Chapter 5

Democracy on the Leash in Pakistan

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With the general elections of May 2013, Pakistan arrived at an unprecedented historical moment. On March 16, 2013, when the outgoing Thirteenth Parliament dissolved, it became the second parliament to complete its term since the restoration of democracy in 1988 and the third to do so in all of Pakistan's history. The Fifth Parliament (1972–1977) was the first to complete its term. The Twelfth Parliament (2002–2007), elected under General and President Pervez Musharraf's military government, became the second to do so. Apart from these three, *all* other parliaments were prorogued either through extraconstitutional means (for example, dissolved by a viceregal governor-general or by a military coup) or through the use of a constitutional amendment that permits the president to dismiss the prime minister.

Analysts feared that the political polarization of the country, massive electoral violence, the quixotic rise of a third party under Imran Khan (the famed former cricketer and lothario turned conservative politician), and voter disillusionment would result in low voter turnout and a hung parliament. Contrary to those dismal expectations, voter turnout was a robust 60 percent (Grare 2013). When the votes were tallied, the party of former prime minister Nawaz Sharif, the Pakistan Muslim League–N (PML-N), came out a clear winner. The PML-N secured 166 seats, a mere 6 seats shy of the 172 needed for a simple majority. Sharif was easily able to cobble together the remainder of needed votes from ally parties to form the government (*News International* 2013).

Sharif has taken the helm of a Pakistan saddled with a shambolic economy, plagued by energy shortages (see Khan in this volume), riven by massive internal insecurity challenges (see Tankel, Watson and Fair, and Clary in this volume), and burdened with the regional fallout of the American drawdown in Afghanistan. At the time of writing, the much-debated Bilateral Security Agreement (BSA) between the Americans and the Afghans has yet to be signed. Without this BSA, it is possible that the Americans will leave no troops in Afghanistan. Whatever happens in Afghanistan will have important impacts upon Pakistan's interests (see Gartenstein-Ross and Vassefi in this volume). Absent unforeseen events, Sharif is likely to be the prime minister of Pakistan when the last American soldier leaves Afghanistan.

Much is at stake in this transition. While Nawaz Sharif campaigned on the promise of sending the military back to its barracks and asserting greater control over foreign and security policies, the army is busily seeking to thwart those same goals. Democracy's gains will be the army's loss. In the past, the army has confidently seized the reins of power following domestic crises that the military itself helped to engineer (with the assistance of venal politicians more interested in regaining power than providing governance). Nawaz Sharif is no stranger to the tumults of civil-military relations. Sharif's first government fell in 1993 after protracted wrangling with the president. In 1999 after Sharif tried to dismiss General Pervez Musharraf from his position as army chief of staff, Musharraf removed Sharif from power in a coup. Sharif had vexed the men in khaki because he had dismissed the army chief Jehangir Karamat in 1998 and had pursued high-stakes diplomatic overtures toward India in 1998. Pakistanis generally prefer democracy to military rule, and while it still has cards to play, the army has lost some of its traditional tools of interference. Its ability to act per its own prerogative has been further constrained by the ongoing legal battles of former dictator Pervez Musharraf, who now faces a raft of treason charges. This essay seeks to evaluate the gains in democratization thus far and, at the same time, examine the scope and means for military intervention.

The remainder of this chapter is organized as follows. In the first section below, I discuss the army's past, present, and future options for controlling the government, whether indirectly or perhaps, in the future, directly. Second, I review the rise of Pakistan's judiciary and what this means for democratization and the rule of law in Pakistan. Third, I evaluate the

important gains in democratization since 2008. Fourth, I identify some of the key governance challenges Sharif is likely to face. Fifth, I review the various unprecedented legal cases confronting Musharraf and their import for civilian-military relations in Pakistan. I conclude this chapter with a discussion of the possible futures of Pakistan's civil-military relations and of the consequences for Pakistan and beyond.

The Army's Well-Worn Book of Ruses

While much is at stake for Pakistan's nascent democracy, the army also has a great deal at risk: namely, its ability to run roughshod over a country that it has ruled, directly or indirectly, for most of that country's existence. The army has long promoted itself as the only institution able to protect Pakistan from domestic and foreign foes. In its attempts to prove its own efficacy, it has exploited interparty rivalries to sow discord and maximize political incompetence: the worse the politicians appear, the nobler and more competent the army seems in contrast. The army has used its privileged place in Pakistani society to demand a lion's share of the budget and to pursue risky policies toward Afghanistan and in India. The army has also attracted international opprobrium for its history of sponsoring nuclear proliferation through the ''procurement networks'' of A. Q. Khan, among others (see Clary in this volume). Analysts suspected that the army's preferred outcome of the election May 11, 2013, was a weak government composed of a fissiparous coalition that would be unable to resist the army's powers of persuasion and coercion (Fair 2013b).

While much public trust in the army has been restored, it has faced numerous challenges to its public standing since Musharraf's 2001 decision to cooperate with the Americans in Afghanistan. Pakistanis were vexed that their prized army appeared little more than an American ''rental,'' engaging in operations against valued allies and even Pakistanis. Pakistanis were particularly disconcerted by the bin Laden raid, in which the Americans entered Pakistani airspace by helicopter, engaged in an hour-long operation at the bin Laden compound, refueled the helicopters on Pakistani territory, and exfiltrated into Afghanistan before Pakistan's air force even understood that the breach had taken place (Sanger 2012). Pakistanis were less agonized by the fact that the world's most notorious terrorist had found sanctuary in their country than they were by the prospect that the United States,

India, or even Israel could conduct such an attack on Pakistan's prized nuclear weapons (Associated Press 2011). Unfortunately, the parliament ultimately rallied around the military, reserving most of its vituperations for the United States and its policies. The subsequent investigation of the ''Bin Laden Affair'' focused on American attacks upon Pakistan's sovereignty rather than on identifying those persons and organizations within the government that aided and abetted bin Laden (Al Jazeera 2011). The army was able to cultivate support from the parliament and baffled citizenry alike by bemoaning America's technological advantage and painting the military as a victim, while at the same time assuring Pakistanis that India could never carry out such an operation (Perlez 2011).

Parliament's role in examining the bin Laden affair and the broader inquiry into U.S.-Pakistan relations demonstrates that civilians walk a fine line with the military establishment. Parliament asserted itself, but not to the point that it has seriously undermined the governing role of the army in these policies. Nonetheless, the Pakistani electorate has become more accustomed to seeing the army's authority publicly questioned and now expects politicians to be active in crafting security policy. More generally, while the army shoulders most of the blame for the decrepit state of Pakistan's democracy, it is also true that the army has never come to power alone. During periods of direct military rule, the army engages in what Anil Kalhan calls ''transformative preservation, by which he means undertaking ''legal, political, and institutional transformations with the effect of preserving and extending its dominance into periods of civilian rule'' (Kalhan 2013: 15). In doing so, the army has consistently followed a well-established pattern of undertaking sweeping constitutional reforms to strengthen its ''viceregal aspects,'' most notably to preserve ''its primacy over defense and foreign policy,'' among other areas (Kalhan 2013: 15). This army-orchestrated constitutional transformation depends on civilian institutions, including the judiciary as well as mainstream political party representatives and party workers. Over time, this set of practices has allowed the military to entrench itself so deeply in Pakistan's social, economic, and political structure that it has been virtually impossible to pry out.

One of the first steps that the army takes to prepare for a coup is to declare some sort of existential threat to the state that ''justifies'' suspending the constitution and ousting a democratically elected government. It is a notable—if lamentable—fact that when the generals seize power, they usually do so with the support of the people. To secure that enthusiasm, the

army usually drums up a political crisis in advance to make its interventions seem legitimate. The army chief then hoists up a provisional constitution order (PCO) to supplant the constitution and to buttress the army's power. Typically the army chief then anoints himself the head of government, suspends the constitution, and dismisses parliament. (These actions constitute high treason under the constitution [Fair 2013b; Kalhan 2013].)

The PCO then becomes the "extra-constitution" that supplants the actual constitution. To secure legal and institutional blessing for this measure, the military leader requires the justices of the Supreme Court to take an oath to the army chief-cum-chief executive and the PCO. Thus the army simultaneously reconstitutes the judiciary and constrains it (Kalhan 2013). Justices with integrity choose not to swear the oath and retire or are forced out, but the regime easily replaces them. This exercise is repeated on down the ranks of the judiciary (Kalhan 2013; Fair 2013b). The reconstituted, regime-friendly judiciary plays a critical role in validating the takeover under the "doctrine of necessity."[1]

In accordance with the army's view that the civilians are unfit to govern, the military must also manipulate the foundations of the political system. Pakistan's military leaders have rarely done so by banning political parties outright; complete suspension of politics is usually short-lived because the army chief cannot rule alone. Thus, he generally engineers elections to produce a parliament that will be amenable to his rule. He can do so either by holding elections on a nonparty basis or by reestablishing parties provided that the military can regulate who can contest elections and/or hold office. The latter requires the regime to create a "king's party," which is cobbled together by poaching willing politicians from existing parties. Pakistan's intelligence agencies also construct an "opposition of choice," featuring Pakistan's various Islamist parties (Fair 2013b). Eventually, the parliament is reconstituted via flawed elections in which the king's party prevails and the opposition of choice adopts the role of "loyal opposition."

The legislature next adopts the dictator's various extraconstitutional legal orders and renders them into law. Through this process of engaging a compromised legislature, the army preserves its supremacy, despite the ostensible return to civilian rule. Article 58(2)(b), the eighth amendment to Pakistan's 1973 constitution, which was passed in 1985, is the best example of this. This provision, initiated by Muhammad Zia-ul-Haq, permitted the president to unilaterally dismiss the government, and it required the appointment of a caretaker government, with appointments to the same

deriving from consultations of the outgoing prime minister and opposition leader. This became codified in Pakistan's constitution when the Seventh National Assembly passed the Eighth Amendment in 1985. Between 1988, when democracy was restored following Zia's death, and 1996, the legislation was used to dismiss all four elected governments (Kalhan 2013). The army also used the mere threat of dissolving the government to manipulate politicians into endorsing its preferred policies.

Eventually, however, even the most beloved dictators wear out their welcome. When the army realizes (usually after a decade or so) that the people have turned against military rule, it finally relinquishes direct control. At this point, democracy will be reestablished but, due to the hiatus, the political parties will be rusty and less than competent. The politicians do not usually censure their colleagues who collaborated with the army. Similarly, the judiciary does not punish those justices who broke their oath to uphold the constitution. And, although treason is a capital crime under Pakistan's constitution, before Musharraf no general had ever been tried for it. Worse, because the politicians fear that their time in power will be short, they tend to focus not on governance but rather on looting what they can before they are forced to flee the country or tossed into jail. What's worse, whichever party lands in the opposition has often retarded the return to democracy by conniving with the army to bring about early elections. In the 1990s, governments were lucky if they lasted three years, with the prime ministership handed back and forth between the inefficacious and corrupt Benazir Bhutto and Nawaz Sharif. The army is pleased to oblige; the chaos gives weight to the idea that it is Pakistan's sole responsible player, trying to save the country while inept civilian dolts run it into the ground.

The last few steps of the civilian-military power cycle played out differently in 2013. Although no one was foolish enough to believe that Pakistan's democracy was strong, the army's space for chicanery did shrink. This was likely due to the simple fact that the public remained deeply opposed to military rule. According to a 16,000-person, nationally representative survey fielded by myself and several colleagues, nearly 50 percent of respondents said that it is "extremely important" to live in a country that is governed by elected representatives of the people while another 32 percent said it was "very important to do so." In that same survey 40 percent said that it was "extremely important" that the civilians exercise control over the military while another 30 percent said that it was "very important" (Fair et al. 2013).

Moreover, the military itself it still reeling from the negative effects of General Pervez Musharraf's nine years as ruler of Pakistan. Musharraf made the controversial decision to cooperate with the United States in the deeply detested war on terror. He also agreed to permit U.S. drones to operate in and from Pakistan, allegedly scaled back Pakistani support for militants in Kashmir, and launched a series of wildly unpopular military operations across Pakistan's border areas (in Baluchistan, the tribal areas, and Swat). In addition, the Supreme Court decried several sales of public enterprises to Musharraf's cronies at below-market prices as evidence of his corruption. All this diminished the public's support for the military, even though it still remains quite popular (Kalhan 2013).

Pakistan's Activist Judiciary: Securing or Undermining Rule of Law?

In recent years, Pakistan's Supreme Court, under the guidance of Chief Justice Iftikhar Muhammad Chaudhry, has garnered accolades for its "judicial independence." Unfortunately, it is far from clear that Pakistan's courts have advanced democracy or deepened a commitment to constitutionalism or even fundamental rights or rule of law (Kalhan 2013). Chaudhry became chief justice in 2005. Along with most other judges of this period, he took an extraconstitutional oath after Musharraf's 1999 coup, and he signed off on the court's judgments validating the coup. However, under his leadership, the court began distancing itself from the military regime by expanding public interest litigation via its expansive *suo moto* powers. The court antagonized the military by overturning the regime's privatization schemes and subjecting it to questioning about persons who were "disappeared" as part of Pakistan's counterterrorism efforts. Musharraf responded in March 2007 by suspending Chaudhry and referring him for disciplinary proceedings. Unfortunately for the regime, the cameras were rolling when the police abused Chaudhry. His plight galvanized the so-called "lawyers' movement," which made his reinstatement its primary goal. In July 2007, the Supreme Court dismissed Musharraf's charges and reinstated Chaudhry.

But this was not the end of the affair. Musharraf declared a state of emergency in November 2007—in many ways a coup against his own coup. He once again suspended the constitution, promulgated a PCO, and forced judges to take an oath to it. Musharraf designated Justice Abdul Hameed

Dogar as the new chief justice, and once again, the newly reconstituted Supreme Court validated the emergency and Musharraf's reelection as president. This was Musharraf's fatal overstep. At this point, the lawyers' movement was joined by civil society actors as well as by the mainstream political parties. While Musharraf was sworn in again as president on November 29, 2007, he promised that the emergency would end by mid-December and elections would be held soon thereafter.

Musharraf was fairly certain that his regime would survive the elections. His confidence stemmed from a deal that he had forged with the former prime minister Benazir Bhutto of the Pakistan Peoples Party (PPP). This deal was brokered by the United Kingdom and the United States and became law when Musharraf's government passed the National Reconciliation Ordinance (NRO) in October 2007. The NRO suspended all corruption charges against PPP politicians, allowing them to contest elections. (It did not extend amnesty to the PPP's main rival, the PML-N.) The logic of the NRO was simple: Bhutto's popularity at the ballot box would restore Musharraf's dwindling legitimacy; she would serve as prime minister and he would remain on as president.

However, Bhutto was assassinated later, in December 2007. Elections were postponed until March 2008. With many Pakistanis blaming Musharraf for her death, it was unlikely that he and his party would fare well in the elections. Instead, the PPP, led by her widower, Asif Ali Zardari, swept the polls. However, the PPP did not have sufficient seats for a simple majority. Initially, in an unprecedented move, it joined hands with the PML-N. Bonds between the two parties had been strengthened when they collaborated on the Charter for Democracy, signed in London in 2006. The Charter for Democracy held significant moral power in the early efforts to jump-start democracy. But the PPP and PML-N alliance was short-lived (Kronstadt 2008). The PML-N, which had joined the lawyers' movement, insisted that Chaudhry be reinstated as chief justice. The PPP, under new party president Asif Ali Zardari, demurred because Zardari feared (correctly, as it turned out) that as chief justice Chaudhry would strike down the NRO, invalidating his government. Zardari's refusal to reinstate Chaudhry prompted the PML-N to pull out of the coalition and launch massive protests against PPP intransigence. The months-long impasse was resolved by General Ashfaq Parvez Kayani, the army chief of staff, in March 2009. Kayani, fearing that the standoff between the two parties would cause the government to collapse, persuaded Zardari to reinstate the chief justice (Nawaz 2009).

Chaudhry, once reinstated, proved true to his word: he voided the NRO and ordered the government to reinstate all pending cases against Zardari and other PPP politicians. The Supreme Court has since used these cases as a cudgel with which to beat the PPP. Former prime minister Yousuf Raza Gilani was one victim (the court pushed him out of office in 2012). Although the court justifies its dogged pursuit of the party as a sign of its commitment to rule of law, its impartiality is suspect: politicians notorious for corruption fill the ranks of every Pakistani political party (Fair 2011; 2013b; 2013c).

Furthermore, judicial activism against the PPP government tended to peak when the army seemed to have a viable alternative to the PPP. After all, why would the army attempt to undermine the government when the only alternative was the PML-N, which, given Sharif's history with the army, had a soured relationship with general headquarters? Sharif had first crossed the military in October 1998, when he dismissed army chief Jehangir Karamat, ostensibly for advocating a stronger military role in policy making. Karamat accepted his dismissal, and Sharif appointed Pervez Musharraf to take over as army chief (Dugger 1998). Following the debacle of the 1999 Kargil crisis, Sharif tried to oust Musharraf in October 1999. Sharif made this decision while Musharraf was in Sri Lanka, and when Musharraf attempted to return Sharif forbade the plane carrying him to land in Pakistan. The army understood this order as an assassination attempt, because the civilian aircraft lacked adequate fuel to land elsewhere. The army rescued its chief by taking over the Karachi airport, beginning the coup of October 1999 (Dugger 1999). After Musharraf seized power, Nawaz Sharif was exiled to Saudi Arabia, where he remained until November 2007 when he was allowed to return to Pakistan as a result of Saudi pressure (Wilkinson 2007). (Saudi Arabia was no doubt unhappy that the United States was promoting the left-of-center Benazir Bhutto and PPP in the looming governance transition.)

During 2011 and 2012, Supreme Court efforts to prosecute PPP figures coincided with Imran Khan's surge in popularity. At its height, Khan drew large crowds that spanned generations and ethnicity. His self-proclaimed "tsunami" reinvigorated the electorate and mobilized them on the themes of corruption, restoring Pakistani sovereignty, opposition to U.S. drone strikes, and scaling back military cooperation with the United States. Yet it was clear that Khan could not seize the government without playing coalition politics, something he declined to do. As Khan's prospects dimmed,

the court returned to relative quiescence until the sudden arrival, in January 2013, of Tahir Qadri (Fair 2013b and c).

Although Qadri had ties to two previous military rulers—Zia and Musharraf—few Pakistanis had even heard of the Canadian religious scholar. His protests against corruption were nonetheless able to marshal some of the largest crowds ever gathered in Pakistan. His rapid rise, extensive funding, and access to Pakistan's media caused many to believe that he, too, had the support of the army. Many Pakistanis wondered about the provenance of the "martyrdom-proof container" in which he moved about. The fortified mobile residence offered resistance to high velocity ammunition and even improvised explosive devices. Even Pakistan's police and politicians do not have access to such secure vehicles. The bizarre spectacle of Qadri moving about in his truck—mounted, armored, and possessing a command center—left many wondering how a foreign, private citizen could arrive in Pakistan from Canada and immediately obtain such high-level protection and draw such massive crowds (Fair 2013b and c).

Qadri and his followers camped out in front of the parliament and insisted that the government end its term early and form a caretaker government in consultation with him and the army. Although many of his complaints were reasonable, his methods were outrageous. Many Pakistanis feared that the army planned to use the weeklong confrontation to justify a coup, but such a move was never likely. Instead, the army was biding its time, using an unelected and unelectable Canadian citizen to bring the previous government to its knees. It was no coincidence that the Supreme Court took the opportunity to order the arrest of the prime minister as the Qadri drama unfolded (Fair 2013b and c).

In the end, Pakistanis gave a collective sigh of relief when the standoff ended with the government agreeing to set an election date and appoint a caretaker government in consultation with Qadri and the army. The popular reading of these events is that the politicians were able to sideline Qadri and undercut a coup in the making. That is too generous: Qadri in fact managed a soft coup on behalf of the army. Qadri coerced the government into agreeing to dissolve the parliament before March 16, even though the parliament's term was set to expire on March 18. As a Canadian citizen, Qadri had no standing to demand that a popularly elected government dissolve prematurely. Yet, with the support of his allies in uniform, it seemed as if he would be able to dictate terms. As it turned out, the government ended up on its own schedule rather than Qadri's. Nonetheless, this

episode, and the bizarre accord it produced, tainted the legitimacy of the May 2013 electoral transition and demonstrated that the army still has democracy on a leash. It also hurt the popularity of the PPP, which suffered a drubbing at the polls (Fair 2013b and c).

The Supreme Court sought to ''act as ultimate arbiter of political integrity and morality'' under the PPP-led government (Kalhan 2013: 66). Several of its initiatives illustrate this judicial hubris. First, the court sought to undo elements of the Eighteenth Amendment (discussed below) because the court ''contested the notions that Parliament's power to amend the constitution was 'unfettered,' even though the constitution's text expressly states that it is'' (Kalhan 2013: 77). Second, the court again hijacked parliament's authority when it indicted Prime Minister Gilani for contempt of court. Gilani had refused to ask Swiss officials to reinstate corruption charges against President Zardari after the court vacated the NRO in December 2009. After two years of wrangling, the court found Gilani in contempt and disqualified him from holding office. The court threatened to also oust Zardari, but ultimately did not. (This likely had as much to do with the army's preferences as the court's judgment: after all there was no alternative to Zardari.) Third, in the fall of 2011, the court inserted itself into what became known as ''Memogate.'' In the days after the bin Laden raid, Pakistan's ambassador to the United States, Husain Haqqani, allegedly warned the United States of a coming coup and requested that it intervene to secure the civilian government. In that instance, the military communicated directly with the court without any agency of the civilian government directing it to investigate the matter. Throughout the drama, the court played its ''traditional role of facilitating the subversion of representative institutions—relying in the process, once again, on an underlying discourse that coincides with the military's own'' (Kalhan 2013: 86). At the time of writing, it remains unclear to what extent Nawaz Sharif, the judiciary, and the military will enact the traditional dynamics during the PML-N administration.

Assessing Civilian Gains Since 2008

The outgoing PPP government came into power in March 2008 following reasonably free and fair elections. However, the PPP was forced to forge a fragile coalition, including, at first, the PML-N, its principal rival. Never

before had the two parties governed together and many observers interpreted this as a sign of electoral maturity after nearly a decade of President and General Musharraf's military rule. Pakistanis optimistically greeted the new government even though the coalition lasted only six months (Press Trust of India 2012). After five years of its administration, the PPP most distinguished itself by its massive corruption, inability to collect taxes (and refusal to expand Pakistan's miniscule tax base by imposing industrial and agricultural taxes on parliamentarians and their patronage networks), incapacity to address the colossal power and gas shortages that have plagued the country, weakness in addressing Pakistan's pervasive security problems, and inability to stem intolerance against religious and ethnic minorities (Fair 2013b and c). But the PPP also had remarkable achievements during its five-year tenure. First, the parliament (Pakistan's thirteenth) passed more legislation than any other in Pakistan's recent history (National Assembly of Pakistan 2014). In fact, only the 1973 parliament, which passed the current constitution of Pakistan, passed more bills than the Thirteenth National Assembly. The Pakistan Institute of Legislative Development and Transparency (PILDAT), an independent organization that monitors legislative affairs in Pakistan, observed that "while the outgoing Government deserves appreciation as it did not bulldoze legislation through the House, the opposition should also be applauded for playing a positive and constructive role in bringing major changes in the 1973 constitution and for positively contributing to key legislation" (PILDAT 2013b; Fair 2013b and c).

The PPP-led government made considerable strides in institutionalizing democracy. Perhaps its most controversial moves were the government's efforts to take greater responsibility for foreign and defense policy making, which have been traditionally the bailiwicks of the powerful army. The parliament set up the Parliamentary Committee on National Security (PCNS) in November 2008 through a joint resolution of the House and the Senate. According to PILDAT (2013b), the PCNS has been "one of the effective Committees during the past five years. The unanimous passage of the 14-point recommendations of the Parliamentary Committee on National Security by the Parliament marked the beginning of an oft-demanded Parliamentary overview and ownership of Pakistan's foreign policy" (see also Fair 2013b and c). The PCNS certainly drew strength from Pakistani public outrage over events such as the unilateral U.S. raid on Osama bin Laden's Abbottabad safe house (Schifrin, Tapper, and Khan

2013); the Raymond Davis affair, in which Davis, a CIA contractor, shot and killed two suspected ISI contractors that he claimed attempted to rob him at gunpoint (Waraich 2011); and the deadly operation in which U.S. and NATO forces attacked a Pakistani military post at Salala, accidentally killing twenty-four Pakistani troops (Masood and Schmitt 2011). Some of the PCNS recommendations irked the United States, such as the closure of the ground lines of supply to the war in Afghanistan between November 2011 and July 2012 (CNN 2012) and the closing of the Shamsi air base to U.S. drone operations (Masood 2011). These actions degraded the U.S. ability to resupply the war in Afghanistan cost-effectively and constrained U.S. drone operations, at least temporarily (see Watson and Fair in this volume for a more complete discussion of the drone program).

But over the longer term, PCNS activism ultimately advanced America's strategic interests in having Pakistan's civilian institutions of governance assume a more prominent role in providing security governance in the country. Ultimately the government did not follow the PCNS's framework for restructuring U.S.-Pakistan relations, which was a key element of the parliamentary resolution that came out of the PCNS review. After all, the military—not the civilian government—is the final arbiter of Pakistan's foreign and security policies. Nonetheless, ''the facilitation of this review and the unanimous approval of these recommendations indicated the Government's maturity and due regard to the institution of Parliament'' (PILDAT 2013b). Equally important, the PCNS and the review process it began did help to establish some semblance of parliamentary oversight of governmental policies in the realms of defense and foreign policy. Even though the government did not follow the PCNS guidelines and has carefully managed this process to avoid fundamentally challenging the army, the Pakistani people nevertheless became increasingly accustomed to seeing politicians weighing in on these hefty issues prior to the elections of 2013. Attesting to this development, all of the major political parties discussed civil-military relations in their various party manifestos (PILDAT 2013a; Fair 2013b and c).

With the passage of the Eighteenth Amendment in April 2010, President Asif Ali Zardari became the first sitting Pakistani president to have ever voluntarily devolved his extensive presidential powers to the prime minister. In fact, this was the most extensive ''deconcentration'' of power since the 1973 constitution. This was no small accomplishment in a country where the president has often enjoyed more power than the prime minister

or parliament. The Eighteenth Amendment modified some 97 out of a total of 280 articles of the Pakistani constitution. This amendment denuded the president of the powers to circumvent the legislative function of the parliament and decreased the period of time that the president can consider bills that have been passed by the parliament before approving them. It also removed the afore-noted, deeply problematic Article 58(2)(b), first promulgated under the military dictator General Zia and then revived under Musharraf. The Eighteenth Amendment also removed the term limits that precluded prime ministers from serving more than two terms (Fair 2013b and c).

With the Eighteenth Amendment, Pakistan formally returned to a parliamentary democracy in which the prime minister and his ministers compose the "federal government." It reinstated the prime minister, rather than the president, as the chief executive of the nation. But despite this important constitutional change, for all intents and purposes President Zardari retained power over those aspects of the state where there is space for meaningful civilian engagement. Equally important, the international community continued to engage with President Zardari, as well as the army chief. Thus despite the important devolution of power from the presidency to the prime minister, the prime minister remained largely irrelevant. A testament to the irrelevance of this post is the ubiquitous celebratory contention that this current government served out its term, even though the Eighteenth Amendment clearly defines the government as the prime minister. Given Gilani's ouster, the claim that this government has served out its term would be suspect in any country with a more robust tradition of parliamentary democracy (Fair 2013b and c).

An equally important contribution of the Eighteenth Amendment is that it was the first serious effort to devolve power to the provinces. It eliminated the so-called "Concurrent List," which enumerates areas in which federal and provincial governments may both legislate but where federal law governs. As part of devolution of power from the center to the provinces, the amendment also altered the way in which the National Finance Commission establishes the distribution of national revenue to the provinces. Unfortunately, this will likely remain a source of increased friction between the central government and provinces. Ultimately, however, significant devolution of power to the provinces may be an important way of mitigating some of the significant concerns of ethnic groups who feel

dominated by the "Punjabi state." Other amendments ratified by the Thirteenth Parliament are the nineteenth, which changed the way judges are appointed to the superior judiciary, and the twentieth, which established a new procedure to handle government transitions through the consensual appointment of a caretaker government (Fair 2013b and c).

This impressive slate of legislative initiatives represents an important and unprecedented, if modest, step toward involving civilian institutions in security governance (Malik 2009). This does not mean, of course, that Pakistan's democracy is in the clear. There are numerous daunting tasks ahead for the next government. It must consolidate democratic institutions, strengthen civilian control over the military, forge consensus among its restive coalition partners, resist political infighting and military interference, and bravely seek economic reforms, often against the wishes of its constituents and party members' own economic interests. This may prove too herculean an agenda. While the government has moved forward by leaps and bounds in the last few years, progress might be slower in the ones ahead despite Sharif's electoral mandate (Fair 2013b and c).

Navigating the Preferences of a Vexed, Divided Electorate

Since the 1990s, Pakistani politics has been dominated by the PPP and the PML-N, the only parties with national standing. In recent years, the Pashtun nationalist party, the Awami National Party (ANP), has taken root in places well beyond the northwest, like Karachi, where Pashtuns live in large numbers, but has not expanded its appeal beyond Pashtuns. The Muhajjir party, the Muttahida Qaumi Movement (MQM), has struggled to establish itself beyond its traditional stronghold in Sindh.[2] It has been very difficult for these parties to establish an extra-regional presence, much less a truly national one. Imran Khan's emergence as a national politician is an important and recent exception. His party, the Pakistan Tehreek-e-Insaf, has been in existence since 1996, but for years Khan and his party were marginal players of little or no political consequence (Baxter et al. 2002: 195–225; Talbot 2009). By 2011, Khan had succeeded in attracting a substantial following that spanned age groups, ethnic groups, and even regions. Khan referred to his movement and the rallies it attracted as a "tsunami (*Economist* 2011; Yusuf 2011). Khan's unexpected shift into prominence fostered suspicions that he enjoyed the backing and even the active assistance of the

Pakistan army, which was anxious to find an alternative to the PPP and PML-N.

One of the positive externalities of Imran Khan's rise—irrespective of the identities of his backers—is that he and his party galvanized youth in an almost unprecedented way. In the run-up to election, the Pakistani daily *Express Tribune* published polls that assessed the much-anticipated "2013 youth vote." This voting youth cohort was the largest in Pakistan's history: Pollsters estimated that twenty-five million registered voters were between the ages of eighteen and twenty-nine years of age and that some thirteen million first-time voters would participate in the election (Iqbal 2013). Young voters, however, were the most pessimistic about the Pakistan's future. When surveyed about the most important issues in their lifetimes, they identified the earthquake of 2005, the floods of 2010, and the assassination of Benazir Bhutto. More disturbing is that a quarter of all young people have been directly impacted by violence. Contrary to Western expectations, the "youth vote" need not necessarily support liberalism and democratic values. In fact, in the above-noted survey, 64 percent of male youth describe themselves as conservative/religious, and 75 percent of the women describe themselves in such terms. When asked about their political inclinations, 29 percent believe in democracy as a system, while 29 percent believe in military rule, and another 38 percent believe in sharia (Iqbal 2013). At the time of writing, no statistics were available covering turnout by age, although the Election Commission of Pakistan put overall turnout at 55 percent. This was a record: during the election of 1988, only 43 percent of registered voters cast a ballot; in 1990, 45 percent; 1993, 40 percent; 1997, 35 percent; 2002, 41 percent; and in 2008, 44 percent (*Express Tribune* 2013).

Not only are Pakistan's young voters divided, so is the rest of Pakistan's polity. The *Herald* (a Pakistani monthly magazine), in conjunction with the Sustainable Development Policies Institute (SDPI), fielded a poll in early 2013 that demonstrated that Pakistanis are deeply divided along party lines and are deeply conflicted about which of the issues confronting the state are the most important. Survey respondents were given a list of issues and asked to select the most pressing problems facing Pakistan. While poverty, corruption, power crises, illiteracy, and extremism were the most common choices, no issue garnered more than 17 percent of the responses. Responses differed according to the respondent's socioeconomic status, place

of residence (rural or urban), and level of education (SDPI 2014). Pakistanis are even more deeply conflicted when it comes to Pakistan's foreign policy, including relations with the United States, India, Afghanistan, and China. The United States and Pakistan have a long and tortured history together. While both sides have frequently been disappointed in the alliance, the last decade has been particularly challenging. SDPI asked respondents whether or not Pakistan should ''have a strong alliance with the US?'' Despite the public outrage over drones and other unpopular U.S. policies, respondents were evenly divided, with nearly one-third answering ''yes,'' another third ''no,'' and the remainder ''maybe'' (SDPI 2014). Pakistanis are similarly divided about their country's relations with India. One of the Sharif government's greatest accomplishments so far has been offering India ''most favored nation'' (MFN) status. (India offered Pakistan the same status in 1996.) Respondents surveyed by SDPI were not terribly enthusiastic about this important breakthrough. In fact, the plurality of interviewees believed Pakistan should not have done so (43 percent), with 28 percent agreeing with the move and another 29 percent undecided (SDPI 2014).

The previous PPP-led government tried to make overtures to Afghanistan. Pakistani policy makers have emphasized that they would like a cooperative relationship with Pakistan's western neighbor, even though the army backed and continues to back a more interventionist approach. According to the SDPI poll, Pakistanis are equally divided about how best to pursue relations with Kabul. When asked whether Pakistan should ''actively promote a government favorable to its own interests in Afghanistan?'' roughly equal percentages of persons responded ''yes'' (33 percent), ''no'' (35 percent) and ''maybe'' (32 percent) (SDPI 2014). Should Nawaz Sharif carve out a greater role for himself in directing Pakistan's foreign affairs, there is no clear public mandate dictating the course of policy action he should pursue toward Afghanistan.

Despite all of the anti-American fulmination in Pakistan, Pakistanis do not appear to be ready to oust the Americans. Survey respondents were asked to select the countries they believed were most beneficial to Pakistan from a list that included China, India, Iran, Russia, Saudi Arabia, the United States, as well as countries associated with the South Asian Association for Regional Cooperation (SAARC) and ''Muslim countries'' in general. China proved most popular, with 15 percent of the respondents identifying it as the ''most beneficial.'' But the other countries and groups

of countries, including the United States, polled similarly, at roughly 11 to 13 percent; statistically, this is a dead heat (SDPI 2014).

This discussion of the *Herald*/SDPI survey results suggests that the new PML-N government will have to navigate a fractured electorate whose priorities vary by province and ethnicity. While Nawaz Sharif received a clear mandate to govern Pakistan, it is less clear how this mandate will translate into prioritizing and prosecuting the varied domestic and foreign policies that attract voters and what space the army will provide the government to do so.

Musharraf and the Army on Trial

The Musharraf regime's end was an unusual one, as far as Pakistani military regimes are concerned. During the emergency of fall 2007, Musharraf agreed to step down as army chief. In October 2007, he promoted Lieutenant General Ashfaq Parvez Kayani, then serving as the head of the ISI, to the rank of four-star general and appointed him vice chief of army staff. When Musharraf retired from the army on November 28, 2007, Kayani became the new chief of staff. Musharraf retained his position as president. Had his plans with Benazir Bhutto been realized, he likely would have remained in this position. However, Musharraf ultimately was forced resign amid threats of impeachment. Never before had a military dictator been threatened with such a dramatic repudiation (Kalhan 2013; Fair 2011).

The threat of impeachment, and Musharraf's subsequent resignation, were the result of several developments. First, the lawyers' movement helped mobilize public sentiment against Musharraf's accumulating dictatorial powers. Second, both the PPP and PML-N agreed to begin impeachment proceedings (doing so requires a two-thirds majority in a joint session of the senate and national assembly). Third, the army had to overcame a collective action problem: while no senior leader wants to challenge the writ of his former chief, the army's leadership—including Kayani—feared that should President Musharraf be subjected to impeachment proceedings, the process might have evolved into a referendum on the army and its political role. While the lawyers' movement and political unity were secondary precipitants for Musharraf's resignation, army pressure appears to have been the proximal cause. Musharraf's departure, with or without

impeachment, was a victory for civilian control over the military (Fair 2011).

However, Musharraf's troubles did not end there. Living in London in self-imposed exile, Musharraf decided to return to Pakistan to contest the 2013 elections, despite numerous threats to his life. Musharraf, who faced a plethora of legal charges, apparently made his decision to return to Pakistan against the advice of the military. In April of 2013, judges ordered Musharraf's arrest to answer allegations that he had committed treason in 2007. Musharraf literally fled the courtroom on foot. This ignominious retreat motivated considerable ridicule in Pakistan's media (Zahra-Malik 2013). In August 2013, he was formally charged with murder, criminal conspiracy to murder, and facilitation related to the murder of Benazir Bhutto (Crilly 2013). In September 2013, Musharraf was charged with contributing to the death of the radical cleric and well-known terrorist Abdul Rashid Ghazi. Ghazi was killed, along with many others, during a stand-off with the military at the Red Mosque in Islamabad, which Ghazi and his militant associates had turned into their base (*BBC News* 2013). These murder charges represented an important further step in challenging the activities of military dictators: never before had one been forced to answer for his actions while in power.

While these murder-related charges are grave, Musharraf's case took a still more dangerous turn in December 2013, when Nawaz Sharif's government filed a complaint of five counts of high treason against the former dictator. The complaint detailed five major "personal penal acts for the purposes of his personal aggrandizement and a consequential vendetta," which Musharraf allegedly performed on or after November 3, 2007 (Butt 2013). The first charge of high treason stems from Musharraf's promulgation of the Proclamation of Emergency. The second charge is for issuing the Provisional Constitutional Order (PCO) of 2007, another blatant violation of the constitution. In addition, during this period Musharraf suspended fundamental rights enshrined in several constitutional articles. The third charge derives from Musharraf's demand that that judges take a new oath to abide by the PCO of November 2007. The fourth and fifth charges of high treason derive from Musharraf's issuance of two constitutional orders, both in violation of Part XI of the constitution (Butt 2013). The federal court did not pursue treason charges with respect to his first coup in 1999. The reasons for this are unfortunate: the courts and parliament ratified that coup.

At the time of writing, Musharraf has employed numerous delaying tactics to avoid appearing in court. He missed several appearances after suffering an alleged heart attack and being hospitalized at a military hospital. His request to leave the country for treatment was turned down by the courts (Boone 2014). Now Musharraf's legal team is challenging the jurisdiction of the civilian court that issued an arrest warrant for his persistent refusal to appear in court (Symington 2014). This prolonged confrontation has several important implications for the future of civil-military relations. There is no question that the army is uncomfortable with this turn of events. No previous military dictator has ever faced trial for high treason, which carries the death penalty, even though each surely qualified. That the army has been unable to resolve this impasse indicates that the army is not as free to intervene in civilian affairs as it would have been in the past. At the time of writing, it is impossible to say whether Musharraf's parade of delaying tactics will succeed in buying him time for the army to negotiate his exit, or whether Musharraf will stand trial (much less be convicted). No matter how this drama eventually resolves, however, there can be no question that Musharraf's legal woes will make future coups very difficult—which is exactly why Nawaz Sharif is so doggedly pursuing him.

In the Shadow of 2014

Nawaz Sharif has vowed to take control of the defense and foreign policy portfolios. He has virtually no chance of succeeding. His commitments to peace with India provoked former army chief General Kayani to caution him against acting rashly. In an effort to further consolidate some semblance of control over the military, in November 2013, Prime Minister Sharif named a fellow Kashmiri, General Raheel Sharif, as the new army chief. This appointment caused some grumbling because two more senior generals were passed over (Waraich 2013). Yet General Sharif and Nawaz Sharif are already quietly at odds. The latter campaigned on a platform of negotiating with the Pakistan Taliban while the former, representing the equities of the army, seems less willing to negotiate with militants given the enormous losses the army has suffered fighting them since 2004. General Sharif wants to ensure that Nawaz Sharif understands that his remit is restoring civilian law and order rather than putting a bridle on Pakistan's

army (de Borchgrave 2014). General Sharif has nonetheless shown considerable forbearance—or exposed the army's institutional weakness—by declining to rescue Musharraf from his legal entanglements.

How do the various developments in civil-military relations in Pakistan affect American interests? First and foremost, the United States, under the guidance of its special representative for Afghanistan and Pakistan James Dobbins, is anxious to find some negotiated settlement with the Taliban in Afghanistan that will permit it some degree of an honorable exit. There are many actors who have a clear stake in this outcome. President Karzai, who is rapidly becoming irrelevant as he faces the end of his final term, is uncomfortable with any process that leaves Pakistan and the Taliban with the initiative. Karzai and his non-Pashtun allies fear that the Taliban will be given power that they could not earn via the ballot box. Pakistan, for its part, is anxious that the Taliban have some role in Afghan governance, particularly in the south and east, where the group can prevent India from gaining influence in the Afghanistan-Pakistan border areas. India, Iran, and many of Afghanistan's neighbors are worried about any initiative that puts power in the hands of the Taliban due to the Taliban's past and present alliance with other Sunni militant Islamists, including al-Qaeda. For the near term, the army's preferences—not those of Nawaz Sharif—are likely to remain the priority for U.S. policy makers.

The army will also likely maintain the upper hand over civilian policy makers in other crucial areas, including the ongoing U.S. drone program (see Watson and Fair in this volume). The degree to which Pakistan's government—or elements therein—continue to participate in the program is open to dispute. At times, strikes carried out with the apparent collusion of the military have clearly vexed the civilian leadership. While Pakistan's military maintains ties with some militants, it has also vigorously maintained its right to pursue those militants who target the Pakistani state, especially the armed forces. The battle for public support has been a losing one, according to yearly data collected by Pew's Global Attitudes survey: in 2013, only 35 percent of polled respondents supported using the army to fight extremists, 29 percent opposed using the army in this way, and the balance declined to even answer the question (Pew 2013). If the ISI and Pakistan's military want the U.S. drone program to continue, it likely will. After all, under the current regime, the ISI and the Pakistan army benefit from the drone program because it eliminates Pakistan's foes without cost to the army. As an added bonus, Pakistani politicians who decry the program

while failing to stop it look ever more feeble in the eyes of the electorate. As 2014 nears, the future of the drone program is in question for multiple reasons.

Perhaps the most critical question facing the United States after 2014 is what to do about Pakistan's ongoing support for terrorism under its expanding nuclear umbrella. This is also an area in which the army is unlikely to cede much ground: Pakistan has shown absolutely no willingness to abandon jihad as a tool of foreign policy. Equally disconcerting, Pakistan has publicly pursued an expansion of its nuclear program, including tactical nuclear weapons (Smith 2013; see Clary in this volume). This is likely a deliberate calculation to keep the United States engaged in the region generally and with Pakistan in particular: Pakistan understands that preventing an India-Pakistan war remains a key U.S. policy objective, and Pakistan's development of tactical nuclear weapons coupled with India's limited-war doctrine (Cold Start) threatens to redefine red lines and diminish the timelines of conflict escalation. Thus while the temptation may be for Washington to dramatically redefine its relations with this troublesome country, Pakistan has developed various insurance measures to make such redefinition less likely. It is unlikely that Nawaz Sharif and his newly elected government will have any meaningful role in shaping those Pakistani policies that most deeply concern Washington.

Notes

Parts of this chapter reproduce and expand upon previous work by the author (Fair 2013a, b, and c).

1. Pakistan's Supreme Court first articulated this doctrine in the 1950s amid a conflict between the first Constituent Assembly and the governor-general, who did not agree with the constitution proposed by the Constituent Assembly and the "vision of parliamentary supremacy and federalism animating that document" (Kalhan 2013: 26). In that case, the court upheld the dismissal of the assembly.

2. The Muhajjirs hail from North India, speak Urdu as a mother tongue, and came to Pakistan either during partition of British India in 1947 or shortly thereafter.

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