical deficiencies, mismanagement; corruption; the lack of coordination with provincial departments working in FATA etc. On a more fundamental level, the project planning suffered from serious gaps. Feasibility of the projects was based on erroneous data, and in addition, the social context or institutional constraints of the Pukhtun society in FATA were completely ignored. These are the cultural traits or behavioural characteristics arising out of social norms system in a society. Ahmed (1982, pp. 40-49) refers to these as inherent structural constraints of the Pukhtun society⁷. The omission is not surprising given that no sociologist or anthropologist was involved in the planning process and economists had little appreciation for such dimensions at the time⁸. In fact, the planning process was rendered merely a formality due to undue pressure from authorities for quick results. One respondent explained this as follows:

The decision to set up industrial units in FATA was taken at the highest level in the country. The technical staff was under extreme pressure to take practical measures to make this happen. The process of the feasibility reports was thus rushed from the start till the end with little time to collect reliable data from the field. There was also a prevailing perception that if we account for the reality on ground, no project of ours would pass the criteria for approval (Interview E 5).

Technical errors in the feasibility studies became apparent soon after the commencement of commercial production by the units. For instance, given the geographical disadvantage of FATA in comparison with the settled districts, a primary consideration for profitability was reliance on locally available raw material. The feasibility studies claimed to have taken this basic factor into consideration. However in reality nearly all the units had to depend on inputs imported from outside the region rendering production very costly. “We had to transport the raw material from the other parts of the country, and after processing it again for sale we had to transport the goods down country” (Interview E 5). Rushing the feasibility studies left little time to collect reliable data from field surveys. The entire cost and benefit calculations on which the recommendations were based were actually fictitious (Interviews E 5, E 13). A revealing case regards the tannery unit in South Waziristan Agency. An abundance of livestock in the Agency became the basis of the presumption that raw hides would be

⁷ Pending an introduction to the concept of institutions later in this chapter, I will refer to these constraints in the manner of Ahmed.

⁸ Ahmed (1982) notes that at the time, the prestigious Planning Commission of Pakistan did not have a single anthropologist or sociologist on board.

available locally in suitable quantities. No scientific enquiry was made to determine whether there were enough local supplies to sustain commercial production of the unit. As one respondent pointed out:

Obviously we had to purchase hides from the Punjab [province]. [Commercial] Industry requires substantial inputs for commercial production. We are talking about a poor area. How many sheep would be slaughtered there per day, 10, 20, 30...? This is not good enough for [sustaining] an industry [commercially] (Interview E 5).

The gaps in the feasibility studies were compounded by the inherent structural constraints of the Pukhtun society. The most common manifestation of the latter was in the shape of periodic labour—management disputes between the local labour and their managers. Due to a dearth of trained manpower in the area, skilled labour had to be contracted from outside. The supervisory staff was mostly from the Punjab:

[The local] labour would not listen to them [because they were not Pukhtuns]... The poor supervisor would not be able to control his subordinates at all. He [supervisor] would fail to ensure their presence at work... and when he would try to discipline them they would simply not bother, and when pressed, even warn him [supervisor] that the factory is for them so he better not be bossy with them (Interview E 5).

A strong perception of the Pukhtun identity and territorial based rights are clearly manifested in the above statement. Within their territorial domain, Pukhtuns regard themselves as masters or patrons and not clients. Any direct or indirect move at a redefinition of that status, particularly in relation to outsiders was bound to stir up resentment. An added dimension pertains to the assertion of rights on the basis of being the project's main intended beneficiaries. The Pukhtun labour knew that the project was being sponsored by the state for their benefit. A strong awareness of tribal status and the nature of state-tribe relationship is betrayed in both cases. Chapter 4 will elaborate on the various aspects of the matter in detail however a few dimensions are described below.

In areas where Shia and Sunni tribes co-exist such as in the Kurram and Orakzai Agencies, sectarianism is a major factor and causes great loss to life and property every year. A fruit processing plant was established in the Kurram Agency which is quite well known for its fruit exports to other areas of the country. Unlike the previous example, the feasibility study was not quite off the mark on the count of local inputs but failed to appreciate the repercussions of the sectarian divide in the Agency on the supply chain. As a consequence,

the fruit processing plant was never quite a success story even after the Corporation sold it to a private party. While pointing towards frequent disruptions in the supply of inputs to the unit during sectarian outbursts, a respondent explained that the unit was set up in the Sunni area whereas the fruit orchards were all in the Shia area. Even the private investor could not run the unit successfully and had to close it down shortly after the takeover (Interview E 13).

Owing to the lack of indigenous capital, the planners assumed that the units would attract investors from outside but failed to realise that the field was not level for outsiders. In practice, *Pukhtunwali* accords the local Pukhtuns of a particular area certain privileges over all others. Consequently, there is a difference in the entitlements as well as the ability to defend these entitlements between locals and outsiders within the parameters set by *Pukhtunwali*. This is elucidated in Chapter 5. In view of these differentials, the latter have concerns for security of person and property that are not exaggerated. Except for two cases of special nature, the Mir Ali Power Looms, North Waziristan Agency and the Oil Expelling Plant at Khar, Bajaur Agency, it is no surprise that the response from outside investors was unenthusiastic. Exceptions included those parties already in close contact with the Corporation: the unit machinery suppliers. “When the units were not yielding profit we were willing to get rid off them [at any cost] so when they [the machinery suppliers] offered to take over, we happily agreed (Interview E 5). The units were acquired on very favourable terms (see table above) at a time when the Corporation had lost all hopes hence the risk taken by the buyers in the face of odds in FATA convey some sense.

However, FATA’s tryst with outside investment did not betray expectations. Of the two businessmen, the one who purchased the Mir Ali Looms was abducted by a local under the custom of *brampta*⁹ and held in captivity till his claims were paid by family of the businessman. The second unit at Bajaur never operated successfully (Interviews E 1, E 5). Both the ventures proved to be failures and were closed down eventually. Of the other disinvested units, only Bara Ghee and to some extent Bara Cigarettes could sustain commercial operations over the years as these units were able to exploit their geographical location and close proximity to a major urban centre (Peshawar) to their advantage. Apart from the owners’ strong financial position, smuggled raw material, across the border sales, and counterfeit manufacturing of foreign brand cigarettes provided the extra margin of profit

⁹ See discussion on *Pukhtunwali* in Section 2.2.1 below and Chapter 5 for further details.

required to sustain operations in the region. Others struggled to remain afloat but not for long and were eventually shut down.

By the year 2002, the pent up resentment against the Corporation's performance had already reached a tipping point. The audited balance sheets of the Corporation clearly reflected the crowding out of development expenditure by recurring establishment costs over the past several years (Division, 2002, p. 70). On 30th of June, the decision regarding its fate came by way of a liquidation order. Reasons justifying the order included excessive salaries due to overstaffing; a lack of merit in employments and postings; a lack of adequate funding to keep the development schemes going; and an absence of appropriate linkages with government bureaucracy resulting in the lack of support at the Agency level (Sahibzada, 2006, p. 36). However, the timing of the decision had a broader context too. It was part of an unfolding national strategy in FATA mandated by events across the border in Afghanistan. As described below, the year also witnessed far reaching administrative changes to meet the perceived challenge of development in FATA.

Development in FATA is funded by the Federal government through the Ministry for State and Frontier Regions (SAFRON). While the Corporation's mandate was specific to the economic development sectors described above, development projects in other sectors, including the social sectors, were entrusted to the provincial bureaucracy of NWFP. The provincial line departments (or the nation building departments) executed the Annual Development Plans (ADPs) for FATA in health, education, communication, agriculture and forestry etc. These line departments functioned under the overall auspices of a FATA section within the provincial Planning and Development Department (P&D) (USAID, 1982, pp. 16-17; Sahibzada, 2006). One of the reasons enumerated in the charge sheet against the Corporation was its inability to forge a working relationship with this provincial setup.

In terms of budgetary allocations for FATA, education, communication and works (roads and public infrastructure), health, public health (water supply and sanitation), agriculture and power (in that order) have traditionally been the major avenues of development intervention (Division, 2002, p. 11). A detailed description of the performance and analysis of each sector is outside the scope of this thesis. Nevertheless, since all the sectors of development are essentially interlinked, and have a bearing on economic development, certain important shortcomings need to be briefly highlighted to facilitate a complete picture of the development progress in FATA.

Except for roads, which were deemed essential for defence, progress in all the sectors mentioned above is a post-independence phenomenon. The change in the post-independence period was too significant to evade notice and captured the imagination of many at home and abroad. The tribes were seen to be marching on the road to progress in a stark contrast to their tribal kin on the other side of the Durand line (Toynbee, 1961; Publications, 1964; Ahmed, 1977)¹⁰. Since 1947 there has been steady progress in all sectors of development but at the same time, apart from serious issues concerning planning and quality of delivery, the progress remained outstripped by the actual needs of the area. Changes in the social landscape of the region due to the changing economic and political environment only added to the complexity of the development challenge in the region.

A gradual increase in educational facilities since independence could not make much difference to livelihoods due to a lack of employment opportunities in the area. Out-migration from the area remained the only option for employment of any kind. Unskilled labour in particular benefitted from the construction boom in the Middle East since the late '60s. The impact on family incomes was quite significant as estimates suggest 5-10% of the FATA residents, or at least one person in every extended family, benefited from employment in the Middle East. Though the gulf oil boom of the late '60s came as a great relief and a lucrative avenue to supplant meagre family incomes, this did not last for long. By the mid-eighties return of the migrants had started as opportunities for unskilled workers started shrinking, whilst back home, avenues to channel savings into productive activities were still meagre. As already described above, the government's economic development initiatives in the area suffered from severe handicaps and were grossly insufficient. To make things worse, a dramatic political change unfolded across the border in Afghanistan. The Soviet invasion of Afghanistan in 1979 sent hundreds of thousands of Afghans scrambling for their lives across the border into FATA and the settled districts of Pakistan. In FATA, this seriously upset the demographic balance and caused severe strain on the public goods and resources of the region (USAID, 1982, p. 13)¹¹.

¹⁰ Ahmed (1977) describes the enthusiasm for development in FATA in detail. Toynbee (1961) draws a comparison between Pukhtun tribes on either side of the Durand Line and highlights the positive impact of development on the Pakistani tribal areas.

¹¹ Although all the Agencies received substantial populations of Afghan refugees, in some Agencies such as Kurram, Bajaur and North Waziristan the refugee population clearly overwhelmed the local demographics well through the '90s due to continued instability in Afghanistan. See Socio-Economic profiles of the Agencies prepared by USAID (USAID, 1990c, pp. 2,19; 1990a, p. 14; 1990b, p. 17; 1991, p. 12; 1992, p. 19; 1993b, p. 19).

A number of studies conducted by government as well as international development agencies since the '90s revealed the downside of development in FATA (USAID, 1990c, 1990a, 1990b, 1991, 1992; Khan & Bajwa, 1993; USAID, 1993b, 1993a). These show that the reasons leading to the Corporation's poor performance and ultimate dissolution can more or less be extended to all the development counterparts concerned with FATA's development. These studies portray a common perception regarding FATA's development predicament as an outcome of inadequate resource allocation, faulty planning and non-conducive socio-political environment. A more recent study commissioned by the Planning Commission to evaluate development investment in FATA during the period 1990-2000 (Division, 2002) is quite instructive in this regard. In addition to the major contributory factors of low development budget allocation and peculiar socio-political milieu, the study notes serious gaps in planning and execution which are adversely affecting the sustainability of the projects to the detriment of the much desired social return on development investment in the region. The trend has to be reversed, and commitment of more resources, it urges, "is justified on the grounds of: FATA's geostrategic importance; *the need to integrate this area further* [with the rest of the country]; and given FATA's development needs" (Division, 2002, p. vi; emphasis added).

As a consequence of the prevailing perception regarding FATA's development problems, the prescription started taking shape around two major themes: enhancement in the financial allocations for FATA's development and major restructuring of the planning and delivery institutions; and second, major institutional reforms in the system of governance of FATA in order to bring around the much desired social change. Although enhanced development allocations and improved planning and delivery mechanisms are a significant break with the past, a paradigm shift in development thinking lies in the agenda of institutional change that now forms an essential part of the strategy for development in FATA in accordance with the recent global trends inspired by neoclassical economics.

By the year 2002, visible signs of change in government's policy towards the 'poverty of development' in FATA started appearing. The change was also urged by a growing concern about losing the area to the militants if drastic measures to improve the livelihoods of people in the area were not taken. Thus the Corporation's dissolution was not the sole event of the year. Sweeping administrative changes were introduced in the developmental and administrative bureaucracy of FATA at the provincial level. The different sections/divisions of the nation building departments looking after FATA were reorganised as different sections

of FATA's own Civil Secretariat. This was followed in 2006 by the creation of the FATA Development Authority (FATA DA), an autonomous body. Similar to its predecessor, the Corporation, FATA DA was tasked with interventions in the economic sectors. However, it has a much leaner organisational structure and well defined procedural linkages with the FATA Secretariat. Clearly an attempt to avoid the past shortcomings has been made. Finally with the SDP unveiled in 2006, a roadmap was in hand to steer an aggressive agenda of development as a strategy of social change in FATA.

Corresponding with the grand designs of its approvers to effect “real and dramatic changes in the lives of ordinary people” the SDP purports to be an integrated development plan—a supposed panacea for the economic woes of the people—offering interventions in almost all the sectors of development that could possibly be conceived. The myriad of sectors that it seeks to target are grouped under four broad categories: 1) Human Development Sectors (education, health and drinking water supply); 2) Natural Resources Sectors (agriculture, livestock, forestry and fisheries); 3) Communication and Infrastructure Sectors (roads and bridges, housing, irrigation, power); 4) Economic Development Sectors (industry, mining, commerce and trade, skill development, cultural heritage and tourism). The initial five years of the plan are earmarked for intensive intervention followed by a consolidation phase in the final four years. Both the FATA Secretariat and FATA DA are the implementing agencies but the former plays the lead role in terms of the budget consumed and the cumulative size of its operations under the various subsectors. FATA DA is tasked primarily with the economic development sectors.

In the manner described above, the traditional pattern of development intervention in FATA has been drastically altered through the SDP and reforms in its implementing bureaucracy. Contrary to expectations inspired by the SDP however, the so called ‘Economic blitz-krieg’ has not been as straightforward a matter as some believed it would be. The SDP is past its first five years now but trends do not reflect positive change in the situation on the ground. The initial spurt of optimism seems to have ebbed considerably. Indeed there is much more to the complexity of development in FATA, and for that matter in all traditional societies generally, that forbids optimism even on the basis of grandiose plans of the likes of SDP. Institutional changes are often unpredictable as experience has proved on numerous occasions (Jean, 1997; Fitzpatrick, 2006; Benjaminsen, et al.; Bromley, 2009), and as theoretical insights into the phenomena below also establish. The irony is that in pursuit of a

socio-economic nirvana, mainstream development prescriptions are seldom deterred from trying out the ‘silver bullet’ of institutional reforms in traditional societies.

The preponderance of the institutional dimension in modern development programmes derives its inspiration from the currency of NIE¹² (Bates, 1995, pp. 27,37; Cameron, 2000; Azfar, 2002)¹³, a far cry from the opinion held five decades ago when the early saplings of the paradigm of institutions started challenging the traditional wisdom in neoclassical economics which was then almost entirely focused on the physical means of production. In today’s scholarship, the central notion that institutions matter for economic growth and development is reckoned as an irrefutable fact. However, the deceptive simplicity of the economic rationale behind growth conducive institutions, of which the Western institutions represent an archetype, is a prime reason for the erroneous extension of the paradigm as a universal prescription to the problems of economic development. The many caveats involved in the process underscored by NIE are ignored as the underlying rationale tends to encourage ambitious plans—such as the SDP—to supplant the existing ‘inefficient institutional arrangements’ with ones that are deemed efficient. Looking at the development initiative in FATA, one can easily surmise a similar approach in action. In order to highlight the pitfalls inherent in the approach, there is therefore a need for a deeper look at its theoretical source of inspiration, i.e. NIE.

2.2. The New Development Paradigm: NIE and the Hazards of Optimism in FATA

A logical start to the discussion on NIE would be to look at the import of the term ‘institutions’. The definitions propounded by scholars vary in detail¹⁴ but the concept behind

¹² The term was used for the first time by Williamson (1975). According to Coase (1998) it was coined to differentiate the subject from the old institutional economics associated with John R. Commons, Wesley Mitchell and their associates.

¹³ Cameron (2000) highlights the increasing engagement of developmental NGO’s with the theory and practice of NIE in their programmes. To disseminate the requisite understanding as to how NIE can help, note that the primary audience of Azfar (2002) (duly acknowledged in the abstract of the article) is development practitioners or those engaged in providing foreign assistance to the developing countries. Also, see Brett (1993) who emphasizes the relevance of NIE to NGOs.

¹⁴ For instance, according to Greif, institutions are “a system of social factors — such as rules, beliefs, norms and organizations — that guide, enable, and constrain the actions of individuals” (2000). Ostrom offers a broad definition of institutions as “the prescriptions that humans use to organise all forms of repetitive and structured interactions including those within families, neighbourhoods, markets, firms, sports leagues, churches, private associations, and government at all scales” (2005, p. 3).

the term is lucidly conveyed by the one proposed by North and his definition of the term is the one popularly followed. According to North institutions are:

[T]he rules of the game in a society or, more formally, are the human devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether political, social, or economic (1990, p. 3).

A twofold categorisation of the type of institutions is evident. Institutions can be either formal “such as rules that human beings devise” [written rules such as constitutions, laws etc.] or informal “such as conventions and codes of behaviour”. Institutions may be created or may simply evolve over time. They are perfectly analogous to the rules of the game in a competitive team sport. That is, they consist of formal written rules as well as typically unwritten codes of conduct that underlie and supplement formal rules, such as not deliberately injuring a key player on the opposing team (North, 1990, p. 4). Viewed thus, institutions are an overarching framework of rules and constraints, formal as well as informal, that governs interactions among individuals (North, 2005, p. 59). North also makes a useful distinction between institutions and organizations. In his view, organisations are developed as a consequence of the institutional framework. Similar to the players in a team, organisations “are group of individuals bound by some common purpose to achieve objectives”. Therefore, if institutions provide the rules of the game, organisations are the players who play the game under those rules (1990, p. 4). Organisations could be political, social, economic or educational in character. Political parties, legislatures, churches, clubs, firms, cooperatives, universities etc., serve as examples of the different categories. The conceptual distinction North makes between institutions and organisations is widely reckoned to be useful analytically for identifying the difference between the functions of institutions and organisations (Dixit, 2004, pp. 5,6). It is North’s definition of institution and organisations that will be followed in this research¹⁵.

The main premise of NIE is evident from its definition. It posits that all human interactions or exchanges, not merely economic exchanges, are prone to uncertainties and thereby hazards.

¹⁵ Although normally organisations act under the rules, it is evident in some of the examples above that they can also alter or make new rules. A legislature or a university for instance, could make rules as well as act under the rules. The distinction between institution and organisation in such cases may depend on the particular function that is being discharged at a certain point in time. Generally, however, the independence of the organisations to act is limited by the rules but it is not entirely eliminated. There are important feedback linkages between the organisations and institutions. Organisations can impact the rules and thereby help evolve the institutions in order to achieve better outcomes (Dixit, 2004, pp. 5,6).

Institutions perform the all-important function of countering these by stabilising such exchange relationships enabling the parties concerned to achieve mutually beneficial outcomes. However, exchanges of economic character are the ones that are specifically focussed in NIE¹⁶. A central concern in this regard is to seek explanation to the problems of economic efficiency¹⁷ by looking at, and analysing, the role of social and political institutions as a medium in which economic activity takes place. NIE's spot light on institutions is at variance with the traditional neoclassical view wherein institutions were relegated to the domain of sociology, law and anthropology (Landa, 1994, p. 4). As aptly put forth by North, "NIE is an attempt to incorporate a theory of institutions into economics" (1995, p. 17) .

Before the genesis of NIE, the world of neoclassical economics revolved around the concepts of instrumental rationality¹⁸, a behavioural assumption wherein man is viewed as a rational being making unrestrained choices to maximise his benefits in a world beset with competition due to scarcity of resources. The trio of rationality, scarcity and competition were deemed to be fully interactive with the division of labour and increasing job specialisation as both inevitable and desirable; outcomes obtaining over time as the invisible hand worked its wonders. The result of this unfettered regime of choice making and exercising towards individual profit maximisation was believed to be a win-win situation for everyone in the long run. A condition known as Pareto-optimality¹⁹ would set in representing an equilibrium point of best outcomes for everyone in the ultimate. At this stage, it would no longer be possible for any one person to be better off without making others worse off.

¹⁶ Interdependence is a hallmark of human life in economic as well as social domains thus man has to contend with exchange and the challenges associated with exchange in both. The nature and form of exchange in the two domains may however be quite different. Relying on Blau (1964), Landa (1994, p. 14) notes that a primary distinction between the two type of exchanges is that:

[S]ocial exchange entails *unspecified* obligations to reciprocate at a future date, and the nature of the return benefit cannot be bargained about but must be left to the discretion of the one who receives the benefit... In addition, social exchange, unlike economic exchange, carries no exact price in terms of medium of exchange.

¹⁷ The term refers to the use of resources in a way that leads to the best possible outcomes or gains. The term is used in a relative sense while comparing different economic systems, options or situations. In the words of Williamson, "an outcome for which no feasible superior alternative can be described and implemented with net gains is presumed to be efficient" (1996, p. 195).

¹⁸ The term as used in neoclassical economics refers to the rational ability of men to pursue certain desired ends by adopting all the essential means required to that end. Construed thus, the concept of instrumental rationality does not recognize any limits to this ability of men under any condition.

¹⁹ Named after its propounder Vilfredo Pareto. Pareto optimality is a concept in economics that signifies a stage in economic efficiency after which no further improvements could be made. At this ultimate stage, it would not be possible to make any one individual better off without making someone worst off.

In contrast to reality, the neoclassical rational man, for all intent and purposes, was presumed to be blessed with super human capabilities. His perception of reality was deemed flawless, and his ability to decide and act in satisfaction of his profit maximising instincts was reckoned relentless under all conditions. This was a world that had no imperfections—ailments, flaws, or faults. And if there were any, these could not survive long enough to be noteworthy. An innate ability to find effortless remedies was deemed almost automatic²⁰. Uncertainty as a hazard for exchange relationships, and institutions as a means to counter it, could hardly be appreciated in such an optimistic environment. Accordingly, an analytical consideration of institutions would be a redundancy in a world of perfect rationality and competition as the system was deemed capable of taking care of imperfections if any. Market, that fuzzy and mythical concept within which economic actors compete for resources, had the ability to goad the participants—at least those who were competent enough to learn and adapt—towards correct behaviour by providing the necessary means to that end; information as well as arbitrage. Alluding to the implications of such presumptions, North notes:

[I]n a world of instrumental rationality institutions are unnecessary; ideas and ideologies do not matter: and efficient markets—both economic and political—characterise economies (1995, p. 17).

As institutions were reckoned as efficient, the only costs that mattered in the neoclassical equation for success were production costs. Ronald H. Coase, took the lead in exposing the paucity of this central assumption in neoclassical economics (Coase, 1937).

The real world is strikingly different from what was presumed to be the case by the neoclassical economists. Here the ability of men to interpret and analyse a situation, before they make a decision, is limited and essentially depends upon their mental models. These mental models evolve over a period of time as a result of life experiences therefore the influence of contexts and cultures cannot be ignored and diversity even within the same culture is likely to be the rule rather than exception. In addition, the situation in real life is further compounded by the facts that the nature of information is ‘always incomplete’ and it

²⁰ The possibility of imperfections in the market institutions was assumed away by placing the blame of failure on the actors competing for resources in the market. Even if an eventuality cropped up where the markets became inefficient, it was expected that the rational actors would remedy the situation by introducing new institutions suited to the avowed objective of profit maximisation in an effortless fashion incurring no costs (North, 1995, p. 19).

is held ‘asymmetrically’ between the parties. Thus, there is ‘always uncertainty’²¹ regarding the likely outcomes whenever two parties decide to transact with each other or enter into what is termed an exchange relationship. Uncertainty is a source of costs for the parties as they have to make an effort and spend resources to protect their interests from the likely hazards by exercising best choices under the given circumstances (North, 1995, pp. 18-19)²². So far a behavioural cause of uncertainty, as indicated by some NIE scholars, has not been factored into the equation. The situation is further aggravated by the proposition that humans have an innate tendency towards opportunistic behaviour. This increases the risks of hazards manifolds in interdependent situations (Williamson, 1975, 1985; Ostrom, 1990)²³, which is elaborated at an appropriate stage later in discussion.

As one would expect, the relationship between uncertainty and stability is a direct one: the greater the level of uncertainty perceived by the parties, the greater the instability in an economic exchange or a transaction. And, correspondingly, the higher the cost implications for the parties and vice versa. The latter, dubbed broadly as transaction costs, are in fact an assortment of costs of different kinds which arise when the ownership rights to economic assets are exchanged and enforced (Eggertsson, 1990, p. 14). The costs of search for price or trading partners, costs of contract negotiation, costs of enforcement and the costs of breach of contract all make up the transaction costs (Eggertsson, 1990, p. 15; 1994 p. 23)²⁴. In order to

²¹ For establishing a link between uncertainty and institutions North (1995) credits Heiner (1983). The concept of uncertainty can be elaborated upon by looking at its causes. For instance uncertainty arises due to the incomplete nature of information. A second source of uncertainty is the limited capacity of the human mind to process all relevant information and arrive at correct decisions. Uncertainty also stems from opportunism in human behaviour and this becomes a significant cause in circumstances where parties are locked in bilateral dependence. Finally, uncertainty could also be due to the unpredictable nature of the future. When it is not possible to estimate the probability of the outcomes or result of an action, the uncertainty is known as fundamental uncertainty, also referred to as Knightian uncertainty after Frank Knight (1921). This is different from risk which signifies the likelihood of possible outcomes of a particular action.

²² An element of uncertainty will always persist no matter how carefully a choice has been made.

²³ Both Williamson and Ostrom point towards opportunistic tendency in humans and the resultant uncertainty in exchange that needs to be addressed by appropriate institutional arrangements.

²⁴ According to Eggertsson (2002, p. 14), a clear cut definition of transaction costs does not exist. In general terms, transaction costs are the costs that arise when individuals exchange ownership rights to economic assets and enforce their exclusive rights. Transaction costs are different than production costs as the former pertain to the “cost of arranging a contract *ex-ante* and monitoring and enforcing it *ex-post*” whereas the latter are “the costs of executing a contract” (Matthews, 1986 cited in Eggertsson, 1990, p. 14). Similarly there is a key difference between transaction costs and information costs, although both are closely associated. Information costs could be encountered generally while going about production of any kind. Such costs would not be termed as transaction costs as long as production is carried out without entering into an exchange relationship with someone. Information costs become transaction costs only if such costs arise in relation with an exchange. Moreover, transaction costs are sometimes referred to as social costs (see for instance, Coase (1960)) or externalities, however there is a distinction between the two notwithstanding an intimate connection between the

reduce uncertainty and bring stability to the exchange relationship, or in other words, to reduce the transaction costs, the need for an appropriate constraining mechanism arises and this is where institutions enter the scene. The better the institutions perform this function, the less the uncertainty faced; consequently, transaction costs will be reduced for the parties doing business in such an environment. An incentive for the parties to find ways and means to reduce such costs in order to maximise their benefits is obvious as exemplified by strategies of firms engaged in commercial enterprise. Their objective is to reduce not just production costs, but the sum of production and transaction costs (Coase, 1937; Toye, 1995, p. 53).

Thus as evident from the above discussion, compared to the neoclassical notion of ‘unrestrained maximisation’, NIE posits ‘constrained maximisation’ (Eggertsson, 1996, pp. 17-21). Institutions are viewed as the necessary constraints to stabilize exchange relationships. In the realm of economic exchanges, the institution of property rights and the various organisations entrusted with the job of enforcement of these rights are of prime importance. In simple terms property rights are the rules, formal and informal, “that govern access to and use of tangible and intangible assets such as land and buildings, and intangible assets such as patents and contract rights” (Anderson & McChesney, 2003, p. 1). The nature of property rights determine the scale of transaction costs and it follows from this, as highlighted by Coase around two decades on from his first seminal paper, that the appropriate assignment of property rights by will lead to the most efficient use of resources (Coase, 1960)²⁵. Stated differently, an appropriate assignment of property rights by law would enable the parties to an exchange (or contract) to minimize the transaction costs or internalize the

concepts. Externalities are best understood as spill over effect of a transaction. A transaction signifies a voluntary exchange between two parties but the costs and benefits of a transaction do not remain restricted to the parties to the exchange. Third parties may also be affected indirectly and involuntarily in the process of exchange. See Dahlman (1979) for a discussion on transaction costs, externalities and its repercussions.

²⁵ Simply put, viewing scarce resources from the stand point of rights Coase stipulated that in the absence of transaction costs, a clear delineation of property rights would lead to the most efficient use of these resources. In such a situation of zero transaction costs, there will be no need for the government to intervene and enforce the rights. This was later dubbed as the Coase theorem. Landa (1994, p. 16 F.N. 22) states that the term first appeared in Stigler (1966, p. 111). Coase (1988) also confirms this. Economists have generally misunderstood Coase by construing his so called theorem in a literal sense. Coase simply wanted to stress that since in the real world there are always transaction costs to contend with, the manner in which property rights are delineated, and enforced, will always matter. Hence contrary to what appealed to the imagination of the economists, the real contribution of the Coase theorem does not lie in the ideal that it seems to depict, but in highlighting exactly the opposite: the impossibility of obtaining zero transaction costs, a situation where property rights and their enforcement would not matter. See Coase (1988) for a rejoinder to the economists. See also Butler & Garnett (2003) for common misconceptions about the Coase theorem.

externalities. This central connection of law and efficient use of resources formed the backbone of a tradition of economic analysis of property rights initiated by Demsetz (1967) and styled as the Property Rights Theory.

Demsetz's thesis is pivotal as it initiated a tradition that started exploring crucial questions such as: how technological developments threaten the stability of economic exchanges by way of inducing high transaction costs; how such developments lead to adjustments or changes in the old institutional arrangements as a means to economize on the transaction costs and restore stability in economic exchanges; and why efficient property rights arrangements are a must to avoid waste of scarce resources. Central to this view is the notion that transaction costs result in exchanges when benefits attached to economic assets get transferred without due compensation.

According to Demsetz (1967), economic exchanges between parties are potential situations of spillage of resources from one party to the other without due compensation. This is because of the nature of attributes attached to goods or economic assets. There are a myriad of attributes attached to economic assets and each attribute is capable of generating benefits or income streams²⁶ but it is impossible to fully measure these attributes at any given point of time due to technological limitations. So, whenever rights are exchanged between the parties, some benefits are likely to spill over unaccounted for²⁷. However, economic exchanges would remain stable, or in other words a given institutional arrangement would reflect an equilibrium position as long as the gains from the rights exchanged between the parties are more than the costs of such transactions in rights. Stated differently, the equilibrium position will hold till the time the costs of the internalisation of rights remain more than the gains from internalisation. This balance or equilibrium, according to Demsetz, is disturbed when changes in economic conditions occur. These changes are brought about by economic forces—changes in knowledge cause changes in production techniques, values and aspirations.

The impact of these changes results in altering the old balance as new harmful or beneficial aspects of the rights are revealed. Thus corresponding with the instincts of rational

²⁶ The benefits may accrue by way of direct consumption or indirectly through an exchange of rights with others.

²⁷ Barzel (1989, p. 5) terms this as passing over of attributes to public domain. These are thus available for capture without compensation to the owners, and parties try to capture these by spending resources.

individuals to maximise benefits, the value of rights attached to goods or commodities also increases and finally a stage is reached where the cost of internalisation is overcome and exceeded by the gains from internalization. At this stage a readjustment in property rights will become feasible and in the interest of all the parties involved. In other words, transformation to more efficient forms of property rights will inevitably occur when it is feasible to realign the existing arrangements in order to benefit from the effects of new external economies or diseconomies (Furubotn & Richter, 1997, p. 104).

As essential criteria for economic efficiency, the Property Rights Theory emphasizes the organisation of property rights on individual private lines and the enforcement of these rights under formal law, backed by the coercive authority of the state. The essentiality of legal rights in order to derive due benefits from economic rights is evident²⁸. Both these conditions are viewed as mutually complementary and essential conditions to limit undue spillage of resources and thereby secure efficient utilization of resources. In this view, as demonstrated empirically by Demsetz²⁹, other forms of ownership, open access³⁰ and common property, being inherently inefficient represent stages on the development continuum towards private property and are destined to be replaced by it as a more efficient form³¹. Emphasis on the theme in literature in the subsequent years seems to have been accentuated by three powerful

²⁸ Traditional property rights theorists believe this as an essential criterion for efficient assignment of property rights. The tendency to view law enforced by state as an essential condition for efficient enforcement of rights is referred to as legal centralism. See for instance Posner (1980; Posner, 1992), and his other books and numerous other articles on the subject of law and economics. See also Barzel (1989 chapter 1; 2000). DeSoto (2000) is also pertinent. DeSoto emphasises the lack of formalisation of property rights in the developing world as the main reason for the failure of capitalism and the persistence of underdevelopment. The gist of his argument is that as property rights are ill defined in the Third World, the owners are hindered to extract capital out of the resources. The costs of formalisation of property rights are exorbitantly high and the procedures are very cumbersome. Resultantly the owners of property are forced to operate in the informal sector (which he calls the extra-legal sector). The inevitable consequence of this is that the property fails to get converted into capital and thus fails to have its potential exploited by the owners. He passionately advocates legal reforms in the developing world to have efficient economic outcomes on the pattern of Western capitalist democracies.

²⁹ Demsetz utilized available anthropological data on two aboriginal Indian communities; the Indians of the Labrador Peninsula in the north-west and the Indians of the south-western plains in America contained in the articles by Eleanor Leacock (1954) and Frank G. Speck (1915).

³⁰ Open access refers to the case where property rights are not defined yet and therefore no one is controlling access to the property concerned. This is opposed to the position in common property (or collective property) and private property cases, where a group or a private owner respectively, has ownership rights and is asserting these rights by controlling access to the property.

³¹ Constancy of rights is not assumed in property rights paradigm even at the private property stage. Change in the value of rights could be due to the performance of the available mechanisms of protection. The value of rights may decline if the existing mechanisms become ineffective. On the whole private property is necessarily regarded as superior but the presumption is challenged by recent scholarship. See Ostrom & Hess (2007).

models : Mancur Olson's pessimism in "The Logic of Collective Action" regarding the lack of ability within groups³² to generate useful collective action in matters of common interest in the absence of coercive authority (Olson, 1965); Hardin's tell-tale title "Tragedy of the Commons" (1968); and the formalisation of the problems of common property decried by Hardin as a prisoner's dilemma (PD) game by scholars (Ostrom, 1990, pp. 2-7). In order to prevent precious resources being lost, private property was declared the only option (e.g. Smith, 1981). Where a private enterprise system could not be established, an extreme version of this view, endorsed a decade later by Hardin himself, justified even socialism or state control of resources (Hardin, 1978, p. 314 cited in Ostrom,1990,p.9)³³.

While there could be no disagreement that efficient utilization of resources depend on an efficient system of property rights, Demsetz thesis suffers from major shortcomings with regards to institutional change solely in response to economic stimuli. Seen from Demsetz's view point, the progress of societies on the road of development would appear an outcome of institutional choices exercised by rational profit maximising men at various points in time, but history does not support this view. In reality, both the process and the progress have not been smooth, linear and predictable. Changes, if any, were certainly not entirely in response to economic forces alone. There are complex social and political processes involved in institutional change as highlighted by Libecap (1989), North (1990) and others.

Any institutional change has a significant political dimension to it. Property rights have distributional implications for the parties in a system therefore a beneficial change in property rights may not occur if the influential parties are not compensated through the political process with due share allocations (Libecap, 1989 cited in Roy, 1995; Mahoney, 2005, pp. 109,110). Even human rationality has its limits. People may err in making the right kind of choices in complex situations due to a limited capacity to process information as well as the limited information they may have on the various alternatives. Therefore, the institutions created through the exercise of rational choice may not be efficient under all circumstances. Path dependence is also a factor that hinders evolution to more efficient forms (North, 1990). In North's view, institutional efficiency hinges on a harmony between three crucial elements, informal rules, the formal rules and the enforcement procedures. Whenever the right

³² Large groups in particular. Olson allows an exception in the case where the number is small (1965, p. 2).

³³ Ostrom (1990,p.9) refers to the works of Carruthers & R (1981), Heilbroner (1974) and Ehrenfeld (1972) as exemplars of this mind set.

alignment takes place, the emerging institutions would be efficient but the process of alignment among the three elements is more prone to chance than deliberate design. Institutional change is unpredictable as there is little certainty as to which specific form or forms of new institutions would emerge in the end and often include unintended consequences (Ostrom, 1990, p. 14; Agrawal, 1992, p. 15; Alston, 1996, p. 25; Eggertsson, 2005, p. 5).

For its simplicity in ignoring such dimensions, Demsetz's theory is branded as the "naive theory" of property rights (Eggertsson 2002, p. 249) or the "optimistic theory" of property rights (Furubotn & Richter, 1997, p. 108). Notwithstanding its insufficiencies, and despite a cautious approach adopted by later property rights theorists (Barzel, 1989; Libecap, 1989; Eggertsson, 1990; North, 1990; Eggertsson, 2005; North, 2005)³⁴ and even Demsetz's own sequel to his earlier work where he explicitly acknowledges the complexity and unpredictability of institutional change (Demsetz, 2002)³⁵, his original hypothesis (supplemented by the three models referred above) continues to inspire great expectations as witnessed in global development programmes. This "institutional fetish" (Chang, 2006) prevails despite its many failures in the developing world³⁶ and is apparently reinforced by the belief that as victims of a "dangerous lock-in" of preferences, people themselves are incapable of improving their lot (Ostrom, 1990, pp. 2-6). The prevalence of common property regimes, particularly in traditional societies, is seen as an outcome of this lock-in which needs to be rectified through appropriate measures by the state.

2.2.1. The Complexity of Institutional Environment in FATA

FATA represents an epitome of all the factors that could make institutional change by deliberate design an adventurous proposition. The socio-political scenario of FATA is evident from the historical synopsis outlined in the previous chapter but so far references to FATA's predominantly informal institutional setup have been generic. In North's view, success of any institutional change depends on a match between the formal and the informal institutions

³⁴ The intellectual movement of North from an optimistic stance (Davis & North, 1971; North, 1981) to his present, and more and nuanced, view that efficient institutions are more likely a matter of chance (North, 1990) is already acknowledged in literature Mahoney (Nelson & Sampat, 2001; 2005, p. 118).

³⁵ In an apparent rejoinder to immense critique and as a complement to his 1967 article, Demsetz (2002) is appreciative of other dimensions impacting institutional change.

³⁶ Fitzpatrick (2006) offers a thorough discussion on the implications of Demsetz's thesis in the developing world. See also Trebilcock & Veal (2008) for a detailed discussion on the problems of formalisation. Bromley (2009) and Jean (1997) are also pertinent in this regard.

(1990; 2005); therefore, the significance of this essential criterion, and its improbability, in the context of FATA can better be appreciated with the help of insights into the nature of *Pukhtunwali* or the informal code of conduct that governs FATA.

The term *Pukhtunwali* is literally translated as “the way of the [Pukhtuns]” (Spain, 1995, p. 39). Evolved through the centuries and unwritten in form, it is a code of law or conduct based on the Pukhtun notions of honour and shame. The code is an agglomeration of interlinked tenets, precepts, or maxims which a Pukhtun must observe in all his dealings and interactions with others in the social, political and economic spheres. In the sense that it provides an essential framework of behaviour within which all socio-political and economic relationships are ordered, *Pukhtunwali* functions as a “Pukhtun social contract”: it is perhaps the only contract truly respected by the Pukhtuns (Miller, 1977).

Pukhtunwali imposes a certain standard of behaviour on Pukhtuns. In other words, it sets up an ideal for behaviour which must be approximated under all circumstances. Individual acts are judged by the society with reference to the ideal and the pursuit of this ideal is referred to as *doing Pukhto*. Incidentally, *Pukhto* is also the term used to denote the Pukhtun *lingua franca* but for Pukhtuns the usage has a much broader connotation. Merely speaking Pukhto is not enough as one has act in accordance with *Pukhto* and in this sense it refers to the whole body of the *Pukhtunwali* code (Ahmed, 1980b, p. 91; Hart, 1985, p. 13; Sultan-i-Rome, n.d). The society at large is the judge and every act of an individual is judged in the manner ‘*daa Pukhto dah*’ (this is Pukhto) and ‘*daa Pukhto na dah*’ (*this is not Pukhto*) (Sultan-i-Rome, n.d). Similarly even the term Pukhtun may be used as a metaphor for the ideal behaviour under the *Pukhtunwali* code. The degree to which an individual succeeds in approaching the ideal determines his status on the scale of honour or ‘*Pukhtunness*’. Statements such as ‘*daa Pukhtun dey*’ (he is a *Pukhtun* with an emphasis on Pukhtun) or ‘*ze Pukhtun yam*’ (I am a *Pukhtun* with a similar emphasis on Pukhtun) have much deeper connotations beyond the obvious literal meanings. Such statements may be asserted to stress the ‘*Pukhtunness*’ of an individual based on his performance with reference to the *Pukhtunwali* ideal (Ahmed, 1980b, p. 91) and as a signal for his likely behaviour in future. An act contrary to *Pukhto* may even attract severe social ostracism by excluding the deviant individual from the ambit of *Pukhto* or *Pukhtunness*. An assertion of the kind ‘*daa Pukhtun na dey*’ (he is not a Pukhtun) is considered a ‘*peighour*’ or a taunt and regarded as an insult to a *Pukhtun* (Sultan-i-Rome, n.d,

p. 91). A Pukhtun without *Pukhto* has no place in the Pukhtun universe and this threat of social ostracism makes *Pukhtunwali* self-enforcing (Mahdi, 1986).

As regards the tenets or maxims of *Pukhtunwali*, it is difficult to arrange these in order of importance. Most writers on Pukhtuns identify some tenets that form the core of *Pukhtunwali* (Ridgway, 1910; Davies, 1975; Ahmed, 1977; Miller, 1977; Spain, 1995). However, this does not mean that others are less important. As alluded to above, and as is the case with informal laws generally, the *Pukhtunwali* tenets are interlinked, and mostly have indiscrete boundaries. The operation of one tenet often leads to and depends on the operation of several others. The whole system is poised in a delicate equilibrium covering all aspects and dimensions of an individual's life.

The tenets believed to be at the core of *Pukhtunwali* are: 1) *melmastia* (hospitality); 2) *badal* (revenge); 3) *nanawatay* (begging forgiveness for a grievance caused); and *nang* (honour) (Ahmed, 1977, pp. 39-41; & relying on Ahmed, Hart, 1985, pp. 13-14). But different authors rank the importance of *Pukhtunwali* tenets differently. Ridgway (1910, p. 19), for instance, appears to regard the first three (in order of *nanawatay*, *badal* and *melmastia*) as the most important. Davies (1975), on the other hand, agrees but regards *badal* as the foremost tenet. For him, the three basic tenets in order of importance are *badal*, *melmastia* and *nanawatay*. This is further confirmed by Spain (1995, p. 42), who also highlights *jirga* as the main instrument of enforcement of *Pukhtunwali*. Miller (1977, p. 99) also subscribes to the view and dubs the three tenets as “The Three Commandments of [*Pukhtunwali*]”. In his view *badal* is the “keystone of the tribal arch”³⁷.

For Ahmed (1977), the fourth tenet, *nang* (generally personal or family honour but also encompassing the collective honour of the tribe or the nation),³⁸ in turn depends on observing the other tenets of *Pukhtunwali* and he lists at least fifteen. However, given the comprehensive import of the term *nang*, its inclusion in the list at par with the other tenets is a source of confusion as explained later. Some of the tenets in Ahmed's list are: *tor* (safeguarding chastity of female family members); *tarboor* (literally cousin and also used to connote *tarboorwali* i.e., agnatic rivalry or animosity with male patrilineal parallel cousins);

³⁷ In a later work Ahmed also appears to have accepted this view as he upgrades *badal* to number 1 position followed by others but stresses that *badal* may be translated freely to mean *tarboorwali* (cousin rivalry) and *tor* (chastity of female family members) as the main operating features of *Pukhtunwali* (Ahmed, 1980b, pp. 90-91).

³⁸ The terms *izzat* or *ghairat* may also be used as synonyms of *nang*.

lakhkar (an armed tribal force set up to implement decisions of *jirga* also known as *tselweshti* or *chelweshti*); *jirga* (an assembly of elders which performs a variety of functions such as resolving disputes and making decisions in all inter and intra-tribal matters when required) *teega* or *kanrai* (literally stone but refers to truce between the warring parties till the matter is resolved by *jirga*); *nikkat* (derived from the word *nikkae*, literally grandfather, and refers to a system of distribution of profit and loss based on tribal genealogy). Apparently Ahmed's list is not intended to be exhaustive as others have identified several other precepts³⁹.

The most common *Pukhtunwali* tenets and their commonly referred usages have been listed above but some tenets have a much wider connotation in the Pukhtun society. I revisit the subject and discuss its economic manifestation in Chapter 5.

As apparent from the above views, arranging the contents of *Pukhtunwali* in order of importance is a tricky enterprise and the exercise becomes increasingly complex beyond the most outstanding first three or four tenets. The inter-connected nature of the tenets makes the task ever more difficult as is a failure to appreciate the difference between the nature of the tenets of *Pukhtunwali*. These include both the abstract and the precise. Some even prescribe elaborate procedures or rituals to be followed. As explained below, *Pukhtunwali* is a mix of these different types that can be ranked in categories representing different levels such as the abstract concepts, the operating principles and the operating features⁴⁰. The abstract concepts represent the philosophy of *Pukhtunwali* and looking at Ahmed's list above, the term *nang* qualifies as such. The inclusion of *nang* at the fourth place and at par with the other tenets in the above list is therefore erroneous. *Nang* is actually a comprehensive concept, an overarching notion lying at the core of *Pukhtunwali* and signifying 'the end' of *Pukhtunwali*, the objective or the 'ultimate goal' that *Pukhtunwali* seeks. While defining *Pukhtunwali*, the linking of *nang* by Pukhtuns to certain abstract attributes such as camaraderie; generosity; bravery and living up to promises made is common. *Nang* and its attributes thus belong to a class of its own atop the other tenets of *Pukhtunwali*⁴¹.

³⁹ A significant omission from the list is *brampta*. See Sultan-i-Rome (n.d) for others.

⁴⁰ The term "operating features" has been used by Ahmed (1980b, p. 91). I borrow the term but use it slightly differently. I make a distinction between the operating principles and the operating features as explained in the following discussion.

⁴¹ The noun Pukhtun is believed to be an acronym representing these attributes. Ahmed (1980a ; note no.9 in notes to Chapter 4 page 370) refers to such a definition by a respondent. As spelled in Pukhto, *pey* is for *pat*

The quandary of the true nature of *Pukhtunwali* is clear from Spain's following words:

What is [*Pukhtunwali*]: law, customs, manners or mindset? And what are its subjects: criminal, civil, or social? I opt for all seven, and perhaps this is why talking about [*Pukhtunwali*] is so complicated.

It is law inasmuch as it is enforced by [*maliks*] and [*jirgas*] (officials and representatives) and was accepted as such by the British Frontier Crimes Regulations. It is custom insofar as every [Pukhtun] knows what to do or not do under it in the circumstances of daily life. It is manners because 'a true *khan*-like' [Pukhtun] never departs from it. It is mind-set because all [Pukhtuns] accept it. It is criminal because it deals with murder and injury. It is civil because it has provision for inheritance, theft and adultery. It is social because it sets standards for everyday behaviour.

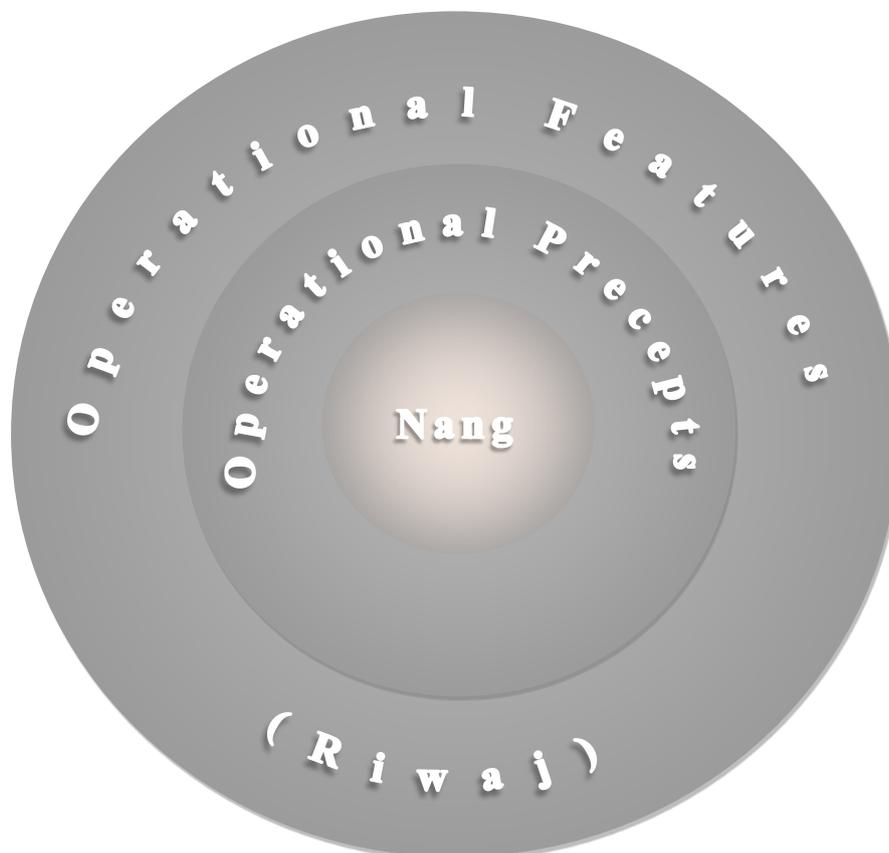
It is, I might add, as ancient as the Old Testament in its concern for 'an eye for an eye and a tooth for a tooth'. Yet in its constant emphasis, as Caroe puts it, 'on the satisfaction of the aggrieved rather than the punishment of the aggressor' ('All crime is a tort!'), it is as modern as the latest interest of western law in 'victims' rights' and liberal sympathy for the idea that society is collectively responsible for the actions of ghetto products in a 'world they never made' (1995, pp. 39,40).

I argue that it is useful to construe *Pukhtunwali* as a multilevel complex system as shown in the figure below. At the highest level or at its core it is apparently entwined in the abstract notions of *nang* described above, followed at the next level by its operating principles and finally by its operating features. The operating features are a set of specific rituals, customs or practices that derive and flow from the level two tenets and cover even the minute details of everyday life. The level two tenets, or operating principles, in turn are a reflection of the overarching and abstract principles or notions of *nang*. Level one and two are the spirit behind level three and all the levels operate in perfect harmony but it is the operating features that can be observed practically at any time. The degree of adherence to specific customs or practices reflects the intensity of devotion to the tenets at level two and that in turn determines whether *nang* or honour has been preserved or not. The rituals, customs or practices are known as *riwaj* and these may vary from tribe to tribe but generally—and especially amongst the hill tribes—unanimity prevails regarding the level two tenets (from which these derive) and above. Notable exception to this are the tribes of the plains where *Pukhtunwali* has not remained intact as pointed out in the previous chapter, however, it

(comradeship, fellowship), *khey* for *khegara* (doing good to others, benevolence), *tey* for *tura* (bravery), *waw* for *wafa* (fidelity to one's word and cause) and *noon* for *nang* (honour).

suffices to say here that from the perspective of the hill tribes, such exceptions are believed to be against *nang*.

Figure 2-1: The *Pukhtunwali* Complex



The wide-ranging scope of the *Pukhtunwali* tenets or precepts, their fuzzy boundaries and entwined nature are quite apparent from the discussion so far. Generally, Pukhtuns adhere to *Pukhtunwali* but *Pukhtunwali* as a complete code is intact only in the hill tribes of FATA (Ahmed, 1977, p. 39). Ahmed's (1977, 1980a) twofold classification of Pukhtun tribes in order to account for such changes in the Pukhtun society has already been described in the previous chapter (Section 1.1.2). The sanctity of *Pukhtunwali* in the hill tribes of FATA is essentially due its un-encapsulated status. The tribes have retained autonomy by arriving at an arrangement with the state allowing it a well defined role. As opposed to being in conflict with *Pukhtunwali*, the state institutions, the PA and FCR, depend on it and even underwrite its existence (Ahmed, 1980a, p. IV).

2.2.1.1. The Potential Perils of Institutional Reform in FATA

Institutional change in FATA essentially means altering this arrangement by assigning the state institutions a larger and alternate role. Successful legal transplants require that the authorities allocate ‘sufficient resources’ to the ‘production of legality’. In other words, they must provide necessary infrastructure and inputs for the legal system (Eggertsson, 2005, p. 174). The term ‘sufficient resources’ include material as well as non-material resources such as the capacity and honesty of the enforcing staff, but most crucially it depends on the level of voluntary cooperation by the people (Eggertsson, 2005, pp. 174-177). If the level of cooperation is lacking or not significant, more resources have to be devoted to enforcement. Lack of voluntary cooperation usually spawns corruption, abuse of power and professional incompetence etc., which add to the costs of enforcement. With the required level of enforcement not generally within the financial means of poor countries, varying degrees of chaos and lawlessness are inevitable as the winners and losers rely on the competing formal and informal institutions to assert their rights. Resulting high levels of uncertainty could severely restrict meaningful economic enterprise. In such cases, there is even the possibility of a regression from common property to open access, contrary to what is proposed by Demsetz’s thesis. The previously commonly owned resources could revert to open access due to competing set of claims and institutions to enforce rival claims⁴². The resulting confusion and absence of clarity in rights could therefore lead to rapid depletion of resources (Ostrom, 1990, p. 23; Fitzpatrick, 2006; Benjaminsen, et al., 2008)⁴³.

The affordability dimension of the enforcement of laws thus becomes a critical constraint on the efficacy of institutional change and it does not take much imagination to portend a similar outcome for FATA. Given that informal institutions are quite robust in FATA, a poly normative system representing legal and normative pluralism would be the most likely outcome due to a clash between *Pukhtunwali* and the formal state institutions. The state’s ability to overwhelm and replace or modify the former’s institutional setup would be severely handicapped due to inordinately costly enforcement in that setting.

⁴² Assuming that the strength of the informal institutions would also suffer as a result of clash with the formal institutions and resultantly there would neither be clear winners nor clear losers. Fitzpatrick (2006) offers a detailed account of such situations.

⁴³ Fitzpatrick offers a thorough discussion on the subject. Ostrom refers to several such cases in the developing countries reported by scholars such as Feeny (1988); Thomson, (1977); Thomson, Feeny, & Oakerson (1986); Arnold & Campbell, (1986); Messerschmidt (1986); Gadgil & Iyer (1989).

Despite being at the centre of global attention, FATA is still the most misunderstood region. Misperceptions about FATA's property rights regime in particular are noteworthy and one such instance is worth mentioning here. While the SDP acknowledges the existence of formulas for sharing mineral wealth from the mines in commonly owned lands, on the other hand it seems to suggest the insufficiency of these formulas by claiming that "these are defined *only* to the level of the clans and the elder/*malik* of the clan is *free* to distribute *as he pleases*" (2006, p. 82; emphasis added). A paucity of understanding regarding the structural organisation and functioning of the tribal segmentary system in FATA is obvious. One gets an impression of elite domination and arbitrariness. However, given the distinctive social structure of FATA tribes, arbitrary determination of share formulas are simply out of question. These formulas are based on certain commonly acknowledged principles (*nikkat*) and derived through consensus amongst the shareholders. Abidance is zealous hence contrary to the assertion in the SDP, profit distribution under *nikkat* leaves little room for the elders/*maliks* to manipulate. I deal with the subject in detail in Chapter 5 but the need for a better understanding of the property rights regime of FATA is manifest.

Insufficient understanding of such fundamental issues could easily hamper development intentions in FATA, irrespective of the size and scale of the state's resource commitment. Rather than a strategy for cutting the roots of militancy through economic progress and development, a fundamentally flawed approach risks lending a new dimension to the conflict prone region (Talbot, 2008). Given that history is an important guide to the dynamics of institutional change (Alston, 1996, p. 25; Eggertsson, 2005, p. 5; North, 2005, p. 51), it is not difficult to imagine that in case of FATA, the approach would be construed by the society at large as an attempt to displace its much revered traditions and would end up rallying the Taliban and the non-Taliban general populace under a common banner. A potent fuse that could trigger such a reaction is embedded within the SDP in the shape of an enhanced focus on gender development (2006, pp. 88-94,99). Indeed, the snags in development are becoming increasingly apparent as recent reports do not paint a sanguine scenario (Group, 2012).

A precise outline and discussion of the theoretical framework of this research follows in the next chapter. Pending this, an assertion in general terms below concludes this chapter.

The main concern in the property rights regimes, where formal property rights are weak or absent altogether, is to see how the alternative institutions of customs, norms, or traditions (informal institutions) help in mitigating uncertainties inherent in exchange relationships and

thereby foster exchange stability so that the parties concerned can benefit mutually. Substantial literature has emerged lately on the informal institutions and exchange stability nexus in traditional societies (Bernstein, 1992; Greif, 1993; Greif, Milgrom, & Weingast, 1994; Landa, 1994; Clay, 1997; Bernstein, 2001). However, every setup requires investigation to gather insights specific to the working of institutions in that particular context. In FATA's case, the main research proposition would be to explore how the *Pukhtunwali* institutions of property rights fare in this respect. The unravelling of the essential parameters of exchange stability as a result is believed to advance an understanding of the pros and cons of feasible economic activity; a prerequisite for any viable economic development policy in that region. This is what this thesis aspires to contribute. The need for research of this nature is amply manifest from the misconceptions that abound regarding FATA and its institutions. The failed development initiatives of the past and—potentially heading towards a similar fate—the flawed development initiatives sponsored currently are a practical manifestation of this reality.

In the meantime, the prevailing circumstances present a window of opportunity for this research to be of practical significance. Supporters of the SDP contend that the plan could not deliver its targets in FATA due to an increase in the scale of violence in the region since 2007 that has hampered the overall progress—physical progress on ground in the various sectors of development as well as progress on the regulatory frameworks or institutional arrangements (Interviews E 2, E 3, E 11). This provides an opportunity for this research to be usefully employed in illuminating the property rights regime in FATA before it is too late. Insights from NIE could be of great use if employed appropriately. The expositions of NIE advanced by Oliver Williamson and Elinor Ostrom are of particular significance. A theoretical framework based on their work is discussed in the next chapter.

2.3. Conclusion

In this chapter I have outlined the past and present development initiatives in FATA. The latest development initiatives represent a significant departure from the past in terms of both the scale, and an overt policy of institutional reform. Both the initiatives reflect the dominant mainstream trends of the times. The recent initiative is inspired by an extended neoclassical agenda that has incorporated insights from NIE and is therefore more thorough in its approach but it has its shortcomings. In particular, drawing inspiration from the theoretical

underpinning supplied by NIE, it pursues development in FATA under optimistic assumptions regarding institutional change in a staunchly traditional setting region, risking further instability. This was illustrated through an appraisal of NIE and its traditional Property Rights Theory followed by a sketch of the informal institutional structure of FATA. The main research aim was also revealed, a process which will be explicitly explored in the shape of research questions after a theoretical framework is outlined in the next chapter.

Chapter 3. The Theoretical Framework

In Chapter 2, a synopsis of the development history of the region was presented highlighting the salient features of the economic development initiatives of the past as well as those being undertaken currently. It was argued that the latest development agenda is resting on optimistic assumptions regarding institutional change, apparently due to insufficient knowledge about FATA institutions. The hazards of pursuing this agenda were pointed out and the imperative of a deeper understanding of the FATA institutions was stressed; a task by no means simple given that there has been little research on the complexities of the informal property rights regime in FATA. In this chapter, I aim at configuring a theoretical framework that will deliver this objective and facilitate a deeper understanding of the underlying factors of stability (or otherwise) in economic exchanges in relation to the resources owned in common as well as private.

Two powerful perspectives within NIE, pioneered by Elinor Ostrom (1990; Ostrom, et al., 1994; Ostrom & Walker, 1997; etc.) and Oliver Williamson (1975, 1985, 2000, 2002, 2005) are the focus of discussion for their potential promise in this regard. Both highlight the limitations of formal institutions in relation to governance of economic exchange. Ostrom's main concern is to determine the causes of success or failure of communities in creating enabling institutional environments for their common benefit, or more precisely, the ability of the communities to craft suitable self-governance institutions through collective action in relation to resources owned in common. Williamson's approach focuses on the micro level of contract execution between the individual actors within a given institutional environment. He exposes the limitations of formal institutions and underscores the utility of informal action or "private ordering" for the stability of exchange at the individual level. I argue that a conjoint theoretical framework based on the two approaches illuminates the entire spectrum of economic governance in the FATA property rights regime and hence suits the purpose of guiding this research endeavour.

The chapter has three sections. I start in Section 3.1 by explaining the inter-related nature of the two approaches followed by the specifics of each. Ostrom's governance of the commons approach is discussed first followed by an elaboration of Williamson's governance approach. Next, the relevance of these two approaches to FATA is discussed in Section 3.2 and specific research questions are also revealed. Thereafter the contours of the theoretical framework are

laid out in detail. Section 3.3 concludes the chapter by presenting a summary of the discussion.

3.1. The Two Prongs of Governance: The Collective and Individual Action Arenas

At a cursory glance the governance approaches pioneered by Ostrom and Williamson may appear disparate; with the former's concerns primarily centred on governance of commonly owned resources in traditional informal settings and the latter's on the contractual hazards in formal settings (Western capitalist in the main); however in reality these are inter-related. Albeit at different levels, both the scholars focus at the fundamental problem of exchange stability or the governance of exchange relationships through non-market institutions. While Ostrom examines the challenge of governance at the higher level of groups or communities and highlights the conditions under which they succeed (or fail) to develop enabling institutional environments for their collective benefit, Williamson takes his lens deep down to the micro level of exchange between individual actors and focuses in particular on exchange involving future promise and obligations or contracts (Nabli & Nugent, 1989; Furubotn & Richter, 1997, pp. 121-123)¹.

The state and its institutional framework are deemed a manifestation of successful collective action; a final product attained after the culmination of various processes designed to capture the collective choices of the people. In ideal scenarios or Western democracies, the constitution and the laws (the institutions), and the organisations required for the enforcement of the laws, all are decided by the people who exercise their choices collectively for that purpose. Together these make up the legal environment also referred to as the institutional environment. Laws defining property rights and laws relating to the transference of property rights by consent, or laws relating to the freedom of contract and obligations in pursuance of contracts are essential components of this legal environment. The transaction costs² logic suggests that efforts at this (the collective choice level) should be guided towards adoption of such institutions and organisations that could deliver the best outcomes at the lowest possible costs. For this purpose, the alignment of property rights on individual private lines are

¹ Ostrom and Williamson shared the Nobel Prize for economic sciences in 2009 for the inter-related nature of their contributions. See press release issued by Nobel Committee (2009) .

² Transaction costs are due to bounded rationality, limited information and opportunism. See discussion in Chapter 2.

generally deemed an efficient way to address the efficiency problems in economic exchanges (Ostrom, 1990, pp. 12,13; Furubotn & Richter, 1997, p. 122)³. However, all situations where the state either fails to emerge or lacks an appropriate institutional framework for governance are reckoned, in varying degrees, as different collective action failure scenarios.

Ostrom fervently challenges the latter view by contending that it is not necessarily doom and gloom in scenarios that lack formal institutional set ups provisioned by the state. Contrary to the predictions that captured popular imagination⁴, in many cases communities have been able to devise reasonably effective institutions for their common benefit such as those concerning resources owned in common without any help from the state. The state could thus have a rival, as providing for and managing the stability of exchange relationships is clearly not its exclusive domain (Ostrom, 1990, pp. 2-21; 2000)⁵.

Williamson, on the other hand, warns against complacency even in formal settings. In his view, the complexity of property rights cannot be assumed away as contractual hazards are not entirely eliminated even in the best possible case scenarios of Western capitalist democracies. Full monitoring and enforcement of contracts is prohibitively costly due to the concomitant transaction costs. The danger of *ex-post* opportunistic behaviour is ever present thus the chances of contract disruption persist in all cases. The exercise of appropriate choices therefore remains relevant as individual actors are compelled to safeguard against the disruption of their contracts by seeking remedies to their disputes through informal measures or private ordering (Williamson, 1985, pp. xii, 9, 10; 2002). The formal institutions hence do not replace the utility of informal institutions.

Similarities between the approaches of the two scholars are manifest. Each exposes the paucity of the traditional property rights paradigm and extends its ambit to come to grips with the various manifestations of reality in relation to governance of exchange at the collective and individual levels respectively. FATA represents a situation where insights from both approaches are deemed appropriate. A closer look at the specifics of the two approaches is

³ Although recent research has challenged the view that private property is necessarily superior to common property. See Ostrom & Hess (2007).

⁴ Hardin's "Tragedy of the Commons" and related literature referred to in Chapter 2.

⁵ Ostrom was not a lone ranger. Wade (1988) advanced similar ideas but it was Ostrom who dominated the scholarly world through her seminal book. Her study looked at common-pool resources across diverse cultural contexts in different countries and was thus more wide ranging. Ostrom's thesis has been confirmed by countless scholars of the commons through empirical research and even extended by adding useful detail. See Baland & Platteau (1996) as a major example in this regard.

undertaken below to demonstrate the utility of the relevant theoretical insights for this research.

3.1.1. Determinants of Successful Self-governance: Ostrom's Governance of the Commons Approach

A great implication of the Demsetz's economic rationalisation of private property, and a stream of literature that followed, was a fixation on the notion, almost as if it were a sacred paradigm, that common property was the root cause of all the social and economic ailments that plagued mankind. And, that people will not be able to utilize such resources to their benefit unless these were assigned as private property or placed under the control of state. An extreme view even justified the use of force by the state if necessary to effect the change (eg. Hardin, 1978; see discussion in Chapter 2). The grim results of interventions—involving both centralisation as well as privatisation—across the world inspired by this logic left much to be desired.

The problem of effective management of common property resources (or common-pool resources, henceforth CPRs)⁶, Ostrom argues, is quite different to that of the goods where it is possible to restrict the use only to those entitled. Electricity, transport or medical services, for instance, are better managed by private firms. However, privatisation may not yield the required results in the case of CPRs as it may not be possible to exclude certain potential beneficiaries from the resource utilization at low costs (Ostrom, 1990, p. 22).

In Ostrom's view, ground reality belies popular metaphors as attempts at self-governance of CPRs by communities are not a universal failure. In numerous cases across the world, communities have been able to avoid the dangerous lock-in of personal preferences and devise credible self-governance institutions for their common benefit without any help from the state (Ostrom, 1990, p. 23; 2000; Dietz, et al., 2002, pp. 5-13; Ostrom, 2007). At the same time Ostrom warns against generalisations of the kind that communities will always be successful in this regard.

⁶ Common-pool resource is defined as a natural or man-made resource system that is sufficiently large to make it costly to exclude potential beneficiaries from obtaining benefits from its use. The term common property implies a kind of management arrangement devised by humans whereas the term common-pool resource focuses on the characteristic of a resource from which it is difficult to exclude the users and is therefore deemed conceptually more appropriate usage than the former. There could be different management arrangements in relation to such a resource. It could be left as open access, managed by the state, assigned as private property or managed by a common property regime (Ostrom, 1990; Ostrom & Walker, 1997, p. 40; Dietz, Dolsak, Ostrom, & Stren, 2002, p. 17).

The key to a successful collective action, in Ostrom's opinion, depends on the resource characteristics and certain facilitating factors internal to a given group. If the resource is salient enough to the users; they have the requisite autonomy from external authorities and can communicate with one another within the group; trust and a sense that they share a common future are likely to emerge, enabling them to avoid the trap inherent in the commons dilemma. Alternatively, groups lacking these attributes may not be able to avoid the trap and may require some form of external assistance to break out of their dilemma (Ostrom, 1990, p. 21; Dietz, et al., 2002, p. 456). There are caveats nonetheless. Rules imposed by external authorities can damage the existing norms and crowd out cooperative behaviour (Ostrom, 2000). Lamenting the ubiquitous simplicity of the generalised policy prescriptions in a section reproduced below, Ostrom recounts several pertinent dimensions usually ignored by policy makers, much to the detriment of the outcomes desired:

Both the centralizers and the privatisers frequently advocate oversimplified, idealized institutions—paradoxically, almost “institution-free” institutions. An assertion that central regulation is necessary tells us nothing about the way a central agency should be constructed, what authority it should have, how the limits on its authority should be maintained, how it will obtain information, or how its agents should be selected, motivated to do their work, and have their performances monitored and rewarded or sanctioned. An assertion that the imposition of private property rights is necessary tells us nothing about how that bundle of rights is to be defined, how the various attributes of the goods involved will be measured, who will pay for the costs of excluding non-owners from access, how conflicts over rights will be adjudicated, or how the residual interests of the right holders in the resource system itself will be organised (1990, p. 22).

The above “institutional details” are crucial for Ostrom and therefore varying solutions across different settings is quite possible. A set of rules used in one physical environment, she asserts, may have vastly different consequences if used in a different physical environment (Ostrom, 1990, p. 23). The organisation of a meaningful collective action is hence not simply a matter of appointing this or that type of agency for the purpose. In Ostrom's view, all efforts towards that end, whether by an external ruler, an entrepreneur, or a set of principals aspiring to gain collective benefits, need to address a common set of problems that “have to do with coping with free riding, solving commitment problems, arranging for the supply of new institutions, and monitoring individual compliance with sets of rules” (Ostrom, 1990, p. 27). The research agenda that confronts us, according to Ostrom, is to understand how communities address these common challenges. In her view, study of successful CPRs

provides an opportunity because the attributes or “design principles”⁷ that have enabled individuals to overcome such challenges can be discerned in such settings (Ostrom, 1990, pp. 27-28). Making use of extensive data generated by several empirical studies of diverse communities in her seminal work “Governing the Commons”, she identifies a set of eight fundamental design principles instrumental for success of collective action (table below).

Table 3-1: Design Principles Illustrated by Long-enduring CPR Institutions

<ol style="list-style-type: none"> 1. Clearly defined boundaries Individuals or households who have rights to withdraw resource units from the CPR must be clearly defined, as must the boundaries of the CPR itself. 2. Congruence between appropriation and provision rules and local conditions Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and provision rules requiring labor, material, and/or money. 3. Collective-choice arrangements Most individuals affected by the operational rules can participate in modifying the operational rules. 4. Monitoring Monitors, who actively audit CPR conditions and appropriator behaviour, are accountable to the appropriators or are the appropriators. 5. Graduated sanctions Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offense) by other appropriators, by officials accountable to these appropriators, or by both. 6. Conflict-resolution mechanisms Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials. 7. Minimal recognition of rights to organize The rights of appropriators to devise their own institutions are not challenged by external government authorities. <i>For CPRs that are part of larger systems:</i> 8. Nested enterprises Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises.
--

(Ostrom, 1990, p. 90)

The first seven principles listed in the table above are relevant to almost all robust and long sustaining CPRs. Broadly speaking, the principles outlined could be characterised as pertaining to the resource characteristics (clearly defined boundaries of the CPR), the characteristics of the relevant group (clearly defined user group which in turn depends on the inter-group power relations fanned by various kinds of inequalities such as of wealth and heterogeneity etc.), the internal institutional arrangements (suitable appropriation rules, monitoring, sanctions adjudication, accountability) and the relationship with the external institutional environment (autonomy from external institutions of the state). These represent a

⁷ A design principle is defined by Ostrom as an “essential element or condition that helps to account for the success of these institutions in sustaining the CPRs and gaining the compliance of generation after generation of appropriators to the rules in use” (1990, p. 90).

set of general conditions for successful operation in cases where the CPR is small and presumably involves one principal group of appropriators. The situation gets more complex in cases of large CPRs involving multiple groups of appropriators. Ostrom's eighth principle identifies a feasible organisational structure for such scenarios. The prescribed organisation pattern in such cases is a multilevel federated system⁸ that attends to all the relevant functions outlined by the foregoing seven principles. (Agrawal, 2002, pp. 49,50).

Ostrom's "Design Principles Illustrated by Long- enduring CPR Institutions" have remained unchallenged since their appearance in 1990. Subsequent scholars of the commons have only added more details underneath these broad principles⁹. While robust institutions reflect several of the key principles summarized in the above table, "[e]vidence from the field suggests that *fragile institutions* tend to be characterised by only some of these design principles, though failed institutions are characterised by only a few (if any of these principles)"(Ostrom & Walker, 1997, pp. 46,47; emphasis in original).

Robust institutions are in turn facilitated by conditions whereby: 1) relevant information pertaining to the resource condition, its provision costs and consequences of use is accessible; 2) users are relatively homogenous in terms of their understandings and preferences; 3) users have initial social capital in the shape of shared norms of reciprocity/trust; 4) users deny total control to a few and are stable as a group; 5) users enjoy autonomy, can make and enforce rules through low cost collective mechanisms (Ostrom & Walker, 1997, p. 48). Since groups are embedded in a larger system (state), many of these facilitating conditions are affected by its encapsulating environment. In Ostrom's view the probability of success will be higher if the larger system facilitates local self-organisation by sponsoring: 1) provision of accurate information about natural resource systems; 2) discovery and conflict resolution processes; 3) the local monitoring and sanctioning procedures. Alternatives, such as completely ignoring resource problems or presuming that only the central authorities are capable of making the right decisions, are in her view pregnant with dangerous consequences (Ostrom & Walker, 1997, pp. 48,49).

⁸ Federated systems involving multiple user groups are also referred to as polycentric systems (Ostrom & Walker, 1997, p. 49; Ostrom, 2007, 2010).

⁹ See Agrawal (2002, 2003) for a review of major works on the commons by Wade (1988) and Baland & Platteau (1996).

3.1.2. Securing Stability of Exchange at the Individual Choice Level: Williamson's Governance of Contracts Approach

Creation of property rights in resources, in itself, is not a sufficient condition for an efficient private enterprise system contrary to the popular belief that “once property rights have been defined and their enforcement assured, *the government steps aside*. Resources are allocated to their highest value as the marvel of the market works its wonders” (Williamson, 2000, pp. 598,599; emphasis added). “This compact statement”, in Williamson’s view, “illustrates both the strength and the weakness of the property rights literature”.

The great strength of this literature is that it brings property rights to the forefront, where they belong,... The weakness is that it *overplayed* its hand. The claim, for example, that the legal system will eliminate chaos upon defining and enforcing property rights assumes that the definition and enforcement of such rights is easy (costless)... Going beyond the *rules of the game* (property) to include the *play of the game* (contract)¹⁰ was needed (2000, pp. 598,599; emphasis added).

This ‘play of the game’ takes place at the individual level and mainly involves transactions¹¹ that are futuristic. Thus, “[t]he transactions that are the focus of Williamson's approach are contractual, not just spot exchanges or even a long-lasting series of spot exchanges”(Alchian & Woodward, 1988, p. 66). “In a contract a promise of future performance is exchanged, and investments are made, the value of which becomes dependent on the fulfilment of the other party's promises” (Alchian & Woodward, 1988, p. 66). Meticulous attention to security of property rights becomes all the more essential in exchange relationships involving future obligations in cash or in kind. If not, the likely contractual hazards are not addressed properly and the possibilities of beneficial exchanges between the parties concerned are hindered. Investments in otherwise mutually beneficial avenues would be avoided and this could eventually lead to market failure. Referring to the

¹⁰ The play of the game refers to efforts by the parties (private ordering) to infuse order by mitigating conflicts in contracts so that mutual benefits could be realised (Williamson, 2002).

¹¹ An exchange is generally construed in the narrow sense of spot exchange, a transfer of property rights to resources that involves no promises or latent future responsibility. In contrast, a contract is construed as a promise of future performance, “typically because one party makes an investment, the profitability of which depends on the other party's future behaviour”(Alchian & Woodward, 1988, p. 66). The notion of a transaction includes both exchanges and contracts. However, the term exchange has a broader and generic connotation as well and in that sense it closely corresponds to the term transaction. I refer to exchange in this generic sense that includes both spot exchanges and contracts but the focus of this thesis is on contracts. Pertinent is also the fact that in modern economies even spot exchanges of goods between sellers and buyer normally entail certain future obligations, at least in relation to the quality of goods exchanged. Performance guarantees in the shape of warranties etc. serve as one example. Spot exchanges hence come close to the notion of contracts. In the words of Janet Landa, “[e]very transaction, even the simplest, is a species of contract” (1994, p. 53).

widely regarded plausibility of the general Demsetzian proposition that property rights are costly to define and enforce and ‘arise only when the expected benefits exceed the expected costs’, Williamson stresses that his focus is regarding:

[T]he degree to which property rights, once assigned, have good security features. Security hazards of two types are pertinent: expropriation by the government and expropriation by commerce (rivals, suppliers, customers) (Williamson, 1991, p. 288).

The matter of concern is how to safeguard against or govern such hazards. In his view, the property rights theory relied overwhelmingly on *ex-ante* arrangements such as the delineation of rights while ignoring the vital aspect of enforcement of these rights. He asserts that defining the rules of the game and assuring their enforcement is merely part of the story. Expropriation of property rights is a clear and present danger during the process of exchange. Absent this danger, and if rights once assigned could not be undone by the government or expropriated by private parties in commerce, especially through the use of strategy or what is referred to as strategic behaviour, firms and individuals would confidently plan and invest in productive assets without the fear that they would thereafter be deprived of the just benefits. But, as that is not the case, and as property rights are subject both to reassignment by the government as well as expropriation by private parties in commerce without due compensation, the parties have an ‘incentive’ to adapt to various measures in attempting to preclude such expropriation possibilities (Williamson, 1991).

3.1.2.1. Introducing Opportunism: A Further Extension of the Rationality Postulate

Williamson appoints erroneous behavioural assumptions as the *raison d'être* behind the optimism of the property rights theorists. Albeit an improvement, supplanting instrumental rationality with bounded rationality still fell short of explaining the complexity of human behaviour. In his view, men suffer from bounded rationality but they are also prone to opportunism (Williamson, 1973; 1975, p. 7; 1979)¹², “which is a condition of self-interest seeking with guile” (Williamson, 1985, p. 30). Whereas the former places a congenital limit on the human capacity to plan and is thereby an important behavioural constraint to consider, it is the latter, opportunism, which requires special measures to tackle. As a functional implication of bounded rationality, planning will always remain deficient, and, as a

¹² Opportunism is recognized in the literature as strategic behaviour and implied by various terms such as adverse selection, moral hazard, agency, sub-goal pursuit and shirking etc. (Williamson, 1985, pp. 31, 47; 1989, 2000).

consequence, contracts unavoidably incomplete (Williamson, 1975, 1979, 1991, 2000, 2005), however:

Plainly, were it not for opportunism, all behaviour could be rule governed. This need not, moreover, require comprehensive preplanning. Unanticipated events could be dealt with by general rules, whereby the parties agree to be bound by actions of a joint profit-maximising kind. Thus problems during contract execution could be avoided by *ex-ante* insistence upon a general clause of the following kind: I agree candidly to disclose all relevant information and thereafter to propose and cooperate in joint profit-maximizing courses of action during the contract execution interval, the benefits of which gains will be divided without dispute according to the sharing ratio herein provided (Williamson, 1985, p. 48).

In other words, absent opportunism, simply bounded rationality would not pose execution problems although gaps may appear in the contracts. The words of each agent at the *ex-ante* stage would be akin to a self-enforcing promise. Sans opportunism, what is referred to in the economic literature as strategic behaviour, would be absent. Therefore, in Williamson's opinion, it is not enough to rely merely on promises of good behaviour or be overly optimistic about the joint-profit maximisation instincts of the parties to an exchange. Opportunism is the cause of uncertainty in exchange relationships. This becomes more pronounced in situations where the nature of transactions is such that the parties get locked in bilateral dependence. To be able to cope with the hazards arising out of opportunism is thus in the interest of all the parties to an exchange (Williamson, 1979; 1985, p. 30; 1989, 2000).

However, due to bounded rationality, the limited nature of information and asymmetry of information held between the parties, it is not possible to foresee all the post contract phase hazards that may disturb the smooth functioning of contracts. Or stated differently, the possibility of devising all appropriate measures *ex-ante* is quite limited. In Williamson's view, at least an appropriate contractual framework, one that would be able to respond to likely future hazards, could be chosen at this stage. Given these future hazards, an incentive does exist for the parties to choose an appropriate contractual framework at the *ex-ante* contract stage and the attributes of transactions could help select such frameworks or governance structures (Williamson, 1979; 1985, pp. 29-32; 1989). Williamson claims that the dominant attribute of the transactions concerned can guide such a selection and posits his "discriminating alignment hypothesis" for the purpose.

A discriminating analysis will explain which transactions are located where and give the reasons why. The overall object of the exercise essentially comes down to this: for each abstract description of a transaction, identify

the most economical governance structure—where by governance structure I refer to the institutional framework within which the integrity of a transaction is decided (1979, pp. 234, 235).

The section below first looks at the attributes of transaction and then elucidates the said hypothesis.

3.1.3. The Attributes of Transactions as Determinants of Contract Governance

According to Williamson, transactions can be discriminated in terms of their dominant attributes. He identifies three principal attributes: asset specificity, uncertainty and frequency. However, of the three, the first, i.e. asset specificity, plays the principal role as the potential for hazards increases when asset specificity increases (Williamson, 1979; 1985, p. 30). Asset specificity denotes, “durable investments that are undertaken in support of particular transactions, the opportunity cost of which investment is much lower in best alternative uses or by alternative users should the original transaction be prematurely terminated” (Williamson, 1985, p. 55).

Simply stated, asset specificity refers to the degree to which an asset can be redeployed to alternative uses and by alternative users without the sacrifice of productive value (Williamson, 1991). Williamson (1985) identifies at least four categories of asset specificity: site specificity, physical asset specificity, human asset specificity, and dedicated assets¹³. In later accounts (1989, 1991), Williamson adds brand name capital and temporal specificity to the list. There is a loss of value implication whenever such assets are redeployed thus these assets represent a major governance challenge. Asset specificity represented by the first five forms creates bilateral dependency and thus poses additional contractual hazards (Williamson, 1991).

As regards uncertainty, it is a universal attribute of transactions; however, its implications vary, depending upon the degree of asset specificity. The influence of uncertainty on economic organisation is hence conditional as it may be of little consequence for transactions

¹³ Elaborating on Williamson (1983a) for the difference in the four main types of asset specificity, Shelanski & Klein (1995, p. 341) state that *site specificity* is the following type:

[I]n which parties are in a "cheek-by-jowl" relationship to minimize transportation and inventory costs, and assets are highly immobile once in place. The second is *physical asset specificity*, referring to relationship-specific equipment and machinery. The third is *human asset specificity*, describing transaction specific knowledge or human capital, achieved through specialized training or leaning-by-doing. The fourth is "*dedicated assets*", referring to substantial, general purpose investments that would not have been made outside a particular transaction, the commitment of which is necessary to serve a large customer.

that are non specific. This is because “new trading relations are easily arranged, continuity has little value, and behavioural uncertainty is irrelevant” in such cases (Williamson, 1985, p. 59). Market exchanges more of a spot type kind, involving no future promises serve as cases in point. However, the conditions of greater asset specificity are a different proposition. According to Williamson, concerns over behavioural uncertainties intrude as the greater the asset specificity, the greater the level of bilateral dependency that is created. The possibility of opportunistic or strategic behaviour which may disrupt contractual relationship between the parties is hence enhanced. Replacements to contractual partners in such cases are either not possible or are very costly. It is thus imperative that “the parties devise a machinery to “work things out”—since contractual gaps will be larger and the occasions for sequential adaptations will increase in number as the degree of uncertainty increases” (Williamson, 1985, p. 60). The need for an appropriate specialised governance structure, one that will offer the required contractual safeguard, is therefore manifest.

Although such arrangements would entail costs to be borne by the parties, these would be essential in order to avoid the greater costs (losses) of the complete breakdown of contractual relationship. It is here that frequency of transactions come into play and may be used to ascertain the cost effectiveness of the required specialised governance structure before a decision is taken (Williamson, 1985, pp. 60,61).

3.1.3.1. The Logic Underlying Characterisation of Governance Alternatives: Williamson’s Discriminating Alignment Hypothesis

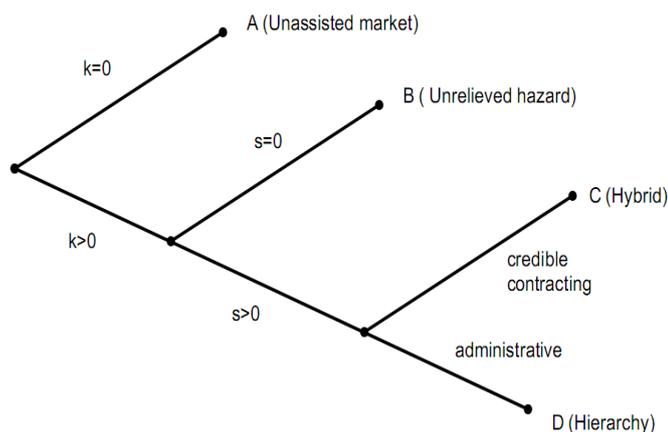
An appropriate contract governance mode is simply a matter of securing an alignment between the attributes of the transactions and the governance structure that would be least costly under the circumstances. This is Williamson’s discriminating alignment hypothesis: a process which refers to the alignment of “transactions which differ in their attributes” with “governance structures which differ in their costs and competencies in a discriminating (mainly transaction cost economizing) way” (Williamson, 1991, p. 227). Williamson indicates a threefold categorisation of governance structures—markets, hybrids and hierarchies.

Markets (simple spot-market exchange) lie at one end representing independent entities whereas hierarchies (vertically integrated firms, bureaus) lie at the opposite end of the scale representing different types of governance structures. The latter is an extreme case where all the contracts are organised within the firm representing a unified ownership. Between these

two polar forms, hybrids (networks of horizontally integrated firms through long-term contracting)¹⁴ exist as a compromise mode. It is the hybrid mode, also referred to as the relational contracting mode, which is most common and also prone to most problems (Williamson, 1979; 1985, pp. 30-32, 399; 2005)¹⁵.

Each generic form is attuned to a particular contracting scenario that differs clearly in the underlying principle of the contract, and consequently, intensity of incentives as well as the control instruments or power to enforce decisions or safeguards. “Safeguards include penalties, information disclosure and verification procedures, specialized dispute resolution (such as arbitration), and in the limit, integration of the two stages under unified ownership” (Williamson, 2005, p. 12). Each governance form has, therefore, a different capacity to respond to the hazards due to opportunism and has different price implications due to the concomitant costs of governance. Practically therefore, the dynamics of the hypothesis involve interplay of three variables; asset specificity (k), contractual safeguard (s) and price (p) associated with each node (A, B, C & D) representing various governance options from market to hybrid to vertical hierarchy respectively (Williamson, 1985, 2005). This is illustrated with the help of Williamson’s Simple Contracting Schema reproduced below. Note however that the price (p) is not shown in the figure but it is associated with each node as becomes apparent in the discussion.

Figure 3-1: The Simple Contracting Schema



Source: (Williamson, 2005)

¹⁴ Mixed ownerships: Alliances, joint ventures, franchising and the like (Williamson, 2000).

¹⁵ Hybrid mode is named as such for it represents conditions neither of the market nor hierarchy. Infact it stands for a variety of “complex contracts and partial ownership arrangements”(Shelanski & Klein, 1995, p. 337). According to Williamson, the contracts in the middle range (hybrid mode) are “notoriously intractable” (1985, p. 399).

Transactions in assets lacking specificity ($k=0$)—involving general purpose technology—are the ones in which opportunism could be discouraged by simply terminating the contract and finding an alternative source of supply in the market. These transactions do not require specialised arrangements ($s=0$) and could therefore be arranged in the market represented by node A. Market competition serves as a potent check on opportunism and contracting in a classical sense—sharp in by clear agreement; sharp out by clear performance” (Macneil, 1974, p. 738)—may be undertaken. At $k=0$, the identity of parties do not matter; parties are autonomous or make their own decisions; the terms of the contract are interpreted rigidly when disputes occur and even court ordering may be preferred¹⁶ as the costs of arranging alternatives are not high. Moreover, the parties have high powered incentives to stick to the terms of the contract due to the operation of market forces. Neoclassical economics has been traditionally concerned with such type of contractual scenarios (Williamson, 1979; 1985, p. 32; 1991).

However, when we enter the domain of specific investments ($k>0$), market becomes an unsuitable governance structure as inter-dependence between the parties creeps in due to the specific nature of the assets, and along sneaks in the potential for opportunism. Opportunism in such cases could be hazardous for the parties if there are no safeguards ($s=0$); a scenario represented by node B; rendering contractual relations unstable at this position. A breakdown of the contractual relationship could have great cost implications for the parties concerned because of the loss of significant substitutability by equivalent resources. Node B transactions would therefore either revert to node A by replacing asset specific investments with general purpose investments or move to node C if the specific investments ($k>0$) have to be maintained. Creation of appropriate safeguard ($s>0$) is posited in the latter case. “Node B transactions are [thus] rare” practically (Williamson, 2000, p. 604).

As the purpose of a governance structure is to check opportunism, it should be able to ‘afford’ sufficient incentives to the parties at node C to ward off any such eventuality and keep the contractual relationship intact. As a foremost safeguard, the contract terms should be flexible or open to renegotiation. Court ordering is thus required to be supplanted by private ordering, a less costly alternative in case of disputes¹⁷. Court ordering is generally costly because of multiple reasons; lack of sufficient knowledge of the actual situation on part of the

¹⁶ Third-party participation is discouraged. The emphasis is on legal rules, formal documents, and self-liquidating transactions (Williamson, 1979).

¹⁷ Note that Williamson relies on the exposition of the concept of private ordering by Galanter (1981).

judges; lengthy formal procedures and insistence of technicalities etc. In many instances, sufficient information may not exist to make out a legally viable case of breach of the contract terms. Adjudication of claims between the parties in such scenarios would be a less costly way to go about contractual disagreements. Flexible contracts may therefore become an advantage over the rigid contracts as the parties would have an option to renegotiate the terms of contract, whenever the conditions warrant (Williamson, 1985, pp. 32-35;75-77; 2005). The degree of asset specificity is still moderate at node C. A movement towards highly specific assets would render the safeguards at this node ineffective. Flexibility of the hybrid mode contracting will not mitigate future hazards arising out of uncertainty. Here more control afforded by a hierarchical arrangement (vertical integration of firms) is in order (Williamson, 2005). Such governance structures would exist at node D of the Contracting Schema above.

Williamson notes that shifts are possible between the three types of governance modes depending upon the attributes of transaction described above. A pertinent point is that the operation of safeguards entails costs. Each node thus ends up having a related price dimension. Accordingly, price will be high at node A position (market) where safeguards are not required as the likely hazards are mitigated by the market dynamics described previously. However, the situation at node C is different. A supplier at this position is offering supply under certain safeguards and as the buyer is willing to provide him the required safeguards, the price will therefore be reduced in consequence (Williamson, 1985, p. 33). Consider below Williamson's explanation of the price dimension approached from another angle:

[T]he price that a supplier will bid to supply under node C (hybrid) conditions will be less than the price that will be bid at node B. That is because added security features ($s > 0$) serve to reduce the risk at node C, as compared with node B, so the contractual hazard premium will be reduced. One implication is that suppliers do not need to petition buyers to provide safeguards. Because buyers will receive product on better terms (lower price) when added security is provided, buyers have the incentive to offer *cost-effective credible commitments* (2005, p. 12; emphasis in original).

Affordability of the costs of safeguards is evidently implicated every time a contract is negotiated or renegotiated (sequentially adapted to suit an emerging situation). Node D or the unified firm is justified as an option only when higher degrees of asset specificity and added uncertainty warrant it (Williamson, 2005). Because hierarchy at node D will entail added bureaucratic costs for organising a transaction internally, this is usefully thought of as

the organization form of last resort: “try markets, try hybrids, and have recourse to the firm only when all else fails”(Williamson, 2005, p. 12).

However, notwithstanding the plausible logic of the possible shifts between the three governance nodes represented on the Simple Contracting Schema, in reality this may not obtain in most settings, especially in the developing world where markets are not fully developed. In such settings, contracts tend to hover in the middle range relevant to the hybrid mode for reasons explained in the subsequent section on the theoretical framework for this research. The challenge faced in these settings is to ensure continuity of contracts (contractual stability) at that particular mode. Even elsewhere, the hybrid mode is the most commonly prevailing mode for long-term contracting—asset specific situations—requiring assurance of a continuing relation to encourage exchange. For the reason it is also referred to as the relational contracting mode. Williamson thus devotes special attention to this mode (Williamson, 1979).

The main challenge in long-term contracts (given the fact that contracts remain invariably incomplete by reason of bounded rationality, and opportunism creates the hazard of expropriation in such a scenario) is that of effecting suitable adaptations along the way under the compulsions of changing market circumstances. In Williamson’s view, what facilitate the process of adaptations are the norms and not the formal law (1979). The formal law (the classical and the neoclassical contract law system) is of no help in such circumstances as “the reference point for effecting adaptations remains the original agreement (Macneil, 1978, p. 890 cited in Williamson, 1979). This is disastrous as relationships are effectively fractured if a dispute reaches litigation (Friedman, 1965, p. 205 cited in Williamson, 1979). In contrast, under a relational mode the reference point is the "entire relation as it has developed . . . [through] time. This may or may not include an 'original agreement'; and if it does, may or may not result in great deference being given [to] it” (Macneil, 1978, p. 890 cited in Williamson, 1979). The universal usefulness of the informal over the formal order for the stability of exchange is succinctly rounded up by Williamson (2002, p. 440) in the following words:

The overarching argument is that, whatever the rules of the game, be they well developed (as in the United States) or poorly developed (as in Vietnam [John McMillan and Christopher Woodruff, 1999a]), the play of the game is usefully interpreted as private ordering efforts to infuse order, thereby to mitigate conflict and better realize the "mutuality of advantage from voluntary exchange"[in the words of Buchanan (2001)].

3.2. Scoping the Research Problem with the Help of the Ostrom - Williamson Approach

From the discussion in the preceding sections, it is evident that property rights institutions are complex and exist at more than one level. Even a best case choice exercise at the collective level, one that results in efficient formal institutions of property rights, does not crowd out the significance of individual action in protection of property rights. Within the overall legal environment supplied by the formal institutions, appropriate individual action, essentially informal in nature, is required to be able to mitigate the hazards to property rights in a least costly way. Discussion so far has also highlighted that it is wrong to presuppose that a formal order is mandatory for beneficial use of CPRs under all circumstances in as much as it is a gross mistake to infer that communities will ‘always’ be able to check spoilage of resources owned in common by devising credible institutional arrangements on their own. While the context specific nature of success is abundantly clear, the possibility of a potential self-governance alternative to various forms of exogenous interventions is exciting. The theoretical insights generated can be usefully employed to reveal the dynamics of beneficial economic enterprise (exchange stability) in situations where formal and informal institutional orders co-exist, as well as in situations where formal institutions are lacking. The latter is the situation that concerns this research.

Discussion in the preceding chapters highlights FATA as a semi-autonomous tribal region governed by its traditional customary law (*riwaj*) of *Pukhtunwali*. Thus far the Pukhtun *nang* tribes have been able to perpetuate their local autonomy and successfully kept the state at bay due to a conducive local ecology. The overarching institutional framework is evidently informal and the state also refers to this in its dealings with the tribes. The presence of an agent of the state, the PA, does not provide a competing alternative in the shape of a formal arena of governance as reliance on *Pukhtunwali* is not substituted. The tribes enjoy substantial degree of autonomy in running their internal affairs in accordance with their traditional institutions which are ‘presently’ unrivalled by the state. Competing sets of property rights regimes do not exist and conflict between the formal and informal property rights regimes is thus irrelevant in FATA (see discussion in Chapter I and the section on *Pukhtunwali* in Chapter 2). This is therefore a case distinct from the cases where formal laws are imposed by external agents in an arbitrary manner.

Literature on the region (e.g., Ridgway, 1910; Spain, 1963; Ahmed, 1976, 1980b) reveals that the tribes have demarcated and assigned parcels of land for use to their respective members as private property and manage the CPRs (forests, pastures, water bodies etc.) collectively as common property. Both private and common property arrangements therefore exist within FATA and are potential avenues for collective and private economic enterprise. The entitlements in relation to the different types of resources are governed by the *riwaj* and the mechanism for dispute resolution is the *jirga*. A recent addition to the CPRs in FATA is on account of mineral reserves discovered in the region. This research focuses on these new CPRs as they are economically very significant.

Although informal, a legal order exists in FATA, and for analytical purposes could be construed as a counterpart of the formal legal systems. The agenda of this research was posited towards the end of the previous chapter in general terms: (a) to highlight the salient features of the property rights institutions of this informal legal order; and (b) to explore how these traditional institutions foster exchange stability to the mutual advantage of the parties in exchange. This two fold agenda can now be given final shape in the form of the following specific research questions in the light of discussion in the foregoing section on Ostrom and Williamson's governance approaches.

- What are the principles and characteristics of property rights institutions in FATA?
- What are the characteristics of the contracts and the likely contractual hazards in CPR and non-CPR scenarios?
- How does relational contracting help to mitigate such hazards in the two contracting scenarios and under what conditions it fails to deliver as a viable governance mode?

Before I move to the next section to outline the specific theoretical framework of this research, it is pertinent to point out that several studies have highlighted the effectiveness of close knit trading groups based on business or ethnic ties as an effective means to overcome contractual hazards in different situations¹⁸. Umbeck's famous study of the California gold

¹⁸ Dixit (2004, pp. 12,13) cites an array of empirical studies that have examined the phenomena in self-organised groups based on ethnic or business ties and even in cases where services of an outside group or individual was hired for a fee. Private judges at medieval trade fairs in Europe (Milgrom, North, & Weingast, 1990) are an example. Concern for good reputation amongst the merchants attending these fairs helped in the

rush (Umbeck, 1977) points towards credible dispute resolution mechanisms created by a community of miners during the California gold rush period in the nineteenth century. In this case, the miners shared common economic interests. Another frequently cited study, Bernstein (1992), provides empirical evidence regarding the role of an exclusive group, the diamond merchants of New York, relying on common norms to punish deviant behaviour and thus mitigate contractual hazards. A later study by the same author (Bernstein, 2001) provides an example from the cotton industry. Greif (1993) highlights historical evidence in support of the positive role of a coalition of medieval traders in enforcing contracts. Clay (1997) uses a game theoretic model to explain a similar performance by a merchant coalition in California during the period preceding the gold rush period (1830-1846). Similarly, Landa (1994) advances a theory of the Ethnically Homogenous Middle Man group (EHMG) on the strength of empirical evidence and argues that the lack of formal law or its infirmities could be overcome and contracts could be stabilized in situations where homogenous groups, relying on shared norms, are able to offer credible assurances against opportunism in contracts. Casella & Rauch (2002) and Rauch (2001) also point out the significance of ethnic groups for the purpose.

All these studies establish the role of relationships for cost effective governance within or even without an overall umbrella of formal law. In this sense, the concept is not novel to Williamson. However, none of the studies offer an analytical tool that explicates the alternative modes of governance by taking into consideration the interaction of asset specificity, price and safeguards. Williamson's approach is hence distinctive and offers a fuller and more realistic picture of how contracts play out in reality in different conditions. By extending it to contracts in FATA in conjunction with Ostrom's approach, the entire contracting spectrum is placed within the reach of analysis and suits well the purpose of advancing an objective understanding of the property rights institutions and its functioning in that region.

3.2.1. The Contours of the Conjoint Theoretical Framework Relevant to FATA

The conjoint theoretical framework of this research looks at the challenge of governance in FATA at both the macro level of the community and the micro level of individual contracting

enforcement of decisions by private judges. Interestingly the role of organised crime in facilitating information and the enforcement of contracts has also not gone unnoticed. The study by Gambetta (1993) is pertinent in this regard.

in consonance with the predominant focus of Ostrom and Williamson's governance approaches.

The gist of Ostrom's governance approach is to assess the rule making and enforcement ability of a community in relation to matters concerning their common benefit. The first research question is designed to lay the groundwork. It will illuminate the specific institutional context of property rights in FATA whereby the rules in relation to property rights and the rule making and enforcement ability will be highlighted with the help of secondary and primary sources. The succeeding question shows how the tribes respond to the challenge of governing the newly emerging common-pool resources in minerals that overshadow the traditional CPRs due to their overwhelming economic significance. CPRs are perceived as potential sites for both common and private commercial enterprises depending upon the choice of the particular user group. The relevant data is carefully examined for ascertaining conditions enabling the various types of governance arrangements; self-governance and the alternative contractual arrangements in vogue. Ostrom's compendium of essential design principles is used as a guide. The institutional attributes instrumental in the emergence of the self-governing CPRs in FATA as well as the characteristics of its various alternatives are revealed in the process. The main hazards in all these contracting scenarios are also highlighted.

Pertinent to note here is the extension of Ostrom's approach to non-renewable mineral CPRs. This does not pose a major theoretical concern requiring elaborate justification. CPRs in non-renewable minerals (coal, marble, chromite, soapstone, copper, gold, gemstones etc.) have emerged throughout FATA and the process continues as new discoveries continue unabated. The demand and value of these minerals in the market outside FATA has led to greater levels of economic dependence on this resource by the user groups as compared to the traditional renewable CPRs. The non-renewable resources could have a considerably longer life span. Although overuse can exhaust or degrade the quality of the output, these issues can be addressed through regulation. The main issue in such CPRs is finding an efficient path toward efficient mining of the resource (Dietz, et al., 2002, p. 22). Strong motivation to address common problems is therefore justifiably presumed. Moreover, the size of these

CPRs and the user groups is small almost by default as would be become evident in Chapter 5. This again corresponds to the features of non-renewable CPRs studied by Ostrom (1990)¹⁹.

Williamson takes us deeper into the world of contract: to the micro level of contract execution; where in his words, the “play of the game” takes place between parties (Williamson, 2000, p. 599). Williamson adopts the threshold of asset specificity as the principal attribute of a transaction, the degree of which has a direct nexus with the level of uncertainty due to opportunism. His Simple Contracting Schema is the principal analytical tool to see how trading relations are established to attenuate (govern) such hazards in contracts. Three principal and alternative modes of governance in this regard are the market, hybrid and hierarchy modes corresponding to non-specific (standardized) transactions, specific transactions and highly specific transactions respectively. Shifts between the modes are posited depending upon a feasible interaction between changes in the level of asset specificity, price and contractual safeguards deemed appropriate. In daily situations, however, the majority of contracts tend to involve asset specific investments of a medium range for which the hybrid mode or relational contracting is best suited. The relational mode of governance is of particular interest to this research as other alternatives are less likely in FATA for reasons already explained.

In a later exposition of the application of the Simple Contracting Schema to lawless situations (scenarios of weak property rights; where formal property rights either do not exist or are weakly enforced by the state), Williamson suggests that although bilateral dependence is mainly caused by weak property rights in such situations, contractual hazards can “nevertheless be interpreted as a variant upon the simple contacting schema” (Williamson, 2005, p. 15). In the absence of relief, contractual hazards would position the parties to a contract at node B “which is inefficient if cost-effective private ordering supports for property can be devised that will move the parties to node C” (Williamson, 2005, p. 15). Although contracts explored in this research are asset specific, a modification to the Contracting Schema and replacement of asset specificity with the more general stipulation of weak property rights is deemed more relevant in the FATA context. Henceforth I refer to said Schema as the modified contracting schema in order to emphasize this extension.

¹⁹ The size of the user groups in Ostrom’s case ranges from 50 to 15000 persons. Due to the segmentary nature of the tribal social organisation, described in detail in Chapter 5, the possibility for the size of the user group to exceed the range indicated by Ostrom is marginal.

The second and third questions of the research are designed to examine the play of the contracts on the micro level of parties, business entities or units engaged in CPRs as well as outside the domain of CPRs. The latter contracting scenario is distinguished from the former by the generic title of non-CPRs. It is pertinent to note that the business units in this research are not construed as sophisticated arrangements between the resource owners and managers, the likes of which we see in developed or even developing economies. These are mostly self-proprietorships or partnerships between individuals²⁰. Complexity of business organisations is therefore not a feature of the FATA economy as modern firms, corporations, franchises and bureaus do not exist. I refer to the business entities variously as business units, firms, contracting firms or contractors and focus on contractual relations across, rather than within these entities.

As given the nature of its institutional environment, relational contracting is presumed to be the popular mode of contracting in FATA, the aim of this research is to explore the conditions whereby the parties are able to sustain trading relationships, or afford to stay at this mode in contracts pertaining to CPRs and those not pertaining to CPRs (represented by the non-CPR category). The affordability of the costs of relational contracting, of which private ordering of disputes is the mainstay, is clearly implicated mandating a look at the production stage expenses. I attempt this to an extent which allows me to infer a reasonably illuminating picture of the probable profit margins in both CPR and non-CPR contracts. The costs affordability potential is thereby facilitated which highlights the comparative advantages or disadvantages encountered by the parties in sustaining trading relationships within and across the two contracting scenarios.

3.3. Conclusion

Discussion in this chapter focussed on Ostrom and Williamson's approaches to underscore their utility in furthering our understanding of the functioning of FATA's property rights regime. I argued that the somewhat generalized insights of Ostrom are supplemented by Williamson's focus on the micro level of contract execution. A conjoint application of these approaches is therefore essential to reveal the dynamics of stability in contractual relationships. The argument was supported with a detailed discussion on the two approaches followed by an outline of the research questions and an explanation of the salient features of

²⁰ The recently completed Survey-Enumeration of Industries in FATA (DA, 2010) affirms this.

Chapter 3 – The Theoretical Framework

the theoretical framework. I move on to outline the research methodology in the next chapter, and with that the stage will finally be set for the empirical chapters to follow.

Chapter 4. The Research Methodology

No empirical study has been conducted so far to investigate the property rights regime and the dynamics of exchange stability in FATA. As any viable planning for the future has to begin from an objective understanding of the past and the present, a pressing need for ‘in-depth’ exploration of the property rights regime of FATA in its ‘natural settings’ is manifest. Selection of the basic components of research methodology for this research—the research paradigm, the strategy of inquiry and the research methods—is guided by this primary consideration. This research used a qualitative case study approach with in-depth semi-structured interviews as a means to collect the primary data. Discussion in this chapter elaborates on the rationale of this choice in its various dimensions pertaining to three basic components and their sub-constituents. The sequence of the discussion follows the following format. Section 4.1 highlights the rationale of the research paradigm and the strategy of the research. Section 4.2 elaborates on the methods used for data collection. Discussion also reveals the sources of data collection and the sampling techniques used. Finally, Section 4.3 explains the data analysis strategy by looking at the techniques and tools used for this purpose. Ways in which ethical considerations have been fulfilled and the reliability of the research has been ensured are duly highlighted at appropriate points during discussion in the chapter.

4.1. The Research Paradigm and Research Strategy

A qualitative research paradigm generally affords a deeper understanding of social realities in an inductive and interpretative way (Denzin & Lincoln, 1994, p. 2) and is thought ideal for exploratory studies (Merriam, 1988, p. 17). As this research is essentially an exploratory study, the qualitative paradigm is an obvious choice. However, the leverage provided by the qualitative paradigm can only be exploited fully by adopting a suitable strategy of inquiry and methods of data collection. Strategy of inquiry refers to the general approach taken in research (Robson, 1993, p. 40). Generally, five different strategies of inquiry—narratives, phenomenology, ethnographies, grounded theory and case studies—can be accommodated within the qualitative paradigm. The research strategy best suited to a particular research depends on its nature and purpose. All research strategies offer certain advantages over others owing to the uniqueness of some of the attributes they offer. It is an appraisal of these attributes with reference to a research project that enables the researcher to pick the most

appropriate strategy for the research (Creswell, 2003, pp. 14-23). A look at the attributes of the case study strategy below highlights why this strategy was deemed appropriate for this research.

The nature and objectives of a research project are the primary criteria for selecting a particular strategy of inquiry. These are usually reflected by the specific questions of the research. The nature of the questions are hence an important consideration to judge the suitability or otherwise of a particular research strategy. For instance, case studies are suitable for answering “how” and “why” questions in research (Yin, 2003, pp. 5-7)¹. Moreover, case studies are considered an appropriate choice generally when the area of research is relatively less known and the main consideration is to optimise understanding of a particular situation or problem rather than generalisation beyond the case (Stake, 1998, p. 135; Ghauri, 2004, p. 109). The need for a case study arises in particular when it is intended to build a holistic understanding of complex contemporary social phenomena or behaviour in its natural settings (Yin, 1994, pp. 2, 7; Gerring, 2007, p. 77); when a research phenomenon is embedded in its context and cannot be studied outside of its natural setting; or stated differently, when the “contextuality” of the research phenomena is significant (Ghauri, 2004, p. 111).

Case studies suit a vast array of research questions and allow data collection from multiple sources (documents, reports of various types, artefacts, interviews and personal observations etc.) and methods (Eisenhardt, 1989; Yin, 2003, p. 8; Ghauri, 2004, pp. 109,110). The ease with which a case study allows the incorporation of data collected from diverse sources gives the research the essential depth required to unravel complex issues (Merriam, 1988, p. 2; 1998, p. 28; Ghauri, 2004, pp. 109-112). Possible errors can be eliminated through the triangulation of data from different sources and methods and this enhances the credibility of the study (Jick, 1979; Ghauri, 2004, pp. 115,116). Additionally, a distinctive feature of case study research is the role of theory serving as a guide throughout the research. These wide ranging attributes have imparted great interdisciplinary appeal to case studies making these one of the most common ways to undertake qualitative inquiry (Gerring, 2007, p. 50).

The FATA property rights regime is a complex social phenomenon embedded within the distinct context of FATA. Discussion in the preceding chapters highlights this as well as the fact that the said phenomenon is insufficiently appreciated by development managers,

¹ Certain type of “what” questions may in fact be in the nature of the “how” or exploratory type. Yin (2003) and Ghauri (2004) confirm the suitability of case study to address such types of questions.

essentially due to lack of knowledge. In the light of the discussion in the preceding chapters, building a holistic understanding of this complex social phenomenon through the review of relevant historical facts and a critical assessment of the opinions of actors as well as observers is required. The purpose is best served by an exploratory inquiry that employs a descriptive narrative style. A case study approach enjoys an edge over other approaches as all these essential requirements fall within the range of its attributes. It therefore promises better prospects for a nuanced perspective on the research problem and a compelling conclusion to this thesis. The appropriateness of the case study approach to research of this kind is also confirmed by its wide use by researchers in field studies on institutions and institutional change (Ostrom, 1990, pp. xiv, xv; Fafchamps, 1996; Azfar, 2002; E'ric, 2008, p. 103; Sykuta, 2008, p. 136; note 3)².

4.1.1. The Design Characteristics of the Case Study

The aim of this research is to explore the property rights regime of FATA in order to advance an understanding of the dynamics of stability in exchange relationships. The study focuses in particular on the economic contracts in the region. Discussion in the preceding chapter has highlighted the significance of the CPR and the non-CPR categories for this purpose as the two principal contracting scenarios in FATA. A CPR may either be entirely self-governed by the owners of the resource system (the users or appropriators in terms of Ostrom (1990)); in which case it becomes a case of internal contracting amongst the owners themselves; or alternatively the owners may contract with another party by assigning it the rights of commercial operation of CPR. Different contracting arrangements are possible depending upon the choices and preferences of the owners but all these involve the owners as one of the parties to the contract. A CPR is thus a potential site for common as well as private enterprises. An alternative contracting scenario pertains to commercial enterprises not related to the operation of CPRs in any manner. An assortment of privately owned businesses in FATA would qualify for this club that I termed the non-CPR category. Contracts in this case are essentially between private parties. However, the non-CPR category for this research is

² Case studies are also known as analytical narratives. The term analytical conveys the use of a theoretical framework or set of theoretical concepts and the term narrative conveys the use of historical qualitative evidence. See E'ric (2008). Sykuta(2008) opines that to study the true relationships in contracts a more in-depth interaction with the parties is required. Thus some of the most insightful research will not be possible by the best econometric tools but by case study research. See Fafchamps (1996) as an example of a descriptive case study approach adopted to study least investigated commercial contracts. Ostrom's ground breaking book (1990) is based on data from several case studies conducted by independent researchers. Also note the case study approach adopted by various NIE scholars in Alston, Eggertsson, & North (1996).

restricted to the study of manufacturing enterprises as the development of this type of industry has traditionally been viewed as a panacea for the economic problems of FATA (see discussion in Chapter 2).

The CPR and the non-CPR categories are studied as two action arenas or case scenarios of the property rights institutions. In accordance with the classification provided by Yin (2003, p. 40), case studies with such design perimeters are known as multiple case holistic case study designs. Such a design is suitable for an in-depth examination of a single phenomenon and its operation in different situations or scenarios. Inquiry can commence by developing general insights into the phenomena under study and then enriching the understanding so gained by focussing on certain situations where the phenomena is deemed to be at work. In the end a holistic picture is obtained with the help of a comparative analysis of these situations. The research is structured in a similar fashion.

The CPRs studied in this research pertain to marble, coal and chromite. Although FATA boasts of copper, iron, soapstone, feldspar etc., and even gold reserves, selection of the three minerals was made for valid reasons. First, mining of other minerals at present is not on a scale at par with the selected three minerals. In some cases such as copper and gold reserves in Waziristan (Fig. 6-1), technological constraints are a major reason behind this. Second, the utility of findings in this inquiry is not negated by the non-inclusion of CPRs of other minerals. Given that the institutional principles in relation to resources owned in common are uniform across FATA, all CPRs in the mining sector could be seen as parallel and not distinct sites involving a common set of issues and challenges. The data collected in this research are therefore able to advance a fair understanding of exchange; the hazards in exchange and how parties cope with these hazards to stabilize their exchange relationships. Additionally, and without prejudice to these reasons, the on-going military operation in the region against the Taliban and heightened security concerns during the fieldwork period (December 2009 to May 2010) made it virtually impossible to secure access to and collect data from the other CPRs. Entire populations in parts of FATA were displaced due to the intensity of these euphemistically styled ‘clean-up’ operations³. The prospects of a meaningful inquiry were hence marginal even if caution was thrown to the wind and these areas were somehow accessed.

³ This has been widely reported by the news media and international donor agencies. See Imtaiz (2011). World Food Programme official website also displays relevant description and reports; for e.g. see Programme (2009).

With regards to the non-CPR category, the manufacturing firms from which data was collected in this research produce polypropylene products; edible oil and ghee; synthetic yarn and cloth; melamine and steel crockery; steel billets; plastic goods; marble tiles; wheat flour and electrical goods. In order to build a holistic and nuanced perspective, an effort was made to collect data not only from the firms in the CPR and non CPR categories but also from the other stake holders. This is explained in the section below.

4.2. The Methods of Data Collection

Both primary and secondary data sources have been used in this research. Primary data was gathered through in-depth semi-structured interviews from the main stakeholders—firms; government officials; prominent local inhabitants; and professionals (Table 4-1). Prior to commencement of the fieldwork a sample size of 50 interviews in all the categories of participants (with at least 35 (70%) of the interviews from the business units) was envisioned as a rough target for planning purposes. This was however not meant to be a rigid capping limit. The total number of interviews was contingent on the variety of information coming from the participants and a decision to stop further interviews was to be taken in the field at a point of saturation of information and no prospects of new information from further interviews. The final tally of interviews slightly exceeded the plan as 60 face to face interviews spanning 50 to 90 minutes (average 60 minutes per respondent) were conducted in the field. In line with ethical requirements, the interviews were recorded wherever allowed and roughly 80% of the respondents consented to this. In cases where permission to record was not allowed, notes were taken during the interview and the entire conversation was diligently reconstructed with the help of these notes on the same day so as to capture the details fully.

A prerequisite of quality in research is a critical evaluation by the researcher of his role as a potential source of bias that could distort the reality that is being researched. I explain this at an appropriate stage towards the end of discussion in this section. Amongst the practical measures taken in this direction, each respondent was allowed adequate control by eliciting his opinion through “grand tour” questions. Additionally, follow up interviews were conducted on telephone with ten key respondents during the data analysis phase in order to reconfirm the emerging themes and exclude the possibility of erroneous interpretation (Lindgreen & Beverland, 2009). This also became a means by which I was able to keep tab on potential developments of interest in the research area, even in the post fieldwork phase.

As regards the selection of respondents, since this inquiry seeks to understand the research problem from the perspectives of the stakeholders concerned (respondents), selecting a sample from which the most can be learned is of utmost importance (Merriam, 2002). A non-probability or purposive sampling method delivers this objective as it allows selection of those respondents who can provide rich and specific information. A way to ensure this is to lay out suitable a priori criteria to guide the selection process (Merriam, 1988, pp. 47-51; Patton, 1990, p. 169; Merriam, 1998, pp. 61,62). Selection of the respondents in this research was therefore made by using the purposive sampling method and to ensure its efficacy, the following a priori criteria were used in the different categories of respondents.

Table 4-1: Selection Criteria of Respondents

Respondent Category	Selection Criteria
Firms	Owners of business (including elders/ <i>maliks</i> as representatives of the owners (user groups) of the CPRs)
Government officials	Active present duties in the region or having served in the region within the past 10-15 years. Experience of serving in multiple Agencies preferable
Prominent local inhabitants	Elders or <i>maliks</i> of the tribes
Professionals	Active professional or academic engagement with the region as a development professional, journalist or an academic

In order to select the required number of respondents in the different categories, snowballing technique was also applied as part of the selection strategy. In this technique a person who fulfils the selection criteria is asked about other persons who may also fulfil the selection criteria and provide rich information (Miles & Huberman, 1994, p. 28).

As the primary data collection was through interviews, special care was taken to meet the prescribed ethical obligations for this type of research. In this regard, the guide lines laid down by the University of Auckland Human Participants Ethics Committee were kept in sight at all stages of data collection, and even onwards till the conclusion of this research. Interviews in this research were conducted on the basis of informed consent in order to gather information in an ethically appropriate manner. The recorded interviews were then self-transcribed. Moreover, due care has been taken to maintain the privacy and confidentiality of

the respondents at all stages of this research and appropriate pseudonyms and numeric identities have been assigned where required. In order to differentiate between the interview types (firms and individuals), three broad categories of C, E and N have been used. Category C refers to CPR firms whereas N refers to non-CPR firms. As experts in their respective domains, interviews of government officials, prominent local inhabitants and professionals have been assigned to category E.

Since the core focus of this research is on the execution of contracts between parties engaged in economic enterprise, firms are presumed to be the core players in this respect. The number of respondent firms is therefore maintained as an overall majority of the total respondents. A total of 39 interviews were conducted out of which 22 pertain to the non-CPR and 17 to the CPR category. Within the non-CPR category, effort has been made to capture the diversity of business in the region. This is apparent from the diverse nature of the manufacturing firms interviewed. In the CPR category interviews were conducted from the owners as well as contractor firms operating the mines. The research was successful in selecting at least one firm from each Agency in the non-CPR category, however, as regards the CPRs, data was collected mainly from Mohmand, Orakzai, Bajuar, North Waziristan and FR Kohat. As already mentioned above, the law and order situation prevented access to some parts of FATA.

In addition to the above interviews, 21 interviews were conducted with respondents classified in the three categories of government officials, prominent local inhabitants and experts (see table above). This imparted greater depth to the understanding of the research problem. The breakup of these interviews is as following: five interviews with former PAs and APAs (some of these officials had experience of serving in multiple Agencies /FRs during their career); five interviews with elders/*maliks* of Khyber, Kurram, Mohmand, North and South Waziristan Agencies (there is a partial overlap of respondents in this category with those in the CPR category. Exclusion of respondents from Bajuar and Orakzai Agencies is thus remedied by interviews from the elders of these areas in relation to the CPRs. See the respondent category “Firms” in Table 4-1); one interview with an eminent journalist; one interview with a senior academic at the University of Peshawar and nine interviews with development professionals in public and private sectors. These interviews were conducted during approximately five months fieldwork in the region from mid December 2009 to early May 2010. In addition, as already highlighted above, telephonic contact was maintained with

ten key respondents which became a means of regular follow up interviews during the data analysis phase.

With regards to the selection of respondents, the biggest challenge proved to be the selection of the core respondents or firms. As noted earlier, the region was undergoing a great deal of turmoil due to security operations being conducted in the region. Visits to the main business locations to search out information regarding prospective respondents could not be undertaken at random. The difficulty was overcome with the help of the Tribal Areas Chamber of Commerce and Industry (TACCI) and the help of friends and former colleagues in the civil service. Membership lists obtained from TACCI proved an invaluable source of initial information about businesses and business people in FATA. However, establishing contact with the respondents would still have been a big issue under the prevailing circumstances had help not been available from the management of TACCI. TACCI's involvement helped in gaining trust of the respondents, an essential requirement in any research. Once the process of selection commenced, the initially selected respondents were also a useful source of information on others and helped in refining the selection process to include only those respondents who could offer maximum information. The help of friends and former colleagues in civil service was meshed in with this process to enhance the possibilities of access and selection of the most knowledgeable respondents. Apex government organisations dealing with FATA such as the FATA Secretariat and FATA DA in the city of Peshawar provided information on development professionals as well as government officers who had served in FATA and could offer informed opinions on the subject. Here I was extremely fortunate to benefit from the invaluable help and assistance of my civil service colleagues who happened to be posted in these two key organisations during my field work phase.

In addition to the primary data, this research has collected data from a vast array of secondary sources and applied the method of triangulation both within and across the two sources to enhance the quality and credibility of the research (Jick, 1979; Patton, 1990, pp. 467,468; Ghauri, 2004). Diversity within the primary data sources and inclusion of data from secondary sources facilitated the objective of cross checking of information for internal consistency to ensure reliability.

Rich accounts of the Pukhtuns and their society by imperial officers dating as far back as the early days of the Raj, periodic Land Revenue Settlement Reports and official District

Gazetteers were a treasure trove of secondary data on traditional social institutions. More current sources included development overviews, surveys and reports by government and non-government organisations engaged in the region and publications by major donor agencies (USAID; DFID). Locally published literature on customs and traditions of the region was also very helpful to add depth to the understanding of Pukhtun social organisation, institutions and their evolution through time and space. The publication section of the National Archives in Peshawar was found to hold some invaluable publications that have long gone out of print. Hours spent digging in the shelves for relevant material at the small library in the FATA Secretariat also paid off well. Feasibility studies for various economic development projects of the past and hard to find data pertaining to the defunct FATA DC were the pick of the finds there. Moreover, the official record of mining and prospecting leases in FATA maintained by the Directorate of Mines and Minerals FATA Secretariat proved very helpful to assess the general trends in contracts in CPRs. Since these leases pertained to different locations across FATA, perusal of these documents deepened my understanding regarding contracts and contractual arrangements in vogue in CPRs.

At this stage, a few words on the organisation of the fieldwork would be in order. The field work phase was planned in three main phases: information gathering and selection of respondents; conducting interviews; and sifting data for possible errors. In terms of the time period, it was reckoned that the first phase would be completed in 15 days followed by a 3.5 month period of primary and secondary data collection. Transcription of the recorded interviews was to commence side by side but the final 30 days were reserved for completing the pending transcription work. A cursory look at the transcribed data and contacting the respondents again for clarification of any contradiction or ambiguity in the statements before embarking on the return journey was thought to be an ideal strategy.

As is usually the case in qualitative fieldwork, sticking to the above plan turned out to be practically impossible. Yet fortunately in this case, only the last phase could not be carried out as planned. The primary cause was unexpected delays in the data collection phase. Interviews had to be frequently rescheduled due to very bad law and order situations. The entire north-west; FATA and the neighbouring NWFP; was passing through a very turbulent phase at the time⁴. The planned transcription work in the last phase remained incomplete, a

⁴ The extent can be gauged from the fact that a bomb was exploded almost daily in this region during my fieldwork phase. Detail of each of these incidents is catalogued by South Asia Terrorism Portal (SATP) under the title of FATA Timeline. See (Portal, 2010).

job finally completed on arrival in New Zealand. Luckily, the lapse of the last phase turned out to be of little consequence in the end as data discrepancies were insignificant. Self-transcription was perhaps the main reason. Moreover, validity of data interpretation remained possible even in the post-fieldwork period as regular contact was maintained with the ten key respondents.

I had reserved comments regarding my role as a researcher at the start of this section. With the discussion so far as a background, it is an appropriate stage to make my positionality explicit. Following are some important aspects of which I remained cognizant throughout this study and which need elaboration here. I do not come from a Pukhtun lineage and, as such, do not share a common ethnic bond with the Pukhtuns. I believe that this frees me from any ethnic bias, in favour or against the community researched. Notwithstanding this fact, I was raised in the district of Kohat in NWFP, the neighbouring province of FATA, and worked there as a civil servant in the Income Tax Department⁵ for around 11 years. I therefore have prior knowledge of the people and the region and do not suffer the constraints of a language barrier. I can speak Pukhto, the language of Pukhtuns, fluently and understand their norms and traditions. This enabled me to understand the perspective of my respondents, who, except for three respondents, were not known to me prior to this research.

Given my prior experiences with Pukhtuns and my Western education, I remained sufficiently aware of the fact that I did carry a perspective of my own as a lens with which I would perceive and interpret reality. My prior knowledge of the area could therefore be a potential weakness, if a conscious effort was not made to let the respondents' viewpoints emerge. I tried to tackle this problem by embedding necessary protocols within the data collection process. These include: allowing adequate control to the respondents through grand tour questions, obtaining information from multiple sources (multiple stakeholders' viewpoints for primary data alongside the secondary data), triangulation both within and across the sources, and most importantly, keeping a rigorous check on my own emerging perceptions during the research process by recording these within a field diary and cross checking with the viewpoints of the respondents as well as with the secondary data sources. In addition, I conducted follow up interviews via telephone from New Zealand, with the ten selected respondents during the data analysis phase. In this way, I was able to share the

⁵ The jurisdiction of Income Tax does not extend to FATA. Since 2009, Income Tax department has become part of a new service by the name of Inland Revenue Service (IRS) that administers all the federal Inland taxes: Income Tax, Sales Tax and Federal Excise Duty.

emerging themes with these respondents and cross-check their authenticity. With these inbuilt protocols within the methodology, I believe that I have been able to present the reality of FATA institutions as perceived by the people of FATA.

4.3. The Data Analysis

The description of qualitative data analysis in this section is about the process of analysis adopted and the tools utilized to assist in this process. In qualitative research the process of data analysis refers to breaking down, conceptualising, categorising and presenting data in a manner that can help the researcher to make authentic interpretation of the empirical evidence collected during the research (Miles & Huberman, 1994, p. 10). The principles underlying the data analysis process are more or less common in all types of qualitative research. The first stage of this process generally consists of locating the relevant data and arranging it into various conceptual categories by assigning codes. The second stage consists of reviewing the codes with the purpose of refining, merging or extending the different categories as required. The third stage involves establishing and explaining relationships between codes with the help of different analytical strategies and techniques and here a researcher may have a range of choices (Yin, 2009, p. 136). For the purpose of this stage, this research relies on what Yin describes as ‘theoretical propositions’ as an analytical strategy and utilizes pattern matching logic as the analytical technique in order to interpret the empirical evidence collected (Yin, 2003, pp. 111, 116-120).

There is a caveat, however, to the above outline of the analysis process. Qualitative data analysis is not as discrete a process as in the quantitative data analysis and identifying a definite start point of analysis may well be an oversimplification. In qualitative studies, the initial stages of analysis commence as soon as the data collection phase is initiated (Merriam, 1998, pp. 151,162; Taylor & Bogdan, 1998, p. 141; Ghauri, 2004, p. 117). In contrast to a quantitative researcher, a qualitative researcher is often confronted with baffling questions during the data collection phase: questions such as ‘what would be useful to collect’, ‘how to collect these’ and ‘from whom to collect’ etc. are common due to the vagaries of the field. Question like these keep cropping up and have no easy answers. The researcher is always on his toes as persistent reflection on the goal and objectives of the research is required to come up with sound decisions in response to the emerging situations. These decisions could have deep implications for later stages of the research (Richards, 2005, pp. 34-36). Thus this exercise marks the rudimentary beginning of the analysis process as different patterns and

themes do emerge in the mind of the researcher which become increasingly refined as the research proceeds through the data collection and transcription phases and enter the coding phase which is commonly taken as the start point of the analysis phase.

In the sense described above, data analysis in this research commenced with the field work. I meticulously prepared a log of all the events and thought streams in the shape of a field diary which was used as a useful reference to trace the genesis of ideas and track their evolution through time, and the different phases of the research. This also provided a means to a quick overview of the research project whenever required and helped keep a focus on the research objectives at all times. Moreover, maintaining a complete record in this manner proved of immense help later at the more formal analysis stages of coding and interpretation of data as it was easy to discern interconnections between the various themes or categories of data. A log in this manner is mostly referred to as an audit trail which is recommended by most experts in the field as an essential measure of reliability and hence quality of the research (Miles & Huberman, 1994, pp. 278-282; Yin, 2003, pp. 101-105).

Qualitative research generally generates an awful lot of data so effective management of data is a key requirement for a good analysis (Patton, 1990, pp. 371, 372; Miles & Huberman, 1994; Merriam, 1998, p. 164). Computer assisted data analysis software is a helpful tool in this regard⁶. However, as a case study is normally about complex phenomena, different types of data are collected in an effort to comprehend the complexity in a real life context and analysis through computer software can only be of a significant advantage if all this data is readily accessible through the software (Yin, 2009, p. 129). This means that data forms that are not compatible with the software requirement need to be converted into the required format first⁷. I used software called NVivo 9 (henceforth NVivo) which allows greater flexibility in this regard. A research study is referred to as a “project” in the terminology of NVivo and in order to take a start in NVivo, a research project file has to be opened up which can be entitled with a suitable name. Once within a specific project file, all essential primary data pertaining to research whether in text, photo, audio or video etc. can be imported through the use of folders named ‘Internals’ and stored therein. Other forms of data such as secondary data and records of personal thoughts and observations can be accessed through the folders

⁶ An important distinction of the qualitative analysis tools in comparison with the statistical analysis tools lies in the fact that unlike the latter, these are not an end in themselves. They do not do generate analytical results on their own even if computer software are used for the purpose.

⁷ NVivo allows a range of data forms to be accessed such as audio recordings, videos, photographs, PDF files etc.

named 'Externals' and 'Memos'. Once imported into the NVivo project in electronic format, the stored data can be processed for analysis purposes by availing the various inbuilt operation tools provided in the software such as coding, search, queries, linking, memos, visual representation, modelling etc.

I opened up my research as a project in NVivo and imported the transcribed interviews as Internals. Within the Internals essential bifurcation of the data into the CPR and the non-CPR categories and that pertaining to both (interviews from other stake holders as per the table above) was effected with the help of subfolders entitled as such. Other data sources such as the field notes, documents and reports etc. were made accessible within the software by importing them within the Externals. I then started coding the data which is the first step towards identifying the similar themes and grouping these into respective categories. Codes are simply tags or labels for assigning meaning to descriptive and inferential data collected during the research (Miles & Huberman, 1994, p. 56). Coding could be classified into three main types according to the data they represent. These are descriptive, topic and analytical coding. Descriptive coding is used for information such as age, gender, job etc. and does not involve interpretation. Topic coding pertains to labelling the text according to the subject whereas analytical coding refers to identifying a theme within a text and involves significant degree of interpretation. Of these, the topic coding and analytical coding are of prime importance in qualitative studies (Richards, 2005, pp. 87, 88). In NVivo, the coded data is placed at nodes which function as containers for the coded data. Data with coding similarity is grouped at one node and within that node further organisation of data into various subcategories is also possible by creating child nodes. In this manner several nodes were created representing different topics, themes or categories within the NVivo project. NVivo also allows for maintaining descriptive information about a code via the node property window and through this feature I was able to recall the rationale for creating the node, track its evolution and also maintain consistency in coding.

The initial round of coding was essentially topic coding as texts pertaining to particular subject areas of the study were coded at the respective nodes. After this initial round, a reorganisation of the nodes was undertaken by identifying nodes that could represent subcategories of a parent node. Such nodes were placed as child nodes underneath the main or parent nodes and the process was repeated over and over again to merge different nodes in this manner while reflecting intently on the different nodes and their interconnections. This helped refine my understanding of the nodes by establishing meaningful and clear patterns of

relationships between them. Memos documenting the reflective process were religiously maintained all along the process.

Proliferation of the hierarchical nodes in this manner were taken as a sign of progress and when it was obvious that further repetition and review in this manner would not yield more categories or subcategories of nodes, it was taken as a sign to initiate analytical coding. Analytical coding required each node to be examined in depth. In this process, the field notes and the memos maintained during the early analysis phases came in very handy as possible new meanings started emerging from the data when the content of nodes were interrogated in conjunction with these. New meanings necessitated reinitiating the coding process or to ‘code on’. The theoretical framework of this research provided an analytical strategy or framework and thus played the all-important role of guiding the process of reflection at this stage. The content of each node was rigorously scrutinised to check for the prevalence of the a priori themes through the logic of pattern matching between the empirically based pattern and the one predicted by the theory (Trochim, 1989 cited in Yin, 2009 p. 136) in each of the two cases—the CPR and the non CPR. The outcomes were then analysed within each case as well as compared in order to highlight the differences between the two case scenarios and offer a convincing explanation to the questions posed in this research.

4.4. Conclusion

The relevance of the qualitative case study methodology employed in this research was explained in this chapter in view of the nature and objectives of the research. Detailed exposition of the research design and methods was undertaken to demonstrate that due attention was paid towards protocols and procedures deemed essential by experts for quality in research. With the basics of research methodology now fully exposed, I proceed to examine the normative features of the property rights regime of FATA in the next chapter in an attempt to answer the first question of this research.

Chapter 5. The Architecture of the Property Rights Regime in FATA

As revealed by its title, this chapter explores the property rights regime of FATA for the ‘normative rules of the game’: the relevant tenets of the *Pukhtunwali riwaj* in relation to property rights. Discussion also looks beyond the rules at their socio-economic and psychological underpinnings and the mechanisms by means of which these rules are enforced. Stated differently, the design here is to unravel the relevant facets of the institutional environment in FATA as mandated by the first question of the research: *what are the principles and characteristics of property rights institutions in FATA?*

The chapter is divided into two main sections. Discussion in Section 5.1 looks at Pukhtun genealogy as a system of rights and duties within *Pukhtunwali* and highlights its significance for self-governance and stability in the society. The spatial characteristics of the tribal settlements are elaborated as an operative manifestation of this system and deviations from the standard principles are also examined with the help of history. Discussion highlights the fact that property rights of a tribal resident are inextricably tied to the territorial limits of his section (lineage segment) of the tribe and the nature of these rights change when he moves out of his territorial limits for residence or business. The pattern of land distribution within a particular tribal segment; rules relating to ownership and alienation and the principles governing access of ‘non Pukhtuns’ or ‘outsiders’ are also revealed. Section 5.2 looks at the enforcement of property rights within *Pukhtunwali*. Discussion highlights the significance of the *Pukhtunwali environment* in discouraging hazards to property rights in general with reference to the standard dispute resolution mechanism through *jirga*. An overview of the different types of *jirga* is presented which highlights its strengths and limitations in these cases. A critical analysis of *jirga* and its enforcement ability reveals the inherent transaction costs of the system. This is followed by the conclusion which presents a summary of the chapter’s main findings.

5.1. The Rationale and the Substance of Property Rights in *Pukhtunwali*

It is clear in the light of discussion so far that property rights in FATA are not ordained by formal laws of the country but by *Pukhtunwali*. The laws of Pakistan stop short of the geographical borders of FATA and even the presence of the PA in FATA does not offer a choice between the formal law of the state and *Pukhtunwali*—the customary law of the

Pukhtuns. To the contrary, according to Ahmed, presence of the PA “underwrites the un-encapsulated and free nature of the area” (1980a, p. 1V). FATA is thus the preserve of informal law without any competition or rivalry from formal law. The principal *Pukhtunwali* tenets and their commonly ascribed usage have been listed in Chapter 2 but some of these have a much wider practical connotation and application in the Pukhtun society than generally acknowledged in the literature on Pukhtuns. As a point of interest for this thesis, this is illustrated with the help of a few examples below.

Badal for instance has been predominantly construed as revenge in the literature but *badal* also refers to returning a favour with a favour or reciprocity, and enjoins cooperation. *Badal* is thus not necessarily negative and has a much wider positive role in the society. *Badal* is equally obligatory for all *Pukhtuns* in its positive role. As in its negative role, here too *badal* enjoins not merely to reciprocate a favour with a favour in return but to surpass it if possible (Sultan-i-Rome, n.d). Another instance is that of *tarboorwali* or agnatic rivalry between paternal first cousins which often risks oversimplification by analysts due to the extremely complex nature of behaviour and standards of social acceptability. Paternal first cousins are generally regarded as enemies due to competition amplified by scarcity of resources (for eg. Barth, 1959; Ahmed, 1976, 1980b; Lindholm, 1981). Being surpassed by a cousin is regarded a matter of shame as it implies incompetence and thus becomes a source of a *paighour* (literally taunt) by others. The consequences of this social reality may thus lead to unimaginable consequences for the rival cousins as they strive to thwart real or perceived threats from each other through various strategies. For such reasons *tarboorwali* is generally projected in the literature in its negative role. However, in reality the relationship has complex manifestations. The paradox is that cousins are also required to support each other in the case of enmity with outsiders (Sultan-i-Rome, n.d)¹. Moreover, under the right conditions, the social stigma of being overtaken by a cousin may also be a powerful incentive to growth and progress. Ahmed (1977, p. 17) points out the positive implications in the case of Mohmands when opportunity knocked at their door².

¹ This has been confirmed by respondents in this research.

² This refers to Mohmand tenant settlements in the suburbs of Peshawar, Charsadda and Mardan. Driven by intense competition with agnatic kin inside their resource scarce Agency, the vast barren Yusufzai lands outside became a favoured destination. Eventually, in most cases the Mohmand tenants have been able to wrestle control over these lands from their erstwhile Yusufzai landlords.

Likewise, the scope of *melmastia*, generally defined as hospitality bestowed on relatives, friends or strangers alike irrespective of rank or status, is quite extensive. In an extended usage *melmastia* may well imply a degree of relaxation or favour in the terms of a business deal especially in the case of a first time interaction between the parties. Instances of such a nature are common in daily life particularly when one party, the buyer, is not a local resident. A connection of *melmastia* with *badraga* or armed tribal escort is also obvious (Sultan-i-Rome, n.d). In fact the latter appears to be an operating feature of *melmastia* that is invoked when there is a need to ensure the safety of travellers (who are deemed as guests) and their property through the tribal territory. Similarly, rivalry in business may be given up under the tenet of *nanawatey* if one party visits the other in his house or business premises and seeks forgiveness for a past misdemeanour. *Melmastia* places an obligation on the host to extend due hospitality to the visitor. As will become apparent in the discussion in the second section, *melmastia* also bolsters another *Pukhtunwali* precept, the *jirga*. Apart from the moral pressure due to the tradition of heeding to the voice of *jirga* (Ahmed, 1991, p. 24), the costs of mandatory *melmastia* serve as a tool in compelling the disputants to agree to a speedy resolution of their disputes. In similar fashion, common threads could be traced among other precepts as well. The interrelated nature of the *Pukhtunwali* precepts facilitates the operation of *Pukhtunwali* as a complete system.

As a logical start to a discussion on property rights, I begin with land and the principles of land ownership in FATA. Save parts of Kurram Agency and the Tochi valley in North Waziristan Agency, formal record of land titles does not exist in FATA. These areas are thus an exception within FATA. The genesis of formal record in these two cases is traced to land revenue settlements. First land settlement was carried out in the Kurram Agency in 1893 (Province, 1908, p. 22), and in the Tochi valley in 1902-1903 (N.W.F.P, 1902, p. 10; 1903, p. 9; USAID, 1990a, p. 1; *Imperial Gazetteer of India: North-West Frontier Province*, 2002, p. 248; Dawar, 2005, p. 45). In both the cases the tribes, the Turis and Dawars respectively, were under considerable pressure from their rivals and welcomed the British into their territory for protection. However, the impact of these changes was not significant. It did not lead to any worthwhile social and economic change at the two locations³. A third location

³ Land settlement was effected in Kurram Agency for an area of around 53,835 acres which was enhanced in the subsequent periodic land settlements but coverage has been partial. Large tracts of land remained outside the ambit of revenue record and the position is the same till present day as the practice of periodic land settlements has not been continued onwards since 1940's (USAID, 1990c, p. 1). The position is the same in the case of the Tochi valley. Here the extent of the area under first settlement (completed in 1903) was much smaller in comparison (almost half of the area covered by the first settlement in Kurram Agency). It is pertinent to note

within FATA where land settlement has not been carried out yet some sort of land ownership record is still maintained is Khar town in Bajaur Agency. Respondents in this research confirmed that though not a mandatory legal requirement, it is customary for a purchaser to submit a copy of the sale deed to the PA's office. This is preferred as an additional security measure to lend authenticity to the transaction. Over the years the PA office has thus accumulated a fairly large record pertaining to land ownership in the town area (Interviews E 8, N 5).

Interestingly, these exceptions have emerged in tribes that Ahmed term as deviant cases within FATA. According to Ahmed (1980a, 1984) certain tribes or sections of tribes inhabiting the few fertile valleys within FATA (notably the Shia Turi tribe (Kurram Agency); Shia sections in Orakzai Agency; certain sections of Mohmands (Mohmand Agency) and Tarklanris (Bajaur Agency)) exhibit *qalang* type social characteristics with landed families or feudal aristocrats present (see Table 1-1, Chapter 1). However, these deviant cases do not disturb the *larger social reality* of the *nang* case on the FATA landscape and are subsumed within the latter (Ahmed, 1980a, 1984). Likewise, the presence of a formal land record at these locations does not change the predominantly informal nature of land holding in FATA.

Despite the lack of formal land records, a clear distinction between private and collective property is still maintained across FATA. Albeit *riwaj* may vary from one tribe to another tribe or clan, due to adherence to certain common principles, a remarkable uniformity of approach exists across the tribes in FATA on matters of inclusions and exclusions in property ownership⁴. As elucidated in the section below, the precept of *Pukhtunwali* that is singularly important in this regard and forms the basis of property rights in FATA is *nikkat*⁵. *Nikkat* determines the rules of access and alienation of resources and on the whole has played a vital role in shaping the geography of the Pukhtun settlements.

that Kurram already had a history of revenue payments to the Kabul government and the Sikhs. Its major tribe, the Turis, were under threat from the encroaching Waziris and embraced the British protection. See (Plowden, 1879; Province, 1908; Kapoor, 1944). Likewise, in the Tochi valley, the Daur tribe was under similar threat from its powerful Waziri neighbours and petitioned a British presence in the area in 1895. Under the terms of their petition, they agreed to pay a tithe of the gross produce to the British government which was commuted into payment of a fixed house-tax at Rs. 8000 till the first revenue settlement was enforced from autumn 1903. The tithe assessed then at Rs. 36000 almost remains the same to date (USAID, 1990a, p. 7; *Imperial Gazetteer of India: North-West Frontier Province*, 2002, p. 248; Dawar, 2005, p. 45).

⁴ Written compilation of *riwaj* exists only in the case of Kurram Agency. Entitled as "*Turizuna*" after the major tribe of the Agency, the Turis, it was compiled by the British in order to facilitate consistency in *jirga* decisions (Khan, 1977?).

⁵ The term is also spelled *nikat*.

5.1.1. The Role of Genealogy, Psychology and Ecology

Experts have highlighted three main characteristics of the traditional Pukhtun society of which FATA is an exemplar. These are unilineal descent from an eponymous ancestor, segmentary tribal structure, and the acephalous nature of the society (Ahmed, 1976, pp. 6-17; 1977, pp. 14-16)⁶. These characteristics have not only been instrumental in the expansion of Pukhtun settlements over a vast expanse of land in the north-east and north-west but have also shaped the nature of property rights in that society. The rationale of inclusions and exclusions in property rights are thus compatible with these characteristics and this is duly portrayed by the existing Pukhtun settlements in FATA. The significance of the three characteristics is elucidated in some detail below.

First, zealous adherence to the principle of descent is the bed rock of Pukhtun social organisation. “[T]he entire tribe traces its descent from one common male ancestor. He is the apical ancestor” of the tribe concerned (Ahmed, 1977, p. 14). The Mohmands, for instance, trace their origin to Mohmand who is the founder or father of the Mohmand tribe and even beyond to one common putative ancestor of all the Pukhtuns. There are several Pukhtun tribes in FATA and their founders are again linked to one mythical progenitor of all the Pukhtun tribes, Qais bin Rasheed (Ahmed, 1976, p. 7; 1977, p. 14; Glatzer, 2001)⁷. Descent among the Pukhtuns is thus patrilineal or recognized only through the male blood line⁸.

Second, the composition of the tribes is segmentary in nature as “the entire body of society is made up of segments relating to each other” (Ahmed, 1977, p. 14). This also explains the proliferation of clans and sub clans across the landscape of FATA underneath the main tribal divisions. A fair idea of the segmentation process can be gathered from the classification of a typical Pukhtun tribe by the British into tiers such as the tribe, clan, division of the clan, subdivision of the division, section of the subdivision and other minor fractions of the section (Headquarters, 1910). Against this six tiered classification, Ahmed offers a relatively simple five tiered classification including the tribe, clan, sub-clan, section and finally, the subsection

⁶ See the discussion on Tribal models in Ahmed (1980b, p. 82). See also Barth (1959) for an elaborate discussion on the Pukhtun segmentary tribal structure.

⁷ Or Qais Abdur Rashid. Qais’s ancestry is traced to Afghana, the descendant of Saul, the first King of Jews. This also explains the name Afghan, a derivative from Afghana (Ahmed, 1980b, p. 128).

⁸ Although there may have been deviations from this accepted norm in the past such as for instance in the case of the Karlarnri branch of Pukhtuns who are believed to be descendants from an adopted son. This however is regarded as an exception and even a myth by many. The historical evidence in this regard is hardly conclusive and many versions exist. Ridgway (1910, p. 11) for instance believes that the genealogies were “concocted” 400 years ago. See generally Caroe (1958, pp. 3-24) for a detail discussion on the subject of Pukhtun genealogies.

comprising of small villages or *kandi*⁹ (1977, p. 16; 1980b, p. 130). This last tier is where the living members actually reside. It comprises of individual households designated by the names of the living patriarchs of the families. Tracing backwards, the categories link up as each junior category merges with its senior category till all finally merge at the level of the apic ancestor of the tribe, and going further beyond, the links lead to the common progenitor of all the Pukhtun tribes¹⁰. According to Ahmed's classification, for practical purposes, the operative segment remains the subsection of the tribe (1980b, pp. 3,130). As a feature of singular importance, generally each subsection of a tribe spatially exists within defined territorial limits. For the sake of consistency, Ahmed's classification will be followed in this thesis.

Third, the Pukhtun society is acephalous¹¹ in nature or lacks a central leadership. "The [P]athan tribes are independent without any central authority and within the tribes even every household is independent" (Holdich, 1899b)¹².

The three characteristics are interrelated and reinforce each other. Descent from a common ancestor has been the source of a strong sense of equality and egalitarian tendency in Pukhtuns (Glatzer, 2001). In an ecology beset with resource scarcity, this has traditionally fuelled rivalry and competition with its strongest manifestations amongst the close agnatic collaterals or paternal first cousins in the same generation (Barth, 1959; Ahmed, 1980b; Lindholm, 1981). The division and subdivision of the tribes into smaller segments successively, roughly every three to four generations, has been an inevitable consequence of this rivalry. The acephalous nature of the society is so strong that every household is important and its head a "petty chief" and no collective tribal action is possible without his consent" (Ahmed, 1977, p. 16). The mechanism for taking his consent is the *jirga* which is examined in detail in the second section. Suffice to say here that there is no common leader

⁹ A subsection may be composed of several small villages or hamlets (singular *kandae*; plural *Kandi*) comprising of households (single household *kor*; plural *Koroona*). See Ahmed (1980b, p. 130).

¹⁰ "Their genealogical lines resemble the branches of a tree that lead to the main trunk" (Ahmed, 1977, p. 14). The belief that all Pukhtuns have a common ancestor (real or mythical) creates an enduring social structure. According to Sir George MacMunan, "Mohsud links up with Wazir; Wazir with Zaimukht; Zaimukht with Orakzai; Orakzai with Afridi; Afridi with Mohmand; Mohmand with the tribes of Bajaur; Bajaur with Dir; Dir with Swat; Swat with Buner; Buner with the Indus valley; and the Indus valley with the Black mountain" (Pazhwak, 1954 cited in Mohabat, 1979, pp.22,23). It is pertinent to note here however that the genealogical linkages do not presuppose strategic alliances essentially in the same sequence due to the divisive dynamics of lineage politics within the tribal segments. See Ahmed (1976, 1977, 1980b; 1982 ; 1991).

¹¹ See F.N. 22, Chapter 1.

¹² See also Holdich (1898, 1899a).

as in the case of the Baluch tribes in the south of FATA and even though there are *maliks*, the sphere of influence of a *malik* has seldom transcended beyond his particular subsection (Holdich, 1899b; Ahmed, 1991, p. 23)¹³. An official imperial account captures the essence of the tribal society in the following words:

The people are by instinct intensely democratic, and any man may rise by courage and wisdom to the position of malik or leader; but these maliks have often little influence and no real authority, and many who have attempted an untoward assumption of it have been assassinated (*Imperial Gazetteer of India: North-West Frontier Province, 2002*).

The predominance of the three characteristics—unilineal descent; segmentary tribal structure; acephalous nature of society—over the Pukhtun landscape could easily mislead one to imagine chaos and anarchy in the society and indeed some of the early British accounts of the Pukhtuns do convey such an impression. But the outcome has been to the contrary as the tribes have been able to successfully perpetuate their existence through centuries of self-governance. Cooperation in what could otherwise be a fractious society is due to *Pukhtunwali*, and within its ambit, allegiance to a functional criterion for allocating entitlements amongst the members on the basis of tribal genealogy or pedigree. The tribal pedigree functions as a charter of rights known as *nikkat*¹⁴, a term derived from the word *nikkae* which is the general *Pukhto* appellation for grandfather or ancestor (Ahmed, 1991, pp. 17-18). *Nikkat* stands for heredity or, more closely, “*hereditaments*”, as Caroe (1958) puts it, bequeathed by the paternal ancestors and it has come to imply:

[T]he whole body of what Howell¹⁵ calls the immutable or slowly changing law which fixes the share of each clan and sub-section, even of each family, in all tribal loss and gain. By this system known also as the tribal *sarrishta* benefits would be distributed and liabilities apportioned (Caroe, 1958, p. 402).

In other words, “[t]he system whereby profits and loss are determined in relation to the genealogical charter is called *nikkat*” (Ahmed, 1991, p. 18). *Pukhtunwali* and the tribal pedigree are interconnected and ratify each other (Ahmed, 1980b, p. 95). Together the two

¹³ This is quite evident from the proliferation of *maliks* pointed out by Ahmed (1991). See F.N. 18, Chapter 1.

¹⁴ Also known as tribal *sarishta* (Caroe, 1958, p. 402). The terms *nikkat* and tribal charter are used interchangeably in this thesis.

¹⁵ A reference to Sir Evelyn Howell’s description of *nikkat* in his (now published) monograph on government relations with the Mahsud tribe entitled “*Mizh*”.

make up for the essence of the Pukhtun social organisation in every operative segment or subsection of the tribe and help provide a commonly acknowledged basis for cooperation.

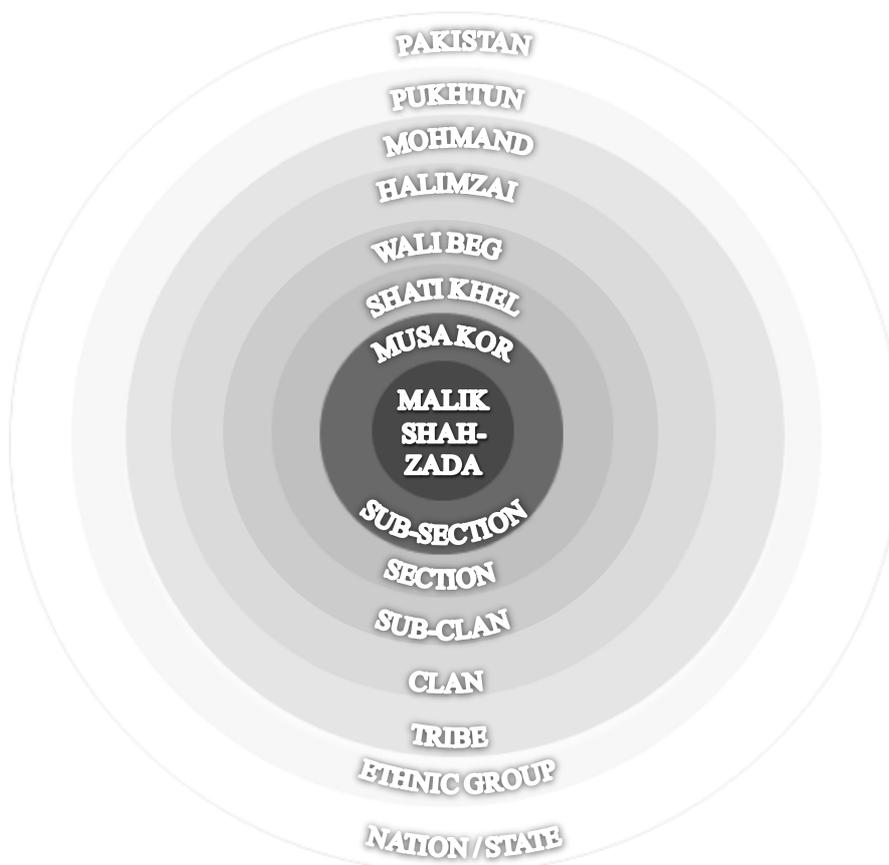
A man possesses *droit de cite* in virtue of occupying a given niche in the social structure and membership of a tribe is a consequence of this place in the lineage. A place on the charter [tribal pedigree] confers legitimacy while creating *barriers* between Pukhtun and non-Pukhtun; *as it includes, it excludes* (Ahmed, 1980b, p. 86 ; emphasis added).

Barring cases of special nature described later (Section 5.1.1.2), the exclusion of the non Pukhtuns from ownership is the universal principle. They do not enjoy the right to ownership in a particular area as they do not figure on the tribal charter or *nikkat* of that area (Barth, 1959). Even in the case of a Pukhtun, the right to property is not universal within FATA as the tribal charter is relevant to the subsection of the tribe of which he is a member. Outside the domain of his particular subsection the status of his rights suffers a change to a subordinate or a *hamsaya* (vassal) status under the tutelage of a host patron. Cases exist within FATA where under the dictates of pressing circumstances, an entire tribe has become *hamsaya* with another (willing) tribe. This will become clear during the course of discussion. The point to stress here is that independence has to be forgone and a subordinate position with limited rights has to be accepted. However, a *hamsaya* *should* not be construed as a slave. His relationship with his patron is not akin to a master-slave relationship as his freedom to opt out of the arrangement is not obstructed. He can leave at will (Ahmed, 1977, 1980b)¹⁶. The genealogical and the ecological boundaries are thus functionally coterminous in so far as rights are concerned. And, this explains the existence of the lineage segments within defined geographical boundaries—a marked feature of the tribal settlements in FATA (Ahmed, 1977, 1980b; Siddiqi, 1987; Beattie, 2002)¹⁷. As apparent from the diagram adopted from (Ahmed, 1977), each junior level is nested within the next senior level. The order of the circles, from the outermost to the innermost, is indicative of the senior and junior levels and determines the order in which rights and duties are devolved to each level from its immediate senior level.

¹⁶ Chapter 6 in Ahmed (1980b) offers a thorough discussion on the subject.

¹⁷ For an exhaustive discussion around the subject see Chapters 5 and 8 in Ahmed (1980b). Also see Glatzer (2001) who ascribes the pattern to all the eastern Pukhtun tribes of Afghanistan.

Figure 5-1: The Pukhtun Universe



Source: (Ahmed, 1977, p. 16)

The functional utility of the tribal pedigree as a charter of rights not only forms the basis of self-governance in Pukhtuns, it is also accepted by the state and is relied upon as an essential framework for ordering the state-tribe relationship. This has further cemented and perpetuated its role in the tribal society. All types of benefits and losses (in case of fines) accruing from the state are apportioned between and within the tribes through the system of *nikkat*. The extensive scope of *nikkat* in the intra and inter-tribal as well as tribe-state relationships is manifest. In practical terms, the operation of *nikkat* is from the collective to the individual member as the shares are divided amongst the tribes and again divided and subdivided through intricate mathematics within the tribes as these are passed on from one tribal segment to another and finally to the living members in each subsection (Ahmed, 1991, p. 18) in the sequence shown in the above figure.

Due to the patent social, political and economic relevance of genealogies, there is a high level of genealogical consciousness amongst Pukhtuns as compared to the agricultural peasant communities. “‘Generation recall’ is important to tribal society and contrasts with agricultural

peasant societies where village and caste boundaries are more important than lineage” (Ahmed, 1980b, p. 133)¹⁸. The ease with which Pukhtuns trace their link to their apical ancestor is remarkable for it is the former’s unique position on the tribal pedigree that determines his social status within the community and enables him to order his relations with others—kinfolk and the non-kinfolk alike (Ahmed 1977, p. 14; 1980b, pp. 84-87; 1991, p. 21). “Great importance is attached to the preservation of their genealogical traditions, which are handed down from father to son with the greatest care, as the basis of all their rights and possessions” (James, 1868, pp. 61-62). The chances of error are eliminated for valid reasons. As ensured by the ongoing process of segmentation, the size of the community is invariably within such limits where every member knows every other member. The claims are therefore always open to verification by the rival claimants within an operating segment of a tribe or a subsection. An essential parameter of effective governance of CPRs pointed out by Ostrom is therefore intrinsic to the Pukhtun social organisation in FATA (Ostrom, 1990, p. 90).

The principle of equality is the bedrock of *nikkat* but practically the principle of equality is limited to the subsection of the tribe. In reality differences between the tribes, and within the tribes between the different segments, exist principally due to natural asymmetries in their numerical strength and thus power. Both, the process of segmentation, which is on-going, as well as varying degree of success in the inexorable quest for better land and resources, account for such differences. However, individual inequalities, and consequently social stratification along class lines, are still precluded due to the principle of equality observed amongst the living members within a particular segment of the tribe. Acknowledgment comes even from the otherwise unsparingly critical early British accounts:

Pathan tribes, however barbarous, seem generally to divide new acquisitions *on some established equitable principle*, e.g., ancestral shares or number of families or mouths in each khel. The tracts seized by Waziri clans from forty to a hundred years ago were all so divided and the Haramta’la estate granted the *thieving* Dhanna and Wurga’ro Bittanis in 1866 has been divided by them amongst themselves according to ancestral shares (Punjab, 1989, pp. 29-30; emphasis added)¹⁹.

¹⁸ Relying on Mayer (1970), Ahmed notes that the greatest case of generation recall is only up to a maximum of four generations in agricultural peasant societies and therefore ancestral memory has little social and political significance. This is in contrast with FATA where generation recall going back to seven or eight generations is common. Also see Fosberry (1869, pp. 183-184).

¹⁹ In 1865-66, a large tract of land was given to the Bhattani clans, Dhanna and Wargara, on the condition that they bring it under cultivation and secure the passes leading through their country to the British territory (Yunas & Taizai, 2006, p. 194).

With regards to the settlement of shares between and within the tribes, as revealed by the history of the region, such matters have been extremely contentious affairs usually involving violent and long drawn conflicts. Yet as becomes clear in the discussion below, being inevitable due to the nature of Pukhtun social organisation, changes have been effected whenever the scales tipped in someone's favour either through outright victory on the battlefield or settlements negotiated under intimidation by the sheer numerical strength of rivals, or their overwhelming geopolitical strategies. Irrespective of the means, judging by the ultimate outcomes, such matters have apparently been handled well by the tribes themselves as order seems to have returned after every major cycle of conflict. This attests the existence of a pragmatic tradition, one of coming to terms with rivals. Chapter 6 discusses the subject in relation to the emerging mineral resources in FATA in recent times. It cannot be denied however that change in the system is generally quite contentious. The apparently contradictory terms, “immutable or slowly changing law”, in the quote from Caroe (1958) reproduced above allude to the costly nature of the enterprise should someone try to deviate from the established pattern of the *nikkat* system.

5.1.1.1. Conflict and Cooperation through Time and Space

It is unknown exactly when the Pukhtun tribes emerged on the land they currently occupy. Generic references to Pukhtuns as people of the “Roh” meaning mountains or “Afghans” are all that one can find in early accounts dating back to the early 11th century. The darkness prevails during the entire middle ages as details hardly measure up to the role they played in India, far beyond their territory, supplying it with soldiers and even Kings. The mystery is more confounding regarding the hill tribes as details are too sketchy (James, 1868, p. 17; Caroe, 1958, p. 118)²⁰. It was not till the British arrival on the scene that information regarding these tribes and their land gradually started emerging in some detail. It is from these accounts that one can gather an impression that the tribal settlements up to the early British period in the 19th century were in a state of flux. Inter as well as intra-tribal struggle

²⁰ Caroe (1958) notes with surprise that even the Arab chroniclers who travelled the country during muslim conquests also failed to record details of these people. Holdich (1899b) points that the “[Pukhtun] inhabitants of these western gates of India” are acknowledged by Herodotus and by the Historians of Alexander. The country was called “Roh” in the medieval times and the inhabitants “Rohillas” but he makes a crucial distinction between the Pukhtun tribes by dividing them into two group, those of Afghan origin and those of Indian origin. His account suggests that the tribes of Indian origin (Afridis, Orakzais, Waziris) were present in the mountains much before the tribes of Afghan origin came through. Over the centuries cultural assimilation took place as all the tribes now speak a common language and have a common code. It is due to such diverse views, owing to the lack of authentic historical evidence, that the origin of Pukhtuns is regarded as having a mythical nature. See also Holdich (1898).

for survival in their resource scarce habitat propelled the drive of the tribes towards the east of their ancestral grounds in and around Ghor in Afghanistan. The process of segmentation within the tribes, which created new entities, and thus new rivals, added additional pressure fuelling the eastward drive further.

A glimpse of the tussle for resources, agricultural land, grazing grounds and water etc., can be gleaned from the accounts in the District Gazetteers and Settlement Reports prepared by the British administrators of the North-West frontier in the 19th and early 20th centuries. The Khattaks for instance were settled in Shawal (North Waziristan Agency) at the close of the 13th century, an area now occupied by the Wazir tribe. Sections of the tribe had to gradually move out towards the territory of Kohat District and beyond as they found it harder to sustain their growing population. The sections remaining behind could not hold on to their settlements due to the diminishing power of the tribe in the area and were driven out by their erstwhile allies, the Shitak tribe. The process of their elimination from the area was complete by the end of 14th century (Punjab, 2003, p. 35). The cycle of elimination was repeated as yet another tribal configuration got stronger and emerged on the scene in the next century or two. These were the Wazirs of the Darwesh Khel clan. They expanded their settlements, wresting control of the former Khattak lands and driving out the rival tribes. Their expansion was finally halted when they met the British on the borders of the Bannu District towards the latter half of the 19th century (Punjab, 1989, p. 29).

Northwards of the Wazir—Khattak conflict arena and roughly around the beginning of the 15th century, the Bangash tribe, then settled in the Kurram valley, gradually started moving down into the plains of Kohat and together with the Khattaks pushed another tribe, the Orakzais, into the hills from their territory around the city of Kohat. As the Bangash tribe settled in the lower valleys, the Turis took possession of the lands they once occupied in the Kurram valley by dominating sections of the Bangash tribe that had remained there (Punjab, 2003, pp. 31-32). A similar story in the north, culminating in the settlement of the Yusufzai Pukhtuns in the valley of Peshawar and Swat and its allied tribes in the surrounding hills in the later 14th and early 15th centuries, is well known (Holdich, 1899b). It is hence skipped for the sake of brevity as are other numerous accounts of intra-tribal or sectional disputes. Suffice to say here that the tribal genealogical trees convey a fair idea of the magnitude of the

tribal march over time and space as one can presently find the otherwise kindred tribes living hundreds of miles apart²¹.

In this intensely competitive environment there could be no ambiguity about options or choices in order to survive. The territory held had to be defended against the ever prying aggressors, or otherwise in case of failure to match up to the challenge, abandoned in search of new grounds. This would normally entail either aggression in turn on a weaker tribe or, if not lucky enough to find one close by, in seeking refuge with a willing tribe in a subordinate status as its *hamsaya* (vassal). Examples of the latter type are not an exception in the hill tribes.

The zealous watch on the territories and restriction on land alienation to outsiders even today is better appreciated in this backdrop. As previously mentioned, order seems to have returned in the periods between the sequence of conflicts. Coming to terms with the victorious rival, whether from another tribe or a competing internal division (clan, section or subsection), has been common. In areas where this meant the sharing of resources and redistribution of rights in resources such as pastures, water for irrigation, forests etc., ample historical evidence exists to suggest that this was done through indigenous settlements between the contending parties. Bargains have been made and differences in strengths of the opponents or contribution by the allies in the conflict have usually been acknowledged in the end by adjusting the spoils or profits and even losses accordingly. The numerical strength of the male fighting population appears to be the primary criteria for *nikkat* (Ahmed, 1991, p. 17), being a prerequisite of power and influence. Factors such as financial contributions to fund the war effort, leverage due to the strategic location of a tribe and even physical losses borne such as the number of dead from a particular tribe or its segment, are also important and could be treated with due regard while making inter and intra-tribal settlements (Interviews E).

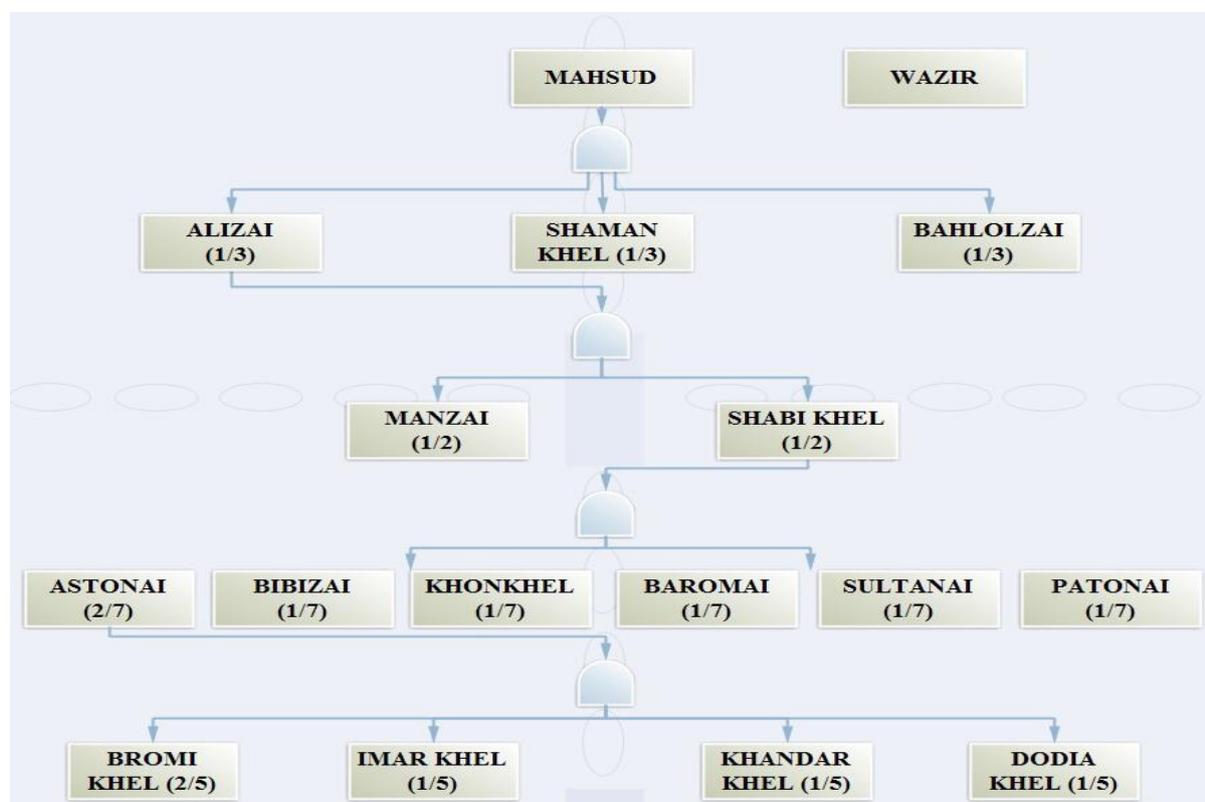
Since outright winners in this difficult terrain were usually far and between, interdependence seems to have profited generally. Homage to the norm of interdependence is glaringly apparent from the division of revenue collected from the tolls levied by the tribes on trade through their territories before the arrival of the British. The strategic location of some tribes put them in control of trade routes through the several mountain passes they guarded. But as no single tribe held sway over the entire length of the trade route, the need for arriving at

²¹ See Caroe (1958) for genealogical trees wherein the present settlement locations have been given.

appropriate terms of sharing the benefits with others was a must. Although the exact quantum of incomes derived by the tribes from the tolls is not known with certainty, the schedules of tolls indicate a variety of trade traffic passing through the tribal territory. A sizeable income hence cannot be ruled out, especially in case of the most frequented routes in the Khyber, Mohmand and Kurram Agencies. The practice of levying tolls was eventually substituted by the British through sectional allowances to the tribes known as *mowajib* (Caroe, 1958, p. 349). The fact that the matters pertaining to management and apportionment of shares were resolved by the tribes themselves without the assistance of any outside agency is an important indication of their indigenous self-governance ability (James, 1868, pp. 84-92; Merk, 1984) .

The pattern of profit and loss shares between and within the tribal segments is hence an outcome of variations in their respective fortunes over time which eventually becomes part and parcel of inheritance of the future generations. This is the reason why the system has survived till this day. A look at the *nikkat* chart serves as a rough indicator of the relative strength and importance of the tribes in an Agency (or FR), and the different segments within any particular tribe.

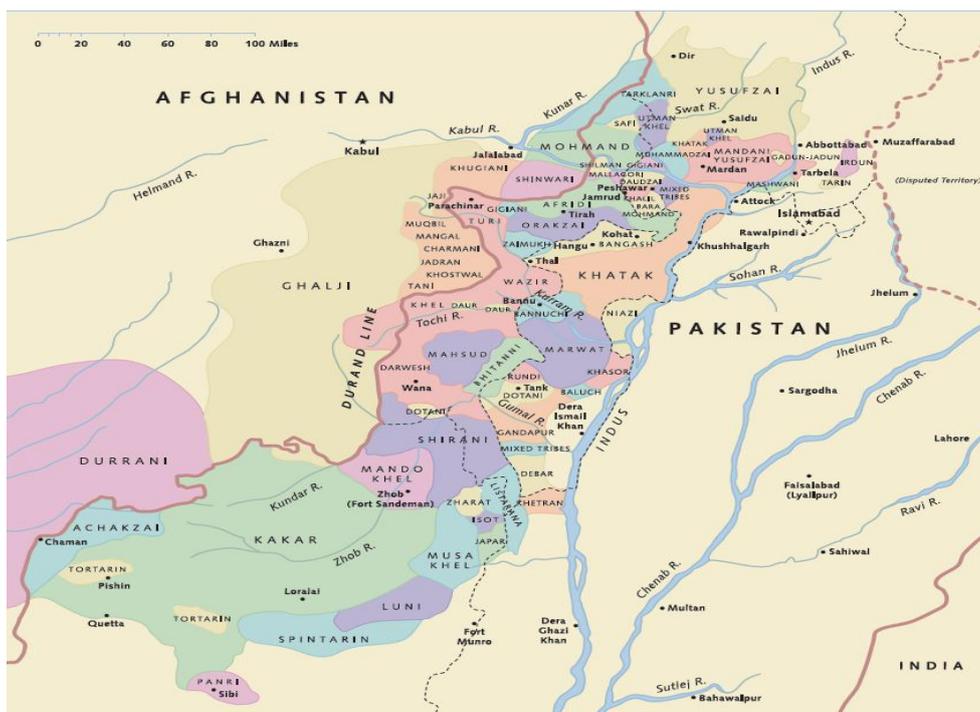
Figure 5-2: Nikkat Chart* of Shabi Khel Mahsuds in SWA



Source: created from information in (Mohmand, 2003) and (*Report on Waziristan and its Tribes*, 2005)
 *Respective shares indicated within brackets.

As apparent from the *nikkat* chart of the Shabi Khel sub-clan of the Mahsud tribe above, the process of the division of shares within a tribe may start, although not necessarily in every case, with an equal division at the initial tier or the clan level indicating relative equality in strengths of the respective segments at some remote point in history. Gradually however, inequalities start emerging in the lower tiers as manifest from unequal share distribution ratios at each level, right up to the level of the subsection where the living members exist. Share distribution amongst the living members within a particular subsection may again revert to equality in most cases. This may be so as there is greater likelihood of similarity in strengths across the internal subdivisions (*kandi*) of a subsection. Therefore for all practical purposes, the social and spatial limits of the subsection define the nature and extent of the arena where the real action lies. Distinct sectional boundaries are a physical manifestation of this reality and this leaves no room for ambiguities of the kind of open access in FATA. The status of property rights suffers a change when the sectional boundaries are crossed and an individual moves from his native section to another for any reason. The relevant operative features of *Pukhtunwali* or *riwaj* in this respect may vary in detail from tribe to tribe (or even within a tribe) but on the whole there is a considerable common ground. The section below elaborates upon the basic features.

Figure 5-3: Map - Tribal Boundaries of Pukhtun Tribes



Source: (Nawaz, 2009)

5.1.1.2. The Principles Governing Access and Exclusion

Private as well as common ownership forms coexist in FATA and both the categories can be found within a subsection. Parcels of land that are demarcated are assigned to individuals as private property whereas land that is not demarcated as such is held as common property. The latter is referred to as *shamilat*. *Shamilat* lands can be appropriated to cater for the demands of an expanding population but only with the consent of the community²². The extent of lands in collective and individual ownership depends on the size of the community and varies accordingly but it is probable that at least initially, a standard procedure of dividing the land into equal proportions for the two categories was adopted on lines similar to Pukhtun tribes elsewhere. According to the standard practice, usually about half of the land would be set apart as common grazing ground for the entire tribe and the other half would be divided amongst the constituent subgroups or tribal segments. Each subgroup in turn would repeat the process of making two categories from the respective portion of land assigned to it (Spain, 1963, p. 81; 1972, pp. 74-75).

With regards to the principle of equality, a custom popular with the Pukhtun tribes till the early 20th century needs mention here, although its prevalence amongst the *nang* tribes was restricted to a select few locations for patent ecological reasons. As no two land parcels could be alike in all their attributes, a practice of rotation of tenures amongst individual owners known as *wesh*, was introduced amongst the Yusufzai tribe by a sixteenth century saint²³ to compensate for possible inequalities between the shares of individuals at any location. The practice was followed quite religiously by the Yusufzais, the largest and the most powerful of the Pukhtun tribes of the time, which occupied fertile lands in the Peshawar valley and its surroundings including the Swat valley in the north²⁴. However, *wesh* could not emerge on the FATA landscape as a predominant system because productive land was scarce (Ahmed, 1976). There is some evidence that it was practiced in some fertile parts of FATA. Previous discussion has already highlighted that such locations are exceptions within the largely scarce ecology of the region. It is generally believed that *wesh* was mostly abandoned by the mid-19th century and completely wiped out from the last few places where it was still

²² *Shamilat* holding of a community also allows necessary space for accommodating the newly emerging segments within the tribe.

²³ Shiekh Mali. See Ahmed (1976); Nichols (2001).

²⁴ Yusufzai is still the principal tribe in these areas and has now been almost completely encapsulated within the larger state system.

in vogue, by the early 20th century as a result of colonial encounter. The traditional system was indeed an anathema to the British revenue administrators (Spain, 1963, p. 84)²⁵. The importance accorded to the principle of equality in the traditional Pukhtun society is visible nonetheless. A very complex system, given that entire communities were required to move by switching places after every five, ten or fifteen years in accordance with agreed tenure schedules (Spain, 1963, p. 84; 1972, p. 75; 1995, p. 45; Nichols, 2001, pp. 18-21), was willingly perpetuated for nearly 300 years to prevent social inequalities or class divisions from emerging.

An individual's share in land is known as *brakha* or *barkha*²⁶. Just as in the case of *brakhas* allocated to individuals as private property, *brakhas* in *shamilat*, though not demarcated as such, are the legitimate right of those who figure on the *nikkat* charter of that particular area. The *brakhas* in *shamilat* are transferred to the heirs of a *brakha* holder in the same manner as his private property. The size of a *brakha* at any point in time can be worked out by dividing the area of the *shamilat* by the number of original *brakha* holders (the number of eligible members at the time of original demarcation) and taking into account the fragmentation of the original shares through the intervening generations since the original demarcation (Interviews E). The use of *shamilat* is regulated for the collective use of the community and access of the outsiders is strictly checked (Bangash, 1996, p. 73; Interviews E). Further, use by community members is also regulated through the relevant provisions of the *riwaj*. Since the nature of the community is homogenous within a particular subsection and its size is almost invariably small and contained within certain defined boundaries owing to the segmentary nature of the tribal social structure, regulation is quite effective as every member knows every other member. The social network is dense (North, 1991), therefore everyone is in a position to monitor use and report any abuse to the elders (or *maliks*) of the community for necessary penal action by a *jirga*. Access is controlled in this manner, thus the much lamented

²⁵ There is no evidence that *wesh* was ever in practice amongst the Waziris. However, the system seems to have been popular in parts of Mohmand, Bajaur and Kurram Agencies where land was fertile. See (Spain, 1963, 1995). Nichols (2001, pp. 20-21) argues that *wesh* came into existence to keep equity in the use of land as nomadic life style slowly gave way to sedentary agricultural communities in the vast conquered lands. This explains why the system did not prevail generally in the low production areas occupied by the hill tribes. There is some evidence that the decline of the system had begun well before the British took control of the North-West Frontier. By the mid 19th century, it was not a generally prevailing system and its practice was limited to a few communities only. See Thorburn (1999) and District Gazetteers (Punjab, 1989; Punjab, 2002, 2003) .

²⁶ *Brakha* or *Barkha* is the Pukhto appellation for a share but some authors such as Spain (1963, 1972) also refer to it as *bakhra* .

possibility of spoilage of resources due to open access (eg., Hardin, 1968) is simply out of the question in the context of FATA (Interviews E).

The status quo is perpetuated by strict adherence to the *riwaj* in cases of alienation of land. I will first deal with the rules of inheritance before discussing the rules pertaining to alienation of land or access to resources in other cases. *Riwaj* bestows the right of inheritance on males only. Daughters and wives are not eligible to inherit a share in the property of their fathers or husbands. In case there is no male offspring to inherit, the brothers of the deceased and their children are regarded as next of kin for the purpose of inheritance. The property is to be divided equally amongst them (Interviews E). A widow and a daughter are left without any means of sustenance although it seldom happens that they are not looked after. *Riwaj* devolves their responsibility on the inheriting members of the family; brothers of the deceased if alive or otherwise their children; and social pressure ensures that this responsibility is discharged (Interviews E 14, E 19). However, this does not compensate for the injustice. *Riwaj* on this count conflicts with the express provisions of the *shariah* which provides for inheritance by female successors.

Brothers enjoy equal shares in the property of their father. However, the eldest may at times be allowed a slightly higher share or *masharana* (from *mashar* literally elder) in recognition of his service and responsibility for the family. This is not to be regarded as primogeniture though as it is not a mandatory provision of the *riwaj* (Interviews E 14, E 19, C 3). Joint living is common. A father may divide his assets amongst his sons when they come of age—and marriage is usually taken as a prequalification in this regard—but this is not the general trend. A married son can opt for independent living but the general practice is living together with the other siblings whilst the father is alive. Family divisions at this level are generally regarded as a mark of disrespect to the father and are avoided for reasons of social ostracism (Interviews E). Respect for the father's authority is also mandated by Islam so the sanction behind the practice is substantially augmented.

A pertinent point here is that unless a married son has opted out of the family, the profits and losses are mutual. Even if he has started a business on his own initiative, the brothers will have a share in his profits irrespective of whether their services are utilized or not (Interviews E). The costs and benefits are not hard to surmise. The possibility of free riding the talent and hard work of one brother by others cannot be denied but at the same time independent living also has its demerits or costs. Reliance on kin is essential for security in this society and joint

living helps mitigate the hazards of survival by sharing the inevitable costs of security. This apparently offsets the costs of free riding within a family. “You could be devoured by enemies if left alone”, said one respondent (Interview E 7). “It’s better to avail of all hands in the family as you have to live with them and share your profits with them in any case”, stated another (Interview E 3), and the theme recurred with similar overtones throughout in the other interviews. This explains the incentive to engage all the available hands in a family for business, at least till the formal division amongst the brothers is effected. A sizeable proportion of business units across FATA are a practical manifestation in this regard and could indeed be construed as ‘family corporations’.

Alienation of land through sale is not common in FATA, and if any, such transactions are mostly limited to the particular community (*kandae*) within a subsection (the operative segment) of the tribe. The first right of purchase belongs to the nearest of the kin i.e., the brothers, followed by the first cousins, the second cousins and then the distant kin in the subsection (Interviews E). In theory, the right of purchase passes from one party to the other with its consent only and can be blocked or held hostage by a party higher in that order. A cousin for instance, cannot purchase land if the nearest of the kin i.e., a brother of the seller is not willing to waive off his right. In practice, the buck usually stops on the nearest of the kin i.e., the brothers, it may make it to the first cousins but rarely crosses over to the second cousins or beyond (Interviews E 6, C 1, C 3, N 15).

A fellow kinsmen is construed an outsider to the family concerned and a sale transaction can be blocked by the nearest of the kin on grounds of breach of privacy ‘*be pardagee*’ of the household (essentially of the women folk) if an outsider is allowed to settle close by (Interview C 3). It is important to note that the definition of the ‘outsider’ is in the narrowest sense possible in such matters. Even if such a transaction does take place, it is not hard to imagine the ensuing hazards. The buyer would not be able to manage control of the land and is most likely to lose his case in a *jirga* which is bound to go by the *riwaj* and give high priority to the concerns of privacy by the nearest of the kin (Interviews E). It is hardly surprising therefore to find that land transfers outside the family and inter-tribal sales in particular—where the seller and purchaser belong to different tribes—are not a common feature across FATA. Consequently, a market for transactions in land does not exist in FATA. Respondents in this research confirmed that exceptions could be found mainly in the

major towns of Khar (Bajaur Agency) and Parachinar (Kurram Agency)²⁷. Therefore, the sectional boundaries between the tribal populations in these places may not be as discrete as elsewhere in FATA. It may be recalled from our discussion above that these localities pertain to the deviant cases of *qalang* societies within FATA.

The preponderance of the features described above perpetuates the homogenous character of communities within the respective operative segments across FATA. The principle of collective and territorial responsibility is also underpinned in consequence. This benefits the government also which relies on the latter as the linchpin of its tribal administration. However, in places like Parachinar and Khar, the relatively indiscreet nature of the sectional boundaries between the various tribal populations makes it difficult for the administration to operate this principle (Interviews E)²⁸.

The predominantly hereditary nature of property rights in FATA has resulted in an exclusionary or particularistic regime of property rights. The system does not devolve property rights on those who do not enjoy a genealogical niche at par with those who do at a particular location. It was stated above that the status of a Pukhtun changes if he has to move out of his particular subsection to some other section within his tribe or another tribe. A patron-client relationship becomes the basis of his settlement at the new location (Ahmed, 1977; 1980b; Interviews E). Although excluded from *nikkat* of that particular segment, usufruct rights are usually extended by a patron to his client in such situations and may entail certain services by the client in return. It is a sort of quid pro quo, as according to the *riwaj* the patron not only stands responsible for all the acts of omission and commission of his protégé before his tribe but is also supposed to go to any length in protection of his client should a situation demand it (Ahmed, 1980a, p. VIII). A rather notorious extension of this arrangement is in the case of fugitives from law. Tribal lands have traditionally remained the refuge of criminals fleeing law enforcement agencies in the settled districts. The magnitude

²⁷ Some respondents alluded to instances of intra-tribal sales within the Afridis in Bara Khyber Agency but noted that this was on a very small scale.

²⁸ Respondents pointed out that lands of the erstwhile Nawab of Khar eventually passed on to his tenants when his fortunes fell. This in their view was a major reason for its relatively less homogenous population. Similarly, the fertile lands of Parachinar became the prime reason for tenant settlements there. Settlers from other sections of the tribe or different tribes can impact and disturb the *riwaj* of collective and territorial responsibility though. This explains why sale of land to “outsiders” is not preferred generally. It makes the job of the Political Administration difficult as well. Officials interviewed confirmed that it was relatively difficult for them to enforce the relevant clauses of the FCR in these towns as the territorial lines between the tribal communities were not as clear as elsewhere in FATA.

of the problem and the concern to tackle it is evident from the terms of the treaties concluded with the tribes during the British period (Yunas & Taizai, 2006). A more regular extension of the feature is in the case of artisans and traders. Certain trades such as barbers and musicians have traditionally been regarded below the dignity of Pukhtuns to engage in. Therefore non-Pukhtun barbers and musicians have been attached to the tribes to render these services to their Pukhtun clients (Ahmed, 1980b, p. 97). Significantly even non-Muslims, Hindus and Sikhs, have lived under the patron-client arrangement. The case of Hindus and Sikhs in Orakzai Agency is particularly well known (Ahmed, 1977; King, 1984)²⁹.

Although traditionally Pukhtuns have left the field open for the non-Pukhtuns in the realm of business (Ahmed, 1980b, p. 97), it no longer remains the dominant trait (Interviews C, E, N). The change in preference is apparently an outcome of increase in opportunity as a consequence of factors such as FATA's special status, progress in the means of communication, and cross border trade. Trade in consumer goods smuggled from across the border has become a principal attraction ever since Pakistan extended transit facilities to goods destined for Afghanistan. Moreover, the status of FATA as an independent territory and outside the ambit of Pakistani law also attracted venturesome non-tribal entrepreneurs to the region to avail the benefits of cheap, and even free, electricity, smuggled raw material, and freedom from taxation and extortion from regulatory departments in the settled areas (Interviews E).

Different shades of the patron-client relationship could be seen as instrumental in all such cases. Access to avail a business opportunity that has arisen within the geographical boundaries of a particular tribe is possible only under a partnership arrangement with a local resident (of the particular tribal segment) who provides land for the business and stands as a guarantor for the outsider party before his tribe. The responsibility is implicit in the partnership and is assumed to have been devolved on the local party even if there is no explicit acknowledgement of it in writing. Handling of local disputes relating to the business and resolving these through the *jirga* are regarded as prime responsibilities of the local partner. The terms of partnership regarding contributions from the partners and the allocation of benefits between them may vary from case to case but in so far as the contribution from the local partner is concerned, his responsibility as a guarantor is usually equated with

²⁹ Apart from these client groups, non-Pukhtun religious groups are also accorded an affiliated status. They do not figure on the *nikkat* but for their religious and spiritual role are deemed an essential appendage of the tribe concerned.

financial contribution (Interviews C, E, N). The nature of the property rights regime in FATA provides the local partner great leverage to manoeuvre disproportionate benefits as will become clear when we discuss the enforcement of property rights and dispute resolution in the next section.

5.2. The Enforcement Dimension of the Property Rights Regime

The delineation of property rights, i.e., the principles governing access, alienation and exclusion within the overall framework of *Pukhtunwali* described in the preceding section pertain to one aspect of the “external controls” available to the actors to facilitate the use of valuable resources (Eggertsson, 1996, p. 8). In this section, I deal with another aspect of the external controls i.e., the mechanisms by which the actors ensure enforcement of their rights to such resources. The latter is important as mere delineation of rights is meaningless without effective enforcement, or at least a reasonable degree thereof, to allow the actors to realise the useful potential of their rights. While in principle, even “the most lawless community is compelled to recognize the necessity for a sort of government; even the rudest form of customary law needs enforcing” (Davies, 1975, p. 51), yet in practice enforcement in informal settings is often an intricate and complex matter. In FATA in particular, an added complexity of enforcement is due to the peculiar nature of *Pukhtunwali* itself. The code allows for direct action by an individual to remedy a wrong yet paradoxically provides for, and apparently emphasizes, a regular dispute resolution procedure through *jirga*. *Jirga* and heeding to its voice are fundamental to the operation of *Pukhtunwali* (Spain, 1963, p. 63; Ahmed, 1980b, pp. 90,91; Spain, 1995, p. 42). Although it may appear as a ‘license to kill’ if viewed casually, and may be construed as source of disorder in the society, that is actually not the case. In what may appear yet another paradox, the provision for direct action in *Pukhtunwali* serves to underpin the *jirga* and its effectiveness. The discussion in this section strives to explicate the point besides describing the features of the standard dispute resolution process through the *jirga*.

Pukhtunwali is also abbreviated to Pukhto which is also the appellation for the language the Pukhtuns speak. Pukhto in the former sense represents the code and has a much broader connotation than being merely the pronoun representing the Pukhtun *lingua franca* (Ahmed, 1980b, p. 91; Hart, 1985, p. 13)³⁰. A Pukhtun should not only speak Pukhto but “do Pukhto” and this equates to maintaining the inviolability of his person, property and family. The

³⁰ See discussion on *Pukhtunwali* in Chapter 2.

dictate of the code is unsparing as it places the primary duty of safeguarding one's rights on the individual rather than the community. Measures in pursuit of the primary duty are seen as seen as “doing Pukhto” and legitimacy for these is provided by *Pukhtunwali* (Ahmed, 1980b; Mahdi, 1986; Sultan-i-Rome, n.d, p. 91). The tenet of *badal* and its reflection in the *riwaj* of *brampta* are noteworthy in this regard. The latter in particular pertains to recovery measures by way of taking hostages by an aggrieved party—usually moveable property and even human hostages—in order to bring pressure for restitution. *Brampta* has a nexus with the concept of collective responsibility—the notion that the tribe as a whole and every member of it is responsible for the misdeeds of any of its members. “It follows from this principle that an aggrieved party can enforce his remedy against any tribesman on whom he can lay his hands” but generally the closest to the alleged perpetrator of the crime are the best option. (Caroe, 1958, p. 350) However, practically seeing a *brampta* through to conclusion—recovery of the property in question or due compensation for it—requires substantial kinfolk support in addition to basic individual daring as the hostages taken have to be kept in captivity and the status quo defended against possible counter attempts by the foe (Interviews E). Variation in ability of the actors in this regard naturally exists even if the freedom to act is unlimited in FATA.

The involvement of kinfolk from both the sides is inevitable in the process due to the norm of collective responsibility³¹ and since variation in the relative strength and influence of tribes (or the subsections) is a practical reality, *brampta* may not be an easy feat for all to accomplish. Its probability is however not discounted by the parties, given the social legitimacy of the peculiar custom and potential risk of underestimating the rival's ability. Success in *brampta* is prestige enhancing as it is a testimony to one's ability to do Pukhto. In the case of a human hostage (or hostages), the victim and his kin may find themselves in a position where they have to seek supplication and negotiate settlement of the dispute from a position of weakness. The probability of settlement on unfavourable terms is thus heavy. Moreover, the ‘winner's’ credentials as a Pukhtun are reinforced *vis-à-vis* his foe. The gain of one party is at the expense of the other so the stakes are significantly high in the whole affair and this makes *brampta* a matter of the last resort.

³¹ It needs to be recalled that the tribal administration in FATA also relies on of *brampta* to compel a tribe to hand over persons wanted for crimes and pay fines to compensate for damages caused by any of its members. See Chapter 1.

While the looming threat of a possible *brampta* serves as a check against potential misdemeanours or strategic behaviour, it compels the parties, in case a dispute arises, to seek remedy through the standard dispute resolution procedure, or *jirga* as it is a less hazardous option. The gains and losses in consequence of a *jirga* decision are not equated with prestige of the parties unlike the case of *brampta*. In this case, accepting the *jirga* decision is seen in accordance with Pukhto (Interview E 14, N 5). Pertinent to note is that the option of *brampta* is only suspended and not foregone permanently. It may be reckoned as the proverbial ‘Sword of Damocles’ hanging over the heads of all concerned. Violence is always waiting in the wings should there be no choice left for an aggrieved party. The pressure on the parties to go for a *jirga*, and on the *jirga* to deliver, is evident. Moreover, even in the case of a *brampta* the final terms between the parties are usually settled by a *jirga*, though in that case one party is on weaker ground as explained above. A specific instance of *brampta* discussed in Chapter 7 will illustrate this point further. The interlinked nature of *brampta* and *jirga* are however clear from the discussion so far. The former acts as a sanction for the regular dispute resolution process through *jirga* and this explains the paradoxes pointed out earlier.

For the premium *Pukhtunwali* places on individual action, a tendency to misinterpret the state of order in the society by outside observers, especially of Western origin, is always inherent. Few have been able to avoid errors in judgment as descriptions of Pukhtun society bordering anarchy abound in literature on the region. Davies (1975, p. 49) for instance believes, “the tribes are perpetually at feud, tribe with tribe, clan with clan and family with family”. Swinson (1967, p. 20), Wilber (1962, p. 56) and (Miller, 1977, p. 100) also echo similar assessments. On the contrary, Singer (1982, p. 151) is of the opinion that an “anarchic society could never survive so long, outliving the empires that tried to crush it”. Ahmed (1980b, p. 87) also believes that perpetuation of the society over at least a period of 400 years is proof that the society is not chaotic, in contrast to its negative image. This could not have been possible in the absence of a reasonably functional dispute resolution system, and in general, a mechanism ensuring collective action wherever required. *Jirga* does all that. It has a vast ‘job description’ in that society and tackles matters at the individual level as well those concerning the community collectively. It can discharge its functions in legislative, judicial and executive spheres (Ahmed, 1980b; Qadir, 2007).

In a society where there is no written or formal law the importance of an assembly is crucial in ordering society and preventing it from collapsing into anarchy. The [*jirga*] regulates life through decisions ranging from the location of a mosque to the settling of conflict within subsections, to larger issues such as regulating foreign relations with other tribes and even conveying decisions of the tribe to government (Ahmed, 1980b, p. 90).

My fieldwork data supports the view of Ahmed. A reasonably strong perception of right and wrong, within the *Pukhtunwali* framework of course, exists in the society and the norms to right the wrongs are common knowledge. *Jirga* benefits from this perception or the ‘environment of *Pukhtunwali*’ and so does the society generally as crises are dissipated before they can threaten its very existence. However, having said that, within the overall environment of stability, the performance of *jirga* is a function of many factors and questions the ability of an actor in so many ways like *brampta*. It has its inherent costs. It may, under certain conditions, prove inordinately costly to a party that fails to economize on the likely costs by making the right ‘choices or moves’. The complexity of its processes may render such choices difficult hence an edge for those with greater personal factor endowments cannot be denied. The point will become clear as discussion proceeds and navigates the various features of *jirga*.

5.2.1. Normative Features of the Dispute Resolution System: The Troika of *Jirga*, PA and the FCR³²

The discussion so far underscored that *Pukhtunwali* is not complete sans *jirga* and the relationship is one that is mutually reinforcing. The effectiveness of the Pukhtun *jirga* depends in no small measure on the environment of *Pukhtunwali* or the freedom to act in accordance with the dictates of *Pukhtunwali*. The *nang* tribes enjoy an edge in this regard hence the dynamics of *jirga* in these tribes are quite different than the *qalang* tribes outside FATA. The *Pukhtunwali* environment in the latter case is only partial as the freedom to act in accordance with *Pukhtunwali* is constrained by the formal law which judges acts in pursuit of *Pukhtunwali* as crime. Take the case of *brampta* for instance. The fact that *brampta* is no longer an active Pukhtun tradition in these tribes is thus logical³³. The traditional informal dispute resolution systems in the non-Pukhtun communities are a case further apart. The non-Pukhtun equivalent of *jirga* in Afghanistan is called ‘*shura*’ and though culturally more

³² The Frontier Crimes Regulation 1901. See Chapter 1.

³³ See Chapter 1 and the discussion on *Pukhtunwali* in Chapter 2.

strongly linked with Pukhtuns (Wardak, n.d), a number of other ethnic groups in Pakistan such as the Baluch and several non-Pukhtun groups in the northwest also label their traditional dispute resolution systems as *jirga*. However, despite similarities in terms and even some procedural features, all these systems are analytically different from the Pukhtun case—in particular the *nang* tribes. This is due to the uniqueness of the *Pukhtunwali* environment in FATA³⁴.

The literal connotation of *jirga* is a gathering of people, but the number is not fixed and depends on circumstances of the case (Miller, 1977, p. 90; Ahmed, 1980b, p. 91). In matters concerning the tribe collectively, the entire tribe can participate but the tradition of appointing representatives by the parties concerned is more common, especially in disputes between individuals. An important aspect pointed out by almost all the respondents in this research was the right of the parties in a dispute to nominate members of the *jirga* in equal numbers in line with the principle of equality between the parties. A *jirga* member is known as *jargaez* (Ahmed, 1980b, p. 91), *jirgamar* (Smith, 2009), *marakachian* (Bangash, 1996; Wardak, n.d) or *munsif*, varying from area to area³⁵. Tradition restricts the membership to male Pukhtuns only and religious groups are excluded as only Pukhtuns with strong kin support are able to ensure that decisions of the *jirga* are respected. Influential *maliks* are normally the preferred choice (Ahmed, 1980b, pp. 7, 98,151; Spain, 1995, p. 42) but as revealed by my fieldwork data, this tradition appear to have been suspended lately due to the rise of Taliban. It somewhat confirms Spain's assessment that a certain degree of *nang* or *tureh*³⁶ can make a niche for a deviant behaviour (Spain, 1995, p. 42). A pertinent point in relation to *jirga* is the tradition of charging fees by its members for their services. The amount of the fee depends on the reputation and influence of a member as well as the nature of the case. As elsewhere in traditional societies, the *grundnorm* of *jirga* is conciliation between the parties. Decisions are therefore required to be made with consensus (Abraham & Plateau, 2004, pp. 217-218).

³⁴ In the Punjab for instance, the term *Punchayat* is used for the community based informal dispute resolution system. It may be noted though that the procedures involved in the traditional dispute resolution systems in non-Pukhtun communities may be entirely different from the Pukhtun *jirga*. The differences are seldom appreciated however, in critiques on the traditional institutions. See for instance, Salim (2008).

³⁵ The term *munsif* was used by respondents in South Waziristan Agency (SWA). Writing in the context of the eastern Pukhtuns in Afghanistan, Wardak (n.d) makes a subtle distinction between *jirga* and *maraka* and explains that the latter, being less formal than *jirga*, is reserved for ordinary day to day affairs. *Jirga*, according to him, has more elaborate rules and is reserved for serious issues. He nevertheless points out that the terms are generally used interchangeably and this perhaps explains why none of the respondents in this research pointed out a difference between *jirga* and *maraka*.

³⁶ Literally bravery. See discussion on *Pukhtunwali* in Chapter 2.

A *jirga* is not a permanently functioning body like courts and its members do not enjoy a fixed term. It is formed to address a particular issue as and when it arises and depending on the scope of the issue and the nature of the call for its constitution, a threefold typology of *jirgas* was offered by the respondents in this research, confirming the classification contained in the existing literature (Bangash, 1996). A *jirga* at the instance of the PA is branded as a *sarkari jirga*. *Sarkari* literally means official. The prefix is an indication of the involvement of the PA in the formation and oversight of *jirga* proceedings and its decisions. The other types are the *quami* or *ulusi* and *sakhsi jirgas*. *Quam* and *ulus* literally mean the tribe and the people respectively and hence a *jirga* at the level of the tribe as a whole is branded as *quami* whereas a *jirga* at the level of a certain village is known as *ulusi* (Bangash, 1996, p. 294). Interchangeable usage is however common and *jirgas* at the level of a subsection are also referred to as *quami jirga*. Generally, such *jirgas* at the level of a subsection are more frequent than at the level of the tribe as a whole. *Shakhsi* means personal or pertaining to private individuals and thus the third type of *jirgas* are those involving disputes between individual parties. By far this is the most common form of *jirga* in FATA.

In conformity with Pukhtun egalitarianism, the disputants enjoy the right to appoint members of the *jirga* in equal proportion. This right is forgone in the case of a *sarkari jirga* where the PA has the authority to appoint the members of the *jirga*. However, usually a choice is offered to the disputants by allowing them to select their nominees from a list of ‘official’ *maliks* drawn by the PA³⁷. Additionally, the right of the parties to object on the inclusion of a particular *malik* in the *jirga* panel against whom they may have reservations is also normally allowed. The principle of parity between the parties is also maintained as they are asked to nominate members on their behalf in equal proportion but the PA reserves the right to nominate additional members. This is vehemently justified as an essential safeguard to ensure that the process remains fair and free of influence (Interviews E). According to the standard practice, the PA receives the verdict of a *jirga*, and stamps it if it is not in deviation from the *riwaj*. In case he feels that the *riwaj* has been miscarried, he sends the issue back to the *jirga* for reconsideration. The primary role is that of an overseer but practically the cases of such fundamental errors by the *jirga* are not very common (Interviews E). Two appellate forums are provided for challenging decisions of the *sarkari jirga*: first at the Commissioner’s office and subsequently, the FCR Tribunal (Siddiqui, 2011).

³⁷ These *maliks* are officially acknowledged for their influence on their kinfolk and receive *maliki* allowance from the government.

Bangash (1996, p. 290) regards the three most important components in the justice system of FATA as the role of the PA, the FCR and the *jirga* itself. However, unlike the cases widespread in the developing world, despite the role of the PA and the FCR, the justice system in FATA cannot be termed as poly normative and on a par with the cases elsewhere in light of the following aspects (see discussion in Chapters 1 and 2).

Sarkari jirgas do not provide for a departure from *Pukhtunwali* in the manner the courts do in the Pukhtun communities outside FATA. The FCR is not in conflict with *Pukhtunwali* as such but on the contrary is based on it and recognizes its tenets. It acknowledges *jirga* as the ultimate dispute resolution mechanism and does not provide an alternate forum in the shape of formal courts. Decisions in all types of *jirgas* are made with consensus of the parties as in other lineage based societies (Abraham & Plateau, 2004, pp. 217-218). Second, the direct jurisdiction of the PA is limited only to the administered areas (also referred to as protected territories) comprising roads, government offices and installations. In areas that are not administered (also referred to as the tribal territories), the cognizance of civil and criminal crimes is entirely left to the tribes themselves (Tanguay-Renaud, 2002; Ahmed, 2011; Siddiqui, 2011). But most importantly even within the area subject to direct jurisdiction of the PA, the parties generally opt for the resolution of their disputes, in particular disputes of civil nature, through private or *sakhsi jirgas* (Interviews C, E, N). The forum of the PA however does provide an option to the parties, especially the weaker ones, in case of disagreement on the formation of a suitable *jirga* by the parties themselves. Such cases are a fraction of the overall number of cases decided by the parties in *shakhsi jirgas*. Cases, usually of a criminal nature and in particular those posing a threat to law and order are another exception. The PA normally intervenes in such cases' resolutions in order to avoid an armed clash between the rivals. The eventual outcome is again decided by a *jirga* which the PA assists to form and perform according to the provisions of the FCR which incorporates the relevant features of *riwaj* (Interview E 8, E 14). The availability of choice between the *sarkari jirga* and the *shakhsi jirga* is hence not akin to the choice available to parties to choose between the formal and informal modes of dispute resolution in other settings—a decision that is made by weighing the transaction costs.

A petition in civil cases is made to the PA only when it is deemed absolutely essential and in such cases his involvement is solicited as a leverage to compel a recalcitrant party to agree to resolution of the dispute. The PA's office serves as an additional avenue for property rights enforcement but not an alternate forum. *Jirga* remains the ultimate dispute resolution

mechanism although some procedural formalities may vary as explained above. The choice therefore cannot be construed similar to the one in the formal settings where there is a fundamental difference between formal and informal modes due to the nature of the law, codes and procedures involved as well the nature of decisions made. Costs and benefits of the informal over the formal mode of dispute resolution factor in the choices made in those settings but not in the case of FATA. The surface formality of the FCR is hence better understood as a version within the overarching framework of *Pukhtunwali* rather than an alternate or a parallel formal law. Moreover, the role of the PA is clearly a differentiated one from that of a typical administrator or a magistrate reminiscent of the colonial era. He is more of a referee with the purpose of ensuring that the game is played between the players—the individual actors, the tribes and the state—within the parameters agreed between them (Ahmed, 1980a)³⁸.

5.2.2. The Sanctions “For” and “By” *Jirga*

The implicit and explicit sanctions in the property rights regime of FATA make deviant behaviour socially and economically costly. The efficacy of sanctions is directly linked to the *Pukhtunwali* environment. I have dealt with the subject of the *Pukhtunwali* environment above and in particular, the custom of *brampta* within that environment. In the pre-*jirga* phase the threat of *brampta* is a vivid reminder to the parties of the costs of avoiding the resolution of their disputes through *jirga*. Additionally, the sanction for seeking dispute resolution through a *jirga* is also complemented by a strong social perception regarding the sanctity of *jirga*. *Riwaj* has no room for a refusal by any party in referring a dispute to a *jirga*. Denying a role for *jirga* to look into a dispute may invoke severe social reprimand by way of being declared ‘*kibargen*’ (literally proud) and in this specific context, too proud to regard the opponent worthy of a settlement within the prescribed way of the *Pukhtunwali*. Once a person is declared a *kibargen*, the rival party virtually gets a ‘license’ to take all measures deemed appropriate by it and thereby enlists the support of the community to his private cause (Interview E 14). The declaration may even turn the entire community against the *kibargen* leading to burning of his property and expulsion from the area, making nonconformity extremely costly.

³⁸ These parameters have been laid out in the treaties and agreements with the tribes. See Yunas & Taizai (2006) for treaties relating to the North-West Frontier.

As regards the sanctions by the *jirga*, two factors are crucial in so far as the efficacy of sanctions is concerned. Foremost, for a *jirga* to be effective it really matters who is on the panel of the *jirga*. Second, the ‘*waq*’ (literally authority or mandate) of the *jirga* is essential as it determines the leverage of the *jirga* to enforce its decisions through sanctions as and when required. The two factors are also interconnected in some ways and I will discuss the latter first for reasons that will become apparent.

Waq is a unique feature. Its nature defines the essential parameters within which a *jirga* is supposed to deliver and thus has a direct bearing on the authority wielded by a *jirga*. The question of *waq* is to be consciously decided by the parties before the start of the formal proceedings. Broadly, the *waq* can either be of an advisory nature, with no sanctions as such to enforce its decision, or in the nature of the arbitration duly empowered to enforce its decisions with the help of sanctions. The types are known as ‘*da khabaro waq*’ (the mandate to talk or negotiate only) and ‘*ubo wary waq*’ or ‘*sindh waray waq*’ (the mandate to do whatever it takes to decide the dispute) respectively (Interviews E). For the sake of easy reference in ensuing discussion, I will refer to the former as ‘conditional’ and the latter as ‘unconditional’ mandate.

A conditional mandate is allowed mainly for negotiations with the other party. In this type of constitution the *jirga* does not decide the matter in dispute although efforts at mediation are not totally precluded. Primarily, the aim is to keep a channel of communication open between the parties in a dispute, which enables them to arrive at a settlement. As the *jirga* shuttles to and fro between the parties and communicates rival viewpoints in the process, duly peppered by its own advice, the parties are able to assess the soundness or otherwise of their claims and may make up their minds regarding the likely terms of settlement. The efficacy of such *jirgas* is open to question due to its limited mandate and such *jirgas* may be a prelude to *jirgas* with unconditional mandate. However, these do provide an opportunity of private ordering to parties willing to arrive at a settlement at the lowest possible costs before the matters reach a point where a *jirga* with unconditional mandate is the only option. As will become evident from the discussion below, *jirgas* with unconditional mandate may have substantial cost implications for the parties.

It is in the genre of the unconditional mandate that the role of a *jirga* reaches its pinnacle. In this category, it becomes a hybrid of mediation, arbitration and adjudication, and is usually armed with sanctions to enforce its decision. Prior to the launch of formal proceedings, the

parties concerned are required by the *jirga* to furnish ‘*machalka*’ or securities in cash or kind. The extent of *machalka* required depends on the nature of the case and can be substantial in big cases. In case a party is aggrieved and does not accept the verdict handed out by the *jirga*, its *machalka* is forfeited in fine and distributed equally amongst the *jirga* members. The aggrieved party can seek the constitution of another *jirga* and all the formalities such as the selection of its members, *waq* and *machalka* etc., have to be repeated afresh. In that case, the impugned decision is put to careful scrutiny by the second *jirga* and the authors of the earlier decision may be called in to explain the basis of their decision if required. *Riwaj* allows a maximum of three such *jirgas* and decision of the third *jirga* is regarded as final. However, in practice the dispute seldom drags on to the third *jirga* due to the transaction costs that keep mounting each time a *jirga* is constituted—and the costs are not just limited to forfeiture of *machalka* in fine.

The cost due to forfeiture of security deposits, every time a party decides to go in appeal and forms a fresh *jirga*, is evident but there are other costs involved as well. Apart from the intangible costs of time, of the search for suitable *jirga* members, and costs of approaching the rival party—who may not be readily forthcoming for a second round of *jirga* due to a moral high ground after a favourable decision—the tangible costs involved are on account of the fees charged by the *jirga* members and the expense incurred on *melmastia* of the *jirga*. There is no fixed yardstick regarding the fees but in big cases these can be huge sums. The justification advanced in defence of the fees charged is simple and carries weight. It is an incentive to the *jirga* members to see through the process of conflict resolution to the end, an arduous task in itself, and of course, a means of putting extra monetary pressure on the parties to come to terms with the *jirga* decision (Interviews E 8, E 14). Additionally, the parties are subjected to the not so insignificant costs of *melmastia* as they are required to host the *jirga* sessions on a turn by turn basis—and there could be several generally. I have already hinted at the use of *melmastia* as a tool to ensure agreement with the *jirga* decision elsewhere (Section 5.1). The importance of *melmastia* in *Pukhtunwali* has already been explained and an occasion such as a *jirga* obviously “calls for the best possible display of *melmastia* by a host party”. Hence, contrary to the common perception among the people a *jirga* can in fact be quite a costly affair (Ahmed, 1980b, p. 119), particularly in cases where the parties fail to economize on the inherent transaction costs of the system. Respondents in this research confirmed this fact.

As indicated at the start, efficacy of a *jirga* depends in no small measure on the members of the *jirga*. “A *jirga* in session is diplomacy at its peak” as members employ the powers of their oratory, logic and knowledge of custom to persuade others in order to reach a consensus (Interview E 14). Social renown can be of great advantage in influencing colleagues in a *jirga* and men with exceptional skills do get acknowledged by the community as elders and often carry an official endorsement in the shape of a *maliki* as well. The theoretical spirit of the *jirga* being a non-partisan forum is an ideal removed from reality as the members nominated by a party act as ‘advocates’ of that party. This is an unintended consequence though and may not be as damaging to the cause of *jirga* as the siding of a member with the rival party for any reason, threat or bribe in cash or kind. Hazards of the latter kind were affirmed by the respondents as ‘clear and present’. The incentive to choose members with the best credentials on all scores, including a reputation for honesty, is obvious. The need for nominating the best and those with influence in the society is also mandated by the fact that a *jirga*’s job does not terminate at the point of its verdict. It also has to oversee the implementation of its decision which becomes more likely if the members are men of influence who can deter after thoughts and belated violations either themselves or by enlisting help from the community if required. Serious violations may call for punishment through collective action by a tribal *lashkar*. Severe penalties can be inflicted in that case, including burning of the house or property of the offender.

In comparison with the *shakhsi jirga*, where efficacy of the *jirga* depends in so many ways on the ability of a party to make the right moves and choices during the entire process of dispute resolution, the *ulusi* (or *quami*) *jirga* may be a relatively different ball game. As it is the ‘people’s’ *jirga* at a certain lineage level regarding matters concerning common interest, by its very nature it draws on a vast pool of talent and resources overcoming the many limitations of the *sakhsi jirga*. The question of fees to the members does not arise in this case and the burden of other tangible and intangible costs is also relieved as these costs are shared by the entire community. Enforcement of decisions is comparatively easier in this case and the costs of enforcement are also shared. Communication of decisions to the people is instant due to its representative nature. Few can afford not to comply or shirk as every member keeps a check on every other member within a subsection and every subsection on every other subsection in case the *ulusi jirga* is at a higher level of lineage. The small size of the population and close kinship ties within a subsection, together with the norm of collective responsibility foster uniformity of interests and ensures effective monitoring.

5.3. Conclusion

The fundamentals of the Pukhtun social organisation have been explained in the light of *nikkat* or the charter of rights based on Pukhtun genealogy. It was shown with the help of the operational dynamics of *nikkat* that in both the individual and commonly owned property types, the nature of rights is exclusive and restricted to membership of a particular subsection of the tribe concerned. Adherence to *nikkat* in FATA has resulted in predominantly homogenous populations within the operational lineage segments (or the subsections). The essential features of *riwaj* in relation to ownership and alienation of property were also outlined. Ruling out the possibility of ‘open access’ in FATA, it was stressed that access to resources in FATA is ‘controlled’ as each tribe, and its constituent segments, exist within defined spatial boundaries which are jealously guarded against each other. The movement of outsiders for business in the region, or conversely, that of the tribesmen from their particular subsection to any other location within the region is well regulated by *riwaj* and presupposes consent of a local Pukhtun patron. Currently most businesses in areas outside one’s own lineage segment exemplify this relationship in different shades of partnerships as we will discuss in the subsequent chapter in detail. There is no conflict as such between the state and the tribes regarding *nikkat*. The state also relies on *nikkat* as a framework to govern and regulate its relationship with the tribes. The question of apportionment of all possible benefits flowing from the state to the tribes, and of fines or penalties for offences from the tribes to the state, is settled in accordance with the respective *nikkat* shares of the tribes.

As regards the enforcement of property rights and its efficacy, the primary importance of the *Pukhtunwali* environment in the *nang* tribes, which lacks in the *qalang* tribes or elsewhere generally, was stressed. The nature, dynamics and effectiveness of dispute resolution in the *nang* tribes’ case is hence not to be treated on a level with other informal modes. Relying on Ahmed (1980b) and field data, it was argued that despite *Pukhtunwali*’s demand on an individual for direct action to redeem his property through ‘all means deemed necessary’, all disputes eventually make it to and are resolved in *jirgas* due to the likely hazards of direct action. This practically reinforces the regular dispute resolution mechanism of *jirga*. Moreover, since *jirga* is the recommended dispute resolution institution even within the framework of the FCR, FATA is not poly normative like other traditional settings in the world. *Jirgas* are complex nonetheless. A *jirga* could be a very costly affair if a party fails to economize on its inherent costs through sufficient foresight and deft handling. The point was advanced with the help of a critical review of the types as well as the probable costs

implications of *jirga*. It can easily be inferred that the local Pukhtuns would have an edge against outsiders in relation to a *jirga* in FATA.

Having presented a sketch of the institutional environment in FATA, the quest now is to look at the dynamics of contract stability more closely as required by the second and third questions of the research. Performance of two types of firms embedded in this institutional environment—CPRs and non-CPRs—are of particular interest as explained in Chapter 3. The subsequent two chapters take these up one after the other in an attempt to advance an understanding of the essential parameters of relational governance in FATA. The contracts, the hazards, and how the parties cope (or fail to cope) with these exchange hazards in these two case scenarios will be revealed in the process.

Chapter 6. The Emerging “New-Commons” of FATA: The Case of Mineral CPRs in FATA

The quest in this chapter is guided by the second and third research questions: *what are the characteristics of the contracts and the likely contractual hazards in CPR and non-CPR scenarios; and how does relational contracting help to mitigate such hazards in the two contracting scenarios and under what conditions it fails to deliver as a viable governance mode?* This chapter addresses the above stated agenda by looking at contracts in the mineral CPRs; or what can also be termed as the ‘new-commons’¹; fast emerging on the FATA landscape. As opposed to traditional CPRs, these CPRs are entirely commercial in nature. Field data in this research affirm that relational contracting is the principal mode of governance in FATA. The data also reveal that owner communities can successfully tide over their dilemmas inhibiting collective action and are able to put in place viable self-governance mechanisms or make alternative governance arrangements through contracts with private contracting firms. In the latter case, the contractors are locked in bilateral dependency due to the nature of property rights, usufruct in this case. However, despite the odds, they too seem to be in a position to safeguard against the hazards of exchange. The high demand and prices of minerals in the market outside FATA seemingly result in high levels of affordability of the costs of relational contracting in FATA.

The chapter is structured in four main sections. Section 6.1 charts the commercial significance of the emerging CPRs. Discussion highlights the state’s ambitions towards the regulation of mining in the region and the success of the tribes in maintaining their autonomy. Section 6.2 elucidates the limited access nature of CPRs and stresses the essentiality of unambiguous ownership and resolution of all disputes prior to any activity in CPRs. The discussion explores the three principal modes of contracts found in operation during the fieldwork, their salient features and likely hazards. Section 6.3 deals with the dynamics of contract governance. First, the likely challenges and the responses in the self-managed CPRs are explored with the help of an example from FR Kohat. An overview of other CPRs in its neighbourhood is also presented to facilitate a better understanding. Next, the discussion looks at the partnership mode of contracting between contractor firms and owner communities. The various costs avenues and strategies of governance that deliver stability in

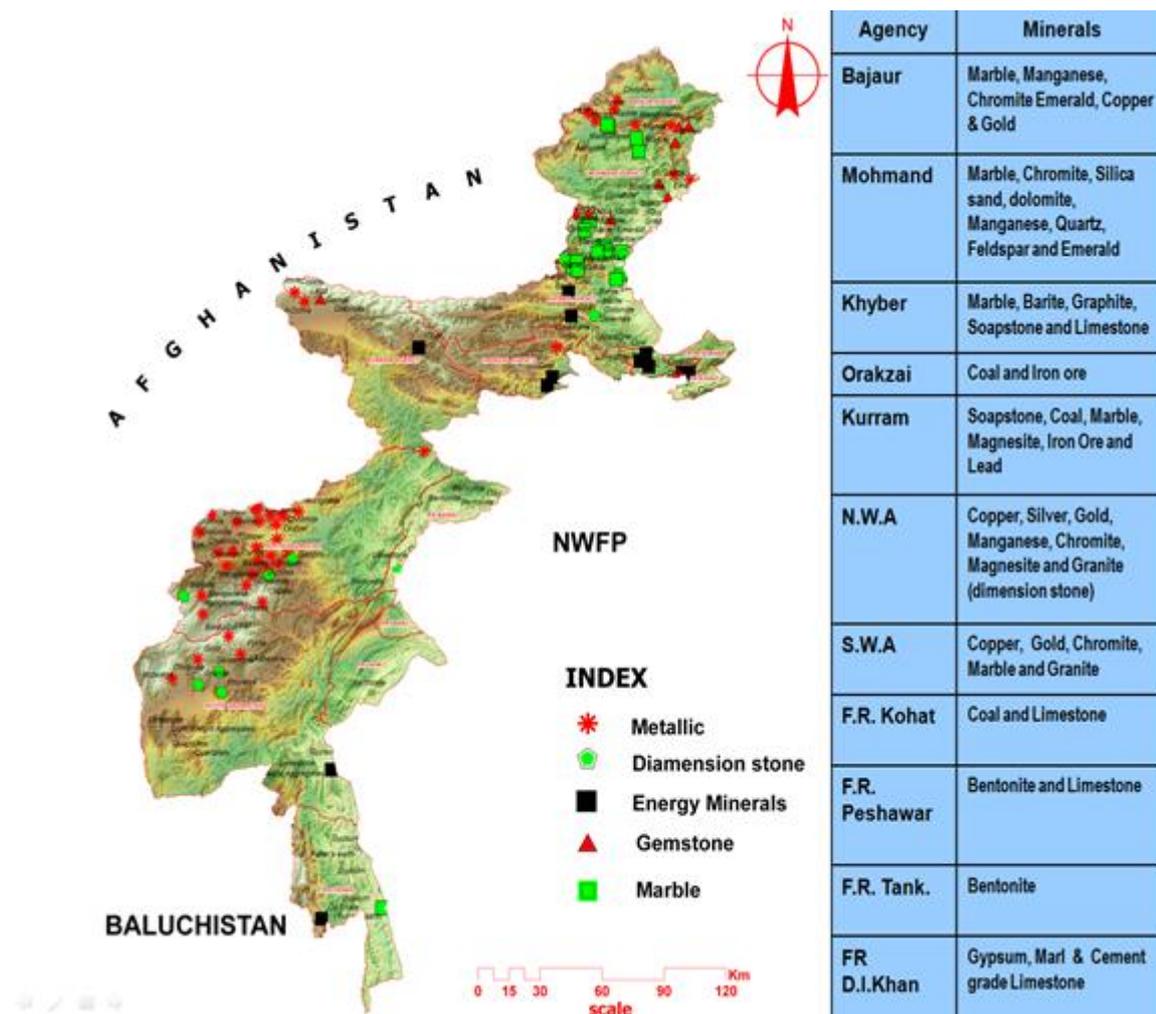
¹ The term is used in the literature for the 21st Century common-pool resources such as the internet. See Ostrom & Hess (2007). The usage here is in the FATA context to highlight the recently emerging CPRs.

contracts are highlighted. Finally, an attempt is made to suggest a likely explanation of how the costs of the relational mode of governance remain within the affordable range and hence contract stability is made possible. Section 6.4 attempts to chart the future road map. It argues, while relying on field evidence, that technological up-grading is logical hence FATA CPRs are likely to be sustained for their useful life. The conclusion presents a summary of the chapter’s findings.

6.1. The Shattered Myth of Resource Scarcity: The Emerging Mining Communities of FATA and the Obligatory Pragmatism of External Institutions

Just two decades ago little was known about the mineral potential of FATA and the sporadic mining activity that had started at various places across the region was too measly to merit attention. It is little wonder that a series of socio-economic profiles prepared by USAID for each Agency in the early ‘90s, the first ever attempt of its kind to consolidate base line socio-economic data for each Agency, do not dwell much on the subject. Agriculture, transport, remittances, and employment are described as mainstays of the tribal economy in each Agency and references to mineral potential are merely generic if any (USAID, 1990a, 1990b, 1990c, 1991, 1992, 1993a, 1993b). Change in the economic landscape has been dramatic since. The mineral production of FATA and the royalties collected thereon by the state has been on the rise (see Table 6-1 for year-wise production of three selected minerals). FATA is now well known for its diverse and extensive mineral potential (Fig 6-1).

Figure 6-1: The Mineral Landscape of FATA



Source: Information retrieved from Mineral Section FATA DA

Today, commercial enterprise in the mineral sector forms a significant component of the local economy with coal, chromite and marble mining enterprises in the lead due to their widespread reserves, amenability to mining within the locally available technological means, high market demand and prices.

It is pertinent to note that the mineral reserves of FATA have not been fully quantified as yet. The available figures are hence only partial estimates at best. Experts believe that the current estimates of all the mineral reserves are likely to go up many times as the mine bearing areas are surveyed thoroughly, a job that has become difficult to complete due to the on-going conflict in the region. However, even the partial estimates are indicative of a huge untapped potential. Of the three minerals relevant to this study, chromite figures are least precise. The quantum of its reserves is believed to be significant nonetheless and of high grade,

particularly in and around Bajaur Agency. The state of available information is relatively better in the case of coal and marble. Coal reserves in Orakzai Agency and its surroundings (Central Kurram Agency and FR Kohat) are inferred to be 81 million tons (Interviews E 17, E 21), whereas estimates of marble reserves stand at 7000 million tons—reckoned practically in-exhaustible (Badshah, 1994, p. 14; SMEDA, 2002 cited in Group 2006 p. 29; Sahibzada, 2006, p. 38).

The exact figures of the number of mining enterprises operating in FATA are also not available. Currently available statistics offer partial estimates with chromite again being least precise. Official statistics are silent on the number of chromite mines operating in the region. Respondents quoted a figure of 100-120 mines in Bajaur and Mohmand Agencies alone. The state of information is relatively better in the case of coal and marble. Estimates put the number of operational coal mines at more than 250 in the Orakzai, FR Kohat and Central Kurram Agencies (Interviews E 15, E 17). Likewise, around 300 marble quarries are believed to be operational in Mohmand and Bajaur Agencies (PISDAC-USAID, 2006, p. 32). An official of the Provincial Marble Association pointed out that the actual number of operational mines was over 500. This includes mines operating in Khyber Agency. Clearly, all the figures above do not include the two southern most Agencies (NWA & SWA). Much higher figures are likely to be returned if a thorough survey of the mining industry in FATA is conducted. This however may not be possible until the security situation in the region becomes conducive to such an enterprise.

Although the full impact of the mining activity on livelihoods in the area will remain unknown till reliable statistics are available, a significant economic change unfolding in FATA is too obvious to miss. The huge impact that mining has had on the local economies in general can be gleaned from the following snapshot by a respondent:

We started mining in 1988 in a remote part of Mohmand Agency, in village Gumbatai, Tehsil Ambar...Population of the village was around 250... In the start we used to pay 200 rupees per truck [load]² as surface rent to the local community. At that time our production was just one truck per week. Even [the meagre] 200 rupees was [seen as] a big change in the area. Nowadays the daily income [of the owners] from the same place is around 100000 rupees... [We pay] 10000 rupees per truck [today]... Currently the total production from the entire area [the mining cluster] is around 100 trucks per day and when all the mines in adjoining areas [Ziarat, Spinki Tangi], are open this figure rises to more than 250 trucks per day... A [marble] mine on

² 20 tons of marble.

average [directly] employs 15-20 persons [in addition], every truck has at least two persons, a driver and a helper... If there are 250 trucks plying the route per day [it will have impact], previously there were just two [petrol] pumps [on the entire route], now there are 18. A truck driver stops for lunch and usually after every two hours for tea... [Moreover], you also need tyre repair shops and mechanics along the way to cater for the mechanical needs of transport. Scores of ‘truck hotels’ [restaurants for truckers] and mechanic shops have sprung up [as a result] lining the entire route... (Interview C2).

The scale of the on-going activity is also manifest from the figures of mineral production in FATA, and revenues realised by the state. State royalty collection on minerals has risen over the years from just 1.8 million rupees in 1994-95 to 58.95 million rupees in 2008-09³. The mineral sector is hence the only avenue in FATA that has started contributing to state revenues. The economic dependence of the respective local communities on the emerging CPRs in this otherwise resource scarce region is quite significant (Ostrom, 1990, p. 26)⁴. The blossoming economic opportunity is mainly driven by private enterprise as government investment in this sector remained a paltry 95 million rupees till 2002⁵. The SDP now promises the rectification through renewed focus on the development of the mineral sector (FATA, 2006). There is a caveat nonetheless. There is a real possibility of state-tribe conflict if the state adopts a proactive approach to discharge the responsibilities that it has devolved upon itself through the mining laws and regulations that have been put in place for the purpose. The section below looks at the mining law, its efficacy and the tribal response.

Table 6-1: Year Wise Production Chromite, Coal & Marble in FATA

Mineral	Year wise Production (Tons)									
	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Chromite	3340	2570	5350	8970	35207	35083	66381	76350	45698	126292
Coal	143660	207450	201570	161155	178370	263085	266490	219389	215825	304538
Marble	62771	60800	327100	257705	570519	982856	818987	1065480	444697	517241

Source:(Statistics, 2003, 2005, 2008, 2010)

³ Source: Information retrieved from the Minerals Section FATA DA.

⁴ This is ancillary to situations of scarcity Ostrom expressly considers as one of the essential conditions of her studied CPRs. See Ostrom (1990, p. 26).

⁵ See Chapter 2. The only worthwhile achievement up to this point was the geological survey of FATA that paved the way for the discovery of 19 minerals of commercial importance (Badshah, 1994, pp. 1-2; Division, 2002, p. 70; Sahibzada, 2006, pp. 35-36).

6.1.1. “You Own the Land Not the Minerals”: The “Legality” of Mining in FATA

The mineral law in Pakistan has traditionally vested ownership and hence the powers to regulate and develop minerals, with the state; a responsibility that is discharged on behalf of the state by provincial governments for minerals occurring within their respective territories. In the case of minerals occurring in special areas, such as FATA, the functions of development and regulation are discharged directly by the federal government. FATA is however a recent addition to the list as the legal history of FATA minerals commences from 1989, following discoveries of important minerals in the region. This prompted the adoption of the mining regulation already enforced in the adjoining NWFP (N.W.F.P, 1976) for FATA. The Corporation⁶ was entrusted the sole responsibility to perform regulatory as well as development functions in the region—functions that remained unfulfilled due to practical constraints on any form of authority in the tribal region.

In order to streamline and develop the mining industry in the country, a new National Mining Policy (NMP) was announced by the federal government in 1995⁷. The objectives of the NMP were extended throughout the country through new mining regulations adopted by each federating unit (provinces and special areas) (Bank, 2003). This objective was fulfilled in the FATA case through the Mining Concession Rules of 2001 (henceforth Rules)⁸; a FATA specific regulation for the first time in history (Interviews E 7, E 17).

The NMP has maintained the traditional supremacy of the state with respect to the regulation and development of minerals. As per the Rules, any mining activity sans a formal approval from the state is declared ‘illegal’. Moreover, the state is assigned an overarching authority in relation to decisions on the award of prospecting and mining leases. It has a final say in surface rent determination and disputes of various natures including boundary disputes. For all practical purposes therefore, it stands between the lease holder and the land owners. Violations of the Rules and its decisions could attract multiple penalties; site embargos; cancellation of leases and even imprisonment. However, FATA remains unimpressed and intransigent as nothing of the sort spelled out in the Rules is possible in that region, at least within the presently assigned human and material resources. This is unlike the case in provinces where mining is virtually inconceivable sans formal approvals from the authorities

⁶ This refers to FATA DC see Chapter 2.

⁷ (Pakistan, 1995).

⁸ Federally Administered Tribal Areas Mining Concession Rules (2001).

and cases of violations are dealt with the full force of law. In FATA, it is the *malikan* (literally the owners/user group) who matter, even if the word of the law says otherwise. Any mining or mining related activity is contingent on the consent of the *malikan* and not on the approval of the state. The position is the same in relation to disputes. All mining disputes are dealt with in accordance with the *Pukhtunwali riwaj* rather than the Rules made by the state.

The preponderance of tribal over state authority is visible in the abysmally low count of formal leases in FATA. My field data suggest that formal leases may be obtained in some cases by parties merely as an additional avenue of security vis-à-vis the *malikan*. This is not deemed as an alternate avenue though. The point is explicated in section 6.2. The decision to seek a formal lease remains voluntary rather than obligatory under the force of the existing Rules. That it does not find favour with a majority is evident from the greater number of ‘illegal’ mines in FATA.

From the state’s perspective, it has no option but to put up with the so called ‘tribal insolence’. There is some solace for it though as all roads from the mines lead to the adjoining settled districts where the markets are located. This allows room for the state to collect royalties on minerals while these are on the way to the markets and also show some, if not all, of its teeth to the violators of the Rules through the levy of penalties. There are constraints even in this regard. The scale of the penalty is kept at its lowest for fear of tribal reprisals. While minerals from the formally approved mines are subjected only to royalties, others are required to pay an equal amount of penalties over and above this. Collection is effected on the road side check posts set up for the purpose. The state pride is hence assuaged to some degree.

From the tribal point of view, there is a grudge regarding the state’s levies, particularly penalties on so called illegal mining. This is however tempered by an expedient realization that the state has to be paid as a ‘gate keeper’ of the markets beyond FATA in the same manner as the PA, who has to be paid to allow the transit of minerals through the area under his administrative control⁹. The latter refers to the euphemistically styled “Agency Development Fund”: a levy of 1000-1500 rupees per truck collected by the political administration. Officials of the FATA Secretariat affirmed that the authority for collection was not officially sanctioned by the government and the collection is not transferred to the coffers of the state (Interview E 15, E 21). The size of this informal collection is presumably

⁹ Referred to as the protected territory. See Chapter 1.

huge given the increasing scale of the mining activity in almost every Agency. How the PA dispenses with these funds remains at his discretion. However, without prejudice to the legality of the collection, it aligns the interests of the Agency political administration to the continuity of the mining enterprise in FATA. Some of its bearings will become apparent in Section 6.3 below.

On the whole, the royalties and penalties are largely construed by the tribes as ‘right of way tolls’ rather than a token of the state’s legal claims to ownership of FATA minerals. The concept of tolls of this nature is not new to the tribes. They have levied such tolls in the past on merchandise in transit through territories under their respective control (James, 1868, pp. 84-92; Caroe, 1958, p. 349; Merk, 1984, pp. 4-9)¹⁰. Moreover, the rates are sufficiently low to cause unrest amongst the tribes. The state’s ownership of minerals thus remains a legal fiction; a theoretical proposition at best. Payments of the ‘tolls’ are made at the ‘gates’ away from the site. The state remains distant and cannot intervene at the site despite having the law on its side. The owners of the resources practically enjoy an uncontested control and do not seem to care about the legal propositions that remain confined to the statute and do not alter this reality on the ground. The larger political system is clearly not in a position, at least at present, to alter the superiority of the local institutions governing the CPRs. One of the basic conditions for success in governing CPRs is thus clearly met in FATA (Wade, 1988, p. 216; Ostrom, 1990, p. 90; Baland & Platteau, 1996, p. 289; Ostrom & Walker, 1997, pp. 45-49).

6.2. The Form and Substance of Contracts in FATA CPRs

The principles of *riwaj* governing the access and use of CPRs in FATA have been discussed at length in Chapter 5. “Working here [in FATA] without the consent of the *malikan* is an impossible proposition”. This respondent’s view was confirmed by others including the officials interviewed, and categorically rules out the likelihood of open access in FATA, unlike the case of contested ownership elsewhere (Fitzpatrick, 2006)¹¹. Access and withdrawal of resource units from a CPR, whether for self-use or commercial purposes, is contingent upon prior consent from the respective *malikan*. *Nikkat* clearly specifies the identity of *malikan* relevant to a particular locality and the segmentary nature of tribal social

¹⁰ See discussion in Chapter 5. Before the British replaced the system with subsidies the tribes used to levy tolls on the merchandise through their respective territories.

¹¹ This also precludes scramble for FATA mineral wealth by outsiders and contractual arrangements in the manner of the famous California gold rush (Umbeck, 1977).

structure excludes all others. The previous chapter has dealt with the subject in detail. Two essential design parameters of successful CPRs laid down by Ostrom pertaining to clearly defined boundaries and identity of the user groups therefore stand satisfied in FATA (1990, pp. 90,91). Depending on the group and resource characteristics, the consent of *malikan* could take any of the three principal contract forms described below. However all the forms of consent are essentially of a limited nature as they bestow only usufruct rights on the parties (see Chapter 5). There is even a further constraint relating to the transfer of these rights. Although rights can be transferred to a third party, provided the *malikan* approve, this may not come easily nor on the same terms. Modification in the terms of the original contract is likely to be demanded and rents and/or profit payment scales may be enhanced rendering the alienation of a contract practically difficult if not impossible.

There are three principal modes of contracting in relation to CPRs. A CPR may be self-managed by the *malikan* themselves; operated under a partnership between the *malikan* and a contractor firm (henceforth contractor) or solely entrusted to a contractor for operation for a fixed term period. An arrangement of the latter type is popularly branded as a ‘lease’ but it is not to be construed as a formally approved lease. In local parlance, a lease simply refers to an arrangement whereby the owners have allowed usufruct rights to a party in lieu of fixed payment per unit of the resource extracted, usually per truck basis, for a specific time period. I will use the term ‘sole contract’ for such arrangements in this discussion to avoid its confusion with the formal lease contracts.

FATA is generally regarded as a bastion of oral tradition (Ahmed, 1976, pp. 77,82; 1977, p. 21). It predominantly remains so even today but a transition from an oral to written tradition was visibly noticed during the field work especially in relation to mining contracts. All the respondents in this research stressed the benefits of written contracts in the eventuality of disputes. One respondent explained this in the following terms:

Agreement in writing makes the job of a *jirga* easy [in case of a dispute]. Verbal agreements were done in the past as people were illiterate. Now there are people in almost every community who can read and write. In case of a verbal agreement, the parties have to present witnesses for oath taking before a *jirga*. There could be complications if the proposed witnesses are disputed by the parties. [Additionally], [i]t may not be easy to present all the witnesses at the time appointed by the *jirga*. The cause of a party is lost if it fails to produce witnesses deemed credible (Interview E 7).

Written contracts are therefore viewed as a cost effective way to deal with the likely hazards in exchange. The positive role played by the spread of literacy is also evident from the above account. Some respondents suggested that attestation from the political administration of the Agency may also be obtained to add to the authenticity of the contract: “A contractor may get the [contract] document attested by the political authorities, the PA, APA or [even] the PT [Political Tehsildar], depending on his convenience of access to either of these officials” (Interview C2). Involvement of the political administration as witness to a contract can come in handy in case a need for a *sirkari jirga* arises in future.

Any contract involving the *malikan* is referred to as ‘*quami moahida*’ (literally agreement with the tribe). A contract may be inscribed on a plain paper or a judicial stamp paper of varying denomination as is the practice in the settled districts but the latter has no legal significance in FATA¹². The usage has no bearings on the stipulations of the contract or the mode of enforcement. The stipulations are stated in simple terms and are sans specific detail in either case. These generally pertain to upfront advances paid (if any); the rate and frequency of *malikana* (from the word *malikan* and literally payments to the owners); the term period of the contract; affirmation of responsibilities by the parties (owners’ collective responsibility to ensure smooth operation of the venture; the contractor’s responsibility for timely payments to the owners); penalties on account of defaults; and pledges by the parties to uphold the *riwaj* of the area in case of disputes. While in some cases express provisions relating to the employment of local labour and payments for locally acquired materials may be made a part of the contract, specifics of the operations are generally left wanting in detail. The contract is therefore intrinsically flexible, necessitating cooperation between the parties (Williamson, 1985, p. 20)¹³. Moreover, since there are structural asymmetries between the parties, the contractor, being the weaker party, is actually the contract taker (E'ric, 2008, p. 51). Chapter 5 dealt with the subject in detail and the subsequent discussion builds on that to explicate the point further.

¹² Though an anomaly in FATA, the trend could be attributed to the influence of markets located in the settled districts and the growing business interaction with these. An agreement inscribed on a judicial stamp paper does not presuppose recourse to a formal dispute resolution process even in the settled areas. It merely lends authenticity to the basic agreement as the names of the parties and the date of agreement can be cross verified from the register of the stamp vendor if required by a court of law. Its utility is hence in the case of the formal option, should a party opt for it in the eventuality of a dispute.

¹³ A contract could be very detailed wherein numerous contingencies and suitable adaptations by the parties are stipulated in advance, or, “the document can be very incomplete, the gaps to be filled in by the parties as the contingencies arise” (Williamson, 1985, p. 20).

Sole contracts were the dominant mode of contracting in CPRs in the past but there is an increasing trend towards self-managed CPRs¹⁴, followed by partnerships between the *malikan* and the contractors. The change could be attributed to the increasing certainty of mineral resources in FATA and its rising value in the markets. Sole contracts in particular have come under increasing pressure. Just a decade ago most of the *malikan* in FATA had no qualms about allowing long term lease contracts to potential investors for up to 30 years or more¹⁵. Self-management was deemed risky but not anymore. Recent discoveries have established a pattern whereby the existence of a particular mineral at a certain locality can be predicted with a reasonable degree of accuracy. Coupled with the rising resource value in the markets, this has led the *malikan* to resent the earlier agreements. Hazards on account of strategic behaviour are known to become likely in such scenarios (Williamson, 1975; 1985, pp. 30-32; Ostrom, 1990, pp. 33-38). A respondent recounted his experience as follows:

People were quite sceptical at first. They would even say that [the contractor] has ill- gotten money and that’s why he is wasting it on digging stones in the mountains. Had he earned it lawfully he would have been more cautious about the spending. Remarks like this were talk of the village but things changed dramatically when I hit coal. Coal at that time [2005-06] was 5000 to 6000 rupees per ton. The mine was producing 4-5 truck loads daily so the attitudes changed dramatically. Disputes started brewing on one or the other pretext as people started complaining. Now they would say that the mountain belongs to them and how come this outsider is making 2-3 lac rupees¹⁶ out of our property daily (Interview C1).

Albeit outright demand for renegotiation of the contract may not be made as this would be visibly contrary to the tenets of *Pukhtunwali* and become a source of *paighor* (taunt)¹⁷ for the community, the grudge may reflect indirectly in the loss of goodwill and falling levels of support for the contractor. Naturally, carrying on would be very difficult in such an environment as excuses to disrupt the contract operation may not be hard to come by. Modifications in the terms of contract thus become imperative in such situations to avoid the greater costs of contract disruption. The old lease arrangements represent a similar dilemma.

¹⁴ In addition, individually owned mines also exist in FATA in cases where discoveries were made within individually assigned *brakhas* but these are not common, and most importantly, fall out of the purview of CPRs studied here.

¹⁵ In one case on record in the Mineral Directorate of FATA Secretariat, I noticed an agreement on a plain paper between a contractor and a tribe for 50 years.

¹⁶ One lac is a hundred thousand rupees.

¹⁷ See discussion on *Pukhtunwali* in Chapter 2.

They have become difficult to continue with and in many instances have been modified into partnership agreements, allowing the *malikan* a greater take in the payoffs (Interviews C).

The profit sharing ratio between the contractor and the *malikan* under partnership arrangements can go up to 50% but the range of 20-25% is more common. Pertinent in this regard is the fact that “unlike the case of partners [in a contracting firm], the tribes normally do not share losses” (Interview C5). One coal CPR in Orakzai studied in this research had such an arrangement in place. The profit sharing ratio was 1/4th to the owners and 3/4th to the contractor over and above the regular *malkana* payments at 1000 rupees per truck¹⁸. The contractor was responsible for all the investment on the project. Under the terms of agreement, the contractor was allowed first to recover his capital investment following which the profit sharing would commence in accordance with the agreed ratio. The contractor had successfully retrieved his capital investment at the time when I interviewed him and the enterprise was set to commence further on the agreed profit sharing terms (Interview C6). This however is not a universal principle as respondents pointed out several cases where a phased recovery of capital was insisted on by the owners. In such cases, the contractor is required to adjust a certain percentage of profit (normally 5-10%) towards his capital investment and apportion the rest according to the agreed profit sharing ratios (Interviews C).

A point to emphasize is that renegotiation of the contracts is recurrent even in the case of partnerships. Contracts have to be deemed flexible whenever circumstances demand in order to counteract the hazard of impending total disruption. A respondent alluded to the utility of flexibility and accommodation in the following terms: “if because of a dispute a contractor is forced to leave, isn’t it better that the operation continues even if he [has to] partner with 50% of his profit? The business will [continue] at least” (Interview C8). The principle applies to all the contracts in FATA and in particular where the *malikan* are not the principal operators. Parties deem the contract beneficial therefore strive to preserve it (Fafchamps, 1996). The section below offers a detailed discussion on the challenges of governance in the two main modes of contracts in FATA; the self-managed mode and the partnership mode. The fact that sole contracts are no longer a viable mode has already been explained above.

¹⁸ A standard truck for coal is 10 tons, unless otherwise specified. This is also known locally as “single truck”. Generally, if the *malikan* have a share in profit with the contractor, the per truck *malikana* payments may be reduced or even eliminated in the case of a higher profit sharing ratio.

6.3. The Likely “Slips between the Cup and the Lip”: The Dynamics of Contract Governance in FATA

Many of the challenges of contract stability are averted in the case of self-managed CPRs, but there are caveats nonetheless. Not only should the *malikan* be able to muster the required finances but most importantly, they should be able to evolve a consensus on management and profit distribution matters of the enterprise. This may not be forthcoming for patent reasons and thus remain a challenge. Whereas *nikkat* provides an egalitarian framework for profit distribution, this may not help in certain situations where significant differences have emerged in the size of the individual shares (due to fragmentation in the original shares over time. See discussion on *nikkat* in Chapter 5)). Additionally there may be genuine issues concerning affordability of the investment and even risk aversion that may hinder consensus amongst the share holders. An illustration from FR Kohat discussed in the section below draws out the nature of challenges that could arise even in staunch traditional and closely knit FATA communities. Neighbouring CPRs are also discussed in general towards the end to highlight the possibility of varying solutions.

6.3.1. Rising Up to the Occasion: The Likely Challenges and Responses on the Road to Collective Action

In the year 2005, the residents of Malik Sahib Din Khel Mela, a *kandae*¹⁹ of Mohammad Khel subsection²⁰ in FR Kohat started considering options for exploring coal in their *shamilat* (common lands). Predictably, amidst the ensuing discussions amongst the *malikan* the distribution of profits and losses emerged as the main contentious issue. A dominant view proposed the distribution should be based on marriage criterion as opposed to the traditional *nikkat* principle, which in their opinion had become skewed in the favour of those families whose original shares had suffered less fragmentation over time. Going by this principle, the number of eligible shares was 142, representing the total number of married men at the time. An opposing view, obviously from those who expected gains that way, preferred conformity to the original share allotment under the *nikkat* criterion. An additional issue pertained to investment and adequate compensation to those who were willing to invest in the proposed

¹⁹ A *kandae* is a further sub division of a subsection best described as a small village within. See Chapter 5.

²⁰ Mohammad Khel falls within the Zarghun Khel section which is traced back to the Galai sub clan of the Adam Khel clan of Afridis in FR Kohat. See Donald (1901) for details on the Adam Khel Afridi clan in FR Kohat.

venture. Participation in equity from all the *malikan* was not forthcoming due to a mix of affordability as well as risk aversion reasons. The *malikan* did eventually succeed in reaching consensus on the issue but the outcome of the negotiations was a complex formula based neither on *nikkat* nor the marriage criteria but a combination of the two.

The proposal for equal distribution of profits on the basis of the marriage principle amongst the 142 shareholders reflected the reality of the day given that the original share fixation under the *nikkat* was skewed in the favour of one family in particular. Originally descendants of four brothers, the present *malikan* represented four extended cousin families with varying numerical strength. Of the four, the smallest family would benefit more under the traditional *nikkat* system due to relatively lesser fragmentation in the individual shares since the time of the original *nikkat* fixation. This family supported this criterion while others realised their loss in this traditional formula. In their case, the marriage criterion offset the disadvantage caused to them by share fragmentation and returned larger individual shares. Additional challenges to overcome pertained to the issues of affordability and uncertainty of investment. While some found it genuinely difficult to afford investment in the project, the decision was difficult for others due to the prevailing uncertainty²¹. Discovery of coal in the surroundings was a recent development. Many doubted that a commercially viable find would ever be made in the hill overlooking their dwellings. On the other hand, those willing to invest had genuine concerns regarding both the scale and security of returns in case the project was successful.

The deadlock of varying interests was finally resolved through a clever scheme of profit distribution that seemingly reconciled the diverse interests of the *malikan*. A consensus decision was eventually achieved by a *jirga*. The pre-existing collective choice arrangement thus proved to be effective in resolving the conflict *ex-ante* (Ostrom, 1990, pp. 90,93,100). The initial investment required was raised through an in-group offering of shares against cash payment. To those willing to undertake the risk, the value of each share was fixed at Rs.100,000 and there was no bar on the number of shares a person could purchase. The tricky part of the profit distribution was resolved by adopting a batch wise approach to maintain an incentive in the project for all the stakeholders. Each batch of coal mined was composed of two truck-loads of coal. The first truck in every batch would go to the investor *malikan* and divided within the group in accordance with the shares held by each. The second truck in

²¹ FATA residents do not have access to institutional credit and even if provided, a majority would not prefer it due to religious considerations. The subsequent chapter touches upon the subject.

every batch would be allocated on the basis of the marriage and *nikkat* principles in an alternate fashion. This way the proceeds of the second truck of first batch would go to 142 married *malikan* in equal shares. Similarly, proceeds from the second truck in the second batch would go to the *malikan* in accordance with their share ratios under *nikkat*. Management of the project was entrusted to a committee of four members chosen by the *malikan* within the group. Accountability was maintained (Ostrom, 1990, p. 90; Agrawal & Ribot, 1999). The committee was responsible to the *malikan* who remained the ultimate monitors as well as the appropriators. It was not long before high quality coal was struck and the project started delivering dividends (Interviews C3 & C9).

The *malikan* in this case successfully counteracted *tarboorwali* (agnatic rivalry): the infamous divisive behavioural trait that Pukhtuns are widely known for (Barth, 1959; Ahmed, 1976, 1980a). The scheme of profit distribution crafted by the elders of Malik Sahib Din Mela to ingratiate the diverse interests attests to their ingenuity. On the whole, the need to cooperate for mutual gains was fanned by the reality that no party stands a chance to gain by excluding the others. That costs of such an enterprise would be inordinately high in the social context of FATA does not beg much imagination in the light of discussion in the previous chapters. The Malik Sahib Din Mela case can be clearly seen to be complying with all the relevant design principles witnessed in successful CPRs by Ostrom such as: well defined boundaries (of the resource and the user group); equitable rules; monitoring; sanctioning and arbitration ability; autonomy (1990, pp. 90-101; Ostrom, et al., 1994, pp. 267-282; Ostrom, 2000)²². The CPR was being successfully self-managed when last confirmed from the field in late 2011. News gathered through contacts with selected respondents in the field confirmed that matters of an identical nature are being resolved in several other areas more or less on similar lines.

Successful cases are proliferating across the FATA landscape; however, variations in solutions may exist depending upon the peculiar circumstances of the respective *malikans*. One such case pertains to the neighbouring subsection of Qasim Khel; perhaps one of the

²² See the relevant portion on Ostrom in Chapter 3. She outlines a total of eight principles in her seminal work (Ostrom, 1990). The first seven pertain to various governance attributes and activities in relation to appropriation, provision, monitoring, enforcement, conflict resolution and autonomy. The eighth principle pertains to complex CPRs wherein the governance activities are organised in multiple layers of nested enterprises (federated systems involving multiple user groups also referred to as polycentric systems (Ostrom, 2007, 2010)). Other scholars of commons have added some more variables to the list. See (Wade, 1988; Baland & Platteau, 1996). On closer look these offer minor modifications or make explicit what Ostrom deliberates upon in her work. The validity of Ostrom’s design principles (or variables) remains unchallenged (Ostrom, 2000). Also see (Agrawal, 2003) for a general comparison of these two scholars with Ostrom (1990).

earliest instances of coal discovery, and conflict, in FR Kohat. Coal was discovered in the year 1996 in the common lands of five *kandaes* of the subsection: Chargan; Abbas Khel; Rajwali Khel; Sher Alam Kalay and Gandeer Khel. However, within the *malikan*, one named Ameer Said (alias Charg) from the *kandae* Chargan, a notorious personality and ringleader of a kidnapping (for ransom), carjacking and drugs racket, felt confident enough to throw the gauntlet to the other *malikan* by capturing the deposit bearing area through force. A severe conflict ensued the details of which are skipped for the sake of brevity. The final outcome was however in the favour of the *malikan* who collectively were able to regain possession and start the mining operations after a final settlement amongst themselves just before my fieldwork in 2009/ 2010.

My respondents informed me that Ameer Said’s control of the mines remained tenuous throughout this time and he could not operate the mines smoothly due to the intense pressure from the other *malikan*. Ameer Said eventually met his fate in 2007 at the hands of the Taliban who did not approve of his activities. However, my respondents also hinted at the complicity of the *malikan* in his elimination. In the period following, the internal disputes amongst the five *kandaes* in relation to appropriation of profits and management of the resource were resolved in a unique way.

The traditional *nikkat* apparently failed to unite the *malikan*. It was through what could be termed as an unorthodox interpretation of the *shariah* (Islamic law) by religious scholars of the area that consensus was finally achieved. A unique principle of gender equality in shares was adopted going even beyond the normative *shariah* prescription of dividing the shares between male and female siblings in the proportion of 1:1/2 respectively (share of a sister equal to one half that of the brother) (Interviews C 1, 9 & E). The Qasim Khel case is not the standard way such matters are dealt within FATA and hence clearly a deviant case. However, it does demonstrate the possibility of varying solutions and capacities of the *malikan* to resolve the dilemmas of collective action confronting them, provided if they are left alone to their own devices (Ostrom, 1990, p. 14; Ostrom & Walker, 1997, p. 43).

While the *malikan* in Malik Sahib Din Mela and Qasim Khel were able to overcome the intervening challenges towards credible collective action, the situation is to the contrary just a few kilometres away. A dispute on shares amongst the various subsections of Akhorwal, on going at the time of my field work, still remains unresolved. Coal was discovered in the Akhorwal area around the year 2003. “These [Akhorwal deposits] are the largest in entire

FR” remarked a respondent, “but production was halted after six months when a dispute over shares broke out between the three subsections of Akhorwal: Pirwal Khel, Gaddia Khel and Bulaqi Khel” (Interview C10). Mediation efforts have been afoot ever since but a speedy consensus is seemingly inhibited by the number of parties involved in the dispute. Each subsection has several *kandi* within, hence the elders/*maliks* have a very difficult job to drive the diverse interests towards a consensus. It takes time, usually several years to resolve such issues though exceptions to this generally observed pattern can be wrought by leaders blessed with exceptional skills (Ostrom, 2000). The Akhorwal dispute is both on a higher level and involves a greater number of claimants, making it different to the Malik Sahib Din Mela case, and even the Qasim Khel case. The locus of dispute in the former was within a particular *kandae* of a subsection and in the latter both within and across the different *kandi* of the subsection. A comparison of the Akhorwal case with the famous Ziarat marble dispute involving sections of Massaud and Gurbaz Clans of the Safi tribe in Mohmand Agency is more germane²³. However, in that particular case, a four year long dispute (from 2004 to 2007) was hastened towards resolution by the Taliban who eventually intervened and brokered a settlement. The case proves the point made in Chapter 5: for a *jirga* to be effective, it really matters who is on the panel. The Taliban enjoy a niche in this regard, at least in the areas where they hold sway.

Despite variation in the ease of success, a distinction of the FATA context in comparison with many other traditional settings is noteworthy. Here elite capture is well nigh possible despite high resource value as the outcome of the Qasim Khel case in favour of the *malikan* shows. Elsewhere this is a big issue to contend with in relation to common ownerships (Azhar, 1993; Agrawal & Ribot, 1999; Platteau, 2004; Fitzpatrick, 2006; Iversen et al., 2006; Sarah, 2006)²⁴. While conflict amongst the *malikan* may take time to resolve, solutions are likely to emerge given the basic premise in relation to CPRs in FATA that all parties stand to

²³ Marble was discovered in the hills of Ziarat village in 1999 and all the six sections of the Massaud Clan (Adamzai, Said Khan Kor, Khazeena, Chinari, Had Kor, Mashwani) were able to resolve their emerging intra as well as inter-sectional matters in relation to the marble mines. At some point in 2004, a dispute broke out between the Adamzai section of the Massauds and the neighbouring Gagezai section of the Gurbaz Clan and mining in the area was stopped. The primary cause of the dispute was stated by my respondents as expansion of the mining operations by the Admamzai to an adjacent territory partly claimed by the Gagezai. The Gagezai’s claims got due support from Kataras and Adin Khel, sister sections within the Gurbaz Clan perhaps in the hope of getting some shares in return. The dispute was finally resolved by the Taliban in 2007 and the new mining area was reapportioned between the claimants.

²⁴ Sarah (2006) discusses elite domination in a *qalang* Pukhtun context. She examines the effectiveness of Pukhtun *jirgas* in Malakand, a *qalang* Pukhtun setting and notes elite domination of *jirgas* in that setting. The situation is quite different in the *nang* society of FATA as elaborated in the discussion in Chapter 1.

gain through cooperation or else no one does. Deviant behaviour is likely to be seen as an affront to the *Pukhto* of others and hence invoke a demand on the latter to take all possible redeeming measures (see discussion on *Pukhtunwali* in Chapter 2). This underpins the incentive to cooperate. Stated differently, the structure of the ‘game’ played within the matrix of *Pukhtunwali* allows and exhorts the actors to punish those not seen making appropriate contributions (Ostrom, 2000). Once the basic differences are mitigated, stability is underpinned and perpetuated by uniformity in the gains in accordance with the distribution parameters agreed *ex-ante*.

6.3.2. On Costs and Governing the Costs

In the opinion of one senior official interviewed in this research, mining in FATA was not prone to hazards in the same measure as in the case of the settled districts:

All you need to do is approach the tribe through its elders and get an agreement done with their help... [d]isputes are also resolved easily in comparison with the settled districts such as Buner or Chitral where such matters usually get embroiled between the local custom [*riwaj*] and the courts (Interview E 16).

Buner was a part of the formerly princely state of Swat; a Yusufzai Pukhtun stronghold of the *qalang* category (Ahmed, 1976, 1977). Swat was encapsulated in the 1969 through its merger with Pakistan (Ahmed, 1976; Sultan-i-Rome, 2008)²⁵. Chitral, also a formerly princely state was merged with Pakistan in a similar fashion around the same period (SMEDA, 2009) but is distinct from Swat in its mainly non-Pukhtun demographic composition. Both Buner and Chitral have rich mineral potential and a sizeable number of operational gem stone and marble mines (SMEDA, 2009, n.d). Although the absence of alternative forums of disputes puts FATA in an advantageous position against the encapsulated or semi encapsulated areas such as Buner and Chitral, its institutional complexity cannot be overlooked in the manner apparent from the above opinion of a respondent. Outsiders are generally the most disadvantaged group when it comes to understanding the institutions and collection of other relevant information (Ostrom & Walker, 1997, p. 43). A contract can thus easily drift into a quagmire for lack of sufficient knowledge of the local realities as evident from the following

²⁵ *Qalang* category represents social stratification of Pukhtun society along feudal or semi feudal lines. See Chapter 1.

account by a respondent:

There are elders in every tribe [subsection] who represent their tribe [subsection] by signing or affixing their thumb impression on the [contract] agreements but it remains imperative for the contractor to ensure that *all the share holders have been consulted in the process*. If you are not aware of who the share holders [*malikan*] are and enter into a deal there may be problems. This task becomes quite difficult in cases where some of the share holders have migrated out of the locality. The likelihood of them being left out in the process is more [and it may not be easy at the *ex-ante* stage to detect the omission] (Interview C2; emphasis added).

The nature of society is democratic. The elders/*maliks* do not enjoy power in the manner that the tribal chiefs in the tribal societies elsewhere do. This point has been made in earlier discussion (Chapter 1). In FATA’s case, in order to be effective, the elders/*maliks* have to have a *waq* (mandate) from their respective constituency for the purpose of the contract. A tendency of these leaders to overestimate their influence is a real possibility as implied by the statement above. The elders/*maliks* may presuppose their *waq* at an immature stage or even leave out certain elements from the process. Usually the process of consensus starts from within the family but ironically it is here that omissions have a greater likelihood of occurring. Migration of some *malikan* to other places is an additional dimension to be wary of and demands a reasonably high level of local knowledge on the part of a contractor at the *ex-ante* contract stage. Since the tribal social structure is based on oral traditions, the costs of reliable information in this setting are bound to be high generally, and in particular for outsiders. Considerable resources have to be spent at the *ex-ante* contract stage in order to avert the possibilities of the above type (Williamson, 1985; North, 1990; Williamson, 2002). Parties from within the region however enjoy an edge in this regard as they are in a position to collect useful information through their social networks at much lower costs.

The *ex-post* contract stage has its own dilemmas of contract enforcement. Although *jirga* is the unrivalled dispute resolution institution, it has its own costs (Chapter 5). My field data suggests that a formal *jirga* may be avoided by the parties till it becomes absolutely essential. Instead, true to the spirit of private ordering (Galanter, 1981; Williamson, 1985), I found the parties (the contractors in particular), inclined more towards negotiations outside the *jirga* framework apparently in an attempt to avoid the costs of the more formalised *jirga* procedures. *Jirga* however remains the final resort in case negotiations fail to yield results.

“*Mung sara balla lar nashta*” (there is no other way or alternative [but to keep our door open for claims and negotiations]); a respondent’s assertion confirms realization of the dilemma in

the institutional context of FATA (Interview C1). The nature of FATA Property rights is usufruct as already explained. A contractor is seemingly at the mercy of the *malikan* given that exit through contract alienation could also be a costly alternative. In line with the logic of the modified contracting schema (Williamson, 1985; 2005; see discussion in Chapter 3), FATA is a weak property rights scenario therefore the relational contracting mode is the mandated governance structure. The parties are locked in bilateral dependence; however, there is a significant disparity between the positions of the parties: the contractors vis-à-vis the *malikan*. The latter are, and remain, in control of the former’s investment throughout the term of the contract. The *riwaj* seem to dictate even operational choices such as employment of the local labour. This further cements the dominant position of the *malikan*.

Mining is generally labour intensive but its degree varies across various settings depending upon the level of technology employed. Since the level of technology employed for mining in FATA is not sophisticated enough at present, reliance on labour is greater than the technologically advanced settings. An average marble mining quarry employs around 15-20 workers. The position is almost similar in the case of surface chromite mining (from the outcrops). However, the figure changes dramatically when deep mining is involved such as in the case of coal (and even in the case of chromite at places where the ore is not exposed to the surface). In that case, the number of workers may fall within the range of 50 to 300, depending upon the depth of the seam (Interviews C). In regards to employment, *riwaj* mandates a preference for local labour over all others. Labour from outside is generally disapproved of as it can cause a breach of privacy or “*bepardagee*” (privacy of the household generally and particularly of the women). An exception is grudgingly made in cases where the required skills are not locally available or if the job involves substantial hazards such as in coal mining where the underground tunnels run very deep²⁶. Pukhtun coalminers from the Shangla district (in Swat) have thus been able to carve a niche for themselves in FATA coal mines. In all other cases locals have to be employed even if the requirement is not explicitly stipulated within the contract. It is an unwritten rule of the *riwaj* and presumed to be well understood by the parties.

In addition to direct employment in the mines, the locals enjoy an advantage in almost all the activities in relation to a mine in their area. There are a number of auxiliary contracts and activities that crop up around a mine once it resumes commercial production. Mines are

²⁶ Experts revealed that the depth of FATA coal mines is currently within a range of 500-3500 feet.

usually at quite a distance from the public or main access roads hence right of way arrangements have to be made for access roads through the intervening lands. Settlements with the land owners are mostly verbal and payments are usually settled on a per truck basis en route to the market. Carriage transport again remains a local monopoly. Carriage contracts to outsiders were ruled out by my respondents being a potential cause of trouble in the presence of locally available transport and declared feasible only where the locally available transport was not sufficient to match the output from the mine.

That all these compulsions may have significant cost implications is pretty obvious. Williamson argues that parties are usually not taken by surprise in bilateral dependency situations; they anticipate such conditions and adapt or organize with respect to them in order to stabilize exchange (1985, pp. 180-182; 1990). Although clear or direct choices between alternatives are apparently limited in the case of FATA, certain inherent features of the mining activity may abet and deliver to one’s advantage as potential avenues of exchange stability. Indeed as apparent from the rapidly rising mineral production figures of the region, it seems that the contractors are coping reasonably well with their choice constraints and the costs that these impose. I will tackle the affordability of the costs dimension last and first examine how a reasonably stable relational mode of governance is sustained within the adverse set of choices that a contractor has to adjust to.

My field data suggest that the same features of mining that are generally construed negatively as merely choice constraints could be avenues for contract stability. Other than the *malikan*, a number of parties have stakes in the direct or indirect streams of benefits generated by mining. Three main avenues in this regard are labour, transport and the right of way. The interest of all the stake holders engaged in these avenues is tied to the operation of the mine. The norm of payments on a per truck basis, as is the case in the right of way and carriage arrangements to and from the mines, makes it easy for the recipients to calculate their daily losses in case the mine is closed for any reason. Pressure could be brought to bear on the *malikan* if their ‘unreasonable’ demands have forced the closure of a mine. Support can also be derived by invoking the ideals of *Pukhtunwali*.

Likewise, it may not be easy even for the *malikan* to forego their daily income and let a dispute drag on for long. Affirming a positive change in attitudes due to a change in the

frequency of payments, a prominent contractor of marble mines had this to say:

When we had annual leases [sole contracts with annual payments] our operations would be halted frequently. Whenever there was a dispute even amongst them [the *malikan*] the mine would be closed down. A person would come and close down the mine even if the matter would not relate to the mine as such. When we changed the mode [from annual payments] to daily payments things changed. We proposed daily payments to them on a per truck basis. This way if there was production there would be payments [to the *malikan*]. [Henceforth], whenever someone would try to close down the mine, others [*malikan*] would intervene [and get the matter resolved quickly] as their daily income would suffer [in case the matter dragged on] (Interview C8).

Obviously, a reasonable level of production from the mine on a daily basis would be essential to make the impact of this felt by the stake holders. Going by this logic, it is not difficult to visualize that enhanced production possibilities through the use of modern machinery and mining techniques would enhance the utility of stability of contracts for all the parties, and in particular the *malikan*, who otherwise seem to hold an unfair advantage of the turf. Section 4 deals with this subject.

I have alluded in the above towards a proclivity of private ordering disputes outside the *jirga* framework to avoid costs incidental to the latter. However, *jirga* remains the ultimate forum in case negotiations fail. In such cases, respondents indicated a rising trend of including contractors from the neighbouring mines as experts on the panel alongside the traditional members such as *maliks*/elders. Uniformity in decisions of *jirgas* across the mining communities of FATA is thus on the rise alleviating a major drawback of *jirga* on this count. Contractors have become a sizeable community over the period. Information sharing is effective and quick due to the rise of telecommunication especially through mobile phones. The market is another common platform that links them. Interestingly, even the role of the PA emerges less tainted. Respondent contractors confirmed that mining disputes that are lodged with the PA get attention and members from their community were now routinely appointed on the *sarkari jirga* (official *jirga*) panels. “After all it is in the interest of the political administration that mining prospers in the area. Their income [from the Agency Development Fund] ceases if we do not work”. This remark by a respondent is self-explanatory (Interview C8).

The *Pukhtunwali* environment is not to be discounted despite the likelihood of opportunism as noted earlier in this discussion. A majority of respondents in this research affirmed that its

ideals do have a moderating effect, even if these fail to achieve the otherwise impossible task of culling opportunistic behaviour altogether. The overarching umbrella of *Pukhtunwali* and its operating features, the *riwaj*, are trusted by the majority for the purpose of unspecified contingencies or unforeseen circumstances. Clauses stipulating resolution of all disputes in accordance with the *riwaj* were found included in every written contract examined in the field. Pukhtuns regard *Pukhtunwali* as a complete code therefore reference to abide by the *riwaj* in case of disputes provides an assurance to the parties that matters would be resolved within a commonly acknowledged and sacrosanct framework. Indeed it is a more comprehensive and stronger assurance than that afforded by vague references to certain generic norms requiring a tenant to act in a ‘farmer like manner’, in case of disputes found in the Southern U.S. tenancy contracts (Alston & Gillespie, 1989).

Discussion up to this point highlighted the inherent costs of exchange in the institutional environment of FATA. Parties in contract have to contend with these costs and stabilize their contracts by leveraging the potential avenues of stability to their advantage in order to avoid the greater costs of contract disruption. A glimpse into the production and price dimensions below sheds light on how the parties are able to afford such costs in the FATA CPRs’ case.

6.3.3. What Makes Stability a Reality: The Tangible Props of Contract Stability

One question but two opinions on the profitability of mining offer an interesting insight into the range of possibilities in mining. A high note of optimism was sounded by one respondent while declaring: “there is no loss in mining” (Interview C2). A somewhat cautious opinion was offered by another respondent: “[t]here are no losses in mining in *certain areas* where the quality and quantity of yield is not an issue”(Interview C4; emphasis added). One way of telling the probable whereabouts of such areas is by looking at the mining clusters that have sprung up over time in various Agencies.

The qualifying statement of the second respondent became clearer as I explored the theme in further interviews. It transpired that a total loss case is one where a find is not established at all. Risks of such a nature come as an essential part of the overall risk package in the mining industry everywhere though technical knowhow and technology has greatly relieved the possibilities of such a risk. This is true to some extent even in the case of FATA where the

rising level of technical knowhow, if not technology, has minimized such risks²⁷. Where the quality and quantity of the output is not good enough, it is also considered a loss case and rightly so given that the results do not match the expectations. However, even in the worst of such cases, generally, the parties are able to recover at least their capital. This is mainly because the initial capital requirement is not prohibitive at the current level of technology and there is demand in the market even for inferior qualities of coal, chromite and marble (Interviews C). The opportunity costs of mining are therefore generally presumed to be favourable.

The pre-production capital cost of a mine mainly depends upon the type of the mineral and location of the site. The main cost components are the upfront payments demanded by the *malikan*; the cost of infrastructure (access roads, labour quarters and storage depots etc.); the cost of machinery and the labour costs of establishing the find. In the case of coal, respondents indicated a range of 8-15 million rupees depending on the seam depth. Variation is mainly on account of labour costs²⁸. The upper level of 15 million in this case may suffice to operationalize an average marble mine with the help of moderate level machinery—generator, compressors, and at least one fixed or overhead crane and loader. Revision of the machinery downwards to tripods and chain pulleys supplemented by manpower as required may reduce the investment by 50-60%. A similar amount of capital may be required in the case of a chromite mine if it does not involve deep mining (Interviews C).

All the respondents interviewed confirmed that financial constraints are more likely in the pre- production rather than the production phase due to certainty of sales in the latter. Likewise, their responses reveal that the use of mechanical implements is kept at the bare minimum level till the find is established and production capacity is fully ascertained. The level of capital investment is thus kept within an affordable range in the pre-production phase. Moreover, data reveal that initially reliance is mainly on cheap local machinery and technological improvements or up-grading, if any, is reserved for some feasible time later in the production phase.

²⁷ Respondents confirmed awareness of basic geological knowledge within the mining communities due to increased interaction with professional miners (contractors, skilled labour) and even professional geologists.

²⁸ There are sites of potential advantage in terms of labour costs such as in Abudag, Orakzai Agency where a respondent informed me that “the seam is virtually exposed at numerous sites and coal can just be scratched off the surface without much ado”.

The situation changes almost dramatically when a mine enters the production phase. “Sales are mostly on cash terms and are not an issue due to high demand in the market” (Interview C5). The growing demand is duly reflected in the trend of huge advances for sales. Big trading firms have emerged with offices in the neighbouring settled districts. “Recently a party deposited 100 million rupees upfront to be adjusted against future sales to the party from my mine. I completed the order in four months”, said a respondent (Interview C9). A similar situation was described in the case of chromite and marble. “Advances make the job of the contractor easy. There is cash in hand to keep everyone happy and the work [production] running” (Interview C10). On the ease of sales, a contractor operating a marble mine in Mohmand Agency stated:

In the past we used to [sell on credit and] visit the factories for recoveries. Payments would get stuck in cases where the factory owners had objections on the quality [damage due to hairline cracks]. It’s different these days as mostly the buyers pay in advance to the mine operators [contractors or the *malikan*]. Then there is also the emerging trend of cash sales through auction at the weighing stations where the interested parties line up for bidding. The winning parties make cash payments there and then” (Interview C2).

Enhanced level of affordability is almost certain in this milieu as sales generate and establish a cyclic pattern of cash inflows. Profitability seems to be assured by the rising prices of minerals in the market every year as revealed below. Not surprisingly, all the respondents interviewed confirmed this as the phase where major investments on improved mechanical technology are possible, and indeed made in most cases.

The market prices of coal and chromite depend on the natural quality of the mineral and are not largely affected by the mining method *per se*. On the other hand, quality in the case of marble is mainly determined by aesthetic considerations (Bank, 2006, p. 66 F.N. 66),²⁹ therefore the method of mining becomes a major factor in determining its price. The natural quality of a mineral can be ascertained through analysis of its samples at the Pakistan Council of Scientific and Industrial Research (PCSIR) labs, a government facility in Peshawar and other major cities as and when required³⁰. The need for sample testing is mainly buyer driven and is relevant more in the case of chromite and coal than in marble. Visual inspection is

²⁹ This refers to colour, evenness of shades, lack of cracks, fissures, and regularity in the dimensions of the extracted block etc.

³⁰ A respondent pointed out a private lab in Hayatabad Township in Peshawar but this has not been confirmed.

deemed sufficient in marble as colour and physical appearance (or texture) is the main criteria for its quality. Percentage content of the desirable chemicals/elements is the main parameter for natural quality in the other two cases.

An official of the Mines and Mineral Directorate FATA Secretariat revealed that Orakzai coal was declared the best in Pakistan due to its low sulphur content and high heating quality (Interview E 17). “A truck of good quality coal from the area easily fetches up to 125,000 rupees and is in high demand in the brick kilns in the neighbouring settled districts where it is used to improve the quality of low grade coal through mixing”, confirmed a contractor in Orakzai Agency (Interview C6). Coal from FR Kohat has a relatively lower heating quality but is within the range suitable for industrial use.

Chromite is an oxide of chromium, iron and magnesium and is the only source of chromium which does not exist as free metal in nature. Chromite ore rarely contains more than 50% of chromium³¹. It is mainly in demand for its use in stainless and other alloy steel industries (SMEDA, 2007, p. 3). The price in this case depends on its percentage content within the host ore³². Ore with chromium content at 50% or above is regarded of good grade in the market which is mainly driven by international demand, especially from China. Prices of good grade chromite touched a peak of over 50,000 rupees per ton before the global economic slowdown in 2008 brought these down (Interview C10).

Although reliable statistical data regarding year-wise market prices of the three minerals under study could not be traced, all the respondents confirmed an upward trend in prices over the years except in the case of chromite lately. An estimate based on the opinions elicited from the respondents indicates an average increase of 10-15% per year in prices since FATA minerals started emerging in the ‘90s (tables below). Even in the case of chromite, the drop in price in 2009 came after several years of upward spiral (Table 6-1). The increase in chromite production from the area was supported by high market demand for the mineral till it started dropping off in late 2008 due to the global financial crisis³³. This however was

³¹ Chromium has a wide range of uses including in chemicals and refractory bricks. Stainless steel and nonferrous alloys are two of its main applications. The demand for chromite is mainly driven by Chinese industrial consumption. The global financial crunch of 2008 adversely affected the demand for Chinese exports and this in turn slowed down its demand for chromite.

³² Deposits in Bajaur Agency are known for their high grade of chromium content.

³³ The drop in price is reflected by the drop in production in 2008-09 (Table 6-1) but a significant increase in production in the next year (2009-10) is apparently on account of production from new discoveries in Waziristan. This should be not taken as a sign of improvement in price.

widely believed to be a temporary phase at the time of my fieldwork and parties had either temporarily suspended operations or reduced output to levels bare enough to maintain essential staff on the site and sustain a presence in the area. The contracts remained intact as the *malikan* seemed to appreciate the changed market situation. As for the big trading firms in the market who could afford to wait for the situation to improve, they were reportedly holding on to their existing stockpiles, and even buying new stocks at lower prices in an expectation of windfall profits³⁴ (Interviews C10, C11, E 17).

Table 6-2: Average Rates of Coal per 10 Ton (Rs)

Year	Good Quality*	Medium Quality	Low Quality
2006	42000	15500	7000
2007	50000	18000	10000
2008	57500	21000	11000
2009	70000	32500	17000
2010	82500	40000	22500

*Quality of coal is determined by moisture, volatile matter, fixed Carbon, Ash and Sulphur contents.

Table 6-3: Average Rates of Marble* per Ton (Rs)

Year	Ziarat White	Super White	Badal
2006	6500**	4500	1600
2007	8500	6000	1800
2008	9500	6300	1800
2009	11000	7000	2000
2010	13000	8000	2500

*Average rates of three major varieties according to respondents interviewed.

** This was average rate in 2004 when production from Ziarat mines was stopped. It remained suspended till 2007. See F.N. 23.

³⁴ The prices were showing signs of recovery when confirmed from the field in late 2011.

Table 6-4: Average Rates of Chromite per Ton (Rs)

Year	Good Quality (50% and Above)	Medium Quality (40%)	Low Quality (30%)
2006	28000	20000	8000
2007	40000	23000	9000
2008	45000	30000	11750
2009	26000	16000	7000
2010	28500	18000	9000

In so far as the amount of production expenses in three minerals is concerned, it reveals that on average and at the existing levels of technology, these expenses remain well within the 25-30% range leaving a huge chunk of 70-75% as the margin for profits. The figure is not based on statistical evidence but responses from the respondents interviewed. An element of imprecision cannot be overruled but it is unlikely that this would cause a significant departure from the estimated rate. The high profit rate also explains the short payback period of capital pointed out by all the respondents. “Two months regular production is enough to recover the capital expended on the development of a mine”, declared a contractor operating a chromite mine of a modest production capacity of one truck in two working days (Interview C 10). A similar position was underscored by a contractor in relation to his coal mine of a moderate capacity of 5-6 trucks per day. One caveat was invariably stressed by all the respondents: continuity of production hinged on essential cooperation and relationship with the *malikan*. If that was obtained, sales and resultant profits could almost be taken for granted.

It is clear that the respondents were under no compulsion or constraint from the buyers’ side. Contrary to the production side, the supply side in the case of mining is therefore free of the lock-in due to bilateral dependence. The high prices result in huge dividends for a contractor which he could appropriate in part to meet the costs of the relational mode and still be left with a sizeable chunk to take home. In other words, contractors remain by and large in a position to offer incentives in the shape of enhanced payoffs to the *malikan* (and all other stake holders) as and when a need arises in order to avert the contractual hazards. Clearly, this is more or less akin to situations wherein a seller has to afford an incentive by way of price concessions to a buyer with whom he is locked in a bilateral dependency situation or vice versa. In this case imagine the *malikan* as sellers of certain rights to their productive assets and the contractors as buyers of these rights. The buyer is locked-in with the sellers

after making the decision to buy the rights on offer. He is no position to alter the institutional environment in place (property rights regime of FATA) that renders his position inferior to that of the *malikan* and the only way is to keep an incentive for the sellers (*malikan*) in a bid to make them follow the terms of the contract. The contract will remain stable as long as he is able to hold the carrot in front of the *malikan*. The yearly increase in prices helps this cause as it maintains affordability almost at a uniform level. On the threshold of the modified contracting schema, the parties in this case are at Node C. At this node parties are able to devise cost effective private ordering supports(s) for property hazards(r) due to favourable price (p). Credible contracting is thus achieved and mutual gains are realised by all the parties (Williamson, 2005).

6.4. A Likely Road Map Ahead

The locals see the newfound mineral wealth of FATA as a blessing for their region; the dawn of new era of opportunity in this otherwise resource scarce region. The view is endorsed by outsiders too, development professionals associated with the government and non-government organisations, but with a pinch of salt. Concerns abound regarding the potential negative environmental fallouts of the mining methods pursued in the region. Marble mining methods are a particular focus due to the high incidence of resource wastage caused by the traditional blasting techniques in practice. The percentage of waste is estimated at a whopping 73% in the extraction stage alone. The downstream wastages in the processing industry are also significant. On the whole the entire process from the marble quarries down to the processing involves a net estimated wastage of 85% (PISDAC-USAID, 2006, p. 7)³⁵. In the case of chromite, the low grade ore goes to waste as generally only the high and medium grade ores are commercially viable at the present state of technology (SMEDA, 2007, p. 3). Likewise, lack of best practice in the case of coal mining is reckoned as hazardous for workers’ health besides being a factor responsible for the premature closure of mines (Interviews E 15, E 17).

The concerns are not entirely misplaced. However, standard solutions based on the premise of preservation through enhanced regulation, as indeed underlie the official mind set, are

³⁵ For the figure of wastage, Group (2006) relies on a study conducted in 2004 by the Centre of Excellence in Geology, University of Peshawar but does not cite a proper reference of the said study.

more likely to aggravate than remedy the situation³⁶. The efficacy of such measures remains doubtful even in the case of mines already under full state control in the adjoining settled districts. The arbitrary nature of laws and abuse of authority by state officials have been identified as reasons why mining practices in these settings have not improved over time (PISDAC-USAID, 2006, p. 16)³⁷. The potential ill-effects of regulatory policies are a subject well explored in numerous other traditional settings too (Ostrom, 1990; Fitzpatrick, 2006). The costs of regulation usually outstrip the projected benefits in the developing world scenarios. The case of FATA may be more complex than most especially when it comes to enforcement of authority. Any attempt towards stringent regulation is likely to be resisted vigorously by the tribes. Chapter 1 & 2 highlight a myriad of countervailing factors that the state has to contend with in order to keep its flag hoisted in this region. Any such attempt is destined to defeat its purpose in this region besides being destructive to the possibilities of indigenous change³⁸.

My field data suggest that although at a slow pace, technological change is already under way in FATA. In fact, paradoxical as it may seem, marble mines may be well ahead of others in embracing the change. The reason is none other than the enormous scope of profit maximisation contingent on essential technological improvement in this case. Studies have shown that losses can be brought down to 45% through modern technology which is the internationally accepted bench mark in marble. Even the waste can be value added. The type of waste generated by modern machines lends itself easily to further use in handicrafts such as marble mosaic tiles etc.³⁹. Square blocks as opposed to irregular and damaged boulders extracted through blasting techniques fetch on average a price three times more in the market. In that shape, it becomes fit for export as well in which case the unit price per ton goes up by 25 times more than the domestic market. Moreover, value is added across the entire marble value chain. The transportation costs from the quarries to the processing units are decreased

³⁶ Invariably all the officials interviewed in the Mines and Mineral Department urged the need for more regulation.

³⁷ For instance, the mining law in Pakistan fails to ensure secure property rights under formal leases and allow room for abuse by state officials. Approved leases can be cancelled at will hence the resulting insecurity affects the incentive of operators to invest in modern mining methods. See Bank (2003).

³⁸ The mineral law is already extended to FATA but its enforcement is not rigorously pursued. See discussion in Section 6.1.

³⁹ Interestingly a scope for female employment also arises as a result as such activities can be performed by the women folk in privacy (*pardah*).

as the size of useful material transported increases. The scale of waste in the downstream marble processing industry is also significantly reduced so the value added output is enhanced (PISDAC-USAID, 2006; PASDEQ, 2008?).

Such enormous possibilities of profit maximisation have not gone unnoticed by the progressive entrepreneurs in FATA. The onlookers are likely to follow as successful experiences in field demonstrate new possibilities to them. Lately some of the government’s own progressive measures at supporting the ‘demonstration effect’ by progressive entrepreneurs are likely to register more success than its traditional regulatory policies. Plans were afoot for ‘marble city’ projects at the time field work was being carried out during December 2009—May 2010. These projects include special facilities to improve the quality of production in accordance with international standards.

Indeed, technological improvements, apparently not a pressing requirement at present, are likely to become inevitable at some point not too remote in time. In the light of discussion in Section 3, it is not hard to conceive that contract stability would be fleeting in FATA if an entrepreneur is not in a position to afford the transaction costs inherent to the institutional environment in FATA. The situation may arise at a certain point in the future where the cushion of high profit currently available due to high prices and low costs (production plus transaction) is no longer available. This may happen if the costs creep up on the prices⁴⁰. Cost economization through the use of modern technology may become imperative under such circumstances. The possibilities of an endogenous change cannot be ruled out even at a stage much earlier than the ultimate tipping point. The existing comfort zone of profits does not presuppose a halt in the ongoing traditional profit maximisation drive. The profit enhancement potential is evident even from the basic statistics above. The incentive to upgrade is significant and the inexorable movement towards a higher state of technology is logical even without coercive measures. The process is sure to benefit from the more benign face of the state revealed through its support and sponsorship of the demonstration effect. It remains to be seen however as to how long it will take for the FATA CPRs to move decisively in the direction of change.

⁴⁰ Increase in the labour and transportation costs alone will have a telling effect on the profits. Labour, currently cheap and the mainstay of production is bound to become dearer with time as its demand increases due to the upcoming CPRs. The costs of transportation are already on the rise due to the continually rising global fuel prices.

6.5. Conclusion

Discussion in the chapter revealed the characteristics of contracts in CPRs, the likely hazards and the performance of relational contracting as a governance mode in FATA in an attempt to answer the second and third questions of research in relation to CPRs. Field data presented in this chapter confirm that CPRs in FATA have the potential for successful self-governance as almost all the design principles pinpointed by Ostrom (1990) are present in this case. Resultantly the FATA CPRs hold out a great opportunity for indigenous growth in the region.

Data portray that the tribal communities enjoy full control over their resources. The state clearly emerged as resigning rather than intimidating. The tribes remain in a position to keep it at a comfortable distance from the CPRs. Potential challenges confronting the tribal communities in the FATA case, at least presently, are not from the larger political system but are from within and mostly pertain to ownership and profit distribution issues. At the same time, a distinctive feature of the FATA tribal societies is that a disputed CPR cannot be operated by the parties unless the dispute is resolved. This brings significant pressure to bear on the rival parties as potential gains become contingent on the resolution of the conflict. Rules pre-exist to help resolve such conflicts. Similarly, as regards the profit distribution, the pre-existing *nikkat* system generally works and precludes major disputes. Modifications may however still be required in some cases and field data reveal that *malikan* have the requisite ability to do this and arrive at consensus based solutions.

Once the basic differences, if any, are resolved, the self-management mode is clearly the most stable contract mode in FATA as many of the hazards of the partnership mode are averted when the *malikan* are themselves the sole operators. Partnership contracts emerge as the second best option leaving the sole contracts as most susceptible to hazards of disruption. Field data revealed that the latter type of contracts were mostly an arrangement of the times past when greater uncertainty about the resource and its value prevailed. The situation has dramatically changed in the wake of a flurry of new discoveries and the visible success of the emerging mining enterprises. Data also indicated a trend of conversion of sole contracts into partnerships. This may be seen as an attempt by the parties to safeguard against the hazard of disruption due to strategic behaviour which usually arises under conditions of certainty and rising resource value.

The partnership mode is a patent mode of relational contracting in CPRs but a contractor is hostage to the *malikan* by virtue of his investment being under their control and subject to

their *riwaj*. A contractor has seemingly no choice but to keep his principals in good humour at all times. Even though blatant opportunism is prevented by *Pukhtunwali*, additional rent seeking is a recurring possibility. Discussion highlights the potential avenues that may help in private ordering the emerging claims and keeping them under control. There are costs to be borne nonetheless and evidence suggests that it is the high level of cost affordability that ensures the continuity of the relational mode. The high demand and prices of minerals in the markets outside FATA yields huge profits thus a contractor is in a position to offer incentives in the shape of rent payoffs or enhanced profit shares to the claimants as and when a pressing need is perceived to save the contract from disruption. The higher costs of contract disruption are hence avoided. In effect, as per the logic of the contracting schema, this is similar to the price incentives afforded to the buyers. With the nature of property rights (usufruct in this case) remaining constant, the price and the safeguard (relational mode of contracting), remains fully interactive.

So far I have reserved a comment that manifests quite early in the discussion in the chapter. Given the institutional intricacies of FATA, contractors from the concerned locality or from within FATA generally, seem to have a decisive edge over parties from outside the region. Additionally, parties from outside are constrained more by information asymmetries that the locals can make up for through their local connections at considerably lower costs. Finally, I have argued that technological up-grading is logical and may happen without coercion. The cushion of profits may shrink at a certain point in time if the price hike is not able to correspond to the rising transaction and production costs in FATA. Technological up-grading may be the only option in that case to enhance the output, lower the costs of production and thereby yield sufficient profits to sustain the costs of contracting in FATA.

Chapter 7. Battling the Odds of Exchange: The Case of Manufacturing Firms in FATA

This chapter completes the quest of this research by taking up the second and third questions of research in the case of non-CPR firms—private enterprise outside the domain of CPRs in FATA. For reasons given in Chapter 3, this chapter focuses on manufacturing firms in FATA as exemplars of the former.

Manufacturing firms emerged in FATA as a consequence of a window of opportunity provided by the Afghan Transit Trade Agreement (ATTA) between Pakistan and Afghanistan allowing the latter to transit its imports through Pakistan. Being an indispensable trade corridor between Pakistan and Afghanistan, FATA was ideally perched to reap the unintended benefits of this liberal trade protocol through cross border smuggling. A huge demand for foreign goods in the affluent Pakistani markets was logical due to the highly protectionist trade regime of Pakistan¹. FATA provided an ideal sanctuary and warehouse for smugglers much to the detriment of the local industry in Pakistan². The local economy of FATA, in contrast, received a big stimulus and some manufacturing activity also kicked off at certain feasible locations to exploit the ‘freedoms’ of FATA (access to cheap smuggled inputs, free electricity, and freedom from taxation and regulation) and target the Pakistani markets, in particular in the neighbouring settled districts of NWFP.

Field data collected in this research reveal that the position has largely changed, at least with regards to manufacturing, mainly as a result of trade liberalization policies unfolding in Pakistan since 1997/98. Previously, access to cheap raw material and favourable credit terms from suppliers located in FATA was almost guaranteed putting firms in a position to forge relationships onwards with the buyers on credit terms. This advantage was also reinforced by the low cost of production in FATA mainly due to free or heavily subsidized electricity supplied by the government. The recent trade liberalization in Pakistan has disturbed this traditional pattern. Smuggled raw material has lost its prime attraction and hence firms have been forced to source their purchases from the settled areas on unfavourable terms.

¹ According to a World Bank study till 1997/98, Pakistan was “one of the most highly protectionist trade regime in South Asian[sic] and in the world”(Bank, 2006, p. 121). Also see Chapter 3, in Volume 1 of Bank (2004) for a detailed overview of Pakistan tariff reforms.

² See Hussain & Masood (2008) for the impact of Afghan Transit Trade on the economy of neighbouring NWFP.

Additionally, subsidized electricity is also increasingly becoming a myth in FATA. I argue that as a consequence of rising costs, the relational mode of governance has become virtually impossible for a majority of firms in FATA that previously relied on smuggled raw materials.

Discussion in this chapter is structured in three main sections. Section 7.1 highlights the clashing nature of the tribal economy and the national economy of Pakistan in general and the waning advantages of the former in the arena of manufacturing. It looks both at the nature of the manufacturing scene and the *raison de être* of manufacturing in FATA to highlight the diminishing traditional advantages in the current scenario. Section 7.2 discusses the modes of contracts in vogue in relation to individual private property in FATA, the likely hazards and the dynamics of contract enforcement. Section 7.3 attempts to make sense of the increasingly complex task of contract governance in FATA by exploring the changing dynamics of relationships amongst the firm and its trading partners. Last, the conclusion summarizes the main findings of the chapter.

7.1. An Endangered Fruit of the “Freedoms”: The Manufacturing Landscape of FATA

FATA seems to have come a long way since the Corporation’s (FATA DC) industrial debut in the region; a task which failed to bear the much desired results for various reasons (see discussion in Chapter 2). A recent survey of the region’s industry (henceforth survey report) sponsored by its successor (FATA DA) reveals that though modest, private enterprise in manufacturing took off in the ‘80s, roughly coinciding with the public sponsored drive towards industrialization and gained some pace in the ‘90s (DA, 2010)³. Progress in this respect was however not uniform across all parts of FATA and the majority of the units

³ See Table 1 Annex-II of the report. Notwithstanding its shortcomings, stylistic and typographical in certain sections that render its findings somewhat confusing, this is the first ever survey of its kind in the region covering the manufacturing and services sector as well as the labour force in the region. A total of 1815 manufacturing and 13221 services sector firms were contacted in this study. Unfortunately, the report does not differentiate the industry by type and includes the operating mines as industrial units. This clouds its statistics somewhat. However as it is a known fact that mining activity kicked off in the region in the late ‘90s, data depicting year wise industrial growth in the region prior to the year 2000 can be safely presumed as relevant to manufacturing.

installed (66%) were of small scale⁴.

The two main manufacturing hubs that emerged in this period in FATA are Khyber Agency and its neighbouring tribal region of FR Kohat (Table below). FR Kohat incorporates the historic gun manufacturing town of Darra Adam Khel, well-known for its hand crafted replicas of famous brands of European game guns, hand guns, assault rifles and ammunition (Donald, 1901; Ahmed, 1980b, p. 87) . Although of late there has been some diversification of manufacturing in this area, the principal trait of industry still remains linked to arms and ammunition manufacturing. In contrast, Khyber Agency has a sizeable number of manufacturing concerns of varied nature mainly because it is the most preferred and frequented route for the Afghan Transit Trade (ATT) as discussed in the section below. Clustered in the two major towns of the Agency, Bara and Jamrud, manufacturing firms in this Agency produce yarn, cloth, plastic goods, polypropylene based products, cables and electrical goods, cigarettes etc. Until the recent spurt of industrial activity in some Agencies in what may be referred to as the post 9/11 period, other parts of FATA have not been as feasible for manufacturing or even business in general.

⁴ The report adopts the Small & Medium Enterprise (SME) Policy 2006 criteria for classification of the enterprises into the categories of small, medium and large. A small enterprise (manufacturing) is one which employs less than 50 people and has assets (excluding land and building) of not more than 30 million rupees or alternatively a turnover of less than 100 million rupees. A medium enterprise employs 51-250 people, has an asset range of 30-100 million rupees or alternatively an annual turnover within the range of 100-300 million rupees. As can be seen there is a considerable berth in the categories, which may project an exaggerated account of reality in the FATA case. A FATA specific categorisation would have been more useful. See pg. 66 of the report.

Table 7-1: Industries in Agencies by Period of Establishment

Agency/FR*	Period			Total
	1980-1989**	1990-1999	2000-2009	
Bajaur	12	26	52	90
Khyber	24	186	327	537
Kurram	5	18	27	50
Mohmand	6	63	158	277
Orakzai	1	9	160	170
North Waziristan	2	5	18	25
South Waziritan	-	2	7	9
FR Kohat	140	289	170	599

Source: Modified from (DA, 2010, p. 67)

*Amongst the six FRs, only FR Kohat has been included in the above table because of its significance in relation to manufacturing. The survey report reveals that a total of 704 units were established in all the FRs upto 2009 and of these, as shown in the table, 599 were set up only in FR Kohat. This attests to the predominance of this FR in its group and even in FATA on the whole.

**This includes a very small number of industrial units established in the prior period.

As a testimony to the resilience of the tribal folk in general and the tribal entrepreneurs in particular, the above table reveals that despite all the odds, industrial investments in FATA did not cease even in the after math of 9/11. A significant number of industrial enterprises were set up in the traditionally less business friendly Bajaur, Orakzai and Mohmand Agencies during this period. Though the nature of newly emerging industries in these areas has not been given (see F.N. 3), these are unmistakably related to the recent mining boom in these areas. We know, for instance, that the discovery of marble in Mohmand and Bajaur, has prompted a sizeable cluster of marble processing firms in these two Agencies (PISDAC-USAID, 2006; see Chapter 6)). A striking feature of these emerging areas of industrial activity is that these are far away from the traditional industrial hub of Khyber and its surroundings.

7.1.1. The Stigmatic Underpinnings of Manufacturing Industry in FATA

Respondents interviewed in this research offered three main reasons for the commencement of industrial activity in FATA: smuggled raw material from across the border in Afghanistan; free or cheap electricity; and freedom from government regulation and taxes. The last of these ‘economic freedoms’, as we may call them, needs no elaboration in view of discussion

in the previous chapters while the reality in respect of the remaining two freedoms has largely changed as a result of developments outside FATA. This will become apparent in the discussion below.

The origin of modern day smuggling on the north-western frontier owes much to the transit facilities traditionally allowed to Afghanistan to route its imports from abroad through the Pakistani ports⁵. These offer the shortest and hence the most viable transportation route to Afghanistan⁶. For Pakistan, the favour has been dictated more by the imperatives of strategic considerations of ensuring peace and tranquillity on its precarious north-western border land than any worthwhile expectations of mutual economic gains. The Afghan Transit Trade Agreement (ATTA) is the relevant trade protocol governing this arrangement since 1965. Intended to be an olive branch for the restive landlocked Afghans, the ATTA was (and continues to be) inherently liberal⁷. Under the terms of the said trade protocol, the foreign trade ordered by Afghanistan is exempt from the custom tariffs besides other substantial concessions in port and freight levies (Asad, 1995; Adam, 2009)⁸. Pakistan itself has been a highly protectionist trade regime with average customs tariffs hovering over 60%, in addition to the non-tariff barriers of regulatory quotas and import licences. This position persisted till the major tariff reforms of 1997-98 (Bank, 2006)⁹. FATA was destined to benefit directly as it was ideally positioned to grab the unintended benefits of the liberal trade agreement between the two countries. Given its special status and tribal autonomy, it could afford to be an ideal sanctuary and warehouse to the huge smuggling operations¹⁰. Excessive custom

⁵ Cross border inflow of goods from Afghanistan into Pakistan are not entirely related to ATT. It is the predominant source however.

⁶ See ADB (2006) for information on the various trade routes into Afghanistan.

⁷ In late October 2010 a new trade protocol “Afghan-Pakistan Transit Trade Agreement” (APTTA) was signed between the two countries to replace ATTA. However, the favourable terms of trade to Afghanistan have largely been maintained. The new treaty went into effect in 2011.

⁸ Many items on the ATTA list had actually no use in Afghanistan’s rudimentary economy making obvious the predisposition of the concerned Afghan businessmen (and their Pakistani cohorts) towards smuggling. Corruption within the ranks of regulatory authorities and lack of appropriate technical infrastructure helped their cause. The Pakistani clearing port at Karachi has no scientific screening mechanism to check the Afghan bound transit trade containers for potential graft even today so it has been virtually impossible to restrict the merchandise ordered under the ATTA to the approved list of items. The abuse of ATTA has been widely reported in the Pakistani Press.

⁹ Gradual reduction of custom duties started from the year 1997 onwards indicating a shift from protectionist to more liberal trade policies. See a detailed study by World Bank (2006, pp. 119-121).

¹⁰ The smugglers depots on the Afghans side are a stone’s throw distance from Torkham, the Pak-Afghan border crossing in Khyber Agency.

tariffs on the regular Pakistani imports had created a niche for these goods (finished consumer goods as well as industrial raw material) warehoused in FATA for onwards smuggling to the settled districts of Pakistan.

With the virtually cost free extension of electricity to FATA commencing in the '70s as part of the government's development drive in the region (Ahmed, 1977, p. 62)¹¹, the three economic freedoms essential for manufacturing industry in FATA started showing results. Locations in proximity to the major ATT route through Khyber Agency in the north¹², in particular Bara and Jamrud and to some extent even Darra Adam Khel, suddenly became feasible for manufacturing outside the traditional tribal forte of arms and ammunition. The major components of direct cost, cheap raw material and electricity, coupled with the geographical advantage of a close proximity to the markets in the relatively affluent northern districts of NWFP, and the ease of access to markets in the Punjab beyond, provided an edge to these locations over the more remote parts of FATA.

Manufacturing industry, however, is just one of the many implications of the budding economic opportunity shaped by the juggernaut of the ATT in FATA. Even though many parts of FATA, especially in its southern extremity, lagged behind in this respect, commercial enterprise generally benefitted from the ATT across FATA. Details are not relevant to the discussion here but it suffices to say that the thriving transport business by the inhabitants of the region within and outside the region is just one of its many manifestations (FATA, 2006, p. 6; DA, 2010, p. 18). An overall expansion in the commercial opportunity in the region is also apparent from the rise of bazaars as commercial hubs across all the major towns of FATA.

That economic growth in FATA comes at a huge cost to the formal economy of Pakistan is obvious in light of the above discussion. The full extent of the cost to the economy of Pakistan may never be fully known given the complex and discreet nature of smuggling transactions. All available estimates remain partial at best. One estimate by the government in

¹¹ Electricity had to be free by default given the tribal intransigence at the time to payment for any kind of utility provided by the government.

¹² This is through the famous Khyber Pass which leads to Torkhum border crossing between Pakistan and Afghanistan. Other officially approved routes for the ATT are through Ghulam Khan in North Waziristan Agency and Chaman in the Baluchistan province but the Khyber route takes the bulk of ATT to Afghanistan.

the year 2000 puts the direct loss of revenue caused from the sale of smuggled merchandise in Pakistan at 140 billion rupees, around three times the budget deficit for the year (Hussain & Masood, 2008, p. 8)¹³. The size of revenue loss may have increased many times over the years as the failure of counter smuggling operations is common knowledge in Pakistan.

From an official perspective, the problem defies easy solution. The most effective measures in this regard cannot be in the cards. A complete withdrawal or even an appropriate modification of the transit facilities to Afghanistan are practically non-options for the strategic ramifications of such measures could be unimaginable. The ATT related smuggling has therefore become an unavoidable bane for cordial relations between the two countries. It is hence all but natural to expect profound antipathy within official circles towards what the tribes in FATA deem their legitimate right, being simply a continuation of their centuries old vocation. The classificatory prefixes of ‘legal’ or ‘illegal’ are treated as superfluous. From the tribal view point, what is termed as illegal by outsiders is vital for their survival. A respondent in this research minced no words in this regard:

What you call smuggling is simply trade for us and if you stop that, you strangle us to death...tribal businesses would come to a halt. Trading with Afghanistan and Pakistan is the backbone of the tribal economy...What other choice do we have? (Interview N 6).

The official antipathy manifests in many ways. Plans for economic development in the region, for instance, are carefully evaluated for their possible repercussions on the formal economy of Pakistan. Many otherwise viable proposals may be resigned to the bin for fear of likely abuse and potential encouragement to the informal economy (Interviews E). My respondents complained that the woes of a tribal entrepreneur find little sympathy as compared to his counterparts in the settled districts, even in day to day matters. Severe rationing of power supply to the FATA industry (load shedding) for long hours in comparison to neighbouring industry in the settled districts was frequently cited as a practical example of a discriminatory mindset. Obviously, as the Achilles’ heel of FATA businesses, the manufacturing industry is more vulnerable than others in this respect.

¹³ Hussain & Masood (2008) refer to a televised talk on 20th May 2000 by the Minister for Internal Affairs Pakistan Mr. Mueenuddin Haider. Some reports suggest that the total volume of the declared and undeclared merchandise at around 5 billion USD and revenue loss to Pakistan at 2.5 billion USD. Around 80% of the transit trade merchandise lands back in Pakistan (Siddiqui, 2010). These are however estimates given the near impossibility of ascertaining the value of smuggled goods and quantifying their impact on the host economy of Pakistan. See Waqar Hussain (2008) for the impact of ATT on NWFP’s economy.

Electricity supplied to the region was virtually free of charge initially but there has been a change in policy in this respect. Since around the mid '90s fixed billing has been gradually introduced in the major towns of FATA with slabs fixed by the type of industry. The industry remained largely unaffected as the price of electricity is well below the standard billing-by-the-meter prices in the settled districts and a sizeable number are managing to stay out of this system by colluding with the power supply company, a government owned corporation. However, lately a major setback has come to the industry via rationing of power supply under compulsions of severe energy shortage in the country. As a predominantly non-bill payer community and outside the ambit of the formal economy of Pakistan, FATA is the last priority during the severe energy crisis in the country. Nonetheless, a bitter resentment towards the state in this regard was quite apparent during my fieldwork (Interviews N& C). The survey report also confirms this (DA, 2010, pp. 5,6).

My field data reveal that the power crisis is preceded by perhaps a more profound set back that hit a majority of manufacturing firms in FATA that relied on smuggled raw material. The recent power crisis may well be the last straw on the back of an already weak and limping camel. The entire edifice of manufacturing in that region is thus visibly endangered. Section 7.3 in this chapter explores the implications of the changed scenario in detail.

7.2. The Contours of Contracts and Contract Enforcement in Private Enterprise

Earning a livelihood through private enterprise is not a matter of choice but a necessity in FATA as there are limited options otherwise. One has to be entrepreneurial and enterprising in this region in order to eke out a living. Within private enterprise, business, especially trade and commerce, is more in line with the spirit of tribal freedom. It yields quick returns and is therefore the most preferred vocation. “The tribal folk have very little patience for something that takes a longer period to deliver” (Interview N 15). As this is the case with manufacturing, it is not a preferred option with most. Moreover, manufacturing is generally approached with a degree of caution mainly because of its inherent sophistication and technological complexities. Hence, even when preferred, there is a natural proclivity towards industry involving crude or simple manufacturing. A respondent’s view is given as follows:

We are simple people. We do not like complications and would go for the business that can be handled on our own. A business in trade is therefore the

first option. In case we find manufacturing viable, as a rule it will have to be simple (Interview N 9).

I found the theme recurring in all the interviews. With an exception of three firms (a polypropylene unit; an edible oil and ghee unit; and a synthetic yarn manufacturing unit) all others touched upon in my fieldwork were variants of simple manufacturing. These included marble processing units which may at first sight appear to involve intricate, if not very sophisticated operations. One parameter of the simplicity of the manufacturing process is the time spent by the trainee labour to acquire a reasonable level of skill to operate machines. This is considerably low in the latter case. “A raw hand can be trained on the job in just 10 days”, confirmed a respondent (Interview N 10).

Reliance on oneself clearly manifests in the ownership pattern of the manufacturing firms in the region. Field data collected in this research indicate a preference for sole ownerships over partnerships in the case of manufacturing. This is also affirmed by the survey report’s findings, referred to at an appropriate point in the discussion below. Partnerships however remain the predominant means of access to FATA for non-local parties. This is mandated by the *riwaj* (see discussion in Chapter 5). Respondents in this research also alluded to the possibility of rental contracts for setting up units at some places in FATA but my probe into the subject revealed that these end up more or less in the same category as partnerships. I explain this in the discussion below.

Going by the criterion of identity of the parties, partnerships could be classified into two types: partnerships wherein all parties are of FATA origin, and partnerships involving resident parties of FATA and non-resident parties from outside the region (settled districts). The first category could be subdivided, and not without valid reasons as will become apparent during the course of discussion, into partnerships between parties sharing common residency of a particular locality of FATA and those where the parties come from diverse localities within FATA¹⁴.

Interestingly, my respondents ranked partnerships with non-family tribal parties as a less preferable option than with non-tribal parties from settled areas. Moreover, it was affirmed that written contracts are becoming increasingly common especially in cases of ‘outside the

¹⁴ A bifurcation of the non-resident parties into Pukhtuns from the settled districts of NWFP and non-Pukhtuns is not deemed significant as the former’s advantage on account of common language may be overwhelmed by the many disadvantages shared in common with all other non-Pukhtun outsiders.

kin' partnerships. The reasons given were found to be identical to those highlighted in the previous chapter. Before I explain the preference for non-tribal partners, it may be recalled from the previous discussion (Chapter 5) that the case of family is different. Brothers, and even cousins, have a share in the business in any case, with or without any material investment, unless of course there has been a formal division within the family. Such cases of combined family fortunes usually last whilst the male patriarch (grandfather) is alive. Capital in many cases is raised from contributions within the family but such arrangements are not commonly referred to as partnerships and may remain undisclosed unless the matter is probed by a researcher through relevant questions. Hence, sole proprietorship in FATA does not essentially mean sole ownership even though all the operational decisions may be made by one person in charge of the business unit.

A cautious approach towards partnership with fellow tribal residents was attributed to the relatively high probability of disputes in the manufacturing line. Business operations usually involve complex transactions and profit calculations may not be easy in an undocumented setting such as FATA. A majority of the respondents hence agreed that the potential for a dispute is more in this line than trading.

Partnership with non-tribal outsiders was regarded as a different matter. "They will not come here [FATA] *unless they have to* [for reasonable profits] and for that *they cannot do without our support*" (Interview N 4; emphasis added). The statement by the respondent says it all. The local partner retains an edge over his non-local counterpart in such cases. This position cannot be altered in the *ex-post* contract stage. The investment is on the former's turf and his blessings are a must for the continuity of the business. A hostage-like situation obtains in such cases. It is natural that such partnerships would be seen as a different ball game, one in which the possibility of strategic behaviour on behalf of the non-tribal outsider is virtually non-existent. A bonding effect is guaranteed. The interests of the non-resident partner bind him to his tribal partner in the *ex-post* contract stage (Williamson, 1985, p. 168; 1989, pp. 148,149). Seen from the perspective of the outsider, a non-tribal party in particular, such contracts are not conducive as equality between the parties to a contract is merely theoretical. A level playing field does not exist. Not surprisingly, partnerships with tribal residents are generally regarded as a non-viable option, unless of course, the opportunity costs of such investments are brought down significantly by abnormally high profit expectations (as is the case in the CPRs discussed in the previous chapter). This fact is not lost on the tribal folk either as manifested from the above statement of the respondent.

It was acknowledged however that partnerships may become unavoidable if a business has to be set up on someone else's turf i.e., in cases where sectional or tribal lines have to be crossed for setting up a business or its branch. Contingencies of trading businesses in particular may require such partnerships to be effected but the need may not arise in the manufacturing line as normally sites close to one's abode are preferred for setting up the units. A rental contract could however provide a way out of the partnership dilemmas in the tribal areas. A respondent explained this in the following terms:

In some areas such as Jamrud and Bara (Khyber), the locals have allowed their lands on monthly rent to the outsiders from other clans or tribes and even the non-tribals. The landlord remains responsible for his tenants under the *riwaj* irrespective of the terms between the parties therefore rent contracts and partnerships share some common features in this respect. In both the cases there is a local resident standing as a guarantor before the tribe (Interview N 9).

“Under the tribal laws [*riwaj*] the land lord is responsible for his tenant and if someone has an issue [with the tenant] he will have to approach the landlord”, explained another respondent (Interview N 13). Clearly, the landlord retains his patron status even in the case of a rental contract. My investigations into the matter revealed that over and above the normal monthly rent, there is an additional incentive for the landlord, and his family, in such contracts by way of employment in the concerned unit. A rental agreement thus involves substantial implicit benefits for the landlord patron and his family and may be on the whole quite rewarding. Rental contracts were used predominantly in the case of the once thriving silk cloth units in Bara by the entrepreneurs from outside, the Punjab province in particular¹⁵.

There are some limitations not to be discounted in the case of rental contracts. In relation to manufacturing, the tradition has not yet evolved uniformly across FATA, ostensibly for the lack of such industry on a sizeable scale in the more remote parts (North Waziristan and South Waziristan Agencies in particular). The viability of such arrangements as an alternate mode of access to the ‘freedoms’ of FATA is hence yet to be established. Second, in situations where a non-local party cannot ensure a presence to oversee the unit's operations at all times, a rental contract may not be a feasible alternative to a partnership. The need for a direct and active involvement in the day to day business affairs by a local partner may not be

¹⁵ At the time, import of raw material for the industry was highly regulated through quota restrictions on import and high tariffs. Production in FATA was free of such restrictions courtesy of the blessings of ATT and there were significant additional benefits in the shape of free electricity and exemption for all kind of taxes. This provided a significant competitive edge to this industry in FATA vis-à-vis the settled areas.

obviated under certain conditions. A renowned industrialist from Khyber Agency explained the situation in the following terms:

I rented out a cigarette unit to a resident of Karachi.... There are huge problems faced by him these days due to the law and order situation. He cannot visit his unit. Partnerships [with locals] come in handy in such situations. The investor [non-local party] can manage a business without moving to the area. This [partnership] becomes a very feasible arrangement if the investor has other business interests outside FATA. It gives them an opportunity to remain engaged in their businesses outside the area (Interview N 4).

The fact that partnerships in the manufacturing line are popular to a lesser extent is corroborated by the survey report. The said survey reports a significantly low incidence of partnerships. As against a mere 22.31% of units being run as partnerships, a whopping majority, 77.69%, manage their businesses as sole proprietorships¹⁶. A lesser proclivity towards partnerships is on account of the constraints of property rights in FATA. These constraints render all the non-local parties, the non-local tribal as well as the non-tribal parties, amenable to the possibility of opportunism or strategic behaviour (Williamson, 1985, pp. 47-52; 1990, pp. 189-191) by the local party. However, between the two, the position of a non-tribal party is more precarious. A respondent emphasized the apparent advantage of the locals over the non-local parties by referring to an old saying (*matal*) in this respect, “*Da watan spay da watan soya neway shee*” (A local dog can catch the local hare; inferring that an outsider cannot be effective in an alien territory) (Interview N14). The advantage of the non-local tribal party due to better information and an understanding of tribal institutions is obvious. Moreover, within the environs of FATA, it is technically in a position to exercise the freedom to act in accordance with the dictates of *Pukhtunwali* in such matters. An account of partnership dispute between two tribal parties presented below explicates this point. A non-tribal party is decisively disadvantaged in this respect so naturally “there would be a trust deficit between them and the tribal people” (Interview N 14). They would not ordinarily venture into a partnership with a tribal party in the tribal area unless there are reasonably high profit expectations; almost of a windfall nature. It was apparently under such considerations that the Punjabi entrepreneurs crossed the Rubicon and set up silk factories in partnership with the locals in Bara.

¹⁶ The possibility of over estimation of the sole proprietorships cannot be overruled as explained in section 7. 2, however, the figure (22.31%) would still remain valid for non-family contracts.

7.2.1. The *Ex-ante* and *Ex-post* Enforcement Dimensions

An aspect of *Pukhtunwali* in FATA to reckon with is the *riwaj* of *brampta*. I have detailed the dynamics of *brampta* in Chapter 5. Although commonly regarded as the last resort due to its potential cost implications as explained in Chapter 5, it remains an option available to the parties nonetheless. As a credible threat, it checks opportunism, reinforces credible commitments to contracts (Williamson, 1983a, 1983b; 1985, pp. 167, 375) and has a sobering effect on the tribal society in general. The process of private ordering is strengthened as a direct implication. People do not close their doors to negotiations in matters of dispute. If matters could not be resolved between the parties for any reason, a more formal mechanism of dispute resolution through *jirga* is adopted to avert the impending hazards to life and property. A deviation from this norm could be a very costly affair as evident from the following account narrated to me by a respondent concerning one of his first cousins.

7.2.1.1. The Threat of Enforcement is Credible: A Tale of *Brampta* in Action

Amin Jan, a Kuki Khel Afridi of Jamrud town in Khyber Agency entered into a partnership with a non-local tribal party; one named Yar Aslam, an Adam Khel Afridi of Zurghun Khel section of FR Kohat¹⁷ to set up a steel utensils manufacturing unit in Amin Jan's home town of Jamrud. Yar Aslam held 2/3rd share in the business and allowed 1/3rd share to his local partner whose main contribution was in the shape of one acre of land for the unit. Two years down the road just when the business started delivering handsome returns, cracks in the partnership started emerging. Yar Aslam's main grievance was that Amin Jan was repeatedly overstepping his mandate in making business decisions behind his back with utter disregard for the fact that he was a major partner. An unrepentant attitude by Amin Jan did not help the matters between the two. Yar Aslam was now certain that Amin Jan was deliberately trying to create an antagonistic environment to push him out and acquire control of the entire business. Yar Aslam realised that he was on weak ground in Amin Jan's home town and that continuation in business with an untrustworthy partner was suicidal. Under the circumstances, exit from the partnership contract appeared to be the only viable option to avert imminent greater losses in future. Yar Aslam's main concern was to get his due compensation as there were limitations in this regard too. Since investment was made on the

¹⁷ Names of the parties have been changed and the precise sectional details of the parties have been withheld in order to protect their identity.

land owned by Amin Jan, he remained in a position to hold up his partner or dictate his terms and this is precisely what happened¹⁸.

In the ensuing deliberations between the partners, Amin Jan in principle agreed to buy Yar Aslam's share but the deal got stuck amidst conflicting estimates of the net worth of the business. Yar Aslam believed that the worth of his share was undervalued by at least 50% by his partner. Under normal circumstances the matter would be referred to a *jirga* but in this case the stalemate persisted as Amin Jan remained evasive despite repeated requests by Yar Aslam. In the midst of all this, Yar Aslam started gathering an impression that his erstwhile partner was not interested in paying him off, and perhaps never would, as he reckoned him incapable to take any action in reprisal. Yar Aslam found his *Pukhtunness* at stake and hence the stage was set for *brampta* to vindicate it. It was only a matter of keeping an eye on the rival party (and his kin) and picking the right moment to strike.

It did not take long wait for Yar Aslam to remind Amin Jan of his unfinished business with him. Around one year later, Yar Aslam was tipped by his informers that a paternal first cousin of his old partner was on his way to D.I. Khan, a southern district of NWFP, and was likely to take the route through the Kohat pass. A party of close kinfolk was scrambled to effect *brampta* and they were successful in capturing him along with his vehicle. On receiving the news of his seizure in *brampta* on account of Amin Jan's business dispute with Yar Aslam, the family of the captive cousin approached the former and demanded him to resolve his matters with Yar Aslam and secure the release of their son. Amin Jan had no choice. He could not risk the wrath of his cousins. A group of elders was assembled to approach the elders in Yar Aslam's tribe. Contacts were established between the elders of the two sides and assurances were exchanged. The hostage was released under personal guarantees furnished by the elders of the Kuki Khel clan while a *jirga* was appointed to look into the dispute between the parties. Yar Aslam got 85% of his claim as the *jirga* determined a lower value for his share but this was still more than the original offer by Amin Jan. Irrespective of the loss, it was still a victory for him. A recalcitrant tribal partner was brought down on his knees and *Pukhtunwali* was vindicated.

Instances of the above kind are not frequent, however, they are also not rare. This perpetuates the institutional memory. Most respondents interviewed had never actually resorted to

¹⁸ Refer to the discussion in Chapter 5 on limitations of sale of property in FATA generally.

brampta to enforce their business contracts but emphasized its positive implications in countervailing opportunistic behaviour in business in general. In the words of a respondent:

In a way *brampta* is a check on fraudulent practices and is used very wisely as the consequences could be grave¹⁹. You see I benefit from the *riwaj* of *bramta* although I might not have actually used it to recover my debt. *This is why the tribal businessmen are successful in doing business in the tribal areas* (Interview N 14).

An emphasis on the tribal identity as a reason for success in business in the tribal areas needs to be noted. Obviously, as also manifest from Yar Aslam's case, only the tribal residents of FATA are in a position to recourse to *brampta* if need be²⁰. Moreover, non-tribal outsiders in FATA are particularly vulnerable in this regard. An incident recounted to me by a respondent about a non-tribal entrepreneur taken hostage in *brampta* by a local in South Waziristan Agency and highlighted in Chapter 2 serves as a case in point. However, there is a caveat in this regard. In business settings, "*brampta* is not the first but the last option..." (Interview N 13). The decision has to be weighed carefully in all its pros and cons. "A trigger happy businessman would find himself sitting alone in his shop. You can do anything but certainly not business if you resort to violence on small pretexts" asserted another respondent who continued to explain in the context of day to day trading scenarios:

[N]ormally you try to pull along [in business] through peaceful means but when a situation is such that a major amount gets stuck which puts the business at stake and nothing [the normal dispute resolution mechanisms] seem to work then coercive measures of that kind [*brampta*] may become unavoidable...This is then the ultimate solution but I again say if there are two out of 50 that are bad debts and you can pull along then there is no need to resort to coercive measures (Interview N 9).

Clearly then, *brampta*, a self-enforced sanction, is reserved for extra-ordinary business situations. "In case a total disagreement occurs and an enmity breaks out then there are *brampta* possibilities against a party" confirmed a respondent (Interview N 13). The condition of enmity signifies a total breakdown of relationship. If the normal channels of communication either cease to exist or lose efficacy, that may well be a point where *brampta* might be contemplated.

¹⁹ See discussion in Chapter 5 for these.

²⁰ The point has been stressed above. Only the *nang Pukhtuns* of FATA are free to invoke the tenets of *Pukhtunwali* to the full. All others, including the *qalang Pukhtuns* who are otherwise ethnically linked to the *nang Pukhtuns* would be disadvantaged to varying degrees in this region. See discussion in Chapters 1 and 2.

Still, in most cases restraint might be deemed practical unless the dispute is perceived to be an affront on the threshold of *Pukhtunwali* or if it involves an amount that puts the very survival of the party at stake. The former is most likely the case when a party somehow doesn't show the due courtesy expected from it by its rival. Ordinarily, a deviation from the terms of a contract is expected to be rationalized with the help of compelling evidence and entreaties for reconsideration more or less on compassionate grounds rather than through outright defiance or obstinate justifications for non-compliance. It is through such a protocol that room is created within *Pukhtunwali* for accommodating a certain degree of docility essential for keeping the contracts afloat. *Pukhtunwali*, it may be recalled from our previous discussion (Chapter 5), is otherwise unsparing in its demands on a Pukhtun to safeguard one's property at all costs. In other cases restraint may be deemed practical as *brampta* is not without costs for all the parties to a dispute. I have highlighted some of these cost dimensions in Chapter 5. Parties in FATA are well aware of what methods to take should a dispute arise for some reason and are careful not to offend or insult their business counterparts. A failing in this respect is likely to evaporate the costliness of *brampta* as a practical consideration. Perhaps this explains why the instances of *brampta* are less prevalent yet this tenet of *Pukhtunwali* remains robust.

7.2.1.2. On The *Ex-ante* and *Ex-post* Enforcement Measures Generally

Invariably all the respondents interviewed in this research stressed the utmost importance of the continuity of relationships for their business in FATA. This, it was asserted repeatedly, is possible only when the matters of dispute are handled in such a manner that the spirit of cooperation prevails at all times. However, it was equally emphasized that a businessman must ensure that he is dealing with a trustworthy party in the first place. A lapse in this respect can cost an honest businessman his hard earned money as the dispute resolution system in FATA can be exploited by a shrewd operator to his advantage. This was the opinion of a respondent who quoted a *matal* that alludes to such an irony "*lanja mewa dar botay dey*" (dispute is a fruit bearing tree) (Interview N15). Since the *grundnorm* of the dispute resolution is reconciliation of the parties, there is always a possibility that a *jirga* may reduce the actual claims or liabilities standing against a party in order to salvage the relationship. An unscrupulous party may get an unfair advantage in the process if it plays its cards well and outsmarts the rival party in its strategies of dispute resolution. Reduction of its otherwise genuine liabilities is the 'fruit' that it may be able to gain from the dispute and hence the above *matal* that likens a dispute to a fruit bearing tree.

While almost all the respondents confirmed the possibility of the abuse of *jirga* due to the very nature of its underlying principles, they were of the view the hazard could be relieved significantly through appropriate *ex-ante* and *ex-post* measures. Foremost of the *ex-ante* measures was the selection of trustworthy parties in all spheres of business—not only in the case of capital ventures (partnership contracts) but also in routine day to day business transactions or contracts due to the predominantly credit oriented nature of business in FATA. I discuss the emerging ramifications of this aspect in Section 3. “A businessman should be able to sift the trustworthy from the untrustworthy through his own information network as the success of his business depends on this”, said a respondent (Interview N 15). “As a tribesman we can access even other tribal Agencies through our known people [personal and business contacts] and get information on a particular party”, stated another respondent who hastened to add that the more established the contacts, in particular business contacts, the easier it will be to obtain credible information (Interview N 14).

Evidently, a novice or a new entrant would not only be handicapped in getting reliable information on parties that it intends to trade with but would pose a similar dilemma for others as well. Lack of a sufficient history in business means that parties looking for it as a parameter to ascertain whether a party is credible enough would remain unconvinced and may hold back their cooperation. The entry costs for new firms in FATA are hence potentially quite high. The need to take all possible safeguards with new parties was invariably emphasized in this research and a respondent summarized some of these measures below:

We try to deal with the people we know, our own business relations. We do not readily trust new parties and in case of business interaction with someone new, we check their business reputation as well the family background... All possible safeguards are put in place in such cases. We insist on cash terms as the safest of all measures, or if credit has to be allowed in any case, this is limited both in terms of time and amount and personal guarantees from trustworthy third parties may also be demanded as a precondition... Future business terms with a party depend on whether it has lived up to its past commitments (Interview N 1).

A caveat against undue complacency was stressed even in the case of well known parties. “You cannot close your eyes even in the case of your trusted parties as your survival in business is linked to their performance [in business]”, averred another respondent who emphasized that a businessman should not be caught unawares under any circumstance. There are always signs or warnings of an impending default that a businessman must be able

to discern and safeguard against. This, he explained, is possible by “keeping an eye on how your trading partners fare in their respective businesses” (Interview N 14). This is evidently more than simply monitoring a particular contract *ex-post* as in addition to that the need for keeping a tab on business performance on the whole is posited. The purpose is to have a reasonably fair idea of the financial position of one’s trading partners at all times.

It is quite clear from the above that parties in FATA accord a priority to those who have earned their trust through satisfactory past performance and for the new entrants, a set of safeguards may be put in place. Business interaction in such cases is usually preceded by a thorough check on reputation and essential safeguards such as assurance of good performance from reliable third parties. Ethnic and business networks help with the dissemination of information. Those with established business networks have an edge in this regard as they can gather reliable information at relatively low cost. All the commonly reported *ex-ante* dispute prevention business protocols in literature are hence very much in vogue in FATA (Milgrom, et al., 1990; McMillan & Woodruff, 1999b; McMillan & Woodruff, 2000).

However, as is usually the case, the likelihood of a default in contracts can only be limited and not precluded altogether despite the best possible measures. Although the respondents affirmed cases of defaults due to strategic behaviour, they were generally of the view that these do not abound in FATA due to the very nature of the tribal social structure and *Pukhtunwali* environment. The act of going back on one’s word is generally reviled by society and those seen guilty in this regard could face severe ostracism. This however does not obviate the need for taking all possible safeguards as discussed above.

Alternatively, the more common cases of disputes pertain to defaults on agreed payment schedules but these are mostly due to genuine business contingencies. In view of a majority of respondents interviewed, such instances do not cause alarm so long as the basic contract is acknowledged and the party seeks relaxation merely in the terms of payment. Mostly there is no need for the ultimate form of the *jirga* in such cases. Parties are usually able to resolve their issues at lesser costs i.e., through the more mundane means of private ordering such as mutual negotiations between the parties and time concessions in payment schedules are usually allowed as an incentive to keep the main contract afloat. In the words of a respondent, “recovery is what matters the most for us to survive in business here [FATA] and we are happy that the debtor is paying after all even if it is over an extended time period” (Interview N 14). Other respondents also reciprocated this view. Obviously, this entails costs and a firm

could find it increasingly difficult to accommodate such cases if their number keeps on rising. Affordability could become a major challenge and as highlighted in the subsequent section, this is what presently confronts a majority of firms in FATA.

In contrast to the above scenario, respondents deemed defaults on payments instigated by quality issues and those in consequence of total losses in business far more vexing to tackle. The latter was termed a worst case scenario wherein a party may not be able to continue in business. According to a respondent:

If a party goes out of business it becomes very difficult to make the full recovery. Though one should spare no effort to recover the debt, experience shows that full recovery is very rare in such cases. One should be ready to part with a sizeable chunk of one's money [in such cases] (Interview N 7).

In both the cases, and particularly in the latter case scenarios, resolution of the dispute may not be possible unless the ultimate private ordering forum of the *jirga* is put into action. That dispute resolution would be achieved at relatively high costs in this case is obvious given the dynamics of *jirga* alluded to earlier in the discussion and discussed in detail in Chapter 5. “A businessman should be ready to part with some of his money when it comes to *jirga*”, explained a respondent who went on to stress that under certain circumstances this may be the only way to move ahead. “At least part recovery is ensured which is better than no recovery at all” (Interview N 15). The theme was echoed by the majority of respondents. A former president of Sarhad Chamber of Commerce and Industry (NWFP's apex trade association), who was a leading industrialist of tribal origin in Peshawar recounted his personal experience regarding a *jirga* and its costs in the following words:

A few years ago I invested in [a project in] Afghanistan in partnership with an Afghan national. The partnership eventually fell apart due to a breach of trust by my partner who funnelled money out of the business... I was able to form a *jirga* to look into the dispute... Each party was required to deposit \$100,000 [US] as *machalka* [security] with the *Jirga*²¹ and it [*jirga*] decided the matter in just three sittings. My erstwhile partner had to pay me within two hours... I had to part with \$150,000 including \$55,000 as fee to the *jirga* members but was able to recover the remaining \$600,000. So yes, it [*jirga*] has its costs but if I had gone to the courts [in Afghanistan] instead, the costs would have been far more; it would have taken me decades simply to get a decision and I am not sure whether it would have dealt with the case on merit. Take the example of Swat before its merger with Pakistan. Swat was way better judicially,

²¹ This was obviously a *jirga* with a specific mandate or *waq*. This is the most effective type of *jirga* as *machalka* deposited with the *jirga* by the parties in advance is used as a sanction by the *jirga* to enforce its decision. If a party does not accept the decision its deposit is forfeited. See discussion in Chapter 5 on the types of *jirgas*.

economically and even in education [in comparison with other areas of NWFP]. Wali Swat²² would preside and decide murder cases in a matter of days. People liked his quick dispensation of justice... That is what people want. Swat after the merger is nothing like that (Interview N17).

What is manifest from discussion till this point is that parties try their best to perpetuate business relationships by ironing out the emerging disputes through mutual consensus. Help may also be obtained from common business acquaintances by way of their advice and peer pressure if necessary. These private ordering measures are less costly than the *jirga* which remains the ultimate forum of dispute resolution. Parties prefer business interaction with already known and trusted parties as it limits the likelihood of strategic behaviour and encourages reasonable expectations that a certain mutually beneficial behaviour will prevail during the length of a contract. This is clearly in consonance with Williamson's modified contracting schema which posits the relational mode of governance as a panacea for contract stability in weak property rights environments. In terms of the schema, the relevant node for the parties in FATA is node C and will remain at this node so long as they can afford the relevant costs of the relational mode of governance (see discussion in Chapter 3). However, it transpires from my fieldwork data that this is becoming increasingly difficult as rising costs have outstripped the affordability threshold of a majority of firms in FATA. My field data suggest that this has a nexus with certain extra-ordinary developments in the formal economy of Pakistan that have disturbed the traditional patterns of trade and business relationships in this region. I elucidate this in the next section.

7.3. The Rising Costs and the Improbable Governance

A salient feature of the manufacturing industry in FATA, as apparent from my field data, is that it is predominantly credit oriented. Firms have to offer credit to their buyers, and in consequence, to overcome its cash flow constraints they are constrained to look for a similar facility from their suppliers. In simple terms, assuming other variables remain constant, if a firm is able to manage this essential balancing act, it may be able to sustain its operations. Relational contracting makes it possible to operate in such fashion, yet this would be a tight rope walk given the straining implications of the costs of relational contracting highlighted in the preceding section. Alternatively, sustainability would be severely threatened in cases

²² The ruler of Swat preferred the title of "Wali" for himself.

where a firm is not able to match its credit sales with credit supplies. Data collected in this research reveals that a majority of firms in FATA have moved in the latter direction.

Markets in the settled districts adjoining FATA are the principal destination of goods manufactured in FATA. “It [FATA] is a small place. Not even 1% of the products manufactured can be consumed here”: a respondent’s opinion reveals the predominantly export oriented manufacturing in FATA (Interview N 4)²³. The manufacturing units within FATA are thus dependent on markets in the settled areas but the buyers situated in those markets are not. They are not constrained in their choices as they can purchase products manufactured in the settled area. There have to be incentives for them to purchase from FATA units and credit is a basic requirement, almost as if by default. A respondent asserts emphatically, “If you do not advance credit, buyers will not buy [even] a needle from you” (Interview N 9). Others also confirmed that entry into the markets in settled areas is possible only through offering credit terms as well as attractive price incentives over other competitors from the settled areas. That it is apparently not possible for the parties in FATA to limit their exposure to credit in such an adverse milieu is pretty evident. One respondent recounted from his business experience that up to 70% of working capital easily gets tied up with debtors:

If you have ten million rupees [as working capital], seven million is sucked in the debts owed by the customers within no time; you are left with just three million in hand... That is a big disadvantage [of doing business here] but you have to put up with it (Interview N 6).

The adverse business cash flows that result cannot be remedied with loans either as there is no access to institutional loans in FATA. Banks do not lend in FATA as the region falls outside the ambit of the relevant banking laws²⁴. Though private money lenders do exist in FATA, the rate of interest demanded by them could go as high as 50%. Additional constraints by way of shorter pay back periods and demand of payback guarantees deemed acceptable by the lender make this option very costly; virtually a non-option for most. “The time allowed for repayment of loan is usually short... They just do not lend to everyone. They require a guarantor or an asset that they will seize if you are not able to pay” (Interview N 4). Without

²³ This presumably excludes edibles such as wheat flour and cooking oil or ghee produced in FATA.

²⁴ Commercial banks do have branches in almost all the major towns of FATA and maintain deposits from customers but they do not advance loans to their customers. An exception however is loan advanced for agriculture by the Agricultural Development Bank of Pakistan. See USAID (1990c).

prejudice to these constraints, a predominant majority deem all interest based financial arrangements as un-Islamic²⁵. It is not surprising hence that almost all the businesses (98.74%) rely on personal sources of finance and the non-interest mode of borrowing from within the family or from friends (DA, 2010, p. 9)²⁶. This obviously is not a very reliable way to raise finance as it depends on the financial circumstances of others which may not be favourable in times of need. The irony is that a simple extension of institutional loans in FATA would be meaningless. Given the religious inclination of the people, facilitation of access to institutional loans will have little impact unless special interest free products are designed for the region.

As pointed out at the outset, this financial predicament may be relieved somewhat when firms are able to obtain their inputs on credit. This, however, is possible only when purchases are made from suppliers within FATA. Suppliers in the settled areas are wary of the possible hazards of extending a credit line to FATA. The reasons should be clear from the discussion so far but a respondent summarized these as follows:

Outsiders do not readily trust us [tribal residents] because they believe that it would be difficult for them to settle their disputes with us... We have a different culture than the outsiders. We go for *jirga* [in case of disputes] whereas they [outsiders] do not understand what it means...Their concerns are not totally unfounded either. They genuinely find it hard to pursue their defaulters in the tribal area in cases of disputes (Interview N 14).

The current conflict in FATA has been an icing on the cake as it has further enhanced the level of uncertainty about FATA businesses. Timely delivery on business commitments has become virtually impossible for firms in FATA. Consignments get routinely delayed due to excessive checking and road closures by security agencies (Interviews N & E).

It needs to be recalled from our discussion in Section 7.1 that a major incentive that sprouted manufacturing enterprises in this otherwise disadvantaged region was access to cheap raw material smuggled from across the Afghan border, in addition to cheap electricity and freedom from taxation. Respondents in this research confirmed that this helped them secure their purchases on favourable terms. The suppliers were predominantly tribal and located

²⁵ A reflection of the religious orientation in relation to loans is evident in the figures reported by a recent study (Khan & Ahmed, 2007?) conducted for Khyber Agency. While 69% would not consider the loan option under any circumstance, only 23% expressed willingness to go for loans but under situations of intense need. A small minority of 7.2% revealed eagerness to avail loans as and when required without any religious considerations.

²⁶ Khan & Ahmed (2007?) report that more than 79% in Khyber Agency borrow from family and friends. The pattern is likely to be the case in other parts of FATA as well.

within FATA and thus willing to trust and sell on credit. This allowed them to meet the essential criteria of entry into the settled areas markets. They could entice their buyers by selling on credit and even offer price incentives to encourage timely payments. The low cost of production in FATA allowed sufficient leverage in this respect. However, of late this advantage of FATA has taken almost a U-turn for the majority of its manufacturing industry due to the changing trade tariff patterns in Pakistan.

Starting from the tariff reforms of 1997/98, Pakistan initiated an era of trade liberalization. There have been reductions in tariffs every year and the non-tariff barriers have been almost done away with (Bank, 2004, 2006)²⁷. The price of regular imports in Pakistan has fallen sharply and hence smuggled raw material under the ATT framework has lost its prime appeal. Respondents in this research revealed that the ATT importers (catering to the demand of smugglers) no longer prefer industrial raw material and therefore it has to be sourced from the suppliers in the settled areas of Pakistan.

A vital shift in traditional trading partners, and resultantly, in the terms of trade, has thus taken place. Primarily due to the trust deficit highlighted above, these ‘new suppliers’ (suppliers based in the settled areas) insist on cash or guarantees that the firms in FATA find difficult to afford. With sales still stuck with credit, an indispensable requirement that cannot be altered under the existing state of manufacturing technology in FATA, the vital balancing act of matching it with credit for inputs is no longer possible. This has pushed the firms, save a few exceptions, towards a severe financial crisis. It has become virtually impossible for the majority to manage business cash flows in the new trading scenario. The predicament of the firms is further aggravated by inordinate escalation in the costs of production in FATA. Two major heads in this respect were identified by the respondents as power and transportation. I will revert to discuss these after examining the exceptions; firms that are either able to cope with or that are not affected by the shift in the trading pattern described above.

The field data reveal that only those firms that have parallel business existence in the settled areas may be able to get around their pressing credit constraints. Such firms are hence in a position to allay the concerns of their suppliers by offering credible guarantees outside FATA. Moreover, the very fact that businesses and personal assets outside FATA in this case remain well within the reach of the normal law of the land serves as an assurance in itself. All

²⁷ Pakistan has taken more radical steps in removing the tariff and non-tariff trade barriers as compared to its South Asian neighbours, India and Bangladesh. See (Bank, 2004) for comparisons.

potential remedial measures in case of a default by such a party would remain the same as in the case of any other defaulting non-tribal party. For those firms in this category who have the requisite financial strength, there is even the option of direct import. At least three of my respondents, who fulfilled this criterion, confirmed direct imports at times in the past but maintained that this eventually ends up being very costly due to unfriendly tax laws and procedures. They revealed that tens of millions of their money paid by way of taxes (Sales Tax and Income Tax) at the import stage was still stuck with the revenue department²⁸.

The irony is that even though FATA is exempt from such taxes, FATA businessmen can never get exemption notified in advance by the concerned department, as is the legal procedure in such cases, to avoid payment of these taxes on their import consignments. The taxes paid remain legally refundable but once these taxes are paid—there being no other way to clear the goods without making depositing the taxes—it is virtually impossible to get these refunded. “FATA businesses are always suspected of some devious design [misuse of the facility by not utilizing it within but outside FATA] in the official quarters” (Interview E1). The procedural requirements for such refunds are hence so designed that these can never be met to the satisfaction of the revenue department. Direct imports are therefore not affordable on a sustainable basis even by those who could otherwise afford to avail this option (Interviews N 14, N 15, N 9).

Apart from the firms described above that may be able to cope with the change—apparently a small fraction in the light of the field data—there are three specific exceptions that are not affected by the change described in the above paragraphs. These include firms that use agricultural inputs imported from Pakistan, rely on natural resources indigenous to FATA, or rely on raw material smuggled from across the border outside the ATT umbrella. Wheat flour mills are a typical example of the first category whereas steel furnaces (manufacturing steel billets) and marble processing units are examples of the second and third categories respectively²⁹. In the case of flour mills, respondents lamented excessive controls in the shape of import permits, purchase quotas, bribes³⁰, inspections and interference in day to day

²⁸ In Pakistan, the Federal Board of Revenue (FBR) is the apex government agency responsible for federal revenue collection and administration. Its Inland Revenue wing looks after sales and income taxes whereas the Customs wing is responsible for the administration of import and export tariffs and regulations.

²⁹ Other examples of units in these categories respectively are edible oil and ghee, furniture (using Afghan timber) and stone crushing units.

³⁰ For instance 50 rupees are demanded per wheat bag at entry into the Agency as disclosed by one respondent.

business affairs by the political administration. However, as sales are to be made within the Agency, much of the problems that are confronted by the manufacturing firms in general do not arise in this case.

Likewise, the steel furnaces and marble processing units were found to be performing reasonably well under the circumstances because the sources of their raw material in their case remain within FATA. These firms continue to rely on their traditional trading partners both for inputs as well as output. The finished goods in these two cases remain in high demand in the markets outside FATA. Marble processing firms in particular were found to enjoy cutting edge advantages in this respect. Their raw material input is a resource indigenous to FATA, one in which FATA enjoys a niche. Sales are guaranteed due to huge domestic demand in Pakistan and there is also a vast untapped export potential (see discussion in Chapter 6).

With the exceptions to the prevailing trading syndrome in FATA fully outlined, I now revert to discuss the affordability implications of the excessive rise in the costs of production in FATA. I referred to the two most important heads in this regard highlighted by the respondents as electricity and transportation. I will start with transportation.

A major disadvantage to industry in NWFP, in general, is transportation costs. These costs are deemed significantly higher in NWFP in comparison to the major industrial hubs of Sind and the Punjab (Bank, 2005, pp. v,xi; Zubair Khan, 2005, p. 36), but tucked in the extreme north-western corner of the country and blessed with a tortuous hilly terrain FATA is even worse on this count. Experts interviewed in this research estimated that average transportation costs in FATA are roughly around 50% higher than in NWFP (Interviews E 1, E 5). A gruelling aspect of transportation in the FATA case pertains to the entry and exit barriers to and from the region resulting in significant transaction costs. All inbound and outbound goods need special sanction (permits) from the PA concerned. Moreover, my respondents informed me that unless cash gratification is paid, consignments could be held up indefinitely in FATA. Previously only the finished goods destined for Pakistani markets needed to be cleared from the officials manning the gates of FATA but now it's double the hassle as for a majority the source of raw material has shifted out of FATA to the settled areas of Pakistan. Imports from Pakistan require the same process of clearance and consignments could be delayed for days and even weeks (Interviews N). Evidently, the costs

of transportation have suffered a significant increase in the changed trading scenario described above.

However, a major upward thrust in production costs has been caused by the rising costs of electricity. Electricity supplied by a government corporation was the only source of cheap energy for manufacturing firms in FATA. Replacement fuels are either not available or not feasible being very costly³¹. The position has changed lately due to certain measures adopted by the government. Not only is the price of electricity being hiked, the government is also regulating its supply to this area under pressing economic compulsions and constraints of power deficiency in the country generally. Free and subsidized electricity to domestic and industrial consumers respectively has become unsustainable in view of the prevailing energy crisis in the country (Interview E 1)³². Long hours of power outages are routine in FATA and even when the supply is resumed, voltage is either too low or unstable to be of any use in commercial enterprise such as manufacturing (Interviews N). One of the main attractions of FATA has almost been phased out.

The change in the traditional trading pattern has almost overlapped with the rising costs of production in the region causing a devastating blow to relational contracting, a predominant trait of governance in the region. The former is a fundamental structural change, or more aptly, a fundamental distortion that a majority of the firms in FATA are unable to cope with. Indeed it does appear a distortion if we look at it through the theoretical prism of this research. If we recall the modified contracting schema (Chapter 3), this change compels the firms located at node C to approach a market based purchase position at node A as they cannot provide their new suppliers the requisite acceptable safeguards. FATA's peculiar institutional environment is an insurmountable barrier in that connection as elucidated in detail. However, relocation to node A is necessitated only in respect of purchases. The sales remain dependent on the buyers in the markets outside FATA requiring the firms to maintain

³¹ Gas for instance is not available in FATA and power generation through furnace oil costs almost 60% more due to high fuel prices, transportation, storage, heating costs as well as cost due to its lower calorific value etc (Interview E 1). Electricity provided by the State Corporations is hence the only choice. The Survey report confirms that nearly 60% of industries in FATA solely rely on this source while the balance of 40% may partially rely on self-generation through generators (DA, 2010, p. 31).

³² Pakistan has been in the grips of a severe power crisis for the last several years. The electricity demand is around 1500 MW per day which exceeds the electricity generated by around 4000 MW. See Haq & Hussain (2008). Additionally, FATA is accused of non-payment of even the concessionary bills. Arrears against FATA have mounted to more than 50 billion rupees according to senior officials. Though estimates vary on the total arrears outstanding against FATA, the matter has been receiving wide attention in the local press. See for instance Mustafa (2003) who puts the sum of arrears against FATA in 2003 at 27 billion rupees.

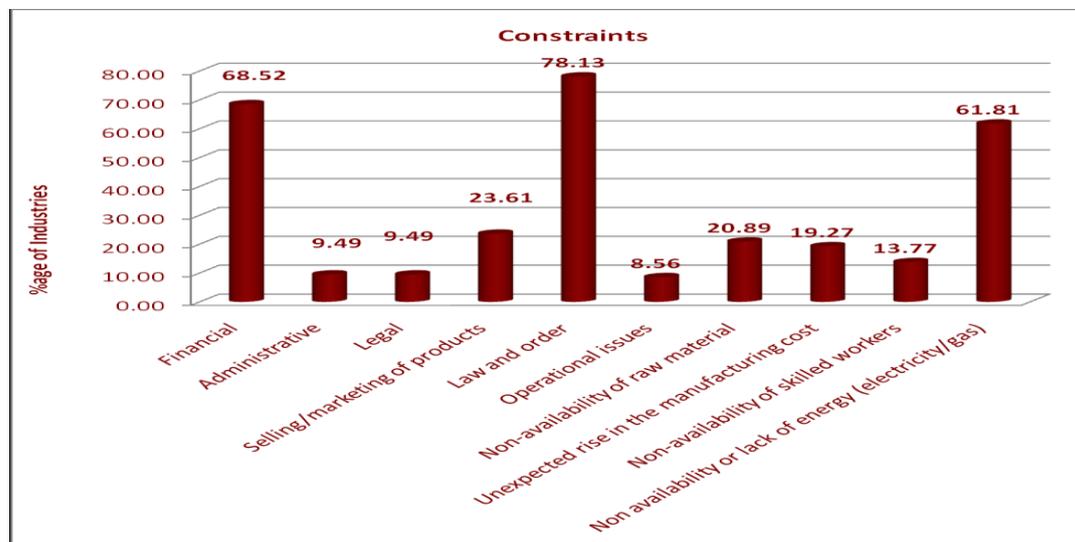
their position at node C. As the transition to the required node cannot be made in total, the governance costs for the firms rise as they try to pull along in this structurally distorted scenario. The inordinate rise in the costs of production further diminishes their chances of survival. Interestingly, the theoretical framework also explains the case of firms having parallel businesses outside FATA; noted as a general exception in the above discussion. These firms appear to demonstrate the ability to avoid dependence on their suppliers if required. They can import directly for their consumption or make other arrangements to suit their purposes. The likelihood of a movement towards node D, the node reflective of an hierarchical organisation on the modified contracting schema, is hence indicated. This posits that there may be a possibility of big FATA firms sustaining as monopolies in FATA if provided with reasonable support by the government.

In the wrap up to the discussion in this chapter, it would be worthwhile to refer to some of the findings of the survey report as these tend to support the findings of this research. However before that, it is pertinent to point out that the said report does not classify the sample of the units surveyed by different sectors of the manufacturing industry. It treats the whole industry as one homogenous block, including the mining industry, while the latter has been dealt with separately in this research design (Chapter 6). The reported figures will obviously not be truly reflective of the manufacturing case as construed in this research. Notwithstanding, however, some of the findings of the report can still be useful for the purpose of identifying a general trend in the research area.

I will take up the case of raw material first. The report indicates that 95% of the firms rely on raw material from Pakistan (DA, 2010, p. 32) and only 5% rely on imports from Afghanistan. This supports a shift away from the ATT based smuggled inputs towards regular Pakistani sources as highlighted in this research. I have argued that purchase from Pakistani sources is predominantly cash based which has eventually pushed the firms towards financial crisis and that the rising costs of production (primarily on account of electricity and transportation) have further exacerbated the situation. Incidentally, in the multiple options allowed to each respondent on the subject (Fig. below), financial constraint is the option most chosen (68.52%), after law and order (78.13%). Obviously, law and order is bound to be a concern

with the majority in a conflict zone. Non availability or lack of power falls next (61.81%) followed by a clutter of other related constraints identified by respondents³³.

Figure 7-1: Constraints Faced by Industry in FATA



Source : (DA, 2010, p. 33)

7.4. Conclusion

By all standards, it will not be an exaggeration to brand the current scenario in FATA as a ‘mayday’ for the manufacturing sector. In summary, discussion in this chapter examined the different types of contracts in private enterprise in FATA. It also attempted to show that the residents of FATA can counter the hazards of strategic behaviour in contracts even in cases where one party is not from the particular area of FATA where the contract is supposed to be enforced. The discussion also attempted to highlight the relevance and conditions under which the relational mode of governance relieves the hazards inherent in exchange within the institutional environment of FATA. An important link emerges as a result of my exploratory journey through the data collected in field. It transpires on analysis that in the context of FATA, the relational mode of governance delivers on its objectives of exchange stability reasonably well in a milieu where the firms are not constrained to go beyond the bounds of FATA for their raw materials. The region’s nascent manufacturing emerged precisely in response to an abundance of raw material within FATA through cross border smuggling in the aftermath of the ATTA. This study discovers that the situation has taken almost a U-turn

³³ The percentages do not total to 100 as multiple choice was allowed for each respondent to select from various options listed in the survey questionnaire.

from a position of self-sufficiency in inputs (smuggled) to a position of an overwhelming reliance on inputs from the markets in Pakistan.

The changed scenario is the consequence of a policy shift towards liberal trade in Pakistan. Smuggled raw material has lost its cutting edge as regular imports in Pakistan have become relatively cheaper. This necessitated a corresponding adjustment in the traditional trading partners in relation to inputs or in other words switching FATA based raw material suppliers with those in the Pakistani markets. This in turn mandated a change in the terms of trade from predominantly credit based transactions to cash based or market transactions for the reason that suppliers outside FATA do not ordinarily trust FATA businesses. Consequently, the traditional relational mode of exchange in FATA became threatened as at the same time firms in FATA remain constrained to rely on credit as a major incentive to lure buyers. I have argued that this portrays a situation on the threshold of the modified contracting schema with the suppliers pulling the firms towards market transactions and the buyers away from it. The costs of governance have therefore risen sharply and have surpassed the affordability levels of the majority of firms. The situation is further aggravated by the rising costs of production in FATA mainly on account of energy. The energy costs have gone up inordinately, primarily due to the severe rationing of the power supply to the region.

This research notes some exceptions to this pattern. Data reveal that firms that have grown big and have parallel businesses outside FATA are in a position to cope better with the change. There are thus signs that monopolies may thrive in the changed trading scenario, provided access to cheap power is not denied. Data also suggest three categories of specific exceptions in this regard. These pertain to food processing firms; firms based on natural resource indigenous to FATA and lastly firms that rely on raw material smuggled from across the border in Afghanistan. This is apparently because in such cases the traditional trading pattern persists but of all of these, the natural resource based firms appear to be the best performers under the most adverse conditions.

Chapter 8. Conclusion

This research has explored the traditional property rights regime of FATA in pursuit of its stated objective of advancing a deeper understanding of its performance in economic exchange. The need for a study of this kind was felt in the wake of an on-going development agenda in the region that is essentially underpinned by encapsulating ambitions dictated by exigencies of the international ‘War on Terror’. It was argued in this thesis that such an agenda of exogenous institutional change in the *nang* Pukhtun society of FATA could easily run aground and defeat its overall objective of peace and stability in the region. In the meanwhile many existing avenues of beneficial economic gains within the traditional institutional framework might be rendered ineffective due to inevitable conflict with the formal institutions. The point was highlighted from three dimensions in the first two chapters: a snapshot of the history of the region as a demonstration of the likely behaviour of the *nang* tribes when confronted by external challenges; the nature of *Pukhtunwali* and its structural underpinnings in the *nang* tribal society as the *raison d’être* of the continuing un-encapsulated existence of the *nang* tribes; and, the inherent limitations of the theoretical assumptions that inspire the *change* seeking current development approach.

A theoretical approach was configured in Chapter 3 by utilising the Ostrom-Williamson governance approaches conjointly. Three specific research questions were stated to explore the normative characteristics of the property rights regime of FATA; the characteristics of the contracts in vogue and the likely hazards in two contracting domains of common-pool resources (CPR) and private property (non-CPR); and the performance of the property rights regime in governing contractual hazards in these two domains. Theoretical insights suggested that contract stability in FATA would be contingent on the ability of the parties to find cost effective solutions to their contractual disputes within a relational mode of governance. Chapter 5 of the thesis addressed the first research question. The subsequent chapters dealt with the second and third research questions. Chapter 6 looked for answers to these questions in the first contracting domain of CPRs while Chapter 7 looked at the second contracting domain of private property exemplified by manufacturing firms in FATA. Discussion in this chapter is structured in three sections. The first section summarizes the main research findings and the second section highlights the significance of the findings for development policy. The last section describes the main research contributions made, the limitations of this research and some avenues for future research.

8.1. Summary of the Main Research Findings

This research has shown that contrary to the common perceptions in the mainstream regarding a lack of productive avenues and the inhibitive role of the informal institutions, on the ground a different scenario prevails in FATA. Avenues of economic gains do exist in the region and traditional institutions are delivering reasonably well. CPRs top in this regard. However, on a less positive note, this research also shows that the corresponding case of private property (non-CPRs) outside the domain of CPRs represented by manufacturing firms, is in crisis apparently due to factors exogenous to FATA institutions. I discuss this case first before moving on to the CPRs.

The manufacturing firms studied in this research were found to be battling with all sorts of challenges to survival and were virtually on the brink of a total shut down due to fundamental changes in the larger economy of Pakistan. The foremost of these is a shift in the traditional trading pattern of the firms due to a change in the trade regime of Pakistan. Crude and simple manufacturing in this region mainly thrived on access to cheap smuggled raw material and liberal credit from FATA based tribal suppliers. Firms were in a position to market their products onwards in the Pakistani market on credit. Heavily subsidized electricity supplied to the region kept the production costs considerably lower than their rival firms in Pakistan. Consequently, incentives could be afforded to the trading partners *ex-ante* as well as in the *ex-post* contract stage through private ordering. The relational mode of governance was thus possible. However, the gradual removal of tariff and non-tariff trade barriers in Pakistan over the last decade has largely diminished this advantage of FATA. A second shock has come by way of the severe rationing of formerly heavily subsidized electricity provided to the region's industry. This is under the duress of the acute power shortages in the country. Costs of production in FATA have resultantly escalated.

The two major developments have shaken the foundations of the relational mode of governance. Raw material has to now be purchased from Pakistan and this is possible for a majority on cash terms only. Non-tribal suppliers do not trust their buyers in FATA simply because it is virtually impossible for them to pursue their defaulters in FATA. The escalation of conflict and a worsening law and order situation in the region has further accentuated such perceptions. The financial position of the firms has taken a battering in consequence. An essential working capital level cannot be maintained on a sustainable basis unless the exposure to cash at the purchase stage is counteracted by cash sales. This, however, is not

likely as FATA products are not irreplaceable. Buyers in the markets outside FATA have many options.

In this adverse milieu, survival of the manufacturing firms would depend more than ever on significant direct and indirect subsidies by the state. This does not seem probable at present in view of the latter's dimly frail economy. Moreover, the matter of state support is also not straight forward. In this case the tribal economy of FATA clashes directly with the formal economy. Suitable support to the manufacturing firms in FATA essentially means striking at the roots of industry in the formal economy.

There are however some promising avenues within the bleak manufacturing scenario of FATA. It is interesting to note that firms that seem to operate reasonably well and in defiance to the above odds are those that are not exposed to markets outside FATA for their inputs. Marble processing firms top this list. Adequate financial and technological support by the state can enhance their usefulness for the region. Other exceptions are those firms that are still able to find cheap raw material from across the border. Firms such as steel furnaces fit the latter description. These exceptions are threatened only by the shortage of power and not by the mounting transaction costs due to the changing dynamics of governance in FATA.

Alternatively, commercial enterprise in CPRs within the same region remains largely unaffected by the odds underscored above. The primary reason is its capacity to afford the inherent costs in the FATA property rights regime. Evidence suggested that it can afford to maintain reasonable incentives for all the actors and thereby sustain a relational mode of governance. A high level of affordability is bolstered and sustained primarily by the high demand of the produce from CPRs. FATA enjoys almost a niche in this respect. Minerals sourced from its CPRs are in high demand in the markets outside and the growing demand pattern keeps the prices high. This ensures guaranteed sales and even advances that can be used to overcome the capital requirements. CPRs in FATA have therefore much deeper pockets. Expectations of an on-going stream of benefits from a CPR foster the much required cooperation amongst the parties in exchange.

As regards the various modes of operation of the CPRs, this research finds that communities in FATA are increasingly inclined towards self-operating their CPRs. This mode is more profitable for the individual shareholders and hence the most stable. The pre-existing robust *riwaj* provides for almost all the essential design features highlighted by Ostrom (1990) in relation to successful self-governance of CPRs. Access to outsiders is strictly controlled and

as regards the owners, the possibility of the elite capture of resources does not exist due to the operation of the *nang* principles of *Pukhtunwali*. Contentions could however emerge in relation to ownership and profit distribution but it was found that if required, the tribal communities have the ability to resolve such disputes and modify the existing institutional arrangements.

In this regard, *nikkat*, the traditional tribal charter of rights, remains the fundamental yardstick for ascertaining the validity of all claims and profit distribution amongst the owners. This ensures that profits reach all the owners in accordance with an acknowledged formula. Though modification to this traditional system could be extremely contentious, the possibilities are not totally denied. Such demands may be made in cases where the sanctioned share ratios under this traditional system have become skewed over time due to disproportionate increase in population. However, even the latter type solutions have to emerge with consensus within and across the communities and pending an acceptable solution, the disputed CPR is closed for all the claimants. This adds considerable pressure on the communities to work towards an amicable resolution of the conflict. Everyone understands that a solo flight is virtually impossible within the predominantly egalitarian *Pukhtunwali* environment. Cooperation is the only way to gain. Either all rightful claimants benefit according to an acceptable formula or no one does. The robust nature of the traditional institutions is manifest.

Evidence from my fieldwork suggests that CPRs are most likely to sustain in this fashion as long as there is no attempt by the state to actively regulate or disturb the existing institutional environment. Commercial enterprise in this domain does not seem to be in dire need of financial subsidies from the state and is able to generate significant profits on its own despite the current adverse business environment in the region. However, the benefits of a helping hand by way of technological support and assistance to improve productivity cannot be denied. This would also assuage the prevailing environmental concerns in relation to these CPRs.

On a common note, both the case studies (CPRs and non-CPRs) highlight the predominance of the locals in the composition of enterprise in FATA and it does not come as surprising in view of the *riwaj*. As outsiders can access FATA resources only by partnering with a suitable local resident, agency costs are unavoidable to begin with. The dominance of the local partner is further reinforced by practical barriers to exit the contract through transfer or sale which

cannot go through without the consent of the local partner. An outsider may thus become virtually a hostage in FATA. In case of a dispute, the ultimate reliance of the latter is on the PA whose efficacy, in most circumstances, cannot be taken for granted. Naturally, the costs of enforcement are bound to be higher in this case. In comparison, enforcement of contracts through the PA is just one option within a set of different options for the locals. It is not surprising that given the potentially high transaction cost implications, the proposition of investment in FATA has seldom been attractive for non-tribal parties.

8.2. The Message for State Sponsored Development in the Region

I started my exploratory journey by noting a paucity of understanding of FATA institutions by the development managers of FATA. FATA was always waiting for its share in development but instead received attention that can easily qualify as perfunctory in nature. However, when the pendulum swung to the other extreme under compulsions of addressing the root cause of militancy in the region, apparently no one had enough time to give serious thought to the suitability of the perceived development road map for the region. Indeed the otherwise deceptively appealing nature of the mainstream NIE, the theoretical underpinning of the on-going development in the region, made it even harder to identify the gaping pitfalls on the road.

That for successful outcomes the current development presupposes institutional reforms in FATA is writ large on the development agenda even if it may not be professed so clearly. The unprecedented national and international focus and a sizeable kitty to splatter development projects all over FATA have hyped up optimism in this regard to dangerous levels. The *nang* Pukhtuns have been presumed passive recipients of development in the manner of their encapsulated kinfolk outside FATA. The complexity of the *nang* Pukhtun behaviour and his social institutions have thus been ignored. However, the *nang* Pukhtun psyche demonstrated in the region's history clearly foretells of the hazards of optimism of this nature.

I have attempted to shed light on the potential dangers of the blind pursuit of perceived development goals in the region with the help of the Ostrom-Williamson framework—rival insights from within NIE. What this reveals is that there are avenues of fruitful economic enterprise that a standard approach to development in the region might destroy for good. The CPRs are likely to be the engines of future growth in this underdeveloped region. Unlike the case in other less homogenous or less vibrant traditional settings, the robust *Pukhtunwali* is a

check against the possibility of misappropriation of such resources by vested interests. The spread of economic benefits amongst the people of FATA seems to be certain as long as the self-governing ability of the tribes remains intact. Policy makers should be wary of wrong moves in this regard. Given their long history of largely autonomous existence, the tribes might not give in to any encroachment on their traditional authority. Such moves are therefore likely to fuel conflict in the region and become part of the problem rather than the solution.

In FATA the goals of development may be better served if a policy of guidance instead of direction through regulation is adopted. In this regard, the idea of vigorous enforcement of NMP in the region seems to be pregnant with hazards of the above kind. It is not hard to imagine that precious resources would be wasted in the process and the distrust engendered would diminish the existing opportunities of helping the tribes with their resource systems through benign guidance, technological assistance and even financial assistance wherever required. In particular, financial help for improved mining technology would quicken the pace of conservation of resource systems and environment. CPRs are indeed commercial tribal corporations. Interest free loans, or any other suitable financial product that is compatible with Islamic *shariah*, can be extended to these corporations. The possibility of defaults on such loans is quite limited given the robust tribal social structure and the norms of collective responsibility. Opportunities of investment for profit in FATA are thus not precluded altogether.

A noteworthy distinction of the mineral sector of FATA is that it is not fundamentally in conflict with the formal economy of Pakistan. In fact it is contributing to the state revenues through royalties. Ample resources therefore need to be allocated to exploration and quantification of the minerals in the region. In comparison, the non-CPR case of FATA manufacturing presents a real quandary for the development managers given its direct and indirect costs to the formal economy of Pakistan. The costs of turning the wheels of machines in FATA may be well nigh impossible to afford but the larger social and strategic objectives may not permit abandoning the industry altogether. This research highlights certain segments of this industry which have a better chance to develop and prosper in the region. A specific focus on such type of industries may help ease the development dilemma somewhat.

Finally, the pros and cons of various contractual configurations in FATA highlighted by this research indicate an inherent bias of the traditional property rights regime towards the locals.

The development managers' predilection towards non-tribal entrepreneurs from outside for investment in FATA therefore needs a serious rethink. Encouraging local entrepreneurs instead, which have by the way swelled in numbers, seems to be more viable being the least costly option in FATA.

8.3. Reflection on Research, Contributions and Some Future Research

Directions

Qualitative exploration of the FATA property rights regime with the help of the Ostrom-Williamson approach has benefitted this research on two major counts. There has been limited research on FATA since Ahmed's last scholarly contribution on the tribal society (Ahmed, 1991). The list of academic research is quite short in particular. A plethora of reports authored by International Development Agencies and independent scholars have emerged in the aftermath of the 'War on Terror' but these have a normative approach. Moreover these focus on the region from a predominantly geo-political perspective. Little is known about the property rights regime of FATA and its dynamics. The bits and pieces of information found scattered in the available literature do not present a holistic picture of the vital economic institutions of the region. This research has attempted to address this gap with the help of three specific questions designed to encompass the institutions as well their performance. The questions dealt with: a) the normative characteristics of the FATA property rights regime; b) the nature of the contracts and the likely hazards to contracts within the said property rights regime; and finally, c) the dynamics of governance of such hazards through relational contracting. The research has fulfilled the agenda defined by these questions with the help of an in-depth exploratory inquiry and has highlighted the normative characteristics of the property rights regime as well as its functioning in contracts. The rules of the game as well the various facets of the play of the game have been exposed.

A conjoint Ostrom-Williamson framework theoretically equipped this research with the tools to shed light on the twin avenues of the on-going economic enterprise—within and outside CPRs—in FATA. Ostrom's insights helped explicate the basis of meaningful cooperation in CPRs whereas Williamson's modified contracting schema enabled a deeper look at the micro realities of contract and contract governance in both CPR and non-CPR situations. Application of a uniform theoretical lens made cross comparisons between the two contracting scenarios possible, enabling this research to capture a rich picture of contracts and contract performance in FATA. On the road toward a better understanding of the property

rights regime of FATA, this research has also made a humble theoretical contribution. Marriage of the two approaches in this manner has the potential to provide a better understanding of the dynamics of exchange stability in traditional settings where common property and private property co-exist.

Some problems encountered during field work need to be highlighted here. This research could not access some parts of FATA as unfortunately the timing of the fieldwork coincided with the worst spate of violence in Pakistan and FATA. CPRs in the more remote parts of FATA were not accessible at all. Second, an extended stay was not possible anywhere in FATA for valid security reasons. Personal observation at a site over an extended period of time was simply out of the question under the prevailing circumstances. No one can deny the utility of conducting research in a germane environment, but as it turns out in most cases, the option was not there. A researcher has to adjust according to the larger realities in the field and make the best use of available options under the given circumstances. In this research, my strategy to cope with the adverse circumstances prevailing in the field was twofold. First, I identified and accessed those respondents who could provide me with the most information. This was complemented by a second strategy of keeping regular contact over the phone with some key respondents in different Agencies in the post fieldwork phase. Thanks to the rapid progress of mobile telecommunication in Pakistan, I was able to achieve my objective. I strongly believe therefore that I was able to overcome the potential shortcomings in this research.

As regards future research directions, this study notes that information is scarce particularly in relation to the mining sector of FATA. There is hence a need for a mining industry specific survey in the region. This research also recommends a study focussing on the progress made by the mining enterprises towards technological up-grading and an assessment of the government's incentives in this regard. The study should be helpful in assessing the needs of the mining sector and identifying ways to address these. Second, there is a need to investigate the potential fallouts of the emerging New Commons of FATA on the traditional CPRs in that region. Future research should be able to assess the negative implications, if any, for the latter on account of the overwhelming commercial significance of the former and suggest ways to address these. Third, as regards the manufacturing industry in FATA, future research should be able to highlight ways to extricate this industry from the dilemmas of power shortages and identify avenues whereby it could avoid conflict of interests with the formal sector of Pakistan.

References

- Abraham, Anita, & Plateau, Jean-Philippe. (2004). Participatory Development: Where Culture Creeps In. In V. Rao & M. Walton (Eds.), *Culture and Public Action* (pp. 210-233). California: Stanford University Press.
- Adam, Pappas. (2009). Trade Promotion in Afghanistan: Roles for Infrastructure and Institutions. Washington DC: South Asia Studies, The Paul H. Nitze School of Advanced International Studies, John Hopkins University.
- ADB. (2002). *Technical Assistance (Financed by the Japan Special Fund) to the Islamic Republic of Pakistan for Preparing the FATA Rural Development Project* (No. TAR:PAK 33268): Agriculture, Environment and Natural Resources Division, Asian Development Bank.
- ADB. (2006). *Afghanistan: Cross Border Trade and Transport Facilitaion* (No. TA 4536): Asian Development Bank.
- Agrawal, Arun. (1992). *Risks, Resources and Politics: A Study of Institutions and Resource Use from India*. Unpublished PhD Thesis, Duke University, North Carolina.
- Agrawal, Arun. (2002). Common Resources and Institutional Sustainability. In E. Ostrom, T. Dietz, N. Dolsak, P. Stren, S. Stonic & E. U. Weber (Eds.), *The Drama of the Commons* (pp. 41-86). Washington, DC.: National Academy Press.
- Agrawal, Arun. (2003). Sustainable Governance of Common-Pool Resources: Context, Methods, and Politics. *Annual Review of Anthropology*, 32, 243-262.
- Agrawal, Arun, & Ribot, Jesse. (1999). Accountability in Decentralization: A Framework with South Asian and West African Cases. *The Journal of Developing Areas*, 33(4), 473-502.
- Ahmad Khan, Rashid. (2005). Political Developments in FATA: A Critical Perspective. In P. I. Cheema & M. H. Nuri (Eds.), *Tribal Areas of Pakistan: Challenges and Responses*. Islamabad, Pakistan: Islamabad Policy Research Institute.
- Ahmed, Akbar. (1976). *Millennium and Charisma Among Pathans: A Crtical Essay in Social Anthropology*. London: Routledge & Kegal Paul.
- Ahmed, Akbar. (1977). *Social and Economic Change in the Tribal Areas 1972--1976* Karachi, Pakistan: Oxford Univerity Press.
- Ahmed, Akbar. (1980a). Introduction to King's "Orakzais" In "*The Orakzai Country & Clans*" by L. White King (pp. I-XV). Lahore, Pakistan: Vanguard Books.
- Ahmed, Akbar. (1980b). *Pukhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society*. London: Routledge & Kegan Paul.
- Ahmed, Akbar. (1982). Lineage Politics and Economic Development: A Case- Study From the North West Frontier Province, Pakistan. In S. Pastner & L. Falm (Eds.), *Anthropology in Pakistan: Recent Socio-Cultural and Archaeological Perspectives* (pp. 40-49). Ithaca, New York: South Asia Programme, Cornel University.

References

- Ahmed, Akbar. (1984). Introduction to Merk's Mohmand In *"The Mohmands" by W.R.H. Merk*. Islamabad: Pakistan: Vanguard Books.
- Ahmed, Akbar. (1991). *Resistance & Control in Pakistan*. London: Routledge.
- Ahmed, Akbar. (2011, May 6). The Code of the Hills. *Foreign Policy*. Retrieved 10-06-11 from http://www.foreignpolicy.com/articles/2011/05/06/the_code_of_the_hills.
- Ahmed, Feroz. (1973). Pushtoonistan and the Pushtoon National Question. *Pakistan Forum*, 3(12), 8-22.
- Alchian, Armen A., & Woodward, Susan. (1988). Review: The Firm Is Dead; Long Live The Firm a Review of Oliver E. Williamson's *The Economic Institutions of Capitalism*. *Journal of Economic Literature*, 26(1), 65-79.
- Alston, Lee J. (1996). Empirical Work in Institutional Economics: An Overview. In L. J. Alston, T. Eggertsson & D. North (Eds.), *Empirical Studies in Institutional Change* (pp. 25-30). New York: Cambridge University Press.
- Alston, Lee J. (2008). The "Case" for Case Studies in New Institutional Economics. In E. Brousseau & J.-M. Glachant (Eds.), *New Institutional Economics : A Guidebook* New York: Cambridge University Press.
- Alston, Lee J., Eggertsson, Thrainn, & North, Douglas (Eds.). (1996). *Empirical Studies in Institutional Change*. New York: Cambridge University Press.
- Alston, Lee J., & Gillespie, William. (1989). Resource Coordination And Transaction Costs: A Framework for Analyzing the Firm/Market Boundary. *Journal of Economic Behavior & Organization*, 11, 191-212.
- Anderson, Terry Lee, & McChesney, Fred S. (2003). Introduction: The Economic Approach to Property Rights. In T. L. Anderson & F. S. McChesney (Eds.), *Property Rights : Cooperation, Conflict, and Law* (pp. 1-12). New Jersey: Princeton University Press.
- Arnold, J.E.M., & Campbell, J.G. (1986). Collective Management of Hill Forests in Nepal: The Community Forestry Development Project In *Proceedings of the Conference on Common Property Resource Management, National Research Council* (pp. 425-454). Washington DC.: National Academy Press.
- Asad, S. Hasan. (1995). Afghan Transit Trade - Its Implications for Pakistan's Economy. Retrieved 7-11-2010, from HighBeam Research: <http://www.highbeam.com/doc/1G1-17198548.html>.
- Azfar, Omar. (2002). *The New Institutional Economics Approach to Economic Development — An Analytic Primer*. Retrieved 14-04-2011 from http://www.iris.umd.edu/Reader.aspx?TYPE=FORMAL_PUBLICATION&ID=70843195-11ce-426b-b8ff-bb0076128693.
- Azhar, Rauf A. (1993). Commons, Regulation, and Rent-Seeking Behavior: The Dilemma of Pakistan's "Guzara" Forests. *Economic Development and Cultural Change*, 42(1), 115-129.

References

- Aziz, Khalid. (2005). The Frontier Crimes Regulation (FCR) and Administration of the Tribal Areas of Pakistan In P. I. Cheema & M. H. Nuri (Eds.), *Tribal Areas of Pakistan: Challenges and Responses*. Islamabad, Pakistan: Islamabad Policy Research Institute.
- Badshah, M.S. (1994). *Federally Administered Tribal Areas Development Corporation Peshawar (Minerals Sector): Information for October 1994 International Round Table Conference on Minerals*. Peshawar, Pakistan: FATA Development Corporation.
- Baha, Lal. (1978). *N.W.F.P Administration Under British Rule: 1901-1919*. Islamabad, Pakistan: National Commission on Historical and Cultural Research.
- Baland, Jean-Marie, & Platteau, Jean-Phillippe. (1996). *Halting Degradation of Natural Resources : Is There a Role for Rural Communities?* Oxford: Clarendon Press.
- Bangash, Mumtaz A. (1996). *Political and Administrative Development Of Tribal Areas. "A Focus on Khyber & Kurram"*. Unpublished PhD Thesis, University of Peshawar, Pakistan.
- Bank, World. (2003). *Republic of Pakistan: Mineral Sector Development Policy Note (Draft Report)*.
- Bank, World. (2004). *Trade Policies in South Asia: An Overview (No. 299949): Poverty Reduction and Economic Management Sector Unit South Asia Region*.
- Bank, World. (2005). *Pakistan: NWFP Economic Report (No. 32764-PK): Poverty Reduction and Economic Management Sector Unit South Asia Region*.
- Bank, World. (2006). *Pakistan Growth and Export Competitiveness (No. 35499-PK): Poverty Reduction and Economic Management Sector Unit South Asia Region*.
- Barth, Fredrik. (1959). Segmentary Opposition and the Theory of Games: A Study of Pathan Organization. *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 89(1), 5-21.
- Barzel, Yoram. (1989). *Economic Analysis of Property Rights* New York: Cambridge University Press.
- Barzel, Yoram. (2000). Property rights and the evolution of the state. *Economics of Governance*, 1(1), 25-51.
- Bates, Robert H. (1995). Social Dilemmas and Rational Individuals: An Assessment of the New Institutionalism. In J. Harriss, J. Hunter & C. M. Lewis (Eds.), *The New Institutional Economics and Third World Development* (pp. 27-48). London: Routledge.
- Beattie, Hugh (2002). *Imperial Frontier: Tribe and State in Waziristan*. Richmond, Surrey: Curzon Press.
- Behuria, Ashok K. (2007). The Rise of Pakistani Taliban and the Response of the State. *Strategic Analysis*, 31:5, 699_724.
- Benjaminsen, T., Holden, S., Lund, C., & Sjaastad, E. (2008). Formalisation of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa. *Land Use Policy*, 26(1), 28-35.
- Bernstein, Lisa. (1992). Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry. *The Journal of Legal Studies*, 21(1), 115-157.

References

- Bernstein, Lisa. (2001). Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions. *Michigan Law Review*, 99(7), 1724-1790.
- Blau, Peter M. (1964). *Exchange and Power in Social Life* New York: J. Wiley.
- Brett, E. A. (1993). Voluntary Agencies as Development Organizations: Theorizing the Problem of Efficiency and Accountability. *Development and Change*, 24(2), 269-304.
- Bromley, Daniel W. (2009). Formalising Property Relations in the Developing World: The Wrong Prescription for the Wrong Malady. *Land Use Policy*, 26(1), 20-27.
- Buchanan, James. (2001). Game Theory, Mathematics, and Economics. *Journal of Economic Methodology*, 8(1), 27-32.
- Butler, Michael, & Garnett, Robert. (2003). Teaching the Coase Theorem: Are We Getting it Right? *Atlantic Economic Journal*, 31(2), 133-145.
- Cameron, John. (2000). Development Economics, the New Institutional Economics and NGOs. *Third World Quarterly*, 21(4), 627-635.
- Caroe, Olaf. (1958). *The Pathans: 550B.C.— A.D. 1957*. Karachi, Pakistan: Oxford University Press.
- Carruthers, I., & R., Stoner. (1981). Economic Aspects and Policy Issues in Ground Water Development. Washington DC.: World Bank Staff Working paper no. 496.
- Casella, Alessandra, & Rauch, James E. (2002). Anonymous Market and Group Ties in International Trade. *Journal of International Economics*, 58(1), 19-47.
- Centre, Afghanistan Research Reachback. (2009). *My Cousin's Enemy is my Friend: A Study of Pushtun "Tribes" in Afghanistan* Fort Leavenworth, Kansas: Human Terrain System, US Army.
- Chang, Ha-Joon (2006). *Understanding the Relationship Between Institutions and Economic Development: Some Key Theoretical Issues*. Retrieved 28-07-2009 from http://www.wider.unu.edu/publications/working-papers/discussion-papers/2006/en_GB/dp2006-05/.
- Clay, Karen. (1997). Trade Without Law: Private-Order Institutions in Mexican California. *Journal of Law, Economics, & Organization*, 13(1), 202-231.
- Coase, R. H. (1937). The Nature of the Firm. *Economica*, 4(16), 386-405.
- Coase, R. H. (1960). The Problem of Social Cost. *Journal of Law and Economics*, 3, 1-44.
- Coase, R. H. (1988). *The Firm, the Market, and the Law*. Chicago: University of Chicago Press.
- Coase, R. H. (1998). The New Institutional Economics. *American Economic Review*, 88(2), 72-74.
- Committee, Economic Sciences Prize. (2009). *Economic Governance*. Stockholm: The Royal Swedish Academy of Sciences.
- Creswell, John W. (2003). *Research Design : Qualitative, Quantitative, and Mixed Methods Approaches*. California: Sage.

References

- DA, FATA. (2010). *Survey—Enumeration of Industries, Service Sector Entities, Labour Force and Identifying Constraints in FATA*. Peshawar, Pakistan: FATA Development Authority. Retrieved 04-02-11 from <http://www.fatada.gov.pk/download.php>.
- DA, FATA. (2011). *Feasibility Study of Regulatory Regime for Industry, Commerce & Trade in FATA*. Peshawar, Pakistan: FATA Development Authority. Retrieved 08-08-11 from <http://fatada.gov.pk/Projects-Sectors2.php?ProjectId=30&SectorId=3>.
- Dahlman, Carl J. (1979). The Problem of Externality. *Journal of Law and Economics*, 22(1), 141-162.
- Davies, C. Collin. (1975). *The Problem of the North-West Frontier, 1890-1908 : With a Survey of Policy Since 1849* (2 ed.). London: Curzon.
- Davis, L., & North, Douglas C. (1971). *Institutional Change and American Economic Growth*. Massachusetts: Cambridge University Press.
- Dawar, Saeed Ahmad. (2005). *The Dawars-A Profile*. Unpublished MA Thesis, University of Peshawar, Pakistan.
- Demsetz, Harold. (1967). Toward a Theory of Property Rights. *The American Economic Review*, 57(2), 347-359.
- Demsetz, Harold. (2002). Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership. *The Journal of Legal Studies*, 31(S2), S653-S672.
- Denzin, Norman K, & Lincoln, Yvonna S. (1994). Introduction: Entering the Field of Qualitative Research. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of Qualitative Research* (pp. 1-18). California: Sage Publications.
- DeSoto, Hernando. (2000). *The Mystery of Capital : Why Capitalism Triumphs in the West and Fails Everywhere Else*. London: Bantam.
- Dietz, Thomas, Dolsak, Nives, Ostrom, Elinor, & Stren, Paul. (2002). The Drama of the Commons. In E. Ostrom, T. Dietz, N. Dolsak, P. Stren, S. Stonic & E. U. Weber (Eds.), *The Drama of the Commons* (pp. 3-35). Washington, DC.: National Academy Press.
- Division, Planning and Development. (2002). *Evaluation of Investment in FATA*. Islamabad, Pakistan.
- Dixit, Avinash K. (2004). *Lawlessness and Economics : Alternative Modes of Governance*. New Jersey: Princeton University Press.
- Donald, D. (1901). *Notes on the Adam Khel Afridis*. Kohat: Government of N.W.F.P.
- E'ric, Brousseau. (2008). From Bilateral Set of Incentives to Multi-level Governance of Relations. In E. Brousseau & J.-M. Glachant (Eds.), *New Institutional Economics : A Guidebook* (pp. 37-66). New York: Cambridge University Press.
- Eggertsson, Thrainn. (1996). A Note on the Economics of Institutions. In L. J. Alston, T. Eggertsson & D. North (Eds.), *Empirical Studies in Institutional Change*. New York: Cambridge University Press.
- Eggertsson, Thrainn. (2005). *Imperfect Institutions : Possibilities and Limits of Reform*: Ann Arbor : University of Michigan Press.

References

- Eggertsson, Thrainn (1990). *Economic Behavior and Institutions*. New York: Cambridge University Press.
- Ehrenfeld, David. (1972). *Conserving Life on Earth*. New York: Oxford University Press.
- Eisenhardt, Kathleen M. (1989). Building Theories from Case Study Research. *The Academy of Management Review*, 14(4), 532-550.
- Ewart, J.M., & Howell, E.B. (2001). *Story of the North West Frontier Province*. Lahore, Pakistan: Sang-e-Meel Publications.
- Fafchamps, Marcel. (1996). The Enforcement of Commercial Contracts in Ghana. *World Development*, 24(3), 427-448.
- FATA, Civil Secretariat. (2006). *FATA Sustainable Development Plan 2006-2015*. Peshawar, Pakistan.
- Feeny, D.H. (1988). Agricultural Expansion and Forest Depletion in Thailand, 1900-1975. In J. F. Richards & R. P. Tucker (Eds.), *World Deforestation in the Twentieth Century* (pp. 112-143). North Carolina: Duke University Press.
- Fitzpatrick, Daniel. (2006). Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access. *The Yale Law Journal*, 115(5), 996-1048.
- Fortes, M., & Evans-Pritchard, E. E. (1970). *African Political Systems*. London: Oxford University Press.
- Fosberry, Major. (1869). On Some of the Mountain Tribes of the N.W. Frontier of India. *The Journal of the Ethnological Society of London (1869-1870)*, 1(2), 182-193.
- Friedman, Lawrence Meir. (1965). *Contract law in America; A Social and Economic Case Study*. Madison: University of Wisconsin Press.
- Furubotn, Eirik Grundtvig, & Richter, Rudolf. (1997). *Institutions and Economic Theory : The Contribution of the New Institutional Economics* Ann Arbor: University of Michigan Press.
- Gadgil, M., & Iyer, P. (1989). On the Diversification of Common-Property Resource Use by Indian Society. In F. Berkes (Ed.), *Common-Property Resources* (pp. 240-272). London: Belhaven Press.
- Galanter, Marc. (1981). Justice in Many Rooms: Courts , Private Ordering, and Indigenous Law. *Journal of Legal Pluralism and Unofficial Law*, 19, 1-47.
- Gambetta, Diego. (1993). *The Sicilian Mafia: The Business of Protection*. Massachusetts: Harvard University Press.
- George, Stigler. (1966). *The Theory of Price*. London: Macmillan.
- Gerring, John. (2007). *Case Study Research : Principles and Practices*. New York: Cambridge University Press.
- Ghauri, Pervez. (2004). Designing and Conducting Case Studies in International Business Research. In R. Marschan-Piekkari & C. Welch (Eds.), *Handbook of Qualitative Research Methods for International Business*. Cheltenham, UK: Edward Elgar.

References

- Glatzer, Bernt. (2001). War and Boundaries in Afghanistan: Significance and Relativity of Local and Social Boundaries. *Die Welt des Islams*, 41(3), 379-399.
- Gordon, James. (2005, August 25). Afghanistan the Forgotten War: Pakistan's Wild West Border. *New York Daily News Online*. Retrieved 03-03-11 from http://articles.nydailynews.com/2005-08-25/news/18317525_1_pakistani-border-police-al-qaeda-border-outposts.
- Greif, Avner. (1993). Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition. *The American Economic Review*, 83(3), 525-548.
- Greif, Avner, Milgrom, Paul, & Weingast, Barry R. (1994). Coordination, Commitment, and Enforcement: The Case of the Merchant Guild. *The Journal of Political Economy*, 102(4), 745-776.
- Group, International Crisis. (2006). *Pakistan's Tribal Areas: Appeasing the Militants* (No. 125). Retrieved 12-06-2009 from <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/125-pakistans-tribal-areas-appeasing-the-militants.aspx>.
- Group, International Crisis. (2012). *Aid and Conflict in Pakistan* (No. 227). Retrieved 29-06-12 from <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/227-aid-and-conflict-in-pakistan.aspx>.
- Haq, Noor ul, & Hussain, Khalid. (2008). Energy Crisis in Pakistan. Retrieved 10-10-2011, from Islamabad Policy Research Institute: <http://ipripak.org/factfiles/ff99.pdf>.
- Hardin, Garrett. (1968). The Tragedy of the Commons. *Science*, 162(3859), 1243-1248.
- Hardin, Garrett. (1978). Political Requirements for Preserving our Common Heritage. In H. P. Bokaw (Ed.), *Wildlife and America* (pp. 310,317). Washington DC.: Council on Environmental Quality.
- Haroon, Sana. (2007). *Frontier of Faith: Islam in the Indo-Afghan Borderland*. London: C. Hurst.
- Hart, David M. (1985). *The Guardians of the Khaiber Pass: The Social Organisation and History of the Afridis of Pakistan*. Lahore, Pakistan: Vanguard Books.
- Hauner, Milan. (1981). One Man against the Empire: The Faqir of Ipi and the British in Central Asia on the Eve of and during the Second World War. *Journal of Contemporary History*, 16(1), 183-212.
- Headquarters, General Staff Army. (1910). *A Dictionary of the Pathan Tribes on the North-West Frontier of India* (1st ed.). Calcutta: Superintendent Govt. Printing India.
- Heilbroner, Robert L. (1974). *An inquiry Into the Human Prospect*. New York: Norton.
- Heiner, Ronald A. (1983). The Origin of Predictable Behavior. *The American Economic Review*, 73(4), 560-595.
- Hofstede, Geert H. (2001). *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations* (2nd ed.). California: Sage.
- Hofstede, Geert H., & Hofstede, Gert Jan. (2005). *Cultures and Organizations: Software of the Mind* (2nd ed.). New York: McGraw-Hill.
- Holdich, T.H. (1881). Geographical Results of the Afghan Campaign. *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, 3(2), 65-84.

References

- Holdich, T.H. (1898). Tirah. *The Geographical Journal*, 12(4), 337-359.
- Holdich, T.H. (1899a). The Arab Tribes of Our Indian Frontier. *The Journal of the Anthropological Institute of Great Britain and Ireland*, 29(1/2), 10-20.
- Holdich, T.H. (1899b). Swatis and Afridis. *The Journal of the Anthropological Institute of Great Britain and Ireland*, 29(1/2), 2-9.
- Holdich, T.H. (1901). The Geography of the North-West Frontier of India. *The Geographical Journal*, 17(5), 461-475.
- Hopkirk, Peter. (1990). *The Great Game : On Secret Service in High Asia*. London: Murray.
- Howell, Evelyn Berkeley. (1979). *Mizh :A Monograph on Government's Relations with the Mahsud Tribe* Karachi: Pakistan: Oxford University Press.
- Hussain, Sayed Waqar, & Masood, Alauddin. (2008). *The Impact of Afghan Transit Trade on NWFP's Economy, 1999-2000*. Peshawar, Pakistan: Area Study Centre, University of Peshawar: Hanns Seidel Foundation.
- Imperial Gazetteer of India: North-West Frontier Province*. (2002). Lahore, Pakistan: Sang-e-Meel Publications.
- Imtaiz, Saba. (2011). Paksitan has the Sixth Largest Population of Displaced Persons. *The Express Tribune* Retrieved 10-10-11 from <http://tribune.com.pk/story/155548/pakistan-has-the-sixth-largest-population-of-displaced-persons/>.
- Inglehart, Ronald. (1997). *Modernization and Postmodernization : Cultural, Economic, and Political Change in 43 Societies*. New Jersey: Princeton University Press.
- Inglehart, Ronald, & Welzel, Christian. (2005). *Modernisation, Cultural Change, and Democracy: The Human Development Sequence*. New York: Cambridge University Press.
- Iversen, Vegard, Chhetry, Birka, Francis, Paul, Gurung, Madhu, Kafle, Ghanendra, Pain, Adam, et al. (2006). High Value Forests, Hidden Economies and Elite Capture: Evidence from Forest User Groups in Nepal's Terai. *Ecological Economics*, 58(1), 93-107.
- James, Hugh. (1868). *Report on the Settlement of the Peshawar District*. Lahore.
- Jean, Ensminger. (1997). Changing Property Rights: Reconciling Formal and Informal Rights to Land in Africa. In J. N. Drobak & J. V. C. Nye (Eds.), *The Frontiers of the New Institutional Economics* (pp. 165-196). San Diego: Academic Press.
- Jick, Todd D. (1979). Mixing Qualitative and Quantitative Methods: Triangulation in Action. *Administrative Science Quarterly*, 24(4), 602.
- Johnson, R. A. (2003). "Russians at the Gates of India"? Planning the Defence of India, 1885-1900. *The Journal of Military History*, 67(3), 697-743.
- Kapoor, B.K. (1944). *Kurram Gazetteer* Peshawar: Government of N.W.F.P.
- Khan, Abdul Rashid. (1977?). *Civil Service on the Frontier*: s.n.

References

- Khan, Amir, & Bajwa, Muhammad Yaqub. (1993). *Streamling Planning Process in Federally Administered Tribal Areas: Terms of Reference for Regional Plan for Kurram Agency*. Peshawar, Pakistan: Planning & Development Department N.W.F.P.
- Khan, Azmat Hayat. (2005a). *The Durand Line: Its Geo- Strategic Importance*. Peshawar: Paksitan: Area Study Centre, University of Peshawar.
- Khan, Azmat Hayat. (2005b). FATA (Federally Administered Tribal Areas of Pakistan). In P. I. Cheema & M. H. Nuri (Eds.), *Tribal Areas of Pakistan: Challenges and Responses*. Islamabad : Pakistan: Islamabad Policy Research Institute.
- Khan, Ghulam Jilani. (1972). *Development of Tribal Areas*. Peshawar, Pakistan: Board of Economic Enquiry N.W.F.P. University of Peshawar.
- Khan, Muhammad Mohsin, & Ahmed, Saeed. (2007?). *Micro Finance Needs Assessment Survey in Khyber Agency (FATA)*. Peshawar, Pakistan: Institute of Management Sciences.
- Khan, Sarfraz. (2008). Special Status of FATA: Illegal Becoming Licit. *Central Asia*, 63, 7-37.
- Khan, Sarfraz. (2010). Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia. *Eurasia Border Review(Online)*, 1(1), 63-74.
- King, L. White. (1984). *The Orakzai Country & Clans*. Lahore, Pakistan: Vanguard Books.
- Knight, Frank H. (1921). *Risk, Uncertainty and Profit*. Boston: Houghton Mifflin.
- Lal, Deepak. (1998). *Unintended Consequences : The Impact of Factor Endowments, Culture, and Politics on Long- run Economic Performance* Cambridge: MIT Press.
- Landa, Janet T. (1994). *Trust, Ethnicity, and Identity : Beyond the New Institutional Economics of Ethnic Trading Networks, Contract law, and Gift-exchange*. Ann Arbor: University of Michigan Press.
- Leacock, Eleanor. (1954). The Montagnais "Hunting Territory" and Fur Trade. *American Anthropologist*, 56(5).
- Libecap, Gary D. (1989). *Contracting for Property Rights*. New York: Cambridge University Press.
- Lindgreen, Adam, & Beverland, Micheal B. (2009). *Research Quality in Qualitative Case Studies* (Research Memorandum 79): Unversity of Hull UK.
- Lindholm, Charles. (1981). The Structure of Violence Among the Swat Pukhtun. *Ethnology*, 20(2), 147-156.
- Lindholm, Charles. (1982). Models of Segmentary Political Action : The Examples of Swat and Dir, NWFP, Pakistan. In S. Pastner & L. Flam (Eds.), *Anthropology in Pakistan : Recent Socio-Cultural and Archeological Perspectives* (pp. 21-37). Ithaca, New York: South Asia Program, Cornell University.
- Macneil, Ian R. (1974). The Many Futures of Contracts. *Southern California Law Review*, 47(May), 691-816.

References

- Macneil, Ian R. (1978). Contracts: Adjustment of Long-Term Economic Relations Under Classical, Neoclassical and Relational Contract Law. *Northwestern University Law Review*, 72(6), 854-905.
- Mahdi, Niloufer Qasim. (1986). Pukhtunwali: Ostracism and Honour Among the Pathan Hill Tribes. *Ethology and Sociobiology*, 7, 295-304.
- Mahoney, Joseph T. (2005). *Economic Foundations of Strategy*. California: Sage.
- Markey, Daniel. (2008). *Securing Pakistan's Tribal Belt* (No. 36): Council for Foreign Relations (CFR). Retrieved 6-06-11 from <http://www.cfr.org/pakistan/securing-pakistans-tribal-belt/p16763>.
- Markham, C. R. (1879). The Mountain Passes on the Afghan Frontier of British India. *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, 1(1), 38-62.
- Marsh, B. (2009). *Ramparts of Empire: India's North-West Frontier and British Imperialism, 1919-1947*. Unpublished PhD Thesis, The University of Texas at Austin.
- Marten, K. J. . (2008). *The Effects of External Economic Stimuli on Ungoverned Areas: The Pashtun Tribal Areas of Pakistan*. Paper presented at the ISA's 49th Annual Convention, " Bridging Multiple Divides" Retrieved 02-03-2010 from http://www.allacademic.com/meta/p254657_index.html.
- Martin, Gerald. (1879). Survey Operations of the Afghanistan Expedition; The Kurram Valley. *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, 1(10), 617-645.
- Marwat, Fazal-ur-Rahim Khan , Khel, KaKa, & Shah, Sayed Wiqar Ali (1993). *Faqir of Ipi*. Peshawar, Pakistan: Emjay Books.
- Matthews, R. C. O. (1986). The Economics of Institutions and the Sources of Growth. *The Economic Journal*, 96(384), 903.
- Mayer, A.C. (1970). *Caste and Kinship in Central India*. London: Routledge & Kegan Paul.
- McMillan, John , & Woodruff, Christopher. (2000). Private Order under Dysfunctional Public Order. *Michigan Law Review*, 98(8), 2421-2458.
- McMillan, John, & Woodruff, Christopher. (1999a). Dispute Prevention without Courts in Vietnam. *Journal of Law, Economics, & Organization*, 15(3), 637-658.
- McMillan, John, & Woodruff, Christopher. (1999b). Interfirm Relationships and Informal Credit in Vietnam. *The Quarterly Journal of Economics*, 114(4), 1285-1320.
- Merk, W.R.H. (1984). *The Mohmanads*. Lahore, Pakistan: Vanguard Books.
- Merriam, Sharan B. (1988). *Case Study Research in Education : A Qualitative Approach*. San Francisco: Jossey-Bass.
- Merriam, Sharan B. (1998). *Qualitative Research and Case Study Applications in Education* (2nd ed.). San Francisco Jossey-Bass.
- Merriam, Sharan B. (2002). *Qualitative Research in Practice : Examples for Discussion and Analysis* San Francisco: Jossey-Bass.

References

- Messerschmidt, D.A. (1986). Collective Management of Hill Forests in Nepal: The Community Forestry Development Project, *In Proceedings of the Conference on Common Property Resource Management, National Research Council* (pp. 455-480). Washington DC.: National Academy Press.
- Miles, Matthew B, & Huberman, A.M. (1994). *Qualitative Data Analysis : An Expanded Sourcebook*. California: Sage.
- Milgrom, Paul R., North, Douglass C., & Weingast, Barry R. (1990). The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs *Economics and Politics*, 2(1), 1-23.
- Miller, Charles. (1977). *Khyber, British India's North West frontier : The Story of an Imperial Migraine*. London: Macdonald and Jane's.
- Mohabbat, Ahmad Sha. (1979). *Pakhtun National Self-Determination: The Partition of India and Relations with Pakistan*. Unpublished Ph.D Thesis, Saint Louis University, Missouri.
- Mohmand, Sher Mohammad. (2003). *FATA (Federally Administered Tribal Areas of Pakistan): A Socio- Cultural and Geo-Political History*. Peshawar, Pakistan: s.n.
- Moynahan, B. (1976, 21 March). The Free Frontier: Warriors of the Khyber Pass. *Sunday Times Magazine*.
- Mustafa, Khalid. (2003, July 27). WB Asks Govt to Help WAPDA Recover its 33.9 b Arrears. *Daily Times*. Retrieved 10-01-11 from http://www.dailytimes.com.pk/default.asp?page=story_27-7-2003_pg7_34.
- N.W.F.P, Government of. (1902). *Report on the Administration of Border of the North-West Frontier Province for the Year 1901-1902*. Peshawar.
- N.W.F.P, Government of. (1903). *Report on the Administration of Border of the North-West Frontier Province for the Year 1902-1903*. Peshawar.
- N.W.F.P, Government of. (1976). *NWFP Mining Concession Rules* Retrieved 11-9-11 from <http://data.iucn.org/places/pakistan/elaws/PDF/NWFP/NWFP%20Vol-2/06/6.1.3/6.1.3.3%20NWFP%20Mining%201994.pdf>.
- Nabli, Mustapha K., & Nugent, Jeffrey B. (1989). The New Institutional Economics and its applicability to development. *World Development*, 17(9), 1333-1347.
- Nawaz, Shuja. (2009). *FATA- A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan*. Washington D.C.: Centre for Strategic and International Studies (CSIS).
- Nelson, Richard R., & Sampat, Bhaven N. (2001). Making Sense of Institutions as a Factor Shaping Economic Performance. *Journal of Economic Behavior & Organization*, 44(1), 31-54.
- Nichols, Robert. (2001). *Settling the Frontier: Land, Law and Society in the Peshawar Valley, 1500-1900*. Karachi: Oxford University Press.
- North, Douglas. (1981). *Structure and Change in Economic History*. New York: Norton.

References

- North, Douglas. (1990). *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.
- North, Douglas. (1991). Institutions. *The Journal of Economic Perspectives*, 5(1), 97-112.
- North, Douglas. (2005). *Understanding the Process of Economic Change*. New Jersey: Princeton University Press.
- North, Douglas. (1995). The New Institutional Economics and Third World Development. In J. Harriss, Hunter, Janet, Lewis, Colin M. (Ed.), *The New Institutional Economics and Third World Development* (pp. 17-26). London : Routledge.
- Nuemann, Ronald. (2007). Borderline Insanity: Thinking big about Afghanistan. *The American Interest Washington*, 3(2), 52-58.
- Obhrai, Diwan Chand. (1983). *The Evolution of North-West Frontier Province: Being a Survey of the History and Constitutional Development of N.-W.F. Province in India*. Peshawar, Pakistan: Saeed Book Bank.
- Olson, Mancur. (1965). *The Logic of Collective Action : Public Goods and the Theory of Groups*. Massachusetts: Harvard University Press.
- Ostrom, Elinor. (1990). *Governing the Commons : The Evolution of Institutions for Collective Action* New York: Cambridge University Press.
- Ostrom, Elinor. (2000). Collective Action and the Evolution of Social Norms. *The Journal of Economic Perspectives*, 14(3), 137-158.
- Ostrom, Elinor. (2005.). *Understanding Institutional Diversity*. New Jersey: Princeton University Press.
- Ostrom, Elinor. (2007). *The Challenge of Crafting Rules to Change Open Access Resources into Managed Resources*. Paper presented at the International Economic Association Roundtable on the Sustainability of Economic Growth. Retrieved from <http://ssrn.com/paper=1936109>.
- Ostrom, Elinor. (2010). Polycentric systems for coping with collective action and global environmental change. *Global Environmental Change*, 20(4), 550-557.
- Ostrom, Elinor, Gardner, Roy, & Walker, James. (1994). *Rules, Games, and Common-pool Resources*. Ann Arbor: University of Michigan Press.
- Ostrom, Elinor, & Hess, Charlotte. (2007). Private and Common Property Rights (Publication no. 10.2139/ssrn.1304699). Retrieved 10-12-2011, from SSRN: <http://ssrn.com.ezproxy.auckland.ac.nz/paper=1304699>.
- Ostrom, Elinor, & Walker, James. (1997). Neither Markets Nor States: Linking Transformation Process in Collective Action Arenas. In D. C. Mueller (Ed.), *Perspectives on Public Choice : A Handbook* (pp. 35-72). Cambridge: Cambridge University Press.
- Pakistan, Government of. (1995). *National Mineral Policy*. Retrieved 21-11-11 from http://www.sindhmines.gov.pk/pdf/mineral_policy.pdf.
- Pakistan, Government of. (2001). *Federally Administered Tribal Areas Mining Concession Rules*

References

- Pakistan, Planning Board of. (1955). *The First Five Year Plan (1955-1960)*. Karachi: Government of Pakistan Press.
- PASDEQ. (2008?). *Social and Economic Development Through Marble and Granite Sector*. Islamabad: Pakistan Stone Development Company, Ministry of Industries and Production.
- Patton, Michael Quinn. (1990). *Qualitative evaluation and Research Methods*. California: Sage Publications.
- Pazhwak, Abdur Rahman. (1954). *Pukhtunistan*. London: Hove [Sussex] Key Press.
- PISDAC-USAID. (2006). *Pakistan Dimensional Stone Strategy: Square Blocks*. Islamabad: Pakistan Marble and Granite Strategic Working Group.
- Platteau, Jean-Philippe. (2004). Monitoring Elite Capture in Community-Driven Development. *Development and Change*, 35(2), 223-246.
- Plowden, Captain T.C. (1879). *Memorandum On The District of Kuram Under The Government of Amir Of Kabul And The Independent Tribes In Its Neighbourhood*. Lahore: Government of Punjab.
- Portal, South Asia Terrorism. (2010). FATA Timeline 2010. Retrieved 22-5-2011, from <http://www.satp.org/satporgtp/countries/pakistan/Waziristan/timeline/index.html>.
- Posner, Richard A. (1992). *Economic Analysis of Law* (4 ed.). Boston: Little, Brown.
- Posner, Richard A. (1980). A Theory of Primitive Society, with Special Reference to Law. *Journal of Law and Economics*, 23(1), 1-53.
- Programme, World Food. (2009). *Food Assistance to Internally Displaced and Conflict Affected Persons in Pakistan's NWFP and FATA: World Food Programme (WFP)*, United Nations.
- Province, N.W.F. (1908). *Gazeteer of the Kurram Agency*. Peshawar: Commercial Press.
- Publications, Pakistan Department of Films &. (1964). *Pathans: The People of Pakistan*. Karachi, Pakistan: Ministry of Information Broadcasting.
- Punjab, Government of. (2002). *Gazetteer of the Dera Ismail Khan District 1883-84*. Lahore, Pakistan: Sang-e-Meel Publications.
- Punjab, Government of. (2003). *Gazetteer of the Kohat District 1883-84*. Lahore, Pakistan: Sang-e-Meel publications.
- Punjab, Government of. (1989). *Gazetteer of the Bannu District 1883-84*. Lahore, Pakistan: Sang-e-Meel Publications.
- Qadir, Shaukat. (2007). Defusing Pakistan's Tribal Rebellion. *Far Eastern Economic Review*, 170(9).
- Rakisits, Claude. (2008). *Pakistan's Tribal Areas; A Critical No-Man's Land*. Paper presented at the Webster University Forum. Retrieved from http://www.geopoliticalassessments.com/Pakistan_s_Tribal_Areas.pdf.
- Rauch, James E. (2001). Business and Social Networks in International Trade. *Journal of Economic Literature*, 39(4), 1177-1203.

References

- Report on Waziristan and its Tribes.* (2005). Lahore, Pakistan: Sange-e-Meel Publications.
- Richards, Lyn. (2005). *Handling Qualitative Data : A Practical Guide* London: SAGE.
- Ridgway, R.T.I. (1910). *Pashtoons : History- Culture & Traditions* (1997 ed.). Quetta, Pakistan: Sales and Services.
- Robson, Colin. (1993). *Real World Research : A Resource for Social Scientists and Practitioner-Researchers.* Oxford : Blackwell.
- Rostow, W. W. (1959). The Stages of Economic Growth. *The Economic History Review*, 12(1), 1-16.
- Roy, Sumit. (1995). New Institutional Economics, State and Development:Some Conceptual and Empirical issues. *Economic and Political Weekly*, 30(30), 65-72.
- Sahibzada, Imtiaz Ahmed. (2006). *Federally Administered Tribal Areas (Strengthening and Rationalisation of Administration): Draft Report.* Islamabad, Pakistan: Office of the Adviser to Prime Minister on Tribal Affairs.
- Sahlins, Marshall David. (1968). *Tribesmen.* New Jersey: Prentice-Hall.
- Sahlins, Marshall David. (1969). On the Sociology of Primitive Exchange. In M. Banton (Ed.), *The Relevance of Models for Social Anthropology.* London Tavistock.
- Salim, Ahmed. (2008). The Inhuman face of Jirga. *Reseach & News Bulletin Sustainable Development Policy Institute*, 15(2), 3-4.
- Sarah, Southwold-Llewellyn. (2006). Devolution of Forest Management: A Cautionary Case of Pukhtun Jirgas in Dispute Settlements. *Human Ecology*, 34(5), 637.
- Schmidle, Nicholas. (2008, March 30). Pakistan's Badlands: Like the Wild, Wild West. Plus Al-Qaeda. *The Washington Post Online.* Retrieved 3-04-11 from <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/28/AR2008032802973.html>.
- Shelanski, Howard A., & Klein, Peter G. (1995). Empirical Research in Transaction Cost Economics: A Review and Assessment. *Journal of Law, Economics, & Organization*, 11(2), 335-361.
- Siddiqi, Akhtar Husain. (1987). Society and Economy of the Tribal Belt in Pakistan. *Geoforum*, 18(1), 65-79.
- Siddiqui, Niluafer. (2011, Febraury 1). Broken Justice. *Foreign Policy.* Retrieved 03-03-11 from http://afpak.foreignpolicy.com/posts/2011/02/01/broken_justice.
- Siddiqui, Tayyab (2010, August 1). Imponderables in Transit Accord *DAWN (dawn.com).* Retrieved 2-02-12 from <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/in-paper-magazine/encounter/imponderables-in-transit-accord-180>.
- Singer, Andre. (1982). *Guardians of the North-West Frontier : The Pathans.* Amsterdam Time-Life Books.
- SMEDA. (2002). *Marble and Granite Sector Brief.* Islamabad: Small and Medium Enterprise Development Authority Pakistan.

References

- SMEDA. (2007). *Pre-Feasibility Study: Chromite Benefication Plant* (No. PREF-02). Quetta, Pakistan: Small & Medium Enterprise Development Authority, Baluchistan.
- SMEDA. (2009). *District Profile Chitral*. Peshawar, Pakistan: Small and Medium Enterprise Development Authority, N.W.F.P.
- SMEDA. (n.d). *NWFP Investment Guide*. Peshawar, Pakistan Small and Medium Enterprise Development Authority, N.W.F.P.
- Smith, Deborah J. (2009). *Community-Based Dispute Resolution Processes in Nangarhar Province*. Retrieved 8-12-11 from <http://areu.org.af/EditionDetails.aspx?EditionId=291&ContentId=7&ParentId=7&Lang=en-US>.
- Smith, R. J. (1981). Resolving the Tragedy of the Commons by Creating Private Property Rights in Wildlife. *CATO Journal*, 1, 439–468.
- Spain, James W. (1963). *The Pathan Borderland*. The Hague: Mouton.
- Spain, James W. (1972). *The Way of the Pathans* (2nd ed.). Karachi, Pakistan: Oxford University Press.
- Spain, James W. (1995). *Pathans of the Latter Day*. Karachi, Pakistan: Oxford University Press.
- Speck, Frank G. (1915). The Basis of American Indian Ownership of Land. *Old Penn Weekly Review (University of Pennsylvania)*, 491-495.
- Stake, Robert E. (1998). Case Studies. In N. K. Denzin & Y. S. Lincoln (Eds.), *Strategies of Qualitative Inquiry*. California: Sage.
- Statistics, Bureau of. (2003). *FATA Development Statistics*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- Statistics, Bureau of. (2005). *FATA Development Statistics*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- Statistics, Bureau of. (2008). *FATA Development Statistics*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- Statistics, Bureau of. (2010). *FATA Development Statistics*. Peshawar, Pakistan: Planning and Development Department, FATA Secretariat.
- Sultan-i-Rome. (2008). *Swat State (1915-1969) : From Genesis to Merger*. Karachi: Oxford University Press.
- Sultan-i-Rome. (n.d). Pukhtu : The Pukhtun Code of Life. Retrieved 25-06-2010 from <http://www.valleyswat.net/literature/papers/Pukhto.pdf>.
- Swinson, A. (1967). *North-West Frontier*. London: Hutchinson and Co.
- Sykuta, Michael E. . (2008). New Institutional Econometrics: The Case of Research on Contracting and Organization. In E. Brousseau, Glachant, Jean-Michel (Ed.), *New Institutional Economics : A Guidebook* (pp. 122-141). New York: Cambridge University Press.

References

- Talbot, Ian. (2008). Future Prospects for FATA, *Brief no. 41*. University of Bradford UK: Pakistan Security Research Unit (PSRU).
- Tanguay-Renaud, Francois. (2002). Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan. *Singapore Journal of International & Comparative Law*, 6, 541-596.
- Taylor, Steven J., & Bogdan, Robert. (1998). *Introduction to Qualitative Research Methods: A Guidebook and Resource*. New York: John Wiley.
- Thomas, H. Johnson, & Mason, M. Chris. (2008). No Sign until the Burst of Fire: Understanding the Pakistan-Afghanistan Frontier. *International Security*, 32(4), 41.
- Thomson, J. T., Feeny, D., & Oakerson, R.J. (1986). Institutional Dynamics: The Evolution and Dissolution of Common Property Resource Management, *In Proceedings of the Conference on Common Property Resource Management, National Research Council* (pp. 391-424). Washington DC.: National Academy Press.
- Thomson, James T. (1977). Ecological Deterioration : Local-Level Rule Making and Enforcement Problems in Niger. In M. H. Glantz (Ed.), *Desertification : Environmental Degradation in and around Arid Lands* (pp. 57-79). Boulder: Westview Press.
- Thorburn, S.S. (1999). *Bannu or Our Afghan Frontier*. Lahore, Pakistan: Sang-e-Meel Publications.
- Toye, John. (1995). The New Institutional Economics and Implications for Development Theory. In J. Harriss, J. Hunter & C. M. Lewis (Eds.), *The New Institutional Economics and Third World Development*. London: Routledge.
- Toynbee, Arnold. (1961). Impressions of Afghanistan and Pakistan's North-West Frontier: In Relation to the Communist World. *International Affairs (Royal Institute of International Affairs 1944-)*, 37(2), 161-169.
- Trebilcock, Michael J., & Veel, Paul-Erik. (2008). Property Rights and Development: The Contingent Case for Formalization. from SSRN: <http://ssrn.com/paper=1084571>.
- Trochim, W. (1989). Outcome Pattern Matching and Program Therapy. *Evaluation and Program Planning*, 12, 355-366.
- Umbeck, John. (1977). A Theory of Contract Choice and the California Gold Rush. *Journal of Law and Economics*, 20(2), 421-437.
- USAID. (1982). *Project Paper : Pakistan-Tribal Areas Development* (No. 391-0471). Washington D.C.: Department of State.
- USAID. (1990a). *Socio-Economic Profile of North Waziristan Agency*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- USAID. (1990b). *Socio-Economic Profile of South Waziristan Agency*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- USAID. (1990c). *Socio Economic Profile of Kurram Agency*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.

References

- USAID. (1991). *Socio-Economic Profile of Orakzai Agency*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- USAID. (1992). *Socio-Economic Profile of Bajaur Agency*. Peshawar, Pakistan: Planning & Development Department, Government of N.W.F.P.
- USAID. (1993a). *Socio-Economic Profile of Khyber Agency*. Peshawar, Pakistan: Planning, Environment & Development Department, Government of N.W.F.P.
- USAID. (1993b). *Socio-Economic Profile of Mohmand Agency*. Peshawar, Pakistan: Planning, Environment & Development Department, Government of N.W.F.P.
- Wade, Robert. (1988). *Village Republics : Economic Conditions for Collective Action in South India*. Cambridge; New York: Cambridge University Press.
- Walker, James. (1862). On the Highland Region Adjacent to the Trans-Indus Frontier of British India. *Journal of the Royal Geographical Society of London*, 32, 303-316.
- Warburton, Colonel Sir Robert. (1975). *Eighteen Years in the Khyber: 1879-1898*. Karachi, Pakistan: Oxford University Press.
- Wardak, Ali. (n.d). Jirga - A Traditional Mechanism of Conflict Resolution in Afghanistan. University of Glamorgan, UK.
- Wazir, Badshah Gul, & Mohmand, Jehangir Khan. (1995). *Futuristics of Tribal Administration*. Peshawar, Pakistan: Academy for Rural Development.
- Weber, Max. (1958). *The Protestant Ethic and the Spirit of Capitalism*. New York: Scribner.
- Wilber, Donald Newton (1962). *Afghanistan: Its People, its Society, its Culture*. . New Haven: HRAF Press.
- Williamson, Oliver E. (1973). Markets and Hierarchies: Some Elementary Considerations. *The American Economic Review*, 63(2), 316-325.
- Williamson, Oliver E. (1975). *Markets and Hierarchies; Analysis and Antitrust Implications : A study In the Economics of Internal Organization*. New York: Free Press.
- Williamson, Oliver E. (1979). Transaction-Cost Economics: The Governance of Contractual Relations. *Journal of Law and Economics*, 22(2), 233-261.
- Williamson, Oliver E. (1983a). Credible Commitments: Using Hostages to Support Exchange. *The American Economic Review*, 73(4), 519-540.
- Williamson, Oliver E. (1983b). Transaction Cost Economics and Organization Theory. *Industrial and Corporate Change*, 2(2).
- Williamson, Oliver E. (1985). *The Economic Institutions of Capitalism : Firms, Markets, Relational Contracting* New York: Free Press.
- Williamson, Oliver E. (1989). Transaction Cost Economics. In R. Schmalensee & R. D. Willig (Eds.), *Handbook of Industrial Organization* (Vol. 1, pp. 136-178). Amsterdam: North-Holland.

References

- Williamson, Oliver E. (1990). Chester Bernard and the Incipient Science of Organization. In O. E. Williamson (Ed.), *Organization Theory: From Chester Barnard to the Present and Beyond*. New: Oxford University Press.
- Williamson, Oliver E. (1991). Comparative Economic Organization: The Analysis of Discrete Structural Alternatives. *Administrative Science Quarterly*, 36(2), 269-296.
- Williamson, Oliver E. (1996). *The Mechanisms of Governance*: New York : Oxford University Press, 1996.
- Williamson, Oliver E. (2000). The New Institutional Economics: Taking Stock, Looking Ahead. *Journal of Economic Literature*, 38(3), 595-613.
- Williamson, Oliver E. (2002). The Lens of Contract: Private Ordering. *The American Economic Review*, 92(2), 438-443.
- Williamson, Oliver E. (2005). The Economics of Governance. *The American Economic Review*, 95(2), 1-18.
- Yin, Robert K. (1994). *Case Study Research : Design and Methods* (2nd ed.). California: Sage.
- Yin, Robert K. (2003). *Case Study Research : Design and Methods* (3rd ed.). California : Sage.
- Yin, Robert K. (2009). *Case Study Research : Design and Methods* (4th ed.). California : Sage.
- Yunas, S.Fida, & Taizai, Dr Sher Zaman (Eds.). (2006). *Treaties Engagements and Sanads Relating to the North West Frontier Province: Covering the Period upto 1930 based on Mr. C.W. Aitcheson's Compilation*. Peshawar, Pakistan: Area Study Centre, Univesity of Peshawar.
- Zubair Khan, Mohammad. (2005). *North West Frontier Province : Private Investment Growth and Development* Islamabad, Pakistan: s.n.

Annexures

Annex – A**Major Tribes and Population in FATA Agencies/FRs***

Agency/FR	Major Tribes	Area (Sq. Kms)	Population
Bajaur	Utman Khel, Tarkalanri or Tarkanri	1,290	595,227
Khyber	Afridi, Shilmani, Shinwari, Mulagori	2,576	546,730
Kurram	Turi, Mangal, Bangash	3,380	448,310
Mohmand	Mohmand, Safi, Utmankhel	2,296	334,453
NWA	Utmanzai Wazir, Dawar	4,707	361,246
Orakzai	Orakzai, Daulatzai	1,538	225,451
SWA	Mahsud, Ahmadzai Wazir	6,620	429,841
FR Bannu	Utmanzai Wazir, Ahmadzai Wazir, Bhattani	745	19,593
FR D.I. Khan	Ustrana, Shirani	2,008	38,990
FR Kohat	Afridi	446	88,456
FR Lakki	Bhattani	132	6,987
FR Peshawar	Afridi	261	53,841
FR Tank	Bhattani	1,221	27,216
Total FATA		27,220	3,176,331

* Source: Mohmand (2003), Civil Secretariat FATA (<http://fata.gov.pk>)

Annex – B

Annex-20

Economic Initiative for the Federally Administrated Tribal Area (FATA)

INTRODUCTION:

Location: Wedged Between Afghanistan and NWFP

- Population: 3.93 Million
- Area: 27,000 Sq. Km.

Divided into seven Administrative Units called Agencies.

HISTORY:

- The British controlled this area through a strong Political Agent in each agency and tribal elders under their patronage called “Maliks” while leaving the people with their traditions & internal independence.
- Pakistan inherited and more or less continued with this system.
- FATA remained in a time capsule while the rest of the country progressed economically.
- FATA used effectively as a launching pad for the Mujahedin’s armed struggle to oust the Soviet Army from Afghanistan.

FATA TODAY is characterized by economic deprivation and vulnerability to extremism.

The challenge is to break the vicious cycle of poverty, poor social service, lack of economic opportunities and the easy solution offered by extremism.

- We are convinced that we have to use the opportunity of Economic empowerment to wean people away from extremism. Only by making a real and dramatic change in the lives of ordinary people can we achieve the desired results.
- Small, incremental, piecemeal economic intervention is lost in overall politico-economic milieu of FATA.
- **Need of the hour is an Economic blitz-krieg, a mini “Marshall Plan” in the next five years which would directly impact the lives of hundreds of thousands of Tribal and indirectly leave no one untouched.**
- The total cost of proposed Economic Initiative is \$150 million/year over the five year project period.
- The Government is already spending \$150 million per year on FATA’s development. However this is clearly inadequate.

MISSION:

- **To make Tribals economic stakeholders in the Pakistan common market.**
- **To achieve economic and political integration of FATA with the rest of the country.**

PROPOSED INTERVENTION:

Launch a high impact, fast track Economic Initiative for FATA to:

- Significantly increase the resource base.
- Generate economic activity.
- Create employment.
- Bring FATA’s Social indicators in line with the Millennium Development Goals.

STRATEGY:

Identify growth vents that:

- Build on existing success stories.
- Harness local potential.
- Use indigenous skills and proclivities.
- Are sensitive to tribal traditions.

Accordingly the following six sectors have been identified for Economic initiatives:

I. SKILL DEVELOPMENT**The Demographic Challenge****FATA population**

Age Group	Male	Female	Total	% age of Total Population
Under 15	945,221	870,604	1,815,825	46%
15-24	325,299	299,619	624,918	16%
25-34	233,756	215,302	449,058	11%
35-44	156,030	143,713	299,743	8%

- Today there are only eight training institutes, annually training 152 persons.
- We must plan for at least 200 training institutes with an annual turnover of 25,000, so that by the end of the five years we have over 100,000 skilled workers in the Tribal Areas.

II. MARBLE

- In association with the USAID, we have been working on an holistic intervention in FATA in the marble sector.
- The impact for this initiative shall be impressed as by the end of 5 years period:
 - Value captured by the region (sales) shall increase twenty fold that is form \$50 million today to 1 billion in 2010.
 - Increase in employment from twenty two thousands to 75,000.
 - Improvement in average wage from \$600 / year to \$1600 / year.
 - Increase in employment income from \$ 12 million to \$ 110 million.

III. RECONSTRUCTION OPPORTUNITY ZONE

- Duty free access to the US market will be the prime attraction.
- **ROZs will be pivotal in providing the economic breakthrough required by FATA.**
- This one concession can in itself change the economy of FATA. It has the potential to create 100,000 new jobs within two years, which number can easily grow to 500,000 in the next five years.

IV. AGRICULTURE

- Limited, due to lack of irrigation water, only about 7% of the total area is cultivated.
- We propose to construct 100 small dams to double irrigated land area from half a million acres to one million acres.
- And create Multiplier Effect through an integrated drip irrigation system and cultivation of high value crops.

- An olive tree initiative has already been launched where by grafting is being undertaken on the 13 million wild olive trees in FATA.

V. LIVESTOCK

- Today there are over a million cattle and buffaloes and 21/2 million sheep and goats in FATA however with an extremely limited access to veterinary service.
- Economic intervention in this sector shall be launched through a community based approach focussing on modern livestock management techniques of herd management, range management and breed improvement.
- Allied industry of wool, carpet weaving and leather shall also be developed.

VI. CLEAN DRINKING WATER/COMMUNITY WATER SUPPLY

- Community is facilitated in building micro dams to trap rainwater.
- The total number of mini dams built in the last two years in 100.
- This has impacted a population of 100,000.
- **The plan for the next five years is to build 1,500 mini dams to impact a population of 2 million.**

SOCIAL SECTOR INTERVENTION

FATA cannot develop if its people remain under developed.

- We have aggressively tackle Low Literacy rate (especially amongst women) and poor school enrolment through:
 - Opening of one thousand Adult Literacy Centres, primarily for females and based on the NCHD model which has been successfully implemented even in areas adjoining FATA.
 - An Education Sector Reform Programme. The gross primary enrolment rate is 46%. To get every child in school we have to double the number of schools and hire new teachers. Thus we need to
 - Build 4000 new schools.
 - Hire 15000 additional teachers.
 - Provide free text books.
 - Give a stipend to girls attending school.
 - Improve the quality of all 30,000 teachers.
- The President's Healthcare Initiative has been launched in FATA. Funds shall be required for Secondary and Tertiary level intervention.

IMPLEMENTATION STRATEGY:

- President Musharraf's standing instructions are that no policy document is to be submitted unless it enunciates a clear implementation policy.
- The cardinal principle of our implementation policy is the Programme and projects must be demand Driven.
- A critical element of this initiative would be to first create awareness amongst the tribals of what interventions are available and then give them a clear choice, that if they are not interested we shall move to the next site, next village/sub-clan of tribe.
- At the institutional level we plan to entrust implementation of the Economic Initiative to three Organization/Institutions with overall coordination at Islamabad.
- A) Resurrect **FATA Development Corporation** enchasing on its "brand name" familiarity amongst the Tribals albeit with the following new characteristics:
 - It shall operate at Public-Private partnership.
 - It shall outsource as much possible to Specialist Organizations. FATA Development Corporation shall focus on:

Annexures

- Skill Development.
 - Mineral Development.
 - Industrial Infrastructure.
 - Trade and Industry.
- B) Create FATA Rural Support Organization to work through community mobilization and participation in the following areas:
- Community Dams.
 - Agriculture/Livestock.
 - Micro Credit.
 - Micro Enterprise.
 - Community Schools.
- C) Built Capacity of Government Secretariat. (The Governor of NWFP administrates FATA as Agent to the President). The focus of the Governor's Secretariat shall be:
- Administration.
 - Education.
 - Health.
 - Communication.

CONCLUSIONS:

- We realize that Initiative is ambitious and sets challenging targets.
- However, time is Luxury that we cannot afford. If anything we are already late. Doing nothing is not an option. By doing too little we will not achieve our common goal.
- Therefore we have to rise above the ordinary, make a Herculean effort and make up for lost time.

And we are confident that under the able guidance of our President and support of our friends we shall succeed as our strategy directly impacts the life of the ordinary tribal making him an economic stakeholder in political stability and social moderation.

Annex – C

Rates of Royalty

FATA DEVELOPMENT AUTHORITY MINERALS DEPARTMENT

OFFICE ORDER

The Competent Authority, FATA development authority has been pleased to approve the following rates for various minerals in FATA, are to be charged with effect from 1st July 2008 as per details below.

S#	Name of Mineral	Rate in Rupees	S#	Name of Mineral	Rate in Rupees
1	Antimony.	25/-	21	Laterit.	15/-
2	Asbestos.	30/-	22	Magnesite.	15/-
3	Barite.	15/-	23	Marble Block.	30/-
4	Bauxite.	10/-	24	Marble Boulder.	25/-
5	Bentonite	12/-	25	Marble scrap.	30/-
6	Beryl.	110/-	26	Manganese.	30/-
7	Coal.	30/-	27	Mica.	450/-
8	Calcite.	8/-	28	Quartz.	8/-
9	Chromite.	35/-	29	Red Oxide.	12/-
10	Copper Ore.	55/-	30	Silica Sand.	8/-
11	China Clay.	10/-	31	Serpentine.	12/-
12	Dolomite.	7/-	32	Soapstone.	25/-
13	Potash/Feldspar.	15/-	33	Soapstone Powder.	30/-
14	Fluorite.	15/-	34	Jade.	20/-
15	Gypsum.	7/-	35	Precious Stone.	10% of Market Value
16	Graphite.	25/-	36	Semi-Precious Stone.	3% of Market Value
17	Granite.	10/-	37	Marble Powder/ Chips.	15/-
18	Iron Ore.	15/-	38	Quartz Powder.	12/-
19	Limestone (i) Building Material (ii) Cement industry	5/10/-	39	Finished Marble, Sheets and Tiles.	30/-
20	Lead Ore.	15/-	40	Barite Powder.	20/-

Annex - D

Strategic Framework: FATA Sustainable Development Plan 2006-2015*

Issues and Strategies	
Overarching issues Overall development strategies	Overarching issues Overall development strategies
Governance	
<ul style="list-style-type: none"> The existing system of governance is one of the root causes of underdevelopment, and creates disparities between FATA and the rest of the country. Decision making is driven by vested interests and hampered by political interference. There is a lack of transparency and accountability in the implementation of development schemes. Checks and balances are missing. 	<ul style="list-style-type: none"> Build on the on-going governance reform process. Transform decision making to create transparent criteria and accommodate the needs of the people. Ensure that all development planning decisions are made public, so that the people are informed about specific responsibilities of implementing agencies. Introduce a strict monitoring system that involves beneficiaries.
Law and order	
<ul style="list-style-type: none"> The area faces acute problems with respect to law and order. Insecurity is high, with inter-tribe and -clan clashes, criminality and extremism affecting the quality of life. The existing legal framework and dispute resolution mechanisms do not guarantee access to justice for all citizens 	<ul style="list-style-type: none"> Build synergies with the political administration and law enforcement agencies to improve the security situation, so that a climate conducive to development may be created. Support the on-going reform process to ensure that ordinary citizens have access to justice under an appropriate legal framework.
Society and culture	
<ul style="list-style-type: none"> The conservative nature of tribal society, with strong resistance to change in some quarters, hinders social and economic development. There is no room or opportunity for women to contribute to the development process. 	<ul style="list-style-type: none"> Raise awareness, increase access to information and knowledge, and improve education. Encourage the involvement of educated youth in the development of the area Create opportunities for women to participate in the development process, taking into account religious, social and cultural mores
Services and utilities	
<ul style="list-style-type: none"> The overall level of education is low, with limited access to knowledge and information. Coverage of infrastructure facilities, services and utilities is patchy. 	<ul style="list-style-type: none"> Develop the capacity of local people to enable them to provide services in social and technical sectors. Rationalise the balance between infrastructure development and human resources development.

<ul style="list-style-type: none"> • The quality of service delivery in basic social sectors is inadequate. • Past development initiatives have focused on infrastructure rather than on the human resources necessary to make facilities functional. • There is a scarcity of professional and skilled labour. Access to savings and credit facilities for household and farming needs is inadequate. • Capacity constraints exist within the ranks of service providers. • Baseline data is unreliable, planning mechanisms and monitoring systems are ineffective. 	<ul style="list-style-type: none"> • Strengthen participation through social organisation and the involvement of local beneficiaries as user and interest groups. • Bolster the institutional and human capacities of service providers to enable them to implement and monitor the SDP. • Link savings and credit facilities with the development of social organisations at the grassroots level. • Improve working conditions and living facilities for service providers to ensure better service delivery. • Develop and update sector- and agency-specific baseline data and indicators.
Economy and Development	
<ul style="list-style-type: none"> • Few indigenous options exist for entrepreneurial activity. • Employment and income-generation opportunities are severely limited. • There is no legal framework for private-sector investment. • Financial services are not available. 	<ul style="list-style-type: none"> • Create an environment conducive to economic development through major public-sector investment. • Develop skills based on the demands of the market. • Provide a regulatory framework for investment. • Ensure the availability of financial services for enterprise.
Environment	
<ul style="list-style-type: none"> • Environmental degradation is occurring, with deforestation, intermittent drought and groundwater depletion. • There is no regulatory framework for environmental management. 	<ul style="list-style-type: none"> • Develop a regulatory framework for environmental management. • Ensure that development activities are environment- friendly. • Promote the restoration and sustainable use of natural

*Source: SDP 2006-15