Between the metropole and the postcolony: On the dynamics of rights' machinery from the northwestern tribal belt to the "mainland" Pakistan

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Abstract

Recent analyses have critically evaluated the connection of abstract rights with territorial nation-states. This article extends those findings by analyzing the way discourses of rights (human, political, national) are interconnected. It is argued that the system of relations that rights establish between their norms and concrete sociopolitical practices allows rights to function as overall machinery, one that both produces and governs subjects. From this perspective, this article establishes that: (a) since rights depend for their legal guarantee on the power of nation-states, they are a normative standard which coincides with the political power of a nation-state; (b) since rights require a certain ethic from subjects in order that their exercise of rights be legally protectable, they govern subjects through inclusion, that is, by structuring fields of action in order that a certain "proper" conduct may take place; (c) since the nation-state framework with which rights are connected operates in a postcolonial order, the functioning of rights is also connected with the discursive dynamics of postcoloniality. The empirical focus of the discussion is on Pakistan. The first section focuses on the use of human rights' discourse in order to counter drone attacks in Pakistan's tribal belt. The conundrums that human rights in this context generate are then filled in by acknowledging "rights" of a state (i.e. political sovereignty and territorial integrity), which is the focus of second section. The third section comments on the way national and political rights correspond to the notions of "citizenship" and "belongingness," which in turn shapes the conduct of subjects in a contextually apt manner.

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Human rights depend, as Hannah Arendt long ago pointed out, on national rights—that is, right that constitute, protect, *and punish* one as the citizen of a nation-state. This also means that the state has the power to use human rights discourse to coerce its own citizens—just as colonial rulers had the power to use it against their own subjects. In defending its citizens' human rights it is only the state that can legally threaten to punish violators.
—Talal Asad, *Formations of the Secular*, p. 135
Apparatus is first of all a machine that produces subjectifications, and only as such is it also a machine of governance.
—Giorgio Agamben, *What Is an Apparatus?*, p. 20

Introduction

This article analyzes how various discourses of rights (human, national, and political) are interconnected. It is argued that this interconnection enables each discourse to fill in the gaps created by the other in a way that subjects continue to remain within the juridical context of rights. Further, since rights depend on a legal–political guarantor (one that is capable of interpreting, protecting, and implementing them), their normative force coincides with the political power of that guarantor. This means that rights not only constrain the power of that guarantor but also have to make a legal room for the legitimate functioning of that guarantor. In this sense, discourses on rights both rely on and have to acknowledge "rights" of a nation-state, that is, its right to political sovereignty and territorial integrity. In sum, it is argued that this discursive interconnection gives freedom (which rights protect and establish) a peculiar form and understanding. With these points, this article establishes that since the nation-state framework with which rights are connected operates in a postcolonial order, the functioning of rights is logically related to the discursive dynamics of postcoloniality.

In order to argue out so, this article presents the idea of "rights as machinery." This is done by relying on the theoretical tool of *dispositif* (apparatus). Foucault used this concept to study those sociopolitical setups whose nature is

> essentially strategic ... [and one that aim at] a certain manipulation of relations of forces, of a rational and concrete intervention in the relations of forces, either so as to develop them in a particular direction, or to block them, stabilize them, and to utilize them" (Foucault, 1977: 196).[1]

First, this concept is used in order to theoretically appreciate the way rights are connected to practices and institutions on the one hand, and to the techniques relating to the production of and governing through freedom on the other. This is important once it is appreciated that human rights refer to a guaranteeing power and to peculiar sociopolitical arrangements, while national rights refer to the institutional architecture of the nation-state. It is argued that what gives rights their specificity is "the system of relations (*le réseau*) that [they] establish] between these elements" (Foucault, 1977: 194). Second, this concept is used to theorize the way rights *function*, socially and politically. Theorizing this strategic function of rights is important because rights need to (re)produce their conditions of existence in order to exist in a historical continuum. An important role in this regard is played by an apt constitution of subjects that can (self-)govern themselves within rightful domains (cf. Agamben, 2009: 11; Brown, 1995: 118; Esposito, 2008: 37–38; Foucault, 1983: 221; Patton, 1998: 64–77). In other words, the dependence of rights on various techniques and knowledge formulations, along with their effect of creating certain practices and concepts while displacing others, is traced with this theoretical tool.

The empirical focus of this article is on Pakistan. The discussion begins by studying the trajectory that specific discourses of rights form and then comments on their sociopolitical

implications. The first two sections analyze the northwestern tribal belt of Pakistan (hereafter, the tribal belt). This focus is of utility since the tribal belt possessed an "autonomous" status in the colonial British India[2] and was later bequeathed almost in that unadulterated legal shape to the postcolonial Pakistani state.[3] Because of its "anomalous" status at present,[4] policy analysts have remained unable to see the tribal belt through the available "objective" tools, to only discern it as "a most dangerous place" (Nawaz, 2009: ix) and "the greatest security challenge" (Abbas, 2009: 2) for the region and the world. Primarily, this article studies the important role that rights perform in *including* the tribal belt into the postcolonial territorial order, as policing goes "global" in the wake of "War on Terror."[5] The third part analyzes the way the process of normalization shapes the conduct of the subjects (both in the tribal belt and in the "mainland") and requires from the nation-state to continuously redefine the substance of political and national rights of "its" juridical subjects.

In order to build its narrative, this article selectively looks at three occurrences from the month of October 2013. The focus on specific "minor" events (a testimony and a report, a press release, and an ordinance) within a relatively shorter time period (October 2013) is guided by an objective to sketch rough contours of a "specific historical paradigm" (to draw on Agamben's phrase, Agamben and Ulrich, 2004: 619). The reading of the events locates the discursive processes that not only precede but also shape the present. This not only means that an event only becomes an event as such once situated in a process, but that more importantly both the event and the process presuppose each other in order to sustain *a* specific historicity.

Making oneself heard

First occurrence: On 29 October 2013, Rafiq ur Rehman, a resident of Tabbi from North Waziristan, an agency of the tribal belt, briefed the US Congress as a drone strike victim (McVeigh, 2013). It was the first time that someone who had suffered a personal loss in an American drone strike briefed the US Congress. Almost a year prior, on 24 October 2012, Mr Rehman's mother (Momina Bibi) had been killed and his children were injured by a missile launched by an American UAV (Sledge, 2013). The briefing of a victim from the tribal belt before the US Congress was all the more significant because the northwest in Pakistan has been transformed into a veritable drone laboratory with more than 330 strikes since 2009 alone, with the agencies of South and North Waziristan being the major points of target (BIJ, 2014).

Mr Rehman was represented by the UK-based NGO Reprieve and the Pakistani Foundation for Fundamental Rights. Further, in October 2013, his story featured in Robert Greenwald's and Brave New Foundation's documentary *Unmanned: America's Drone Wars* and was covered by a detailed report issued by the Amnesty International entitled *Will I Be Next? US Drone Strikes in Pakistan*. In order to counter drone strikes, concerned parties (Reprieve, Amnesty, and Mr Rehman) utilized various techniques (videos and photographs, paper and online publication, briefing and awareness raising) and platforms (mass media, press and internet, the Congress). However, what connects this field is the use of human rights discourse to vindicate one's claims.

This section begins by reading the report *Will I Be Next?* in order to see the way drone attacks are being critically taken up through human rights. Then, it discusses how this act produces spillover effects that stretch human rights beyond the immediate use of a critical evaluation of the drones. The report published in October 2013 is presented as "one of the most comprehensive studies to date of the US drone program from a human rights

perspective'' (Amnesty, 2013a). Its express aim is to highlight incidents ''in which men, women, and children appear to have been unlawfully killed or injured'' (Amnesty, 2013b: 8). However, at the end, the report exceeds its limited aim. Given the divide in the human rights discourse itself, this is not unpredictable. There are three such divides in the report that reflect, what Arendt calls as, ''the perplexities of the rights of men'' (Arendt, 1973: 90–103).

First: the subjects. On the one hand, human rights are presented as rights that the tribal people simply possess (Amnesty, 2013b: 57). They are what one solely has by ''virtue of being human'' (Griffin, 2001: 2). As such, they are the parameter according to which practices are to be measured. On the other hand, the nation-state architecture is invoked to guarantee human rights (Amnesty, 2013b: 9, 60). Thus, it is human rights that require the extension of the Pakistani state, as the latter is asked to formalize its judicial system in the tribal belt, among others, in order that these rights become implementable (Amnesty, 2013b: 60). Therefore, the tribal people are presented simultaneously as the *juridical* subjects of *human* rights and the *political* subjects of a *nation-state*. Since one cannot place any other entity in between this abstraction of rights and the concreteness of its assemblage, such as the tribe, masjid, or bazaar, it becomes possible to discern a certain postcolonial understanding at work here.

Second: drones. On the one hand, drone strikes are charged with an ''arbitrary deprivation of life'' (Amnesty, 2013b: 8). On the other hand, it is acknowledged that ''some drone strikes may not violate human rights'' (Amnesty, 2013b: 56). Then, an incredible suggestion: drone technology should only be transferred to human rights friendly users (Amnesty, 2013b: 19).[6] The point of coincidence between these diverging albeit logical remarks is the human rights law. The phenomenon consequently lamented is not that of killing machines, human or otherwise. In fact, it is the process through which drones operate that remains faulty since it is seen to have weak ''legal basis'' (Amnesty, 2013b: 56). What one has here is the regulation of drone strikes through the human rights law rather than a blanket prohibition.[7] Similarly, the entire evaluation of the conflict with its rationale, origins, soundness, and objectives is never an issue but only the lawfulness of the specific war practices. Among others, an important question nonetheless is: What is to pass as law? For sure, the tribal juridical scheme with its accent on reciprocity (*badal*), hospitality (*mailmestia*), and honor (*nang*) can pass as a peculiar code (Benson and Siddiqui, 2014: 112–116; see also Caroe, 1964; Mahdi, 1986), but never as a standardized law under the conditions where justice is equated with rights, and where both justice and rights are in the hands of a nation-state.

Third: the land. On the one hand, the tribal belt is presented as ''one of the most remote and lawless parts of the world'' (Amnesty, 2013b: 9). On the other hand, the Pakistani state is asked to ''protect life and physical integrity of people under [its] jurisdiction'' (Amnesty, 2013b: 9). If lawfulness is equated with a nation-state assemblage, then lawlessness through this banal logic is presented as an absence of the very institutions that stand for it: courts, bureaucracy, police, and effective border control (Amnesty, 2013b: 38). Therefore, once one counters drone strikes through human rights, the autonomy of the tribes subsequently turns up as a liability (Amnesty, 2013b: 60). The boomerang effect of this viewpoint causes the tribal life to appear uneven, with its ''limited governance'' (Amnesty, 2013b: 35), ''patriarchy'' (Amnesty, 2013b: 32), and ''women with limited access to education and public life'' (Amnesty, 2013b: 32). Therefore, at the moment that the status of tribal people as tribal becomes a question, they are freed as ''humans.''

Two things are important to note. First, the vocabulary of human rights is invoked to counter drone strikes. True, human rights might be an effective tool to combat the practice

of drone attacks. However, there is something more. Human rights also require a certain proper groundwork to work through: visible social differentiation between civilians and combatants (Amnesty, 2013b: 45), public and fair trials (Amnesty, 2013b: 9, 36), or restitution and rehabilitation (Amnesty, 2013b: 9, 58). Second, it is important to note the guarantor who is addressed and the way it is to be addressed. Once one discerns victims, then their fears, concerns, stresses, pains, and anxieties constitute them as vulnerable beings in the need of an apt government. Thus, it is the nation-state which is to be engaged through protests, blogging, photojournalism, graffiti, placards, and sit ups, even if the violence protested against is largely a result of the nation-state itself. This is predictable at present in the light of, as Habermas reminds, the "firm entrenchment of nation-states" (Habermas, 2009: 65). However, the entanglement of the abstract human rights with the postcolonial nation-state architecture entails a duality: constant criticism of the nation-state and the consequent extension of nation-states under those critically sieved conditions. Thus, the report ends by requiring transparency and justice from the American government, and governance and involvement from the Pakistani state (Amnesty, 2013b: 58–60). Resultantly, the tribal belt is posited as a certain space that needs to be appropriately governed by the "metropole" (Pakistani state, international bodies, and observers).[8]

Therefore, it would be unsound to see a tragicomedy in Mr Rehman's briefing the US Congress as a victim informing about the aggression and requesting justice from the very power center that symbolically legitimizes the aggression perpetrated against him. It is so since human rights cannot but rely on political power asymmetry, to reflexively engage the metropole. In Mr Rehman's case, there are specific vocabularies (rights, justice, humanity) and tools (child painted drone diagrams, testimonies, photos). However, even in the metropole, power structure is uneven. So, addressing drone campaign before the US Congress or through an art exhibition in New York is more effective than petitioning the Peshawar High Court or through an art exhibition in Lahore. The effect of engaging the first addressee is different than addressing the latter. Regretfully, the second addressee is a mere postcolonial metropole. In fact, it is only when the things are effectively brought before the first addressee (alias, "the international community") that they tend to assume the status of "global" concerns. However, as Chakrabarty notes, from the other side one "do[es] not feel any need to reciprocate" (Chakrabarty, 2000: 28). Hence, the same reciprocity, for example, presenting American fears of a terrorist plot from the tribal belt in a North Waziristan bazaar seems both unimaginable and ludicrous.

Similarly, it is in addressing the metropolitan centers, and then through it the entire humanity, that one cannot but use human rights to tell that "humanity" is at stake here. One can certainly speak through with, what Pashtuns call as, *Pashtunwali* (the tribal code), but one may not be listened to so attentively then.[9] It is only when one assumes the position of a postcolonial subject seeking inclusion into the specific power coordinates that one's vocabulary and addressees are already determined with the satisfaction that the human one is now may henceforth be heard and possibly listened to.[10] Therefore, it is not only the incidence of suffering and violence which is closely connected to politics, but the way suffering is disclosed in order to become lamentable which has deeper political underpinnings. In this case, it means that for a death (of Mrs Bibi) to become lamentable and evade effacement, it has to be particularized (pulled out of anonymous statistics on casualties caused by drone attacks) and reconstructed for an "effective" audience in a presentable manner so that it may fall in line with that audience's sensibilities.[11]

Moreover, speaking through a specific moral vocabulary performs two tasks: first, it brings the speaker within its discursive domain, where then that peculiar language speaks; second, it forms the speaker as a specific subject within that discourse. Thus, there is not, as

if it were, a mere shift from one vocabulary to another, but a transmogrification at the level of subject. That is: for the Other to be recognized and represented as the Thou, the obscurity associated with the Other is first to be done away with. However, given the performative fixture—where vocabulary, the addressed, the speaking site, and the modes through which attention can be garnered are rooted in the historical structures of power—a paradoxical formula haunts the very way a postcolonial subject is to speak in order to be listened to and postcolonial critique is to take place in order to be appreciated. Once the inhabitant of that vocabulary pulls itself out as an active postcolonial subject, there are repercussions on and for vernacular (*Pashtunwali*, for instance). The gradual transformation of vernacular into something opaque means that the moral vocabulary of human rights prioritizes one historical time at the cost of another *within the present*. It does not mean however that the speaking subject is, as it were, a "mere effect whose agency is pure complicity with prior operation of power" (Butler, 1997: 26), because the criticism of drone warfare through human rights does work with effect. What is nevertheless important is the fact that if critique hosts criticism—where critique may be defined as excavating "the conditions of possibility under which a domain of object appears" (Butler, 2009: 109)—then postcolonial *criticism* of the metropole painfully remains vulnerable to becoming a *critique* of the postcolony itself (cf. Asad, 2009: 143–144).

Due to this interconnection of language and power, it is not only the labels "justice" or "right" that merit a closer scrutiny, but also what investments do they bear, who will implement them and how, and what this may mean for the overall power topography in general. Given the political power asymmetry at present, this act extends the process through which the metropole reproduces itself as the metropole. Thus, "free speech"—as exercised both by Amnesty and Mr Rehman—is "shaped by pre-established limits" (Asad, 2003: 184; Nasir, 2015). Meanwhile, once one sees human rights as machinery plugged into the postcolonial institutions, the issue arises as to those spaces where the usual trappings of nation-state as such cannot be found, the tribal belt for instance. In short, the conundrum emerges when a space has not undergone the concrete colonial/modern transition. Thus, on the one hand, human rights presume and operate in a postcolonial world. On the other, it is in the question that how such a colonial transition may occur at present that human rights meet their limits. The issue of colonial transition is propelled yet avoided by human rights.

Realizing the presumed

Second occurrence: Almost a week before Mr Rehman's briefing to the US Congress, the Pakistani Prime Minister met the American President in Washington. In a joint press release dated 23 October 2013, the issue of drone strikes was indirectly referred to under the label: the right of the nation-states to "sovereignty and territorial integrity" (TWH, 2013). Not the incidence of violence through the use of drones, but the violation of Pakistani state's territorial rights in the process became the common reference point. But, in what sense is Pakistan sovereign over the tribal belt? If tribal belt does indeed suffer from "lawlessness" and "ineffective governance," as Amnesty report noted, then in what manner is the Pakistani state sovereign there? It is time to look briefly at the status of the tribal belt and how the right to sovereignty functions in an overall machinery to (re)claim the territory for the nation-state.

Given colonial inheritance,[12] the tribal belt's status is anomalous within the postcolonial structure of Pakistani state. Section 3 Article 247 of the 1973 Constitution of Pakistan exempts it from the acts approved by national and provincial legislatures (Constitution, 1973). This means that police, prisons, and courts are absent in the belt. Moreover, the

Supreme Court of Pakistan reiterated in the landmark *Manzoor Elahi v. Federation of Pakistan* (PLD 1975 S.C. 66) that the tribal belt does not fall under the jurisdiction of the courts of Pakistan. However, Section 6 Article 247 of Constitution also allows that the belt may lose its special status when considered "appropriate" (Constitution, 1973). Resultantly, the tribal belt has an enigmatic status: an anomalous space during the colonial times handed over to a postcolonial nation-state, and whose "anomalous autonomy" functions as a spatial and conceptual limit. It is primarily this status which has generated a threefold problem. First, one is unable to draw neat differentiations: civilians or combatants, law or anarchy, threat or assets, religion or politics or customs, border or frontier, and citizen or alien. Second, there is no locatable center accountable and accounting for the local "excesses." Third, the markers of progress circumambulating around "the actually existing nation-state" remain embryonic: development, education, institutionalization, or infrastructure. Since history as a "knowledge system is firmly embedded in institutional practices that invoke the nation-state at every step" (Chakrabarty, 2000: 41), the tribal belt is fated to remain "static"—unless, of course, salvaged from somewhere, by someone, at an appropriate time.

Therefore, the problems relating to the tribal belt are presented as failures of the Pakistani state to cope up with its colonial legacy that served the "British power but is not suitable for a modern society" (Nawaz, 2009: 8). Because of this failure, one is told, the sovereignty of the Pakistani state and the rights of the tribal people have remained minimal. Thus, as per the US Department of State, an "important objective in the global war on terror" remains the conversion of the tribal belt "into a regularly administered province of Pakistan" (USDS, 2006: 20). Overall, the invocation of sovereignty produces material effects. It first ensures that the diversity of tactics, people, and expertise be made to assume the fact of "the state." It secondly ensures that through this rubric both the land and the people are governed: "the people" are governed in the name of "the state," and "the state" in the name of "the people." This shapes reality in the light of such a "fact."[13] In the tribal belt, therefore, the land has turned up as an object of multiple tamable techniques, as forest areas are being made passable to counter infiltration, checkpoints created to decide on admissibility, watchtowers erected to track the movement of bodies and goods, zones ("red," "green," or "buffer") demarcated to evaluate the writ of the nation-state, and the land of rebels auctioned to deprive them of finances. This is supplemented by debates and half-hearted attempts to fence the Durand Line, given that Pakistani state had previously remained unable to reinforce stringently the passport regime (Shah, 2013). Moreover, since 2001, the tribal belt has been the focus of seven major military offensives: Operation *Al-Mizan* (Justice), Operation *Kalosha II*, Operation *Zalzala* (Earthquake), Operation *Sirat e Mustaqeem* (Path of Virtue), Operation *Sher Dil* (Lion Heart), Operation *Rah e Nijat* (Path to Salvation), and Operation *Zarb e Azb* (Strike of Sword). One has now come quite far since 2001 as the number of troops stationed in the tribal belt has jumped from zero to more than 140,000 (LA, 2010). Meanwhile, the number of "internally displaced persons" from the northwest since 2002 is estimated to be around five million (IDMC, 2013: 1). The refugees that are displaced in their capacity as tribal are saved as humans by the humanitarian agencies and dealt with as political subjects by the state institutions. On the other hand, these violent techniques of openings both rely on knowledge and extend the possibility of data collection. Thus, after the data relating to the inhabitants, property, tribal family trees, cross-border infiltrations, and intertribal and intra-tribal feuds are passed through statistical compilation and pattern generation, it is transmuted into knowledge. Then, it partakes in policy making as military strategies, negotiation possibilities, cost and benefit analyses, progress reports, and development policies are developed on the basis of it. This again means that uncertainties come to limelight only when knowledge shapes them so, and that

those very uncertainties shape newer knowledge in turn. In a nutshell, knowledge constitutes both the objects (reasonable or otherwise) and the subjects (rational or otherwise) (Foucault, 1977: 196).[14]

Importantly, the use of the right to territorial sovereignty performs two political functions. First, the uneven internal power composition of the nation-state is done away with, so that the constant pull of people, places, and objects for the reproduction of nation-state becomes obvious to the point of triviality. Instead, what is needed is to look at the nation-state not solely as a construction but more importantly as an entity always in the process of constructing itself by ''defending, or achieving, or denying the claim of others to sovereignty'' (Asad, 2007: 26). Sovereignty neither precedes nor succeeds the nation-state; the complex process of interrelation itself makes the sovereign nation-state real. Second, given the terrain shaped by the postcolonial territorial order, it becomes difficult to find any outside of the nation-state architecture: if a political entity falls out, it does so only as another nation-state. On the other hand, this entails that not only does violence acted out in the name of nation-state merit a different moral response as compared to that which does not do so, as Asad discerns (2007), but also those actions and actors that either clash with or resist a neat encapsulation within the interpretative milieu of the nation-state framework merit the status of absurd. In this paradoxical sense, albeit the discourse of human rights provides a room for one nation-state to wage war on another nation-state, only to regulate later specific war practices and the use of force,[15] it does not provide a room to any nonstate entity to appropriate violence even in the name of guarantee of those rights.

It is the conceptual rubric of sovereignty with which the issue of legitimate violence is intimately connected that answers the reason why the major political parties may oppose the drone strikes as violation of Pakistan's sovereignty,[16] but find the much more extensive use of air strikes with even adverse human consequences by the national air force as both necessary and judicious (ET, 2011). Around the problem as to how may one best maintain state sovereignty and ensure the rights of subjects, there revolve a host of ''solutions'': if there should be negotiations with the Tehrik-e-Taliban Pakistan in the tribal belt, if negotiations should be ''under'' the Constitution, if there should be an end to drones or if its use must be more regulated, if ''surgical'' strikes should be extended, if there should be full-blown military campaigns into the entire area, if there should be a discriminatory treatment between those Taliban loyal to Pakistan vis-à-vis those that are not, if the status of a front-line ally serves the national interests in the light of escalating violence. What is remarkable is the way national and international law already makes room for the implementation of specific political solutions best suited to assert sovereignty. Then, once rights of ''its'' subjects are utilized as technique of government, it is around this invocation that the nation-state concretizes itself. Therefore, on the one hand, the tribal belt is a site of full-scale military operations, air bombardments, makeshift laws, dislocations, and mass incarceration. On the other, the tribal belt is also a site of a number of empathetic concerns: school projects (Dawn, 2013a), employment and public initiatives (PDMA, 2011), rationalities of integration into the nation-state (Dawn, 2013b), and so forth. A dual process of coercion and paternalism includes the tribal belt into the Pakistani state.

Therefore, it is in the process of inclusion that the national interests of US and Pakistan merge. Let us come back to the October 2013 press release: Whereas the US drones Waziristan on the one hand, the joint press release on the other hand appreciates the announcement of American ''funding for the Kaitu Weir Hydroelectric and Irrigation Project . . . [in] North Waziristan'' (TWH, 2013). Whereas Pakistan ''officially'' protests the drones (Dawn, 2013c), the joint press release thanks the US on Pakistan's behalf for its

support through "military engagements, exercises, and consultations...[on] counterterrorism and counterinsurgency" (TWH, 2013).[17] Whereas Pakistan's "territorial sovereignty" is being violated in the drone campaign, both parties acknowledge the importance of having a "stable and peaceful Pakistan-Afghanistan border...for the success of counterterrorism, counterinsurgency, and counter-IED efforts" (TWH, 2013). Here, the dynamics may remain irregular, but the process itself is far from being contradictory. It is so since "extremism and terrorism" seen to lie in the tribal belt are presented as "a common challenge for humanity" (TWH, 2013). Then, the obvious solution to these problems is "collaboration and joint efforts by the international community" (TWH, 2013). Consequently, the supple discourse of the humanity becomes the thread weaving together the production of colony with the metropole through coercion and paternalism (Asad, 2015).

It is correct that although the human rights discourse relies on the nation-state for the guarantee of the rights it hands over to "humans," it does not provide nation-states with a limitless sway under their label of the right to sovereignty. Further, it would be unsound not to appreciate the fact that various human rights organizations have critically analyzed the arbitrariness of makeshift legal assemblages that have mushroomed in the tribal belt since 2001. However, if human rights can be understood as the rights of a specific "free subject" (Dean, 1995: 561), then the theoretical problem becomes: How can a juridical subject be governed through freedom in those spaces where the legal institutions of freedom have not as yet taken root? What is to become of those humans who cannot be governed through freedom or who can be governed but not through freedom?[18] Therefore, although the Amnesty Report requires from the Pakistani state to "provide access to justice" (Amnesty, 2013b: 60) as construed in the human rights law, it does not comment on how such an end could be achieved through the means of human rights alone. It is here that the right to territorial sovereignty tries to fill these gaps by inserting into the rights' machinery the notions of urgency, preemption, expediency, exigency, and proportionality. This flexibility afforded to nation-states is built into the legal framework of international law with its acknowledgment of necessity, self-preservation, self-defense, discretion, provisional measures, and emergency. Such a possibility allows, in the rights' machinery, for "a readjustment or a re-working of the heterogeneous elements that surface at various points" (Foucault, 1977: 195).

Nevertheless, if the nation-state can be seen as divided from within and caught between centrifugal and centripetal forces, then this pull also leads to a continuous differentiation and identification of subjects, both outside it and within it. If the governance of the center may thus get entangled with techniques utilized in the colonization process, then with the passage of time a strict gulf between a metropole and a colony becomes increasingly difficult to sustain.

A tale of two subjects

Third Occurrence: While PM Sharif was on an official visit to the US in October 2013, back home President Hussain signed the Pakistan Protection Ordinance (PPO) (Tribune, 2014). PPO is among the family of laws passed after 2001 to deal with the situation of "insecurity" and "terror."[19] It allows for search and arrest without warrant, grants power of preventive detention, shifts burden of proof onto the one "waging war or insurrection against Pakistan unless one establishes one's non-involvement in the offence," and exempts "law enforcing agencies" from actions "done in good faith" which includes shooting someone at sight out of "reasonable apprehension" (PPO, 2013). Of all, three things are notable in PPO.

First, whereas various amendments to the 1997 Anti-Terrorism Ordinance largely focused on the tribal belt alone, PPO extends to the entire state territory. Second, PPO does not govern through the juridical rights of a subject nor tries to regulate the political freedoms of a citizen per se. It primarily protects Pakistan from "war against Pakistan." Third, the legal construction of PPO is made in view someone who "influences or affects the conduct of government through coercion or intimidation, or who retaliates against government conduct."

This means that the tactics of government have to be reoriented so that concrete contours of practices corresponding to the juridical being of the citizens within a national community can be drawn. This task is done by substantiating political and national rights. It is so because there is a transgressor amid all that despite being a citizen violates the citizenship obligations, despite being a juridical subject abuses its rights, and despite being a national turns against the body national. The techniques of government then have to both draw a parallel between compliance and transgression and to ensure that transgression is preemptively countered. Now it is correct that forms of knowledge, mobility, and technology have optimized the tactics of colonization in the tribal belt. True, these have affected the tribal life, where now, for example, the "targets" on the drone hit lists are socially avoided, hospitality (*mailmestia*) is curtailed, reciprocity (*badal*) is altered. What is nevertheless difficult to contain is the way such devices and strategies travel back to the center. In a fundamental sense, it means that when compliance determines transgression for long, transgression redefines compliance in return. Hence, there is, what Foucault discerns in the liberal arts of government, the "game of security and freedom" (Foucault, 2008: 65).

One can rightly say that violence in the tribal belt is a manifestation of power, where power does not only determine its targets and objectives, but also determines the form of useful violence and the way it is to operate. What further needs to be looked at is the way this process overstretches itself as power dynamics become mobile. First, the movement of people (soldiers, tribal migrants, civil servants, observers) to and fro exchanges strategies, tactics, lessons, metaphors, and ideas. Second, the practices, examples, techniques, and technologies develop a momentum of their own as they become capable of travelling back and forth. What is intriguing to note is the way violence brings people and practices closer with multiple ripple effects. However, apart from looking at the tactics of power that utilize violence, one also needs to look at the interconnection of violence and normalization: the conditions under which normalization occurs and has to occur.[20] Thus, the machinery of rights does not address violence alone, but more importantly structures fields of action where a certain proper conduct may take place.

The rationale that shapes the proper conduct reflexively impacts the life at the center. Then, the very practices that enrich urban life become the same practices that allow transgression to be diversified and resultantly require that they be more stringently controlled. The center therefore has to rely further on the interface of technology and law to govern the compliant juridical subject and the noncompliant transgressive ones. Thus, the metropolitan subject has to avoid risks, report incidents, shun dangerous web material, maintain clean bank account, and avoid hazardous financial transactions. Moreover, even at the level of technological gadgets, there has been a phenomenal increase in the use of walk-through gates, security cameras, metal detectors, beep machines, and body scanners, from airports and banks to universities and schools in all the central and peripheral cities of Pakistan. Thus, in Pakistan, during the last decade, passports and National Identity Cards have been computerized, data ordered, finger prints and biometrics saved (e.g. BU, 2012; DT, 2014). Moreover, chips have been inserted into the identity documents monitoring mobility. The stored and sorted data then makes policy (say, registration, rationing,

voting) and policing (say, the number of unregistered refugees, licensing of arms issued, securitization of SIM cards) easier and targeted (BU, 2014; Dawn, 2014b; TN, 2014, 2015). Similarly, at the level of residential areas, the use of walled housing schemes, security guards, blocked roads, and check points has visibly increased (e.g. Nasir, 2014). Now, one must certainly make room here for negligence, malpractices, unintended effects, and loopholes. However, the strength of the arts of government lying at the intersection of freedom and security is in its capacity to reflexively bring those limits back onto itself in order to refine its functioning. Resultantly, politics turns up as "game of these different arts of government" and the "debate they arouse" (Foucault, 2008: 313). Now, whereas the machinery of rights counters transgression in the tribal belt, the strategy to counter transgression redefines the substance of rights in the mainland. In other words, the politics of the colonial exquisitely shapes ontology of the subjects.

It would therefore be hasty to discern an indiscriminate violation of rights through laws like PPO. Similarly, it would be unsound to see an increased terrorization of the citizenry itself. In fact, the guarantee of rights remains interwoven with the concerns of an apt management of a population surrounded by threats and risks. Tackling such insecurities, preventing their actualization, generates an ambience of being secure. Transgression becomes more than an act or an event; it functions as a category with its own regularities, incidences, strategies, and counter-responses. Around it, then, there revolve security practices, urban planning, documentation, expert feedback, media input, and the like. There is thus not a brute expansion of state power, but practices mediated by knowledge, expertise, and legality. As a category, transgression addresses both space (requiring that it be made more regulatable) and time (requiring that its passage be calculated and projected) on one hand, and possible actors (terrorists, next attack, vulnerable zones) and potential victims (traumas, psychological counseling) on the other (Aradau and Munster, 2012; Dean, 1999: 1710; O'Malley, 1992). This then both helps locate and arrange subjects in their specificity. Similarly, it is the specific way in which the carnage produced by the transgressive catastrophes is disclosed (victims, costs) and circulated (photographs, social media) that is already attuned to perform specific political functions (patriotism, securitization). This also entails that "the public" co-constitutes itself through the acts of public commemoration, public protest, public lament, public indignation, and public fury.

Resultantly, the subject of the nation-state needs to carefully manage its conduct so that it is able to preserve its veritable juridical status. It means that sustaining one's juridical status merges with the capacity of distancing oneself from the shadow of transgressive practices. The circuit of rights then overlaps with the space of violence as one's conduct qualifies one for one's specific set of rights and the subsequent exposure to the degree and form of lawful violence. This means that "corporeal vulnerability" (Butler, 2004: 30) is distributed differently even over one's body as regards its conduct and actions. One therefore does violence to the concept of violence if one can appreciate neither its variability that makes it effective nor its framing which makes it orderable. At the moment that there emerges a colony in the making, the relationship between it and the metropole becomes fluid as techniques, subjects, and strategies travel to and fro. Subsequently, this extends the scope of intervention of the nation-state to guarantee the rights of "its" subjects, so that the notions of "citizenship" and "national belongingness" perform the task of "strategic elaboration" (Foucault, 1977: 195), that is, of identifying contextually the conditions under which the free exercise of juridical rights remains legally protectable. Hence, there is a constant striving for the desired end result: the inclusion of the tribal belt as governable, guarantee of the various rights, strengthening of the Pakistani state, and the stability of the international order.

A post script

Rights "sacralize" the personhood (e.g. Joas, 2013). As a discourse, rights provide limits that protect its bearers from a penetrative access/excess of power. It is the expanse and the form of limits that rights create, by equating the core of the human personhood and its juridical subjecthood, which then determines how political power can address the subject of rights. This article however has approached rights differently. It analyzed rights not simply as a vocabulary alone or as principled legal limits, but as machinery whose use is made by the guarantor and by the subjects themselves with varying methods and effects.

This article has presented rights as machinery, whose efficiency lies in "govern[ing] conduct and conduct[ing] government" (Foucault, 1983: 220–221; 2007: 503). It has done this by noting the interconnection of the various discourses of rights, and the way this interconnection gives rights a veritable normative status and sociopolitical effectiveness. It began by analyzing how human rights connect a "human" to the nation-state assemblage and its corresponding political community, and the way this causes human rights to refer to political and national rights. It then noted how this requires that "rights" be accorded to a nation-state (such as sovereignty), and how it requires that that "human" be included into a state's political community as a holder of juridical rights. Further, it noted that in order that freedom can be socially protected and individually exercised, there are required concrete investments of power. This gives freedom a specific social reality and understanding. Resultantly, it causes human rights to protect a "human" out there only by ensuring that the adequate "humanizing" techniques are in place.

Much critical energy has been expended on the notions of social and political "exclusion." Then, rights are presented as a discourse breaking such spells and are presented as useful tools with which one can include the excluded (cf. Rancière, 2004). This article has critically evaluated the functioning of rights, as it governs subjects by including them within its juridical context. These tactics of inclusion have been read as decentered and complex that by producing subjects open up spaces where rights function as a technique of government.[21] Consequently, an important line of inquiry for further works can be to analyze how and why power excludes or includes, under what conditions, and with what repercussions on those included/excluded. This does not however mean a denial of the "normative" status of rights, but an attempt to relate their normativity with their functionality.

Notes

1. The concept of rights as a machinery is inspired not only from Foucault's ideas on *dispositif* but also, to some extent, on governmentality. Despite a certain conceptual violence that is thus done to

the "original" concepts, their use remains in line with Foucault's suggestion: I would like my books to be a kind of tool-box which others can rummage through to find a tool which they can use however they wish in their own area . . . I don't write for an audience, I write for users, not readers.

(Foucault, 1994: 523–524)

2. What gives the tribal belt its historical specificity is not simply the fact that it was governed at a "distance" during imperial times, since the British experimented with a lot of different forms of indirect rule in the Subcontinent, "princely states" being the most obvious. Further, it has been noted that this colonial flexibility depended on political expedience and wisdom (cf. Said, 1995: 36–37). What is of interest in the case of the tribal belt is the way this "autonomy" functioned, where one fails to find a set of political institutions, magistrates, elaborate tax-collection and revenue schemes, and even an indigenous representative head. Thus, in the tribal belt, among others, the Jirga remained both the public and adjudicatory assembly, the British Political Agent rather exercised control by paying subsidies to the selected tribal leaders, and the elders were in turn encouraged to raise their own tribal militias (*lashkar*) to ensure that disorder did not spill over and that British interests were not completely overturned (Ahmed, 1988: 133–157; Mohammad, 2008: 571).

3. See the subsection entitled "Realizing the Presumed" for a detailed discussion.

4. It is important to note the way the "autonomous" state of the tribal belt has now shifted into an "anomalous" one. It is so since the tribal belt was an area within an overall colonial setup of British India that was yet outside the colonial system of governance, and therefore at present is an area within a nation-state that cannot be justifiably approached through the conceptual tools of nation-state. Further, the continued legal sustenance of its "autonomous" state not only creates intermediaries between a tribal individual and the Pakistani nation-state, but more fundamentally creates legal hurdles, making it unable for the postcolonial nation-state to structure tribal life. This makes tribal "autonomy" stand in contrast with the understanding of freedom that juridical rights guaranteed by nation-state bear. Since the focus of this article is primarily on the strategic role that rights perform in facilitating "normalization," this article provides little contextual detail regarding the tribal belt in the postcolonial period.

5. For in a world in which land is marked geopolitically as territories within which the arts of government operate, where those territorializations are not only rooted in a historical process of violence and appropriation but are simultaneously buttressed by national legal instruments within and supranational instruments without, an anomalous space not only operates paradoxically but may also disclose the whole setup as contingent.

6. Coincidently, it is this "precise," "careful," "ethical," "wise," and "riskless" character of drone technology which is elaborated upon in official justifications from the US on the use of drones in the tribal belt (e.g. Brennan, 2012; Carney, 2013).

7. In this vein, Asad perceptively notes: "The law never seeks to eliminate violence since its object is always to *regulate* violence" (Asad, 2003: 8).

8. I borrow the concept of "metropole" from Bhabha (2004: 9). I utilize this concept to theorize the status of that social assemblage which attempts to colonize another. However, I have stripped off this concept from its spatial underpinnings. This is necessary in order to appreciate the way the process of colonization generates power effects, feeding on the difference between itself and the other. Hence, the concept of "metropole" is fluid (so that it can also emerge within a (post)colony) and fragile (so that it needs to sustain itself at time when the (post)colony penetrates within it).

9. In line with this, one can also note Mr Rehman's assurances that he was neither from the Taliban nor their sympathizer but a "civilian" school teacher and that his story had been verified. Similarly, the fact that the victims of the drone attack were his deceased old mother and injured children, in contrast to the able-bodied males, is significant.

10. Spivak's (1988) important intervention in postcolonial theory can thus be supplemented by another observation: If one belongs to (*zugehören*) a specific social formation only when one is listened to (*zuhören*) (Gadamer, 2003: 462), then it is also important to note that one is listened to as when one speaks in the way called for. From this perspective, one must not only look at the

speakability of the subaltern, but also at the question as to why, how, and for whom it is to speak and what effects does it generate. In other words, when it comes to critique, it is not only important to focus on what is being criticized, but also at the *way* in which the said act takes place.

11. One can see most clearly in the phenomenon of modern warfare, counter-terrorism, and counter-insurgency, that not every death is equally lamentable. See, for instance, Judith Butler (2004: xiv).

12. After 1858, British Raj focused on two things for its north-western policy. First, the Pashtun tribes had to be contained. This became urgent as the colonial Indian army suffered two defeats in 1842 and 1880 from the Pashtuns, among others. Second, the Russian march had to be halted as it swallowed khanates in the Central Asia. Both these issues were addressed by marking Afghanistan as a "buffer" state and the tribal area as "frontier" (Spain, 1977: 1–23). In 1893, the British mission lead by Mortimer Durand met the Afghan Ameer and finalized an approximately 2650 km long "border." This "Durand Line" begins in the Pamir Mountains in the north, moves southwest, and ends near the Helmand River. At various points, such as Chaman and Chitral, the "border" has almost been inexistent for the tribes living on either side. However, the tribal belt became peculiar in another sense as well. In 1901, Viceroy Curzon divided it into agencies: Khyber, Kurram, North Waziristan, South Waziristan, and Malakand. It was to be administered through the 1901 Frontiers' Crime Regulation Act. This act exempted the belt from taxation, acknowledged tribal legal autonomy, exempted it from the colonial courts of the Raj, and gave substantial authority to the "Political Officer" who was to be appointed by the Governor of the North-West Frontier Province (Awan, 1972). Further, tribal chieftains (*Malik*) were to receive subsidies from the Raj. Curzon referred to this arrangement as a "threefold frontier" (Curzon, 1907: 4). The first frontier was the directly administered territory of the Raj. The second was indirectly administered territory of the tribes. The third was the buffered territory of Afghanistan. Pakistan, as the "successor state" of the Raj, inherited both Durand Line and the peculiar administrative status of the tribal belt. In his address at the Government House, Peshawar on 17 April 1948 to the Jirga from the tribal belt, Muhamad Ali Jinnah, the founder of Pakistan, remarked: "Neither my Government nor I have any desire to modify the existing arrangements except in consultation with you so long as you remain loyal and faithful to Pakistan" (Jinnah, 1989: 239). On the other hand, this anticolonial history also paved way for the Pashtun nationalist "imagination" culminating in another political project, such as that of Khan Abdul Ghaffar Khan, to, in the words of Chatterjee, "fashion a 'modern' national culture that is nevertheless not Western" (Chatterjee, 1993: 6).

13. In this sense, Chatterjee notes that the label nation-state not only means a unique and unified nation possessing a state, but also entails that for its sustenance a state produces an "enumerable form of the nation" (Chatterjee, 1993: 238).

14. Agamben notes: "[*Dispositif*] appears at the intersection of power relations and relations of knowledge" (Agamben, 2009: 3). From this perspective, it would be useful if the literature on the "state of exception" (Agamben, 2005; Schmitt, 2005, 2007) is supplemented by analyses that focus on specific processes (say, administrative, institutional) and knowledge formulations (say, relating to truth, efficiency) that operate prior to and within those "exceptional" zones. This however means seeing law as an articulation of government: one where law functions within certain governmental mentalities which in turn require a coercive power in order to ensure that an optimum can be sustained (Rose and Valverde, 1998).

15. Asad notes that "the Geneva Convention ... paradoxically ... has the effect of legalizing most of the new kinds of suffering endured in modern war by combatants and noncombatants alike" (Asad, 2003: 116).

16. While PM Sharif was on his visit to the US, Imran Khan set 20 November 2013 as a deadline to halt the drone strikes (Dawn, 2013d). After his call went unheeded, workers and supporters of Pakistan Tehrik-e-Insaaf halted the convoys supplying goods and ammunitions to NATO forces in Afghanistan by staging sit-ins on major highways (WP, 2014). The blockade began on 24 November 2013 and was called off on 27 February 2014 after the decision of Peshawar High

Court that the rule of law and the right to freedom of movement was being undermined in the process (Dawn, 2014a).

17. There has been some whistleblowing to the effect that Pakistani governmental officials and military commanders not only condone but have also endorsed the effectiveness of drone campaign (e.g. Reuters, 2011; WP, 2013).

18. This creates a problem for democratic constitutional orders that legally permit nation-state a certain threshold of legitimate violence. At moments, when such orders are forced to extend the scope of permissible violence in the light of emergency situation, the question emerges of differentiating "liberal" constitutional juridical orders from their "authoritarian" counterparts and determining the normative difference between the two. For a relevant statement concerning this point, see Raz:

> There is a significant difference between coercion by an ideal liberal state and coercion from most other sources. Since individuals are guaranteed adequate rights of political participation in the liberal state and since such a state is guided by a public morality expressing concern for individual autonomy, its coercive measures do not express an insult to the autonomy of individuals. It is common knowledge that they are motivated not by lack of respect for individual autonomy but by concern for it. After all, coercion can be genuinely for the good of the coerced and can even be sought by them. These considerations do not, however, affect the liberal concern to limit coercion in a non-ideal state. (Raz, 1986: 156–157)

19. In January 2002 (Dawn, 2002), November 2002 (ATO, 2002), November 2004 and January 2005 (ATO, 2005), October 2009 (ATO, 2009), June 2011 (AACPR, 2011), and March 2013 (ATO, 2013), various amendments were added to the 1997 Anti-Terrorism Ordinance. Predictably, each amendment overlapped with military engagements in the tribal belt.

20. In this sense, "War on Terror" can be approached as a discourse aiming at sociospatial normalization and as governing the by-products of such political projects.

21. If rights can be seen as machinery that subjectifies and governs then "it is impossible for its subject to use it in 'the right way'" (Agamben, 2009: 21). Thus, those works that prescribe "another" use of rights only extend the functioning and the reach of this machinery.

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