CHATHAM HOUSE
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Author(s): K. J. Newman

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THE CONSTITUTIONAL EVOLUTION OF PAKISTAN

K. J. NEWMAN

HAS the parliamentary system really failed in Pakistan? Would the American Presidential system be more successful? Or, if we agree once more that Western Democracy is not an article for export,[1] can we reasonably hope for some indigenous type of democracy to rise from the ashes?

In attempting to answer these questions the two extreme positions should be avoided: one of these takes it for granted, *a priori*, that the Westminster system is not suitable for newly independent countries within the formerly colonial orbit;[2] the other regards the British Cabinet system as a standard of perfection by which to judge Pakistan politics.[3] The approach called for is of an experimental-empirical, an Aristotelian, nature.

Three principal factors have been named as root causes of the difficulties that have faced the constitution-makers in Pakistan since the very inception of the State. The present regime puts the blame squarely on the shoulders of the legislators of the past. Another school of thought, which has increased in volume, holds the geographical division of the country responsible. Others stress the religious issue of the Islamic State. The observer on the spot was able to distinguish some well-sheltered, well-entrenched, but impish force that allows the lawyer-politicians to wrangle about not greatly relevant issues, yet, whenever they settle down to the serious business of government, it appears, shoots a quick and deadly accurate arrow, and withdraws again. It happened in 1954, when the first Constituent Assembly was dissolved, not because it failed to produce a Constitution, but because it was about to produce one.[4] It happened again in 1958, not because the Constitution of 1956 was unworkable, but because it was to be fully implemented by the first elections to be held in the country.[5]

[1] See President Ayub Khan, 'Pakistan Perspectives', *Foreign Affairs* (New York), July 1960.

[2] Penderel Moon, *Divide and Quit*, London, Chatto and Windus, 1961.

[3] Keith Callard, *Pakistan, a Political Study*, London, Allen & Unwin, 1957.

[4] K. J. Newman, *Essays on the Constitution of Pakistan*, Dacca, Pakistan Co-operative Book Society, 1956, pp. xxxvii–xlix.

[5] The majorities of Muslim Leaguers returned in the East Pakistan Municipal Elections of 1958, and the hero's welcome accorded to Muslim League President Quayum Khan at Karachi immediately before the *coup*, produced the spectre of an electoral victory of the Muslim League. The Constitution of 1956 conceded to the Pakistan President and the Establishment barely sufficient power to control an unstable coalition Cabinet. A stable one-party Cabinet would have led to parliamentary supremacy. This accounts for the timing of the *coup* in 1958.

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There is nevertheless some truth in the complaints against the working of the Westminster system in Pakistan. The party structure was very weak; Pakistan had nothing comparable with the strong organization of the Indian Congress. There was some corruption, but it was not excessive, if measured by standards of an incipient democracy, let alone an Oriental one. Worse still was the lack of party discipline caused by reckless opportunism, and an over-developed taste for the making and breaking of Cabinets.

Yet these flaws were inherent in these same lands before they came to form a part of Pakistan. Sir Reginald Coupland had observed the difference in the political evolution of the Hindu and Muslim Majority Provinces of India, prior to 1947.[1] Moreover, the Muslim League was strongest in quality and organization in Provinces such as Bombay, the United Provinces, and Bihar, which did not join Pakistan. Even Jinnah's genius only succeeded in controlling the Muslim Majority Provinces with the greatest difficulty. It may be said that he achieved Pakistan by emulating Congress rigidity in organizing the Muslim League. His was truly a *jehad*, a religious war. Once this object was achieved, and he and his principal lieutenant Liaquat Ali Khan were no more, the Muslim political structure reverted to type. For the Punjab Unionists (who later formed the bulk of the Pakistan Republican Party) and Mr Fazlul Huq's Krishak Proja Party were political parties in the ordinary sense, more interested in social-economic programmes than in religious divisions.

Two further factors contributed. The 'One Unit of West Pakistan Act', which established dualism and killed all hope of a working federalism, brought about an unholy alliance of Punjabi and Bengali Provincialism. Jointly they turned against the Muslim refugees from India, perhaps the most patriotic element in Pakistan, who were now reminded that they were not 'sons of the soil' and gradually driven from all key positions of influence. Thus Pakistan, originally founded as a homeland for the Indian Mussulmans, acted against its own *raison d'être*.

Provincialism, not Parliament, failed in Pakistan. Whereas in the Provincial Assemblies the human material was poor, engaging in squabbles and fights, the National Parliament at Karachi presented a different picture. It maintained throughout a high and dignified standard of parliamentary debate and practice. A small but talented body, it has been accused of too much live and let live, too much give and take. Yet it is exactly these attributes which have been highly commended in respect of other democratic States.

Where, then, is the origin of the democratic decline to be found? First, there is no doubt an endemic tendency towards dictatorship in all societies which lay within the orbit of what Wittfogel has identified as 'Oriental

[1] *India, a Restatement*, London, Oxford University Press, 1945.

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Despotism'. Secondly, when Islam took root in India its model was the Abbaside Caliphate. The absence of a genuine theory of resistance against the usurper in Islamic political thought is well known;[1] so is the role of the guard regiments of Damascus and Baghdad (almost faithful reproductions of their East Roman and Byzantine praetorian neighbours in respect of their 'king-making' potential) in the making and unmaking of Caliphs. The Moghul Government, in some way akin to the Renaissance and post-Renaissance States of Europe, was a still more effective autocracy, which ruled its provinces through despotic governors. The British export of democracy to India commenced late. Before the end of the nineteenth century Company and Civil Service rule was hardly democratic. Then there is the British tradition of dual government, going back to 1786, in the sense that there was provision for one type of government under normal conditions, and another in emergencies. Regular and crisis governments have been alternating ever since, and the latter lost their exceptional character.[2] So successful have been British efforts to identify themselves with the indigenous structure that till this very day no power on earth could make a non-official rank equal with an official, or make a politician seem entirely respectable. Later, when responsible government did come, it came gradually and by instalments. But it came as something the people deeply desired. It was not foisted on them against their will. It is just for this reason that India and Pakistan are today the most crucial testing-grounds of responsible government.

Yet till 1947 ultimate power remained with the Viceroy, the Governors, and the Services. However sparingly they might use it, it was they who represented actual government to the masses, and not the lawyer-politicians in the Assemblies who, without real responsibility, became accustomed to negative attitudes and practices. On the other hand, for many indigenous civil servants and army men, and even for some politicians, the demand for Independence entailed also the promise of that power and prestige which they had associated with the British governmental machine, the force they might combat but still admired. So firmly was 'dyarchy' rooted on the sub-continent. Thereby the following pattern of political conduct emerged. It is normally the Establishment, namely the Army, the Police, and the Civil Service, that stands for the Government, which is, *a priori*, opposed to the politicians. However, one has got to give them a sporting chance, but one must expect them to 'make a mess of things'. When, in the opinion of the Government, this eventuality has arisen, the Establishment appears as *deus ex machina* to save the country from chaos and disorder.

[1] See the reference to Mawardi, Al-Ghazali, and Ibn Jamā'a in E. I. J. Rosenthal, *Political Thought in Mediaeval Islam*, Cambridge University Press, 1958, pp. 32, 40, and 44.

[2] K. J. Newman, 'The Dyarchic Pattern of Government and Pakistan's Problems' in *Political Science Quarterly*, New York, March 1960.

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This pattern of evolution was relatively innocuous before 1947, when the I.C.S. and the Army had no local ambitions, and when there was always Parliament in Whitehall as an ultimate check in reserve. Remove it, and dyarchic parallelism assumes a different hue. Pakistan took over a relatively larger share of the Officers Corps, but a smaller one of the Civil Service. This insufficiency had to be made good by frequently using ill-prepared men, with a sadly inadequate secondary school education, and a university degree gained through memorization. Yet these new civil servants, nicknamed by the people 'Japanese I.C.S.' (because of the cheapness of Japanese goods), soon turned into a proud élite, caring little for the people. What is more, they were constantly encouraged in this attitude by their superiors. There is much evidence to show that Pakistan was, even before 1958, ruled from the background by a group of intensely proud and ambitious officers and civil servants who nursed a deep disdain for the elected representatives of the people.[1] In fact, a congenital rift between Legislature and Executive troubled the country from the start. Jinnah, who was aware of it, tried to bridge it in his own person, by holding simultaneously the posts of Governor-General and Speaker of the Assembly. Fazlul Huq, on becoming Governor of East Pakistan, exclaimed: 'I am a constitutional Governor in the same sense in which the Quaid-e-Azam [great leader—an epithet reserved for Mr Jinnah] was a constitutional Governor-General.' Possibly, just because some of the legislators were themselves used to the dyarchic system, they were less capable of resisting the pretensions of the non-parliamentary executive.

The Establishment was reluctant to part with the strong powers which the Government of India Act of 1935 had given them. The first Constituent Assembly was therefore dissolved the moment it voted these prerogatives null and void. Yet the Constitution of 1956 reaffirmed this stand. While it curtailed the prerogatives of the Establishment it left it with just sufficient influence to control unstable coalition Governments. The Establishment only moved when the General Elections, scheduled to be held in February 1959, promised to establish a strong parliamentary executive. Events such as the killing of the Deputy-Speaker of the Provincial Assembly at Dacca might well have been controlled within the provisions of the Constitution. Granted even that martial law was then inevitable, it would hardly have taken more than six months to clean up and safeguard the fair conduct of the elections. More is known now about the background of the *coup d'état*. President Ayub Khan has recently claimed the 'merit' of abrogating the Constitution on behalf of the Army, which is said to have

[1] A discussion with Mr Zakir Hussain, the Home Minister, and then a retired police officer, should be recalled. It took place in 1954 after the Adamjee Mill riots of that year, in the course of which over a thousand people lost their lives. Mr Hussain then brushed away any thought of revolution: 'There is nothing to worry about. We have inherited the cream of the Indian Army, and we can always fall back on them. Are not we officers better qualified to run the State [than these worthless politicians]?'

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forced President Mirza's hand, before relieving him of his office. The former Chief Justice Munir has since also admitted that he was constrained to uphold the dissolution of the first constituent Assembly, though he felt it was unconstitutional.

Is the military regime then merely another passing phase within the see-saw of the dyarchic system? For the rulers of Rawalpindi have been fond of asserting that they are merely re-establishing the pre-conditions of a working democracy. There has been a good deal of divergence between the junta's assurances and their actions. Early in 1960 President Ayub, in the course of an interview with John Ardagh of I.T.V., promised full restoration of democracy by the end of 1960—'if all goes well'.[1] Shortly afterwards he stated, in the course of an interview with Frank Byers and T. E. Utley, that 'the Pakistan Government would be responsible to the Legislature once the country's Parliament starts functioning about this time next year'. He then also declared categorically that there would be an official opposition, and that 'there cannot be Parliament without political parties'.[2] Yet five days later the Security Act, which further limited individual liberties, was extended. Similarly, on 27 May 1960 the Education Minister, Mr Habibur Rahman, stated: 'The Judiciary is to remain independent'. He can hardly have been unaware at the time of a new Martial Law Regulation (No. 55) due to appear on the very next day, which threatened with the Courts of Martial Law and seven years' imprisonment any person who 'shall organize, convene, or attend any meeting or procession of a political nature'.

It would, therefore, be more advisable to evaluate the regime's policies with the help of their own record so far.

Actions against dishonest politicians, profiteers, and black marketeers were at first popular. But as proceedings under EBDO (the Elective Bodies Disqualification Ordinance) continued, relatively few genuine cases of corruption came to light. More frequent were convictions for ordinary political patronage or the raising of party funds. Sometimes charges were flimsy, as when Deputy Speaker Gibbon was accused of obtaining currency to send his wife to Britain for medical treatment. Ministers were usually found guilty of having overruled the civil servants working under them.

The prosecutions were prepared and drafted by the Bureaus of National Reconstruction,[3] working under a Central Ministry of National Reconstruction. It is noteworthy that some of the police officers who then staffed these Bureaus now hold some of the key positions in the State.[4]

[1] *Dawn*, Karachi, 17 February 1960.

[2] *Ibid.*, 21 May 1960.

[3] The Bureau might be viewed as a Sphinx with a Janus head, half secret police, half information office. Fortunately it has been satisfied hitherto with 'eating' reputations only.

[4] e.g. The Chief Secretary of East Pakistan, Mr Anwarul Huq.

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It is true, on the other hand, that there also took place a formal process of 'screening of services', ostensibly to eliminate corrupt elements. But corruption of politicians and of officers seems to have been measured with unequal weights in Pakistan. Whereas the numbers of disqualified politicians ran into thousands, the screening of the services came to a premature end, not before the mountain gave birth to the proverbial mouse.[1] The politicians thus became recognized scapegoats for all the past, present, and future ills. Some 'satanic' (in the words of the President) vice was to afford a pretext to the regime to justify an unprecedented extension of martial law to safeguard the junta's monopoly of power.

Though the regime governs without the support of any political party, Cabinet members have been imitating their elected predecessors by visiting their own native districts and holding public meetings there. The regime's attitude to the former political parties has gone through three stages. The first lasted roughly from its inception to the middle of 1960. During this time the full vigour of repression hit the Awami League in East Pakistan and the Republican Party in West Pakistan. When harsh measures against leaders such as Mr Suhrawardy had made the Awami League popular again, the regime turned against the Muslim League and arrested its President, Khan Abdul Quayum Khan. The third stage may be counted from about October 1961, when the rulers realized their lack of popularity in East Pakistan and attempted to appease the Awami League —an attempt which utterly failed, and which was partly responsible for the arrest of Mr Suhrawardy and his principal lieutenants.

On the other hand, the regime can claim some positive achievements, though work tends to proceed by fits and starts and too much reliance is placed on showmanship. At Karachi and Dacca, however, some housing schemes for refugees have been completed. In limited sectors industrialization is proceeding faster. Minor clerks and officials have been more willing to help the ordinary citizen, though an evil rumour is in circulation that corruption has not been much reduced and only the bribes are higher. Business activities have so far remained largely tied to the apron-strings of the Government and a few families of local monopoly capitalists. The city of Karachi apart, one can see no evidence of a self-reliant and broad-based class of medium and small business men. The sudden initial fall in prices of consumer goods remained temporary. In the end the President had to recognize that prices follow their own economic laws. Initial efforts to stem inflation and hold prices by whipping and jailing smugglers and black-marketeers had to come to an end.

In 1958 the present rulers seized the reins of power on the plea of the immorality and inefficiency of their predecessors. Their own integrity

[1] The Home Minister gave the number of higher civil servants retired as four, plus two higher police officers. *Dawn*, 1 November 1960.

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and efficiency must, therefore, be an important criterion in any inference as to their long-term plans and programmes. But, where press and public debate are not free, transgressions and shortcomings are sheltered from the public eye—though it is true that repression is not sufficiently well organized to stop citizens from talking about them in private. None of the 'non-official' Ministers had made a mark in public life before President Ayub appointed them, and several of the Ministers from Bengal have been complaining that they are being treated like 'passengers'. The truth of these complaints is, however, subject to doubt, as all the Ministers together hold the President firmly in their grip. No authoritarian regime dares to open its own Pandora's box by admitting some degree of fallibility on the part of its members.[1] The President had even to concede that Cabinet members should be irremovable till a new Constitution comes into force, and he has also agreed to be bound by their advice. They are thus all in the same boat now.

On the other hand it is paradoxical but true that East Pakistan achieved for the first time some measure of autonomy. This was because of the almost unlimited powers of its Governor, Lieutenant-General Azam Khan, who regarded himself as an heir to the throne of Rawalpindi. He has boundless energy and capacity for hard work and is not without the sentimental desire to do good to the common man. From his role in the Lahore disturbances of 1953 he had earned a reputation for ruthlessness—being feared passes in Oriental countries for being respected. On the other hand, having little experience in political or civil administration, there was frequent friction with commanding generals and high civil servants, all of whom had to quit the Province. The Governor was thus in the hands of his own secretarial staff, some of whom are junior in age and service and not without affiliations to the extreme separatist-leftist movement.[2] A situation was virtually created, therefore, well-known to students of the sixteenth century, in which the personal assistant or private secretary, with access to the King's closet, virtually ruled the country. But the self-image of the Governor went back to the Pathan Kings who, as he told me once, ruled Bengal securely and paternally, before the Moghul Emperors became too firmly associated with Lahore and Delhi.

On the regime's credit side are to be counted the agricultural reforms in West Pakistan, which abolished the enormous *latifundia* that had perverted the rural vote in the Punjab and Sind. On the other hand it has been pointed out that these reforms really aim at stabilizing the regime,

[1] As is instanced by precedents in the Soviet Union or in other 'Iron Curtain' countries, where accusations against Cabinet colleagues are rarely the result of genuine failure, but rather an indication of an internal political struggle.

[2] The Governor has tended to shield extremists by minimizing their importance as an effective force—even at the cost of publicly contradicting President Ayub Khan.

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as the upper middle class (from which substantial parts of the Officers Corps originate) has escaped expropriation.[1]

These reforms were to be complementary to the scheme of the Basic Democracies inaugurated by an Ordinance of 1959, which introduced a hierarchy of local councils, beginning at the village level. Members of the junta are sensitive about what they regard as their pioneering effort to build a grassroots democracy. In keeping with statements by Presidents Soekarno and Nasser, they claim that it constitutes a revival of some indigenous form of village government originally based on consensus. It has provided for the election of 80,000 town and village councillors, who are assisted by civil servants and nominated persons. The first elections to these bodies took place early in 1960 on a non-party basis. Electoral issues were local, not national, and often guided by considerations of family, caste, and religion.

Yet, in the eyes of the regime, their local government function is merely secondary. In February 1960 General Ayub Khan received from them a vote of confidence, in which 95 per cent of these councillors confirmed him as President. Voting took place without rival candidates or guarantees of secrecy, on a 'Yes' or 'No' basis. Dependent as these Basic Democrats are on the sub-divisional officer of their respective localities, who can easily control them, and in view of the nature of the Civil Service now, it is open to doubt whether that Service is the proper tutorial board for instruction in democracy.[2] What is more, the entire system is vitiated by agencies of the Bureau of National Reconstruction, which are attached to each tier.[3]

Nevertheless, some scruples remained in respect of the appearance of legitimacy. Immediately after the plebiscite of 1960 a Constitution Commission was appointed. A questionnaire was drafted and despatched to the notables of the country with the avowed purpose of testing public opinion in respect of the future Constitution. Though a man of the calibre of Justice Munir was available, another judge (and former civil servant) was appointed Chairman. The composition of the Commission was not impressive in calibre. Most of the members had hitherto been lawyers and business men of medium standing.[4] During the proceedings they preferred to adopt a philosopher's silence, leaving the Chairman to his own devices.

A glance at the questionnaire circulated by the Constitution Com-

[1] See *Pakistan Today* (London, Hamza Alavi), special number on Land Reform, vol. 2, No. 2/3, March–April 1959.

[2] See K. J. Newman, 'Basic Democracy as an Experiment', in *Political Studies* (London, Oxford University Press), Vol. x, No. 1, 1962. Even in neighbouring India the impact of the bureaucracy on the 'Panchayats' was not found to be entirely salutary. See Albert Mayer, *Pilot Project India*, Berkeley, University of California Press, 1958, pp. 165–6.

[3] See *The Task of National Reconstruction* (*Challenge and Response*), Karachi, Bureau of National Reconstruction, 1960, p. 24.

[4] *The Guardian*, 14 February 1960, called them 'dark horses'.

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mission proves that all the principal questions asked were leading ones.[1] The first presumed that parliamentary government had actually failed, and the second asked, not illogically, for suggestions in order to prevent the recurrence of such a catastrophe. The third enquired if the parliamentary, or the presidential, form of government was preferred. A supporter of the parliamentary form had also to explain how he would prevent interference in the day-to-day running of the administration. But if he decided in favour of the presidential form he had also to explain how he would prevent the checks and balances, so typical of American government, endangering executive supremacy in Pakistan. Another question sought to make a highly centralized form of government palatable to people known to cherish regional autonomy.

The results, however, were more than disappointing to the regime. Over 90 per cent of the answers are said to have favoured an immediate return to a parliamentary form of government and to federalism. The leaders of the dissolved political parties then began to publish their replies in the press and in pamphlets. There was an upsurge of public opinion, perhaps most clearly formulated in the replies of the former Prime Minister, Mr Choudhury Mohammed Ali.[2] 'Dictatorship', he declared, 'imposes a superficial stability, but brings stagnation, oppression, nepotism, and corruption. The spirit of the people is crushed and an opportunistic "yesmanship" is noticeable everywhere. The checks and balances', he reminded the Commission, 'had been evolved in a long struggle against the despotic concentration of power.' What were needed were free elections, the rule of law, and the subordination of the military to the civil power.

Meetings of professional bodies, including the Bar Associations, quickly multiplied,[3] and in one of them Mr Kayani, the Chief Justice of the West Pakistan High Court, appealed in favour of a restoration of the rule of law, which had by then become so much a shadow of its former self that Chief Justice Cornelius of the Supreme Court had himself suggested that judges should, in future, hold office during the President's pleasure.[4]

By July 1960 the regime found itself constrained to call a halt to liberalization. The President described Mr Choudhury Mohammed Ali as a 'political hypocrite', and declared in a manner familiar to students of nineteenth and twentieth century European history: 'The politicians have been tried before God, the Nation, and the World, and have proved a failure.' Simultaneously, the Martial Law Administration declared that

[1] See *Dawn*, 17 April and 17 June 1960.
[2] For the full text see *Dawn*, 17 June 1960.
[3] See *The Times*, 12 July 1960.
[4] Justice Kayani stated: 'The serpent is a subtle creature which obtained admission to Paradise without a permit. The idea that the judiciary should be independent had likewise been smuggled into Pakistan by the British . . . [it] is a foreign growth . . . and ever and ever there is an effort to reduce the judiciary to a third-rate power.' (Full text of the speech in *Dawn*, 15, 16, and 17 April 1960.)

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any further public discussion of the Constitution was a contravention of martial law (punishable by twelve years' imprisonment). Henceforth the Constitution was to be discussed *in camera*.

When the Constitution Commission eventually published its report, its contents were kept a guarded secret and made accessible only to the Cabinet and the highest ranks of the Civil Service. Leakages did occur, however, and the gist of the report found its way into the Calcutta *Statesman*.

Although the Constitution Commission seems to have been given clear instructions by the Executive, its report did not entirely ignore the views of public opinion. The result was a compromise. On the one hand the Commission sought to satisfy the regime by recommending sweeping executive powers for the President, including the right to appoint and dismiss a non-parliamentary Cabinet at his own discretion. Election of the President by the Basic Democracies seems to have been recommended. On the other hand it conceded to the people the election of the Legislature and a continuation of the federal form of government. Alternatively, election by a franchise limited by an educational qualification was suggested. The privileges of the Civil Service were to be fully guaranteed, but, as was to be expected from a former judge, the maintenance of the 'Rule of Law' was to be amply safeguarded.

From the long silence maintained over the report, however, and from the fact that it is known to have been repeatedly discussed by the same sub-committees in secret, it would appear that it did not go far enough. The two main objections were that the report left a back door for a return of the political parties and accorded too much independence and too many privileges to the judiciary.

In the new Constitution, which was announced by President Ayub Khan on 1 March 1962, the development, as outlined above, has come to fruition.[1] The document bears all the hallmarks of a Constitution devised by the Executive, to be imposed through the Executive, and for the Executive. As was to be expected, the recommendations of the Constitution Commission have been only partially accepted. The Basic Democracies are to be the Electoral College, not only for the Presidency but also for the unicameral legislatures, both central and provincial. Political parties remain banned, but may later be permitted by an Act of the Central Legislature. All executive power, and a good deal of legislative and judicial power as well, is vested in the President, who appoints his Council of Ministers from outside Parliament. The Legislature cannot remove them; the President appoints both them and the Governors. Though the system is termed presidential, it has little in common with the United States Presidency, and little more with the French Presidency of the Fifth Re-

[1] See *Dawn*, 1 March 1962.

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public. The Congressional right of confirmation of Ministers, of investigation, and of sovereignty over the budget is notably absent. Even legislation is subject to a presidential veto, though this may be overruled by a two-thirds majority of the House. As a concession to the Legislature, however, a limitation is imposed on the President in respect of dissolution. In case of a disagreement between President and Legislature the matter may be put to a referendum of the Basic Democracies. The usefulness of this provision is questionable because of the doubtful representative character of these Electoral Colleges. It has now been frankly admitted that, in the absence of political parties, candidates for both Presidency and Parliament will be 'projected' to the Electoral Colleges by the 'State'—in other words, by the regime and its bureaucracy. Most serious perhaps is the emasculation of the rule of law. The constitutionality of legislative enactments is no longer subject to judicial review. The Courts have even been barred from examining administrative acts—by the abolition of prerogative writs, such as *Habeas Corpus*, *Mandamus*, *Quo Warranto*, and *Certiorari*. To remind the judges that 'tempora mutantur', a Supreme Judicial Council is to prescribe for them a code of conduct, the infringement of which may lead to their removal. It merely remains to hope that the judges of the Supreme and High Courts, who are members of this Council, may show that modicum of independence demonstrated in the past by such judges as Mr Kayani and Mr Lari.

The first elections will still be held under martial law. On the other hand it seems likely that Pakistan, with her politically wide-awake intelligentsia, so fond of liberal-democratic institutions, may gradually give a more genuine and tolerant content to this rigid authoritarian form. The crucial test will come as soon as the new Parliament meets and martial law is withdrawn, and with it the more stringent limitations of personal liberty.

In conclusion, it cannot be held that the Westminster system of parliamentary government has failed in Pakistan. It is the system the people understand and have come to regard as their own. Indeed for them democracy and Parliament are interchangeable terms.[1] There should have been a provision in the Constitution of 1956 making it clear how soon after its promulgation general elections would have to be held. There certainly should have been a provision stopping the frequent crossing of the floor. If ever the people of Pakistan regain their political freedom they are likely to remember that democracy perished in 1958 as a result of structural faults in the organization of the political parties. Legislation that would discourage splinter parties and encourage regular and contributing membership and solid organization in the districts is certainly called for. The

[1] This has been amply confirmed by the recent movement against the new Constitution, which began with students' demonstrations in Dacca but soon engulfed the entire Province and led to the resignation in April of General Azam Khan as Provincial Governor.

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adoption, as in the Constitution of Ceylon, of the constitutional conventions of the United Kingdom has proved successful. It has to be admitted, however, that the Presidential prerogative cannot be entirely dispensed with at present, although an examination of its legitimate use might well fall within the competence of a revived system of judicial review.

Secondly, it cannot be held that the American form of democracy might have been more successful in Pakistan. By 'Presidential system' the Establishment really means the Vice-Regal system, with full discretionary powers, but unchecked by Parliament. They certainly do not envisage as President the leader of a victorious political party, who frequently selects as his Ministers the very men to whom he owes his election and who have to be confirmed by Congress. The people, still accustomed to monarchy, expect of a President the kind of detached impartiality which cannot easily be achieved under a Republic.

Thirdly, the assumption that there is something in the Orient which may have survived from an archaic indigenous democracy is an outgrowth of patriotic romanticism. What democracy there is in Pakistan is due to the impact of British legislative and educational reforms on a profoundly religious and God-fearing people. The achievement is that the educated classes have learnt to identify themselves with it.

Finally, to quote Mr Choudhury Mohammed Ali again:[1]

> The gaining of experience in political responsibility is akin to mastering any skill, say bicycle riding. It has its successes and setbacks. It takes time to learn the right balance between *freedom* and *order*, and it takes a steadfast faith in democratic values. The school in which these experiences are gained are *free elections* and the instruments for imparting this education are open debates between political parties. The modern world has no better instrument for political education.

Address at Chatham House
10 January 1962

[1] *Dawn*, 17 June 1960. There is no more convincing statement of the case for democracy in under-developed countries to be found anywhere since the end of the second World War.

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