

Law and Liminality in Gilgit-Baltistan: Managing Natural Resources in Constitutional Limbo

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Part 1: Introduction

People often experience their legal-political exclusion, and empowerment, through the environment and its natural resources.¹ As Nancy Lee Peluso argues, “[p]ower struggles between the state and society are played out constantly in the course of resource allocation, resource control, and resource access.”² In Gilgit-Baltistan—the northernmost region of Pakistan-administered Kashmir—disputes over the management and governance of natural resources are directly intertwined with the region’s uncertain constitutional status. Although Pakistan has exercised control since 1947, the ongoing Kashmir conflict has left the region—formerly called the Northern Areas—legally and politically ambiguous. While Pakistan recognizes residents as citizens, they still lack representation at the National Assembly and Gilgit-Baltistan remains undefined in Pakistan’s Constitution.³

The most recent legislation, the *Gilgit-Baltistan (Empowerment and Self-Governance) Order* (2009 Order), proposes “necessary legislative, executive and judicial reforms for granting self-governance to the people of Gilgit-Baltistan.”⁴ The Order extends fundamental rights to its residents and provides the regional Legislative Assembly with greater powers. Yet, as scholar Alok Bansal argues, “Pakistani policymakers have kept

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¹ Shauna Troniak, *Good Relations: An Alternative Paradigm for Natural Resource Governance in Eeyou Istchee* (LLM Dissertation) McGill, 2010 (“Governance” is defined as the “types of ownership or management authority” – or *who* makes decisions – while “management” refers to “approaches to conservation and use”, or *how* resources are dealt with, at 4).

² Nancy Lee Peluso, “Coercing Conservation? The Politics of State Resource Control” (1993) 3:2 *Global Environmental Change* 199 at 201.

³ IUCN, *Environmental Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them: Northern Areas* (Karachi, Pakistan: IUCN Pakistan, 2004) at 17; *Constitution of Islamic Republic of Pakistan*, 1973 (12 April 1973) [Constitution]; The National Assembly of Pakistan is the lower house of the *Majlis-e-Shura*, which also includes the President of Pakistan and the Senate.

⁴ *An Order To Provide Greater Political Empowerment and Better Governance to the People of Gilgit-Baltistan* (9 September, 2009) [2009 Order], at preamble.

the constitutional status of Gilgit-Baltistan in a limbo, making the region an extraordinary example of political and judicial ambivalence.”⁵

Gilgit-Baltistan’s ambiguous status illustrates how law is not only a limited mechanism for empowerment, but also, how law *constructs* exclusion. The article first identifies Gilgit-Baltistan as legally and politically “liminal”. Second, in looking at the lived experiences of liminality and people’s responses, it focuses on Hunza, one of the seven districts in Gilgit-Baltistan. The article shows how liminality exacerbates political, legal and economic marginalization, with particular implications for natural resource management and governance; and third, it explores how communities respond to their in-between status and mitigate its effects through diverse legal and political means at local, national and international levels.

Several conceptual frameworks assist the analysis: first, the anthropological concept of liminality—a transitional phase between different states—helps to characterize Gilgit-Baltistan and to critically analyze the legal empowerment of the poor approach in contexts where people and places have ambiguous legal statuses. Second, Boaventura de Sousa Santos and César A. Rodríguez-Garavito’s “subaltern cosmopolitan legality”—which emphasizes legal and non-legal strategies of resistance that cross geographical scales—sheds light on how people respond to their ambiguous status.⁶ In particular, it highlights how residents of Hunza—who are predominantly Ismaili, a Shia Muslim minority—rely on a transnational network linking local institutions to a global community.

The paper draws upon a month of fieldwork conducted in Pakistan, primarily in Hunza, during July 2011. Data was obtained through my role as a legal researcher with the HiMaT Indigenous Leadership and Development Project, a partnership between two non-governmental organizations: Four Worlds Centre for Development Learning (Four Worlds), based in Canada, and a local group from Hunza called the Karakoram Area Development Organization (KADO). The research assessed the challenges, strategies and successes of communities with local natural resource management. The Four Worlds’ training sessions on development leadership in the village of Khyber provided a platform to interview 25 members of five different inter-village organizations called Local Support Organizations (LSOs) from Hunza.⁷ In addition, I interviewed government

⁵ Alok Bansal, “Gilgit–Baltistan: The Roots of Political Alienation” (2008) 32:1 Strategic Analysis 81 at 86.

⁶ Boaventura de Sousa Santos & César A. Rodríguez-Garavito, “Law, Politics and the Subaltern in Counter-Hegemonic Globalization” in Sousa Santos & César A. Rodríguez–Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005) 1.

⁷ The LSOs include Mountain Areas Support Organization, Chipursan Local Support Organization, Gojal Rural Support Organization, Karimabad Area Development Organization and Khunjerav Villagers Organization.

officials, legal scholars and staff of non-governmental organizations in Gilgit and Islamabad on the status of Gilgit-Baltistan. The research was also compiled in a report that forms the basis of an ongoing dialogue about natural resources between different LSOs in the region.⁸

Part 2: Liminality and the law

This section describes the theory of liminality and identifies its meager presence in legal scholarship. It shows how the theory is useful for analyzing Gilgit-Baltistan, and more generally, thinking about legal empowerment. The theory originally appeared in anthropologist Arnold van Gennep's analysis of *rites de passages* in which he described ceremonies marking transitional events as possessing three major phases: separation, transition, and incorporation.⁹ For van Gennep, transition is the intervening period of ambiguity between two stable, fixed states.¹⁰ Victor Turner appropriated van Gennep's *rites de passage* to describe the state as a "liminal period"—an "unstructured" in-between phase of rituals where participants transition from one social status to another.¹¹ These could be shifts between "culturally-defined life-crises", like puberty, or entry into completely new statuses like a political office.¹² Turner saw the "structural invisibility of the liminal *personae* [as having] a twofold character. They are at once no longer classified and not yet classified."¹³ He further described this "interstructural state"¹⁴ in which "liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial."¹⁵

Liminality is a critical way of examining modes of transition, and the social, legal and political meanings that come with these in-between states. The theory has been taken from its original focus on rituals to become, according to Arpad Szakolczai, a "concept [that] is potentially one of the most general and useful terms of social science."¹⁶ Liminality is especially useful for analyzing law since law itself operates as a

⁸ Caylee Hong, "At the Crossroads: Legal and Institutional Frameworks for Natural Resource Management in Gojal, Gilgit-Baltistan, Pakistan" (published report forthcoming). The report is also in the process of being translated into Urdu.

⁹ Arnold van Gennep, *The Rites of Passage* (Chicago: The University of Chicago Press, 1960) at 11.

¹⁰ Victor W. Turner, "Betwixt and Between: Liminal Period" in Victor W Turner (ed), *The Forest of Symbols* (Ithaca, New York: Cornell University Press, 1967) at 94.

¹¹ Victor W. Turner, *From Ritual to Theatre: The Human Seriousness of Play* (New York: Performing Arts Journal, 1982) at 24-25.

¹² Turner, "Betwixt and Between: Liminal Period", *supra* note 10 at 95.

¹³ *Ibid.* at 95-96.

¹⁴ *Ibid.* at 93.

¹⁵ Victor W. Turner, *The Ritual Process: Structure and Anti-Structure* (Piscataway, NJ: Aldine Transaction 1969), at 95.

¹⁶ Arpad Szakolczai, *Reflexive Historical Sociology* (London; New York: Routledge, 2000) at 218.

classification system: whether conduct is permissible or impermissible, or whether a person is protected or unprotected is dependent upon whether they fall within defined categories. Moreover, as Cass R. Sunstein notes, legal reasoning “relies heavily on classification”.¹⁷ Judges compare similarities and differences between facts and decided cases, assign objects, concepts and relations to categories and in the process, “discover” rules.¹⁸ It is a process of characterizing, distinguishing, ordering, defining and also excluding.

Although liminality “has been extremely productive in anthropology”, it has received only minimal attention in legal scholarship.¹⁹ Furthermore, it continues to be anthropologists and sociologists who primarily use the theory to analyze law, with many focusing on immigration and refugee regimes and stateless persons. In particular, the theory has been frequently used to show how law creates categories such as “citizen,” “permanent resident” and “illegal alien,” along with the problematic cultural, legal and political effects of falling outside of these categories. For example, Cecilia Menjívar examines the “liminal legality” of migrants in the United States while Liisa Malkki’s work on Tutsi refugees in Burundi describes refugees as “liminal in the categorical order of nation-states.”²⁰ Legal scholar Patricia Hynes shows how asylum seekers in England experience “a sense of liminality, or limbo, imposed by the process”²¹ and Laurie King-Irani examines Palestinians living under occupation in Israel or as refugees in surrounding countries, arguing that:²²

they occupy a liminal and interstitial space in the international legal and political order, an order that (contemporary discourses of cosmopolitanism, globalization and emergent transnational organizations aside) remains founded upon and

¹⁷ Cass R. Sunstein, “On Analogical Reasoning” (1993) 106:3 Harvard Law Review 741 at 40.

¹⁸ *Ibid.* See also Edward H. Levi, *An Introduction to Legal Reasoning* (Chicago: The University of Chicago Press, 1949).

¹⁹ Jean E. Jackson, “Stigma, Liminality, and Chronic Pain: Mind-Body Borderlands” (2005) 32:3 American Ethnologist 332 at 333.

²⁰ Cecilia Menjívar, “Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States” (2006) 111:4 American Journal of Sociology 999; Susan B. Coutin, “Denationalization, Inclusion, and Exclusion: Negotiating the Boundaries of Belonging” (2000) 7:2 Indiana Journal of Global Legal Studies 585; Saskia Sassen, “The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics” (2005) 2:1 Globalization 79; Liisa Malkki, *Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania* (Chicago: The University of Chicago, 1995) at 11; see also Jerome S. Bernstein, *Living in the Borderland: The Evolution of Consciousness and the Challenge of Healing Trauma* (New York; London: Routledge, 2005); Laurie King-Irani, “Exiled to a Liminal Legal Zone: Are We All Palestinians Now?” (2006) 27:5 Third World Quarterly 923.

²¹ “Contemporary Compulsory Dispersal and the Absence of Space for the Restoration of Trust” (2009) 22:1 Journal of Refugee Studies 97 at 114. See also Hynes, *The Dispersal and Social Exclusion of Asylum Seekers: Between Liminality and Belonging* (Oxford: Oxford University Press, 2011). Antje Ellermen also describes departure centres as liminal spaces in “Undocumented Migrants and Resistance in the Liberal State” (2010) 38:3 Politics & Society 408.

²² King-Irani, *supra* note 20 at 923.

grounded in the interests of sovereign nation states rather than in the claims of sub- or transnational actors, whether individuals or groups.²³

Liminality is also useful for thinking about legal empowerment more generally. The approach argues that “the excluded” must be empowered to “use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.”²⁴ The Commission on Legal Empowerment of the Poor focuses on four “pillars” of legal empowerment: the foundational right of access to justice and the rule of law, property rights, labour rights and business rights.²⁵ Crucial to all pillars, especially the first, is legal identity: people need to have a legal existence in order to hold rights, access the justice system and take advantage of those opportunities which improve their lives.²⁶ This requires, according to the Commission, a formally registered identity and legal status as a citizen.²⁷

Like existing liminality scholarship on asylum seekers and stateless persons, this article highlights the importance of formal legal identities. It also shows, however, how being categorized as a citizen and having a registered identity fall short of empowerment when the content or enforceability of that legal identity is uncertain. Although the residents of Gilgit-Baltistan are formally citizens of Pakistan, their citizenship does not provide full access to Pakistan’s legal and political institutions. Even more troubling is the uncertainty attached to their legal identities: what rights do they exactly have, and who owes them these rights?

Thinking about law as a tool of empowerment through liminality thus highlights the different ways that legal exclusion operates. People in Gilgit-Baltistan experience specific kinds of vulnerability resulting from the region’s ambiguous status. While they face similar legal barriers to millions of other people in South Asia, including inadequate protection from the law and its institutions, these barriers are exacerbated, or have different effects, as a result of the region’s liminality.²⁸ Consequently, *enhancing* rights, *enabling* rights, *enforcing* rights and creating *rights awareness*, as called for under the legal empowerment approach, is harder since it is not even clear which rights people actually have, or who is obliged to protect or help realize those rights.²⁹

²³ *Ibid.* at 924.

²⁴ Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone Volume 1* (New York: UNDP, 2008) at 3.

²⁵ *Ibid.* at 5.

²⁶ *Ibid.* at 13.

²⁷ *Ibid.* at 61.

²⁸ *Ibid.* at 13 and 19.

²⁹ For example, see John W. Bruce *et al*, *Legal Empowerment of the Poor: From Concepts to Assessment* (Burlington, VT: USAID, March 2007), available online: <http://pdf.usaid.gov/pdf_docs/PNADM500.pdf> at 11.

Moreover, legal liminality directly impacts people's ability to enhance and control their development, especially through natural resources. In particular, access, governance and management of land, water, pastures and minerals are essential for sustainable poverty reduction.³⁰ For residents of Gilgit-Baltistan, natural resources are central to their livelihoods: agriculture is the main source of income while other sectors like mining and eco-tourism are seen as crucial opportunities for long-term economic security. The uncertain status of Gilgit-Baltistan limits residents' ability to contribute to decision-making processes, strengthen rights over land and valuable resources as well as negotiate (and enforce) benefit-sharing agreements.

Part 3: Ambiguity and exclusion through the Constitution and the 2009 Order

3.1: Describing Gilgit-Baltistan

The concept of liminality is particularly helpful for understanding the status of Gilgit-Baltistan and the impact of this status on residents. First, liminality is useful for *characterizing* the region, internationally, and also domestically in Pakistan.³¹ As a result of the persisting Kashmir conflict, the region is liminal in the "contemporary, categorical order of nations."³² Kashmir is split between Indian-administered Jammu and Kashmir, Pakistani-administered Azad Kashmir and Gilgit-Baltistan, and China-administered Aksai Chin and the Trans-Karakoram Tract. China, India and Pakistan have never formally recognized the accession of the areas administered by other states and each country continues to make their own claims to the territory. Although India has stated that it is willing to grant Kashmir independence, Pakistan argues that the region's status should be determined by the people of Kashmir through a plebiscite while China contends that Aksai Chin is indisputably part of Chinese territory. Moreover, as Jonah Steinberg notes, many Pakistanis resist formally recognizing Gilgit-Baltistan as a province: it "would be to cede to the division of Kashmir, to settle for only a portion and recognize that one part is officially held by Pakistan and the rest by India."³³ More cynically, the international NGO Crisis Group states, "Islamabad sees the region as a card to play in negotiations with India about Kashmir".³⁴ Thus despite numerous resolutions calling for a peaceful settlement by the United Nations Security Council

³⁰ Frank Ellis & Edward Allison, "Livelihood Diversification and Natural Resource Access" (FAO: 2007).

³¹ Malkki, *supra* note 20 at 5.

³² *Ibid.* at 253.

³³ Jonah Steinberg, *Isma'ili Modern: Globalization and Identity in a Muslim Community* (Chapel Hill: The University of North Carolina Press, 2011).

³⁴ Statement made by Robert Templer, Crisis Group's Asia Program Director, cited in "Pakistan: Discord in the Northern Areas", International Crisis Group: <<http://www.crisisgroup.org/en/publication-type/media-releases/2007/asia/pakistan-discord-in-the-northern-areas.aspx>>.

(UNSC), the General Assembly and the United Nations Commission for India and Pakistan, the conflict persists.³⁵



Figure 1: Location of Gilgit-Baltistan³⁶

Gilgit-Baltistan is also liminal within the federal structure of Pakistan. Historically, the territory was composed of princely states ruled by *Mirs* and *Rajas*, controlled by British and Kashmiri colonial powers, and then in the 1970s (depending on the area) directly administered by Pakistan.³⁷ Although the 2009 Order expanded its powers, Gilgit-Baltistan is not a province: the Constitution of Pakistan does not list Gilgit-Baltistan as a Pakistani territory even though the state has exercised sovereignty in the region since

³⁵ UNSC Resolution 39 (1948); UNSC Resolution 47 (1948); Resolution 51 (1948); Resolution 80 (1950); Resolution 91 (1951); Resolution 96 (1951); Resolution 98 (1952); Resolution 122 (1957); Resolution 126 (1957); Resolution 209 (1965); Resolution 211 (1965); Resolution 214 (1965); Resolution 215 (1965); Resolution 303 (1971); Resolution 307 (1971).

³⁶ Drafted by Loris Gasparotto, adapted from Nancy E. Cook and David A. Butz "Accessibility Interrupted: The Shimshal Road, Gilgit-Baltistan, Pakistan" (2011) 55:3 *The Canadian Geographer* 354 at 357. Note, some spellings of names differ: for example, Chiporsun is also Chipursan.

³⁷ IUCN, *Customary Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them: Northern Areas* (Karachi, Pakistan: IUCN Pakistan, 2003) at xii; see also Martin Sökefeld, "From Colonialism to Postcolonial Colonialism: Changing Modes of Domination in the Northern Areas of Pakistan" (2005) 64 *Journal of Asian Studies* 939.

independence.³⁸ Rather, Gilgit-Baltistan is a territory “administered by Pakistan”, according to the Constitution, or under the UN Commission for Indian and Pakistan resolutions, “otherwise included” in Pakistan.³⁹ It thus does not have the constitutional rights and powers held by the provinces.

Yet, as the former acting Chief Justice of Azad Jammu and Kashmir, Syed Manzoor Hussain Gillani notes, there are constitutional, legal and administrative practices that place Gilgit-Baltistan “at par with the provinces”.⁴⁰ For example, computerized national identity cards and passports issued by the Government of Pakistan describe residents as citizens; major political parties of Pakistan have established local branches in Gilgit-Baltistan; and subjects of Gilgit-Baltistan settled in other provinces of Pakistan are registered as voters for the National Assembly.⁴¹

Gilgit-Baltistan’s liminality is also *temporal*: as Ronald L. Grimes argues, liminality is “an in-between ‘place’ that is both geographical and metaphoric” as well as a “‘moment’ in a temporary process.”⁴² The region’s ambiguous status is supposed to be a transitional phase: at some future point in time the Kashmir crisis will end and the lack of democratic accountability and legitimacy will be resolved when Gilgit-Baltistan becomes Pakistan’s fifth province. Alternatively, there is a minority that demands a “separate Karakoram Province with real executive and legislative powers”, and others that reject Pakistan altogether, and demand full independence.⁴³

Despite Gilgit-Baltistan being articulated as the unfortunate product of a protracted international dispute, formal law plays a central role in actively constructing and maintaining the region’s liminal position. In particular, the Constitution of Pakistan, the Supreme Court of Pakistan’s interpretation of the Constitution in *Al-Jehad Trust &*

³⁸ IUCN, *Environmental Law in Pakistan*, *supra* note 3 at 17; Constitution, *supra* note 3 at Section 1 (defining the Republic and its territories, including “such States and territories as are or may be included in Pakistan, whether by accession or otherwise”).

³⁹ Constitution, *ibid*. See also Muhammad Feyyaz, “Pakistan-Azad Jammu & Kashmir Politico-Legal Conflict” (Islamabad: Pakistan Institute of Legislative Development and Transparency (PILDAT), 2011) at 10.

⁴⁰ “Justice (Retd) Syed Manzoor Hussain Gillani, “Proposed Constitutional Amendments in the Constitution of Islamic Republic of Pakistan 1973 for Empowerment of Azad Jammu & Kashmir and Gilgit-Baltistan” (Islamabad: PILDAT, 2011) at 11.

⁴¹ *Ibid*.

⁴² Ronald L. Grimes, *Rite Out of Place: Ritual, Media, and the Arts* (Oxford: Oxford University Press, 2006) at 112.

⁴³ See Bansal, *supra* note 5 at 87. However, he points out that this movement has largely come from the Shia majority while the some parts of the Sunni minority wants the region to be merged with ‘Azad Kashmir’ (Mirpur–Muzaffarabad) at 87. See also Martin Sökefeld, “The Attabad Landslide and the Politics of Disaster in Gojal, Gilgit-Baltistan” in Ute Luig, ed, *Negotiating Disasters: Politics, Representation, Meanings* (Frankfurt: Peter Lang, 2012) 175 at 181; Sökefeld, “From Colonialism to Postcolonial Colonialism”, *supra* note 37, also points out that political organizations in the Northern Areas have “become bearers of a nationalist discourse ... in contrast to Pakistan.” at 961.

others v Federation of Pakistan and others (Al-Jehad Trust), as well as the 2009 Order, actively structure the region as a liminal place, and in doing so, exacerbate the marginalization of its residents.⁴⁴

3.2: The Constitution of Pakistan and the *Al-Jehad* case

In 1999, the Supreme Court of Pakistan was called on to assess the constitutional status of the Northern Areas in *Al-Jehad Trust*. The case shows the role of the formal law in analyzing, describing and ultimately justifying this constitutional liminality. The petition, brought by residents of Northern Areas, sought four remedies: (1) the enforcement of fundamental rights found in the Constitution of Pakistan; (2) a declaration of the Northern Areas' constitutional status; (3) a declaration that the people of the Northern Areas are full citizens of Pakistan with the right to fully participate in the affairs of the federation; and (4) granting of provincial status to the Northern Areas.⁴⁵

The Supreme Court's decision is ambiguous in its outcome and reasoning. On the one hand, it affirmed Pakistan's administrative control over the Northern Areas and held that residents are "citizens of Pakistan, for all intents and purposes."⁴⁶ As citizens, they have fundamental rights guaranteed to all Pakistani citizens by the Constitution.⁴⁷ These include the right to freedom of movement, freedom of association, freedom of trade, business or profession, freedom of speech, freedom to profess religion and to manage religious institutions, the right to property, and the equality of citizens.⁴⁸ The Court also called on the government of Pakistan to "ensure that the people of Northern Areas enjoy their fundamental rights, namely to be governed through their chosen representatives and to have access to justice through an independent judiciary, inter alia, for enforcement of their fundamental rights guaranteed under the Constitution."⁴⁹ Along with rights, residents also have duties including the obligation to pay taxes.⁵⁰

⁴⁴ *Al-Jehad Trust & others v Federation of Pakistan and others*, 1999 SCMR 1379 [*Al-Jehad Trust*].

⁴⁵ *Ibid.* at para. 14.

⁴⁶ *Ibid.* ("Since most of the Pakistani statutes have been made applicable to Northern Areas including Citizenship Act as stated above, we are of the view, that the people of Northern Areas are citizens of Pakistan, for all intents and purposes. The above distinction between the two categories of the above fundamental rights of the Constitution is not material. They, as the citizens of Pakistan, like any other citizen have the right to invoke any of the above Fundamental Rights, but they are also liable to pay taxes and other levies competently imposed." at para. 14).

⁴⁷ *Ibid.*

⁴⁸ Constitution, *supra* note 4 at Arts. 15-20, 23 and 25.

⁴⁹ *Al-Jehad Trust*, *supra* note 44 at headnote.

⁵⁰ *Ibid.* See also "Tax system to be introduced in GB", *The Dawn* (21 September 2011), *The Dawn* online: <<http://www.dawn.com/2011/09/24/tax-system-to-be-introduced-in-gb.html>>.

On the other hand, however, the Supreme Court held that there is no legal obligation to grant the people of the Northern Areas representation in the National Assembly. Rather, the Court found that the federal government's only obligation is to provide regional representation and access to the High Court, not the Supreme Court. This two-fold decision reifies the liminality of the people in the region. It confirms that the people of Gilgit-Baltistan are citizens with fundamental rights yet lack the right to representation in the critical decision-making body.

The reasoning of the decision is also rooted in ambiguity. The Court based its finding on the sensitivity of the region, its historical distinction from other parts of Pakistan, the division of powers between the executive and the judiciary, and UNSC Resolutions:⁵¹

It may be observed that since the geographical location of the Northern Areas is very sensitive because it is bordering India, China, Tibet and USSR, and as the above areas in the past have also been treated differently, this Court cannot decide what type of Government should be provided to ensure the compliance with the above mandate of the Constitution.⁵²

The Supreme Court further contended that “[n]or can we direct that the people of Northern Areas should be given representation in the Parliament as, at this stage, it may not be in the larger interest of the country because of the fact that a plebiscite under the auspices of the United Nations is to be held.”⁵³ The Court also characterized the status of the Northern Areas as a political question which should be addressed by the Government of Pakistan, not the courts.

In this way, the judgement drew upon the pre-existing liminality of the region. It identified the region as “sensitive” given its position at the conflux of multiple, contested borders and its historically distinct treatment. The Court also acknowledged the transitory middle ground in which the region must wait for a plebiscite, agreed upon in principle in UNSC Resolutions from 1948 and 1949. While Pakistan continues to call for a plebiscite, international support for the plebiscite has waned significantly.⁵⁴ If Pakistan

⁵¹ There have also been demands for a third option of independence for Kashmir. See “Kashmir’s forgotten plebiscite”, *BBC News* (17 January 2002), BBC online: <http://news.bbc.co.uk/2/hi/south_asia/1766582.stm>.

⁵² *Al-Jehad Trust*, *supra* note 44 at para. 26.

⁵³ *Ibid.* at para. 26.

⁵⁴ European Parliament, Committee on Foreign Affairs, *Report on Kashmir: Present Situation and Future Prospect* (24 April 2007) A6-0158/200 at para. 2 [Nicholson report]. (The European Parliament states that “the UN-laid down conditions for such a plebiscite have not been, and can no longer be, met by Pakistan. The situation has moved on” at para. 24); similarly the United States, for over twenty years, has argued that the dispute should be settled through direct negotiations between India and Pakistan.

continues to justify the exclusion of Gilgit-Baltistan on this basis, the region may find itself in “permanent liminality.”⁵⁵

3.3: 2009 Order, liminality in disguise

In 2007, the former President General Pervez Musharraf presented a provisional legal framework to address some of the issues raised in *Al-Jehad Trust*.⁵⁶ This included upgrading the representative body in the region to a “provincial legislature” and empowering it to elect its own head and prepare its own budget.⁵⁷ It also provided for the transfer of administrative and financial powers to the Northern Areas from the Kashmir Affairs and Northern Areas Ministry.⁵⁸ While the 2009 Order also expands the powers allocated to the region, Gilgit-Baltistan continues to be legally constructed as a liminal place, with major consequences for residents.⁵⁹

First, the legislation still excludes the region from representation in the National Assembly and other important federal bodies.⁶⁰ While democratic deficiency does not necessarily imply liminality, the lack of representation in Gilgit-Baltistan is presented by the Federal government as impermanent and transitory: a temporary state that will change once the Kashmir conflict is resolved. Moreover, as discussed below, the justification for the democratic deficiency is based on the liminality of the region itself. In this way, the liminality is cyclical: the ambiguous status justifies further unclear, transitory exclusions.

Second, the 2009 Order relies upon and concretizes liminality by excluding Gilgit-Baltistan from the jurisdiction of the Supreme Court of Pakistan. Although it establishes a Supreme Appellate Court for Gilgit-Baltistan, cases are not appealable to the highest court of Pakistan. Thus, the Order confirms the ambiguous status of residents: they are granted a forum meant to uphold their fundamental rights but they still do not have access to the country’s highest court, even as citizens.

Third, the Order reifies the liminality of Gilgit-Baltistan by creating a legal-political entity that is similar to a province but is largely controlled by the federal government. In

⁵⁵ Szakolczai, *supra* note 16 at 219. Szakolczai acknowledges, however, that the concept of permanent liminality “inherently paradoxical” since it “implies a fixity that is not characteristic of liminal situations”.

⁵⁶ Bansal, *supra* note 5 at 88.

⁵⁷ *Ibid.* at 83.

⁵⁸ *Ibid.*

⁵⁹ Senge H. Sering, “Constitutional Impasse in Gilgit-Baltistan (Jammu and Kashmir): The Fallout” (2010) 34:3 Strategic Analysis 354 at 354. See also *Al-Jehad Trust*, *supra* note 44 at para. 2.

⁶⁰ *Ibid.* Gilgit-Baltistan still does not have representation before the Council of Common Interests, the National Hydro-electric Board, the Indus River System Authority, the National Judicial Council and the National Finance Commission.

particular, the 2009 Order claims to strengthen the locally-elected Legislative Assembly while allocating many of the most important subjects to the Legislative Council, still dominated by federal actors. For example, the Order structures the Council so that eight out of the fifteen members of the Legislative Council are not elected by the people of Gilgit-Baltistan, and seven are specifically nominated by, or appointed on the advice of, the Prime Minister of Pakistan.⁶¹ Furthermore, the 2009 Order gives extensive powers to the “Chairman of the Council,” which is in fact the Prime Minister of Pakistan.⁶² The Chairman has “power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority,”⁶³ as well as the power to issue a Proclamation of Emergency, all in a jurisdiction that is supposedly outside of the power of the federal government.⁶⁴

The 2009 Order continues to provide the Legislative Council with extensive powers, including jurisdiction over the most financially-valuable sectors such as tourism, forestry, minerals and mineral wealth, planning for economic coordination,⁶⁵ development of industries,⁶⁶ electricity and bulk water storage⁶⁷ and duties.⁶⁸ The Council also has control over the fees,⁶⁹ jurisdiction and powers of all courts,⁷⁰ and offences against laws⁷¹ for any matters listed. As Senge H. Sering contends “[a]t best, the order legitimises Pakistan’s occupation and claims political rights for the locals without changing the power equation”.⁷²

In the language of liminality, the people of Gilgit-Baltistan are “at once no longer classified and not yet classified.”⁷³ They are not members of a princely state anymore, India, their own country nor are they full citizens of Pakistan. Their exclusion is also uneven. While the Supreme Court recognized some rights deriving from Gilgit-Baltistan’s relationship to Pakistan, it also excluded others. Thus the Constitution of

⁶¹ 2009 Order, *supra* note 1 at Section 33 established that the Council consists of (1) the Prime Minister of Pakistan; (2) the Governor of Gilgit-Baltistan (appointed by the President of Pakistan on the advice of the Prime Minister of Pakistan under Section 20); (3) six members nominated by the Prime Minister of Pakistan from amongst Federal Ministers and members of Parliament; (4) the Chief Minister of Gilgit-Baltistan (elected by the members of the Legislative Assembly from amongst themselves); and (5) six members to be elected by the Assembly.

⁶² *Ibid.* at Section 33(2).

⁶³ *Ibid.* at Section 34.

⁶⁴ *Ibid.* at Section 34.

⁶⁵ *Ibid.* at Section 18.

⁶⁶ *Ibid.* at Section 29.

⁶⁷ *Ibid.* at Section 34.

⁶⁸ *Ibid.* at Section 42.

⁶⁹ *Ibid.* at Section 50.

⁷⁰ *Ibid.* at Section 51.

⁷¹ *Ibid.* at Section 52.

⁷² Sering, *supra* note 59 at 354–55. One employee of a civil society organization also stated that “after six decades they have just allocated a name for us. Basically, it is just a game to make local people happy.”

⁷³ Turner, “Betwixt and Between: Liminal Period”, *supra* note 10 at 96.

Pakistan and the Supreme Court structure and justify residents' formal exclusion from legal institutions and law-making processes. Residents face legal obstacles not only because of poverty, corruption of democratic institutions and the judiciary or their distance from urban centers, but because of their limited capacity to hold and exercise rights. This further impacts their ability to escape poverty and marginalization by restricting their control and access to important sources of economic development like natural resources. The people of Gilgit-Baltistan, in the words of Turner, "elude or slip through the network of classifications that normally locates states and positions in cultural space."⁷⁴ The space they occupy is politically and legally liminal, with drastic implications for how they engage with Pakistan, adapt to or contest their marginalization, and manage their development processes.

Part 4: The effects of being in-between

Traditional conceptions of liminality by van Gennep and Turner see the interstructural position as often empowering and creative where "there is a certain freedom to juggle with the factors of existence."⁷⁵ Subaltern scholars and gender theorists also show how the stages of separation and transition invert existing hierarchies and create space for new norms, relations and ideals.⁷⁶ Scholars like Menjívar and King-Irani, however, contend that transitional stages "breed uncertainty" when "extended indefinitely."⁷⁷ In legally liminal places like Gilgit-Baltistan, the in-between status has radical implications for the rule of law and access to development opportunities.⁷⁸ In particular, the liminality of Gilgit-Baltistan has two major impacts on residents when it comes to natural resources: first, it creates challenges for developing industries and negotiating fair revenue-sharing agreements; and second, it also exposes the region to greater legal uncertainty, especially following the 18th Amendment, passed by the National Assembly in 2010.⁷⁹

4.1: The democratic deficit—natural resource management and revenue-sharing

Residents in Gilgit-Baltistan face a democratic deficit, exacerbated by their ambiguous constitutional status. The negative effects of this in-between position become apparent

⁷⁴ Turner, *The Ritual Process: Structure and Anti-Structure*, *supra* note 15 at 95.

⁷⁵ Turner, "Betwixt and Between: Liminal Period", *supra* note 10 at 116.

⁷⁶ Robert Fulton & Steven W. Anderson, "The Amerindian "Man-Woman": Gender, Liminality and Cultural Continuity" (1992) 33:5 *Cultural Anthropology* 603; Katrina Roen, "Transgender Theory and Embodiment: The Risk of Racial Marginalisation" (2001) 10:3 *Journal of Gender Studies* 253; Gilbert Herdt, *Third Sex, Third Gender: Beyond Sexual Dimorphism in Culture and History* (New York: Zone Books, 1994); Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (Belmont: Wadsworth Publishing, 1990).

⁷⁷ Menjívar, *supra* note 20 at 1007 (showing how the legal ambiguity of migrants who are not fully documented yet not undocumented has drastic effects on many aspects of their lives at 1001).

⁷⁸ See also Laurie King-Irani's analysis of Palestine, *supra* note 20 at 225.

⁷⁹ *Constitution (Eighteenth Amendment) Act*, 2010 (26 November 2010) [18th Amendment].

when people try to develop natural resource-based industries. While the main industry is agriculture, people seek to diversify their livelihoods. This has become urgent following the 2010 Attabad landslide which killed 19 people, and created a 25 kilometer lake that submerged villages, and displaced about 1650 people.⁸⁰ It also flooded already scarce arable land and blocked large sections of the Karakorum Highway, the only road to the area.⁸¹ As Martin Sökefeld notes, although the potato has been a successful cash crop, farmers have had great difficulties transporting their crops and importing sufficient food since 2010.⁸² The landslide also significantly reduced tourism—another critical industry, albeit one already ransacked by Pakistan’s security situation—by damaging tourism infrastructure and making it even more difficult to reach the area.⁸³

Communities in Gilgit-Baltistan aim to develop other industries like mining, and wildlife and trophy hunting while seeking investment on terms that give them greater control and a fair share of profits. In particular, mining has received considerable local, national and international attention given the extensive deposits of copper, iron-ore, uranium, coal, and precious and semi-precious gemstones in the region.⁸⁴ Yet, across Gilgit-Baltistan, and especially in Hunza, “no significant results have been materialized”—while illegal, small-scale operations exist, there are still no large scale developments in the sector.⁸⁵

Initiatives to develop mining in the region face many limitations. Combined with the lack of human, technical and financial resources,⁸⁶ the uncertain constitutional status impedes the ability of communities to both obtain investment for projects and negotiate with public and private actors over revenue sharing. Thus, developing mining initiatives beyond small-scale projects in Hunza is nearly impossible, with the Chipursan Valley being an illustrative example. Numerous members of the Chipursan LSO have taken initiatives to develop the region’s coal industry. The most ambitious and coordinated initiative is the Chipursan Mining Company. It was formed in the 1990s when shares of 250 rupees (under \$3 CAD) were collected from households and registered under Pakistan’s Companies Act. The company seeks to develop the region’s resource extraction industry and ensure that the benefits from such industries go to members of the communities.

⁸⁰ Cook & Butz, *supra* note 36 at 362.

⁸¹ For statistics on the landslide see “Early Recovery Plan and Framework for Disaster-Affected Areas of Hunza-Gojal” (Gilgit: AKRSP, 2010).

⁸² Sökefeld, “The Attabad Landslide and the Politics of Disaster”, *supra* note 43 at 187.

⁸³ *Ibid* at 186.

⁸⁴ Abdul Rehman, Muhammad Alam & Babar Khan, *Mineral Resources of Central Karakoram National Park and Suggested Safe Mining Techniques* (Gilgit: World Wide Fund for Nature Pakistan, 2008) at 45.

⁸⁵ Aftab Ismail & Hussain Asif, *Northern Areas Strategy for Sustainable Development* (IUCN: Gilgit, 2003) at 16.

⁸⁶ *Ibid.* at 16.

Despite obtaining two licences and receiving some financial and technical assistance from NGOs, the company has been unable to start mining. A former director of the company attributes this to an underdeveloped market, lack of financing and expertise, as well as government regulations defining the Chipursan Valley as a restricted area. The federal government has imposed a clearance requirement on all foreigners wanting to visit the area, requiring them to obtain No Objection Certificates (NOCs) from the Interior Ministry. The systematic refusal to grant NOCs directly affects the Valley's tourism industry and ability to obtain foreign investment. Members of Chipursan contend that their exclusion from Pakistan's constitutional framework also means that they have limited power to lobby the federal government to lift the requirement of NOCs. While the Chipursan LSO has requested the federal government to provide reasons for the restrictions and has demanded their removal, the NOC requirement is still in place.

The region's constitutional liminality also inhibits communities like Chipursan from obtaining public and private investment to develop natural resource industries. The federal government asserts that since Gilgit-Baltistan is part of the disputed territory of Jammu and Kashmir, it cannot invest in the region without unfairly prejudicing the outcome of the territorial dispute with India. This is inconsistent with the government's involvement in other parts of Gilgit-Baltistan including in Diamer, where Pakistan recently laid the first stone of a multi-billion dollar project, the Diamer-Bhasha Dam.⁸⁷ The federal government has reputedly prohibited foreign companies from operating in the region, even those who are collaborating with the Chipursan Mining Company or other groups in the Valley. The Legislative Assembly also imposed a ban on gemstone mining and exportation of precious stones from the region, even though it is uncertain whether this power falls within federal jurisdiction.⁸⁸

Another contributing factor to the stagnant development of natural resource-based industries in the region is the lack of clarity over policies and power. There is a great deal of confusion as to the formal policies of the national, regional and local governments, who holds power, and who, in practice, is in control. The liminality of the region—and its practical impact on economic development—is expressed through the abundance of rumours that circulate locally. As scholars of rumour argue, rumour often

⁸⁷ While the World Bank has denied funding for the project on the basis that it is a disputed territory, the Pakistan Water and Power Development Authority (Wapda) received a positive response from international firms in its call for procurement of consultancy services for the Diamer-Bhasha Dam Project. The Dam is reported to store "8.1 million acre feet of water for agricultural and generate 4,500MW electricity—about 20 billion units of low-cost hydel electricity to the national grid every year." "Diamir-Bhasha Dam: Consultancy Services Proposals Submitted", *The Dawn* (7 March 2013), *The Dawn* online: <<http://dawn.com/2013/03/08/diamir-bhasha-dam-consultancy-services-proposals-submitted/>>.

⁸⁸ "Gilgit-Baltistan Legislative Assembly Session: Gemstone and Metal Mining Banned", Institute for Gilgit Baltistan Studies online: <<http://www.gilgitbaltistan.us/Bulletin/gilgit-baltistan-legislative-assembly-session-gemstone-and-metal-mining-banned.html>>.

emerges in ambiguous situations.⁸⁹ They build on gaps in information and also perpetuate further confusion. For example, some people say that the federal government secretly awards licences, while others state that it operates “ghost companies” to extract resources from Hunza without local communities’ permission and without providing them with any royalties. One recent controversy is the alleged issuance of a mining lease to a Hong Kong based company by Gilgit-Baltistan authorities, which was equated with “robbing” Gilgit-Baltistan of its natural resources.⁹⁰ The Chief Minister of Gilgit-Baltistan claims that federal actors issued the lease while the Gilgit-Baltistan Finance Minister blames the Chief Minister for issuing the lease “in the darkness of the night.”⁹¹ Others say that foreign companies are restricted access but not because of the region’s constitutional status: rather, it is to prevent foreign companies from mining uranium, or—due to pressure from the United States—to halt Chinese intervention in the area. While the content of the rumours have not been verified, as White argues, rumours “articulate and embody the concerns of the people spreading and hearing the rumour.”⁹² In Gilgit-Baltistan, they highlight frustration and a lack of basic communication between communities and the different levels of government. They also reveal anxieties about exclusion and inequality. In particular, communities feel vulnerable and denied access to important sources of revenue. Attempts at mining in Chipursan exemplify these challenges facing communities. The constitutional uncertainty limits potential investment and also inhibits communities’ ability to lobby for greater control of these industries. Weak elected bodies are not able to defend the rights and interests of people in the region.⁹³

These constitutional issues compound existing challenges of developing natural resource-based industries, especially for community initiatives like the Chipursan Mining Company. For example, Peter van der Veen of the World Bank’s Mining Department, identifies the persisting impediments to foreign investment including a lack of “clearly identifiable, available prospects using reliable, up to date maps,” a lack of standardization in the procedures and terms of licences, persisting corruption, as well as “lengthy, uncertain and unrealistic requirements” and insufficient guarantees in law.⁹⁴

⁸⁹ See, for example, Luise White, *Speaking with Vampires: Rumor and History in Colonial Africa* (Berkeley: University of California Press, 2000); Jean-Noël Kapferer, *Rumours: Uses, Interpretations, and Images* (New Brunswick, NJ: Transaction, Publishers, 1990); Patricia Turner, *I Heard It Through the Grapevine: Rumours in African-American Culture* (Berkeley: University of California Press, 1993).

⁹⁰ “Issuance of Mining Lease Creates Rift in GBLA”, *Pamir Times* (25 June 2011), Pamir Times online: <<http://pamirtimes.net/2011/06/25/issuance-of-mining-lease-creates-rift-in-gbla/>>.

⁹¹ *Ibid.*

⁹² White, *supra* note 89 at 205.

⁹³ *Ibid.*

⁹⁴ Peter van der Veen, “Legal/Fiscal Framework to Attract Investments: Where Does Pakistan Stand?”, presentation at the Mineral Sector Development Workshop: Improving The Investment Climate and Sustainability of Mining in Pakistan, Islamabad, December 15-16, 2003.

Another tangible impact of Gilgit-Baltistan's liminality is revenue-sharing. Royalties and the distribution of natural resources are common sources of dispute among provinces and the federal government in Pakistan.⁹⁵ Particularly controversial claims include the distribution of royalties to Khyber Pakhtunkhwa (formerly called the North West Frontier Province) for hydro-electric power, and to Baluchistan for its natural gas.⁹⁶ In Hunza, however, revenue-sharing is even more complex: first, it is unclear who owes royalties to whom, and second, the government of Gilgit-Baltistan and communities in the region argue that the data documenting earnings is withheld from them by the federal government.

Similarly, participants in the research frequently articulate their broader discontent with the constitutional framework through the injustice of unequally divided revenue. They contend that their lack of constitutional status impedes their communities' ability to obtain a fair share of the financial benefits derived from their natural resources since they are unable to effectively lobby the government. Furthermore, in practice, the federal government continues to manage and control sectors that fall within the jurisdiction of the government of Gilgit-Baltistan like tourism.

Some sectors have established policies that give local communities a portion of the revenue. For example, wildlife and trophy hunting fees are split, with 80 percent going to the community and 20 percent going to the government.⁹⁷ However, residents in Hunza contend that taxation and fees collected by the federal government in other sectors like forestry and tourism and at the Dry Port in Sost—the customs checkpoint on Pakistan-China border—are not fairly shared with communities. For example, an LSO Chairman argues that local people in his region are only given twenty percent of royalties from forestry even though communities in Khyber Pakhtunkhwa are given 80 percent. He states that there is “big discrimination” between people in Gilgit-Baltistan and those from other provinces because they lack a “voice” in the National Assembly and are also not politically-aware or organized.

Other people argue that funds collected by the Tourism Department are also not distributed to communities. For example, one member of KADO points out that the department in Islamabad charges tourist fees but does not share earnings with the communities. He argues that “before September 11th the area was full of tourists, mostly climbers ... and they are paying to the federal government a lot of money. It

⁹⁵ Khurshid Iqbal, *The Right to Development in International Law: The Case of Pakistan* (London, New York: Routledge, 2010) at 151.

⁹⁶ *Ibid.*

⁹⁷ See Mountain Area Conservancy Project, “Spectacular Hunt in the Fascinating Mountains at Ghulkin Community Conservation Area” handout and “Bunji Community Conservation Area, The Land of Choice for Astore Markhor” (handout).

[went] from these mountains to the federal government, not the community". He further points out that the government was not re-investing the funds in the industry, for example, by improving tourist facilities.

The discontent over revenue-sharing also relates to the confidentially over earnings. For example, one community member argues that all the fees go to the Tourism Department in the capital, "[e]verything is in Islamabad. Trekking fees, environmental protection fees, there is expedition adventure fees. Special rules because of security problems. They charge all these fees but they never make it public." Another community member from a different part of Hunza similarly states that "[t]here are many high [mountain] peaks and tourism was a big industry in this area, [but] they never pay us, they never publish the information." An LSO Chairman also points out that the federal government refuses to disclose the amount of revenue being made at the Sost Customs Checkpoint for the Dry Port. While trucks entering from China pay duties, the money is not going to the local communities. This is considered especially unfair because local communities contributed to the construction costs of the port and also bear the most direct environmental burden.⁹⁸

4.2: Liminality as legal uncertainty

The legal liminality of the region is compounded by the 18th Amendment to the Constitution which exacerbates uncertainties over the role and responsibility of different levels of government. The Amendment abandons the concurrent list of federal and provincial powers and devolves numerous exclusive powers to the provinces, including the environmental protection regime and forestry.⁹⁹ While devolution provides the provincial governments with far more responsibilities and control, its practical effects will still largely depend on political will and the capacity of provinces to take on these responsibilities. The impact of the amendments will also be shaped by the actions and composition of Implementation Commission, provided for in the Amendment.¹⁰⁰

The implications for Gilgit-Baltistan are even more uncertain than for other provinces since some subject matters that have been devolved to the provinces are still controlled by federal actors in the Gilgit-Baltistan Council instead of the Legislative Assembly. For example, although forestry is now under the jurisdiction of the provinces according to the Constitution, in Gilgit-Baltistan it belongs to the Council's Legislative List. Similarly, although the Secretary of Tourism of Gilgit-Baltistan correctly notes that tourism has

⁹⁸ Sost has launched a complaint about the Sost Dry Port authority for environmental damage.

⁹⁹ 18th Amendment, *supra* note 79 at Art. 96 and Art. 101(3).

¹⁰⁰ *Ibid.*, Art. 96(9) provides that "[f]or purposes of the devolution process under clause (8), the Federal Government shall constitute an Implementation Commission as it may deem fit within fifteen days of the commencement of the Constitution (Eighteenth Amendment) Act, 2010."

been devolved with the 18th Amendment, there is no evidence that this in practice will “[transfer] tourism to [the local level]”, including allowing for “local processing of permits”.¹⁰¹ Given the central role of federal actors in the Council, discussed above, it is questionable whether the amendments result in real devolution, providing effective power for Gilgit-Baltistan.

The 18th Amendment’s new concurrent power over mineral oil and natural gas and revenue-sharing is particularly murky for Gilgit-Baltistan. The Amendment provides that “mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government.”¹⁰² Moreover, it allocates revenues derived from duties and royalties on natural resources to the provinces in which the well-heads are situated.¹⁰³ Provinces such as Khyber Pakhtunkhwa see the amendments as a long-awaited opportunity to obtain greater control over and financial benefits from resources located in their territory. For example, Senator Afrasiab Khattak states that the 18th Amendment makes Pakistan Asia’s best federal system because it maximizes provinces’ autonomy.¹⁰⁴ He argues that “[a]s autonomy without resources is meaningless, the 18th [Amendment] ... of the Constitution has addressed this issue and now oil and gas resources are jointly and equally owned by the federal government and provinces.”¹⁰⁵ However, it is uncertain how devolution and revenue-sharing would work in Gilgit-Baltistan thus making an already unclear situation even more uncertain.

The constitutional limbo affects people’s access to legal and political institutions, as well as the other specific “pillars” of the legal empowerment approach. As Kishan Khoday and Usha Natarajan argue, legal regimes focused on natural resources and the environment require “checks and balances between government, the private sector and civil society, [and must] expand access to judicial remedies, and support means for accountability and transparency in decision.”¹⁰⁶ Because of the ambiguous status,

¹⁰¹ Imran Sikandar Baloch, Secretary Tourism, Government of Gilgit-Baltistan, “Tourism Development in Gilgit Baltistan: Situation Analysis and Investment Opportunities”, Government of Gilgit-Baltistan: <http://www.gilgitbaltistan.gov.pk/index.php?option=com_content&view=article&id=64&Itemid=57>.

¹⁰² *Ibid* at Art. 65; see also “KP to Revisit Laws Related to Natural Resources”, *The Dawn* (28 July 2011) online: The Dawn <<http://www.dawn.com/2011/07/28/kp-to-revisit-laws-related-to-natural-resources.html>>.

¹⁰³ 18th Amendment, *supra* note 79 (Art. 60 (1)(a) provides that the net proceeds of the Federal duty of excise on natural gas levied at well-head and collected by the Federal Government and of the royalty collected by the Federal Government shall be paid to the Province in which the well-head of natural gas is situated. Similarly, Art. 60(1)(b) provides that the proceeds of duties on oil shall be paid to the Province in which the well-head of oil is situated).

¹⁰⁴ “KP to Revisit Laws Related to Natural Resources”, *The Dawn*, *supra* note 102.

¹⁰⁵ *Ibid*.

¹⁰⁶ Kishan Khoday & Usha Natarajan, “Combating Social Exclusion and Ecological Change Through Legal Empowerment of the Poor”, CISDL Legal Working Paper Series on Legal Empowerment for Sustainable Development (2012).

people in Gilgit-Baltistan have limited access to legal tools necessary for managing and governing natural resources. For example, it is difficult to have effective checks and balances when it is unclear who the power over resources vests in, or when the decision-maker is not democratically accountable. Likewise, the constitutional liminality directly affects other “pillars” like property rights since it is uncertain who technically owns them.

Part 5: Responding to liminality

The next part of this article examines how communities and other local institutions respond to the liminal status of Gilgit-Baltistan. In particular, how do they contest (if at all) their own ambiguous status and its impacts? What institutions and avenues do they use to try to gain access and control over natural resources? If the rule of law is the “critical ingredient for achieving inclusive, sustainable development” as Khoday and Natarajan argue, what mechanisms—legal or otherwise—are available to empower people and hold the state or corporate entities accountable?¹⁰⁷

The challenges stemming from the liminality of Gilgit-Baltistan require mechanisms that traverse borders, cross disciplines and target different types of rights. Conventional litigation and lobbying in the domestic sphere have proven largely inaccessible and ineffective. Instead, this article calls for a more explicit theorization of the legal/non-legal and local/global linkages in the legal empowerment approach. While the approach includes a pluralist conception of law,¹⁰⁸ and often emphasizes political empowerment, the state, its formal legal system and citizenship remain front and center. For example, Kenneth Nielsen observes that a “broadened understanding of legal empowerment as political empowerment” “transforms the poor into citizens who are aware of their rights, are able to assert them, and also to hold the state accountable for their adequate enforcement.”¹⁰⁹ This is, of course, not at all undesirable. Rather, this view of legal empowerment fails to capture how residents of Gilgit-Baltistan—and in particular Hunza—engage legal and non-legal mechanisms and look to both local and global networks and regimes to respond to their liminality and contest its negative effects.

In particular, this article suggests the “subaltern cosmopolitan legality” approach as particularly useful for thinking about empowerment in Hunza. According to Santos and Rodríguez-Garavito, the approach is a way of addressing law and globalization, so as to

¹⁰⁷ *Ibid.* at 9.

¹⁰⁸ The Commission on Legal Empowerment of the Poor, *supra* note 24, for example, calls for “customary and informal legal procedures” and recognition of customary rights, at 5.

¹⁰⁹ Anne Palacio, “Legal Empowerment of the Poor: An Action Agenda for the World Bank”, (Washington, DC: The World Bank, 2006), available at 21; Kenneth Nielsen, “‘Not on Our Land!’ Peasants’ Struggle against Forced Land Acquisition in India’s West Bengal”, in Dan Banik, ed, *Rights and Legal Empowerment in Eradicating Poverty* (Surrey: Ashgate, 2010) 217 at 219.

better understand the connections between law and politics and “[reimagine] legal institutions from below.”¹¹⁰ It is rooted in a view of cosmopolitanism, as suggested by Ulrich Beck, in which “the world has certainly not become borderless, but the boundaries are becoming blurred and indistinct, becoming permeable to flows of information, capital, and risk”.¹¹¹

First, the approach exposes the limitations of the law-centric strategies and focuses on plural forms of responses and adaptations that combine legal, illegal and non-legal strategies.¹¹² In Gilgit-Baltistan there is only so much the law can do. The Supreme Court in *Al-Jehad* recognized the status of the region as a political issue, and consequently refused to make any findings that would imply the inclusion of the region into Pakistan. While the Court drastically expanded the legal recognition of rights of residents, it took over fifteen years for the government to make any modifications, and even those, as discussed below, required domestic and international activism.

Second, the approach focuses on political mobilization rather than only individual rights.¹¹³ It emphasizes collective action to “muster the type of countervailing power necessary to bring about sustained legal change.”¹¹⁴ Thus, it recognizes that rights need to go beyond the individual and “incorporate solidaristic understandings of entitlements.”¹¹⁵ This broader conception of rights reflects the community-focused approach to coping with the effects of Gilgit-Baltistan’s status. As will be discussed, the Aga Khan Foundation and Ismaili jama'ati institutions play a central role in helping the entire village or collection of villages improve their standards of living. Moreover, as the Chipursan Mining Company and community controlled hunting areas show, initiatives for the development of natural resources are entirely shared by the community.

Third, Santos and Rodríguez-Garavito’s approach of subaltern cosmopolitan legality examines how people engage the local, national and global as well as state and non-state legal orders.¹¹⁶ Similarly, research by Eduardo S. Brondizio, Elinor Ostrom, and Oran R. Young into the Xingu Indigenous Park in Brazil also shows the need to “nest local and larger institutional arrangements to accommodate the goals and interest of groups organized at different levels.”¹¹⁷ Ostrom investigates the role of institutions in

¹¹⁰ *Ibid.* at 15.

¹¹¹ Ulrich Beck, “Reframing Power in the Globalized World” (2008) 29 *Organization Studies* 793 at 794.

¹¹² Santos and Rodríguez-Garavito, *supra* note 6 at 15.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.* at 16.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Eduardo S. Brondizio, Elinor Ostrom & Oran R. Young, “Connectivity and the Governance of Multilevel Socio-Ecological Systems: The Role of Social Capital” (2009) 34 *Annual Review of Environmental Resources* 253 at 255.

environmental governance, identifying the importance of both horizontal and vertical linkages to contest encroachment on protected indigenous territories: horizontal linkages include alliances with other groups asserting land rights while vertical linkages include alliances with governments at all levels, NGOs, religious movements, celebrities and anthropologists.¹¹⁸ Similarly, Khoday and Natarajan note the importance of forging how “transnational and global networks and sought to reshape law and development policy.”¹¹⁹

Gilgit-Baltistan’s liminal status requires residents to contest their exclusion with diverse approaches that traverse scales and engage a wide array of actors. Combining different strategies, focusing on political mobilization, and operating across different scales help people deal with the challenges of the region’s liminality in two different ways: first, village and inter-village organizations use *legal and non-legal* modes of contestation; and second, they engage *local and global* regimes, networks and discourses.

5.1: The legal and the non-legal, local and global

As Balakrishnan Rajagopal argues, people and their political movements have “an ambivalent relationship with the law.”¹²⁰ He contends that people see the law as both a “force for status quo and domination which must be contested as part of a larger political struggle or largely ignored as irrelevant,” yet at the same time “it also provides them space for resistance.”¹²¹ In Hunza, as throughout the rest of Pakistan, the formal legal system is often perceived as inefficient, inaccessible and corrupt. Consequently, people primarily rely on local dispute resolution bodies and faith-based tribunals like the *Ismaili Council* to resolve their daily problems. This echoes Jesse C. Ribot’s argument that legal means “are not the only rights-based way of gaining, controlling, or maintaining benefits from resources.”¹²² Nonetheless, people view the formal legal system as an important mechanism to promote their interests and people also undertake numerous types of legal actions. As Ribot notes, “within formal and informal systems of legal pluralism a state often remains the ultimate mediator, adjudicator, and power holder.”¹²³ In Gilgit-Baltistan, where local dispute resolution bodies fail, communities may go to the formal courts to deal with land ownership issues, as was the

¹¹⁸ *Ibid.* at 257.

¹¹⁹ Kishan Khoday & Usha Natarajan, “Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India” (2012) 25 *Leiden Journal of International Law* 415 at 423.

¹²⁰ Balakrishnan Rajagopal, “Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle” in Sousa Santos & César A. Rodríguez-Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005) 183 at 183.

¹²¹ *Ibid.* at 183.

¹²² Jesse C. Ribot, “A Theory of Access” (2003) 68:2 *Rural Sociology* 153 at 164.

¹²³ *Ibid.*

case, for example, regarding an ongoing land dispute between the villages of Gulmit and Shishkat. Moreover, the Village of Shimshal has used the courts to contest the expropriation of pastures for the Khunjerab National Park by the federal government.¹²⁴

Courts, however, have had a limited role in addressing the status of Gilgit-Baltistan: the only case directly assessing the status of Gilgit-Baltistan is *Al-Jehad*. Yet other legal claims have dealt with the region's status indirectly, seeking to close the gap between Gilgit-Baltistan and the rest of Pakistan. For example, in 2011, the Supreme Court of Pakistan heard a claim contending that the appointment of retired judges to the Supreme Appellate Court of Gilgit-Baltistan is prohibited by the Constitution of Pakistan.¹²⁵ The applicant argued that the appointment discriminates against the people of Gilgit-Baltistan by undermining the right to a fair, independent judiciary in the region. The applicant specifically pointed to the Supreme Court's ruling in *Al-Jehad* as authority for the finding that the people of Gilgit-Baltistan (then the Northern Areas) are citizens of Pakistan and thus entitled to the same fundamental rights as all other citizens of Pakistan.¹²⁶

Yet these constitutional cases are unusual and the status of Gilgit-Baltistan is usually contested within a political framework instead of a legal one. The people of Gilgit-Baltistan do not prioritize formal legal claims as a mechanism of contesting power because the judicial system is seen as explicitly linked to their liminality and exclusion. While the Supreme Court in *Al-Jehad Trust* held that in order for the people of the region to enjoy their fundamental rights they required access to an independent judiciary, there is no constitutional right to be able to appeal to the Supreme Court. The Supreme Court only asserted that the Northern Areas must have a Chief Court, equated with a High Court in that "it is manned by the persons of the status who are fit to be elevated as Judges to any High Court in Pakistan" and with jurisdiction to assess constitutional petitions.¹²⁷

Consequently, people engage other mechanisms besides the formal domestic legal system to resist the effects of their liminality, and the liminality itself. In particular they argue for the politicization of their plight at both international and local levels. As Santos

¹²⁴ See Are Knudsen, "Conservation and Controversy in the Karakoram: Khunjerab National Park, Pakistan" (1999) 6 *Journal of Political Ecology* 1 at 21; Nosheen Ali, "Re-imagining the Nature of Development: Biodiversity Conservation and Pastoral Visions in the Northern Areas, Pakistan" in Philip McMichael, ed, *Contesting Development: Critical Struggles for Social Change* (New York: Routledge, 2010) 64.

¹²⁵ Hasnaat Malik, "Appointment of Retried Judges in G-B Court – SC Issues Notices to AGP, Other Respondents", *Pamir Times* (7 December 2011), *Pamir Times* online: <<http://pamirtimes.net/2011/10/19/appointment-of-retried-judges-in-g-b-court-sc-issues-notices-to-agp-other-respondents/>>.

¹²⁶ *Ibid.*

¹²⁷ *Al-Jehad Trust*, *supra* note 44 at headnote.

and Rodríguez-Garavito argue, “subaltern cosmopolitan legality views law and rights as elements of struggles that need to be politicized before they are legalized.”¹²⁸ This highlights that successful legal claims often require a strong political movement both within the affected communities and the wider public in order to effectively leverage the law and transnational networks. Consequently, by engaging the global Ismaili network and rooting their exclusion as a violation of international human rights norms, people in Gilgit-Baltistan appeal to legal and political discourses as well as to international actors and local members of the community.

First, residents in Hunza are linked to a transnational, deterritorialized community, connected by the social, political and spiritual leadership of the Ismaili imam, known now as the Aga Khan.¹²⁹ As Steinberg argues, Ismaili “forms, processes, and structures seems to represent a new possibility for transnational social organization, for sociopolitical participation beyond the nation-state”.¹³⁰ In particular, the Aga Khan’s secular development institutions—such as the Aga Khan Development Network (AKDN), the Aga Khan Rural Support Programme (AKRF) and its village and regional level organizations like LSOs—provide services and direction for sustainable development around the world, including in Hunza.¹³¹ These local-to-global institutions and networks provide financial support, technical expertise and ideologies that are especially helpful for residents in Hunza. In terms of natural resources, AKRSP’s extensive involvement includes funding programs to research and build capacity in high altitude natural resource management, assisting with the creation of resource conservation plans and village conservation funds, and providing infrastructure and irrigation, planting trees and teaching new agricultural practices.

Yet, residents do not rely solely on the global Ismaili network. They also recognize the broader international sphere as necessary to contesting constitutional liminality. In particular, people frequently point to the European Parliament’s diplomatic intervention in Gilgit-Baltistan as demonstrating the necessity of international activism. The European Parliament’s *2007 Report on Kashmir: Present Situation and Future Prospects* is considered crucial to publicizing the democratic deficit in Gilgit-Baltistan, and pressuring the government of Pakistan to enact the 2009 Order.¹³² The report, adopted by the European Parliament in 2007, strongly criticizes the government of

¹²⁸ Santos & Rodríguez-Garavito, *supra* note 6 at 16.

¹²⁹ Steinberg, *supra* note 33 at 11. The Aga Khan Foundation is led by His Highness the Aga Khan, the 49th hereditary Imam of the Shia Ismaili Muslims.

¹³⁰ *Ibid.* at 1.

¹³¹ *Ibid.* at 60. The Foundation’s organizations including the AKRSP and the AK Development Network, AK Agency for Microfinance, AK Education Services, AK Fund for Economic Development, AK Health Services, AK Planning and Building Services, AK Trust for Culture and the AK University are leading development organizations around the world, focusing on the improving the livelihoods of Ismailis.

¹³² Nicholson report, *supra* note 54 at 38.

Pakistan's lack of implementation of democracy in Gilgit-Baltistan. It states that the European Parliament "is concerned that the Gilgit-Baltistan region enjoys no form of democratic representation whatsoever," and that "the people of Gilgit and Baltistan are under the direct rule of the military and enjoy no democracy." It further "calls on Pakistan to hold elections for the first time in Gilgit and Baltistan."¹³³

In commenting on the democratic deficit in the region, the report connects the exclusions in Gilgit-Baltistan to the international human rights regime. For example, it invokes the inalienable right to self-determination and the obligation to promote the realization of this right in the *International Covenant on Civil and Political Rights*.¹³⁴ Moreover, while the European Parliament's *Report on Kashmir* does not specifically link issues like democracy with natural resources, it calls on both India and Pakistan to explore options for "increased self-governance" and enhanced cooperation on water, tourism and environment which alludes to broader notions of international sustainable development.¹³⁵

More generally, people in Hunza also understand political participation and access to royalties as rooted in their fundamental rights. For example, the founder of a local civil society organization draws upon a human rights discourse to contest the confidentiality of information about revenues in the region. She contends that,

[t]here is no proper human rights protection system. All the documents are secret. For example, Sost Customs Checkpoint, how much do they charge from each truck? What is the income, revenue? We are not informed. This is all managed from downside from custom officers and army officers. This is our area.

In this way, people engage a hybrid international human rights discourse that includes group rights, individual freedoms and environmental protections. One LSO representative explicitly credits the enhanced powers found in the 2009 Order to the European Parliament's report. He believes that the Government of Pakistan would not have enacted the Order without external pressure from the European Union. The perceived impact of Europe's political intervention leads him to emphasize the critical role of the international activist. He argues that

[i]f there is some letter from UN, we think they will consider this issue. For example, Amnesty International advisors can write. Nicholson [for the European Parliament] wrote a report. [It] pressured Pakistan to give some rights. She wrote

¹³³ *Ibid.* at paras. 14-15 and 18.

¹³⁴ *Ibid.* at para. 12 (referring to Arts. 1.1 and 1.3 of the *International Covenant on Civil and Political Rights*).

¹³⁵ *Ibid.* at para. 3.

a report, it was discussed in European Parliament in 2004, she visited ... and under this pressure they gave us the Order in 2009.

The representative draws upon recognized, reputed human rights organizations like Amnesty International and appeals to bodies he sees as sympathetic to Gilgit-Baltistan's claims. Similarly, another LSO member states that,

[w]hen Nicholson submitted report to European Parliament, the government of Pakistan objected and said it was one-sided, said she was an agent of India, presenting an Indian opinion. The European Parliament said it was genuine, correct, and under this pressure, the Government of Pakistan gave political package in 2009. They gave us the Legislative Assembly. So-called.

This member also sees the pressure of the European Union as an effective tool in prompting political and legal changes, although they are still insufficient. However, these appeals for activism and human rights are not limited to the global level. Communities actively seek to strengthen the political awareness of people within Gilgit-Baltistan. Members of LSOs as well as civil society organizations contend that people have not been able to effectively lobby the government of Pakistan—not only because of the democratic deficit—but also because people in the region are not politically savvy. The lack of awareness of the political situation is explained by the region's lack of formal democratic institutions throughout history. For example, an employee of a local civil society organization states that,

I cannot blame the community because we were under the *Mir* system of government. No one was allowed to even [go to] Gilgit [the region's capital city] without permission of the *Mir*." Another employee of the same organization states that "people have no idea of democracy ... We are always dependent on others. The *Mir* was here ... and few people had the power. And still these guys are representing us in the Assembly."

However, although people—especially local civil society employees—believe that the region lacks sufficient political awareness to effectively contest its liminality, communities demonstrate persistence and ingenuity in strengthening their own local political institutions to improve their livelihoods and promote change.

5.2: Strengthening local institutions and enhancing community unity

The failure of the federal government to respond to the 2010 landslide has been perceived by communities as an illustration of the centralized government's

unwillingness to assist the region, even in a time of crisis. It has also emphasized the need to look elsewhere—both internally to communities themselves, and externally to other countries, international organizations and Islamists around the world—for assistance and support. Arun Agrawal suggests framing examinations of community-based natural resource management around “institutions” rather than “community” in order to “focus on multiple interest and actors within communities, on how these actors influence decision-making and on the internal and external institutions that shape the decision-making process.”¹³⁶ One way to account for the critiques of a focus on “communities” is to look at the organizational institutions found in the regime. In particular, the capacity-building training sessions hosted by Four Worlds in Khyber in July 2010, and July and October 2012, to strengthen communities’ self-government revealed the desire of communities to strengthen village-level and intra-village level organizations, in order to better manage their resources and be able to negotiate and collaborate with external actors. The way in which they deal with their liminality reveals them to be an emergent, subaltern civil society.

The AKRSP developed a strategy of participatory development by establishing village-level and intra-village organizations.¹³⁷ Village Organizations and Women’s Organizations are the principal “self-sustaining development institution ... that can enter into a partnership for development with governmental and private agencies.”¹³⁸ The Village Organizations collect contributions from households which are put into a fund managed by an elected Village Organization Manager and Bookkeeper.¹³⁹ These institutions help facilitate projects that include infrastructure, health, enterprise development, micro-financing and micro-insurance, and leadership and skills training.¹⁴⁰ In the late 1990s, the AKRSP also helped village organizations and women’s organizations “federate” into “valley or Union Council-level institutions”.¹⁴¹ The LSOs are legal entities, usually registered under the company ordinance of the government of Pakistan, which also work in collaboration with the government, NGOs, and donor agencies to assist communities with development through larger projects.¹⁴²

¹³⁶ Arun Agrawal, “Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation” (1999) 27:4 *World Development* 629 at 630.

¹³⁷ Nauro F. Campos, Feisal U. Khan & Jennifer E. Tessoroff, “From Substitution to Complementarity: Some Econometric Evidence on the Evolving NGO-state Relationship in Pakistan” (2004) 37:2 *The Journal of Developing Areas* 49.

¹³⁸ AKRSP, *First Annual Review: Incorporating the Fourth Progress Report, The Aga Khan Rural Support Programme* (Gilgit: AKRSP, 1984).

¹³⁹ Campos, Khan & Tessoroff, *supra* note 137 at 55.

¹⁴⁰ Antonia C. Settle, “The New Development Paradigm Through the Lens of the Aga Khan Rural Support Programme: Legitimacy, Accountability and the Political Sphere” (2011) *Community Development* 1 at 6.

¹⁴¹ Ehsan-ul-Haq, “Community Response to Climatic Hazards in Northern Pakistan” (2007) 27:4 *Mountain Research and Development* 308 at 310.

¹⁴² *Ibid.* at 311.

Village Organizations and LSOs play critical roles in managing and governing natural resources despite the constitutional liminality of the region. They are crucial to developing capacity, providing information, sensitizing communities and creating platforms for political lobbying. Moreover, each village has numerous committees to address specific issues such as nature conservation, water and grazing. In the village of Ghulkin, for example, the nature conservation committee installs garbage bins, maintains trails, passes bylaws, and collects fines and fees, including from hikers and tenters. These committees are often organized under an umbrella organization. Similarly, the Hussaini Organization for Local Development encompasses committees for education, health, sports and *hoshali* (meaning *prosperity*, which focuses on infrastructure and grazing).

Communities also establish their own dispute resolution committees. For example, the Chairman of one LSO recalled a dispute between two groups in the community over barren lands. The village created a committee composed of a mullah, experts, elders, members of the Village Organizations and representatives of the village clans. The Chairman states that the dispute was swiftly resolved in one day by a process in which the arguing groups agreed to divide the lands equally amongst their households. Given the perceived inefficiency and corruption of the formal legal system, it is not surprising that communities, especially ones in rural Hunza where courts are even more inaccessible, look to local, customary institutions to solve disputes. Yet where constitutional frameworks are seen to be manifestly unjust, there seems to be an even greater emphasis on local solutions.

Despite working on issues at the grassroots level, LSOs frequently go beyond the local level to collaborate with national and international donors, as well as different levels of government to construct community infrastructure, develop business ventures and enhance educational opportunities. The creation of community controlled hunting areas (CCHAs) is a particular example of how local institutions engage with the legal, non-legal, local and global actors in order to improve livelihoods in their communities.

Wildlife and trophy hunting has had considerable success in generating income for villages in Hunza. The region has a great diversity of wildlife, especially sheep and goats (*Caprinae*) and is “one of the key countries globally for *Caprinae* conservation.”¹⁴³ Trophy hunting programs conserve wildlife by regulating the number of available licences and create job opportunities, while also providing a major source of income for community development projects.¹⁴⁴ Through LSOs registered under the *Companies*

¹⁴³ D.M. Shackleton, *A Review of Community-Based Trophy Hunting Programs in Pakistan* (Mountain Areas Conservancy Project, 2001) at 4.

¹⁴⁴ Altaf Hussain, *Conservation Funds and Community Financing* (Durban, South Africa: 2003) at 2.

Act, communities establish CCHAs that are managed by local conservation committees such as those found in Khyber, Passu, Husseini and Ghulkin. The funds generated are funnelled directly back into the communities. For example, in Khyber the money was used to reinvest in tourism infrastructure by purchasing land and building a guesthouse, while the Khunjerav Villagers' Association uses the money for education, agriculture and health. Most notably, Shimshal has created a CCHA in land incorporated within the Khunjerab National Park, which has been one way of maintaining legally-permissible control of pastures and wildlife.

Wildlife and trophy hunting demonstrates the importance of community-based conservation. The successes in Hunza show that involvement of local communities in the management of biodiversity promotes sustainable environmental and ecological protections and greater empowerment of local people.¹⁴⁵ In particular, it enables local communities to monitor and manage hunting in the territory, and provides them with revenue and employment opportunities.¹⁴⁶ Community-based approaches to hunting are seen as the "only viable strategy for wildlife management in Pakistan" since a complete hunting ban is unenforceable and also undermines communities' access to economic benefits.¹⁴⁷

The success of the CCHA as a locally-based mechanism to manage natural resources and obtain revenue is also to the result of collaboration that cross geographical boundaries and legal-political frameworks. The CCHA requires cooperation between the federal and provincial governments and assistance from large international NGOs like WWF Pakistan, the IUCN and the AKRSP. In particular, the lucrative schemes which attract international hunters require cooperation from the government of Pakistan, for instance to provide NOCs to tourists, and an agreement that fairly divides the revenue between the government and community. For example, the Mountain Areas Conservancy Project, funded by the Ministry of Environment and implemented by the IUCN, has helped communities set up hunting packages. It provides a travel itinerary for a hunting expedition of the Astore Markhor for \$25,000 USD, or the Himalayan Ibex for \$2,000 USD. The price includes accommodations in Islamabad, travel to Hunza, hunting and camping equipment, guides, and export processing fees for the trophy. Through networks engaging local, regional and international actors within NGOs, international organizations, and the federal government, residents of Gilgit-Baltistan have been able to establish initiatives that provide income and which require them to establish accountable community organizations.

¹⁴⁵ K. Rao & C. Geisler, "The Social Consequences of Protected Areas Development for Resident Population" (1990) 3:1 *Society and Natural Resources* 19.

¹⁴⁶ Knudsen, *supra* note 124 at 21.

¹⁴⁷ *Ibid.*

Part 6: Concluding remarks

Gilgit-Baltistan can be seen, in Malkki's description, as "occupy[ing] a problematic, liminal position in the national order of things."¹⁴⁸ The region has an ambiguous place within both Pakistan and the wider international sphere. Its in-between status stems from a complex web of colonialism, post-colonialism, globalization of resources, and even international security which makes the status of the region uncertain—as well as also geo-politically, economically, and militaristically strategic.¹⁴⁹ Gilgit-Baltistan is often seen as part of a global power struggle in which its ambiguous status is both an opportunity and a threat to countries like China, the United States, India and Pakistan. For example, a resident of Karimabad recalled an article in a national newspaper identifying the 2009 Order as a mere "covering, like a protection against the increasing influence of Chinese trade and its political interest."¹⁵⁰ Likewise, Sering argues that the 2009 Order "allows Pakistan to reap benefits from Gilgit-Baltistan's strategic location, in a time when China, her all-weather ally, is investing billions of dollars in the region."¹⁵¹

These beliefs, regardless of their truth, capture the challenges and concerns posed by the ambiguous status of Gilgit-Baltistan. They reveal the vulnerability and uncertainty of being excluded from the order of nations in some ways but connected in other ways. For example, although the Supreme Court recognizes the residents of Gilgit-Baltistan as citizens of Pakistan while the 2009 Order renames the region and provides for new institutions, people still lack genuine democratic and constitutional processes to voice discontent and resolve problems. There is also a tangible sense of injustice amongst people that Pakistan "reaps the benefits" from Gilgit-Baltistan while not including it formally within the state.

The region's ambiguous status illustrates how law constructs exclusion. The article first identifies Gilgit-Baltistan as legally and politically "liminal" then shows how liminality exacerbates marginalization, with particular implications for managing and governing natural resources, and finally, it explores how communities respond to their in-between status and mitigate its effects. The article also shows how thinking about Gilgit-Baltistan through the lens of liminality allows for a more critical analysis of legal empowerment scholarship. While it unsurprisingly confirms the nexus between exclusion, poverty and

¹⁴⁸ Malkki, *supra* note 20 at 2.

¹⁴⁹ Yaqoob Khan Bangash, "Three Forgotten Accessions: Gilgit, Hunza and Nagar" (2010) 38:1 *The Journal of Imperial and Commonwealth History* 117 (pointing out that two of the former Princely states, Hunza and Nagar, now apart of Gilgit-Baltistan have been claimed by the Kashmir Darbar and Chinese authorities as part of their empires at 134).

¹⁵⁰ He went on to say that "as Chinese investment increases, so is the American fear about the hegemony of China in this region. As a result the think tanks of Pakistan worked for six or seven months on an ordinance just to preserve the influence of Pakistan".

¹⁵¹ Sering, *supra* note 59 at 355.

law by showing how the region's status has radical impacts on the availability and enforceability of rights, it also raises questions about how to address such exclusion, especially in a globalized, cosmopolitan world. Liminality also challenges legal empowerment scholars to think about the implications for exclusion and empowerment where law denies people a place within the all-important category of the nation-state.¹⁵²

It is easy to feel skeptical about the ability of people at the grassroots level to resist their liminality and its effects in Gilgit-Baltistan. As the landslide exemplified, residents of the region are structurally positioned so as to be unable to contest their in-between status. Their exclusion from the National Assembly and the minimal power granted to the Legislative Assembly mean that political mobilization is very restrained. Moreover, lack of access to the Supreme Court, along with the pervasive challenges to accessing the legal system generally, also mean that the formal law is a limited strategy to contesting exclusion. However, this article shows how residents respond their exclusion and liminality through legal and non-legal modes of adaptation and contestation, and through local and global regimes, networks and discourses. As a result of the Kashmir conflict, the people of Gilgit-Baltistan are linked to a wider international network of United Nations resolutions, human rights discourses, and international scholarly and political commentaries.

Santos and Rodríguez-Garavito's subaltern cosmopolitan legality emphasizes the need to bridge the global/local, the legal/non-legal and the political. As such, it is a useful approach for examining the liminality that lies at these crossroads. Because of their ambiguous status and exclusion from regular political and legal channels, communities in Gilgit-Baltistan are forced to cross scales and engage in a range of tactics. In Hunza, these include filing cases before domestic courts, appealing to transnational faith-based organizations like the Aga Khan Foundation, and enhancing their own local political institutions. In particular, Village Organizations and LSOs have been central institutions in organizing communities and enabling them to link with other local and global actors. The community controlled hunting areas are a specific example of the successes, and persisting challenges, of initiatives that go beyond strictly legal/political/local/global categories.

Yet, many of these observations relate exclusively to Hunza, only one district of Gilgit-Baltistan. In particular, this article emphasizes how the Aga Khan's global institutions such as AKRSP or AKDN, along with its local organizations such as LSOs, provide "a forum for local participation in a global network".¹⁵³ These help residents of Hunza both adapt to and contest their liminality by providing financial, technical and political support.

¹⁵² Bruce, *supra* note 29 at 11.

¹⁵³ Steinberg, *supra* note 33 at 3.

Given the violence against Shia minorities in northern Pakistan, Ismaili institutions and transnational networks are especially important when the liminal status not only precludes legal and political avenues of protest, but where outright resistance is also dangerous.¹⁵⁴

Beyond Hunza, Santos and Rodríguez-Garavito's approach is more limited: first, does its focus on *resistance* accurately capture the responses in Gilgit-Baltistan? Do people actually resist their liminality or exclusion in creating alternate institutions, establishing local and transnational relations and working to enhance or create new industries? On the one hand, most of the responses discussed in the article may be seen as merely *accommodating* residents' liminal status rather than resisting it. Yet, on the other hand, resistance can be understood more broadly so as to include actions that enable people to adapt to contexts of exclusion and oppression, without active contestation. As Steve Pile notes, resistance is "a mode through which the symptoms of different power relations are diagnosed and ways are sought to get round them, or live through them, or to change them."¹⁵⁵ From this view, striving to develop a community-based mining company despite all the barriers is to resist categorical exclusion.

Second, the subaltern cosmopolitan legality largely focuses on global collective action through transnational networks and local or national struggles—yet it fails to capture the unique exclusion facing residents of Gilgit-Baltistan. While they define cosmopolitanism as subverting hierarchies and borders, the approach does not consider how people resist their exclusions when those hierarchies and borders, themselves, are uncertain, veiled or in flux.

Furthermore, as with any theory applied to "practice," liminality as a tool to explain the situation of Gilgit-Baltistan is incomplete. In particular, many applications of the theory also show how the in-between state is a source of potential power. For example, Malkki shows how Tutsi refugees subverted their forced liminality by "categorizing back."¹⁵⁶ Or Ribot shows more generally how "[a]mbiguity also plays an important role in overlapping systems of legitimacy, ie, where a plurality of legal, customary, or conventional notions of rights are used to make claims."¹⁵⁷ Further research in Gilgit-Baltistan is needed to determine if people actively take advantage of their liminality, and to test the common assumption that legal certainty is a requirement for empowerment. During the interviews and group discussions, no positive statements were made about the region's uncertain

¹⁵⁴ See *ibid.* at 133; "Sectarian violence", *The Dawn* (4 April 2012), The Dawn online: <<http://dawn.com/2012/04/04/sectarian-violence-2/>>.

¹⁵⁵ Steve Pile, "Opposition, Political Identities and Spaces of Resistance" in Steve Pile & Michael Keith, eds, *Geographies of Resistance* (London: Routledge, 1997) 1 at 3.

¹⁵⁶ Malkki, *supra* note 20 at 8.

¹⁵⁷ Ribot, *supra* note 122 at 163.

constitutional status. However, research into the independence movements may show that for some groups, the liminal position of the region benefits political aims. Or in regards to natural resources, there may be greater opportunities for access or ownership of resources where there are uncertainties over who has formal power. Comparing Hunza with other districts in Gilgit-Baltistan, or other regions elsewhere in Pakistan like Swat or Gwadar which were incorporated into Pakistan in the last fifty years—also with varying degrees of political representation at the federal level—would be helpful.

Moreover, is it a paradox to talk about liminality in a cosmopolitan world? As Beck argues, cosmopolitanism is seen as a blurring of boundaries and borders itself. Yet he also points out that they are as real as ever. For example, Beck states that a borderless world is envisioned “not for labour but for capital.”¹⁵⁸ Beck further points out that “people still think in terms of the ‘national outlook’, which suggests the nation-states as the universal and most important ‘containers’ within which human life is spent.”¹⁵⁹ The paper shows that amidst cosmopolitanism people still need—and thus look to—the traditional category of the nation-state for their legal, political and often economic empowerment despite also relying on global actors, processes and norms. Despite their limitations, both liminality and the approach of subaltern cosmopolitan legality help expose the multiple and often contradictory sources of exclusion. They also help articulate the plural forms of resistance that emerge in dynamic and diverse ways.



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¹⁵⁸ Beck, *supra* note 111 at 798.

¹⁵⁹ *Ibid.* at 794.