Constitutionalism and Ethnic Conflict: The Case of Pakistan

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The role of a constitution and a constitutional order in political development is generally not discussed in recent literature on the comparative politics of developing societies. It is more or less taken for granted that, in the division between developed and developing societies, the former are identified with mature institutions of legitimate order that provide political stability, continuity of political authority, and established rules for conflict settlement; the latter are characterized by the weakness or absence of such institutions. This is the analytical scheme in Huntington's now classic study, *Political Order in Changing Societies.*[1] In this work, there is no index entry for "constitution," "constitutionalism," or "constitutional order." The absence of such references was not considered anomalous, for it was assumed that constitutional practice and norms, designs and processes, were the defining characteristics of mature developed societies. Instead of examining the role of constitutions in the evolution of developing societies, comparative political studies like Huntington's focused on the polity's structural foundations and the functional nature of political organizations. Huntington claimed that the difference between developed and developing societies was not in the *form*, but rather in the *degree*, of government. Constitutionalism, the study of constitutions in the workings of a mature political system, in this view, rightly belongs to examining the various *forms* of political systems available in the modern world. Conversely, his study implied, efficacy or *degree* of government did not follow from the adoption of a constitution in the making of political order in a developing society.

Recent events in Europe, beginning with the disintegration of the Soviet Union and Yugoslavia, raise once again questions of ethnicity, nationalism, and political development. For much of the second half of the twentieth century, these were seen as problems pertinent to the developing societies of Africa, Asia, and South America and only of comparative his-

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torical interest to mature societies. The resurfacing of "national" problems within Europe and Canada suggests that constitutional order cannot be taken for granted as a measure of mature societies, nor can issues of constitutional norms, designs, and processes be separated from issues of institution building as the priority of developing societies. More study is required of the place of constitutional practice in a polity's evolution, of the contribution of constitutional norms to strengthening the political structures of developing societies, and of constitutional arrangements for democratic development in ethnically plural societies. The purpose of this paper is to examine through a case study what relationship, if any, may exist between constitutionalism, i.e., the idea of constitution in the making of a democratic society, and ethnic conflict in a biethnic or multiethnic society.

Constitutionalism as a mechanism of ethnic conflict settlement is distinct from the method of integrating or assimilating ethnic groups into a higher order of political identity. Integration implies a movement of ethnic group(s) from "outside" or the "periphery" of a political community to "inside," where the "inside" represents the established political order. It suggests that institutions, reflecting the values, preferences, and norms of a dominant ethnic group, class, or citizenry, already exist to enable the process by which those "outside" the political community are brought "inside." Typical of the nature of integration–assimilation is the process by which immigrants of different ethnic backgrounds are "schooled" into the American "melting pot," given French citizenship with due encouragement to adopt French culture, given Hebrew lessons in Israel, or invited to contribute to the "multicultural" mix of Canada.

This method appears to have worked successfully in states with mature political orders (the United States), where the cultural identity of a state is firmly rooted in history (France), or where the state is a product of immigrants settling a territory (Israel). But in states that are multiethnic in their *initial* construction, as most postcolonial states are with their territories having been demarcated by colonial powers, such integration would scarcely be distinguishable from a policy of control by a dominant ethnic group, for example the Kikuyu in Kenya, Sunni Muslims in Iraq, or Malay *bumiputra* (sons of the soil) in Malaysia. In contrast, constitutionalism in a multiethnic state represents an effort to design a political order in which each constituent ethnic group is viewed as an integral part of that society, where no one ethnic group takes precedence over other(s), and where the social contract binding the different groups together is legitimized by a common set of values either historically found, as within Arab-Islamic societies, or deliberately constructed, as in modern India.

The experience of Pakistan provides a good case study for examining the linkage between constitutionalism and ethnic conflict. The fundamental question that confronted politicians engaged in constitution making in Pakistan, a predominantly Muslim society where the ethnic identities of the linguistically diverse population were subordinated to the common attachment to Islam, was whether Pakistan would be a "Muslim majority"

secularly oriented state or an "Islamic state." This question is as germane today for the Muslim world (which stretches from Morocco to Indonesia, from the Central Asian republics of the former Soviet Union to sub-Saharan Africa) as it was in the 1950s when the question first surfaced in Pakistan. The failure to answer this question successfully eventually contributed to the tearing apart of the country in 1971 along ethnic lines.

One of the main lessons of Pakistan's experience is that a political community (state) must reflect in its constitutional arrangement the core value(s)—in this case Islam—of its majority population. The debate in Pakistan on the nature of the Islamic state in modern times anticipated the contemporary struggle, since Iran's Islamic revolution of 1979, between modernists and traditionalists within the Muslim world.[2] Events in Algeria, with the repression of the Islamic Salvation Front (FIS) after its electoral success in the opening round of the December 1991 elections, illustrate the extent to which such debate may become bloody. A political order that is not built on the shared values of the population lacks legitimacy, is insecure and, therefore, ultimately held together only by force. Under such circumstances, a biethnic or multiethnic state, such as Pakistan, will tend to fragment along ethnic lines as ethnic loyalty assumes a greater importance than loyalty to a larger political community. A successful constitutional order is a preemption of ethnic conflict, which can cause the disintegration of a political community. Accommodation of ethnicity within the larger framework of an ethnically pluralist state presupposes a social contract in the absence of which, as the case of Pakistan illustrates, force may be used for an indefinite period to keep the political community together. But, the eventual dissolution of that community may not be averted.

The constitutional history of Pakistan has been turbulent.[3] Three attempts at constitution making and rule by constitutionally mandated governments have been punctuated by military coups and martial law regimes. The constitutions of 1956 and 1962 were abrogated by the military coups of 1958 and 1969. The constitution of 1973 was amended by the military regime that ousted Prime Minister Bhutto in 1977. It remains in effect as a transition to civilian government was completed after the death of the military strongman General Zia ul-Haq in August 1988.

Ever since the establishment of Pakistan in 1947, the country has been pulled in different directions by regional forces. Questions regarding its viability have accompanied every analysis of its political future.[4] The unsettled nature of its politics is exemplified by its unenviable history of civil war and dismemberment in 1971, when East Pakistan broke away to acquire separate statehood as Bangladesh, and the hanging of an elected prime minister, Zulfikar Ali Bhutto, by the military in 1979. These two events indicate the intensity of ethnic conflict that has undermined political order within Pakistan and the perils that accompany the struggle for democracy in developing societies. Hence, Pakistan's experience of struggling with problems of ethnicity and the challenge of establishing a constitutional order provide an interesting case study.

It is appropriate here to define *ethnic conflict* and *ethnicity*. Ethnic conflict occurs within the territorial boundaries of a state. Such conflict may spill across national boundaries, as the ethnic conflict in Pakistan did before the establishment of Bangladesh and as occurred in a number of countries in Africa. Ethnic conflict may also potentially be irredentist, as with the Kurds of Turkey, Iraq, and Iran threatening to dismember more than one state in a region. *Ethnicity* is collective identity within which individuals situate themselves to strengthen their sense of belonging and self-esteem.[5] It connotes a community in the sense that Smith defines *ethnie* or ethnic community as "a social group whose members share a sense of common origins, claim a common and distinctive history and destiny, possess one or more distinctive characteristics, and feel a sense of collective uniqueness and solidarity."[6]

The problem with Smith's definition of *ethnic community* is that it also defines nation. Here Worsley's observation in distinguishing between *ethnie* and *nation* is useful. According to Worsley, nationalism is another form of ethnicity, but special in the sense that it is "the institutionalization of one particular ethnic identity by attaching it to the State."[7] Discussion of nation and nationalism is inseparable from politics and, hence, the subject of power. It is the drive for power through the establishment of a state that transforms *ethnicity* into *nationalism*. It is necessary to keep this small but important distinction in perspective, since the problem of ethnicity is mostly a problem in a multiethnic political order that, if not constitutionally resolved, may threaten the viability of that order, as the case of Pakistan illustrates.

The Making of Pakistan

Pakistan was made in a great hurry. Only seven years passed between the adoption of the Lahore Resolution in March 1940, when a two-state solution for the future of India was presented by the Muslim League (ML), and the passage of the Indian Independence Act of July 1947 by the British Parliament. During these seven years, Muhammad Ali Jinnah and the ML mobilized Muslim sentiment by arguing that Muslims of India, because of their religion and culture, constituted a *separate nation*, and that they required a separate state so that they could progress, unhindered by the majority *Hindu nation*. This argument was historically inaccurate and unsupported by history and ethnic reality, but it seized a great many Muslims, especially in central India, where they constituted a minority.

India and Pakistan acquired their independence through a constitutional transfer of power and not through revolutionary insurgency. In this sense, they stood for the continuity of the British-initiated constitutional process to provide for responsible government, however limited in practice, with the Government of India Act of 1919. The respective constituent assemblies set up under the Independence Act were responsible for preparing new constitutions and, in the interim, functioned as federal legislative

assemblies within the jurisdiction of the Government of India Act of 1935. The leaders of both the Congress Party and the ML were constitutionalists, lawyers by training, and experienced in the constitutional evolution of undivided India under the British. Yet the subsequent history of the two constituent assemblies reveal in one case (Pakistan) how little reflection had gone into the making of a constitutional order, and in the other (India) how much thought had been given to constitutional issues prior to achieving independence. It took the constituent assembly of India twenty-seven months to prepare and enact the Indian constitution, a document that built upon the constitutional experience of British India. In contrast, the constituent assembly of Pakistan arrived at a political gridlock and was dissolved by the governor-general, Ghulam Mohammed, in October 1954. It took another two years for a second constituent assembly to draft a constitution for Pakistan, which two years later in 1958 was abrogated by the military government of General Ayub Khan.

Pakistan's tormented political history, when contrasted with the relatively healthy development of representative democracy in India, points to the initial failure of constitutionalism. Two important and related consequences of this failure were the entrenchment of the viceregal system and the widening of ethnic and regional differences.

Transference of the Viceregal System

The transfer of power meant that the "steel frame" of the British administration in undivided India—the Indian civil service and the army upon which the viceregal system rested—were not dismantled but rather inherited by the successor states. In independent India, the institutions of the civil service and the army were provided with a new legitimacy, after the enactment of the constitution in November 1949, and were brought under the supervision of elected politicians. In Pakistan, however, as constitutionalism floundered the viceregal system, with its attendant institutions of civil and military services, flourished.

The main characteristic of the viceregal system, according to K. B. Sayeed, was that "matters pertaining to the Central Government were under the control of the Governor-General in Council."[8] In other words, the governor-general could overrule the majority of the legislature. The Government of India Act of 1935 provided extensive executive powers to the governor-general, who was unchecked by the federal legislative assembly—he answered only to the British parliament through the secretary of state for India, and his office represented the retention of dyarchy in the Government of India Act signifying the colonial status of India under the Crown.[9] While the Independence Act of 1947 placed constitutional and legislative responsibility in the constituent assembly, it retained the full plenitude of reserved powers as described in the Government of India Act with the representative of the Crown until a new constitution

was enacted. Jinnah's choice to be governor-general and head of state, instead of prime minister and head of government, had the unintended consequence of politically reinforcing the viceregal system. However, Jinnah believed, as he indicated in early 1948, that the viceregal system would last only until a new constitution was enacted within "eighteen months or two years."[10]

Jinnah's authority was ultimately extralegal. He was the *Quaid-i-Azam*, the Great Leader, a title bestowed by Indian Muslims and later adopted via a motion in Pakistan's constituent assembly. His charismatic authority could not be passed on. Unfortunately, the inability of political leaders to reach a constitutional consensus entrenched the negative features of the viceregal system and permitted the unchecked growth of the civil–military bureaucracy under the protective autocratic powers of the viceregal head of state. The dismissal of Khawaja Nazimuddin's ministry in April 1953, following anti-Ahmadiya riots in Punjab, and the dissolution of the constituent assembly in October 1954 by Governor-General Ghulam Mohammed were demonstrations of viceregal powers and symptomatic of the increasing control of the levers of government by the civil–military bureaucracy. Both Ghulam Mohammed and Iskander Mirza, as occupants of the viceregal office, came from the civil and military services of British India's imperial administration. Their contempt for the political process and politicians was shared by Pakistan's civil–military elite and reinforced by the politicians' failure and indecision to deal with public disorder, as in the anti-Ahmadiya agitations, and the inability to reach a constitutional consensus. Ghulam Mohammed dissolved the first constituent assembly, and Iskander Mirza decided to remove the politicians and end the charade of parliamentary government by inviting the army to take power in October 1958.

The entrenchment of the civil–military bureaucracy in the administration of the country meant, in practical terms, the marginalization of regional political representation at the center and the increasing dominance of one region and ethnic group over the rest. Punjab provided the largest cadre of military recruits among Muslims in British India, and this pattern continued in Pakistan.[11] Similarly, senior civil servants were from Punjab or from the *muhajir* group (Muslim emigrants from post-1947 India whose ethnic origins were outside of the territorially demarcated boundaries of the new state). In terms of population, the province of East Bengal, renamed East Pakistan, constituted more than half of Pakistan but, at the time of partition, had less than 1 percent of representation in what became the Pakistan army.[12] In the higher ranks of the central secretariat, there were no civil servants from East Pakistan.[13] The bulk of the army, with its officer corps amounting to 77 percent, came from Punjab, and nearly 20 percent came from the North West Frontier Province (NWFP).[14] Hence, the provision of government during the first decade through the viceregal system supported by the civil–military bureaucracy, and then after 1958 with the first military administration to be repeated following the coups of

1969 and 1977, came to be viewed (justifiably) by the rest of the country as Punjabi hegemony over all other ethnic groups.

Muslim Nationalism

Appeal to Islam mobilized the sentiments of Indian Muslims living in an undivided British India for a separate state. In the tumult of the Pakistan Movement emotions were flexed, but no detailed thought was given to the nature of the state that would result. The movement's leaders had received a liberal education and were generally Western oriented in their political training. It was of them and their counterparts in other parts of the Muslim world under European rule that Sir Hamilton Gibb would write, "[t]he most remarkable feature of the Moslem world in these early decades of the twentieth century is not that it is becoming westernized, but that it desires to be westernized."[15]

Jinnah was the model of this secular-trained group of a new generation of Muslims for whom Muslim nationalism represented a cultural identity and who did not necessarily accept or comprehend fully the idea and principle of an Islamic state that would follow logically the demand for a Muslim-majority state once such a state was established. Their success rested on the breadth of Muslim appeal, allowing Muslims of differing ethnic and political backgrounds to unite behind the ambiguity of Muslim nationalism within India. Their demand was for a state wherein Muslims of undivided India would be the majority once the British departed. The distinction between a Muslim-majority state and an Islamic state in the postindependence period became one of the main divisive issues in constitution making.[16]

The compelling sentiment behind the idea of Muslim nationalism was that the Muslims of undivided India could not trust a non-Muslim majority to protect their interests. It was this sentiment presented positively in nationalist terms as a demand of a community of people defined by religion, in this case Islam, that worked to bind the same people who otherwise were separated from each other by ethnicity and local or regional cultures. The appeal of Islam lies in its universality, in its emphasis on the ideals of justice and the repudiation of all differences that subvert the potential unity of believers in the message of Prophet Muhammad. Once this appeal was fully mobilized in the Indian context by the ML during the final decade of the British rule, it gained a following sufficient to compel the partition of the subcontinent. Behind this appeal was more than half a century of Muslim politics of separateness conducted under various conditions of colonial India's awakening to the demands of majority representation and national independence.[17] While the politics of separateness and the appeal of Islam brought a majority of Indian Muslims together to establish Pakistan, these factors blurred only temporarily the different views of modernists and traditionalists regarding what should be the constitutional framework of the new state.

Constitutional Dilemma

To suggest that, in part or in whole, the solution to the problem of ethnic conflict should be sought in constitutionalism means presupposing that modern state institutions and the requirements of democracy require these to be situated within a system of law that is consistent with the society's traditions, norms, and practices. It may be objected that what is traditional, especially in non-European developing societies, does not lend itself to the idea associated with constitutional and democratic governments as found in developed societies of Western Europe and North America. While this objection may seem sound, a closer and more detailed examination will show that the practice of democracy can only be successful and sustainable in a society if it is consistent with the fundamental normative value of that society. It is beyond the scope of this paper, however, to deal with this subject at length. I simply state this proposition here to make the point that the idea of constitutionalism must be integrated in the study of developing societies in order to rediscover how it contributes to a conciliatory process of political participation and pluralism in a society that might fragment along ethnic lines.

In the writings of Carl Friedrich, constitutionalism as the major theme of political science found its widest and most useful expression. His major text defined one aspect of constitutionalism simply as "a refinement of ordinary government."[18] The notion of refinement meant limiting the authority of those in power, or in control of the state, in favor of an individual's right to security of person and property. The process of refining ordinary government is, as he discussed at length, an evolutionary and a historical process. What is interesting and useful in his discussion for our purpose is the close connection he traced between the idea and development of constitutionalism in the West and Christianity.

Friedrich viewed the idea of constitutionalism as having universal validity. He recognized, consequently, the contradiction in his assertion that "modern constitutionalism is part of Christian culture."[19] He explained, for instance in *Transcendent Justice*,[20] that in pointing out the "cultural and ideational context of constitutionalism," he was showing how the evolution of Western constitutionalism was rooted in its religiocultural history without denying the universal validity of constitutionalism as a political idea. On the contrary, Friedrich's work hints at the problem of extending the experience of Western constitutionalism outside the West to non-European cultures. In other words, it may be restated without harming his argument that the practice of Western constitutionalism is not readily exportable, or, even if it is, that it must be asked whether such an export is desirable when the task for non-European societies is to work out the principles of constitutional authority within the context of their own culture.

The constitution, in the theory and practice of modern government, is the fundamental law of a state and is superior to all other institutions it creates. It is, as Wheare commented, "prior in time to the legislature, but even

if it is not, it is logically prior."[21] In its functional aspect, as Friedrich described, it legitimates authority even as it restricts the powers of that authority, be it executive or legislative.[22] But a constitution is not merely a dry text describing the mechanics of government, of power sharing, and the rules of conflict settlement: It represents most importantly a society's core or center in the sense that Shils spoke about all societies possessing a core.[23] And this aspect of a constitution being a society's core means that it reflects that society's essential values. In particular, it assumes those values that are religious and transcendent as the basis of the political order that will assure good government. It is only good government, as moral philosphers have claimed, that ultimately can demand obedience from people, especially those in the minority, over which it has authority. Here Wheare's notion of a constitution's moral authority reflects somewhat the larger theme of Friedrich's idea of constitutionalism. Wheare wrote:

> The moral authority which a constitution claims and can claim is related very closely, therefore, to the structure of the community for which it purports to provide the foundations of law and order. It must embody forms of government in which a community believes; it must be adapted to their capacity for government. . . . The whole process of so drafting a Constitution that it provides the best government of which a community is capable must be based upon the social forces operating in the community.[24]

The constitutional debate surrounding the nature of the Pakistani state, whether it should be Islamic or not, touched upon fundamental questions. Islamic modernism is, as Gibb wrote, "primarily a function of Western liberalism."[25] The largely unlettered Muslim masses were untouched by modern liberal values, and Islam in India at the populist level remained ritualistic, eclectic, and nonlegalistic. Modernists carefully crafted support for Pakistan by avoiding any particular exegesis of Islam. But once the state was established, debate with the ulama (Muslim scholars) on the finer points of Islamic law and jurisprudence could not be avoided. In this debate, modernists were at a disadvantage. Traditionalists, despite their orthodoxy and legalistic approach to Islam, were socially and culturally closer to the masses and on matters of religious interpretation were held in greater respect than were modernists. Moreover, without traditionalists galvanizing the Muslim masses behind Jinnah and the ML, modernists would have remained a small group of urban professionals, and their idea of Pakistan based on a "two nation theory" most likely would have ended as a footnote in the history of India's struggle for independence.[26]

   The idea of a secular-oriented Muslim state was not relevant to the ulama and their supporters. In the traditional-orthodox view, a Muslim-majority state is legitimate when it is based on the laws of the Qur'an, the Shari'ah, and is governed according to the principles of Islam as described by the consensus of the classical jurists.[27] Representing the ulama's views

in the constituent assembly, Maulana Shabbir Ahmad Usmani stated: "The Islamic State means a State which is run on the exalted principles of Islam. . . . It can only be run by those who believe in those principles."[28] The man who established himself as the most learned exponent of the meaning of Islamic state was Mawlana Mawdudi, the leader of the Jama'at-i-Islami. In Mawdudi's integralist view of Islam and state, Islam philosophically is

> the very antithesis of secular Western democracy. The philosophical foundation of Western democracy is the sovereignty of the people. . . . Law-making is their prerogative and legislation must correspond to the mood and temper of their opinion. Islam . . . altogether repudiates the philosophy of popular sovereignty and rears its polity on the foundation of the sovereignty of God and the vicegerency (*Khilafat*) of man.[29]

If we set aside the discussion here of the classical basis of Islamic jurisprudence that informed Mawdudi's constitutional thought and upon which he expanded during the course of his political activism, we will find that in his insistence on the "sovereignty of God" taking absolute precedence over any notion of popular sovereignty resided the idea of limiting the authority of those in power by a higher—and sacred—authority.[30] In another section of *The Islamic Law and Constitution,* from which the above quote is taken, Mawdudi stated:

> To say that such a state [i.e. Islamic] possesses absolute sovereignty (except with reference to other states of the world) would be a contradiction in terms. No doubt, an Islamic State is a sovereign state in the real sense of this term vis-à-vis the other states of the world, but if it tries to assert its sovereignty vis-à-vis the commands of God and His Messenger, this will amount to the clear negation of its Islamic character.[31]

The idea of limiting or restricting the powers of those in authority in contemporary independent Muslim-majority states is shared by most modern Islamic thinkers. Hasan Turabi, a political leader and theorist of the Sudanese National Islamic Front, has noted that the basic principle underlying an Islamic government is that it is limited. In his words: "The jurists and the sharia limit government."[32] To limit the powers of those in control of the state means both to protect the society (i.e., the people) from the potential tyranny and injustice of those in power and to acknowledge that authority, in its limited sense as delegated by God, resides in the people. Authority is limited because legitimate authority is circumscribed by God. Turabi states: "Islam exists in society as a matter of norms and law" and "society is the primary institution in Islam, not the state."[33] And according to Mawdudi, "authority is delegated to the Muslim community of the State as a whole and not to any particular individual or group";

hence, "government can be formed only with the consent of all the Muslims or their majority and can function and remain in power only as long as it enjoys their confidence."[34] As these statements illustrate, Turabi and Mawdudi both reached a significant conclusion: Islamic constitutionalism is representative, limiting, and consensual.

For modernist leaders of the Pakistan Movement, Muslim identity as the basis of Muslim nationalism was less a matter of Islam as a legal system and more an issue of culture. In their liberal reconstruction of Islamic thought, following Muhammad Iqbal, they viewed the modern Western world of science and politics as fully compatible with Islam. A Muslim state based on republican principles and democratic representation, Iqbal wrote, is "thoroughly consistent with the spirit of Islam" and "a necessity in view of the new forces that are set free in the world of Islam."[35] But such views, apart from appearing apologetic, lacked the vigor of a clearly elucidated philosophy combining Islamic jurisprudence with modern political theory and demonstrating how, in practice, a traditionalist view of an Islamic state could be reconciled with modern representative democracy and, moreover, how any such modernist reconciliation would differ substantially from the constitutional thinking of a Mawdudi. While such a system of political thought remains to be constructed, and it may only be arrived at through trial and error, what Muslim modernists offered in constitutional terms could not be reconciled with the sentiments that moved the Muslims of undivided India to partition a subcontinent.

Jinnah's secular views pointed toward a constitutional government based on the Westminster model, not much different from what was established in neighboring India, with perhaps sufficient wrinkles on the margins to give it a Muslim flavor. His death in September 1948 and the assassination of Liaquat Ali Khan, the first prime minister and Jinnah's closest deputy, in October 1951, were crippling to the constitution-making process. The contrast with the constitutional development in India is obvious, for Nehru, Azad, Patel, and other national leaders of the independence movement were able to steer the process of constitution making toward success in a remarkably short period. In India, a broad consensus on the secular nature of the state, parliamentary government, federalism, and social issues had evolved over a period going back to the Nehru Report of 1928.[36] Such a consensus was missing in Pakistan, and it is doubtful whether Jinnah and Liaquat Ali Khan would have been able to construct a similar consensus even if they had lived longer. But their early demises jeopardized the process and left a political vacancy that could not be filled.

Before his untimely death, Liaquat Ali Khan presented the Objectives Resolution, a document that laid out the constitutional principles. It sought a middle ground between Jinnah's secular orientation and the modernists in the civil–military bureaucracy, and the ulama and their traditional–conservative supporters. It recognized the ulama's demand for acknowledging God as Sovereign without conceding the principle of parliamentary

sovereignty, by pointing out that God's sovereignty was vested in the people through their elected representatives. The Objectives Resolution was subsequently adopted as a preamble to the constitutions of 1956, 1962, and 1973. As a document of compromise, its authors tried to make it reflect all shades of opinions, and thus what was left unstated was more important than what was stated.[37] There was no mention of the Shari'ah as the basis of the constitution or of making the Qur'an the fundamental source of all laws. Silence on these critical issues meant, reassuringly to the modernists, that the legislative function of the state would not be circumscribed by the Shari'ah as interpreted by the ulama. For the traditionalists, this silence was a betrayal of the Pakistan Movement.

As a preamble, the Objectives Resolution was a directive principle and not part of the constitution enforceable by the courts. The major Islamic provision in the constitution of 1956, retained in subsequent constitutions, was the article laying down the principle that no law repugnant to the Qur'an and the Sunnah (the tradition of the Prophet) would be enacted and that existing laws would be brought into conformity with Islamic injunctions. This was politically the maximum acceptable to modernists, a declaration of Islamic intent, while the state and its judicial institutions continued to function within the civil and criminal codes inherited from the British. The modernist compromise rested on a narrow political base and was vulnerable to the sentiments of the Muslim majority. For traditionalists, the goal remained to place the constitution within the framework of the Shari'ah with all of its attendant legislative and judicial implications.

Appeal to Islam by political leaders in a Muslim-majority country, predominantly traditional and conservative, is a necessary ritual to reassure the population that political rule (*siyāsah*) is in broad conformity with the religious prescriptions of traditional–orthodox Muslims. The use of Islam to legitimize completely contradictory objectives has been common. In the constitutional debate within Pakistan, all parties, except such openly secular ones as the Awami League (AL) in pre-1971 East Pakistan, have sought to cast their position as Islamic. But the differences between modernists and traditionalists have remained wide, and only under the military regime of General Zia ul-Haq did the latter begin to gain ground over the former. Unlike the two previous military regimes, General Zia's regime declared openly its objective to accomplish the "Islamization" of the Pakistani state as proposed by the Jama'at-i-Islami. This was begun with amendments to the 1973 constitution that established the Islamic penal code, set up a federal Shari'ah court to oversee the Islamization of the judicial system and hear appeals from lower courts, and established an Islamic university to train students in Islamic law. The process of Islamization culminated with the promulgation of an ordinance by the president, General Zia ul-Haq, in June 1988 declaring the Shari'ah to be the fundamental law of the country.[38] This ordinance was not ratified, however, before his death in August 1988.

Civil–Military Oligarchy

The Pakistan Movement did not receive uniform support from the regions of India that became Pakistan. Its staunchest supporters were the Muslims of central India who had moved to Pakistan as *muhājirs* (refugees). The Muslims of East Bengal and their leaders were strong supporters, but support in Punjab came late, and in the NWFP the Pathan leader Khan Abdul Ghaffar Khan was opposed to Jinnah and a close ally of Mahatma Gandhi and the nationalist Congress. In independent Pakistan, as Alavi notes, there was "no automatic and universal translation of the attribute of *Muslim faith* or *Muslim by descent* to an automatic assertion of Muslim ethnic identity."[39] Once the issue of faith was set aside, national politics invariably came to reflect the ethnic cleavages within the country.

National integration was made difficult by the country's physical division and the absence of a common language. Urdu was the language of Muslims of central India, and Jinnah's declaration making it Pakistan's national language sparked a vernacular movement in East Bengal. It sowed the seeds of ethnic Bengali nationalism that would eventually, when added to other grievances, lead to the separatist movement among the Bengalis and the making of Bangladesh. But most importantly, the growth and persistence of ethnic nationalism in Pakistan reflected the weakness of representation at the center in a federal system.

The long hiatus between independence and the enactment of the first constitution in 1956 entrenched the dominant role of civil–military bureaucracy in state institutions. Unrepresentative government by an oligarchy of senior civil–military administrators alienated the people from national politics. The dominant role of Punjab within this oligarchy, in association with the majority of the Urdu-speaking refugees from India who settled in West Pakistan, was resented by the rest of the country. It was in this context of maintaining or perpetuating domination by one province and ethnic group that all subsequent schemes of East–West representation prior to 1971 were proposed by the civil–military elite and its allies, and repeatedly found unacceptable by the majority. Representation according to population meant that East Bengal (formally designated East Pakistan in 1955), which contained the largest segment of the population, would have proportionally the largest representation in the federal parliament.

Unable to deny this in principle, Punjabi politicians, with the support of civil–military oligarchs, sought to eviscerate East Bengal's parliamentary majority. The One Unit scheme of 1955, which was introduced by the governor-general to amalgamate the four western provinces into one political and administrative wing and place East and West Pakistan on an equal basis of representation, was designed to deny East Pakistan its majority population status.[40] This scheme was also contrary to the spirit of Islamic brotherhood, of the claim that Muslims—by faith and not ethnicity—constituted a nation, and was the basis for the partition of India. The One Unit idea was retained in the 1962 constitution and contributed to the increasing sense of

political disparity among the Bengali vernacular elite. In the 1973 constitution that followed the break-up of Pakistan, the federal system was restored by dissolving the One Unit scheme.

The Ayub Era

The period 1958-69 is known as the Ayub era, after Pakistan's first military ruler Ayub Khan. This era ended the initial postindependence experience with parliamentary democracy and marked the beginning of the pattern of successive military takeovers of the government. Ayub Khan and his associates engaged, relatively speaking, in the most open attempt to govern the country on secular principles and devise a constitution on modernist lines. The eventual result of his decade-long rule is instructive for a Muslim society, such as Pakistan, where the longing of the populace for democracy cannot be separated easily from an equally strong longing for a sociopolitical order that fits its conception of Islam as ultimately a divinely ordained and just system of rule.

The military "revolution" of October 1958 that brought General Ayub Khan to power as Pakistan's first military ruler was a peaceful affair. Civilian politicians, including the last governor-general, Iskander Mirza, had become discredited across the country. For ten years politicians had schemed and maneuvered to hold on to power without calling an election as they became increasingly unrepresentative.[41] The sense of alienation between the two halves of Pakistan, present since independence, increased with the constitution of 1956. East Pakistan viewed this document as a permanent arrangement to deny Bengalis their majority in the national parliament. It was a feeling that could not be countered. Moreover, the political arrangement within the country continued to disclose the fact that effective power was in the hands of the civil–military bureaucracy. The failure of the ML to institutionalize its popular power base across the country, to commit itself to a clearly enunciated objective of establishing a democratic system of government based upon the popular will of the people, and to reform the economy as the Indian National Congress had committed itself to in independent India, meant the inherited and undemocratic viceregal system continued to impede the development of representative democracy. It also meant that the new state would not have a political party with national support across the physically divided country.

The failure of ML in both constitution making and institution building was not accidental. As a political party of Indian Muslims, especially of the landed class, its primary focus during the period leading to the partition of India was to protect Muslim interests from the electoral power of the Hindu majority. It achieved this by creating Muslim-majority Pakistan, where Muslims from the Hindu-majority provinces of undivided India could move permanently. Yet in the new situation, the ML continued to be the party of the dominant class, the landed aristocracy, and the civil–military bureaucracy, working to preserve their power and status in the center

against popular representation in the provinces, especially that of East Pakistan. The pattern was set by Jinnah's dismissal of the NWFP's provincial government under Khan Sahib soon after independence and was repeated later on when he dismissed M. A. Khuhro, chief minister of Sindh. As Omar Noman observed, "The leaders from the Muslim minority provinces of India were thus back to square one. Before Partition they had sought constitutional safeguards against Hindu majority rule. Now they sought protection from a group of Bengali Muslims."[42]

The 1956 constitution made the two halves of Pakistan, despite their imbalance in population, equal in terms of representation in the national assembly. Yet there was fear within the civil–military bureaucracy that the Bengalis could win a majority in the general election that was planned for early 1959. The military preempted any possibility of such development by seizing power and ending the decade-long effort in the uncertainties of parliamentary democracy and the politics of center versus provinces within a federal structure.[43] The main character of the new arrangement under Ayub Khan for the next decade was a strong central government dominating the two halves of the country under a strong executive authority. It was a throwback to the nature of executive government in British India resting on the steel frame of the civil service and the armed forces.

After more than a quarter century since Ayub Khan was forced from office by popular demonstrations in 1969, there is an increasingly favorable reassessment of his rule within Pakistan. As Altaf Gauhar notes in his recent biography of Ayub Khan, Pakistan's first military ruler was relatively benign, and his attempt to establish a strong executive and centralized system of government was reminiscent of much of Muslim history, in which the opinion that tyranny is preferable to anarchy became part of common political wisdom.[44] Ayub Khan's priorities were to bring about the modernization of the economy, assist in the development of industry and commerce, invest in infrastructural development, create a middle class that would withstand the divisiveness of parliamentary politics, and ensure that the country could move forward into the modern industrial age from a largely feudal economy. He was skeptical about the people's ability to achieve the goals of modernization given the hostile external and internal conditions faced by a society burdened by poverty, superstition, and illiteracy. As a Sandhurst-trained officer in British India, Ayub Khan imbibed the professional culture of keeping the army separate from politics and viewing politicians with distaste, while believing that the military was the ultimate guarantor of the country's independence and honor.

There was a palpable sense of relief in the country, and no serious protest, when Ayub Khan took control of the central administration and abrogated the 1956 constitution.[45] He began his decade-long rule with wide support domestically and internationally. His government became one of the first among the developing countries to test the validity of the World Bank's growth model based on the "trickle-down" theory of creating wealth at the top that would eventually find its way to the bottom. In retrospect,

Ayub Khan had considerable success in bringing about a top-down economic development. His was the first government in Pakistan that brought rural electrification, built roads and railways, constructed power grids and hydroelectric facilities, and saw growth in real income. But critics of his policies, those in his government and those who watched from outside, point to the unequal distribution of income, the increasing concentration of industrial and commercial wealth among a few families, the preoccupation with aggregate economic indices at the expense of investment in human resources through a greater allocation of funds for education and health— all of which eventually undermined the gains of his economic policies.[46]

But the fatal flaw of his regime was in the constitutional scheme he designed: A concentration of executive power resting on a narrow base of an electoral college of eighty thousand basic democrats. Sayeed called the Ayub system of government a constitutional autocracy, a viceregal system behind a facade of limited democracy.[47] Since Ayub Khan viewed parliamentary democracy as inimical to Pakistan's unity, he sought political legitimacy through a controlled and limited political system. In his scheme, democracy was indirect, as the people elected members at the local village and town level (basic democrats) who would in turn elect members to the national and provincial assemblies and the president. In Ayub's view, limited or guided democracy was necessitated by the extent of poverty and illiteracy. Guided democracy would provide for a stable and united government, a strong leadership at the center, and an efficient and competent national administration that could bring about the country's modernization.

The 1962 constitution was designed for a presidential system more akin to de Gaulle's Fifth Republic than the American system of checks and balances. As Ayub Khan stated in his memoir, "The President should be made the final custodian of power on the country's behalf and should be able to put things right both in the provinces and the centre should they go wrong. Laws should be operative only if certified by the President except in cases where they are passed by three-fourths majority. No change in constitution should be made unless agreed to by the President."[48] The Islamic provisions in the constitution were minimum. Pakistan was declared to be a republic when the constitution was enacted on 1 March 1962 under presidential authority; it was later amended to define Pakistan as an "Islamic Republic" in order to accommodate the sentiment of the people. The major Islamic provision remained, as in the previous constitution of 1956, to ensure that no legislation "repugnant to Islam" be passed. The only other, and largely cosmetic, provision was the creation of the Advisory Council of Islamic Ideology.

This council was somewhat similar to, though more broadly representative than, the Board of Ulema of the pre-1954 constitutional discussions. The council's role was of a limited nature: To advise the government in the legislative process on the "repugnancy" clause, to reconcile existing laws with the principles of Islam, and to engage in rethinking the teachings of

Islam in keeping with the thrust of modern science and philosophy. The aspect of rethinking and reinterpreting Islam remains the modernist position to which Ayub Khan subscribed, and for that purpose the martial law administration set up an Institute of Islamic Research in Karachi in September 1959. Both the council and the institute were expected to provide a modern rational approach to Islam, in contrast to the traditionalist one of the ulema. Ayub Khan appointed as council members "not only those persons who possessed a knowledge of Islam but also those who understood the economic, political, legal, and administrative problems of the country so that the requirements of Islam and the requirements of the time and circumstances could be harmonized."[49] But given his broadly secular approach to government—mostly concerned with economic development—the council and the institute remained marginal and their deliberations outside public view so as not to provide ammunition to the religious opposition.

It is a moot question whether the 1962 constitution could have survived the author if he had chosen to step aside as president without seeking reelection when his term expired in March 1965. The main aspects of the 1962 constitution were the presidential system and the method of limited or guided democracy. These ideas won Ayub Khan some important support among a small group of such modernist thinkers as Ghulam Ahmad Parwez, author of several books on Islam; former notables who had served Jinnah, such as the Ahmadiya leader, Sir Muhammad Zafarullah Khan; and members of the business class and the civil service. In the West, Ayub Khan was viewed as a modernizing soldier-statesman of great appeal and wisdom. Huntington wrote that more "than any political leader in a modernizing country after World War II, Ayub Khan came close to filling the role of a Solon."[50]

However, the religious and secular opposition in West Pakistan and the secular opposition in East Pakistan remained alienated.[51] The regime came to be identified with one man, and Ayub Khan, as would happen with the Shah of Iran some years later, was required to take responsibility for political discontent since he took credit for economic developments he had initiated. By repressing parliamentary democracy he exacerbated ethnic tensions. As Hamza Alavi observed, "ethnic movements in Pakistan take the form, primarily, of subnational movements, directed against the central power, demanding regional autonomy."[52] The demand for regional autonomy in East Pakistan, led by the AL representing the subnational sentiments of the Bengali majority, together with the multigroup opposition of religious parties, student movements, trade unionists, and old-line politicians in West Pakistan demanding greater political participation, forced Ayub Khan into retirement.

Ayub Khan handed power to the military in March 1969. Martial law was reimposed after another failed constitutional experiment. A new national election was promised and held. This set the stage for a renewed struggle to define constitutionally the nature of the country. In the election of December 1970, the AL, with Sheikh Mujibur Rahman as its leader,

emerged as the largest political party and won 151 seats out of 300. Zulfikar Ali Bhutto's People's Party (PPP) won 81 seats and emerged as the second largest party in the country. But neither the AL nor the PPP could win national representation with members elected from both halves of the country. Election results showed that Pakistan was effectively divided along party and ethnic lines and could only be kept together through a loose federal arrangement. This is what the AL sought, although it went against the views of the military–civil authorities. General Yahya Khan, military successor to Ayub Khan, was unwilling to accept the result and so postponed the meeting of the constituent assembly, an act that plunged the country into civil war.[53] At the end of the resulting political and military carnage, which dealt a mortal blow to the "two nation theory," Pakistan was broken into two and the new nation-state of Bangladesh emerged in South Asia.

The Post-Ayub Era

At the conclusion of his biographical study of the military leader, Altaf Gauhar chides Ayub Khan's detractors and apologists. Ayub Khan is held responsible by his critics for undermining Pakistan's democratic evolution, while his defenders blame politicians for corrupting the institutions of government and the political process that Pakistan inherited from the British. Gauhar suggests that both views are erroneous, because Ayub's constitutional failure reflected the "fundamental problem of reconciling the Islamic doctrines, as enunciated by Muslim jurists, with the democratic concepts and demands of the modern age."[54] This continues to be the constitutional and political challenge for the Muslim world, as the particular experience of Pakistan illustrates. Ayub Khan's failure reflected the inability of both modernists and traditionalists to work out creatively an appropriate balance between "reconstructing" the essentials of Islam and discarding the nonessential baggage of Muslim history that has been made obsolete by the scientific and industrial revolutions of the past two centuries. The failure also underscored the requirement that any "reconstruction," however modest, must be brought about democratically to be meaningful and perceived and accepted as legitimate.

Since Ayub Khan, increasing demands for an Islamic state have been made in Pakistan, in Bangladesh, and across the Muslim world. This is a populist demand sustained by an increasingly sophisticated understanding that the secular–nationalist agenda of postcolonial leaders has led to a nightmare of broken promises concerning socioeconomic development, equity, and justice throughout the Muslim world. Moreover, the demand for an Islamic state is also a demand for a political system in which the leaders are accountable, in which the arbitrary nature of political power is limited by laws, in which Islam (as the bonds of a civil society) takes precedence over the Islam of those who command the state. The irony of Pakistan's experiment in guided democracy was that those who brought about the fall of Ayub Khan and benefitted most from it, namely, Sheikh Mujibur

Rahman and Zulfikar Ali Bhutto, never learned the lesson of the Ayub era that an individual should not become identified excessively with the regime. It was an oversight for which both of them paid with their lives.

Mujib mistakenly identified Bengali nationalism as an essentially secular ideology. The secular orientation of Bengali nationalism reflected the pre-1971 condition of national politics in Pakistan. In the broader context of South Asian politics and an independent Bangladesh, Bengali nationalism reverted to affirming the national identity of Bengali Muslims as being partly based on religion. Nationalism in this instance illustrated what Alavi has described in the broader case of Pakistan: that ethnic identity is not entirely predetermined, that it can at one time reflect language as the basis of ethnicity and at another time it can be religion, and that language and religion are not exclusive and, quite often, are joined together.[55]

Mujib sought a secular–democratic future for the new state and, accordingly, Bangladesh's 1972 constitution defined the framework of state policy in terms of nationalism, socialism, democracy, and secularism without any reference to Islam.[56] This secularist approach was consistent with the history of the AL from its origin as a secular-oriented party representing Bengali subnationalism within a united Pakistan. Mujib's ideology, or Mujibism to his followers, reflected the urban middle class values of traders, petty government officials, small landowners, and intellectuals. The secessionist war radicalized politics and pushed forward the agenda of the more left-wing parties for reforms favoring the landless and land-poor peasants who formed the bulk of the country's population.[57] Mujib attempted to contain the radical agenda of the left, of those who were once his allies, through a limited policy of nationalization and a broadly based secular–nationalist coalition. But he was discredited as the leader of a regime that came to be viewed widely as corrupt, inept, and authoritarian. His gruesome end in August 1975 marked the limits of his brand of populism. Mujib's murder was an act of a few disgruntled junior officers in the army; the repudiation of Mujib as the father of the nation by a great majority of disenchanted Bangladeshis reflected tragically the extent of his political failure after having received, only a few years earlier, massive and unprecedented support from Bengalis across the country.[58]

The pressure to restore a balance between religious sentiment and the secularist value of ethnolinguistic nationalism reduced Mujib's party, the AL, from majority to minority status within a few years of the creation of Bangladesh. This pressure benefitted the anti-AL majority by containing the radical left, beginning with the military regime of General Ziaur Rahman and followed by that of General Ershad.[59] Ziaur Rahman asserted *Bangladeshi* nationalism as being one identified with the state and its Muslim-majority population instead of, as Mujib did, *Bengali* nationalism denoting ethnicity based on language. Ershad took popular sentiment into his political calculation and, in 1988, amended the constitution so that Islam could be declared the state religion. The difficult process of nation building and making representative democracy work was renewed with the

resignation of Ershad in December 1990 and the election of February 1991, in which Ziaur Rahman's party, the Bangladesh Nationalist Party, led by his widow Begum Ziaur Rahman, formed a center–right government. The result of the 1991 election and the political trend since then suggest the constitutional divisiveness of Bangladeshi politics may have been put behind with the modification of the state's secular–nationalist ideology and the reaffirmation of Islam to reflect a broad national consensus.

Bhutto's fate was as tragic as Mujib's. He rode the anti-Ayub sentiments of the urban middle classes, as well as the populist emotions of the rural poor, trade unionists, and student organizations for economic reforms, to power in a divided Pakistan. It was his refusal to accept the results of the December 1970 election, in which the AL had won the majority and thus had strengthened the military's inclination to repudiate an election it had organized. Bhutto's stand at that critical moment was consistent with two decades of maneuvering by West Pakistan's political leaders, especially those who belonged to the Punjabi–*muḥājir* nexus, to deny East Pakistan majority representation at the center.

The defeat of the Pakistan military in December 1971 toppled Yahya Khan's martial law government, which Bhutto had joined as deputy prime minister. On the basis of popular support, Bhutto assumed power in the wake of Pakistan's defeat and dismemberment, but his government lacked any legal foundation that could confer upon it constitutional legitimacy. The martial law imposed by Yahya Khan had also abrogated the constitution of 1962 and, therefore, the withdrawal of the military from power left a constitutional void at the center. Bhutto did not withdraw the emergency provisions by which the martial law government had operated, but rather chose to enact, with the support of the members of the central legislative assembly elected in December 1970 from the four provinces of former West Pakistan, an interim constitution in April 1972. It was a return to the viceregal system under the India Act of 1935.[60]

Bhutto, however, succeeded in getting a new constitution prepared and passed by the central legislative body within a year. The 1973 constitution was the fifth to be drafted and the third to be promulgated in Pakistan's brief history. It rearranged the political map of Pakistan by establishing a federal structure consisting of four provinces and a quasipresidential form of government with a bicameral legislature.[61] The Islamic provisions of the earlier attempts in constitution making were incorporated with a few new additions. Islam was declared the state religion (Article 2), and an Islamic Council was established on constitutional authority and its functions were described in Articles 227-231. Again the intent was made public that, gradually, Pakistan's legal structure would conform to Islamic principles and that this process would be guided by the council. In Article 3, it was stated that the responsibility of the state is to end exploitation in society and, in an ironic twist of words reflecting Bhutto's play with Marxist language, the fundamental principle of egalitarianism was declared to be "from each according to his ability, to each according to his work." This was reflective

of his rhetoric of Islamic socialism that galvanized the support of the urban and rural poor behind the PPP in 1970 and again in 1977. He was politically and temperamentally adept at working both ends of the political spectrum, of joining socialistic rhetoric to his eclectic reading of Islam, and bending at the same time to contain his right-wing traditional Islamic opposition, as in the case of declaring the Ahmadiya sect to be non-Muslim.

Following the PPP's landslide victory in the national and provincial elections of March 1977, Bhutto was toppled by the military in July 1977 in the wake of a countrywide opposition movement. The opposition charged that the election results were rigged. The confrontation turned violent and set the stage for the military to reimpose martial law, remove Bhutto from office, and eventually try him for the murder of a political opponent. He was found guilty and hanged.[62] But Bhutto's constitution, though amended, survived him. The military did not, as on earlier occasions, abrogate the 1973 constitution. This seemingly minor fact is significant, because the constitution has proven by its longevity that the main principles of ideology and government it provides are now generally accepted by the people. This means that although constitutional consensus has come late in Pakistan, political energy can henceforth be directed as it was in India, to working out the details of democratic politics within an accepted framework of rules about power sharing, representation, rights, and duties.

Ethnicity and Punjabi Hegemony

In a truncated Pakistan, Punjab forms about 70 percent of the population, the *muhājir* and Pathans about ten percent each, Sindhis 7 percent, and Baluchis 3 percent.[63] As a result Sind, Baluchistan, and the NWFP find themselves in a situation of permanent disadvantage vis-à-vis Punjab. Secession for Sindhis or Baluchis is improbable in a contiguous territory with Punjab, and any struggle for secession would be unsuccessful against one of the largest and most highly trained military establishments in the developing world. Thus, behind ethnic and provincial grievances have stood the grating reality to non-Punjabis of Punjab's political hegemony.

Baluchistan constitutes more than one-third of Pakistan's land area, but with less than five million people it remains sparsely populated. It is economically one of the most backward regions of the country, as it was in British India. The Baluchi elite has felt politically ignored and resentful that the province's vast resources, especially natural gas, have been exploited by Punjabi interests without adequate investment being made in the improvement of Baluchistan's economic infrastructure. Political alienation has fueled insurgency, the most serious being in the mid-1970s during the Bhutto regime. It was crushed brutally by the army.

Ethnic grievance in Sind, home to the seaport of Karachi, Pakistan's largest urban and financial center, exploded in 1983. The Movement for the Restoration of Democracy against the military government, though based

in Sind's urban centers, mobilized the rural population as never before. Sindhis viewed Bhutto's execution as one more proof of Punjabi intolerance toward Sind and its demands for greater provincial autonomy. Bhutto was a Sindhi and, during his rule, Sind benefitted politically and economically. His ouster and death ignited Sindhi frustration eventually and directed it toward the Punjabis and their Urdu-speaking allies, the *muḥājir* community, which control a substantial portion of business interests in the province. In response, the *muḥājir* community organized its own political party, the Muhajir Quomi Movement (MQM), and demanded from the federal government that the areas in which *muḥājir*s were the majority, as in the greater metropolitan area of Karachi, be designated a province.[64]

The NWFP has always posed a challenge to outsiders. The Soviet invasion of Afghanistan in 1979 added a new dimension by making Pakistan a front-line state against communist aggression and a temporary home for several million Afghan refugees. An irredentist movement among the province's Pathans to join with their kin in Afghanistan and create a Pakhtun-speaking state of their own has been always a nightmare for the ruling elite of Pakistan. One Punjabi policy of preventing such a scenario has been to favor Pathans through recruitment in the army and civil bureaucracy, and to induce greater economic linkages between Pathans and the rest of the country. This policy has worked despite the federal government's difficulties with some of the Pathan political leaders, especially those who demand greater provincial autonomy in the tradition of Khan Abdul Ghaffar Khan and his son, Wali Khan. Moreover, Zia ul-Haq's assistance to the Afghan mujahidin during the nearly decade-long war with the Soviet Union won extensive support among the Pathans of the NWFP. The mobilization of Islamic solidarity with Afghans has also been an important factor in consolidating ties between Pathans and the rest of the country.

The transition to civilian government begun by Zia ul-Haq in 1985 moved rapidly following his death. Despite such difficulties as the dismissal of Benazir Bhutto's PPP government, elected in 1988 by the president, Ghulam Ishaq Khan, and reminiscent of the 1953 dismissal of Khawaja Nazimuddin's elected government and the constitutional wrangles over the authority of the president and the prime minister in the summer of 1993 between Ghulam Ishaq Khan and Nawaz Sharif, the army carefully distanced itself from the political process. It may be premature to suggest that representative democracy has taken firm roots, given the results of the 1990 and 1993 elections. The unfreezing of the political process and the emergence of a number of political parties representing regional interests with no national base, such as the MQM, may lead to a 1950s-style political gridlock. But the difference between now and then is that Punjab is constitutionally assured of its dominant place in the political system. Punjab's hegemony can now be defined and circumscribed within a legal framework, as the amended 1973 constitution does with Punjab's acquiescence, and this makes for a greater likelihood of it becoming institutionalized. Moreover, restored federalism offers the ethnic minorities (Sindhis,

Baluchis, and Pathans) the political space to grow within their own ethno-cultural specificity. For the *muḥājir*s, increasing assimilation into the existing ethnic mosaic remains the only viable solution. An Islamic constitution makes this assimilation more readily acceptable.

Conclusion

The lesson of the Pakistan experience is that much of what occurred might have been avoided if, in the beginning, constitution making had succeeded. As the Indian experience shows, the most difficult and divisive issues of representation and reorganization of the federal system to accommodate linguistic demands were accomplished under the leadership of Nehru and the Congress party through constitutional means.[65] Consensus on the Islamic nature of the Pakistani state during the first phase of constitution making would have provided an overarching national identity required for state building and democratic development. Such a consensus would have made the critical difference in building agreements on the mechanics of government, the system of representation, the distribution of powers and the nature of federalism. Pakistan's physical division and the mutual suspicion between Punjabis (the dominant group in the west) and the Bengalis (possessing the numerical majority in the east) posed the most serious impediment to constitutional consensus. A loose federation, as the Bengali leadership demanded, held forth the possibility of keeping ethnic differences submerged within the larger identity of Islam. Given the illogical nature of Pakistan's physical construction, its eventual break-up might have been unavoidable whatever the constitutional consensus. An existing constitutional arrangement might not have prevented its disintegration, but it could have saved the people the bitterness of a civil war.

The political failure of modernists was their inability to understand that the appeal to their coreligionists in undivided India made the eventual demand for an Islamic state in Pakistan irrepressible. Moreover, the lack of constitutional propriety in their political behavior, their subversion of the constitutional process and support for civil–military oligarchy delegitimized their vision for the country. Zia ul-Haq's personal beliefs aside, his adoption of a program of Islamization drew support from the majority of Muslim citizens. This majority could not relate to the elevated arguments of the liberal opposition, which was Westernized in political outlook and resistant to the traditional orthodoxy of the ulama. Islamization drew its strength from the majority Muslim population and was consistent with the idea that a political system must draw upon the core values of its people in order to be viable and representative.

It is too soon to draw long-term conclusions regarding the process of transforming the Islamic order into representative democracy through parliamentary elections after Zia ul-Haq's death. The dismissal of Benazir Bhutto's government in 1990 was indicative of the persistence of an authoritarian tendency within the civil–military bureaucracy. But the renewal of

politics after long periods of enforced disability, as well as the emergence of political parties representing regional and ethnic interests within the national body politics, can only be viewed as healthy developments.

Ethnic grievances are frequently reflective of disparity in the political system, of a lack or inadequacy of representation. It is likely that ethnic conflicts at varying levels of intensity will persist, as all of it cannot be resolved—nor is it desirable if the means required are highly repressive and become counterproductive. The ideal remains not to obliterate ethnicity, but rather to find an institutional means for accommodation. Thus, a constitutional system based on a broad consensus is a prerequisite to provide institutions with legitimacy. The process is circular.

It will be useful here to recall Aristotle's definition of a constitution as "the arrangement of powers in a state, especially of the supreme power, and the constitution makes the government."[66] In this classic definition, and in subsequent discussions ever since, constitutionalism reflects a government based on laws and not in any way a modification of human nature and politics bringing about a cessation of conflicts among individuals and within society. Any revision or readjustment of constitutional authority to changing needs and circumstances, as we find, for instance, in the politics of Canada in recent years, is as much a part of constitutionalism as is the occasional recourse to force to maintain authority over national jurisdiction when a minority seeks to secede, as in the United States of the nineteenth century or, in more recent times, in modern India. However, what distinguishes the process of revision (Canada) or the use of force (India) from those such as in the repeated imposition of martial law in Pakistan, is the prior existence of a constitutional order based on a broad consensus and the absence of such an order that makes political contest resemble a Hobbesian political hell.

In our time, especially given the experience of fascism in the first half of this century, democracy has come to mean constitutional government resting on the will of the people. Democracy may have been a contestable idea, as Arblaster has discussed in a useful study,[67] or, as C. B. Macpherson pointed out, democracy "used to be a bad word" until lately.[68] But while today democracy has become the undisputed idea in the realm of politics for good government, for it to be distinguished from mob rule or demagoguery it must be founded on a constitutional consensus that restricts the powers of those in authority and protects the rights of individuals from arbitrary state power. Finally, as is so clear in the case of Pakistan though substantively no different than in other mature societies, democracy or more precisely constitutional democracy remains a never-quite-finished project, but instead remains open and requires each generation to reexamine its working and extend its promise as stated in its essential documents.

To conclude, the promise of constitutional democracy in Pakistan in recent years looks more promising than ever before. The national parliamentary election of October 1990 brought a coalition of Islamic and con-

servative parties, known as the Islamic Democratic Alliance, to form the government. The most significant aspect of the event was the transfer of power from one civilian government to another without military interference, a first in nearly four decades of tormented national politics. This process was repeated in October–November 1993 when Benazir Bhutto, following a general election, was able to bring together enough parliamentary support to form a new government at the center. The entrenchment of this process holds out the promise of the eventual consolidation of representative democracy in Pakistan. It is quite likely that the divisive constitutional debates of earlier decades between modernists and traditionalists have been resolved. In addition, the amended constitution of 1973 reflects, in the broadest sense, the religious and cultural values upon which the country was founded. While ethnic conflict remains a disturbing feature of Pakistani politics, its constitutional and democratic evolution as an Islamic state holds that extraethnic appeal for its citizens that, as a movement in undivided India, it did for Muslims. Just as ethnic differences were submerged in a larger religiocultural loyalty to establish a Muslim-majority state in the subcontinent, as an Islamic state Pakistan may finally succeed in entrenching the constitutional mechanisms described in the 1973 constitution and accommodate its ethnic diversity within a democratic polity.

Endnotes

1. S. P. Huntington, *Political Order in Changing Societies* (New Haven and London: Yale University Press, 1968).

2. I prefer the terms *modernist* and *traditionalist* to distinguish between the two broad streams of Muslim political thought and practice, without engaging here in the sterile debate of identifying who is a fundamentalist.

3. See Kamal Azfar, "Constitutional Dilemmas in Pakistan," in *Pakistan Under the Military: Eleven Years of Zia ul-Haq*, eds. S. J. Burki and C. Baxter (Boulder, CO: Westview Press, 1991).

4. See, for instance, T. Ali, *Can Pakistan Survive?* (Harmondsworth: Penguin Books, 1983).

5. H. R. Isaacs, *Idols of the Tribe: Group Identity and Political Change* (New York: Harper & Row, 1977), chapter 3.

6. A. D. Smith, *The Ethnic Revival* (Cambridge, UK: Cambridge University Press, 1981), 66.

7. P. Worsley, *The Three Worlds: Culture and World Development* (Chicago: The University of Chicago Press, 1984), 247.

8. K. B. Sayeed, *Pakistan: The Formative Phase 1857-1948* (London: Oxford University Press, 1968), 279.

9. A. B. Keith, *A Constitutional History of India 1600-1935* (London: Methuen & Co., 1937), 331-38.

10. Cited in J. Ahmad, *Speeches and Writings of Mr. Jinnah* (Lahore: Sh. Muhammad Ashraf, 1968), 2:449.

11. On the personnel structure of the Pakistan army, its recruiting pattern, and regional representation, see S. Cohen, *The Pakistan Army* (Berkeley: University of California Press, 1984), and H. A. Rizvi, *The Military & Politics in Pakistan 1947-1986* (Lahore: Progressive Publishers, 1987).

12. Rizvi, *The Military*, 137.

13. R. Jahan, *Pakistan: Failure in National Integration* (New York: Columbia University Press, 1972), 26.

14. Cohen, *The Pakistan Army*, 44.

15. H. A. R. Gibb, ed. *Whither Islam? A Survey of Modern Movements in the Moslem World* (London: Victor Gollancz, 1932), 319.

16. It is interesting to note that Muslim nationalism of the League in undivided India was somewhat analogous to the Zionism of European Jews before the creation of Israel. In both instances, secular nationalists mobilized religious sentiments and cultural notions of nationhood for secular political purpose and were opposed, respectively, by Muslim traditionalists and religious Jews. Regarding Muslim opposition to the Pakistan Movement, see Zia ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan* (Bombay: Asia Publishing House, 1963), and Barbara D. Metcalf, *Islamic Revival in British India: Deoband 1860-1900* (Princeton: Princeton University Press, 1982). For a representative collection of dissenting voices, regarding Jewish religious and nonreligious opposition to Zionism, Michael Selzer, ed., *Zionism Reconsidered* (New York: Macmillan, 1970).

17. See F. Shaikh, *Community and Consensus in Islam: Muslim Representation in Colonial India, 1860-1947* (Cambridge, UK: Cambridge University Press, 1989), and P. Hardy, *The Muslims of British India* (Cambridge, UK: Cambridge University Press, 1972).

18. C. J. Friedrich, *Constitutional Government and Democracy*, (Waltham, MA.: Blaisdell Publishing Company, 1937; 4th edition 1968), 9.

19. Ibid., 8.

20. C. J. Friedrich, *Transcendent Justice* (Durham, NC: Duke University Press, 1964), chapter 1.

21. K. C. Wheare, *Modern Constitutions* rev. ed. (London: Oxford University Press, 1966), 56.

22. See H. L. A. Hart, *The Concept of Law* (Oxford, UK: Oxford University Press, 1961), 64-69.

23. E. Shils, *The Constitution of Society* (Chicago and London: The University of Chicago Press, 1972), 93-94.

24. Wheare, *Modern Constitutions*, 66.

25. H. A. R. Gibb, *Modern Trends in Islam* (New York: Farrar, Straus & Giroux, 1978), 69-70.

26. On this issue it is well worth noting Wilfred Cantwell Smith, who was a witness to the demand for Pakistan. Smith wrote, ". . . in 1940, partly for their own purposes, a political party of middle-class Indo-Muslims proposed the Pakistan idea. For some decades leadership in the society had lain with those whose orientation was largely not traditionally Islamic but Westernizing and novel. It was the lower classes and other non-Westernizers who most vividly preserved and warmly cherished the inherited ideals. The modernizing bourgeoisie had to some extent lost touch with the tradition; or they harboured its dreams only vaguely, feeling somewhat their impetus but unable to formulate it. Their own dreams were largely of their immediate interests and ambitions. At the very least, they had added to their inherited ideals much new-fashioned baggage recently acquired. They were hardly in a position to give precise leadership to the popular religious urge. Yet the enthusiasm elicited was widespread and powerful, almost frenzied, when the leadership that they did proffer aimed at something that the rest of the community generally could and did interpret as a programme to realize the splendid, long-standing vision of Islam." *Islam in Modern History* (Princeton: Princeton University Press, 1977), 209-10.

27. On the concept of Islamic state, see for instance F. Hassan, *The Concept of State and Law in Islam* (Lanham, MD: University Press of America, 1981); A. A. Kurdi, *The Islamic State: A Study Based on the Islamic Holy Constitution* (London: Mansell Publishing, 1984); and E. I. J. Rosenthal, *Islam in the Modern National State* (Cambridge, UK: Cambridge University Press, 1958).

28. *Constituent Assembly of Pakistan Debates* (Karachi: Government of Pakistan Press), 5:3, p. 45.

29. Mawlana A. A. Mawdudi, *The Islamic Law and Constitution* (Lahore: Islamic Publications Ltd., 1955; reprint 1983), 138-39.

30. It is instructive to note that the fathers of the American revolution and the authors of the Declaration of Independence and the constitution recognized and invoked the principle of a higher authority. They made no mistake, as wrote Jefferson, that "all men are created equal, that they are *endowed by their Creator* (my emphasis) with certain unalienable Rights," that fundamental human rights originate from a higher authority and they set limit to the authority of those in power.

31. Mawdudi, *Islamic Law*, 258. See Rosenthal, *Islam*, 137-53, for an orientalist discussion of Mawdudi's views.

32. H. Turabi, "Islam, Democracy, the State and the West," *Middle East Policy* 1, no. 3 (1992): 49-61.

33. Ibid., 52.

34. Mawdudi, *Islamic Law*, 258-59.

35. M. Iqbal, *The Reconstruction of Religious Thought in Islam* (London: Oxford University Press, 1934), 157.

36. G. Austin, *The Indian Constitution: Cornerstone of a Nation* (London: Oxford University Press, 1966), 39-41.

37. See L. Binder, *Religion and Politics in Pakistan* (Berkeley: University of California Press, 1963); also G. W. Choudhury, *Constitutional Development in Pakistan* (London: Longman Group Ltd, 1969).

38. G. W. Choudhury, *Pakistan: Transition from Military Rule to Civilian Rule* (Essex, UK: Scorpion Publishing Ltd, 1988), 129-52.

39. H. Alavi, "Ethnicity, Muslim Society and the Pakistan Ideology," in *Islamic Reassertion in Pakistan*, ed. A. M. Weiss (Lahore: Vanguard Books Pvt. Ltd., 1987), 22; (emphasis in original).

40. See I. Rehman, *Public Opinion and Political Development in Pakistan 1947-1958* (Karachi: Oxford University Press, 1982), chapter 3.

41. See K. B. Sayeed, *The Political System of Pakistan* (Boston: Houghton Mifflin Company, 1967), chapter 4, 60-93.

42. O. Noman, *Pakistan: Political and Economic History Since 1947* (London: Kegan Paul International, 1988), 10.

43. For an account of this "revolution" from the top, see H. Feldman, *Revolution in Pakistan: A Study of the Martial Law Administration* (London: Oxford University Press, 1967).

44. See A. Gauhar, *Ayub Khan: Pakistan's First Military Ruler* (Lahore: Sang-e-Meel Publications, 1994). This is a new and important biography by a senior civil servant and head of the Ministry of Information and Broadcasting in the military regime; he assisted Ayub Khan in the preparation of his memoir, *Friends Not Masters*.

45. Ibid., 158-59.

46. See Mahbub ul Haq, *The Poverty Curtain: Choices for the Third World* (New York: Columbia University Press, 1976), esp. 27-36. His critique is of interest, since he was the chief economist of the planning commission in Pakistan during the Ayub era.

47. Sayeed, *Political System*, chapter 5. On the nature of Ayub Khan's constitutional scheme and the provision of the 1962 constitution, see Feldman, *Revolution in Pakistan*; also E. A. Schuler and K. R. Schuler, *Public Opinion and Constitution Making in Pakistan 1958-1962* (Michigan State University Press, 1966); and L. Ziring, *The Ayub Khan Era: Politics in Pakistan 1958-1969* (Syracuse: Syracuse University Press, 1971).

48. Ayub Khan, *Friends Not Masters* (London: Oxford University Press, 1967), 190.

49. Ibid., 199. For Ayub Khan's less-than-positive view of the ulama, especially those who engaged in politics before and after 1947 to oppose, first, the demand for Pakistan, and then the modernist leadership of the Muslim League under Jinnah and his successors, see *Friends Not Masters*, 199-207.

50. Huntington, *Political Order*, 251.

51. Gauhar, *Ayub Khan*, 179-90.

52. H. Alavi, "Politics of Ethnicity in India and Pakistan," in *Sociology of "Developing Societies": South Asia,* eds. H. Alavi and J. Harriss (New York: Monthly Review Press, 1989), 222.

53. It is interesting to compare the response of the Algerian generals to the Algerian election of December 1991 with that of the Pakistani generals to the election in Pakistan twenty-one years earlier. Like their counterparts in Pakistan, the action of the Algerian generals to deny the Islamic Salvation Front, winners at the poll, its right to form a government plunged Algeria into a bitter, bloody, and divisive civil war as the one that sundered Pakistan. In both instances, the military organized the national elections, conducted them, and then repudiated the results for not being to their liking.

54. Gauhar, *Ayub Khan,* 488.

55. Alavi, "Politics of Ethnicity."

56. On Mujib's constitution-making, see M. Ahmed, *Era of Sheikh Mujibur Rahman* (Dhaka: University Press Ltd, 1983), chapter 4.

57. On the radicalization of Bangladeshi politics and its aftermath, see L. Lifschultz, *Bangladesh: The Unfinished Revolution* (London: Zed Press, 1979); also see T. Maniruzzaman, *The Bangladesh Revolution and its Aftermath* (Dhaka: Bangladesh Books International, 1980).

58. On the killing of Mujib and the bloody aftermath of coups that followed, see A. Mascarenhas, *Bangladesh: A Legacy of Blood* (London: Hodder and Stoughton, 1986).

59. See L. Ziring, *Bangladesh: From Mujib to Ershad* (Karachi: Oxford University Press, 1992).

60. Regarding Bhutto's constitutional restructuring of Pakistan after 1971, see S. J. Burki, *Pakistan Under Bhutto, 1971–1977,* 2d ed. (London: Macmillan Press, 1988), chapter 5.

61. Ibid.

62. On Bhutto's political and personal fortunes see S. Wolpert, *Zulfi Bhutto of Pakistan: His Life and Times* (New York: Oxford University Press, 1993); and S. Taseer, *Bhutto: A Political Biography* (London: Ithaca Press, 1979).

63. U. Phadnis, *Ethnicity and Nation-building in South Asia* (New Delhi: Sage Publications, 1989), 37-39. Also see S. J. Burki, *Pakistan: The Continuing Search for Nationhood* (Boulder, CO: Westview Press, 1991), 23-34; and Noman, *Pakistan,* part 3, chapter 4.

64. On the communal and sectarian violence in Karachi involving the *muhājir* community and the role of the MQM, see Christina Lamb, *Waiting for Allah: Benazir Bhutto and Pakistan* (London: Penguin Books, 1992), chapter 8.

65. See P. R. Brass, *The Politics of India since Independence* (Cambridge, UK: Cambridge University Press, 1990), chapter 5.

66. Aristotle, *Politics,* book 3, chapter 6.

67. A. Arblaster, *Democracy* (Minneapolis: University of Minnesota Press, 1987).

68. C. B. Macpherson, *The Real World of Democracy* (Oxford: Clarendon Press, 1966), 1.