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THE NEGLECTED ADMINISTRATIVE FOUNDATIONS OF PAKISTAN'S CONSTITUTIONAL DEMOCRACY

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Introduction

Meeting in London, in May 2006, leaders of the Pakistan Muslim League-Nawaz (PML-N) and the Pakistan Peoples Party (PPP) approved after wide ranging consultations a Charter of Democracy.² The Charter of Democracy and the consultative process that went into its formulation identified a number of important objectives that the signatories committed to pursue. The most important was restoring civilian rule and the ouster of General Pervez Musharraf. Once in power, the signatories would reserve amendments made to the 1973 Constitution that altered the operative framework from a federal-parliamentary democracy to a unitary-presidential autocracy. In order to prevent destabilization political parties agreed to work together as partners in a long-term consensus embodied in a code of conduct, rather than against each other as antagonists. The ultimate aim was to restore Pakistan to the condition of a civilian state, i.e. a state in which the civil government enjoys effective control over the military, its intelligence resources and has fiscal-administrative oversight.

This paper has two principal aims. First, it tries to explain the historical factors that have made the stabilization of democracy highly problematic in Pakistan. The Charter of Democracy represents the collective wisdom and consensus of Pakistan's political class. It remains to be seen whether the Charter of Democracy does actually provide a workable blueprint for achieving the major and subsidiary objectives it lays down. Second, the study discusses the challenges faced by the present dispensation and prospects for the stabilization of democratic rule. The central argument is that unless the political class undertakes comprehensive administrative reform the present experiment in democratic government is likely to meet the same fate as earlier attempts.

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2 For the full text see, "Charter of Democracy", *Dawn*, Tuesday, May 16, 2006, "Text of the Charter of Democracy". <http://www.dawn.com/2006/05/16/local23.htm>

Historical background

Amartya Sen takes strong issue with the perspective that India would have evolved into an authoritarian or a totalitarian state, were it not for British imperial rule.³ In *The Argumentative Indian*, Sen asserts that India has had a robust indigenous argumentative tradition grounded in a heterodoxy that traces its origins to Vedic antiquity. Later rulers, such as Ashoka of the Mauryan Empire (320 BC-180 BC) or Jalaluddin Akbar of the Mughal Empire (AD 1526 - AD 1707) reinforced this tradition and thus laid the cultural foundations upon which contemporary Indian democracy rests. Sen contends that India's own tradition of "Discussions and arguments are critically important for democracy and public reasoning" as well as being "central to the practice of secularism."⁴ After all, "Voice is a crucial component of the pursuit of social justice"⁵ and Sen invests a solid eighty pages exploring the dimensions of India's indigenous voices.⁶

There are, however, serious problems with such a self-aggrandizing line of argument. The first is that while some of India's rulers were enlightened and pragmatic the vast majority were predatory and whimsical. Eight-tenths of India's history, if we were to count from 500 BC, is occupied by warring states, foreign invasions and internal dissolution. These long periods of chaos were punctuated by imperial unifications or hegemonies (Mauryan, Gupta, the Delhi Sultanate, the Mughals and the British). Thus, the glorious Mauryas bloodily conquered and subjugated the Indian subcontinent and under the last of their great absolute monarchs employed Buddhism as an imperial ideology. The relatively benign argumentative tradition that Sen harks back to is scarcely evident in the harsh and uncompromising authoritarianism of the *Arthashastra* state.⁷

To take Akbar, Sen's other favorite example of an indigenous precursor of liberalism, the record is considerably more dire.⁸ Akbar crushed over 140 rebellions against his expanding and consolidating Mughal Raj and imposed an imperial order

3 A point argued, for instance, by Barington Moore Jr., *The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1967), Chapter VI "Democracy in Asia: India and the Price of Peaceful Change", 314-412.

4 Amartya Sen, *The Argumentative Indian: Writings on Indian History, Culture and Identity* (London: AllenLane, Penguin Books, 2005), xiii.

5 *Ibid.*

6 *Ibid.*, 3-88.

7 Kautilya, *The Arthashastra*, trans. L. N. Rangarajan (New Delhi: Penguin Books, 1992). Kautilya was the prime minister to Chandragupta Maurya, the founder of the Maurya Empire, about 320 BC.

8 The Mughal sources have no qualms about expressing the autocratic, proprietorial and theocratic nature of imperial rule. "No dignity is higher in the eyes of God than royalty; and those who are wise, drink from its auspicious fountain...royalty is a remedy for the spirit of rebellion, and the reason why subjects obey...if royalty did not exist, the storm of strife would never subside, nor selfish ambition disappear. Mankind, being under the burden of lawlessness and lust, would sink into the pit of destruction." Abu'l Fazl Allami, *A'in-I Akbari*, trans. H. Blochmann (Calcutta: Calcutta Madrassah, 1873; reprint, Lahore: Sang-e-Meel Publications, 2003), 58.

upon the sweltering chaos of South Asia.⁹ Akbar's suppression of Islamic orthodoxy and promotion of a religious cult centering on himself shows him to be an ambitious autocrat keen to manipulate the instruments at his disposal to secure the rule of his dynasty.¹⁰ Later emperors, in particular Aurungzeb, exhausted the empire through military overextension and proved less tolerant than Akbar. While it is possible to detect small fragments of an argumentative tradition it is quite a stretch to maintain that a handful of exceptions constitute structural congruity between the liberal and constitutional bias of post-British India and pre-British India. The norm in pre-British India appears to have been that of arbitrary rule by oligarchies and autocracies mediated through military and bureaucratic instruments and legitimized by divine sanction. Caste exclusiveness and the existence of predominantly insular rural communities meant that empire, warlordism, anarchy and invasions were the historical alternatives before South Asian societies.¹¹ The combination of arbitrary rule, isolation and invasions meant that the voices Sen refers to never succeeded in gaining the social momentum found in late-Medieval and early-Modern Europe. Indian science, after a promising start, stagnated. Buddhism, originating in India and possessing the potential to bring greater cohesion and reform to Indian societies, was almost completely eradicated from the region leading to the nineteenth century Orientalist search for its mystifying origins.¹²

The lack of empirical validation for Sen's perspective on India's argumentative tradition and its role in laying the foundations for modern India's constitutional democracy compels exploration of a more modest hypothesis. That hypothesis is that there are a range of formal institutions and informal practices that are needed for constitutional and representative government in a continental bureaucratic empire like India and that the institutions and practices in question matured or were introduced during British imperial rule (1757-1947). These include representative local bodies and regional or provincial governments, an apolitical and highly professional merit-based civil service, national and regional political parties, civil society organizations, public

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- 9 Part of the problem was that local forts and armed retainers were maintained by the *zamindars* to collect revenue and keep the peasants in line. "Reports of official action against such forts, described as *qil'achas* and *garhis* abound." Irfan Habib, *The Agrarian System of Mughal India*, 204. For more on Akbar's reign see Abu'l Fazl Allami, *The Akbarnama of Abu'l Fazl*, trans. H. Beveridge, (Lahore: Sang-e-Meel Publications, 2005; original, Calcutta, 1921).
- 10 The Mughal Empire had a "highly unified and systematized bureaucratic apparatus..." that relied on foreign recruits to fill its senior ranks. In 1595, out of 98 highest ranking officers 38 were Turanis, 18 Persians, 4 Afghans, 6 from other parts of the Muslim world, and 16 Rajputs. Indian Muslims numbered 14 out of 98. Athar Ali, *The Apparatus of Empire: Awards of Ranks, Offices and Titles to the Mughal Nobility, 1574-1658* (New Delhi: Oxford University Press, 1985), ix-xx.
- 11 John Darwin argues that "the difficulty of forming autonomous states on an ethnic basis, against the gravitational pull of cultural or economic attraction (as well as disparities of military force), has been so great that empire (where different ethnic communities fall under a common ruler) has been the default mode of political organization through most of history. Imperial power has usually been the rule of the road." John Darwin, *After Tamerlane: The Global History of Empire Since 1405* (London: Penguin Books, 2007), 23.
- 12 For more on this detective story see Charles Allen, *Buddha and the Sahibs: The Men who Discovered India's Lost Religion* (London: John Murray, 2002).

opinion, organized reform movements, private property, an autonomous judiciary, civilian supremacy over the military, secularism, legitimate opposition, etc. It is thus the British imperial legacy that constituted the gestation period for democracy in India.¹³

The strengthening of this legacy in India was due to a number of factors. The westernization experience of the Indian leadership was considerable both in terms of education and in terms of practical exposure to the working of a modern state. The stability of leadership provided by Jawaharlal Nehru, India's first prime minister (1947-1964) and the successful transformation of the Indian National Congress (INC) into a relatively cohesive governing party added further impetus.¹⁴ Finally, India inherited the state apparatus of British India substantially intact and thus the element of administrative continuity was very strong.¹⁵

The weakening and reversal of the British imperial legacy in Pakistan stemmed from important structural and idiosyncratic variables. Pakistan faced far more severe initial challenges to its survival and had to reconstitute its administrative machine in the wake of partition. Soon after independence Pakistan lost both of its most outstanding national leaders. Mohammad Ali Jinnah, Pakistan's Quaid-i-Azam and first governor general, passed away in September 1948. Liaquat Ali Khan, Pakistan's first prime minister, was assassinated in October 1951. The ruling Muslim League (ML) fragmented into hostile factions. The differences between the western and eastern wings of the country combined with the inferior westernization experience of the Muslim leadership also darkened the prospects of democracy taking root. Thus, while India and Pakistan were successor states to the British Raj and shared the same imperial legacy, substantive differences soon emerged so that by April 1953, Pakistan's politicians lost control to a governing corporation of civil servants and military officers. Since then the politicians have periodically had opportunities to rule again (1971-77, 1988-99, 2008-present) but failed on the first two occasions to stabilize civilian democratic rule. Understanding this failure is imperative if the present democratic experiment in Pakistan is to succeed.

13 Almost exactly a century after Macaulay's hopeful predictions, the Joint Committee on Indian Constitutional Reform opined: "...by directing [Indian] attention towards the object lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favored the growth of a body of opinion inspired by two familiar British conceptions; that good government is not an acceptable substitute for self-government, and that the only form of self-government worthy of the name is government through Ministers responsible to an elected Legislature...." *Joint Committee on Indian Constitutional Reform Session 1933-34*, vol I, part I (London: His Majesty's Stationery Office, 1934), 3-7.

14 Nehru's contribution as India's first prime minister is dealt with most effectively in Benjamin Zachariah, *Nehru* (London: Routledge, 2004).

15 The state apparatus was inherited "more or less intact" from the British Raj. "Institutional continuity was stressed by Vallabhai Patel. It was Patel who promoted the cause of the successor institution to the Indian Civil Service, the Indian Administrative Service (IAS)... The IAS, the police and the army provided strong links with a colonial past. Government department changed hands but not organization...." *Ibid.*, 143.

The Failure of Democracy and Constitutionalism in Pakistan

In a functioning constitutional democracy there is a division of responsibilities between the elected members of the government and the civilian bureaucracy and military officer corps. The major duties of the elected representatives are to formulate policies and oversee their implementation. The opposition parties criticize government policies and take the ruling parties to task for lapses and failures. The civilian bureaucracy and military officer corps are there to provide honest, professional advice to the government on policy matters and execute policies in accordance with the law. The relationship between the elected politicians and the servants of the state is critical to the ability of the government to deliver. A lot thus depends on the intellectual and moral caliber of both the political class and the members of the state apparatus.

If the politicians behave abusively towards the civil servants and military officers then sooner or later sound advice will cease to be given. If the elected representatives interfere in the routine working of government departments or try and subvert the autonomy of the armed forces while neglecting policy making the consequences for democracy are likely to be dire. Should the governing party treat the state apparatus as a personal estate and devote itself to the distribution of patronage and politicize the administration it will only have itself to blame if it loses popularity and the democratic experiment is terminated.

Just as political meddling in administration and the internal affairs of the military is likely to backfire, the intervention of the bureaucracy and armed forces in politics is likely to undermine the entire political process and leave the country vulnerable to violent upheaval. Jinnah understood that Pakistan needed a strong bureaucracy capable of executing complex policies and counteracting centrifugal tendencies. To Jinnah, the civil servants were the “backbone of the state”.¹⁶ After Jinnah’s death in September 1948, the prime minister, Liaquat Ali Khan was able to assert the intellectual and moral ascendancy of the political government over the civil service and military. His assassination in October 1951, however, was a shock from which the Muslim League never recovered. Khwaja Nazimuddin succeeded Liaquat Ali Khan as the prime minister but was soon eclipsed by the governor general, Ghulam Mohammad, an ambitious ex-civil servant who has earlier served as finance minister. In April 1953, Ghulam Mohammad, together with the bureaucracy and army, was able to overthrow Nazimuddin. The civil service and military thereafter assumed direct control of policy making although the appearance of democracy was retained until October 1958. For this state of affairs a major share of the responsibility can be assigned to the politicians themselves. Between September 1948 and April 1953, the political class had undermined three aspects of the imperial legacy that were critical to the survival of democracy. The

16 Rana Saleem Iqbal, ed., *The Quaid on Civil Servants: Speeches and Statements, October 1947 to August 1948* (Islamabad: National Documentation Centre, 2007), 17.

first aspect of the imperial legacy was the insulation of the military from politics.¹⁷ The second was the apolitical, professional and merit-based character of the civil service. And the third was the secular character of the British Indian state.

On the military front the policy immediately following independence was to rapidly nationalize the officer corps of the armed forces. The problem was that in 1947, out of the 4000 officers needed by Pakistan for its army of 160,000, only 2000 were available.¹⁸ Out of these 2000 only four were Lt. Colonels. Liaquat Ali Khan, in his capacity as prime minister, defense minister and chairman of the defense committee of the cabinet, pushed ahead with the nationalization of the army with January 1951 the target date for completion.¹⁹ In pursuit of this target hundreds of officers, Junior Commissioned Officers (JCOs) and Non-Commissioned Officers (NCOs), were promoted without the usual scrutiny. Ayub Khan, who took over as the first Pakistani commander-in-chief of the army on January 17, 1951, had been a Lt. Colonel in August 1947. The arbitrary nature of these elevations led a number of military officers led by Major General Akbar Khan to conspire to overthrow the government. The conspiracy was found out in time and suppressed, but only a few years later Ayub Khan became a politically-minded general,²⁰ a protégé of the governor general Ghulam Mohammad and eventually Pakistan's first military ruler (October 1958 – March 1969).

On the administrative side the elected members of the government at the central and provincial levels took to excessive interference in the administration to the neglect of policy making. British governors, such as Francis Mudie in the Punjab, warned the government that unless the politicians took policy making seriously and stopped meddling in the working of the bureaucracy, democracy and constitutionalism would collapse.²¹ Senior Pakistani civil servants, such as G. Ahmed, then interior secretary, delivered similar warnings and advised that if the political class wished to avert disaster for itself and the country it would have to refrain from treating the state as

17 Hasan Askari Rizvi notes that “the most outstanding contribution of the British rule in India...a theory of civil-military relations which emphasized an over-all civilian control and the military’s aloofness from politics.” Hasan Askari Rizvi, *The Military and Politics in Pakistan, 1947-1997* (Lahore: Sang-e-Meel Publications, 2000), 33.

18 Brian Cloughley, *History of the Pakistan Army: Wars and Insurrections* (Karachi: Oxford University Press, 2006), 1.

19 1949, File No. 173/CF/49, Government of Pakistan, Cabinet Secretariat, Cabinet Branch, “Nationalisation Committee’s Report”, 8.

20 In October 1954, Ayub had put his thoughts down on paper regarding the future political and administrative structure of Pakistan. Many of his prescriptions, such as merging the provinces of West Pakistan into a single unit were translated into practice. For more see Amanullah Memon, ed., *The Altaf Gauhar Papers: Documents toward the Making of the Constitution of 1962* (Lahore: Sang-e-Meel Publications, 2003).

21 National Documentation Centre, Islamabad. Folder Six, 1949. File No. 2(2)-PMS/49, Government of Pakistan, Prime Minister’s Secretariat, “Correspondence with the Governor, West Punjab”, 4-7.

a personal estate and focus on policy matters.²² Given the superior cohesion of the military and the bureaucracy it was unwise for the politicians to come across as less intelligent and less honest than the members of the state apparatus they were supposed to be providing leadership to. The relationship between the political and administrative arms of the state was further vitiated by the efforts made by the Muslim League to rig elections in its favor. This could only be done through administrative pressure on behalf of government candidates. An inquiry found that administrative interference in the 1951 elections in the Punjab occurred on behalf of fifty government members of the provincial assembly.²³ As the disintegration of the Muslim League accelerated in 1951 and 1952 its dependence on the apparatus to stay in power and resort to delay tactics in the promulgation of a constitution to prolong the tenure of the constituent assembly (elected in 1946), which doubled as the federal legislature led to a popular backlash and helped derail the entire democratic process.

The third element in the downfall of the politicians was the employment of religion as an instrument of legitimacy. Jinnah, in his August 11, 1947, address to the constituent assembly, had made it clear that Pakistan ought to retain the substantively secular character of the state it inherited from the British Raj:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State... We are starting with this fundamental principle that we are all citizens and equal citizens of one State... Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State. 24

While Islam had served as an instrument of political mobilization during the Pakistan movement (1940-47) against the prospect of succession of Hindu majority rule after the departure of the British, Pakistan's religious, sectarian and ethnic diversity

22 National Documentation Center, Islamabad, Folder Twenty-One, 1952. File No. 3(5)-PMS/52, Government of Pakistan, Prime Minister's Secretariat, "Correspondence with the Hon'ble Minister for Interior and States & Frontier Regions," 72-4.

23 *Report of the Electoral Reform Commission, 1956*. Karachi: Government of Pakistan Press, 1956.

24 Mohammed Ali Jinnah, "Presidential Address to the Constituent Assembly of Pakistan", August 11, 1947, in Khurshid Ahmed Khan Yusufi, ed., *Speeches, Statements and Messages of the Quaid-i-Azam*, vol. iv, 1946-48. (Lahore: Bazm-i-Iqbal, 1996), 2602-6.

did not permit the practical implementation of Islamic law and political theory.²⁵ It was time to move on from the rhetoric of an independence movement and adopt a more statesmanlike and pragmatic attitude. After Jinnah's demise, however, the Muslim League leadership decided to resuscitate the Islamic rhetoric of the Pakistan movement days. The Objectives Resolution of March 1949 asserted that the Pakistani state derived its authority from Allah and would establish a system that operated within the limits prescribed by the Quran and Sunnah.²⁶ Khwaja Nazimuddin took this one step further and empowered an Islamic advisory board to brief the Basic Principles Committee of the constituent assembly on implementing Islam. In the meantime, the Punjab's chief minister, Mian Daultana, tried to one-up the center by aligning with the anti-Ahmedi movement.²⁷ Early in 1952, G. Ahmed had warned Khwaja Nazimuddin that by employing Islamic rhetoric and declaring that Pakistan was going to be an Islamic state the politicians were raising expectations that could not be fulfilled.²⁸ A combustible situation was being created that risked Pakistan degenerating into "primitive" conditions.²⁹ It was not in the

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- 25 There are plenty of works available on the Pakistan movement but two very different ones stand out from amongst those recently published. The first is Sikandar Hayat, *The Charismatic Leader: Quaid-i-Azam Mohammad Ali Jinnah and the Creation of Pakistan* (Karachi: Oxford University Press, 2008), and Samina Awan, *Political Islam in Colonial Punjab, Majlis-i-Ahrar, 1929-1949* (Karachi: Oxford University Press, 2011). Hayat's analysis hems closer to the instrumental use of Islam as an agent of mobilization for the purpose of achieving a secular-rational objective (a territorial national state). Awan looks at the same issue from the perspective of those who were far more Islamic in attitudes and mores than Jinnah and the AIML leaders but who opposed the modernist Muslims in their quest for a separate Muslim homeland.
- 26 "Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust.... Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed... Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah...." *Constituent Assembly Debates*, March 12, 1949, (Karachi: Pakistan Publications, 1949) 90-4.
- 27 When Anti-Ahmedi sentiment led to large riots in 1953, the military intervened to restore order and a committee of inquiry led by Lahore High Court Justice Muhammad Munir was constituted. The committee studied the history of the Ahmadiya movement in its effort to make sense of the violence. The Ahmedi movement began in the 1880s in the Punjab when Mirza Ghulam Ahmed declared himself the recipient of divine revelations. In 1901 Mirza Ghulam Ahmed claimed that he was a prophet but did not have a new Sharia. He and his followers argued that the traditional doctrine of the Finality of the Prophethood eliminated the possibility of any new Sharia, it did not totally preempt the possibility of a new prophet who would seek to restore the earlier Sharia while receiving divine instructions. See *Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to Enquire into the Punjab Disturbances of 1953* (Lahore, 1954), pp. 9-10. To Sunnis and Shias the finality of the Muhammad's prophethood (As the Seal of the Prophets) is a core element of faith. Anyone who contravenes this tenet is thus an apostate meriting death.
- 28 National Documentation Center, Islamabad, Folder Twenty-One, 1952. File No. 3(5)-PMS/52, Government of Pakistan, Prime Minister's Secretariat, "Correspondence with the Hon'ble Minister for Interior and States & Frontier Regions," 77.
- 29 *Ibid.*

enlightened self-interest of the political class to encourage orthodoxy, let alone militant obscurantism. These warning went unheeded and in March 1953, Lahore exploded in sectarian violence directed against the Ahmedis and hundreds died. By this time, however, the governor general, the army and the civil service were ready to move in for the kill. Martial law was imposed in Lahore, Daultana's government was dismissed and on April 17, 1953, Nazimuddin's head rolled as well while Mohammad Ali Bogra was brought in as the new prime minister. The following year the constituent assembly was dissolved and in 1955 the provinces of West Pakistan were merged into One Unit with its capital at Lahore. From April 17, 1953 to December 21, 1971, when Yahya Khan's military regime (March 1969 – December 1971) collapsed following defeat at the hands of India and the emergence of an independent Bangladesh, Pakistan was ruled by the armed forces and the civilian bureaucracy.

The preceding discussion identifies a number of factors that taken together led to the termination of Pakistan's initial experiment with democracy and constitutionalism. A lack of effective political leadership was important but not sufficient as far as the collapse of the democratic experiment was concerned. Political interference in the military and the reactive politicization of senior military commanders was perhaps just as important. Arbitrary interference by politicians in the administration and a concomitant neglect of policy making alienated the civil service. The use of administrative means to manipulate the electoral process undermined the legitimacy of the system before it could get going. Finally, the use of religion for short-term political benefit exacerbated Pakistan's problems of governance and emboldened anti-democratic fundamentalist forces without securing for the politicians the legitimacy they sought.

Between December 1971 and July 1977, the Pakistan Peoples Party (PPP) led by Zulfikar Ali Bhutto ruled Pakistan. It was hoped that the new government would learn from the tragic experience of the 1950s and avoid making the same mistakes. To some extent it did seem to have learnt from history. A new constitution was drawn up and approved by August 1973. Bhutto was without doubt a genuinely popular and inspirational leader. Regrettably, the few successes were outweighed by serious structural failings. Bhutto arbitrarily dismissed thousands of civil servants and introduced a lateral entry scheme to induct thousands of loyalists into the bureaucracy. Money was lavished on the military and Bhutto tried to convert it into his constituency through patronage and interference. Astonishingly for a leader with such progressive rhetoric, Bhutto had the National Assembly amend the constitution in 1974 to declare the Ahmedis non-Muslims. A Ministry of Religious Affairs was set up and in the final days of his government alcohol was prohibited and gambling banned. By the time the March 1977 elections came around the bureaucracy was so intimidated by the prospect of further purges that it went out of its way to secure a heavy mandate for its political master. In these elections the PPP secured 155 out of 200 seats in the National Assembly while the combined opposition Pakistan National Alliance secured 36 seats. The opposition took to the streets and Pakistan seemed on the verge of chaos. Bhutto did not realize that the success of the democratic system depended greatly on the willingness of the losing parties to accept the legitimacy of the election results. This required an autonomous Election Commission and a civil service secure from political

arbitrariness and Pakistan after five years of manhandling by Bhutto had neither. On July 5, 1977, Bhutto's handpicked Chief of Army Staff (COAS), General Zia-ul Haq, an officer who had been promoted over seven senior generals to the top slot, overthrew the government, declared martial law, clamped down on the PPP and in April 1979 had Bhutto executed for conspiracy to commit murder.

In August 1988, Zia-ul Haq's rule ended with his death in a still unexplained air crash. This led to a quasi-restoration of democracy from 1988-93 with Ghulam Ishaq Khan, Zia's chief whip, succeeding him as president.³⁰ After Ghulam Ishaq Khan was forced out of power in 1993 by the Chief of Army Staff (COAS) General Waheed Kakar, the politicians were able to control both the assemblies and the presidency. Benazir Bhutto's second government (1993-96) was brought down by allegations of corruption centering on her husband Asif Ali Zardari.³¹ Her handpicked president, Farooq Ahmad Leghari, exercised his powers under Article 58 (2)b of the constitution and dissolved the assemblies and dismissed the government. In the 1996 elections, Nawaz Sharif's Pakistan Muslim League (PML-N) secured a two-thirds majority in the lower house of the National Assembly. It was desperately hoped that with an unassailable majority, Sharif would succeed where his predecessors had failed and complete a full term in office.

Between February 1997 and October 1999, Sharif had the Supreme Court physically stormed, the COAS Jehangir Karamat sacked, article 58 (2)b repealed and a Shariat Bill introduced that would have established a prime ministerial autocracy legitimized by divine sanction. Sharif's attempt to remove Karamat's successor, General Pervez Musharraf, backfired and on October 12, 1999, the army took over. It was not until March 2007, when rising militancy combined with economic shortages and the popular outcry at the dismissal of the Chief Justice of the Supreme Court, Iftikhar Chaudhry that the political parties were able to navigate their way back into the mainstream. Even here a point to be understood is that the political parties marginalized by Musharraf worked their way back into the mainstream by piggy-backing on the lawyers' movement and adding their weight to it. The Charter of Democracy thus assumed significance as a blueprint for the restoration of democracy and constitutionalism in Pakistan and a checklist against which the politicians could be held accountable by the media and civil society.

30 Iqbal Akhund, a retired diplomat and National Security Adviser in the first Benazir Bhutto government revealed: "Ministers were besieged in their homes from morning to night by petitioners, job-hunters, favour-seekers, and all and sundry...How the ministers ever got their official work done is a mystery, but in any case policy took a back seat to attending to the importunities of relatives, friends, and constituents." Iqbal Akhund, *Trial and Error: The Advent and Eclipse of Benazir Bhutto* (Karachi: Oxford University Press, 2000), 53.

31 What is intriguing about the corruption cases against Benazir Bhutto and Asif Ali Zardari is that almost nothing has been proven in a court of law. In the media and in the eyes of the intelligentsia, however, the Benazir government was corrupt to a degree hitherto unimaginable even by Pakistani standards. Many of the allegations, however, centered on Asif Ali Zardari's use of his proximity to Benazir to influence decision making and award of contracts. The award of contracts to Independent Power Producers (IPPS) in the mid-1990s is cited as a case in point since the electricity they produced was expensive geothermal energy rather than cheap hydroelectric power.

Successes and Challenges, February 2008-Present

The success of the PPP and PML-N in the 2008 elections meant that the signatories to the Charter would actually have the opportunity to implement it. Between February 2008 and December 2010 a substantial number of the Charter's principles outlined above have been implemented although the PML-N seems to be more eager about moving forward than the PPP. These are real achievements and demonstrate that Pakistan's political class has matured compared to the 1972-77 and 1988-99 periods. The most important successes included forcing Musharraf out of power by August, restoring judges sacked by the military regime, revision of the National Finance Commission to give smaller provinces more of the revenue, and refusal of the opposition to legitimize the National Reconciliation Ordinance (NRO), which withdrew some 8000 corruption and criminal cases against politicians and civil servants and expired on November 28, 2009.³² What these indicate is that Pakistan's democratic system *is* working and that it is also responsive to the public mood. There are, however, a number of very serious obstacles that could derail democracy.

The greatest problem that both the PPP and the PML-N have to deal with is that President Asif Ali Zardari is almost as unpopular as Musharraf was shortly before his ouster.³³ Zardari's reputation for corruption has damaged the credibility of the entire democratic process. It appears that Zardari is the president due to the sovereign immunity that he needs to stay a free man. Sovereign immunity does not prevent judicial challenges to his eligibility to stand for the presidency. Thus, Zardari has only reluctantly gone ahead with implementing the Charter. The restoration of the judges in March 2009 was achieved through the agitation launched by the opposition parties and the refusal of the military to help put it down. Even before becoming president, Zardari's prevarications led to the PML-N walking out of the grand coalition at the center. The expiry of the NRO and its rejection by the judiciary and public opinion has left Zardari and his supporters in a very difficult position. With the re-initiation of cases on the cards and hundreds being placed on the exit control list Zardari's interests on the one hand and those of his own party and the opposition on the other are pulling in opposite directions. With the PML-N openly calling for Zardari's resignation along with all ministers and advisors tainted by the NRO the stage is set for more confrontations.

32 The National Reconciliation Ordinance was passed by the Musharraf regime in its final months in power. What the Ordinance did was that it withdrew cases instituted against political leaders and senior civil servants affiliated with political parties in exchange for a reconciliation between the PPP and the military regime. Many of these cases were instituted on political grounds in order to victimize opposition politicians and their administrative collaborators.

33 According to Gallup, Zardari's approval rating in October 2008 was 19% with a disapproval rating of 66% while only 13% had confidence in his leadership ability. The Gallup poll conducted in June 2008 with reference to Musharraf's leadership found that Musharraf had a 17% approval rating and a 74% disapproval rating. Thus, Zardari's popularity at the time of his assumption of office was almost as low as Musharraf's at the time he was forced out of power. <http://www.gallup.com/poll/113737/pakistanis-give-new-civilian-leadership-low-marks-far.aspx>.

Another major source of weakness for the PPP in general and Zardari in particular is perceived closeness to the United States of America.³⁴ The furious debate that erupted over the Kerry Lugar Bill/Law badly bruised the government and gave the opposition and the military the opportunity to appear as being more nationalistic and in tune with domestic opinion. Questions of sovereignty and nationalism aside, the total amount on offer (\$7.5 billion over five years) is not regarded as being enough to actually help Pakistan while the monitoring provisions and the large expansion of US personnel that the Kerry-Lugar Law necessitates have caused great alarm amongst the public and the intelligentsia.³⁵ Part of the alarm was generated by the requirement that US high officials (The secretaries of State and Defense) certify that Pakistan's military is under civilian control. The fact that this aid was almost exclusively civilian oriented also evoked some jealousy in military circles. These problems, however, were more imagined than real since the Kerry-Lugar Law also contains a waiver provision that would allow the United States of America to continue providing aid so long as the same high officials testify that it is in the security interest of the US to do so. The hatred that was directed against the Kerry-Lugar Law was also stimulated by incessant US drone strikes (over 100 such strikes in 2010). While the military utility of such strikes is questionable the political cost to the United States of America in terms of Pakistani public opinion is enormous and has helped marginalized and undermine moderate elements who find themselves isolated by rising religious and nationalist sentiments.

The third major impediment is that the politicians do not seem to have realized that it is their arbitrary exercise of power over the civilian bureaucracy and propensity to treat the state as a personal estate that contributes to the government's inability to deliver on its promises. The government has altered the seniority and promotion rules to enable its favorites to rise more rapidly through the hierarchy. The practice of handing control of regulatory bodies to retired civil servants who can then be rehired on contract has become a norm. Being on lucrative contracts and subject to arbitrary dismissal servility can be assured to a much greater degree. On December 18, 2009, the interior secretary was suspended because immigration officials did not allow the defense minister, who is on the exit control list on account of corruption inquiries, to leave on an official visit to China. The interior minister, Rahman Malik, in the meanwhile, was summoned by the Supreme Court on December 24, 2009, to explain his arbitrary interference in the Federal Investigation Agency (FIA) and faced contempt of court charges. It is possible to continue ad infinitum about instances of arbitrary and illegal interference in the administration by the politicians. The politicians still do not seem to understand that it is in their enlightened self-interest to allow the administration to operate autonomously while they should concentrate on the formulation of policy

34 "In the spring of 2006, Bhutto's representatives approached the State Department with an idea about Bhutto possibly returning to Pakistan after seven years of self-exile. But it wasn't until widespread demonstrations the following spring, after Musharraf sacked the country's chief justice, that the White House began to seriously entertain Bhutto's proposal as a way to shore up an embattled Musharraf." Ron Suskind, *The Way of the World: A Story of Truth and Hope in an Age of Extremism* (New York City: HarperCollins, 2008), 205.

35 For the full text see <http://pakistaniat.com/2009/10/07/full-text-kerry-lugar-bill>.

or that doing so is the only way to gradually re-civilianize the state. The greater the competence and integrity of the administration under their leadership the greater the efficiency with which the government will be able to deliver on its promises.

Finally there is the military. The civilian government does not control it. To the extent that the civilian government and the military share a common goal, such as crushing the Pakistani Taliban and securing Pakistan's nuclear arsenal, there is agreement. On issues where there is disagreement, be it relations with India or the Kerry-Lugar Law, the military does as it pleases with minimal or no civilian oversight. Pakistan's nuclear weapons remain firmly in military hands even though the president transferred nuclear command authority to the prime minister. The repeated confrontations between the opposition and the government/Zardari on implementing the Charter of Democracy have afforded the military opportunities to regain credibility as an alternative even though it seems that the PML-N will not seek the dismissal of the government before its term ends in February 2013. In socioeconomic and administrative terms, the military is more powerful now than it has ever been before. Containing and rolling back the military's structural predominance is a most difficult task and one that requires wise political leadership backed by sound administration.

Conclusions

Pakistan's Charter of Democracy provides a workable blueprint for the restoration and perpetuation of civilian democratic rule. While the cynicism that greeted it was justified in light of the past behavior of the signatories the important achievements of the government and opposition post-February 2008 do indicate a genuine commitment to implementing the Charter. For this Pakistan's political class deserves to be supported by the international community especially given the fierce militant campaign underway against the Pakistani state. President Zardari and his associates are another major handicap and source of perpetual embarrassment that the democratic forces have had to contend with. The recent developments suggest that with the expiry of the NRO and the Supreme Court verdict against its constitutionality the president and his supporters have been reduced to an isolated and beleaguered minority. Linking Zardari's continuation in office to the survival of the democratic process only serves to bring the latter into disrepute.

While the political parties have agreed on the need to maintain judicial autonomy they have not made any meaningful attempt to tackle Pakistan's woeful administrative deficit. The judiciary may well be independent but it is the executive function of the state that accounts for most of its activity. Unless the rule of law is applied to the functioning of Pakistan's vast but dilapidated bureaucratic apparatus, democracy will remain in jeopardy. Until the servants of the state are secure from arbitrary changes to their status they will not honestly advise their ministers. Similarly, a disorganized, haphazardly managed and politicized state machinery cannot be expected to maintain law and order, collect taxes and implement government policies in health, education, infrastructure and social empowerment. Parliament may pass laws and the cabinet can, when roused, lay down policies but unless the mechanism that translates their

intentions into effects is highly motivated, well remunerated and properly organized, little will change on the ground.³⁶

The sheer scale of the challenge on the executive-administrative side is daunting. For instance, the approximate personnel strength of the FBR is 30,000-35,000. Out of these, it was estimated by the Taskforce on the Reform of Tax Administration (April 2001) that at least 60% were corrupt.³⁷ In numerical terms it amounts to about 18,000 out of 30,000 tax officials. The same taskforce estimated that due to corruption and mismanagement in the tax administration the state collected only about 40% of the taxes actually due to it.³⁸ Thus, the 10% of GDP collected by the state as taxes should be in the range of 20-25%. In order to fix tax collection in Pakistan the tax administration would have to be gradually purged of corrupt officials and the training, remuneration and organization of their replacements would have to be dramatically improved. Over a period of 10 years it could be possible to reduce the level of corruption and mismanagement in the tax administration by about 50% thus increasing tax collection very substantially.³⁹ More revenues would mean more money for meeting the current expenditure of the government and its development spending while reducing the need for borrowing. Fixing the tax administration would require great political will and understanding of the importance of such reforms for the viability of democracy. Indeed, a representative government should be better able to tax the citizens than a military dictatorship.

On law and order, Pakistan's police are 400,000 strong in number.⁴⁰ In addition to lacking the technical skills needed the police is perceived to be the most corrupt

36 The Education Policy 2009 is an interesting example. The text of the policy has been available for over two years and the new government took over in February 2008. And yet, it took till June 2009 to announce the policy which the government claimed as its own. It seems that in Pakistan the politicians regard power as an end itself and not a means to an end. Having come to office they then begin thinking about policy matters and often take whatever ready-made material is available and pass it off as their own.

37 *Report of the Taskforce on Reform of Tax Administration, April 14, 2001* (Islamabad: Central Board of Revenue, 2001), 171. The CBR was re-christened the FBR as of 2007. One of Musharraf's "reforms".

38 *Ibid.*, 172.

39 Transparency International's Corruption Perceptions Index (CPI) ranks Pakistan at 139 out of 180 countries. Pakistan scores 2.4/10 with a range of 2.1-2.7/10. For more see http://www.transparency.org/policy_research/surveys_indices/cpi/2009.

40 There is no central police register in Pakistan, no central or coherent personnel management policy, while provincial statistics are unreliable after 1988. Provinces recruit or add additional layers to the police force as the need is perceived. Thus, in 2009, the NWFP announced the formation of a special elite force to deal with terrorism which is to number 2500 police officers and men. In 1970, the total strength of the police (West Pakistan) was estimated at 70,000. By 1992, it stood at 200,000. At that rate it should stand at about 400,000 at present 2009-10. For more see, *Report of the Pakistan Police Commission, 1969-70*, (Rawalpindi: Police Commission Secretariat, 1970); G. Ahmad, "Mr. G. Ahmad's Committee on Police Organization and Reforms in Pakistan", (Islamabad: Government of Pakistan, President's Secretariat, 1972); *Police Reforms Committee, 1976* (Rawalpindi: Government Press, 1976); and Yasin, Mohammad, ed. *District and Police Systems in Pakistan* (Lahore: Vanguard, 1999).

department in the country. It is also a highly politicized department and police officers are routinely subjected to whimsical transfers on political grounds. Reforming the police is essential if the civilian government ever hopes to be able to maintain order in the country without having to call in the military.⁴¹ Actually doing so will require great patience and sustained effort to insulate the police from political interference and pressure alongside material investments in pay, training, infrastructure and facilities. Explaining to Pakistan's politicians that it is in their own interest to cede their powers over the police to a neutral body and undertake thoroughgoing reforms is vital if democracy is to succeed.⁴²

The examples given from the tax administration and the police illustrate the enormity of the administrative deficit and the structural challenge before Pakistan's political class if it wants to improve performance only in the taxation and law and order administration. If one adds health, education, infrastructure, poverty alleviation, family planning and protecting the rights of the disadvantaged, the scale of the administrative challenge increases astronomically. It on this most vital issue that the democratic experiment is failing out of a combination of obliviousness, vested interests and the focus on politics rather than the state apparatus to even try to set things right. With or without a Charter of Democracy, a government constituted through legitimate means must perform or run the risk of losing its legitimacy. The ability to perform, in turn, depends to a great extent on the intellectual and moral qualities of the servants of the state. Democracy in Pakistan positively needs a rehabilitated civil service and bureaucratic leadership if it is to have a decent chance of succeeding.

Pakistan's civil society is highly active and highlights problems associated with the administration and politics of the country. But here there are a number of constraints. Most civil society organizations are small, haphazard affairs with personalized leadership and limited finances. They can agitate, and they can demand, but without an effective state apparatus such activities rarely translate into achievements capable of turning the tide in Pakistan. Until the executive function of the state is improved through internal reforms the ability of the state to meet the demands of civil society remains marginal. Within civil society there is little understanding of this – instead the focus is on democracy, empowerment, and development, with little attention paid to the ability of the administration to deliver on any of these fronts.

Going back the starting hypothesis, it is important that Pakistan's rulers and activists understand that the development of constitutional democracy requires an effective rule-of-law oriented administration staffed by capable functionaries willing and able to advise the political leadership on policy issues and execute decisions taken lawfully and efficiently. It also requires the political leadership to understand their role in a modern constitutional state – make policy, oversee its implementation, do not

41 As had to be done in 1990s in Sindh. In 1998-99 thousands of soldiers were ordered to help the Water and Power Development Authority (WAPDA) clean up its act and crack down on electricity bill defaulters and illegal electricity connections.

42 *Ibid.*

meddle in the day-to-day functioning of the state apparatus,⁴³ and stop playing with the religious sentiments of the people for short-term political benefit. The dysfunction that has afflicted Pakistan democracy has been aggravated by the arbitrary and illegal treatment of the state apparatus by the political leadership and flawed policies and attitudes towards the military that transformed it from a willing servant of the law in a dominant political institution within a decade of independence. Unfashionable as it may be to say this, but a merit-based civil service, an autonomous judiciary, a military subordinate to civilian authority, an effective space for political and societal opposition to authority and secularism, are all part of the British imperial legacy. It is the erosion of these positive aspects of the imperial legacy, the accentuation of its negative features, and the reassertion of South Asia's indigenous culture of power that have brought down constitutionalism and democracy in Pakistan in the past and threaten to do so again in the near future.⁴⁴

43 For more on the present state of the state in Pakistan see *Reforming Pakistan's Civil Service* (Islamabad, International Crisis Group, 2010).

44 Following the murder of Salman Taseer, Governor of the Punjab, on January 4, 2011, by a member of his own bodyguard on the grounds that by challenging the legitimacy of the blasphemy laws the governor had committed apostasy, no major political party condemned the incident and even the ruling PPP backtracked and disassociated from the effort to amend the procedure to make accusations of blasphemy more difficult to register.