Negotiating Pakistan: A Genealogy of a Post-colonial Islamic State

by

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Department for the Study of Religion
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i. Abstract

This dissertation explores the possibilities of Islamic statehood in post-colonial Pakistan through the works of three figures involved in framing the idea of the Islamic state: W.C. Smith, Muhammad Asad, and Muhammad Munir. Each of these three thinkers owes their position and prestige to the dynamics of colonialism, either as one employed in colonial educational institutions and the western academic study of Islam (Smith), or one involved in the critique of empire (Asad), or one tasked with adjudicating the new post-colonial state and its relationship to Islam (Munir). Although their projects embraced to some extent an extension of the colonial state’s hegemonic practices of domination and control, the state was seen by these thinkers as a space in which liberal values could be impregnated with Islamic authenticity. Each of them would find ready opponents amongst the ‘ulama and the Jama’at, who imagined the creation of Pakistan as an opportunity to return to a precolonial past. In exploring these stories, I aim to complicate the genealogy of the Islamic state idea as it was conceived in Pakistan and to provide a perspective from which to understand the ongoing struggles of the Pakistani state to come to terms with both its religious and secular heritage.
ii. Note On Transliteration

Transliteration when dealing with Islam in South Asia tends to be a touchy subject. A large number of Arabic loan words have found their way into Urdu, particularly in areas of law and politics. This transfer has introduced several problems, among these the one posed by the Arabic letters Alif and Ain. Unlike their pronunciation in most Arabic dialects, the Alif and Ain of words borrowed from Arabic are not vocalized differently when spoken in Urdu. For example, my name, Adnan, is rooted in Arabic. There it is written with an Ain ("ع") and is pronounced by Arabic speakers as such. In Pakistan, it is pronounced as if it began with the Arabic Alif ("ا").

As a result of such cross-language transfers, transliteration into English from Urdu of terms borrowed from Arabic may look different than transliteration directly from Arabic. One option, of course, would be to write all Arabic loan words in Arabic standard transliteration (ALA-LC). This has a tendency, however, to give legitimacy to the terms in Arabic at the expense of the terms as they are actually said and heard by Urdu speakers. My compromise in this thesis is to use Arabic transliteration when dealing with classical legal terms or with the use of a term in Islamic legal history. If I am discussing a concept drawn from Urdu discussions, I will use an Urdu transliteration that, even if it differs slightly from transliteration choices made by other scholars, will at least be consistent throughout this document.

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1 As a child learning to write, an older friend unfamiliar with how to spell my name taught me to write it as عدنان. When I tried to impress my Arabic teacher by writing my name on the board, she smiled and then encouraged me to write it fifty times more in the correct way. There I stood, a child deeply betrayed by his own name. On the difficulties of standardizing Urdu and the attempts to create a standard transliteration systems see: Tafseer Ahmed, "Roman to Urdu Transliteration Using Word List" (paper presented at the Conference of Language and Techonology, Lahore, 2009).

iii. Acknowledgments

As with any project that enjoys many years of labour, those owed thanks are legion. First and foremost, thanks are owed to my beloved Erin Luther who remains for me the most extraordinary person to draw breath and whose strength I owe the lives our two sons. To my darling Ilyas and Faiz, you redefine joy itself. None of these words would be possible without the continued support and love of my parents Ismet and Faiyaz, my sister Adeela and Tim my brother-in-law.

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Chapter One

Pakistan as an Islamic State, a Post-Orientalist Analysis

“What is this Islamic State of which everybody talks but nobody thinks?” – Justice Muhammad Munir

“There never was an Islamic state. The state is modern, and by modern I do not mean a particular unit of time located at some point in the trajectory of human history. The modern is a specific structure of relations that distinguishes itself as a unique phenomenon. It is a particular quality. Therefore to resort to such a usage as ‘Islamic state’ –as an entity having existed in history—is not only to indulge in anachronistic thinking but also to misunderstand the structural and qualitative differences between the modern state and its “predecessors,” especially what I have called Islamic governance.— – Wael Hallaq

1.0 Chapter One

1.1 Introduction and Scope of the Study

What is an Islamic state? The term haunts the titles of a great many works of recent scholarship and of late is inescapable in news outlets. Growing up between the United Arab Emirates, as did so many Pakistani children whose families were on work visas in the Gulf, and Zia ul-Haq’s Pakistan, I was exposed to a stream of news items about Islam’s role in government. In addition, the 1980s war in Afghanistan was framed as a battle of our mujahidin against the “godless Soviets” and children would play games pretending to be Ahmad Shah

Massoud, the Sher of Panjshir, driving out General Gromov. Back home, Zia seemed unshakable and his ploys to render political parties illegal had cemented his power. I vividly recall when this chapter of Pakistan’s story ended.

My aunt Dilaveez and I were having tea at the home of uncle Aftab Seth, the then Consul General of India, when the first urgent dispatch arrived rumoring Zia’s death.¹ I remember Dilaveez phuppo (father’s sister) tersely forbidding me from cheering any death, even that of a tyrant. For weeks, the state-sponsored reports on television and radio extolled Zia as a champion of Islam, which was strongly contrasted by the near celebratory air in many homes as another dictator toppled—or, in this case, exploded. As the nation began to brace itself for what would come next, questions about Zia’s so-called “Islamicization” project began to circulate, in particular questions about what role Islam should play in the public life of the nation. Pakistan was by constitutional declaration an Islamic state, but there was no consistent vision about what it meant to be an Islamic state. Thinkers such as Maulana Maududi and the chiefs among the ‘ulama proposed definitions, but most attempts to understand the nation’s histories ignored the reality that Pakistan had European as well as Islamic South Asian heritage.

The Pakistani version of the Islamic state must be framed against the backdrop of British colonialism. It was colonialism that brought the common law approach to law and the parliamentarianism that would paint the scenery in front of which Pakistan would act out its attempts at creating an Islamic state. This dissertation is a genealogy of Pakistan’s experiments in Islamic statehood and its relationship to the colonial legacy. It is roughly divided into two sections. In the first, I begin with an exploration about how knowledge about the Islamic state

¹ Not uncle quite in the generalized South Asian sense, but in this case my father’s first cousin.
was generated by an Orientalist scholar who embedded himself in Lahore. To that end, I detail the legacy of Wilfred Cantwell Smith, a scholar with a towering reputation in religious studies who would author a book linking Pakistan’s Islamic state to political aspirations of nations throwing off the yoke of colonialism. A similar anti-imperialist strain continues through the chapter on Muhammad Asad, one of the main ideologues behind the religious clauses in Pakistan’s Constitution. The second half of the dissertation begins with a transition chapter. Chapter 3 focuses on the legacy of Chief Justice Muhammad Munir, a former colonial justice who went on to author a famous report on the nature of Islam in Pakistan. Munir’s legacy highlights a history of how elite native colonial officers attempted to implement a modernist vision of a secularized Islamic state through the expansion of the colonial powers in post-colony. Chapter 4 deals with Pakistan’s blasphemy laws as a test case for the history of a colonial regulation given new life in an Islamic state. As the theories of Maulana Maududi factor rather importantly in the story, but have been expertly handled by others, I will present a brief summary of his thought and that of the ‘ulama in this Introduction.

Recently, the work of Islamist groups, such as the various organizations classified as the Pakistani Taliban, tends to dominate the public conversation on the Islamic state. In Pakistan, the vision of the state has never been stable and many voices have tried to claim the mantle of Islamic statehood. Of these, a number have conceptualised Islam as being entirely commensurate with liberal political values. Others imagine that the political program of the Prophet or the nizam-e-mustafa can be recreated from the model contained in the sunna and the examples of the first four caliphs. These two approaches are hostile to each other. And it seems that the battle for the future of Pakistan remains intimately entwined with the struggle to define Islamic authenticity and what its relationship to political ends ought to be.
This struggle of conflicting visions began even before the formation of Pakistan, during the twilight of British Colonialism. During the process of gaining independence, South Asian Muslims were faced with one of three choices about where to live. If they were in what was to become India, they could choose to continue living there and accept the promises of the Congress party that they would be a protected and honored minority. Alternatively, they could migrate to one of the two wings of Pakistan—East and West Pakistan, the latter now Bangladesh—to live among their co-religionists. A third group, those who already called one of the two Muslim-dominated areas home, had the easiest choice—they could simply choose to stay where they were. For those that moved, I suspect there was considerable nervousness about the idea. They had good reason to be nervous: the Khilafat Movement of 1920 had seen thousands of Muslims sell their possessions to complete a hijra (migration) to dar al-Islam (the abode of Islam) in Afghan territories in order to escape the dominion of the British in India. The Amir of Afghanistan, fearing so great an incursion, blocked the migration and the muhajirs found themselves trapped in the Khyber Pass. Many would lose their lives to brigands and illness, more would be rendered destitute. The new call for hijra, coming only a generation later from the Muslim League, a political party dominated by secularised modernists, must have reminded many of the earlier tragedy. This time, though, the political compass had rotated. The earlier hijra had called for relocation to a traditional society dominated by a Muslim aristocracy. The leaders of this new movement, such as Muhammad Ali Jinnah, wanted to create a modern nation state in which Islam would undergird liberal political values borrowed from the British.

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What was Justice Muhammad Munir getting at when he asked, “[w]hat is this Islamic State of which everybody talks but nobody thinks?” It reads as more than a little facetious. Munir used his report of the court of inquiry into disturbances in Punjab in 1953 to call into question the understanding of the Islamic state by both the ‘ulama and by Maulana Maududi. Munir was well aware that Maududi had published on the topic, that the ‘ulama had gathered in Karachi to draft a Basic Principles document for the new Islamic state, and that the eminent Jewish convert Muhammad Asad had been broadcasting his approach over the airwaves on Radio Pakistan. Munir’s question implied that all these figures were merely lost in talk and not really thinking about how an Islamic state could actually be implemented in a modern nation state. “Talking” for Munir constituted manipulating Islam for political ends. Though the slogan of “Islam in danger” may have secured the Pakistan resolution, for Munir a continued use of the strategy threatened to undermine a democratised political future. The future of Islam, he believed, was best realised in a secular state, a position which has been restated recently by scholars such as Abdullahi Ahmed An-Na‘īm. This dissertation is, in a sense, an attempt to answer Munir’s question.

While this dissertation is a contribution to the scholarship on the Islamic state generally, its focus will be on the Pakistani experiment. To answer Munir’s question in the era of the post-colonial nation state, we must, I believe, limit the query to the experience of specific geographic areas and specific lineages. I am unsure if it makes sense to speak of the pre-modern Islamic state in a time before the idea of the nation state took root, so I will begin with the assumption

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that the modern Islamic state in its territorial form is a distinct phenomena worthy of study on its own merits. Most of the Islamicate world was dominated by a European colonialism that brought with it the discipline of the modern nation state and the tools, such as the civil or common law based on alien legal traditions, by which it is maintained. In this sense the Islamic state is a distinct response to colonialism. Each of my chapters, accordingly, will follow a similar pattern, contextualizing each and the events being studied in the legacies of colonial rule.

On a programmatic level, my dissertation is informed by the work of Talal Asad, in particular his variety of genealogical approach that he derived from the work of Foucault and Nietzsche. It also owes a debt to the work of postcolonial studies, in particular its critiques of the orientalist production of knowledge to further imperial ends and how that knowledge has subsequently been deployed in post-colonial states. I will return to this issue of the methodological approach of this work. First, though, I will orient my study in the larger framework of questions about religion and the state.

1.2 Secularism and the Nation

Of the multiple recent theorists of secularism, such as Mark Lilla, Peter Berger, and José Casanova, the work of Charles Taylor is broadest in scope and conceptual implications. Taylor classifies understandings of secularism into three types. The first is emptying God, or any notion

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of ultimate reality, from public spaces (or, to invoke Habermas, the public sphere). The second
is what he calls “the falling off of religious belief and practice,” what has been commonly
referred to as the secularisation thesis.\(^\text{10}\) Taylor’s study focuses on a third sense of secularism,
which is to say a condition in which belief in God is “unchallenged and indeed, unproblematic,
to one in which it is understood to be on option among others, and frequently not the easiest to
embrace.”\(^\text{11}\) He is quick to point out, however, that he is talking of primarily non-Muslim
societies.\(^\text{12}\) Taylor’s qualification relies in many ways on the Orientalist assumption, also shared
by many so-called Islamists, that Islam and politics are inherently inseparable. I find t(Taylor
2007)his distinction between “our” settled secularism and “their” embattled or failed secularism
significant. The history of the modern territorial nation state is frequently mapped, it turns out,
using a Western European and North American secularist model. Pakistan, and to a lesser extent
Israel, stand apart as modern nation states created for the purpose of religious flourishing, or at
the very least for the protection of a particular religion from other religions or from irreligion
generally.\(^\text{13}\) These hidden assumptions in discussions of nationalism and secularism need to be
kept in view as we turn to the issues raised by the dynamics of the state and religion in the
development of Pakistan’s national self-understanding. Pakistan was founded in a flurry of
political maneuvering around the fortune of India’s Muslims.\(^\text{14}\) The unhappy consequence was a

\(^{10}\) Taylor, A Secular Age., 2.

\(^{11}\) Ibid., 3.

\(^{12}\) “Clear contrast cases today would be the majority of Muslim societies, or the milieu in which the vast majority of
Indians live…. [I]t seems to me evident that there are big differences between these societies in what it is to believe,
stemming in part from the fact that belief is an option, and in some sense an embattled option in the Christian (or
“post-Christian”) society, and not (or not yet) in the Muslim ones.” Ibid., 3.


\(^{14}\) The primary argument of Jalal’s exceptional: Ayesha Jalal, The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan (Lahore, Pakistan: Sang-e-Meel Publications, 2010).
country without territorial continuity, ethnic homogeneity, or agreement on national ethos.

Benedict Anderson’s thesis bears mention here, especially because his theory on the conditions that enable the emergence of nationalism conjoins secularism and the narrative of the nation state. Anderson posits that the nation or its ideology, nationalism, depends on factors such as the development of a vernacular, the abolitionment of the ancient régime, the privileging of secular authority, and the rise of an imagined community through print-capitalism.\(^\text{15}\) Thus, the nation is a temporal reality “imagined” into existence. A successful nation, the logic implies, would not allow politics to be dominated by religious groups, as is the case in Iran. When Anderson’s theory is coupled with nineteenth century notions of the “nation,” such as that in the “Two-Nation theory,” it perpetuates the belief that Indian Muslim identity is defined by religion instead of language or ethnicity.\(^\text{16}\) It is to this history framed on Anderson’s perspective that Pakistan stands as a stark exception.\(^\text{17}\) A country founded before its population was in place, its

\(^{15}\) See gen. Benedict R. O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Rev. ed. (London ; New York : Verso, 2006). Hobsbawm’s important multi point schema may be summarized as follows: 1) ‘nationalism’ (he cites Gellner’s *Nations and Nationalism*) holds that the political and national unit should be congruent; 2) He stresses the social engineering and invention involved the creation of the nation (contra the perennialist argument for nation); 3) “Nations and their associated phenomena must therefore be analysed in terms of political, technical, administrative, economic and other conditions and requirements”; 4) official histories are not to be trusted and social histories are necessary to understand the nation from below; 5) Social groups have different rates of acceptance of the nationalist project; 6) lastly, “unless the historian leaves his or her convictions behind when entering the library or study” no serious history of nationalism is possible. E. J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 2nd ed. (Cambridge England ; New York: Cambridge University Press, 1992).


\(^{17}\) It fails to fit into even the broader five-part model proposed by Liah Greenfeld on nationalism as an imperative prompted by industrialization à la Gellner. See gen. Ernest Gellner, *Nations and Nationalism*, 2nd ed., *New Perspectives on the Past* (Malden, MA: Blackwell Pub., 2006). and Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1992). I unapologetically engage primarily with the modernist school of the theory of nationalism, which posits that nationalism is an entirely modern phenomenon. The nationalists (states are eternal) and the perennialists (nations have been around a long time, but are shaped differently according to the times) are simply not as present in more recent academic debates on the topic. For this three part division of the theory of nationalisms, I am using the research of Eric G.E. Zuelow, et. al., the scholars
borders agreed upon, or even its vernacular cemented, Pakistan emerged from the ashes of Britain’s Empire as a nation without a sense of its nationhood.\textsuperscript{18} It had, however, \textit{a raison d’être}: to provide a homeland for India’s Muslims.

The narratives of secularism and nationalism frequently go hand in hand. However, in raising the objections of those he reluctantly refers to as “Islamists,” (supporters of the political deployment of Islam deployed politically by any means necessary) Talal Asad problematises the relationship between the state and religion.\textsuperscript{19} Asad posits, channeling Foucault, that, “the modern nation-state seeks to regulate all aspects of individual life—even the most intimate, such as birth and death.”\textsuperscript{20} As such, it defines legitimate social action through consent of the law, which in effect renders all social spaces “political.”\textsuperscript{21} “Islamists,” accordingly, are forced to elevate their project to the level of the state, thereby toppling the secular order to implement reform and change. This is not because they intrinsically oppose secularism, but rather because they seek to use the power of the nation state for their own ends.\textsuperscript{22} I agree with Asad’s appraisal. However, the case of Pakistan is more than merely internal groups seeking to co-opt the power of the state. Rather, Pakistan is an example of the nation state attempting to gain legitimacy behind the Nationalism Project. See gen. Nationalism Studies Information Clearinghouse, “The Nationalism Project: What is Nationalism,” available at http://www.nationalismproject.org/what.htm (last accessed on 7/15/2014).


\textsuperscript{20} Ibid., 199.

\textsuperscript{21} Ibid., 199.

\textsuperscript{22} Although discussed infra it merits repeating that one would be wise to read: Hallaq, \textit{The Impossible State : Islam, Politics, and Modernity's Moral Predicament}. One may also read the review of the book by Andrew F. March for an important objection on the nature of the books polemics.
through religion by asserting a religiously informed “national” identity. This connection will become more clear in Chapter 4 on blasphemy.²³

From its creation, as Farzana Shaikh has recently argued, Pakistan defined itself against India, particularly on matters of religion, and not merely against the British. (Shaikh 2009)²⁴ The Indian quasi-secular state, which had produced a constitution committed to secularism, could not be easily replicated in Pakistan. The debates surrounding its first constitution hotly argued the country’s national character. These debates were public and a number of distinct factions emerged. Firstly, there were a large number of émigré ‘ulama, who, despite lacking consensus on the particularities of the Islamic State, agreed that Pakistan should claim the title. In addition, western-educated native scholars and an Austrian Jewish convert (Muhammad Asad) began to postulate a Pakistan that was more than a place to protect the political rights of a powerful Indian minority, putting forth the defining project of Pakistan to be that of the creation of an Islamic state.²⁵

1.3 Methodological Concerns: Post-Orientalist Histories and Genealogy

Post-Orientalist historiography is a scholarly intervention that challenges both Orientalist histories, in service of empire, and nationalist histories, in service of the national project. In addition, it challenges Marxist histories such as those of the Cambridge School as being overly focused on the capitalist transition, a focus that, though valuable, resists the political intervention

²³ Devji, Muslim Zion: Pakistan as a Political Idea.
demanded by post-Orientalism. Post-Orientalists place a great deal of importance, not only on the role of colonisation and the construction of political and religious identities, but also on the legacy of the nation state, which is the most visible vestige of colonialism. Scholars of religion have recently engaged the post-Orientalist move. In 2010, at the annual meeting of the American Academy of Religions, Carl Ernst and Richard Martin held a day-long workshop, that used their new book, the first chapter of which is entitled, “Toward a Post-Orientalist Approach to Islamic Religious Studies.”

Drawing their impetus from thinkers such as Talal Asad (who problematises both the religious and the secular) and Charles Taylor, Ernst and Martin define a post-Orientalist approach as “[one] which includes the study of foundational texts but which insists upon connecting them to the questions and debates of contemporary scholarship across disciplines and regions.” Post-Orientalism in religion shares the commitment of post-Orientalism in historical study in that it does not eschew political engagement. In particular, it challenges the reductive “clash of civilization” approaches that frequently inform both policy-oriented and popular studies on Islam.

In historical studies, post-Orientalism attempts to move towards a “postfoundational” approach that seeks to learn how knowledge about former colonies (Gyan Prakash uses the term

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26 Bayly has also been critiqued by Prakash as being “foundational” for believing history to be “ultimately founded in and representable through some identity – individual, class structure-which resists further decomposition into heterogeneity.” Gyan Prakash, “Writing Post-Orientalist Histories of the Third World: Perspectives from Indian Historiography,” Society for Comparative Studies in Society and History 32, no. 2 (1990), 397. Chakrabarty similarly critiques Marxist history as using historicist phrases such as “incomplete transitions to capitalism and modernity”. Chakrabarty, Provincializing Europe, 249.


28 Ernst and Martin, Rethinking Islamic Studies, 21.
Third World) is produced. Post-Orientalists attempt to destabilise identities and break down teleological narratives by confronting the silences of the colonial archive, challenging the salience of historicism, and engaging subject-oriented sources such as poetry, mythologies, and dreams. For example, Dipesh Chakrabarty, one of the most high-profile post-Orientalist theorists, critiques Anderson’s notion of the imagination as a “mentalist, subject-centered category” which can be destabilised by religious categories such as darshan, the two way glance between the devotee and the representation of God in Hinduism. Darshan, he argues is a “seeing beyond” that acts without the subject.29 Since darshanic experience, as captured, for example, in the poetry of Tagore, does not need the subject, but is rather a subjectless practice,30 it destabilises Anderson’s “secular” seeing as the first site of imagining produced by print capitalism and injects a religious seeing that exists independent of the subject.

Chakrabarty argues that the task of the historian is to apply this post-Orientalist approach to push history beyond the nation state. Chakrabarty argues that our relationship with the past has been fractured, and this is part of the violence inflicted by modernity on “moderns.” The modern political subject, he argues, wishes to act with a degree of freedom from the past.31 Ashis Nandy, psychologist philosopher, takes this point further, lamenting the non-dialogical relationship of the historian to the past. Frequently, Nandy notes, the subjects of historical study are dead — unlike, for example, anthropological informants.32 On this issue, Chakrabarty points to the inherent difficulty that “we,” as post-Enlightenment moderns, have with non-rational

29 Chakrabarty, Provincializing Europe, 175-6.
30 Ibid, 178.
31 Ibid, 244.
actors such as Gods and spirits. How does the historian then engage seriously with an imagined past?

The historicist response is illustrated in the events surrounding the destruction of the mosque at Ayodhya. In 1992, a political rally in Ayodhya in the province of Uttar Pradesh tore down the Babri Masjid constructed in 1527. The claim was made by a number of Hindu nationalist parties that the mosque had been built by the Muslims to erase the birthplace of Rama. Historians, such as the inimitable Romila Thapar, attempted to combat the “mythological” history being asserted by religious nationalist parties, but to no avail. They argued in a document entitled “The Political Abuse of History” that “[w]hen communal forces make claims to ‘historical evidence’ for the purposes of communal politics then the historian has to intervene.” Secular history to counter communal history on the surface seems an important corrective. However, as Ashis Nandy, ever the provocateur, has indicated, secular history is not necessarily apolitical. He states:

Traditional India not only lacks the Enlightenment’s concept of history [secular history]; it is doubtful that it finds objective, hard history a reliable, ethical, or reasonable way of constructing the past…. Secular historians assume that the past of India has been bloody and fanatic, that the Hindus and the Muslims have been fighting for centuries, and that the secular state has now brought to the country a modicum of peace. They believe that the secular faiths — organized around the ideas of nation-state, scientific rationality, and development — are more tolerant and should correct that history.

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33 Chakrabarty, Provincializing Europe, 253.
35 Nandy, “History’s Forgotten Doubles,” 63-64.
Exposing the possible bias of secular historians to triumph a secularised present provides a powerful critique of an important recent book by Wael Hallaq.

In the second epigraph to this Introduction, Wael Hallaq refers to the “anachronistic” notion of the Islamic state. His stance is that of the secular historian, because he implicitly assumes that, if we disprove the existence of an Islamic state in history, then the concept loses its power in the present. But the continuing salience of the concept in Pakistan and elsewhere in the rhetoric of Muslims the world over implies that there is much lost if the task of the historian is reduced to debunking the claims of non-secular histories.

One way out of this impasse of irrelevancy has been suggested by Michael Rothberg in his study *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*.36 Bringing together Holocaust studies and postcolonial studies, the work is an extraordinary theoretical exposition of the following questions: “What happens when different histories confront each other in the public sphere? Does the remembrance of one history erase others from view? When memories of slavery and colonialism bump up against memories of the Holocaust in contemporary multicultural societies, must a competition of victims ensue?”37 Rothberg offers a partial answer to the posed questions by suggesting the possibility of “multidirectional memory.” Posed as a counterpoint to “competitive memory,” which treats the space of public memory as a zero-sum game, a “struggle over scarce resources” that posits the public sphere’s memory as dualistic, filled only with winners and losers. Multidirectional memory, in contrast, contemplates “memory as multidirectional: as subject to ongoing


37 Ibid., 2
negotiation, cross-referencing, and borrowing; as productive and not privative.” Rothberg’s ideas line up well with current post-Orientalist studies. In Pakistan, for example, framing the issues in binary terms, with Maududi and the ‘ulama on one side and their opponents, the westernised and thereby secularised elite, on the other, presents a false picture. In my explorations, I found that not only did Pakistan’s Islamic state have roots in Europe and North America, but also that the so-called secular elite participated in shaping its contours. To make way for a “multidimensional remembering” of the sort that Rothberg describes, I had to first reread the origins of the Islamic state in Pakistan using post-Orientalist tools.

The Islamic state is, and continues to be, a contested site of political and historical engagement. To attempt a post-Orientalist history of the Islamic state is to engage the concept in a manner that does justice to, or at the very least takes seriously, its proponents. It reads the history of the Islamic state in the context of colonialism and it does not neglect the importance of myths and dreams and memories that inform the idea. Even if the Islamic state is, as Hallaq has argued, “inherently self-contradictory,” it is still invoked and imagined by a number of Muslim moderns whose attempts are worthy of study. However, a post-Orientalist history does not ignore the importance of critique, because, as Chakrabarty reminds us, we need the analytical heritage of abstraction and its ability to produce universals, such as human rights (construed generally, not dependant on international organisations), to help us challenge social injustices and parochialism.

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38 Ibid., 3. Italics are Rothberg’s


Two recent and important histories that introduce, in my opinion, similar considerations and could be considered post-Orientalist, (though the authors themselves avoid the awkward moniker) are Naveeda Khan’s excellent *Muslim Becoming* and Faisal Devji’s *Muslim Zion*.

Naveeda Khan’s contribution begins with a similar orientation to my own, which is to say that it avoids beginning with the conclusion that Pakistan is a failed state and its relationship to Islam is schizophrenic. She writes, “I aim to give an account of Pakistan that demonstrates its inheritance of an Islam with an open future and a tendency toward experimentation, alongside its much criticized historical record.”

Her study is a profound exploration of “aspiration” as the motivating ethic of a unique trajectory of Islam. Of particular relevance to my study is chapter two in which she traces a “possible genealogy of aspiration” through the work of Muhammad Iqbal. She reads Iqbal’s thoughts about Muslims and the desire for homeland alongside Muhammad Asad’s and Maulana Maududi’s approaches to creating an Islamic State. Her contention is that “the creation of Pakistan inaugurated the aspiration to strive to be Muslim. This aspiration did not concern itself with final ends. Thus while the emphasis of striving was on self-perfectibility, it never emphasized perfection.”

She reads this sense of striving or aspiration in all three of the aforementioned thinkers and the rest of her text expands this analysis to politics of local mosques in Lahore, in Urdu literature, and in the struggles of a local family confronted with the supernatural. Her approach distorts the narrative of failure and contributes

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41 I was extremely excited to see her linking many of the same names that I am linking, and that she also drew inspiration from Wilfred Cantwell Smith’s powerful early works. Naveeda Ahmed Khan, *Muslim Becoming: Aspiration and Skepticism in Pakistan* (Durham: Duke University Press, 2012). And Devji, *Muslim Zion: Pakistan as a Political Idea*. Another important earlier work that discusses the nature of the transformations in a Muslim society (through domination of text and law) is Messick’s important study, Brinkley Morris Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, Comparative Studies on Muslim Societies (Berkeley: University of California Press, 1993).

42 Khan, *Muslim Becoming: Aspiration and Skepticism in Pakistan*, 7.

43 Ibid., 203.
to a growing literature of multi-layered histories of Pakistan. By refusing to see Islam as static or monolithic, it creates a space for a deep engagement of the ways in which Muslims experiment and explore their identities. Her history is compassionate yet critical and raw in the honesty with which she shares her own explorations of Pakistan.

Devji’s is similarly inspiring. In the comparative moves it makes in its exploration of the plausible and possible connections between Muslim nationalism in India and Zionism, Devji premises that the linkages between Zionism and the drive for a Muslim homeland teases free a unique narrative about colonialism, religion, and religious nationalism. Rather than a timeline-driven history, the study is a free exploration of an ideological landscape. Such an exploration is made possible by the assumptions undergirding the work: “Having abandoned history, geography and numbers as foundations for a Muslim nationality,” Devji argues, “Jinnah and his followers were occupied with self-making as a form of transcendence.”

He explores the history of Pakistan by using the complicated lives of Iqbal and other ideologues of Pakistan and by attention to the political (and intellectual) machinations of Jinnah. This embodied genealogy frees the history of Pakistan from the simplistic narratives of the decline and failure of a nation state and pushes us to think about the complexity of “settler states” emerging from the shambles of empire. In stressing that the twilight of colonialism merits close study in terms of the possibilities is creates for new expressions of Muslim and Islamic identity, Devji’s work informs my own.

It is my intention, then, to engage in a post-Orientalist approach to the Islamic state in Pakistan using the genealogical method proposed by Michel Foucault (by way of Nietzsche) and

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44 Devji, *Muslim Zion: Pakistan as a Political Idea.*, 143.
refined in the work of Talal Asad. In his own genealogy of the term “religion,” Asad identifies certain key fissures between the “Western concept” of religion and Muslim traditions, in particular the rhetoric of separation between religion and power in the western academia.\textsuperscript{45}

Although it has been twenty years since the initial publication of Asad’s work on the \textit{Genealogies of Religion}, it remains a powerful touchstone.\textsuperscript{46} Asad charges Clifford Geertz, a titan in anthropology, with relying on categories of religion that are constructed from the particular history of Western Christendom and are thus limited in vision when used for analysing a different tradition such as Islam. I try to resist conceptualizing any practice, political form or personage as “essentially Islamic.” Flowing out of Asad’s suggestion that Islam be viewed as a “discursive tradition,” recent scholarship on Islam, especially in anthropology, has been cautious about assuming that Islam has any reified essence. Moreover, insights gained by way of genealogical studies of the post-colonial state have highlighted the nature of “manufactured traditions.”\textsuperscript{47} In this sense, my engagement with Islam in this dissertation makes no claims about what constitutes authentic Islam. Rather, Muslims are those that claim to be Muslims, regardless of adherence to any orthodoxy. In addition, Islam is that which is invoked as Islam, regardless of any ability to validate its origins in the tradition, such as the Qur’an or \textit{sunna}. This is not to say that normative analysis of Islamic legitimacy is not valuable. In the case of Pakistan however, Islamic legitimacy operates on its own distinct logics, which include weighing of factors such as political expediency, anti-Western sentiment, and frequently, in the case of Islamist groups,


\textsuperscript{46} It has actually been 30 years since Asad penned the most famous chapter of his book. See. "Anthropological Conceptions of Religion: Reflections on Geertz,” \textit{Man} 18, no. 2 (1983).

governmental critique. I focus instead on how Islam was constructed by various stakeholders, in particular those whose presence or prestige was made possible by the colonial system who narrated the deployment of modernist Islam in state form.

On a personal note, and in line with the post-Orientalist tendency to reveal possible threads of bias, I am of *muhajir* (the term frequently applied to non-native Pakistani immigrants) stock. The ideological dream of a Muslim homeland has always had considerable currency in my family. It was a family, however, that consisted of Sunnis, Shi’as, Ahmedis and Ismailis, with varied levels of pietistic devotion and of commitment to Marxism. Islam, and who had legitimate claim to it, was therefore construed extremely broadly. As a family involved in the civil service, serving in the military, and engaged in governmental projects in the private sector, there was a strong sense of loyalty to Pakistan, regardless of relative satisfaction with the current regime. As such, I may have some personal commitment to seeing Pakistan as more than merely a conglomeration of political failures. Rather, I see it as a state which is still negotiating its relationship to Islam and its commitments to liberal political ideas in an era of declining political will.\(^48\) It is with these considerations, then, that I wish to engage the continuing political dream of Pakistan as an Islamic state. It is not my intention to engage in apologetics, but rather take a critical, historically-oriented approach to the contours and pitfalls of a national dream (or many disparate dreams).

\(^{48}\) One additional slant that I bring to the task warrants mention here. The more I worked with my subject matter, the more distinct was my sense that all versions of the Islamic state under consideration in Pakistan have been construed by men thinking in heteronormative patriarchal mode. The implications of this observation deserve a far more robust treatment than this minor comment, and I hope that my future work will reflect further on this point. De Sondy’s recent book expands the important work of masculinity studies in Islam. Amanullah De Sondy, *The Crisis of Islamic Masculinities* (London: Bloomsbury Academic, 2014).
1.4 Recent Scholarly Studies on the Islamic State

Orientalist historians and Islamist ideologues, despite their many differences, tend to agree on one significant point and that is the maxim that “[t]he distinction between secular and spiritual for the Muslim has no meaning.” It should come as no surprise that the “clash of civilizations” approach to history has direct links to the prominent Orientalist Bernard Lewis, who once stated that, “[i]n classical Islam there was no distinction between Church and state.”

Lewis’s reputation as a historian with an imperialist agenda is not readily apparent in his earliest scholarship—it becomes more obvious, however, in his later personal politics and in his role as an advisor to the Pentagon. For Lewis, and Samuel Huntington who would further his argument, Islam’s impact transferred Muslims into a separate civilizational category, one that was headed for an inevitable clash with the “West.” This “clash” approach to Islamic political aspirations has been sidelined in most serious scholarly work.

Scholars at the opposite ideological pole, such as Hallaq, have also argued that the modern state form may be incompatible with Islamic authenticity or aspirations. Hallaq’s recent study of the Islamic state concludes that there are certain “major incompatibilities” between Islamic ideals and the modern state form. First, he argues, the modern state is

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anthropocentric and asserts its power through positive law.\textsuperscript{53} Second, Islamic governance can permit no sovereign will other than God.\textsuperscript{54} Third, rules and regulations must be based in the “higher moral principles” derived from the most authoritative sources for human access to God. (Hallaq 2013) Fourth, and perhaps most importantly for Hallaq, the modern state produces subjects that differ from those under any form of Islamic governance. Any attempt, therefore, to construct a modern Islamic state should be deeply suspect.\textsuperscript{55} Options for the pious are thus limited. They must either “succumb” to the moral incompatibility of the modern state or revive a form of Islamic governance which would be doomed to failure in the era of the nation state. In a recent review of Hallaq’s book, Andrew F. March is deeply critical of Hallaq’s conclusions. March states:

For Hallaq, it is the disciplinary, regulatory and surveillance powers of the modern state, anchored in the Enlightenment mentality of instrumental rationality and the Is/Ought distinction, that prevents the public world from being morally grounded. But, for all that his book aims at exploring “modernity’s moral predicament,” Hallaq does not recognize the distinctive conditions of moral argument in modernity. He does not take seriously the distinction between morality (what we owe others as a matter of justice) and ethics (care of the self), and thus does not discuss the possibility that any modern legal and political projects might aim at morality in the former sense while acknowledging multiple ethical projects in the latter sense. There is no recognition that in modernity there might be reasonable disagreement about ethics, even for Muslims or those living in Muslim countries. Hallaq just assumes that for Muslims to be estranged from the premodern shariʿa-Gemeinschaft is to be alienated as such. But what if actually existing inhabitants of Muslim societies think otherwise?\textsuperscript{56}

\textsuperscript{53} Ibid., kindle version chapter 7.
\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid.
I agree with March. Hallaq treats the Islamic state as a zero sum game that either perfectly embodies tradition, which he says is impossible, or else flounders, resulting in profound human misery. While I concur with much of Hallaq’s discussion about the tensions that so called Islamic states face as they juggle questions of authenticity and struggle with the modern state form, I am interested in how states are struggling with the balance. Do these states engage with the tradition or are they just muddling forward?

Another significant recent contribution is that of Noah Feldman. Although Feldman has come under some well-deserved scrutiny for his involvement in the U.S. reconstruction debacle in Iraq, his study remains important. His book, *The Fall and Rise of the Islamic State*, deals with classical political theory, the Ottoman period and its constitutional formulations, and the new variety of Islamic states in “Islamist” movements. Feldman outlines the Ottoman creation of a specialist jurist class and their approach to political theory. This class then informed a “normative Islamic constitution” which was usurped by Ottoman codifications and which in turn was trumped by new Islamist political engagements. Feldman argues that continuing U.S. support of non-democratic regimes spurs on Islamist movements that are in part fueled by a desire for liberal political values and in part by opposition to despotic rule. Mohammad Fadel has extensively critiqued Feldman’s reading of history, in particular the alleged hostility of the ‘ulama to codifications, which does not hold true in either Egypt of Pakistan. What remains of

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57 March’s own work applies Rawlsian political liberalism to explore the possibilities for Muslim engagement in a way consistent with tradition and liberal values. See his: *Islam and Liberal Citizenship : The Search for an Overlapping Consensus* (New York: Oxford University Press, 2009).


Feldman’s work is the important linking of modern Islamic state movements to movements for greater justice and representation. His work provides a strong overview of the different considerations at play in an Islamic state, including the very real desire to use Islam as a tool for better governance.

To a similar end, scholars have looked at attempts to create an Islamic state by way of constitutional establishments. Constitutions are enlightenment or proto-enlightenment documents that define the citizen against the government (e.g., by acknowledging citizens’ right to elect state representatives and by enshrining the right to non-interference from police) and, in the post-Reformation period, against the church. Early constitutions referred to notions such as the “law of nations” and may have given some deference to God in language such as “men are endowed by their creator,” but in essence they created the idea of a citizen defined primarily by his allegiance to the nation and not by his faith or creed. In Chapter 5 I have demonstrated that this phenomenon is reflected by the transformation of blasphemy, in England in particular, from a seditious crime to a mere causa civil, as reflected in the history of the seminal Taylors case.\(^{60}\) Hence, constitutions that enshrine religion are anathema to the tradition of constitutionalism. And this logic perhaps extends to the nation as a whole, which Hobsbawm characterised as an “invented tradition” that emerges from the particular experience of Europe but is extended by coercive and colonial expansion to the rest of the planet.\(^{61}\)

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University Press, 2002); Clark Benner Lombardi, State Law as Islamic Law in Modern Egypt: The Incorporation of the Sharī a into Egyptian Constitutional Law, Studies in Islamic Law and Society, (Leiden ; Boston: Brill, 2006).

\(^{60}\) Enshrining Christianity as a part of the law, which allowed blasphemy to be tried as a civil cause. Taylor’s case created criminal blasphemy which evolved into blasphemous libel in the nineteenth century. See gen. Rex v. Taylor (1676) and its case history.

\(^{61}\)Hobsbawm and Ranger, The Invention of Tradition.
Said Amir Arjomand has considered the development of Islamic constitutions in a number of stages, from the representation of checks on authoritarianism to the early constitutional establishments of Islam. Arjomand argues that “this latest variant of Islamic constitutionalism disowns the myth of the Islamic state and accepts democracy and the legal modernization of the mid-twentieth century, thereby making the principles of the shari’a not the source of all constitutional and ordinary legislation but one constitutional principle that should act as a limitation to government and legislation, ...but alongside other constitutional principles.”62 Similarly in his recent work on Constitutional Theocracies, Ran Hirschl approaches the subject from the pragmatic perspective of a legal scholar.63 Hirschl recognises the importance of emotional and political appeals to religion in constitutional enshrinements. He acknowledges that such appeals may promote liberal political values and suggests that scholars of comparative constitutions should take care not to neglect this new subgenre. Similarly, Nathan Brown has written extensively on the importance of Islam in illiberal societies as a powerful pillar of constitutionalism.64 Though a number of these scholars have a sophisticated understanding of Islam, especially Arjomand, these studies tend not to deal with the Islamic state in a nuanced fashion. They focus on how constitutionalism is invoked in Muslim majority contexts rather than on how Islam is constructed and deployed in the state form. These studies often begin with the assumption that what makes a state Islamic is a declaration in its basic law.

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Though this is the case with Pakistan, I am more interested in how Islam is fashioned in relation to colonialism. My chapter on Munir deals, nevertheless, with certain constitutional questions.

Lastly, there have been a number of surveys by sociologists and political scientists on the question of the Islamic state. On point is the work of Ishtiaq Ahmed whose 1987 *The Concept of an Islamic State in Pakistan* provides an excellent overview of the ways in which various political groups have conceived of the divisions of political power between state and divine sovereign.\(^{65}\) His work was initially done as a dissertation project in the early 1980s. The book version does not consider at length the impacts of colonialism, a topic that I contend is a crucial necessity in any understanding of religion and state in Pakistan. A wider survey may be found in the work of Abdelilah Belkeziz, who provides an excellent survey in his unambiguously titled book, *The State in Contemporary Islamic Thought: A Historical Survey of the Major Muslim Political Thinkers of the Modern Era*.\(^{66}\) One of the broadest studies of its type, it is concerned primarily with ways in which prominent thinkers such as Sayyid Qutb and Khomeini have theorised the various state political structures available to Muslims and the ways these structures are related to the perceived Islamic traditions. Though the work of these sociologists and political scientists provide important contextual study, they are of limited use in this dissertation, where the focus is on the ways the state is produced intellectually and how this process plays out in the theatre of Pakistan.

1.5 Maududi and his Islamic State

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Readers will find it useful to have some understanding of two of the significant players mentioned in the above text, Maududi and the ‘ulama. Abu’l-A’la Maududi (1903-1979, alt. Mawdudi) was born in Aurangabad, in the princely state of Hyderabad. Maududi’s father was western educated and worked as an attorney for a number of years, but later in life, he sold all his possessions and moved to Delhi to live near the shrine of a Sufi saint. Maududi was educated from a young age in the religious sciences, and went to secondary school at a madrassa, as was typical of people of his class and background. In addition to independent work and study, Maududi gained some reputation there for his skill with languages, demonstrating this by a translation of Mulla Sadra’s *Asfar* from the Persian in 1931. In later work as a journalist and political commentator, he formed the *Jama’at-i-Islami* in 1941 to promote Islamic values. Though initially vehemently hostile to the idea of Pakistan, after the decision to partition India was irreversible, Maududi bent his efforts to forcing the Muslim League to stay true to the vision with which they had won Pakistan. The vision, as he saw it, was to establish an Islamic State. It would not be merely a secular state with a Muslim majority, but one that would discipline its citizens into being better Muslims.

Roy Jackson has argued that Maududi’s father’s influence can be detected in his writings which “always possess a central concern: that of a perceived spiritual crisis and the belief that modernity could not answer humankind’s fundamental needs.” This concern does not require, according to Maududi, that one abandon all the various benefits of the modern period, in particular the belief in the state. Though he is generally reticent about the territorial nation state,

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67 Jackson reports that Ahmad Hasan, Mawdudi’s father was pulled out of the school when his own father learned that he was “playing cricket and wearing western clothing.” Roy Jackson, *Mawlana Mawdudi and Political Islam: Authority and the Islamic State* (London; New York: Routledge, 2011)., 16.

68 Ibid., 17.
Maududi is extremely pragmatic when it comes to the usefulness of the state system for making better Muslims. He would famously argue:

Of all the factors of social life which impinge on culture and morality, the most powerful and effective is government…Hence the best way of putting to an end the fitna (strife) and purifying of the life of munkar (evil) is to eliminate all mufsid (corrupt) governments and replace them with those which in theory and practice are based on piety and righteous action, the objective of Islamic Jihad is to put an end to the dominance of the un-Islamic systems of governments and replace them with Islamic rule.  

Maududi’s statement represents a series of carefully constructed compromises. He had seen first-hand the transformative effects of colonial power. He even lauded the British strategy of slowly squeezing out indigenous law, citing the gradualist model as the most effective means of introducing Islamic law to Pakistan. To that end, Maududi would call for a massive codification effort to define and eventually implement Islamic law. For Maududi, Islamic law constituted the following: 1) explicit commandments in the Qur’an; or 2) an explanation of a Qur’anic commandment by the Prophet in the hadith; or 3) law generated by qiyas (analogy) and affirmed by a consensus (ijma) of either the ‘ulama or a majority of Muslims; or 4) the ijma of men of “learning and authority”. A group of “experts of Islamic laws” would then render these laws into a code. This approach allowed Maududi to cull the enormity of fiqh (jurisprudence) by turning all its treatises into mere books of “commentary” on the new code of Islamic law.

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69 Quoted in Ibid., 128. From Maududi’s Al-Jihad fi al-Islam.
71 Ibid., 62.
72 Ibid., 62-3
noticed that many of Maududi’s formulas follow a recipe: he combines a splash of tradition muddled with modernization to concoct a new system for the present.

This blending process was also behind Maududi’s model of an Islamic state. He was among the first to argue that the state was a necessity for Muslims to fully implement God’s plan. Maududi is credited with creating the concept of a *theo-democracy*, which would find strong purchase in the mind of Ruhollah Khomenei, the most famous of Maududi’s translators.\(^7\)
The state would not only guarantee adherence to the *shari’a*, but a new Islamic state would also help Muslims cast off the oppressions of colonialism without losing certain benefits. Constitutions, judicial review, legal codes, and a form of democratic election could be integrated, he would argue, into the Islamic state.

Maududi adopts Orientalist logic. He argues that Islam became weak from despotism and that allowed for the evil of colonialism. A change was necessary, an Islamic revolution, one that was refreshed from the lessons of colonialism. Though it would lead to a modern state, the resulting state should never be a mere western imitation. In the early period Maududi would even collaborate with his occasional opponents, the ‘*ulama*, to develop one of the most famous collaborative documents from Pakistan’s early history, the Basic Principles of the Islamic State, which was submitted to the Constituent Assembly that was labouring to produce a constitution.

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\(^7\) The irony of this is that one of the great ideologues of Sunni Islamists inspired the political theory of post-Revolution Shi’a Iran. Arjomand states that Maududi and Qutb were widely ready in Farsi in pre-revolutionary Iran. Said Amir Arjomand, *The Turban for the Crown : The Islamic Revolution in Iran*, Studies in Middle Eastern History (New York: Oxford University Press, 1988), 97. Maududi’s son takes it further and states that his farther met Khomeni while on *Hajj* and Khomeni translated (or had translated) Maududi’s works into Farsi for use at Qom and Maududi longed for a similar movement in Pakistan in his final months. The quotation, though not contested, is in a book making a negative link between Khomeni and Maududi, arguing that the Jama’at’s desire to create an Islamic state similar to the Irani model would undermine the “true” Islam being taught at Deoband madrassas. S. A. S. Alqasmi, *Do Bhai: Abul Ala Maududi Aur Imam Khomeini* (Deoband: Shaikhul Islam Academy, N.D.), 129.
In Karachi, in January 1951, Sunni and Shi’a ‘ulama from both East and West Pakistan met with Maulana Maududi in his capacity as leader of the Jama’at to draft the Basic Principles document as a complement to the Objectives Resolution of 1949. Maududi had already submitted earlier drafts of the document to the Constituent Assembly. This document was meant to prove that there was broad consensus for Islamic state proposals among the ‘ulama. Included in this model of an Islamic Constitution were the following basic requirements: 1) that no article contravene the Qu’ran and sunna, concerns about which could be negotiated by a state board of religious advisors; 2) that government officials must have training in Islamic morality and ethics; 3) that all that is good in Islam be promoted and all that is evil be suppressed and eradicated; and 4) that the government “take over legal responsibility to provide every needy citizen with the basic necessities of life viz., food, clothing, housing, medical aid and education.” The head of state or amir would be elected by consensus and would have broad-based powers, but could be removed by a simple majority. One remarkable feature of this particular model is that it guaranteed that “no citizen of the State shall be deprived of the fundamental rights without his guilt being judicially established in an open court of law according to the common law.”

(Maudoodi and Ahmad 1960)

For Maududi, the colonial administration had created a hypocritical system which applied one rule to the governed and another to the rulers. He argued for the immediate withdrawal of

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74 Syed Abul 'Ala Maudoodi and Khurshid Ahmad, The Islamic Law and Constitution, [2d ed. (Lahore,: Islamic Publications, 1960).]. 314-316. They also rejected early drafts of a bill of rights that was being circulated in Pakistan, advocating instead the following packet: 1) the protection of life, honour, and property; 2) freedom of thought, expression, belief, and worship; 3) freedom of movement; 4) freedom of assembly; 5) the freedom to adopt any profession; and 6) equal opportunity in all walks of life and equal right of benefit from public institutions. Ibid.

75 Ibid., 334.

76 Ibid., 316.
sovereign immunity for the British Government and its employees and for the establishment of
*habeas corpus* (as formulated by the British) as a fundamental right of citizens. Initially,
Maududi had argued that judicial review had no place in an Islamic legal system, but the shift
took place, I suspect, for two reasons. First, he was at the time in conversation with Muhammad
Asad who was also promoting an Islamic state with strong judicial protections in a show on
Radio Pakistan. Second, Maududi would spend many years in prison, convicted, unjustly, he
believed, by military tribunals. His change of heart about the importance of fair trials may have
been contemplated in a state jail cell.

Although Maududi’s *Jama’at* has proved famously unsuccessful at the polls, members
worked closely with General Zia ul-Haq and helped bolster his “Islamicization” program. They
would ascend to the height of their power under Zia through a combination of patronage and
public good will, much of it earned through aggressive marketing at universities, a strong
reputation for resisting corruption (at least early on), and a record of charitable works.
Maududi’s publications are still available at bookstores throughout Pakistan, although his dream
of an Islamic state would remain largely unrealised.77

1.6 The Approach of the ‘ulama

Muhammad Qasim Zaman in his extraordinary *The Ulama in Contemporary Islam* explores the Islamic state approaches of the ‘ulama in Pakistan.\(^{78}\) His study contributes a nuanced view of the ‘ulama that helps us escape the tendency to see them as either backwards or quietist. In his chapter on the Islamic state, he specifies the careful ways in which various ‘ulama have negotiated their relationships with aspects of the nation state, with codification, and with various Islamicization projects. Zaman devotes particular attention to the thought of Mufti Muhammad Taqi Uthmani, one of the chief jurisconsults of the Deobandi school in Pakistan as well as a judge on the Federal Shariat Bench, an Islamic judicial oversight innovation implemented by Zia. Uthmani’s involvement with the government highlights ways in which the ‘ulama committed themselves to transforming Pakistan into an Islamic state by whatever means that were made available to them. In the earliest phase this meant partnering with Maududi to rail against the Ahmados and develop the principles of Islamic government mentioned above. In later periods, especially under Zia’s and Saudi patronage during the 1980s, they would prove themselves to be extremely competent strategists.

Taqi Uthmani was a proponent of codification, in part because the various legal schools had become used to the codes developed during the colonial period. In addition, he and many of his brethren saw the wisdom of developing a code to prevent capriciousness among common law-trained judges, who may also have an animus to implementing Islamic law or simply be incompetent to do so. Additionally, whereas Maududi grudgingly includes the ‘ulama as advisors in his state, Uthmani and his brethren stress the importance of the unique knowledge of the ‘ulama and have a stratified approach to society in which the common people are to be

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\(^{78}\) Zaman, *The ‘ulama’ in Contemporary Islam: Custodians of Change.*
guided by their betters. Maududi’s goal was Islamic revolution, which in time would create true Muslim citizens capable of implementing God’s rule on earth.

The compromise document developed by the congress of the ‘ulama and Maududi’s party is the closest they would ever come to finding consensus on a constitutional document for an Islamic state. Though, thanks largely to petro dollars, Jama’at power would increase, and though they would frequently lend their influence to a variety of Islamic-themed legislation, such as the “hudood ordinances” (religious punishments for crimes such as adultery) passed by Zia, they have not frequently spoken with one voice. Their widely divergent tactics and competition for funds and resources have, nevertheless, kept them an important but unpredictable element in Pakistan.

### 1.7 Organisation of Chapters

The connection between W. C. Smith, Muhammad Asad and Muhammad Munir is their relationship to colonialism. Each of them owes their position and prestige to the dynamics of colonialism, either as someone employed in colonial educational institutions (Smith), or as someone involved in the critique of empire (Asad), or as someone tasked with adjudicating the new post-colonial state and its relationship to Islam (Munir). In certain ways their projects involved an extension of the colonial hegemonic practices of domination and control, but now bent to new purpose. The state was seen by these actors as a space in which liberal values could be impregnated with Islamic authenticity. Each of them, nevertheless, found themselves hostile to the newly empowered ‘ulama and the Jama’at, who were unwilling to content themselves with quietism.
The first chapter after this Introduction deals with Smith, an Orientalist engaged in the task of constructing knowledge about Islam and the Islamic state who becomes enchanted (and later disillusioned) by the Islamic state idea as it was framed in Pakistan. His importance to both the academic study of religion in general and the development of departments devoted to the study of Islam in North America should not be overlooked. The first chapter will explore Smith’s legacy as it relates to Pakistan. His book on Pakistan as an Islamic state represents a rare example of an attempt to harmonise liberal political values and Muslim aspirations to live in a country organized on Islamic principles. In addition, his manuscript provides a powerful alternative to the models proposed by Maududi and the ‘ulama. Smith’s particular formulation incorporates what would have been considered, in his day, the cutting edge of religious studies: an approach to a non-essentialised way of understanding Islam coupled with an elite Westernised Pakistani vision of Islamic statehood.

The next chapter plumbs another neglected legacy, that of Muhammad Asad. We shift from the perspective of the Orientalist to that of the anti-colonial activist who is drawn to South Asia, and eventually to Pakistan, by the new possibilities of Muslim political expression created by the withdrawal of colonial powers. Asad’s works have cemented him as an important thinker on Islam and the state, but his legacy is frequently abstracted from his specific experiences in South Asia. Rereading his legacy in historical context, we will see, shows that Asad attempted to harmonise constitutionalism and Islamic authenticity. In addition, Asad’s presence in Pakistan highlights the ways in which the campaign for an Islamic state in Pakistan was seen as more than just an attempt to create a homeland for South Asian Muslims. The campaign was perceived as a far more daring project—that of revitalizing Islam through the state.
Chapter 4 deals with the ways in which Smith’s and Asad’s theories of Islamic statehood, coupled with the imaginings of Maududi and the ‘ulama, were ultimately negotiated through the courts of law. Justice Muhammad Munir’s judicial opinions expose not only the relative unease of a powerful non-elected judicial appointee with the idea of an Islamic state, but also ways in which intellectuals fashioned Islam to counter the rhetoric of the ‘ulama and the Jama’at. This chapter also deals with one of the principal difficulties in implementing an Islamic state in the modern nation state: the radical reconceptualization of citizenship that directly burdens minority interpretations of Islam. As a member of the colonial elite, the class of persons which would include Jinnah and others shaped by colonial legal education built on the premise of Western superiority, Munir is uniquely tied to colonialism.

Chapter 5, the final substantive chapter, deals with a major point of conflict between two liberal political values: freedom of speech and the need to protect the honor of religion in the Islamic state. Whereas the first three chapters deal with debates in Pakistan during its nascent years, this chapter attempts to trace the multiple and fragmented legacies of blasphemy both in the Islamic tradition and in the colonial legacy.

Finally, the Conclusion explores how the Islamic state continues to be a contested site in Pakistan by briefly recapping the significant 2009 events in the Swat valley. By generating a more complicated archive, one that includes the legacies of Smith, Asad, and Munir, we avoid the pitfalls of merely speaking of the Islamic state in dualistic terms of successes and failures or as something belonging uniquely to religious scholars and the Jama’at and begin to see it as a dialogical concept still being negotiated.
Chapter Two

Orientalism and Pakistan as an Islamic State to Promote Muslim Notions of the Good

A common adherence to Islam is manifestly a force that binds a majority of the people of Pakistan together; but now I am going to venture onto more controversial ground. I should say that it would be a calamity if Pakistan were to ever become a Muslim state in an exclusive and intolerant way, for then Islam might become a far more disruptive force than the radical and linguistic differences which Islam at present overrides.79  – Arnold Toynbee

When asked, What is an intellectual? He said: “An intellectual is a participant in his own society, listening to people. That kind of truth cannot be put anywhere by us, not in words, never put in its place. The human mind can apprehend, not comprehend.” – W.C. Smith80

2.0 Chapter Two

Western scholars in Pakistan, in contrast to the largely policy-oriented histories of Pakistan discussed in the previous chapter, painted a very different picture of Pakistani attempts to establish an Islamic polity. Names of no less renown than Leonard Binder81 and Wilfred

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Cantwell Smith watched as the ideal Pakistan, as preached from the pulpits of the Muslim League, was now confronted with the reality of a country in need of governance. While Binder, the political scientist, focused on how Islam manifested itself in public political debates, Smith, the historian of religion and comparativist, directed his energies at trying to understand what Pakistan meant and would mean for Islam. Over time, Binder’s PhD-thesis-cum-book would remain significant as the account of an academic observer framing the political rhetoric at play, but Smith’s account would become largely forgotten, in no small part because Smith himself would lose much of his enthusiasm for Pakistani attempts to create an Islamic state. In tracing the trajectory of Smith’s thought, it is my intention to capture a sense of how Pakistanis framed the ideals of an Islamic State as interpreted by one of the most important scholars of religion in the twentieth century. Smith is unique, I will argue, in that he frames the project of an Islamic state as a liberal political project through his empirical methodology and does not dismiss it as merely the keystone of a politics of nostalgia.\(^{82}\) He would become famous, due to his philosophical commitment to understanding deeper human realities, for diatribes against the possibility of objectivism in the humanities. I argue that this helps him intimately relate to the Pakistani struggle for an Islamic State. Smith's account, his response to the question “What is an Islamic state?” is an entirely distinct framing of the issues surrounding an Islamic State, unrelated to the perspectives of other theorists.

\(^{82}\) For an alternative account, the latest work of Abdullahi Ahmed An-Na’im argues that Muslims can best realise their aspirations to live as Muslims in accordance with the Shari’a in secular polities. See his compelling argument in: Na’im, *Islam and the Secular State: Negotiating the Future of Shari’a*. 
2.1 Introduction

This chapter threads the needle that will sew together the next two chapters. Ideological discussions of the Islamic state will be framed as attempts to create a liberal political order steeped in the “Islamic cumulative tradition.” (Smith’s term) In particular, this chapter is a study of how western academics came to grips with the issues taking place in Pakistan in the 1940s and 50s. As Ayesha Jalal and others have convincingly argued, the gambit that resulted in Pakistan did not reach its end game until 1947.83 The demand for Pakistan voiced by the Lahore Resolution of 1940 was more a statement about the Muslim right to self-determination as a distinct nation within India, not a projection of the bifurcated Pakistan that would emerge from the bloodshed of 1948.

As a way of introducing the liberal formulation of the Islamic State, I start with a scathing book review published by a young member of the westernised intelligentsia who rose to the defense of Pakistan’s honor against what he saw as an outside observer who was making, in classic Orientalist fashion, far too much of Islam and far too little of the democratic goals of the new polity struggling to develop a constitution. In 1954, a young and fiery K.K. Aziz, now remembered as one of Pakistan’s most important native historians, wrote a vitriolic review of a recent book by a western academic entitled Pakistan as an Islamic State. In the review, he outlined the author’s nefarious purpose “to paint Islam in black colors.”84 The flaws of the text, in the eyes of Aziz, were many, including, among other issues, the author’s Marxist leanings, his

83 In the case of Ayesha Jalal’s The Sole Spokesman (1985), her argument that Jinnah and the Muslim League were playing a careful strategic game against both the colonial administration and the Congress, the results of which, and not necessarily the optimal outcome of which, was the creation of Pakistan, has become the new standard history of the movement. See gen. Jalal, The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan.

poor writing style, a suspected involvement in some distant foreign conspiracy, and a dust-cover which was ugly and looked like, “a cheap-looking iron sign hung outside a medieval inn.”  

Aziz pulled no punches; his parting shots were brutal:

We discovered no merits [to the present study]. [The author’s] prejudice against Islam stands written on every page. His antipathy to Pakistan and all that it stands for is clearly seen in his disguised statements. What passes for our understanding is that a Pakistani publisher has seen fit to publish a badly-written and badly-reasoned book. Perhaps the publishing concerns of Canada were more discreet.  

The author of the book which had so raised his ire was none other than the late great Wilfred Cantwell Smith. The book was Smith’s attempt to understand the contours of the demand for an Islamic state as it was being mooted in the intellectual ferment of post-partition Pakistan. (Smith 1962)  

For Aziz, Smith had simply gotten it wrong. What bothered him most was Smith’s division of Islamic statehood into two forms, the mundane and the ideal, and on both counts he found Smith’s formulation wanting. According to Smith, the mundane Islamic State was any political state established by Muslims and the ideal Islamic State was the kind of state for which Muslims should strive. Aziz disagreed on both counts, for him, the mundane model was expressed in the Objectives Resolution of 1949 and one did not need to probe beyond its simple definition. According to that document, an Islamic State was one that attempted to create a new

85 Ibid.,326  
86 Ibid., 326-327.  
87 Wilfred Cantwell Smith, Pakistan as an Islamic State (Lahore, Pakistan: Ashraf Press, 1962). The original manuscript published in 1951 had a subheading that was only listed on its internal cover calling it a “preliminary draft.” It was later revised, as I shall discuss infra.
kind of democracy, an Islamic democracy which respected liberal values such as, “equality, justice freedom and collective happiness,” but always with the caveat that it “conforms to the Quran and Sunnah.” As for the ideal Islamic state, Aziz suggests a modernised formulation of an ideal Caliphate:

The ideal Muslim conception is that of a Caliph, elected by some indirect procedure, who is morally obliged to seek and respect advice, but who under exceptional conditions may overrule the opinion of his advisers. Such a person must possess all requisite qualifications – moral, legal and religious. He must be a male adult, highly educated, conversant with Islamic law and jurisprudence, steeped in Muslim tradition and culture, bearing an excellent moral character, an experienced administrator or legislator. He should combine intelligence with intellect, wisdom with knowledge, understanding with power, and forgiveness with discipline. He should be one in whose care you will readily place the future of your political system, the future of your posterity, and the future of your creed. Finally, he should be considered the supreme authority by all the Muslims, no matter to which country, nation, sect or party they belong. He is an international, or rather a supra-national, head. He is not a mere political leader. He also sets social standards.

The aforementioned model is one of an ideal ruler. In the parlance of mid twentieth century sociology, it blends together Weber’s tripartite model of legitimate rule, combining charismatic, traditional, and legal authority into one person. Aziz’s model borrows in part from Muslim

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88 K.K. Aziz, *Studies in History and Politics* (Lahore, Pakistan: Vanguard Books, 2002), 321. I suspect that Aziz developed this formulation while studying the Khilafat Movement. Though he did not write a book on the subject for many years after writing this review, he indicates in his notes that he had been collecting data on Muslim movements in South Asia during the entirety of his career.

89 Ibid., 321-22.

90 In Weber’s well known, posthumous formulation (not available in English till 1968, but in wide circulation before that date) there are three pure types of legitimate domination. The validity of claims to legitimacy may be based on: 1. Rational grounds—resting on a belief in the legality of elected rules and the right of those elevated to authority under such rules to issue commands (legal authority); 2. Traditional grounds—resting on an established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them (traditional authority); 3. Charismatic grounds—resting on devotion to the exceptional sanctity, heroism or exemplary character of an individual person and of the normative order revealed or ordained by him (charismatic authority). Max Weber, Guenther Roth, and Claus Wittich, *Economy and Society: An Outline of Interpretive Sociology*, 2 vols. (Berkeley: University of California Press, 1978), 215.
hagiographies that extend the ideal of rightly guided rulership to the first four successors of Muhammad (632-661 C.E.). It also represents ideals of rule being debated during the Khilafat Movement, which tried to convince the British to spare the Ottoman Caliphate in the wake of the First World War, a point later made moot by the political manoeuvrings of Kemal Attaturk.  

Aziz’s model of an ideal ruler seems a pipe dream, loosely cobbled together from universalised ideals of rulership that seem unrealizable, but I suspect that is just what Aziz intended. Separating the new project of the nation state of Pakistan, which was to build an Islamic democracy, from some idealistic Islamic State was critical for Aziz, because he was being pragmatic about Pakistani realities, whereas Smith saw it as the fount of a new political system.

K. K. Aziz would go on to become a staunch critic of the failures of Pakistani democratic politics. During his long career he would contribute nearly fifty volumes to understanding his embattled, beloved, Pakistan, but beyond his review of Smith he has little to say about what an Islamic state should look like. I suspect that over time his opinion of Smith’s work may have softened, though he never, to my knowledge, recanted his position on Smith’s Islamic State. He included the review, which may otherwise have been forgotten, in a compilation of his essays published in 2002.  

What seems most strange to me in Aziz’s evaluation of Smith’s formulation

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92 Aziz, *Studies in History and Politics*. A less generous reading of the essay’s inclusion may see it as K. K. Aziz mudslinging at a giant of North American academia to further his own profile. Alternatively, one of the hallmarks of Aziz’s many books was his tendency to engage in long, often humorous rants in his introductions targeting any number of villains, including governmental officials, fellow historians, former friends, shippers and the like. Aziz believed that the historian’s task was to plumb history in all of its myriad contradictions with the end goal of knitting together a “seamless tapestry.” This goal runs contrary to our post-modern desire to highlight ambivalence and uncertainty. See gen. Khursheed Kamal Aziz, *The Pakistani Historian* (Lahore: Sang-e-Meel Publications, 2009), 4-20.
is the remarkable similarity in both scholars’ understandings of the Islamic State as an ideal for which Muslims are struggling. The real animus may lie, then, in Aziz’s accusation of Smith being an agent of imperialist design against Pakistan. He would level similar arguments against a number of prominent Orientalists, including Smith’s mentor at Cambridge, H. A. R Gibb (who was officially housed at Oxford).

I will use Aziz’s criticism of Smith to structure the rest of this chapter by answering Aziz’s critiques, framed as the following questions. Was Smith an Orientalist, and if so of what variety? How did he understand the Islamic state as a liberal project? How did Smith’s feelings about Pakistan’s attempt to create an Islamic State change during the 1950s? As we look at the answer to these questions, it will become apparent, I hope, that Smith’s particular understanding of the Islamic state needs to be revisited by modern scholars. Smith’s take on the issues in 1951 reflects the ideals of Pakistanis struggling to create a modern Islamic polity, without trying, as other commentators did, to interpret the Islamic State either as a seamless continuation of previous forms of Islamic governance or as an ill-fated attempt to create a theological polity in the age of secular states. Sadly, Smith’s account was nearly lost to history in the years since its drafting, perhaps because Smith’s ideas did not fit with prevalent nationalist histories, policy-oriented studies, or the work of serious historians who may not have recognised it as a comparative project that highlighted the aspirations of Pakistanis to reconcile a liberal political ethos with an “authentic” expression of Islam. Or perhaps because Smith’s work was obfuscated by his later recantation of much of his own position and his abandonment of academic interest in Pakistan.

2.2 Orientalism and W.C. Smith
2.2.1 Framing Orientalism

Orientalism, the term once used to refer to the study of the Near East and Islam, would be forever transformed by Edward Said’s watershed book of the same name. It is difficult to overstate the impact of the book; Wendy Doniger in her Presidential Address to the Association of Asian Studies quipped that Said, “changed our way of thinking forever.”

Citing the importance of the text, she argues that Said taught us that those who further the pursuit of knowledge, even in an academic fashion, could be implicated as colluders in colonial enterprises. The consequence of the accusation is twofold. First, it would imply that the scholarly enterprise, despite its proclamations of objectivity and scientific detachment, actively participated in the domination, subjugation and oppression of human beings by providing the raw data and the conceptual framework that facilitated conquest. Or it could participate actively, either by laying the groundwork for a civilizational conflict in which the civilised are compelled to enlighten their perennial “others” or by serving as a policy analysis tool that would provide the intellectual capital for conquest. In his own fashion, Aziz was levelling this very criticism against Smith

Orientalism, as Said originally formulated it, was the “corporate institution for dealing with the Orient—dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it: in short, Orientalism as a Western style for dominating, restructuring, and having authority over the orient.”

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93 Wendy Doniger, "Presidential Address: "I Have Scinde": Flogging a Dead (White Male Orientalist) Horse," The Journal of Asian Studies 58, no. 4 (1999), 943

94 Ibid.

number of alternative definitions for the term in his text, the root issue in all of his formulations is the establishment of a sense of radical difference between the West and the rest of the world with the ends of preserving an imbalance of power.\textsuperscript{96} Reflecting in the new preface to the 25\textsuperscript{th} anniversary edition, Said claims that Orientalism uses a humanistic critique to develop a sustained intellectual exchange.\textsuperscript{97} Humanism, he argues, is to “use one’s mind historically and rationally for the purposes of reflective understanding and genuine disclosure.... [It] is sustained by a sense of community with other interpreters and other societies and periods....”\textsuperscript{98} As such, for Said, \textit{Orientalism} paved the way to a new and morally conscious engagement of “the other.”\textsuperscript{99}

Perhaps the surest indicator of the continued relevance of Said’s book is that it continues to invite comment by academics in a multitude of fields. Postcolonial critique frequently begins with a deferent acknowledgement of Said, even when explicitly disagreeing with him. Take for example Aijaz Ahmad, who highlights this ambivalence by beginning a chapter in his excellent \textit{On Theory} recognizing his indebtedness to Said: “I can scarcely find my own thought without passing through [Said and Frederic Jameson],” only to riposte two sentences later with the following: “I disagree with [Said] so fundamentally on issues both of theory and of history that our respective understandings of the world as it now is, and as it has been at many points over the past two thousand years or so—are simply irreconcilable....”\textsuperscript{100} It says something of staying

\textsuperscript{96} Not to be confused with the postmodern mantra of “vive la différence!”
\textsuperscript{97} Said, \textit{Orientalism.}, xxii.
\textsuperscript{98} Ibid., xxiii.
\textsuperscript{99} Said, characteristically frames this in a more grandiose fashion: “The human, and humanistic, desire or enlightenment and emancipation is not easily deferred, despite the incredible strength of the opposition to it that comes from the Rumsfields, Bin Ladens, Sharons, and Bushes of this world. I would like to believe that \textit{Orientalism} has had a place in the long and often interrupted road to human freedom.” Ibid., xxx.
\textsuperscript{100} Ahmad Aijaz, \textit{In Theory : Classes, Nations, Literatures}, Paperback ed. (London ; New York: Verso, 1994)., 159
power when a respected academic, Daniel Martin Varisco, as recently as 2007 published a humorous (he calls it “satirical”) and critical appraisal of the legacy of *Orientalism*, its critics, and its successes and failures, while exhaustively documenting nearly every academic encounter of Said’s work in over two hundred pages of endnotes.\(^{101}\) Varisco argues that *Orientalism’s* continued significance may be its ongoing function as the rallying cry of anti-imperialist, anti-colonial, anti-Zionist, and anti-racist academics.\(^{102}\) Said’s work emerged in the tension of dismantling colonies, a chorus of former imperial subjects challenging their former masters, and the presence of the Middle East in the news, all of which served to vault the work into both popular and scholarly conscience.\(^{103}\) Perhaps a claim could even be made that *Orientalism* now contributes to cultures of resistance by providing a framework for objection to the dehumanization inherent in corporate domination. At the heart of Said’s humanistic inquiry may be a refusal of the dehumanization inherent both in abstracting universal conceptions from particular circumstances and in removing the stories of both the investigator and their interlocutors from the narratives generated in scholarship.

What, then, is this notorious “orientalism” that Said made so odious? His targets were multiple generations of scholars, including both those that participated in the expansion of the colonial knowledge machine and those currently engaged in the defence of American neo-imperialism, such as his perennial intellectual foe, Bernard Lewis.\(^{104}\) In *Orientalism*, Said would

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\(^{101}\) Daniel Martin Varisco, *Reading Orientalism : Said and the Unsaid*, Publications on the near East, University of Washington. (Seattle: University of Washington Press, 2007). I say “nearly” with caution, Varisco is extremely thorough and is probably continuing the project in a blog somewhere to account for citations in the years since the publication of his book.

\(^{102}\) Or humorously put in South Asian parlance, “Yaar postcolonialism begins with a cracking of Said’s coconut.”


target Lewis as a collaborator in what he would call, the “Anglo-American Middle Eastern Establishment.” Lewis, he says, lays the intellectual groundwork for this position.\(^{105}\) Elsewhere he would accuse Lewis and other scholars of Islam of voluntarily attacking modern Arab or Islamic persons while simultaneously studying “classical” Islamic culture in a disinterested fashion and of never missing an opportunity to lecture at the State Department.\(^{106}\) Beyond policy commitments, Said would critique the polemics that he felt impregnated Lewis’ prose with anti-Arab and anti-Muslim sentiment and cast Muslims as developmentally static, oversexed and socially backward.\(^{107}\)

One of Said’s main targets in the generation before Lewis was H. A. R. Gibb, the Orientalist who bridged the late imperial production of knowledge and then facilitated the new Orientalist system under the rubric of area studies and policy analysis.\(^{108}\) Gibb was born in pre-protectorate Egypt at the turn of the nineteenth century and educated in Scotland. He spent the war years in military service (1917-1918). During the interwar years he studied at the School of Oriental and African Studies at London University, writing on Arab conquests in Central Asia.\(^{109}\) Gibb would go on to teach at Oxford for eighteen years, at the end of which he would publish, in back to back years, *Modern Trends in Islam* and his seminal *Mohammedanism*.\(^{110}\) Said devotes

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\(^{105}\) Lewis is one of the primary villains in the section of *Orientalism* entitled “Orientalism Now.”


\(^{108}\) Ibid., 105-106.


considerable space to Gibb’s work and its shortcomings, beginning with the title. He errs in choosing, “Mohammedanism over Islam” (since he says that Islam is really based upon an idea of apostolic succession culminating in Mohammed)... No Muslim would call himself a Mohammedan....” Gibb, for Said, suffers from the classic shortcomings of the Orientalist: he puts too much emphasis on Islam as a static pristine tradition that cannot adapt to the exigencies of the modern era and can only be harmed by imports such as modern nationalism and Westernization. Worse still, Gibb, similar to Lewis, would become deeply embedded in policy-oriented institutions. Gibb served as the director of the Center for Middle Eastern Studies at Harvard for a number of years. Despite his lengthy dressing down of Gibb, Said omits (characteristically, his critics would allege) other Orientalists who trained under Gibb and whose reputations were not marred by policy embroilments. One of these omitted Orientalists was Wilfred Cantwell Smith, who did not fit into Said’s grand narrative of western bias.

2.2.2 Smith as an Orientalist

An incident frequently neglected in Smith’s biographies, I suspect to protect his reputation, is worth a visit: Gibb, one of Smith’s advisers, prophetically warned Smith that his Marxist critique of the British colonial regime in his dissertation would not pass muster at

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111 Said, Orientalism., 280. Italics in the original. The point deserves to be made that Gibb’s earlier titles had “Islam” in the name. His 1947 book, for instance, was not called “Modern Trends in Mohammedanism” Smith also mentions the error in calling Islam “Mohammadanism” in his Meaning and End: “Indeed, Muslims are zealous in their campaign to persuade the rest of the world to abandon other spontaneous names for their ‘religion’ (such as ‘Muhammadanism’) in favour of this proper one, which they proudly bear.” Wilfred Cantwell Smith, The Meaning and End of Religion (Minneapolis: Fortress Press, 1991.), 80.

112 Said, Orientalism., 279.

Cambridge. He was not mistaken: Smith’s work was rejected. He was not mistaken: Smith’s work was rejected.114 The manuscript, which would eventually be published in Lahore in 1943, became Modern Islam in India: A Social Analysis.115 Despite its inability to please the rest of Smith’s committee, Gibb in his Haskell lectures in 1945 praised the text highly and went as far as citing the work as one of only two “real books devoted to significant movements in Islam” published in over a quarter of a century.116 This is, of course, the very same text that provoked Aziz to lay charges of Marxist bias against Smith.

Smith completed a B.A. in Oriental Languages, as the degree was then called, at the University of Toronto. Smith and his wife Muriel, wanting to continue studying Islam, moved to the largest Muslim country in the world, which also happened to be part of the Commonwealth, India. Smith would spend over six years studying in India, where he cultivated a “proper” Lucknow accent.117 This allowed Smith to engage speakers of Urdu, Persian and Arabic and immerse himself in the culture as he wrote Modern Islam. Smith completed the majority of the writing of Modern Islam while employed as a lecturer in Islamic history at the Forman Christian College.118 The text presented what he called a “social approach.” In his notes section of the book, Smith defines at length the social terms used in his study, including liberal (linked to English Liberalism), conservative (one who deprecates social change), progressive (sympathy

114 Hillary Putnam et al., "Wilfred Cantwell Smith: In Memoriam," Harvard University Press, http://www.news.harvard.edu/gazette/2001/11.29/27-memorialminute.html. I regret that this incident has not made its way into the canon of Smith’s life, it is a fine lesson in perseverance, success, and sticking it to his assessors.
117 Correspondence with Amir Hussain on file with author.
118 Forman Christian College was founded by Charles William Forman, an American, in 1864. It grew out of the Rang Mahal School, which was the first Anglo-vernacular school in the Punjab founded in 1849.
with social change) and reactionary (conservatives try to preserve the past, the reactionary restructures it). He continues:

Clearly these definitions have been put forward by someone who believes that there is in history a basic process of ameliorative evolution; and that it is possible for man to say broadly whether a major development is essentially in harmony with that process or runs counter to it. It is also true, and hardly less clear, that the present writer believes that socialism is the next due social form in that process; and that  

fascism is reactionary...‘progressive’ has been used with application to the contemporary scene, it refers to progress in the direction along which socialism lies and ‘reactionary’ refers to movement in the opposite direction. 

Unlike Aziz, I hesitate to call Smith a Marxist. It is clear, however, that he is studying Islam in South Asia with a linear approach to history. This kind of stage-ist approach presents problems, as noted in the previous chapter, but it is premature to leap from Smith’s delineation of stages to a charge of full-blown Marxism. All Smith avers at the time of the writing of this text is that socialism is the next step for evolving societies after market capitalism, which may itself be construed as teleological. In time, Smith would become a staunch critic of so-called objective methodological strategies that he seems to employ in his early work and would come to cultivate what he called a “personalist orientation” (discussed further infra). Yet the point remains that socialism is not atheistic Communism and Aziz’s argument that Smith believed in

120 Ibid., 336-337. I suspect that K. K. Aziz uses this statement as the basis for his argument that Smith is a Marxist. See note infra.
121 “Verily is Marx the Christ of Smith.” Aziz, “Studies in History and Politics." 326. To which Smith’s student Amir Hussain responded, “No, Christ was the Christ of Smith.” Smith was, he concedes, deeply influenced by the Student Christian Movement of the 1930s which was underpinned by socialist philosophy.
122 Talal Asad suspects Smith of re-creating the Orientalist narrative of Islam in India in his re-reading of Smith's classic on the Meaning and End of Religion. However, his robust critique of communalism in Modern Islam in India tends to establish Smith as an insightful critic of how colonialism benefitted from the operation of communalism. These observations, though initially based on public statements of colonial officials, were later confirmed by the various declassifications of documents in the years after colony status.
an inevitable secularism and the narrowing (or extinguishing) of the place of religion may have been a key error in his evaluation of Smith’s work and possibly his life and mission.

Perhaps part of Aziz’s misapprehension stems from Smith’s rather unique conceptualization of “religion,” which differs from most writers on the subject in the first half of the twentieth century. Take for example the definitions section of *Modern Islam*, in which Smith proffers the following non-essentialist definitions for “religion,” “Muslim,” and “Islam:”

Religion: that aspect of a person’s life, or of his society’s life, which that person regards as religion.

Muslim: any person who calls himself a Muslim.

Islam: The religion of the Muslims.\(^{123}\)

He begins to flesh out the above skeleton by offering a few caveats on the effectiveness of the term “religion” (anticipating his future project in the later *Meaning and End*) and claims that his definition of Muslim avoids a “preliminary theological dispute.”\(^{124}\) However, it is in the following explanation of his definition of Islam that we begin to see the foundations for his project in *Pakistan as an Islamic State*:

The definition of ‘Islam’ is more revolutionary than it sounds. For instance, it does not prejudge the question of whether Islam is always identical. In fact, especially in an individualist society, one man’s religion is hardly likely to be the replica of another man’s. More broadly, as one group faces one set of circumstances and problems, and another group faces another set, differing perhaps radically in time, place, and social status, it is not unnatural and surprising that one “Islam”, the religion of Muslims in the one case, should be different from another “Islam”, the

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\(^{124}\) Ibid., 334.
religion of the other Muslims in the other case. The same thing applies, of course, to Christianity, chastity, and communism. It would, in fact, be the most elementary of observations, did it not run counter to the prejudices of almost all religious men.\footnote{Ibid., 334.}

At its heart, this definition shatters any monolithic formulation of Islam, and it anticipates a shift away from a ‘core essentials’ approach to religion and an emphasis on a subject-centred approach.\footnote{Of Smith’s approach Kenneth Cracknell offers the following insight: “Smith’s concern for the ‘coherence of humankind’s religious history’ is twofold. First there is the simple issue of telling the truth, of being as accurate as possible in what is reported about other people’s ways and paths. Second, Smith is concerned to deliver students of religion from what he calls ‘the illusion of monolithic simplicity’. For him there is no ‘essence of Christianity’ or ‘essence of Islam’ and books with such titles reflect a category mistake. Rather, all religious history is about change and process…. The historian is committed to explicating these constantly shifting processes in all their variegated detail.” Wilfred Cantwell Smith, \textit{Wilfred Cantwell Smith : A Reader} (Oxford: Oneworld, 2001)., 12.} John Hick would say in his introduction to Smith’s magnum opus, \textit{The Meaning and End of Religion},\footnote{See Smith, \textit{The Meaning and End of Religion}, in which Smith argues against the continued saliency of the term “religion” owing to its Western Christian (Latinate) genealogy.} that Smith deserved considerable praise for “making us conscious of the intellectual spectacles, formed by our own culture, through which we have been seeing religious life; and he invites us to try the experiment of looking again without those spectacles.”\footnote{Ibid., v. John Hick’s Foreword would first appear in the 1978 edition of Smith’s 1962 edition.}

Smith’s career, with his emphasis on consultation, would not seem to lend itself well to the kind of essentializing (and dehumanizing) Orientalism which Said targets. However the omission of Smith from Said’s discussion seems a bit strange, given Smith’s prominence in the field, his extended presence at Harvard, and his many works on theology written from the perspective of a devout Christian. Was this merely Saidian oversight? Antonio Roberto Gualtieri offers one reading of Said’s omission in the Sullivan and Ismael essay collection \textit{The Contemporary Study of the Arab World}. In the chapter entitled “Hermeneutics of the Old and
New Orientalism”¹²⁹ (one of the very few critiques, by the way, missed by Varisco in his exploration of Edward Said and his critics), Gualtieri divides Orientalism into “old” and “new” types. The “old” (or perhaps, for simplicity, “bad”) Orientalism is the work of scholars like Abraham Heschel, who were furthering the mission of Anglo-American security and resource interests in the Middle East. Gualtieri calls Smith part of a brand of “new Orientalism” (or perhaps “non-pejorative Orientalism”). “New Orientalism” of the Cantwell Smith variety, Gualtieri postulates, operates according to the following logic. First, Smith, as mentioned above by John Hick, approaches his study with a critical spirit that unpacks western assumptions while respecting the “autonomy of Islam.”¹³⁰ Second, and perhaps troublesome for most of the proponents of a so-called detached scholarly approach, Smith champions an approach that begins with appreciating the “transcendent element in human life and history.”¹³¹ In addition, troubling to Said, Smith argues that it should be the goal of scholars of religion to make statements about the faiths that they are studying in a way that allows members of that tradition to be able to recognise themselves in those statements.¹³² Moreover, Smith operates from a position of deep humility, not presuming to speak for a religion and not making “dominating judgments about the other.”¹³³ Finally, Gaultieri argues that, in response to the championing of strategies of “othering” by “old” Orientalists, those of Cantwell Smith’s type were arguing for commonality of humanity, both in historical influence on different traditions and in continued development.

¹³⁰ Ibid., 56.
¹³¹ Ibid., 57.
¹³² Ibid., 57.
¹³³ Ibid., 57-58.
through a commitment to colloquial interactions. Gualtieri’s use of the term “new Orientalism” for Smith’s position, as opposed to the more common “post-Orientalist,” may have been a concession to Said’s framing of the latter term. The simple fact, though, all terminology aside, is that Smith seems to embody the very ideals of humanistic inquiry championed by Said himself.

By most counts, then, an inquiry into Smith being an Orientalist, imperialist, or even as bearing any animus toward Islam, seems a misguided effort. His commitment to the study of Islam in the American and Canadian academy cemented his reputation as an erudite scholar. His lifelong commitment to interreligious dialogue as an ordained Presbyterian Minister also positioned him as one of the most important voices on the subject of how different religious groups must work to live together in a morally responsible fashion. I suspect a personal vendetta may underlie the accusations: Smith’s biting critique of Muslim League politics in his Modern Islam in India, a group with which Aziz was affiliated, was a painful slight.

There is one last clause in the Orientalism charges against Smith that must be addressed: the critiques offered by Talal Asad in his review of Smith’s work. In Asad’s oft-cited reflection on Smith’s now classic The Meaning and End of Religion, Asad offers a two-pronged critique. Though Asad commends Smith’s meditation on the term “religion,” and Smith’s exploration of the limits of its continued usefulness in the study of comparative religions, he

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134 Smith proposes the term “colloquy” as a superior term to “dialogue,” as “dialogue” implies a head-to-head confrontation in which difference is collapsed in order to further dialogue. Instead, he says, he prefers “colloquy,” “partly for its multilateral connotations but chiefly to suggest a side-by-side confronting of the world’s problems (intellectual and other) rather than a face-to-face confronting of each other.” Smith, Wilfred Cantwell Smith : A Reader., 251n (Originally printed in Towards a World Theology).

teases from the text two issues that the study of comparative religion must confront. First, Asad highlights the part that religious practices play in the formation of religious experience in comparative contexts. Second, he argues for an incorporation of the history of the complex phenomena of secularism into our discussions of comparative religions. However, it is not the primary thrust of Asad’s discussion which concerns me, but rather his dissatisfaction with Smith’s concept of “reification.” For Smith, “The concept ‘religion’ then, in the West has evolved. Its evolution has included a long-range development that we may term a process of reification: mentally making religion into a thing, gradually coming to conceive it as an objective semantic entity.” Reification, Asad claims, is linked in Smith’s work and the work of other scholars in comparative religions to the notion that “monotheistic religions are quintessentially intolerant.” To highlight this idea, scholars deconstruct what it means to be religious, invoking the notion of a “cumulative tradition” that destabilises the fixity of religion-the-noun and champions religion-the-adjective (e.g., “Islamic” over “Islam”). In his critique of reification, Asad argues that Smith appropriates the Orientalist narrative of Islam’s arrival in India. This narrative, which frames Muslims as “violent outsiders,” in essence ties Islam in India to “conquest” and being “alien.” Though Asad does not want to quarrel with “the accuracy of Smith’s historical picture,” he goes on to show numerous ways in which Islamic religious history

136 Ibid.
140 Asad, “Reading a Modern Classic: W. C. Smith’s “The Meaning and End of Religion”.”, 210-212.
has demonstrated a comfort with “divergent interpretations” and how this internal variance muddies any simplistic statement on the any inherent “intolerance of monotheism.”\footnote{Ibid., 212-213}

Smith’s discussion of Islam’s “violent” entry into India in \textit{Meaning and End} can be found in his section on the mechanisms by which Hinduism developed a self-identity.\footnote{Smith, \textit{The Meaning and End of Religion.}, 51-79.} The offending statements by Smith are the following:

The term ‘Hindu’ as a religious designation was developed by the Muslims after they had invaded the country in the second millennium A.D. For the Muslims it served to designate these aliens whom they conquered, and whose not being Muslims was of course now for the first time significant.... Never before, however, had an organized, systematic, and exclusive community carrying (or being carried by) what was in theory an organized, systematic and exclusive idea arrived violently from the outside to reject all alternatives and to erect a great conceptual wall between those who did and those who did not belong.\footnote{Ibid., 64-65.}

Smith is not narrating particular historical events such as the conquest of Sindh by Muhammad ibn al-Qasim in the seventh century or that of Mahmud of Ghazna at the end of the first millennium, but rather setting up the ways in which Muslims established the fault lines between themselves and the indigenous populations they were encountering. Asad’s complaint is that Smith structures religious identity by way of “reification” and that he assumes monotheistic intolerance. Smith’s discussion, however, seems closely attuned to the relationships of power rather than assuming any inherent superiority of one group over another. For example he devotes a chapter in \textit{Modern Islam in India} to exploring the creation of communalism by the British, and how this in turn was built on a firming up of religious identities.\footnote{Modern Islam in India : An Social Analysis. , 185-224.}
constructivist approach is difficult to classify as a reification. I agree with much of Asad’s interpretation, but I find his characterization a little unfair. To argue that Smith is perpetuating Orientalist histories would be to say that he is justifying an “othering” of Islam based on its history of violence or its alien nature, neither of which I believe can be supported by a close reading of Smith’s works. We could critique Smith perhaps for reading the idea of a sovereign identity such as “country” into the past, but I suspect that in this particular case Asad is objecting to the way that “reification” is used in the work of comparative scholars generally, and Smith serves as a convenient, if not entirely accurate, foil for an entirely valid argument he is making.

2.3 Smith’s Islamic State

We turn now to Smith’s concept of an Islamic State. I will start this section with a historical overview from 1939-1949. This period corresponds with Wilfred Cantwell Smith’s longest sojourn in South Asia and a deepening of his initial understanding of South Asian Islam. The section will then move to a discussion of Smith as a theorist of the Islamic State. The second section will begin with a brief survey of his next ten years in Pakistan, which will culminate in the publication of Smith’s *Modern Islam in History* in 1959, a book that features a reformulation of his theory of the Islamic State and highlights his growing dissatisfaction with the shape of Pakistan’s Islamic state. It will conclude with remarks about how his particular approach to scholarship on Islam may have set him up for disappointment with Pakistan’s experience of the Islamic state. Smith concludes *Modern Islam in History* in a hopeful fashion—a hope that must have been dashed as he watched Pakistan’s first dictator take power.

2.4 Background 1939-1949
Smith arrived in India in 1940, during the war years. It would prove to be a year of significant developments in the colony. The Viceroy, Victor Alexander John Hope, had announced that India would join the war effort without consulting with the Congress Party or the All-India Muslim League. In protest, the Congress Party threatened to resign on December 22, 1939, from provincial and central offices. The Muslim League President, Muhammad Ali Jinnah, seized the initiative, taking the opportunity to strike at the Congress Party by declaring it a “Day of Deliverance.” The celebration was intended to focus all opposition against the strong-arm tactics of the Congress Party and to serve as a potent platform for rallying the Muslim League, which had historically done poorly in elections. Riding on these successes in March, 1940, Jinnah announced the Lahore Resolution.

The Lahore Resolution (it would be popularly known as the Pakistan Resolution) declared that the only constitutional plan that “would be workable or acceptable to the Muslims” would group Muslim majority areas into constituent units which would be autonomous and sovereign. The British Army consisted of over one million soldiers from India, a majority of whom were Muslims, so a general policy of appeasement towards Muslims would prevail. No promises for an independent Muslim state were made as yet. This led in part to a failure of the 1942 Cripps Mission to unite the Indian parties behind the war. Dissatisfaction and a devastating famine in Bengal in 1943, which resulted in the deaths of over three million, helped to bolster the Muslim League in Muslim majority areas. By 1945, the League candidates held all thirty seats

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145 As has been noted by a number of historians, the League’s rhetoric frequently claimed to speak for all of India’s Muslims and not just those in line with the league.
reserved for Muslims in the central assembly. Smith returned to the United States to start a masters, and then a PhD, at Princeton.

The next two years would feature intense political manoeuvring between the Congress Party and the League. The rallying cry in Muslim majority regions became that of “Islam in danger!” Whereas religious politicking had been restricted in the past, the 1946 elections were different. Prior to this, secularist rhetoric had focused on Jinnah’s character and intentions not to create a theocracy; the explosive rhetoric of the 1946 elections was shaped around Pakistan as a-yet-unformulated ideal Islamic political order. The subsequent manoeuvrings backed Jinnah into a corner and he was forced to acquiesce to a “Moth Eaten Pakistan,” divided by a secular-orientated India and born in the brutality of communal riots which would target minorities and women.

Reeling from intense trauma, Pakistanis would experience the death of Jinnah, a separatist movement in Baluchistan, a pitched crisis between East and West Pakistan over the official language of state (Bengali and Urdu), a water crisis when East Punjab closed dams and throttled water to Pakistan’s farmlands, and the as yet unresolved crisis over Kashmir. The new nation also lacked a legal framework. Though India would promulgate its constitution in 1948, Pakistan had only a statement of policy to offer, in the form of an Objectives Resolution in 1949. The result was the Aims and Objects of the Constitution, popularly known as Objectives Resolution, which was passed in March 1949. But what was the resolution? To some, it seemed bizarre that, two years after the establishment of a sovereign nation state, all that

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147 Hamid Khan, Constitutional and Political History of Pakistan (Karachi: Oxford University Press, 2005), 91.
Pakistan had produced by way of a foundational document was a statement of intentions, but it was precisely what the political leadership of Pakistan needed: a way to lock in their ideals and give themselves time to frame a constitution that took into account their Islamic identity.

2.5 *Pakistan as an Islamic State, 1951*

It was against this backdrop, then, that Smith formulated his theory of an Islamic state. Smith in *Pakistan as an Islamic State* is unapologetically enthralled by the events at play. The book is based in part on field research in West Pakistan during the first half of 1949, when the Objectives Resolution was being debated. The book is divided into three broad sections. In the first section, Smith contemplates the definition of the Islamic state, concluding that it operates in both an actual and ideal form. The second section of the book deals with his survey of public opinion. Counting among his friends a number of high-ranking persons (including members of the Constituent Assembly), he was able to steep himself in the arguments by elites for an Islamic state. His commitment to understanding the popular mindset had him discussing the concept of an Islamic state with interlocutors in public spaces and in daily journals. The third and final section of the book focuses on Smith’s proposition that, “[a]n ideal Islamic state is that state which Muslims consider to be good.”

Methodologically, Smith frames his study as an empirical analysis into the Islamic state with the specific purpose of avoiding either “mere speculation” or restating medieval political

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148 Smith, *Pakistan as an Islamic State*, 41.
149 There is no indication that he consulted non-urbanites about the process.
150 Smith, *Pakistan as an Islamic State*, 69.
ideas about the *Khalifa al-Rashidun*. It is based on a combination of field research and his own reflections during twenty years of study on Islam. As mentioned earlier, the tone of the work is unabashedly excited, and Smith refers to the creation of Pakistan as the most “monumental” development of Indic Islam. In the young nation the “social contract” of the emerging society is being forged: “[I]n the case of new nations starting from scratch,... they have to define, at least in broadest outlines, what other and more established peoples may take for granted: their society’s ultimate objective.”

In Smith’s approximation, Pakistan was only made possible by appeals to Islam and thereby is *already* an Islamic state. However, the nation state, whatever its political form, must as a basic principle work towards its self-preservation, and Smith feels that in the case of Pakistan its Islamic quality is necessary to assure the loyalty of its citizens. Differently put, Islam is the basis of the state’s legitimacy. What then does it mean to call Pakistan an *Islamic*—recall that Smith is dedicated to non-essentialist understandings of Islam and privileges using the *adjective* Islamic over the noun Islam—*state*? Smith argues that the Islamic state is not so much a form of state as it is a “form of Islam.” Alternately, it is a way of making the transcendent aspects of the cumulative tradition of Islam a reality. For Smith, a formation of a state is the chief religious expression of Islam, in the same way that the autonomy of the church from the

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151 Ibid., 39. This also fits with Smith’s particular approach into humanistic inquiry. He believes that study conducted using multiple methodologies should only confirm the results of patient inquiry. For a discussion of his methodology, Cracknell’s introductory essay in his W. C. Smith reader is useful. *Wilfred Cantwell Smith: A Reader*.

152 Smith, *Pakistan as an Islamic State*, 4.

153 Ibid., 7. Smith is of course assuming that much of the ‘established’ world is aware of the telos of their nations, or at least have been around long enough not to worry too deeply about things like ultimate objectives.


155 Ibid. 13.

156 Ibid., 18-19.
state has been the chief expression of Christian piety.\textsuperscript{157} Muslim piety culminates in a political form: “Islam, then, by its own dynamic seeks a state for the social expression of its faith.”\textsuperscript{158} He formulates a two-part definition of the Islamic state which has an actual and ideal component, arguing that (1) Pakistan is an Islamic state, and (2) Pakistan ought to be an Islamic state. To that end he proposes the following formal definition: “An Islamic state in sense (1) is a state which its people are in the process of endeavouring to make an Islamic state in sense (2).”\textsuperscript{159} For Smith, Pakistan, or any nation state for that matter, can never be an ideal Islamic state (in form 2); however, a populace can live in an approximation of a form 2 Islamic state by striving to advance their ideals.\textsuperscript{160} By this measure the corollary is also true, that if a governmental official succumbs to corruption (such as the ousted Premier of Sindh in 1949), then they are merely pursuing “selfish aims” rather than “striving towards righteousness.”\textsuperscript{161} He then praises the central government for maintaining its drive and resolution to create an Islamic state of the second type,\textsuperscript{162} and, perhaps more importantly, for throwing open the doors of interpretation to allow common people to participate democratically in deciding what shape and form their Islamic state will take.

The arguments that Smith surveys in section two cover a wide variety of perspectives. Though he briefly engages with the work of Syed Abul A’la Maududi, he does not cite any of his

\begin{itemize}
  \item \textsuperscript{157} Ibid., 23.
  \item \textsuperscript{158} Ibid., 27. Smith’s notions of what it means for a nation to have its “own dynamic” are obviously open to critique.
  \item \textsuperscript{159} Ibid., 29. Emphasis in original.
  \item \textsuperscript{160} Ibid., 34-35. Elsewhere he will say, “The demand for an Islamic state is a demand for progress.” \textit{Pakistan as an Islamic State.}, 37.
  \item \textsuperscript{161} Smith, \textit{Pakistan as an Islamic State.}, 36-37.
  \item \textsuperscript{162} Ibid., 37.
\end{itemize}
papers or speeches directly. He does, however, discuss one of Maududi persistent themes: the continuing relevance of the example of the *Khalifa al-Rashidun* as an example of an Islamic state in the past. Smith argues that the *Khalifa* cannot be recreated in Pakistan because the nation has committed itself to redefining Islamic ideals in a democratic form. He classifies models that attempt to establish *shari’a* as the supreme law, whether by wholesale adaptation of 7-9th century Arabian values or by updating and applying the rules to the new era, and dismisses all of these attempts as misguided, arguing instead that the *Khalifa al-Rashidun* was not the perfect Islamic state, but rather an *actual* Islamic state that is being elevated to an *ideal* Islamic state in the parlance of its proponents. Smith clings to the importance of the democratised ideal in Pakistan. Though he recognises that liberal democracy has a long lineage in the West and a connection to church histories, he sees the current democratic experiment taking place in Pakistan as a matter of prime importance in the history of Islam.

The final section of the book deals with the struggle to define what is meant by a society which Muslims consider to be good. The way that Smith theorises how the good is determined is to privilege a *process* as opposed to any historical or theologically derived notion of the good. For Muslims, their notion of the good, while influenced by their environment, will also be

\[163\] Maududi was at the time in prison on charges of sedition because he was singularly focused on the ideal Islamic state at the expense of mundane efforts. Smiths says of Maududi: “the anomaly in this case…[is] in the rigidity and limitation of Mawdudi’s thought, which concentrated on the Islamic state that ought to be to the extent that he neglects and even works to undermine the Islamic state that is.” Ibid., 30. One of Aziz’s many critiques of Smith is that he references Maududi, towards whom Aziz (and many other Leaguers) bore considerable ill will as someone who actively critiqued the established order and stoked the fires of anti-governmental groups, sometimes toward violent ends, as took place in the 1950s. The discussion of Maududi begins in section one and continues into section two of Smith’s work.

\[164\] Ibid., 44-46.

\[165\] Ibid., 55.

\[166\] Smith will call this a Platonic bias – Cracknell will remind us that Smith is remembered for “having an active neo-Platonic imagination.” *Wilfred Cantwell Smith : A Reader.*, 18.
influenced by their history and sacred texts. However, since their notion of the good is married to a democratic process (by the Objectives Resolution), Muslims will ultimately succeed in making their society a good society as long as they are committed to pursuing Islamic ideals. The stumbling block in reaching this goal, as mentioned earlier, is “complacency or corruption.” Smith admits that this sounds tautological, but he stresses that the ethical ideals Islam gives to Muslims (however they determine those ideals) will help bulwark the state that they are constructing. Hypothetically, minorities could be oppressed in a democratic system that was a sort of dictatorship of the proletariat, but Islamic ideals would compel Muslims to reflect on their behaviour and hold themselves to a higher standard.

How then does the pursuit of a good Islamic state differ from simple democratic forms of state? How does an Islamic state differ from a Christian or a Jewish ideal state? For Smith, the impossibility of, “introducing into a Pakistani village twenty-five hundred years of the Greco-Roman-Western-European historical tradition” means that western-style justifications of democracy are doomed to failure. The only way in which these ideals can be domesticated is to couch them in Islamic ideals. One wonders, however, if Smith is making too much of Islam at this point in his argument. On the one hand, he is operating on the assumption that anything that Muslims do with Islamic ideals in mind is in and of itself Islamic behaviour. In the case of the nation state whose central ethic is shaped by a constitution and democratic ideals, therefore, anything that Muslims do democratically towards improving their society is, at heart, the

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167 Pakistan as an Islamic State., 74.
168 Ibid., 86.
169 Ibid., 90.
170 Ibid., 91.
motions of an Islamic state. Though in some ways Smith’s initial formulation seems simplistic, he is attempting to take the arguments for an Islamic society seriously and is committed to trying to understand how the Pakistanis themselves conceptualise their project. Smith concludes that the Islamic state, at its core, may be the same as an ideal “Christian, liberal, or democratic state.”

What makes a state Islamic is the process by which the ideal is reached.

2.6 Later Developments, *Islam in Modern History 1957*

After his doctoral work at Princeton University, Smith had an opportunity to write his magisterial *Islam in Modern History*, which incorporates most of the content of *Pakistan as an Islamic State*. In the intervening years the Prime Minister Liaqat Ali Khan had been assassinated, agitations by the ‘ulama against the Ahmadi had resulted in mass riots in Lahore for which Maududi and Abdus Sattar Niazi were in prison, and after much deliberation the Constituent Assembly had promulgated the first Constitution of Pakistan. Even the Muslim League was on the back foot after a drubbing received at the polls in 1955. The political and intellectual ferment of the last few years had sobered Smith’s appraisal of the Islamic state in Pakistan. In this section I shall review the primary changes in Smith’s two texts and focus on what he sees to be the cracks in Pakistan’s Islamic state.

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171 Ibid., 79.

172 On the publication of Maududi’s pamphlet on the Ahmadiyya problem, see Syed Abul A’la Maududi, *Qadiani Masla* (Lahore: Islamic Publications Ltd., 1953). The situation for Ahmadis in Pakistan has continued to worsen. To receive either a passport or a shanakhti (national identity) card, Pakistanis are required to attest the following statements: “a. I am a Muslim and believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) the last of the prophets. b. I do not recognize any person who claims to be prophet [sic] in any sense of the word or of any description whatsoever after Muhammad (peace be upon him) or recognize such a claimant as a prophet or a religious reformer as a Muslim. c. I consider Mirza Ghulam Ahmad Quadiani to be an imposter nabi and also consider his followers whether belonging to the Lahori or Quadiani group, to be NON-MUSLIM.” Capitalization in the original. See Embassy of Pakistan, "Application Form for Passport (Form ‘a’)," [http://www.embassyofpakistanusa.org/forms/A%20form%20fillable.pdf](http://www.embassyofpakistanusa.org/forms/A%20form%20fillable.pdf).
*Islam in Modern History* is a survey study of Islam’s ambivalent relationship with modernity. Smith does not set up “the modern” as a hard category but lumps the rise of secularism, liberation from colonial domination, religious reformism, and the increasing pace of internationalism as aspects of the modern. He covers the developments in the Middle East, Turkey, Pakistan, and India with particular emphasis on the multiple strategies being used by Muslims to deal with change. Chapter 5 is of particular interest as it is on Pakistan’s Islamic state, but refined from its initial form and produced for a western academic audience, as opposed to the first version, which was mainly addressed, in its short run, to a Pakistani audience. A majority of the arguments from the first attempt are retained, though with considerably more polish and with a number of footnotes clarifying his points. His overall conclusion is largely similar to that of his earlier manuscript: he still believes that the place of Islam and a vibrant debate on Islam is crucial to the continued survival of Pakistan. He devotes considerable space, however, to explaining why his perspective on Pakistan in 1957 is considerably more jaded than it was in 1951.

Smith’s main critique in his revised perspective is targeted at a failure of political and intellectual elites to “give leadership to the Islamic state idea.”\(^\text{173}\) Smith feels that, though the leadership was uniquely qualified to make possible the carving out of Pakistan from India, the moral, political and intellectual failures have now put the survival of the nation at risk. Moral failures for Smith take two forms: first, rampant corruption and toadyism have compromised public confidence in the leadership; and, second, corruption has fuelled anti-government sentiment by establishing that the current political order cannot be entrusted to enact the

injunctions of Islam and by fomenting anti-Islamic state sentiment among liberal intellectuals who cite these shortcomings as proof of the failure of the attempt to marry Islam to a modern nation state.174 Political corruption also leads to a skewing of religion towards short term goals by religious figures and political figures. It compromises the kind of idealism that undergirds both the meaning of the movement for Pakistan and Smith’s own excitement in the project.175

The significance of the inability of the government to respond to the crisis in 1953 cannot be understated. The ambivalence expressed by the government as its citizens turned on each other in the name of Islam, what Smith calls a “vast heresy hunt,” threatened the stability of the government to the core.176 The report into the “disturbances” highlighted repeated governmental failures to calm the public passions (in a number of cases members of the League actually participated in the outbursts) stoked by the members of the All Pakistan Muslim Parties Convention, which consisted of members of the ‘ulama as well as political groups such as Maududi’s Jama’at-i-Islami.177 What shook Smith, I suspect, about the particular events was the refusal of the government to engage with either the challenges to religious interpretation being

174 Ibid., 221. In support of Smith’s observations on the ulema see Aziz Ahmed, “Activism of the Ulama in Pakistan,” in Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle East since 1500, ed. Nikki R. Keddie (Berkeley.: University of California Press, 1972). For a modern look at how the ulema have continued to conceptualised the Islamic state see Zaman, The ‘ulama’ in Contemporary Islam: Custodians of Change., 87-110. For liberal ideologues, see generally the work of Tariq Ali and Ahmad Rashid, though I suspect they would scold me for calling them liberals. They should perhaps be called leftists, in deference to their Marxist leanings.

175 Smith, Islam in Modern History., 221. For a study on the use of Islam in political rhetoric in Pakistan see chapter 10 in Metcalf, Islamic Contestations: Essays on Muslims in India and Pakistan., 236-264.

176 Smith, Islam in Modern History., 230. Smith refers to the Munir report and the Objectives Resolution as the two most important documents about the early Islamic state in Pakistan.

177 See gen. Munir and Kayani, ”Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to Enquire into the Punjab Disturbances of 1953.” The “Munir Report,” as it is popularly known, is one of the most significant governmental documents of the period. It represents an attempt by colonially trained officials to scope, comprehend and explain a crisis that engulfed the nation. The most fascinating aspects of the report are lengthy, often humorous, discussions of how the different agitators understood the terms “Muslim,” “Islam,” “Islamic State,” “Jihad,” “apostasy,” and other important socio-religious concepts. I will be discussing the report in chapter 3.
offered by the dissidents or their political demands (one of the sparks of the movement was the demand that an Ahmedi minister resign). Smith goes as far as to call the report a “confirmatory document” of many of his arguments. It did indeed highlight a general lack of leadership by those in power.178

Though the political system was reeling from both scandal and crisis, Smith claims that it was intellectual failure which lay at the root of the other problems. Earlier in Smith’s career, he made much of the fact that Pakistanis had decided that this manifestation of the Islamic state would be tied to liberal democratic values. His analysis was confirmed in the Constitution of 1956 and, before it, the Objectives Resolution, as both documents attested that though “sovereignty of the entire Universe belongs to Allah” that authority on behalf of God would be exercised by the People of Pakistan.179 Moreover, Jinnah, the Quaid-i-Azam, had declared that “Pakistan would be a democratic State based on Islamic principles of social justice.”180 Though the ideals were set high, Smith laments that no subsequent intellectual, since the death of Iqbal, had supplied the state with a vision for the future.181 The elites had failed to deliver an interpretation of Islam that would have made the adjustment to modernity, including the development of a democratic political order. Smith charges them with failing to accomplish the task either “creatively” or “realistically.”182 For Smith, therefore, “[a]n actual Islamic state is a

180 Ibid.
181 Smith, *Islam in Modern History.*, 229. At another place he says: “A breakdown of democracy in Pakistan would indicate inter alia a failure of these Muslims adequately to have faith in it, which in turn would mean in part a failure effectively to incorporate it in the Islam that is their living faith. In an Islamic Republic, Islam either does or does not provide the morale to keep the republic going.” *Islam in Modern History.*, 249.
182 Smith, *Islam in Modern History.*, 226. He makes similar comments throughout the chapter.
state that its Muslim people are trying to make ideally Islamic. *An ideal Islamic state is a state that its Muslims consider to be good.* ¹⁸³ When democratic values are being sewn onto an understanding of the good, the thinking elite of Islam need to be front and centre: an Islamic state requires an Islamic justification for democracy and democratization.

The conclusion of Smith’s chapter attempts to look past Pakistan’s mundane problems and anticipate a fruitful future. Smith concedes that his judgment might have been harsh or that, at least, his analysis of the present problems besetting Pakistan might have made the prospects seem glum. In the last few paragraphs, however, he moves beyond a narrative of specific shortcomings and returns to the ideal of the Islamic state in history. Smith frames it in the following manner:

To be Islamic means, for Pakistan, to take its place within the moving stream of Islamic history, coming out of a distinctive past that is given and is accepted, and looking *sub specie aeternitatis* toward a future that has not yet been created. It is this stream of continuity that may serve, if anything will, to reintegrate the two senses of “Islamic State” that we have discriminated, the actual and the ideal: out of the past and towards a transcendent future.¹⁸⁴

Perhaps a disappointment with the actual has given Smith new dedication to the ideal.

**Conclusions**

Smith’s statement of the conditions that could have made the Islamic state possible, or at least the Pakistani one sustainable, draws us back to K. K. Aziz’s framing of the ideal caliph.

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¹⁸³ Ibid., 239.
¹⁸⁴ Ibid., 254. I wonder whom Smith was channeling in his use of *sub specie aeternitatis*. Perhaps Viktor E. Frankl, who makes the following affirming comment about humanity in the first section of his book, the section entitled “Experiences in a Concentration Camp:” “It is a peculiarity of man that he can only live by looking to the future—*sub specie aeternitatis.*” Viktor E. Frankl, *Man’s Search for Meaning: An Introduction to Logotherapy*, 4th ed. (Boston: Beacon Press, 1992)., 81.
Aziz proposes a model in which the caliph would be elected by some indirect procedure, as in the earliest dynastic caliphates, and not directly selected. That person would use consultation, but yet would be the ultimate decider. In addition, he would need to be well versed in jurisprudence, tradition, and culture, as well as being rich in manaqib, or moral excellences. The caliph would be an ideal ruler who would be able to heal the rifts in the community and to undo the separatism of language, nation, and sect. Most importantly, perhaps, he would also be a moral exemplar that would be capable of setting social standards. Though Smith would not go as far as Aziz in envisioning a caliphate, he would have agreed that Pakistan needed the kind of leader that embodied many of the traits described by Aziz. For Smith, Pakistani leaders should be incorruptible, visionary, and, more importantly, able to overcome the new sectarianism at play in Pakistan that had caused the riots of 1953. It may seem strange that his initial appraisal, aimed primarily at validating Pakistani attempts in whatever fashion they took, saw the project as something that could not be betrayed so long as some nominal ideals were adhered to, but his revisitation is now in the language of failures. I suspect that he could not have imagined Pakistanis turning on each other as Muslims, and, though these issues were not new, he may not have anticipated them exploding in this manner. His second evaluation has a moral component pointing directly at the moral and intellectual shortcomings of Pakistani leadership.

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186 Asma Afsaruddin's work about how moral excellence and precedence, or managib and sawabiq, operate is worth mentioning, with the caution that she has been called by some reviews a bit “irenic” and decidedly “sunni” in her historical approach. Asma Afsaruddin, Excellence and Precedence : Medieval Islamic Discourse on Legitimate Leadership, Islamic History and Civilization (Leiden ; Boston: Brill, 2002); The First Muslims : History and Memory (Oxford: Oneworld, 2008). The critique is by Fred Donner in his review of First Muslims: Fred M. Donner, “Asma Afsaruddin, the First Muslims: History and Memory. Oxford: Oneworld, 2008. Pp. Xx, 254. £40 (Cloth); £12.99 (Paper),” Speculum 84, no. 03 (2009)., pp. 254.
Smith’s utter disappointment with Pakistan in *Islam and Modern History* steps beyond what we would consider appropriate in an academic study. His approach to the study of religion always privileged developing a close understanding of persons and religious movements over the illusion of objectivity.\(^{187}\) This position, controversial in the early years of departments of religion, was not a denial of the traditional academic virtues of keeping an open mind, doing close historical study, and approaching the subject with a hermeneutic of suspicion. It arises from his particular moral commitment to understanding. Of Smith’s moral imagination, Donald K. Swearer says:

> Some—perhaps many—might be uncomfortable with Smith's approach, in part because his style can be that of a crotchety moralist, going so far as to label the use of "objective" knowledge in humane studies as "immoral." Beyond his sometimes tough moralism, Smith's approach to religion and religious studies may provoke discomfort because, while historical and inductive, it also embraces paradox and celebrates the elusiveness of what it means to be authentically human.... A Smithian "holistic" approach to the study and teaching of religion calls for a cognizance of the relationship of a particular subject matter to the total life of a religious community in its historical and contemporaneous dimensions.\(^{188}\)

Swearer’s insights are penetrating. What seems to be worrisome about Smith was his refusal to avoid what we may call “God talk” in his works on religion. His commitment to being a missionary and theologian was strengthened by his encounters with other religions.\(^{189}\) In particular, he was committed in his later theological works towards constructing a theology that began with the assumption that humans had to see each other as co-travellers on a journey and

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\(^{187}\) Similar concerns are voiced by Alasdair MacIntyre in his opposition to the idea of the Encyclopaedia, the claim that a repository contains “all there is to know" on a subject.” Alasdair C. MacIntyre, *Three Rival Versions of Moral Enquiry : Encyclopaedia, Genealogy, and Tradition : Being Gifford Lectures Delivered in the University of Edinburgh in 1988* (Notre Dame, Ind.: University of Notre Dame Press, 1990).


\(^{189}\) Amir Hussain added in personal correspondence that Smith was a missionary “Who never converted a single person.”
not as adversaries. He has many of the qualifications of a classical Orientalist such as Gibb, and on occasion, as in his comments about the lack of any Muslim intellectuals of worth, he even sounds like them. However, his desired outcomes are quite different. Smith’s goal is the realization of a world community, or in his words:

The new world that is waiting to be born is a world of cultural pluralism, of diverse faith.... Let no one imagine that building the new world community will be easy.... Is this possible...? I do not know, [but it is] the fundamental challenge facing humanity today; whether we shall rise to it or not remains to be seen. My own faith is that it can be achieved.190

Smith’s humanism, though unnerving to proponents of detached scientific study, is humble. He does not presume to speak for the “other,” nor does he presume to install signposts for conquest of Pakistan. Rather, I suspect, Smith, like Asad and Maududi, got caught up in the excitement of partition and the promise of the future.

In a 1964 review of Leonard Binder’s Religion and Politics in Pakistan, Smith scolds Binder, who submitted the dissertation behind the book in 1956, claiming that the text should have been updated. Binder’s conclusion was that the constitution that was adopted in 1956 combined successfully the requirements of Islam and modern liberal democratic deliberation.191 However, much had happened between 1956 and 1963 and Smith was disappointed by both the publishers and by Binder himself for treating the issues as though nothing of significance had happened during the seven year interval. He writes,

Had he published this book when he wrote it, at a time when the fallacy of this view had not yet been strikingly clear, one would simply have accepted the fact that a

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191 Binder, Religion and Politics in Pakistan.
young outside observer had been misled by appearances. But to let several years go by, during which the whole bubble was pricked and the work that he had studied so carefully was shattered, and not even to take advantage of that time to revise the hastily written English, seems a pity.\textsuperscript{192}

I suspect that Smith’s reflections are as much a discussion of his own experience as that of Binder. What is, of course, missing from Binder’s account, what had happened since \textit{Modern Islam in History} was published, was the end of democratic politics in Pakistan and the beginning of its first period of martial law. Smith in prophetic fashion warned that to give up on the idea at this early stage would be a “religious act, a deep conclusion” that would declare that the “Islamic ideal for society is irrelevant...or at least that they as a people are unable so to interpret or implement it.”\textsuperscript{193} Smith began preparing for the possibility of failure in 1956 and parts of his 1959 chapter on Pakistan in \textit{Modern Islam in History} read like an epitaph. And though he pins most of the shortcomings on the strength and vision of national leadership, I suspect that he realised in 1953 that sectarianism might split the new nation. Perhaps the disappointment he expressed in 1959 was that the redefinition of who got to participate in the society as Muslims was being transformed, not in the spirit of the highest aspirations of Islam, but through brutal violence directed against a minority by elements flying the flag of religion and allowed to do so by a government afraid of taking a unified stand. The breakdown of 1953 could be contextualised, but an abandonment of democracy by Ayub Khan in 1958 and his subsequent “self election” as president in 1960 was another matter entirely.


\textsuperscript{193} Smith, \textit{Islam in Modern History}. , 209.
I had a dream last night:

Abyssinia. I have always yearned to go to this land. Now I am here. The window of my empty room looks into green hill country, white only where the line of the road winds itself into the lush hills. Standing at the window, I feel the uncanny oppression of a tragic destiny for Abyssinia: the uncountable hordes from India have, like the Tartar waves during [the] European Middle Ages, overrun the land, murdering and burning, and even though the Abyssinians are brave warriors and are on guard, they will be overcome by the enormous numerical superiority of the enemy. The Indians have superior arms, they kill and plunder, and the land is silent, shocked by a terrible suffering. On the hill road before my eyes a small troop of Abyssinian riders appears. The large slender figures look fantastic in their white garments on the beautiful horses, they’re going to battle, they will all die. I discover an insane compassion for this beautiful, free, silent people. I ask myself in torturing horror, why must they all die? And then I am brought a ship’s ticket, that was found by a fallen Indian, a “ticket” issued by a big American shipping company, and it suddenly becomes clear to me, as if something hit me on the head: the Indians, this wild and barbaric people, have not come here on their own, they have been brought here, they have not been intentionally been brought here on giant American transport steamers over the ocean, they have been equipped with the most modern weapons, and then were let loose on the Abyssinians, and now their ruthlessness and huge numbers are supposed to eliminate the Abyssinians, for the West can not come to terms with them.... And when I have grasped the complete dreadfulness and finality of this crime, I am caught up with such compassionate despair that I cry out with all my might and beyond to all the world, that I can telegraph all the newspapers of the world; one wants to just blare out this grey shame against civilization, which our Western governments don’t let us know about. I implore the people of the world to stop further killing and to save the fine and courageous people of Abyssinia, to save them, before it becomes too late! Then I find myself in a narrow yard surrounded by a wall, many people are present, they have assembled to watch a special play; a small Abyssinian lad, taken captive. Francireur is to be publically hanged; he stands pale and trembling near the wall. A silence descends. Sir Herbert Samuel, the English High Commissioner for Palestine appears with his wife by his side; both are festively dressed, they take their place on the raised platform and the hangman puts the rope around the neck.
of the Abyssinian boy. I make one last effort to call, to prevent it, to awaken the respectable world out of their unsuspecting sleep...and I wake up. (After awakening, this is what I noted: If you replace “America” with “Europe” and “Abyssinians” with “Orientals” the political meaning of this dream needs no further explanation.) – Leopold Weiss [Muhammad Assad], in Jerusalem, June, 10 1924.194

3.0 Chapter Three

This chapter is a discussion of Muhammad Asad’s career and the model of an Islamic state which he proposed in Pakistan. I discuss his life in three stages, the first when he began to travel in the Middle East and encountered what he would call an “unromantic orient.” This section highlights three themes which feature prominently in his writings, namely colonialism, capitalism and “crusaderism.” The second section charts the history of his conversion and the motivations behind his journey to India. The biographical elements of the chapter helps structure the genealogy of his thoughts on the Islamic state. Last, I explore the version of an Islamic state that he develops in his capacity as a consultant to the Pakistani government on Islamic constitution making. I conclude with an analysis of how Asad attempts to marry religious requirements to the modern nation state in an attempt to discipline better Muslims using his rationalistic approach. His approach to political reform is an attempt to harness the rational nation-making energies of the constitutional form toward ideological ends. I discuss how he frames his model and how he deals with key issues in constitutional systems such as the right of dissent, the protection of minorities, and the grafting of electoral democracy onto Islamic legitimacy.

The key framework to understanding Asad is to think of him as an Orientalist that transitioned into a modernist Islamic reformer—a most unlikely hybrid identity. Asad may be considered an Orientalist in the sense that the corpus of his journalistic writings resemble travel literatures that are designed to reveal the strange and sometimes titillating mysteries of the Orient to western audiences. These writings continued even after his conversion to Islam. His early articles written in India were still dedicated to exploring the “strange exotic” for western newspapers and audiences. For example, in one article, which reads like a piece in a men's adventure magazine, he describes with dark fascination hiding in a Hindu temple and watching a nude “upper caste” woman praying to a linga for fertility to have children.\(^\text{195}\) Asad's modernist reformer period begins after his sojourn in Arabia, once he started making a living as an anti-colonial and anti-western polemicist.\(^\text{196}\) His first long project in this phase was a translation of a hadith collection of al-Bukhari into English. After a lengthy detention during the Second World War, he allied himself with proponents for Pakistan, and in the period after partition he was tasked with formulating a workable vision for an Islamic state into a constitutional form. Asad and Maududi began public lecture circuits to promote their different versions of the Islamic state in roughly the same period. Whereas scholars have discussed at length Maududi's schemes, Asad's, which strongly influenced Maududi and the Objectives Resolution, remains relatively underappreciated.\(^\text{197}\) He would end his Pakistani civil service career as an ambassador, trying to


\(^{196}\) Anver Emon suggested that there might be a fruitful point of comparison here between Fanon and Asad as international anti-imperialists. I suspect that there is much to be explored on this point and it would be exciting to revisit his idea in terms of international actors in local anti-imperial struggles in Muslim majority territories.  

form a Muslim league of nations, a project which was cut short by his resignation from the service. The remainder of his long life was spent writing his spiritual autobiography and producing an annotated translation of the Qu’ran into English.

3.1 Introduction: From Leopold Weiss to Muhammad Asad

The lengthy epigraph at the start of this chapter is from one of Muhammad Asad’s earliest books and outlines an important early phase in his thought. It reads like something by Conrad, but in the place of Charles Marlow we have Leopold Weiss, a journalist in his early twenties exploring the Middle East and writing occasional pieces for various journals in Germany. Dreams and dreaming feature prominently in Asad’s work, especially in his two travel memoirs, *The Unromantic Orient* (1924) and *The Road to Mecca* (1954). The first was written under contract to the *Frankfurter Zeitung*, a prominent journal, once considered by pre-WWII anti-Semites as part of the so called *Judenpresse*. The second is a “spiritual autobiography” with a number of “elegant fictions” including the protagonist's primary

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198 Asad spent much of his early intellectual years fascinated by Freudian psychoanalysis, in which dream figures prominently, and part of his motivations to visit with his uncle in Jerusalem was to explore this topic further. His uncle had studied under Freud himself and was the head of a mental institution in Jerusalem. Muhammad Asad, *The Road to Mecca*, Fourth Revised ed. (Gibraltar: Dar Al-Andalus Limited, 1980)., 58-9. Hereinafter, *Road*.

199 The *Frankfurter Zeitung* was founded in 1856 by Leopold Sonnemann. The journal was well known for being an “opposition paper” or part of the liberal press which frequently supported leftist and liberal causes. Of it, Ernst Kahn, writing in 1957 had the following to say about between 1914-1930: “[T]here men in particular left their mark on the paper: Bernhard Guttmann, Artur Feiler and Heinrich Simon all three were of Jewish origin; all three had left the Jewish fold. In this too they were typical of a large upper stratum of intellectual German Jews of the post-assimilationist era. In this respect they were also typical of the Jewish members of the editorial staff. From the Jewish point of view, they were for the most part ‘bad Jews’; in the process of losing their Jewish identity; some of them were already half-Jews or children of mixed marriages, or married to non Jewish women; some had changed their religious affiliation.” Ernst Kahn, "The Frankfurter Zeitung,” *The Leo Baeck Institute Yearbook* 2, no. 1 (1957), 230. The prose sounds dated but Kahn goes on to explain that the program of the *Zeitung* in domestic politics was “to protect the underdog,” which when combined with the earlier quote highlights why a liberal journal, with a large Jewish staff, would publish articles against Zionism --a constant reminder of the dangers of lumping together identities and politics.
interlocutor, a Bedouin companion who was largely a creation of Asad's imagination. The dream narrated in the epigraph came to Weiss while he sojourned with his uncle in Palestine and took the opportunity to visit North Africa. He travelled as far as Turkey before returning to Austria.

The dream features Abyssinia, or Ethiopia, which features in German romantic literature of the late nineteenth century and early twentieth century, owing in part perhaps to its continued survival as the only independent nation free from the European rush for Africa. The dream is a sensational, yet astute, critique of colonialism. It highlights the interconnected nature of colonial enterprises, with Indian troops deployed against African natives. Asad's anti-colonial bent was prominent in his condemnation of the political project of Zionism in *Unromantic Orient* and would also feature in his *Islam at the Crossroads* (1934), in which he would frame the

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200 An avid supporter of Asad, the former German ambassador to Algeria and convert, Murad Wilfried Hoffmann, credits a relatively recent study by Günter Windhager for uncovering a number of “elegant fictions” in *Road and being more of a “spiritual autobiography” than a work of history. Murad Wilfried Hofmann, "Book Review: Leopold Weiss Alias Muhammad Asad: Von Galizien Nach Arabien 1900-1927," *The American Journal of Islamic Social Sciences* 19, no. 3 (2002). The book itself is a wealth of information about Asad’s early years, including extensive information about his publishing in German periodicals. The points of contention raised about the *Road to Mecca* include the literary device of a traveling companion who features rather prominently named Zayd, and some other loose facts. Zayd being a literary invention could be unnerving for a reader on a number of counts, especially the lengthy ruminations on his beauty in the text, but seeing him as a foil for the Bedouin in general could make sense. Windhager's text also confirms an assertion made earlier by Hoffmann that Asad's early fascination was with Arabs and the religion of the Arabs as opposed to Islam and that his conversion attempt may be glibly defined as an attempt to become more like an Arab. Günther Windhager, *Leopold Weiss Alias Muhammad Asad: Von Galizien Nach Arabien 1900-1927* (Wien: Böhlau, 2002). One other point that bears mentioning is that Asad's account, according to Hermansen, is one of the first of a new genre of “conversion literatures” that casts conversion as part of a larger narrative as opposed to merely a testimonial. See Marcia Hermansen, "Roads to Mecca: Conversion Narratives of European and Euro-American Muslims," *The Muslim World* 89, no. 1 (1999).

201 Technically, Liberia also avoided colonisation, barring that of the American Colonisation Society-funded project that brought a number of freed American blacks to its shores in the 1820s. For a riveting account of the racism that traveled with them, see Benjamin G. Dennis and Anita K. Dennis, *Slaves to Racism: An Unbroken Chain from America to Liberia* (New York: Algora Pub., 2008). Richard Pankhurst has traced translations of William Dalton's *Tiger Prince* (1863) in German by 1881, but a greater presence of Abyssinia in literature and the arts began in the early 20s when Asad would have been in university. See Richard Pankhurst, "Pankhurst's Corner: Ethiopia in German Creative Literature," *Capital* 2012.
conflict as "the case of Islam versus Western civilisation." In his earlier work, however, his target is British imperialism in Palestine, which he saw as capitalising on the national aspirations of his fellow Jews. Weiss's argument is that at the root of political Zionism in the 1920s is a "sickness," the symptoms of which are a feeling of "homelessness." A Jewish homeland is proposed as a curative. Weiss argues that the true problem of late nineteenth century and early twentieth century Judaism is a loss of its ethical grounding, the moral foundations that make an ethical society possible:

What then, in truth, is the Jewish tragedy? It is briefly, the tragedy of a loss of ethical moorings. A mooring of this is, we should always remember, the prime goal for the healthy development of any nation, and only by its means can forces then be freed for productive progress; for it implies the giving up of every "if" and "but". Its content is pure symbol and its values is determined solely by the intensity with which it is put into practice.

During this period, Weiss admitted that he was questioning religion. He found himself, like many of his compatriots, rejecting all institutionalised religion. Neither religion nor philosophy provided for Weiss an adequate value system and the societal emphasis on materialism and economic recovery in the wake of the First World War left him feeling unmoored. He would come to think, by way of a combination of psychology and logical reasoning, that religion was an instinct, the denial of which left human beings incomplete. At this stage, though, his move toward Islam was more emotional pull than intellectual push. He

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204 *The Road to Mecca.*, 56.

205 Ibid., 57.
was attracted to the unaffected lifestyles that he was encountering on his trips. Weiss’s early writings were filled with tortured metaphors about the simplicity and beauty of life among the Bedouin and how these "pure and unspoiled" lives were being disrupted. He began to connect himself intimately with the Arabs, both in history, through a common ancestor in Abraham, and in his desire to be among them. In the closing pages of Unromantic Orient, Weiss refers to this deep sense of belonging: "Oh, my Arab people" he exclaims at one point in the text. In the final lines of the book he says: "But when I let it be known that we could relate in Arabic, an ahlān wa saḥlān came to me, as if from one breath. And this foreign, inner world stirred me almost like homeland."

This sense of finding a spiritual home among the Arabs, or what he would later call a "homecoming of the heart," is one of the overarching themes in The Road to Mecca. The sense of belonging that Weiss initially feels is framed in terms of a cultural belonging, an identification with the spirit of his Abrahamic ancestors that he finds in the Bedouin. In his imagination, thousands of years of wandering are resolved, not by a conversion, but by a rejoining with the Bedouin and a rediscovering the true religion of his ancestors.

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207 Asad, The Unromantic Orient, 105.

208 Ibid., 128.

209 Ibid., 133.

210 He refers to the homecoming of the heart in Road and it is the title of the second volume of his autobiography, which was only recently published by the Truth Society, a group of Asadians, in Lahore. The Road to Mecca., 49. Murad Wilfred Hofmann calls this a "romantic infatuation with almost everything Arab" and claims that "Asad is one of those Westerners who, with extraordinary effort, tried to turn into a real Arab." Murad Wilfred Hofmann, "Muhammad Asad : Europe's Gift to Islam," in Muhammad Asad : Europe's Gift to Islam, ed. Muhammad Ikrām Cughṭā’ī (Lahore: The Truth Society : Sang-e-Meel Publications, 2006), 222-223.

211 He discusses Abraham as belonging to tribes of Bedouin Hebrews. Asad, The Road to Mecca., 49. An example of fascination with the Bedouin is reflected in the following: "The people--that is, the Arabs: for it was they who
voice it as the following epiphany: “for all at once I knew, with that clarity which sometimes bursts within us like lightning and lights up the world for the length of a heartbeat, that David and David's time, like Abraham and Abraham's time, were closer to their [Bedouin] Arabian roots – and so to the Bedouin of to-day – than to the Jew of today, who claims to be their descendant....” Asad would narrate a similar flash of insight as the impetus for his eventual conversion.212

Martin Kramer (in an article in a volume dedicated to Bernard Lewis) once lamented that the most serious obstacle to understanding Asad’s life is that Asad remains the principle source on Asad.213 We should approach the account of his conversion with some caution. Even though Asad maintains that his autobiographical narrative was constructed out of an ethical duty to other Muslims to share “how and why” he embraced Islam,214 it seems likely that repetition has turned some of his narrative glosses into personal truth.215 Asad's account of his conversion is in a

from the very beginning impressed themselves on my consciousness as the people of the land, people who had grown out of its soil and its history and were one with the surrounding air." The Road to Mecca., 90.


214 On due caution when dealing with conversion accounts, as post facto retellings see: Brian Taylor, "Recollection and Membership: Converts' Talk and the Ratiocination of Commonality," Sociology 12, no. 2 (1978), 316-324.

215 Asad, Islam at the Crossroads., xvi. Technically speaking, assertion by repetition is considered a logical fallacy in formal argumentation.
chapter entitled “Dajjal” in Road to Mecca. Dajjal (referred to on occasion as the *masih al dajjal*), sometimes translated as “antichrist” or “false messiah,” is a being referred to in various Islamic traditional literatures, most notably in the *hadith* collections of Bukhari and Muslim.\(^\text{216}\) This character features prominently in eschatological accounts as an opponent of the faithful, who can learn to identify the *dajjal* by a few features. Two of them are that he is one-eyed and that has the letters “k-f-r” in Arabic (the roots of *kufr* – unbeliever) on his forehead. In a manner similar to Qutb's grafting of *jahiliyya* – traditionally conceptualized as the Arabian pre-Islamic age of barbarism – onto the present age, Asad sees modern “technical civilization” as a manifestation of the *dajjal*. His argument is that modern civilization is one-eyed and focuses on material progress instead of spiritual development and that it convinces people that material benefit is an end unto itself.\(^\text{217}\) Asad’s realization of the nature of *dajjal* came to him on the Berlin subway in 1926. Weiss and his first wife were riding in the luxury compartment of a train when they suddenly realised that the well-dressed, well-fed, and wealthy were suffering from “[a] hidden suffering, so hidden that the owner of the face seemed to be quite unaware of it.” On returning home he found his Qur’an open to *Surat al-Takathur*.\(^\text{218}\) This Meccan *sura*, in the fashion of the earlier *suras*, is framed in the form of an urgent call reminding humanity of the error of seeing the world as an end in itself. It warns that a vision of hellfire will compel an

\(^{216}\text{The dajjal is discussed throughout Bukhari and discussed at some length in Muslim's Kitab al-Fitan was Ashrat as-Sa'ah (the “Book of Tribulations and Portents of the Last Hour”), Muslim ibn al-Hajjaj, "Al-Musnadu Al-Sahihu Bi Naklil Adli," Center for Muslim-Jewish Engagement, http://www.usc.edu/org/cmje/religious-texts/hadith/muslim/041-smt.php. For a riveting account of how modern apocalyptic literatures invoke the dajjal see Jean-Pierre Filiu and M. B. DeBevoise, Apocalypse in Islam (Berkeley: University of California Press, 2011).}\n
\(^{217}\text{Asad, The Road to Mecca., 293.}\n
\(^{218}\text{Ibid., 293.}\)
accounting for behaviour in a person’s earthly life. Asad took this as a sign and commented:

“although it [the Qur’an] had been placed before man thirteen centuries ago, it clearly had anticipated something that could have become true only in this complicated, mechanized,

219 Asad would translate the sura differently when writing his Message of the Qur’an. The early version in Road puts emphasis on humans living in a hell-like state on earth, whereas the both the Arabic and Asad’s later translation would put emphasis on a vision of hellfire in the end of days. Compare

You are obsessed by greed for more and more
Until you go down to your graves.
Nay, but you will come to know!
Nay, but you will come to know!
Nay, if you but knew it with the knowledge of certainty,
You would indeed see the hell you are in.
In time, indeed, you will see it with the eye of certainty:
And on that Day you will be asked what you have done with the boon of life.

(emphasis in original, Ibid., 311-12) with

(1) YOU ARE OBSESSED by greed for more and more
(2) until you go down to your graves.
(3) Nay, in time you will come to understand!
(4) And once again: Nay in time you will come to understand
(5) Nay, if you could but understand (it) with an understanding (born) of certainty.
(6) you would indeed, most surely, behold the blazing fire (of hell)!
(7) In the end you will indeed, most surely, behold it with the eye of certainty:
(8) and on that Day you will most surely be called to account for (what you did with) the boon of life!

( emphasis in the original, Muhammad Asad, The Message of the Quran by Muhammad Asad.Pdf, (Gibraltar: Dar Al-Andalus, 2013), https://www.usc.edu/schools/college/crcc/private/cmje/religious_text/The_Message_of_The_Quran__by_Muhammad_Asad.pdf., Chapter 102.)
phantom-ridden age of ours.” Capitalism became the devil for Asad and in *Islam at the Crossroads* he would designate it as the specific modern affliction of the West.\(^{220}\)

*Islam at the Crossroads* would become one of Asad’s most famous books. It has remained in print constantly since 1934.\(^{221}\) Initially framed as a way to rally elite Muslims in India against British colonial influences, it was published extensively throughout the Middle East. *Islam at the Crossroads* continued a number of themes first found in *Unromantic Orient*. Whereas the earlier work targets political domination of the Middle East, the latter work is about the danger of materialism in a culture that has "no room" left for God.\(^{222}\) In Asad’s version of history, the dominion of the West over the rest of the world is made possible, not by inspiration of the Church, but in the struggle *against* the Church. The rigidity of formalised Christianity, Asad argues, turned European thinkers against the Church and refashioned ethics in terms of a utilitarian morality in which tangible material benefit is the ultimate good.\(^{223}\) He cautions that imitating this Western way of seeing the world deals a "fatal blow to the very existence of Islam as an ideological proposition." In his understanding, Islam can function as a “complete life...

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\(^{220}\) A number of texts have recently dealt with the genre of literature that deals with how the West is envisioned by the East. Two works in particular have dealt with the reversal of Orientalism, predictably entitled Occidentalism. The earlier work by James Carrier deals with a wide number of historic samples, including Japan and China's framing of the West. Buruma and Margalit deal with Huntington's framework in a fashion that Buruma has now become famous for and that I think can be fairly called liberal European alarmism. James G. Carrier, *Occidentalism: Images of the West* (New York: Oxford University Press, 1995). Ian Buruma and Avishai Margalit, *Occidentalism: The West in the Eyes of Its Enemies* (New York: Penguin Press, 2004).

\(^{221}\) The project was initially framed as a lecture series in opposition to changes in dress and manner of the educated classes. The series was presented at the Muslim High School in Lahore. Due to heavy demand, it became a pamphlet distributed throughout India. Asad goes as far as to claim that, "[a]fter a year or so there was hardly any educated Muslim in India who had not read it or at least heard of it." The book would be extremely popular throughout the Middle East as well and still appears in its Arabic translation as *al-Islam ‘ala muftariq al-turuq*.

\(^{222}\) Asad, *Islam at the Crossroads*., 27.

\(^{223}\) Ibid., 36.
system,” which, when instituted properly, will increase human dignity, security, spiritual hope, and happiness.\(^{224}\)

Asad goes on to warn South Asian Muslims about the hidden danger of adopting a Western world view that, because it is rooted in the “spirit of the Crusades,” bears a deep animus toward Islam. In Asad’s approximation, the Crusades were instrumental in the creation of European civilization.\(^{225}\) They helped Europeans transcend petty internal power struggles and identify themselves in opposition to Islam. “Without indulging in undue exaggerations,” he claims, “we can say that modern Europe was born out of the spirit of the Crusades.”\(^{226}\) The book combines this sort of civilizational psychoanalysis, derived from Asad’s time in Jerusalem with his uncle Dorian, the disciple of Freud, with the representation of himself as a westerner who had converted for the cause of justice and was now reporting hidden truths to his oppressed brethren. \textit{Islam at the Crossroads} would gain the approval of Muhammad Iqbal (1877 – 1938), the poet cum barrister cum philosopher, who encouraged Asad to “help elucidate the intellectual premises of the future Islamic state...”\(^{227}\)

### 3.2 Laying the Foundations: Asad in India

During his years in Arabia, Asad dedicated himself to learning about Islam and studying Arabic. It was not until he came to India that we see a maturation in his thought and the

\(^{224}\) Ibid., 95.

\(^{225}\) Ibid., 43.

\(^{226}\) Ibid., 44. This idea would gain considerable traction throughout the Muslim world. It appears, for example, in the writings of Sayed Qutub, who employed the term “crusaderism” to describe the hidden legacy of ongoing European colonialism. Crusaderism was discussed in Qutb’s \textit{Social Justice in Islam}. For a discussion of it fits into his theory of \textit{jahiliyyah}, see Sayed Khatab, \textit{The Political Thought of Sayyid Qutb : The Theory of Jahiliyyah}, Routledge Studies in Political Islam (London: Routledge, 2006)., 134-135.

\(^{227}\) Asad, \textit{The Road to Mecca}., 2.
organization of his objections against imperialism into a schema to transform Muslim societies. Why, though, did he transfer to India and what were his motivations?

Asad spent many years traveling in the Middle East after converting to Islam. For some of those years he was a guest of the house of Abdulaziz ibn Sa’ud (1876 - 1953), who through skilled diplomacy with the British and battlefield prowess against his tribal rivals had formed the Kingdom of Saudi Arabia. Asad discusses his relationship with the Sa’ud family at length in Road to Mecca, and in the revised edition he showers his friend with praise, lauding the strength of his character. The book’s postscript speaks of Asad’s return to Arabia to meet Ibn Sa’ud in 1951 and his later evaluation of King Faysal, who he said had fulfilled “every promise which the life of his father had held out and left open.”

What leaves the reader of this later edition puzzled, however, is why Asad abandoned Arabia. His answer to this question came fifty years after the fact, published in his posthumous Homecoming of the Heart. In this last book he recalls the wisdom of an old man in Kurdistan: “If water stands motionless in pools, it becomes stale, muddy and foul; only when it moves and flows does it remain clear....” Asad also, through the efforts of Abd al-Ghani, a prominent Muslim scholar with ties to Muslim pilgrims from South Asia, had become familiar with the Ahl-i Hadith and was convinced that the situation was ripe for a reformist seeker such as himself to relocate.

There is, however, a more tangible reason that he might have published such a stunning memorial for a place he was about to leave. He may have been currying the favour of Saudi backers who were funding his translation of the Qur’an (and would later fund the purchase of his

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228 Ibid., 378.
home). In support of this explanation, we might note the alteration of certain criticisms of Ibn Sa’ud in later editions of the *Road to Mecca*.\(^{230}\) In Asad’s initial rendering, Ibn Sa’ud, though he is praised for uniting the lands of the Arabs, is called to account for his lack of vision and leadership.\(^{231}\) Asad charges him with establishing his rule though “harsh laws” and “punitive measures” and failing to promote education or public well-being.\(^{232}\) Even worse, claims Asad, Ibn Sa’ud promised an Islamic way of life while clinging to a formality in ritual practice that did not encourage an equitable, progressive society. Asad's fundamental problem with Ibn Sa’ud was that he remained a tribal chieftain instead of becoming a great leader of the faithful. Asad laments:

> When I saw him last in the autumn of 1951 (on the occasion of an official visit to Saudi Arabia on behalf of the Government of Pakistan), it seemed to me that he had at last become aware of the tragic waste of his life. His face, once so strong and lively, was bitter and withdrawn; when he spoke of himself, he seemed to be speaking of something that was already dead and beyond recall.\(^{233}\)

He finds himself in the ironic position of moving to India, away from the heartland of Islam, to work with a more western, educated, and less tribal elite that would be more likely to implement the kind of reforms that he felt were in line with an authentic expression of Islam.

> After arriving in India, Asad spent a few years making contacts in Lahore. In time, he would deliver the lectures which became his *Islam at the Crossroads*. *Crossroads* occasioned

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\(^{230}\) Asad’s translation would even be banned in Saudi Arabia before it was published in full, however he did maintain strong ties amongst certain Saudi elites, such as Saudi minister of oil and natural resources Shaykh Ahmad Zaki Yamani. His change in tune may also have been out of respect for King Faysal. For as, Pola Hamida Asad recalls, the assassination of the King was the first time she had ever seen Asad cry. Kramer, "The Road from Mecca. Muhammad Asad and Islam..", 259. On the matter of the house Paula Hamida Asad: Asad and Asad, *The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992).*, 293.

\(^{231}\) Muhammad Asad, *The Road to Makkah* (Noida: Noida Printing Press, 2004)., 177.

\(^{232}\) Ibid., 177.

\(^{233}\) Ibid., note on page 181.
his introduction to Muhammad Iqbal (1877 – 1938), who would encourage him to begin translating Sahih al-Bukhari as a means of empowering non-Arabic speaking Muslims to claim an interpretive right to engage in *ijtihad* (independent legal interpretation of original sources) against the traditionally madrassa-educated ‘ulama.*234* This colonial state project of domination was fuelled by translation projects in the colonies that made unlikely allies of modernist reformers and Orientalist scholars. *235* Both are interested in dispersing knowledge to a wider audience with the intention of destabilizing traditional power holders such as the ‘ulama. They differ, however, in intended outcomes – whereas the Orientalist scholar’s work would enhance the ability of non-indigenous legal authorities to adjudicate for locals, the modernist reformer’s impulse is to trace a link to the past that bypasses much of the local entrenched variations and empowers a more democratic engagement of early religious sources. This in turn facilitates adoption of modern “benefits,” such as enjoying the fruits of scientific advancement. A number of ‘ulama were reticent to adapt to changes, even those with more liberal perspectives on the education of women such as the Deobandis.*236*

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234 Asad and Asad, *The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992).*, 68-76. Asad would describe *ijtihad* as being incumbent upon the Muslim community, demanded by the Qur'an in 45:13. He translated the term as “independent thinking.” It was, Asad believed, the only means by which the tradition could be authentically engaged. He would work on the Bukhari translation from 1935-1938 before being interned during the war and abandoning the project, partially out of a loss of interest, and partially owing to the destruction of his notes during partition.

235 Peter van der Veer and others have discussed these translation projects. Van der Veer is referring to the case of Western Orientalist scholars’ translations of classical Hindu texts and their continued impact in an Independent India, but his thesis is salient for my purposes. Peter van der Veer, “The Foreign Hand: Orientalist Discourse in Sociology and Communalism,” in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. Carol Appadurai Breckenridge and Peter van der Veer (Philadelphia, PA: University of Pennsylvania Press, 1993).

Islamic modernists, in the typology framed by Charles Kurzman, share the following general traits: they adopt typically “modern” values such as a respect for science, rationality, and constitutional reforms for government. They are also willing to adopt Islamic discourses as a means of self-consciously revitalizing the faith and challenging its traditional power holders, especially the traditionalists who were part of the ‘ulama. In India, tension mounted during the first wave of modernists, such as Syed Ahmed Khan, who worked primarily within the colonial system and pushed for reforms in the Muslim community through developing educational centres for western learning. One famous locus of this first wave is Aligarh Muslim University, which over the course of the twentieth century became a major stronghold for Muslim nationalist sentiment. Asad fits better in Kurzman’s so-called “second wave.” Like those in the first wave, Asad unabashedly endorses the advancement of learning in the sciences and the adoption of the benefits of modernity. He believes, however, that a mere imitation of the West, however, would be disastrous. For Asad, as for many modernists, Islam is at its core a highly rationalistic faith. The dedication in his translation of the Qur'an is "to those who think," and the text extols at length the influence of Muhammad Abuh and Rashid Rida on his translation, who both would, like Asad, face accusations of neo-Mutazalism. This accusation usually manifests as a veiled charge of heresy, suggesting that the professors of excessive rationalism are allowing reason to trump what they consider to be most important: faith. The


238 Of Abuh, Asad says: "His importance in the context of the modern world of Islam – can never be sufficiently stressed. It may be stated without exaggeration that every single trend in contemporary Islamic thought can be traced back to the influence direct or indirect, of this most outstanding of all modern Islamic thinkers." Muhammad Asad, The Message of the Quran by Muhammad Asad, (Gibraltar: Dar Al-Andalus, 2013), https://www.usc.edu/schools/college/crcc/private/cmje/religious_text/The_Message_of_The_Quran__by_Muhammad_Asad.pdf., 6/1314.
accusers charge that rationalists, even on matters of revelation, frame the Qur'an and its importance in rationalistic terms which they derive from contemplating logically the nature of God, an approach that offends both traditionalists and the members of Sufi orders (silsila).\footnote{For an compelling look at the changing dynamics of Mutazalism including its modern manifestations see the highly readable: Richard C. Martin, Mark R. Woodward, and Dwi S. Atmaja, 	extit{Defenders of Reason in Islam: Mu'tazilism from Medieval School to Modern Symbol} (Oxford, England ; Rockport, MA, USA: Oneworld Publications, 1997).} During the peaceful antebellum period of the 1930s, as Asad's love affair with Arabia waned, his status as a critic of the British grew, even earning him a CID (Criminal Investigations Division) tail. In 1939 Asad, along with a number of other “enemy aliens,” found themselves arrested and subsequently interned for the duration of the war.

Asad's internment would embitter him against the British. He was removed from his family and placed in a camp with citizens of every stripe from a number of different nations. The unlikely assemblage of over three thousand men at Ahmednagar (later moved to Deolali) included anti-fascists, refugee Jews, and Nazis, all unceremoniously dumped into the same camp.\footnote{Asad and Asad, 	extit{The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992).}, 101.} He counts the time at Ahmednagar as the bleakest years of his life, finding himself imprisoned with his enemies and worried for the lives of his family in Europe, (his family, he would learn years later, had perished in the Nazi camps).\footnote{He had tried to get his father out of Europe in 1939, right before the outbreak of the war. His father refused on the grounds that he would not leave Austria without his wife and daughter. Before any further steps could be taken, the embassies collapsed and Asad found himself arrested. Years later he would learn from the Red Cross that his father had died in Theresienstadt and his mother and sister had died at Auschwitz.} He did not write much during this period, but later he would attribute his failure to secure his own release to his exposing of various British machinations in the Middle East. In particular, he would cite his alleged involvement with helping CASOC (California-Arabian Standard Oil Company, later ARAMCO) secure oil
rights in Saudi Arabia in the face of British competition. In addition, the government’s continued suspicion that he was a Bolshevik spy, coupled with anti-British passages from his pamphlets (including Crossroads), resulted in him being declared an “enemy of Britain.”242 At the end of 1943, Asad was transferred to a “family camp” near Poona where his wife Munira and his son Talal rejoined him. When he was finally freed, on the 15th of December 1945, he decided to found a one-man journal in which he would attempt to formulate the “ideological principles on which the future of Pakistan might be built.”243

3.3 Framing the Ideological Principles of Pakistan 1946-1948

The journal Arafat was published in Lahore between September 1946 and May 1947. In it Asad revisited many of his ideas expressed in Crossroads, but with the new goal of convincing Muslims that the only hope for the future lay in the creation of Pakistan. In the prolegomena to Arafat, Asad lays out the basis for his argument, framing the struggle as a difference between two types of civilizations. The first is a traditional civilization that is based on values that handed down from generation to generation.244 The second type of civilization is an ideological civilization. Instead of evolving organically within a given region, it struggles for an ideal. (Asad 2001a)245 At the current juncture, Asad believes, the second type takes precedence. An Islamic civilization is, for Asad, not so much a collection of particular geographic (or historical) types, but rather is one in which people are attempting to implement Islamic principles in

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242 Asad would vehemently deny his involvement with any oil deals in Saudi, claiming it would have made him a millionaire if he had had any stake. Asad and Asad, The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992), 106. On his alleged Bolshevism, see “File 18-I(C)/1934 Expulsion of Undesirable Foreigners from Kashmir (Case of Leopold Weiss Alias Mahamad Asad Ullah Vyce),” (1934).


244 Muhammad Asad, This Law of Ours, and Other Essays (Kuala Lampur: Islamic Book Trust, 2001), 9.

245 Ibid. 7-10.
practical life circumstances. As such, the idea of an Islamic civilization, or what he would come to call an “Islamic state,” is less a revival of some fixed entity from the past than it is an idea that evolves with every age, using reason to achieve its ideals in the best possible way. On the basis of this line of reasoning, Asad opposes Muslims remaining in a united India. He believed, I suspect, that if Muslims remained in India, they would find themselves on the horns of a dilemma. Any attempt to establish the second type of Islamic civilization would be overpowered by the forces of India’s traditional civilizations. Only the first type of civilization could survive, compelling Muslims to champion particular regional variants over a universal ideological Islam.

Arafat, in typical Asadian fashion, contains a mix of historical revisionism, a psychological assessment of Muslims and the age they live in, and polemics against the enemies of reason —especially the ‘ulama, but also revivalists, whom he compares to ostriches with their heads in the sand. In addition, as he would indicate in later works such as Principles of State and Government, Arafat was where he laid out the major themes of his political thought. The main line of historical revisionism at work in Arafat is Asad’s claim that Muslim civilization lost its way in the years between its period of dominance and its subsequent subjugation under colonialism. He argues that once the shari’a became a specialised form of knowledge accessible only to the few, i.e. the ‘ulama, that the Islam of everyday practice became a “mechanical habit” as opposed to “moral habit.” For Asad, living the requirements of the shari’a would have

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246 Ibid., 10.
247 This represents a slight shift in Asad’s position as he worked with revivalist groups on his arrival to India. He came to distance himself from them.
248 Asad could be channeling Aristotle on these moral habit points. His history echoes much of the colonial rhetoric on this matter. See Zaman’s brilliant refutation: Zaman, The ‘ulama’ in Contemporary Islam: Custodians of Change.
engendered in Muslims true moral habits if they had engaged their faith individually and rationally. He understands *shari’a* to be a rationalistic engagement of the law contained in the *Qur’an* and *sunna* and the first responsibility of a Muslim must be to participate in this struggle through a return to originary sources. Reading the law with fresh eyes must be preceded by an abandonment of *fiqh* and *kalam*, which he understands to be theology rooted in the Aristotelian and Neo-Platonic forms. Both create, he says, a “monstrous” and “second hand” Islam. He argues that psychology, which he sees as a hard science, has proved beyond a doubt that human opinion can only ever be subjective, time-bound, and relative. Revival, therefore, must begin with an abandonment of imitative practices and a shift to respecting the past but not being enslaved by it.

In May of 1947, in an article entitled “What do we mean by Pakistan?” Asad began to marry these ideological principles to the specific form of the nation state that would become Pakistan. For Asad, Pakistan represented a unique situation in which Muslims would have the opportunity to build a nation from the ground up, including establishing its founding principles in a modern state forms such as a constitution. Asad felt that creating an Islamic state (he sometimes calls it a theocracy) in Pakistan would result in a domino effect in which other nations would follow suit in a revolution of Islamic political thinking. Asad feared that if the

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249 These observations are mainly contained in his essays entitled “Whose is the Fault?” and “Talking of Muslim Revival.” The essays can be found in Asad, *This Law of Ours, and Other Essays.* Ibid., 19-29.

250 Asad concedesthe importance of the Companions of Muhammad (including the early Caliphs) as early interpreters, but he also wants to limit the applicability of their rulings, owing to his understanding of subjective quality of their interpretations. He stresses their importance but simultaneously claims that, if the Companions were making an *ijtihadi* judgement, it should never be binding. Ibid., 43-44.

251 Ibid., 20.

252 Ibid., 25.

253 Ibid., 76.
revolution was co-opted (or betrayed) by the modernizing secular elite, Pakistan would merely become a modern nation without a spiritual grounding, like those of Europe. Asad feared that the dynamism of Muslim efforts, which he felt had made Pakistan possible in the first place, would collapse. Cultural Islam, or popular Islam as it had been practiced in South Asia, should not be allowed to shape the nation. He dismisses “common people,” as being “steeped in ignorance, superstition, [and] political humiliation,” practising the “emotional” rather than the rational side of the faith. The Islamic state that he is later called on to theorise counters this problem by teaching the common people true Islam, that is, the rationalistic faith that he understands Islam to be. In October of 1947, Asad was approached by Iftikar Husain Mamdot, the Nawab of Mamdot, who would go on to become the first Chief Minister of Punjab, with a proposal to set up a Department of Islamic Reconstruction. Asad promptly accepted.

Asad presented the government with a number of proposals in his essay *Aims and Objects of the Department of Islamic Reconstruction*. The Department recommended the following six interventions to strengthen the Islamic character of the nation. The first dealt with the restructuring of the educational system, which would offer religious education as a compulsory subject. Asad advocated for Arabic to be a compulsory subject as a means of making the tradition accessible. Secondly, he proposes the establishment of a *Dar al-‘ulum*, similar to Al-Azhar, that would train state ‘ulama in Qur’an and the *hadith* and *fiqh* of the various major schools and in general subjects, including economics and social studies. Third, he suggests the

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254 He would receive invitations from Ayub Khan and Zia ul-Haq to return to Pakistan to work on state projects of religious renewal. He turned down the former. He might have accepted the latter—he was a great admirer of Zia—but Zia exploded along with his plane before Asad could accept.

development of a *shari’a* code. This code, central to the Islamic reforms in other countries such as Egypt, would receive little attention in Pakistan. Though Asad would reiterate the importance of a code in his *Principles of State and Government in Islam*, in later work he mostly restates what he first formulated in *Aims*, with a few cosmetic changes.\(^\text{256}\) He proposes the creation of a Shari’at Committee where “responsible ‘ulama of all schools” would nominate members to collect all the *nass*, or clear, ordinances from the Qur’an and the authentic *hadith*.\(^\text{257}\) His specific goal was to create a “minimal code” that would avoid the impenetrability of the *fiqh* collections of individual schools. This fits with his general schema of encouraging free and open exercise of *ijtihad* on any matter not governed by an explicit text of revelation. Asad’s fourth proposal is to develop a series of recommendations derived from this basic code which would help legislative bodies and administrative agencies ensure that any law or regulation would fit with minimal *shari* requirements. His fifth proposal similarly deals with monitoring of *waaf* (charitable endowments) and public religious institutions to allow central supervision. Last, he proposes that the Department task itself with promoting Islam through radio, pamphlets, and periodicals, becoming an organ of propaganda to promote “*living in terms of Islam...by learn[ing] to think in terms of Islam.*”\(^\text{258}\) On this final point, his plan combines the paternalism discussed earlier with a totalitarian fantasy.\(^\text{259}\)

\(^{256}\) Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Sharī’ a into Egyptian Constitutional Law*. Of particular relevance is the code drafted by ‘Abd al-Razzar al-Sanhuri, a western and *madrassa* educated lawyer who developed a veritable Napoleonic Code of *shari’a* injunctions.

\(^{257}\) Asad, "Islamic Reconstruction: The Aims and Objects of the Department of Islamic Reconstruction.", 993.

\(^{258}\) Ibid., 995.

His next major contribution to the public discourse on the constitution was an article in *Arafat* entitled “Islamic Constitution Making” in 1948, which he would later revise in his major work *Principles of State and Government in Islam*. The article would also be his last as the head of the Department of Islamic Reconstruction, as he would resign his position, thereby abandoning the project. He then took on the new task, as a member of Pakistan's foreign service, of forming an Islamic league of nations.

**3.4 Asad and Islamic Constitution Making**

In this section we look in more detail at the role that Asad thought Islam could play in the new constitutional order. First, though, we should step back and look more broadly at the legacy of constitutions and constitutionalism that set the context for Pakistan's particular contribution.

The history of modern constitutionalism has its roots in the philosophy of the Enlightenment. One of its early forms is the Constitution of the United States of America. The opening lines of this work are exemplary, “We the people” announced that political sovereignty was vested in the people, not in any form of monarchic or aristocratic rule. Some have taken the point further and have argued that the Constitution represented an announcement of a secularised order and in which religion was replaced with a more generalised sense of natural law in which humans were thought to have inalienable rights that the government could not violate. Early constitutional forms in Islamicate societies, such as the Ottoman Constitution of 1876, set up a

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Apropos to this wider interpretation, Nathan Brown has argued persuasively for a distinction between constitution and constitutionalism. A constitution, he says, is the basic legal framework for governing and constitutionalism is the ideologies and institutional arrangements that promote, limit and define the exercise of state authority. The distinction opens the door for an Islamic constitutionalism that is free from the particular history of the liberal tradition that is rooted in historic evolution from (Christian) natural law and western feudalism. But the more subtle point that Brown teases out of the constitutional tradition is that western liberal constitutionalism rests on a firm belief that humans can “regulate power through law and reason.” As we shall see, Asad’s model rests on a similar assumption.

The United States Constitution represents a unique blend of bargaining between the stakeholders and an ideological vision. This is typical of western political liberalism. Take for example the means by which a thinker like John Rawls structures the basis of a just society. Rawls, in contrast to earlier social contract theories that rely on an escape from the state of nature, uses the hypothetical situation of the “original position,” where parties frame the social contract, or constitution under which they will live through a process of rational bargaining. Similarly, Saïd Amir Arjomand, in his typology of stages of constitution-making, marks the 19th and early twentieth century as being the era of modernization and nation-building characterised

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263 Ibid., 8 and note 12, p 202.

264 Ibid., 100.

by constitution-making as a means of applying rational design to the political order. It is here that I find Asad's project fits. His writings during the constitutional debates in Pakistan that were later revised into *State and Government* are an attempt to rationalise Islam for political purposes. His opposition to the modern secular state was that it lacked a “stable norm by which to judge between good and evil, and between right and wrong.” For Asad, Islam, as expressed in the Qur'an and the authentic hadith, contained, in contrast to liberal models that struggled to devise any common moral standard beyond a generalised notion of human equality, a plan for a complete way of life.

Saïd Amir Arjomand postulates that Pakistan, at its inception, represented a watershed in constitutional development, in that it assigned Islam a new and previously unimagined role. Prior enshrinements of Islam in constitutions, such as in the case of (pre-revolution) Iran, had used Islamic principles as a limitation on capricious government. Pakistan, he argues,

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266 Arjomand’s five stages are a compelling way to look at the development of constitutions and provide a useful framework for the development of constitutionalism. The five stages are as follows: “1) The medieval and pre-modern era down to the eighteenth century, where the dominant pattern of legal development in many traditions consisted of law-finding and jurisprudence while law-making was confined to administrative law by decrees; 2) The modern stage of political reconstruction by rational design in which constitution-making itself was introduced as the procedure for the elaboration of rational design for political reconstruction, alongside parliamentary law-making as an expression of national sovereignty and the principle of separation of powers; 3) The age of modernization in the second half of the nineteenth and early twentieth centuries, when (authoritarian) constitutions served as instruments of state-building and rationalization of the centralized bureaucratic Rechtsstaat, and law-making by parliaments and administrative organs dominated legal development; 4) The era of ideological constitutions as instruments of social transformation according to total ideologies and their offspring (1917–1989), marked by the subservience of narrow conceptions of law and legality to the dominant ideology of the regime. This constitutional era comprised the period of de-colonization (1947–1970s), in which a significant number of new states wedded ideological constitution making to developmentalism, as the age of ideology spread from the first and the second worlds to the emerging third world. 5) The era of new constitutionalism since 1989, marked by a mixture of increasingly judicialized legislation by parliaments and administrative organs and legislative jurisprudence by the constitutional courts and supra-national judiciary organs.” Said Amir Arjomand, "Constitutional Development and Political Reconstruction from Nation-Building to New Constitutionalism," in *Constitutionalism and Political Reconstruction*, ed. Said Amir Arjomand (Leiden ; Boston: Brill, 2007)., 6-7.


represented “not an Islam embedded in the traditional political order under autocracy, but an abstraction set against the background of a century of the British Raj.” It was intended both to state the ideological goals of the community and to distinguish the project of the new nation from both secularised India and the Raj. As such, three clauses of the Objectives Resolution of 1949 bear review:

- Sovereignty belongs to Allah alone but He has delegated it to the State of Pakistan though its people for being exercised within the limits prescribed by Him as a sacred trust.
- The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.
- Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teaching of Islam as set out in the Quran and sunna.
- The judiciary shall be independent.

For Arjomand, the compatibility between this ideological reading of Islam and constitutionalism is deeply suspect. But this Westminster-style parliamentary democracy with Islamic ideological elements pencilled in made sense to Leonard Binder in 1961. Binder, in fact, considered it a perfect compromise that satisfied both ideologues such as Maududi (which it mostly did) and elites, including the secularist civil service, who were concerned about over-stressing the religious nature of the state. As Arjomand cleverly points out however, “God had no difficulty trumping the other putative sovereigns.” What was pencilled in ended up, in the

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269 Arjomand, "Islamic Constitutionalism.", 120.
271 Binder made these observations during the debates of the 1950s. Binder, Religion and Politics in Pakistan.
272 Arjomand, "Islamic Constitutionalism.", 120.
implementation of the constitution, trumping the printed letter.\textsuperscript{273} This bouleversement was not the intention of any of its initial framers, including Muhammad Asad. Asad, whose goal was to cultivate an individualistic rational engagement of Islam, felt that it could best be encouraged by the structuring of a rationalistic Islamic state, or in his words:

[T]he growing of a community of people who stand up for equality and justice, for right and against wrong—or, to put it more precisely, a community of people who work for the creation and maintenance of such social conditions as would enable the greatest possible number of human beings to live, morally as well as physically, in accordance with the natural Law of God, Islam.\textsuperscript{274}

Key to negotiating Asad's model, is that, though he claims that his work in not intended as a "blueprint" for the constitution of any particular state, he takes as a given that any modern Islamic state will have a constitution as its highest non-religious law.\textsuperscript{275} Moreover, it will use that constitution to enshrine the key principles necessary to establish its status as an Islamic state and its right to command the loyalty of Muslims.

Asad's models his style of rationalistic engagement in his book \textit{Principles of State and Government}. The text consists of quotations from the Qur'an and \textit{hadith} interpreted through Asad's rationalistic lens, with few references to secondary literatures. He draws his inspiration for the project from Ibn Hazm of Cordoba (994 – 1064 CE) who was a proponent of rationalistic and empirical engagement of the early sources.\textsuperscript{276} Ibn Hazm would famously use psychology to

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\textsuperscript{273} Ibid.
\textsuperscript{274} Asad, \textit{The Principles of State and Government in Islam}., 30
\textsuperscript{275} Ibid., 95.
\textsuperscript{276} Ibid., 13. Discussing Ibn Hazm's reduction of \textit{shari'ah} to obligatory acts. On Ibn Hazm generally, a new book published by Brill highlights the contours of his career: Camilla Adang, Ma Isabel Fierro, and Sabine Schmidtke, \textit{Ibn ḤAzm of Cordoba : The Life and Works of a Controversial Thinker}, Handbook of Oriental Studies Section 1, the near and Middle East (Leiden ; Boston: Brill, 2013). Talal Asad has also stressed the importance of Ibn Taymiyya on his father's thought. In the earlier political period, however, his father’s references were more to Ibn Hazm,
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challenge his opponent's arguments by exposing their passions and prejudices, undermining their claims to objectivity. Ibn Hazm would argue that true reason was the only means of arriving at the truth, or alternatively, “Reason, the perfect light of God, by which we know things as they are and truth is marked off from error.” Asad, a great admirer of Ibn Hazm, quoted him at length in his journal Arafat, in the notes in his translation of the Qur'an, and in Principles of State and Government. We could reasonably speculate that Asad drew inspiration from Ibn Hazm's frequently scathing critical style, his lengthy periods in detention, and his singular commitment to using reason as a razor to slice through tradition and texts to discover God's intentions for humans.

Let us look more closely at ways that Asad uses the Qur'an in order to lay the foundations for his Islamic state theory. With Ibn Hazm's critical rational style as a guide, Asad derives four principles from the Qur'an, which he postulates as preconditions for Islamic legitimacy. He claims, first of all, that the Qur'an contains a “fundamental injunction” for political organization in 4:59, which he translates as: “O you Faithful! Obey God and obey the Apostle and those in authority from among you [who have been entrusted with authority].” In his translation of the Qur'an, he argues that in this ayah, God places political authority in trust (amanah), but only in Muslims ruling over Muslims. Asad argues that Qur'an 5:47, "Those who do not judge by what God has revealed—those indeed are the evildoers," frames the first principle of the Islamic state,


the principle that an Islamic state must enforce the ordinances of the *shari’ā*.

To undergird his reasoning, he notes that *asbab al-nuzul* (occasions of revelation) literatures indicate that the verse deals with a case of lapidation, a penalty that was no longer being applied in the Jewish community of Yathrib, Muhammad argued that Jewish scripture required stoning and therefore the punishment had to be applied to Jews. The principle he was following was that each community should be judged by the law revealed to that community. Muslims, therefore, should rule over Muslims on the basis of the *shari’ā*.

This translates for Asad into a political requirement that the *shari’ā* must bear on matters of public concern, but it also acts as a limitation to state jurisdiction in matters of private interest that involve an inner sphere of religious negotiation.

His second principle is contingent on the development of a *shari’ā* code. As discussed in *Aims*, this code will be constructed in an extremely narrow manner in consultation with a council of the learned. The second principle, then, is a requirement that the *shari’ā* code be the supreme law of the land and that the constitution recognize it as such. He draws this from Qur'an 33:36: “Whenever God and His Apostle have decided a matter, it is not for a faithful man...”

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280 Asad, *The Principles of State and Government in Islam*, 35

Caveats about the authenticity of the *asbab al-nuzul* literatures aside, they provide a clue for how Asad shaped his theory. Ali ibn Ahmad al-Wahidi, *Asbab Al-Nuzul*, ed. Yousef Meri, trans. Mokrane Guezzou (Amman, Jordan: Royal Aal al-Bayt Institute for Islamic Thought, 2008)., 68. It also bears mentioning that in the *asbab al-nuzul* literature the discussion says that the community had suspended stoning because it was not being enforced against the wealthy, but was being applied to the poor, and that the community had agreed on a middle punishment of flogging and face blackening with coal. Muhammad opposed the innovation and required, according to the account, that the guilty party be stoned. For a differential interpretation of this point (in which jurists refused to see this story giving authority to another community’s law over the *shari’ā*) see Anver M. Emon, *Religious Pluralism in Islamic Law: Dhimmīs and Others in the Empire of Law*, Oxford Islamic Legal Studies (Oxford: Oxford University Press, 2012)., 150.

282 Asad, "Islamic Reconstruction: The Aims and Objects of the Department of Islamic Reconstruction." See also *This Law of Ours, and Other Essays*, 67.

or woman to follow another course of his or her own choice.”

Asad does not specify if a judiciary or some other body ultimately determine whether ambiguous cases contravened the law. I suspect this was due to his reticence about the role traditionally played by the ‘ulama. As mentioned in Aims, he was willing to endorse a state-elected ‘ulama, but only on the assumption that they would be servants of the state and would not devolve into the dismal conclaves he railed against in the 1930s and 40s.

His third requirement is derived from the same Qur'anic injunction as the first, citing Qur'an 4:59, he reiterates, “Obey God and Obey the Apostle and those in authority from among you.”

This time, however, he uses the verse to explain the limits of loyalty. Whereas in a liberal society, he says, citizens owe their allegiance to the state on the basis of their birth, in an Islamic state “obedience to a properly constituted Islamic government is a Muslim’s religious duty.”

Asad's understanding of the limits of obedience to an unjust government turns on the following hadith from Muslim's Kitab Al-Imara:

The Apostle of God said: “The best of your leaders are those whom you love and who love you, those upon whom you invoke blessings and who invoke blessings upon you; the worst of your leaders are those whom you hate and who hate you, those whom you curse and who curse you.” We [i.e., the Companions present] asked: "O Apostle of God! Should we not overthrow them, if such is the case?" He replied: “No, so long as they uphold prayer among you; no so long as they uphold prayer among you!”

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284 Ibid., 35.
285 “Islamic Reconstruction: The Aims and Objects of the Department of Islamic Reconstruction.”
286 The Principles of State and Government in Islam., 35.
287 Ibid. See also page 75-81.
288 Ibid., 78. Parenthetical in the original. Asad's translation eliminates the last line of the hadith. Compare the following translation of 20:4573: "It has been narrated on the authority of ‘Auf b. Malik that the Messenger of Allah (may peace be upon him) said: The best of your rulers are those whom you love and who love you, who invoke God's blessings upon you and you invoke His blessings upon them. And the worst of your rulers are those whom..."
What Asad understands as “prayer” in this hadith is not the right to pray, but rather prayer as it is used in Qur’an 2:3, which talks about people “who believe in [the existence of] that which is beyond the reach of human perception, and are in constant prayer.” This is prayer in the larger sense of faith, not mere ritual prayer. Therefore if the state is legally constituted (i.e., legally elected, discussed infra), respects the shar’i ordinances, and upholds the nass requirements of the Qur’an, then the people may not withdraw their loyalties. The citizens of the state must pay zakat, upholding a standard of equity for one’s fellow Muslims, and participate in obligatory military service in defensive war (jihad). In return for this loyalty the government will ensure the following packet of rights (which are remarkably similar to those suggested by the United Nations Convention on Economic, Social and Cultural Rights): free and compulsory education, economic security through the provision of jobs, and free socialised healthcare.

Liberal political theorists continue to struggle with the same questions of loyalty and allegiance that exercised Asad. The positions on these issues probably reflect his background. Asad’s writings and interviews reflect no particular loyalty to the land of his birth. In addition,

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289 Asad, The Message of the Quran by Muhammad Asad., 25.


291 The ICESCR remain signed but not ratified by the United States, as the rights were considered “too socialist” for the United States model of progress and economic development. They were referred to as “Red rights” owing to their initial promotion by socialist states. Asad would anticipate most of the requirements suggested in advance of the actual UN document. See The United Nations, “International Covenant on Economic, Social and Cultural Rights,” http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.
his lengthy search for a homeland and the murder of his family in the camps would certainly have had a negative effect on his thinking about both the ability of the nation to protect its citizens and what loyalty groups of citizens owe to a nation that turns on them. The Kantian ethic that Asad would have learned in his early years had little to say to these questions, since it tended to emphasise conformity with authority. The new cosmopolitanism that was trying to erase differences between liberal political orders found itself pushing back against national loyalties. Some scholars have recently suggested that loyalty could be directed towards any state that offered both sufficient constitutional protections and a sufficiently “just” order in which to live. Asad, however, doubts whether any such systems could inspire sufficient loyalty. Traditional norms, he argues, lack sufficient stability to inspire or unite people to a common cause:

No nation or community can know happiness unless and until it is truly united from within; and no nation or community can be truly united from within unless it achieves a large degree of unanimity as to what is right and what is wrong in the affairs of men; and no such unanimity is possible unless the nation or community agrees on a moral obligation arising from a permanent, absolute moral law. Obviously, it is religion alone that can provide such a law and, with it, the basis for an agreement, within any one group, on a moral obligation binding on all members of that group.

292 Alasdair MacIntyre’s discussion of the failings of Kantian and Nietzschean morality is compelling. See gen. MacIntyre, A Short History of Ethics. In addition, the Kantian ethic would struggle with persons who had moral objections to serving in militaries. The demands of the state made their ideals too non-universalizable to be recognised.


294 Asad, The Principles of State and Government in Islam, 6 Emphasis in original.
Only an ideological civilization which inspired “brotherhood” could, when constituted into a state form, reasonably demand loyalty from its citizens. Asad, like Ibn Taymiyyah before him,295 believed that living in a society where the shari’a was upheld to be a religious obligation for Muslims. The logic of Asad’s theory of the indispensability of the Islamic state takes the following pattern. It begins by asserting that God does not compel human behaviour, but rather gives humans free will combined with guidance. If humans choose to live according to God’s guidance, they will come together as a community to coordinate their efforts. When assembled into a community, they will work together to enjoin the right and forbid the wrong (al-amr bi’l-ma’ruf wa ‘n-nahy ‘an al-munkar). The model, however, is meaningless, Asad goes on to argue, unless there is a power responsible for enforcing Islamic law and preventing unauthorised rebellion. This requires both powers of command (amr) and prohibition (nahy), i.e., a state.296 Therefore, Asad concludes, his constitutionalised Islamic state could reasonably demand religious loyalty.297 Asad, however, does not address an obvious problem: what if multiple nations claim the mantle of Islamic statehood and splinter loyalties? It is possible that, since he was then working as a member of the foreign service towards the development of an “Islamic League of Nations,” that he saw Pakistan as a starting point for a larger Muslim multi-nation Islamic state. In any case, it is clear that Asad's discussion of allegiance to states does not translate into a fascistic notion of loyalty. Asad’s model maintains the right to dissent and to depose, as noted above, “bad government.”


296 I have paraphrased and cleared up Asad’s formulation of his argument in: Asad, The Principles of State and Government in Islam., 4-5.

297 Ibid., 4-5.
For Asad, freedom of opinion is an important part of living ethically. Muslims, he argues, are required to “enjoin the right and forbid the wrong.”²⁹⁸ Part of the duty of a citizen towards the state, then, is to use their "critical faculties" and summon "moral courage" to stand up for what is right.²⁹⁹ Though he does not state it explicitly, this duty would require that the state create a bubble of permissibility in which a citizen attempting to enjoin the right or forbid the wrong would be protected from prosecution. This fits with Asad’s general perspective that reasoned argument was the means by which disagreements could be negotiated in the community if the space for public discussion was sufficiently broad.³⁰⁰ It is uncertain from Asad's formulation how cases such as blasphemy or other religiously grounded offenses would play out. He never developed the shari’a code he prescribed, so it is uncertain whether it would have specified religious crimes in detail.

Another concern raised by Asad’s formulation, as pointed out by Talal Asad in an assessment of his father's theories, was the fate of non-Muslims in the Islamic state and their right to dissent. Talal Asad formulates the problem as follows:

But to what extent can non-Muslim citizens in an Islamic state criticize a government that is strictly speaking not their government? I do not have in mind simply a minority’s fear of provoking a majority but also, and more importantly, to the right to be fully involved in the state to be criticized. Because the force of legitimate political dissent depends on the complete involvement of the dissenter in the political life of the state in which he/she lives. More important is the question I raised earlier: If the moral authority of the state is truly essential for individual morality, non-Muslims cannot be regarded as living ethically in a state that is not

²⁹⁹ Ibid., 81.
³⁰⁰ Talal Asad discussing his father's understanding of reasonable disagreements in politics. "Muhammad Asad, between Religion and Politics." 79.
Muhammad Asad is conscious of the potential dangers to minorities, especially given his own personal experiences, but legal injunctions in the Qur’an maintain a degree of differentiation between Muslims and non-Muslims. In Asad’s formulation, although non-Muslims would have rights in an Islamic state, even to the point of occupying policy positions, they would not be entitled to a full packet of rights, including the right to become head of state. The relationship of the state to all of its citizens would be one of benevolence, but the Islamic state is by its very nature concerned with helping Muslims perfect their faith. Non-Muslims, therefore, become in effect second-class citizens. Is this a problem for Asad? Not really, because when his ideas are taken to their conclusion the following logic emerges: if other religions similarly realise God's requirements for social and political organization, they could also set up polities where they could perfect their faiths, where they would “obey those in authority from among themselves.” In addition, it is not unreasonable to imagine non-Muslims wanting to live in an Islamic state because they may be better treated than in other religious or secular states.

The last major concern in Asad’s framing of the Islamic state is his insistence on electoral democracy. Drawing from the tradition in which the successor to Muhammad was selected by a process of election, Asad argues that the Qur’an 4:59 requirement of choosing “from among you” constitutes a requirement that the leaders be chosen both from among Muslims and also by the

301 Ibid., 84.
303 He imagines the head of state to be something similar to the American president. Asad, The Principles of State and Government in Islam., 61.
whole community.\textsuperscript{304} Since the requirement of consultation must be construed broadly, this would be accomplished by popular election.\textsuperscript{305} An oddity of Asad’s particular electoral system is that he stresses that self-canvasing should be prohibited, drawing on a hadith that states that God will assist those that do not ask for a position but will leave those that seek one to their own resources.\textsuperscript{306} Perhaps designed to coincide with general democratic concerns with how campaigns are funded, his requirement goes much further than a concern for undue influence. It reflects his concern that an electoral system must enfranchise those who would not normally have the means to seek office. This may seem deeply impractical, but it reflects his larger design to attach religious sanctions to a number of modern developments in social organization. For Asad, human reason and rationality are essential. If non-Muslim societies have reached new horizons through rational engagement, Muslims should take advantage of those advancements, always with the caveat that they should be grounded in the Qur’an and the sunna.

His omission of a judiciary also illustrates Asad’s larger design. Free and independent judiciaries, we know, tend to be cornerstones of constitutional democracies. If Asad’s goal had been merely to build a liberal polity clothed in Islamic pretence, not including a judiciary in \textit{Principles of State and Government} would have been a terrible oversight. Stranger still, in his earlier formulation of the Islamic state in \textit{Islamic Constitution Making}, insistence on a judiciary was a hallmark difference between his model and others being proffered by those such as Maududi. Leonard Binder in his assessment of Asad’s model points out two substantive

\begin{flushright}
\textsuperscript{304} Ibid., 36.
\textsuperscript{305} Ibid., 45-46
\textsuperscript{306} Ibid., 46. He quotes Muslim, \textit{Kitab Al-Imara, Book 020, Number 4489: al-Hajjaj, “Al-Musnadu Al-Sahihu Bi Nakil Adli.”}
\end{flushright}
differences between Asad and Maududi. First, Asad insisted that the head of government must be a Muslim, whereas Maududi insisted that non-Muslims could not hold any policy-making positions. Secondly, Asad insisted on a Supreme Tribunal, a point on which the Jamat-e-Islami would criticise him in their publication Chiragh-i-Rah. Arguing that there was no review tribunal during the period of the “Rightly Guided-Caliphs,” they claimed that Asad's proposals, though generally good, were overly innovative. Asad had suggested that the following clause be inserted in any future constitution:

The guardianship of the Constitution is vested in the Supreme Tribunal, the members of which shall be elected by the Majlis ash-Shura on the advice of the Amir. This Tribunal shall have the right (a) to arbitrate, on the basis of the nass ordinances of the Qur'an and Sunnah in all cases of disagreement between the Amir and the Majlis ash-Shura referred to the Tribunal by either of the two parties, (b) to veto on the Tribunal's own accord, any legislative act passed by the Majlis ash-Shura or any administrative act on the part of the Amir which, in Tribunal's

307 Binder, Religion and Politics in Pakistan., 104. An example of this tension is illustrated in Maududi's intense vitriol toward Pakistan's foreign minister, Zafarullah Khan, who was a member of the Ahmadiyyah. Asad and Maududi's relationship was a tangled one. Asad claims to have saved Maududi's life when he rescued him from India during the period of partition. Maududi in return would speak highly of Asad until the latter's “forced” resignation from the Ministry of Foreign Affairs, after which Maududi would only have bitterness towards his erstwhile savoir. As for Zafarullah Khan, he had once been a friend to Asad during the war. Khan’s status as a civil servant of rank had been enlisted to help Asad gain his release from prison. It was also Khan who confided to Asad the nature of the British insistence on his continued incarceration. In addition, Asad worked for Khan when he joined the Ministry of Foreign Affairs, so Khan would be the one to accept Asad's resignation. In the sequel to his autobiography, Asad narrates the following events in his typically frank and straightforward manner. He met Pola Hamida, a recent convert to Islam, in New York while she was unhappily married, and he fell in love. He wrote to his wife Munira, who was then living in London with Talal, asking for permission to take a second wife. He subsequently planned to fly to Mexico to acquire a divorce for Pola. Munira not only refused this arrangement, but took the issue up with the Pakistan High Commissioner in England, alleging that Muhammad was trying to abandon her. Asad was subsequently admonished by the Commissioner and then informed of a regulation in the Ministry that required any officer attempting to marry a non-Pakistani national to acquire special permission in a formal request, which had to be accompanied by a letter of resignation. Asad assumed that the resignation letter would be returned with permission granted, standard operating procedure in these cases. He was, however, released. He subsequently divorced Munira and spent many years repairing his relationship with his son. Asad and Asad, The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992), 187-188. This account seems to coincide with a number of vague references to the “incident” in other books and articles. One must keep in mind that the account was not published for over twenty years after Asad's death and that it was edited by one of the parties intimately involved in the incident in question. It has, though, a ring of truth to it. (Forgive the digression about Asad’s marital woes. The details were devilishly hard to uncover. They have, though, some relevance on the story presented in this chapter.)

308 Binder, Religion and Politics in Pakistan., 104-5.
considered opinion, offends against a nass ordinance of Qur'an or Sunnah, and (c) to order the holding of a referendum on the question of the Amir's deposition from office in case the Majlis ash-Shura prefers, by a two-thirds majority, an impeachment against him to the effect that he governs in flagrant contravention of the Shari'ah.  

These judges would be tasked with intervening in cases of disagreement between the executive and the legislative. They would have lifetime tenure and could be elected by the Amir-President, similar to a United States appellate Judge. Unlike his other proposals that are tethered to Qur'anic verses, this one is purely ijtihadic: "the shari'ah does not prescribe in any detail any specific system of judicature.... [T]heir structure and method of establishment—has been left to the discretions of the community: in other words the ijihad of the time concerned." Though Asad was criticised soundly by both the members of the 'ulama and the Jama'at at the time for proposing a tribunal that lacked Qur'anic justification, Binder reports that Maududi's opinion gradually softened on the point of a judiciary. After his lengthy detention in the early 1950s, Maududi added judicial protections to his own model. However, despite support from Maududi after his flip flop, Asad seems to have abandoned the judiciary by the time he published Principles. I suspect that the omission from Asad's later formulation was a result of his desire to have all of his suggestions tethered to the Qur'an and hadith literatures. His book also deals with the abstract scenario of building an Islamic state. In his earlier work, with the particular case of Pakistan in the foreground, he felt that he needed to exercise ijtihadic reasoning. I suggest that this highlights the way in which Asad feels that the abstract scenario requires that the framework

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309 Asad, "Islamic Constitution Making." 1037.
310 Ibid., 1038.
311 Ibid., 238.
be built on the strongest foundations from the core sources. Trimming the abstract model to fit a particular scenario requires fine tailoring by the best minds involved.

3.5 Conclusions: The Unrealised State

In 2011, in something of a reversal of Asad’s pariah status after the banning of his Qur'an translation, an international symposium was held in Riyadh on "Muhammad Asad—A Life for Dialogue." T. Asad, though unable to attend, submitted a talk entitled "Muhammad Asad, Between Religion and Politics." The first part of his talk discusses his father's legacy and attempts to clarify errors made by certain Asadians, especially by those who claimed that he was an European who converted with the intention of liberalizing Islam. T. Asad goes on to sketch many of the pillars of M. Asad's state, but points to a flaw in his father’s model on the issue of loyalty. T. Asad argues that the modern nation state has to demand absolute loyalty from its citizens, making it difficult for Muslims that believe true loyalty is only due to God to live as fully committed modern citizens in a modern nation state. He implicitly disagrees with his father's argument, which was enshrined in the Objectives Resolution, that God would be the ultimate sovereign in an Islamic state. In addition, he is troubled by the possibility of turning non-Muslims into second class citizens. He does not offer only criticism, however; he also proposes a counter model, an Islamic politics that incorporates much of his father's theory, yet without raising as many problems with modern understandings of national states.

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312 Pola Hamida Asad has mentioned that it was Maududi's followers who poisoned the Saudis to Asad’s particular interpretation following Maududi’s break with Asad. Maududi accused Asad of having married a non-Muslim and having abandoned his wife and possibly Islam. This conference may serve as something of a Saudi re-enchantment with his life and work. Asad and Asad, The Road to Mecca. Part 2, Homecoming of the Heart (1932-1992), 249.

313 Asad, "Muhammad Asad, between Religion and Politics."

314 Ibid. 85.
T. Asad’s suggestion for Islamic politics consists of the following proposals. First, an Islamic politics would invite willing interlocutors (fellow citizens) to alter their ways of life, in public or private, by drawing on their particular sensibilities.\textsuperscript{315} It seems here that T. Asad is allowing for a free and frank debate without retreating either to a notion of secularised speech in the public sphere, a la Habermas, or a Rawlsian requirement for an Esperanto generated by reason. This kind of Islamic politics "aims" at cultivating a distinct kind of engagement, "[b]eginning with individual faith (iman)—with the recognition that differences among people is an invitation to mutuality—it moves to building civil relationships and friendships with non-Muslims as well as Muslims in spaces within and beyond what is recognised as 'national territory.'"\textsuperscript{316} T. Asad, atypically mirroring his father’s exegetical practices, ties his theory to the Qur’anic reminder (Q 49:13) that people have been created in multiple tribes so that they can come to know one another.\textsuperscript{317} He suggests that this encourages a confrontational politics that challenges the reach of the state, not a competitive politics which would struggle for recognition through the electoral process.\textsuperscript{318} This engagement, T. Asad argues, is political because it claims a stake in the nation. It also answers the fear of attributing loyalty to others but God by disobeying the state’s demand for absolute loyalty:

It is "political" because ordinary subjects demand collectively to be heeded. Hence, open disobedience to the state’s law is practiced in response to the state’s exclusive, even if legal, policies, and in which absolute loyalty to it is repudiated as shirk (the major sin of giving partners to God). This politics could be seen as a collective performance of \textit{amr bil-ma'ruf wa nahi 'an al-munkar}, but without invoking the powers of the state and without presupposing "national unity." The purpose of such

\begin{itemize}
\item \textsuperscript{315} Ibid., 86.
\item \textsuperscript{316} Ibid., 86.
\item \textsuperscript{317} Ibid., 86.
\item \textsuperscript{318} Ibid., 86-87.
\end{itemize}
politics is not to improve the world but to rectify one small part of it in one small time.\textsuperscript{319}

This form of confrontational politics is the difference between the sovereign individual conscience of the secularised, liberal citizen and what he calls “an embodied disposition,” which he defines in this way:

\begin{quote}
[A embodied disposition] (a) is cultivated over time, (b) draws its authority from a 'religious' tradition, and (c) engages in a continuous struggle through 'civil disobedience' \textit{against} the commoditization of the environment, the economy, and human relations, arising from the notion of "thanking the benefactor" (\textit{shukr al-\textit{mun'im}})—that is, of thanking the divine giver for his bounty to humankind which the Qur'an repeatedly speaks of as his wondrous signs (\textit{ayat}).\textsuperscript{R}egarded this way "enchantment" is not simply an obstacle to reason, something that has to be shed when modernity is achieved. It becomes the ground for engaging with the world in a particular way. Enchantment "charms" one out of a habitual state of indifference into a state of wonder made possible by alerted senses.... It seems to me evident that this notion of an Islamic politics draws one away from the modern project of an Islamic state that cannot be different in essence from any modern state. I believe that this is also the view implicit in my father's life and writing, and therefore the most important part of his legacy.\textsuperscript{320}
\end{quote}

T. Asad's vision both provides a powerful reimagining of his father's project and suggests a more practical approach for Muslims wanting to engage the modern nation state. It concedes that the modern nation state is here to stay, but it does not compel Muslims to live according to the terms of these political orders. Rather, as T. Asad suggests, it is possible to imagine a way in which Muslims can fully engage their tradition and participate in the spaces they occupy.

I think, however, that Talal Asad’s approach falls short on one key point: how his father saw the opportunity that Pakistan offered Muslims. T. Asad is looking for a way for Muslims to

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\item \textsuperscript{319} Ibid., 87.
\item \textsuperscript{320} Ibid., 87-88.
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live in the world as it is now, but in one in which they do not have to either (a) compromise by showing their fellow citizens that they can be “just like them” and so are not threats because of divided loyalties, or (b) construct a modern state which will force them to be loyal to their faith and to God in an imperfect form. His father's project during his years in India and Pakistan was shaped by the possibilities of a new nation emerging in a world where the failures of ideological states, such as those in the Soviet bloc, were as yet unknown. In addition, Muhammad Asad's excitement mirrored that of his elite Muslim friends in India who could see nothing but the promise of a better tomorrow after the departure of their colonial masters. Perhaps M. Asad thought that a rejection of the British would include a rejection of their style of divide and rule, of their economics of exploitation, and of their policies of racism. Sadly, he would live to see all of these come to pass in Pakistan itself.

The tendency not to take M. Asad seriously as a critic of the modern nation state stems in part, I suspect, from his involvement with Pakistan. The pillars of his model, as I have mapped them above, were singularly not implemented, save for the inclusion of a few clauses in the Constitution. Whereas many of M. Asad’s criticisms are similar to those of widely-respected philosophers such as Alasdair MacIntyre, who has critiqued modern political philosophy for being impoverished by its entrenchment in the territorial nation state and has proposed ways of reaching a stable (or substantive) conception of the good, Asad himself tends to get sidelined as a serious political theorist because of his religious commitments. 321 Martin Kramer concludes his article on Muhammad Asad by quoting a line from Road in which Asad asks himself, “Why

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is it that, even after finding my place among the people who believe in the things I myself have come to believe, I have struck no root?” It saddens me to think that Muhammad Asad is dismissed so glibly, as merely a dreamer.

By way of conclusion I offer two metrics that may help to resituate Muhammad Asad, one which can be culled from the bibliographical details of his life, the other that reflects his particular engagement with Islam. The first metric is that a number of his major projects—the translation of the *sahih Bukhari*, his work with the Department of Islamic Reconstruction in Pakistan, his project as an ambassador to build a Muslim League of Nations, the second volume of his autobiography—were unfinished. I am not arguing that he was incapable of completing a project, but rather that he was a constant seeker, a person to whom the path itself was more important than the waypoints. While the intellectual side of his work provided him constant stimulation, the human element often frustrated him. The foreword of *This Law of Ours* is illustrative. Its author, Pola Hamida Asad, dug through his collection of notes in Lisbon in 1986 and was able to pull together a compilation of his early writings, but she lamented that “a greater part had been simply discarded by him.” He was a man more driven by a desire to shape the future, less attached to reinterpreting or reviving the past. The project to create Pakistan represented to Muhammad Asad the most important political task that Muslims had embarked on in centuries and he threw himself into it wholeheartedly. But when he found his ideas “taking no root,” or perhaps not the kind of root he had hoped for or at the pace he had hoped for, he moved on to his next project. Similarly, when gossip and political machination forced him to resign his post with the Pakistan delegation at the UN over the marriage to Pola Hamida in New York, he

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322 Asad, *This Law of Ours, and Other Essays.*, x.
moved on to *Road*. There is, however, a remarkable consistency in his thought, despite the constant fluctuations of his circumstances. His hope for certain projects may have waned, but his conclusions remained fairly constant. And though he may have dreamed of an ideal state for Muslims, he embodied an Islamic politics of the fashion described by his son.

The second metric is more theoretical. If we take as a given that Asad's thought evolved along predictable and rational lines (as he himself would argue), then it seems logical that he would not have wholly abandoned the traditions of his youth as he aged, converted, and relocated. By “traditions of his youth” I mean the spirit of the Enlightenment that was so vibrant in Europe, the idea that truth could be thought by sustained rational inquiry. He realised, however, that the lack of stable norms rendered a life based on reason alone not only deeply unsatisfying but dangerous. He found in Arabian culture, and eventually in Islam, a particular call to a ground on which reason could do its work. Fazlur Rahman, a fellow Pakistani rationalist theologian and scholar, represents in his *Major Themes of the Qur’an* the nature of the call in the Qur'an (especially the early *suras*) as insistent and appealing to human intellect.323

Rahman says:

> For, it is much less reasonable—indeed, it is *irrational*—to say that all this gigantic and lasting natural order is pure chance. Hence the recurring Qur’anic invitations and exhortations, “Do you not reflect?” “Do you not think?” “Do you not take heed” And let us repeat that this “reflecting,” “pondering,” or “heeding” has nothing to do with devising formal proofs for God’s existence or “inferring” God’s existence, but with “discovering” God and developing a certain perception by “lifting the veil” from the mind.324

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324 Emphasis in the original. Ibid., 11.
Asad’s objections to the "mechanized phantom-ridden age" in which he lived naturally led him to seek answers. The most satisfying ones he would find in Islam and he tried to develop a means by which he could lead other Muslims to the truths he found. But whereas others built schools or led students, Asad reasoned that the most powerful idea of the age, the dream of an Islamic state, should be used to transform Muslims.
"But why don't the white men stay in their own country?" said some intelligent natives to me one day when talking on these points. "Why does not the Queen stop them and tell them to stay at home?" referring to the old native law which compelled every man to ask permission of the chief before leaving the town.

"The Queen has always enough people round her, and does not miss those who go to other lands."

"Perhaps it is she who sends them. Some say this is the English mode of warfare—by 'papers' and agents and courts."

This was said with contempt.

– John Mackenzie 1887.\(^{325}\)

How is it that with all this experimenting with constitutions, we have not during this long period been able to give ourselves a stable Constitution? This question gives rise to several other questions, each sufficient to fill oneself with anxiety. Is there something basically wrong somewhere because we have not been able to find a workable constitution for ourselves? Has there been something wrong with the persons who were put in or assumed power to work with those Constitutions themselves? Is there something wrong with ourselves and we do not deserve representative institutions of which we had to be deprived more than once? And lastly while we have all along been talking of and acclaiming democracy, does such government in its Western form really suit us?

- Muhammad Munir (1969)\(^{326}\)


4.0 Chapter Four

4.1 Introduction

The jury still seems out on the legacy of former Chief Justice Muhammad Munir (1895-1979). Most historians agree that he occupies a place of some importance in the annals of twentieth century jurisprudence, albeit for the unenviable revival of the common law doctrine of necessity, which has shrouded a number of dictatorial usurpers throughout the global south in the cloak of legal legitimacy. He remains a hero of some modernist Muslims who hold fast to a secularist vision of Pakistan and a villain to the religious leaders incriminated in his eponymous report of 1954. One could unkindly label him “comprador robot,” or perhaps a “mimic man” who was committed to implementing stable and authoritarian colonial norms in the upheaval of post-colony.

This chapter will explore Munir’s legacy in the light of recent scholarship on law, colonialism and colonial lawyering with an eye to how lawyers cum judges like Munir limited the applicability of Islam as a public moral force while promoting a modernist vision of Islam as private exercise that was fully compatible with secularism. I will begin by contextualizing Munir in the histories of colonial lawyering and legal philosophy in India, attempting to illuminate what scholars mean when they accuse him of “radical positivism” in his judgments.\(^{327}\) I will continue to discuss a few of his most significant holdings as Chief Justice of

\(^{327}\) See for example Muhammad Munir (no relation): Muhammad Munir, "Precedent in Islamic Law with Special Reference to the Federal Shari’at Court and the Legal System in Pakistan," Islamic Studies 47, no. 4 (2008). Newberg is similarly critical of Munir’s use of positivism as “doctrine rather than analytic tool” in: Paula R.
the Supreme Court in order to highlight (1) the ways in which the common law tradition features in his understandings of law and the role of judges and lawyers and (2) what place, if any, he leaves for public religion. Finally, I will elaborate on his position as a modernist Muslim, paying particular attention to the kind of Islamic state that he envisioned in his writings and the famous report that has come to bear his name.

It is my contention that Munir continued to function as a colonial judge in post-colonial Pakistan. His internalization of the value system of the common law and its lineages, which remain rooted in the perpetuation of a politics of difference between coloniser and colonised (but now reframed as ruler and ruled), may be teased out from both his legal judgments as well as his private writings. Moreover, the paternalism of the common law as it was implemented in colonial India, especially its distrust of “native” religiosity, is strongly reflected in his investigation of the disturbances in Punjab in 1953. Munir’s example may reveal ways in which the politics of difference persisted in the self-understandings of Muslim modernists, who benefitted most from imperial exclusions of traditional sources of religious authority. When coupled with the authoritarian tendencies of the common law as applied in the colony, Munir’s legacy, by promoting a strong executive which could combat the traditional religious groups that were attempting to dictate the applicability of Islam in Pakistan, amounts to legislating from the bench. To some, Munir is an embodiment of the truism that Western-educated Muslims wanted a secularised Islamic order and their traditionally educated compatriots preferred an Islamic state in which the shari‘a would be incorporated into the legal system. From my perspective, Munir, rather than perpetuating any Manichean distinction between coloniser and colonised, stands as an

example of the gray areas that arose between self-Orientalising native and liberalising Muslim modernist.

### 4.2 Common Law reaches the Colony

During his tenure as Chief Justice, Munir would preside over a series of cases which would shape the constitutional contours by which Pakistan's future regimes would be declared licit or illicit. I discuss these cases in section 3 of this chapter; in the present section I develop the relationships between the authorities that Munir cites in the *Tamizuddin* line of cases. Specifically, I am interested here in how he orients himself in terms of secularism and the authority of the sovereign and how he interprets the core ideals that gave birth to Pakistan. His invocation of the power players of common law, such as Blackstone and Bracton, as well as his harkening to constitutional titans such as A.V. Dicey and Ivor Jennings in furtherance of an authoritarian interpretation of central governmental authority, expose a continuation of colonial policies.

Of the many contradictions of British colonial rule, one of the most difficult to reconcile is the conflict between the narrative of liberalism at home and the creation of empires on foreign soil. As Thomas Metcalf has expertly outlined, in the late eighteenth and early nineteenth century the British developed an “ideology of the Raj,” which would, through the cultivation of radical difference between Indians and Englishmen, allow them to implement paternalistic and authoritarian policies. The policies were justified under the logic of improving the condition of
English anxieties about rule would play out in public trials such as that of Warren Hastings, who stood accused of getting rich by means of corruption and administrative mismanagement. The trial was a public spectacle designed to simultaneously highlight the corrupting nature of “Oriental despotism” and prove that English abuses of power could be checked by the rule of law.

Conceptualizing the rule of law as a check on despotism has a long lineage in England. The preeminent jurist William Blackstone (1723-1780), whose name Munir would invoke with great reverence, claimed in his magnum opus *Commentaries on the Law of England* that it was by means of the law that rogue monarchs and “wicked politicians” were brought to heel and that liberty was both asserted and preserved. In the colonies, even when the brutal police power of the colonial state was invoked to suppress uprisings, imperialists generally did not allow for prolonged periods of martial rule. They hurried to resume the rule of law. The importance of Blackstone’s legacy to these policies has been commented on by William Holdsworth (1871-1944), the seventh Vinerian chair of English law at Oxford University:

First, Blackstone summed up, as I have said in my *Sources and Literature of English Law*, the main principles of law which were the basis and starting-point of the law reformers of the nineteenth century.... Secondly, Blackstone’s book [Commentaries on the Law of England] was, in the opinion of Maitland and Lord Campbell, the only complete treatise on English law which had appeared since Bracton.... Thirdly, it was largely due to the Commentaries that English common law became the common law of the United States.... Fourthly, Blackstone was, as

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329 Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2006). Hastings was eventually acquitted of charges, but the trial formed the basis for the rhetoric of rule.

I have said, the pioneer who suggested that university teaching of law which now flourishes so abundantly in all the countries of the common law.\textsuperscript{331}

This is praise indeed from Holdsworth, author of his own titanic seventeen volume history of English Law.\textsuperscript{332} The law reformers referred to above were the utilitarians. The utilitarian legal program was structured on stressing the importance of codes, reducing the influence of an unaccountable judiciary, and insisting on a positivist approach to law. Though the utilitarians built on Blackstone’s foundation, they were by no means close followers of the legal pioneer. Their doyen, Jeremy Bentham (1748-1832), claimed that Blackstone possessed a deep “antipathy to reformation” and that “[w]e should say that in the interests of reformation, and through them the welfare of mankind, were inseparably connected with the downfall of his works...”\textsuperscript{333} One hundred and fifty years later, Munir would turn back the clock by appealing to Blackstone for precedent, drawing from the depths of English history rules to govern a former colony.

Blackstone, who would come to be identified with the historical school of law, was an avowed political conservative. What infuriated Bentham was his belief that the common law was the perfection of reason.\textsuperscript{334} Bentham's legal positivism would find its strongest expression in the writings of John Austin (1790-1859), who would expand on utilitarian theories and argue against a conflation of laws and morality. For Austin, laws took the form of commands and


\textsuperscript{332} William Searle Goodhard Arthur Lehman Hanbury Harold Greville Burke John McDonald Holdsworth, \textit{A History of English Law} (London: Methuen, 1956). Holdsworth’s work would not, however, have the staying power of Blackstone, and was heavily critiqued from its first publication.


positivism became a remedy to what Bentham called the “nonsense on stilts” of natural law and a protection against the judge-made law in the form of precedent, which was championed by the historical school. Key to Austin perspective is that law is not the province of the “ought.” Citizens are beholden to the law because sovereigns have coercive force at their disposal, not because of moral superiority or divine right.

Austin's approach to the law would prove far more useful in the “Orientalist” of British entanglements in India. During this early phase, the colonial strategy continued the Hastings Plan of collecting information about the territory while administering law with advice from native informants. The understanding of the “rule of law” in the Indian setting was based on the assumption that its inhabitants were different from Englishmen, that they would have to be administered in a manner tailored to their particular environment. Hence, in the early period of company rule, Orientalists such as William Jones would begin sustained translation projects that would, while empowering native traditional authorities, simultaneously cultivate a series of precedents that would come to replace them after 1864. What replaced this initial Anglo-Muhammadan law was a combination of legal codes, the translations of core texts, and the


cultivation of what Thomas Babington Macaulay had once referred to as “a class of persons Indian in blood and colour, but English in tastes, in opinions, in morals and in intellect.”

Homi Bhabha once dubbed Macaulay’s *Minute*, from which the aforementioned is a quote, an “absurd extravagance” which mocked “Oriental learning” as not being worth “a single shelf of a good European library.” However, what is frequently taken as the hubris of the coloniser must be read in its context. Liberty was the highest value underlying England’s civilizational scheme. Liberty so conceived was not a political aspiration; it was, rather, as Peter van der Veer has argued, “an ancient British concept deeply rooted in its history.” What would come to be known as *Whig history* was the understanding that societies naturally progressed from despotism to liberty as enshrined in the liberal democratic ideal. This history was founded on the bedrock of the central importance of English and English-modeled education. Macaulay championed educational programs in India, hoping that, once India had advanced far enough, the English could leave, having enlightened her people and given them liberty.

The Angliciser’s argument was extremely successful. It was backed with a potent narrative of Islam’s decline that even certain Muslims adhered to. Such was the case with Syed

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339 Peter van der Veer, *Imperial Encounters: Religion and Modernity in India and Britain* (Princeton, N.J.: Princeton University Press, 2001), 158. On the same page, van der Veer calls our attention, rather brilliantly, to the master architect Edwin Lutyen’s inscription in colonial buildings in New Delhi: “Liberty will not descend to a People; A People must raise themselves to Liberty; It is a blessing which must be earned before it can be enjoyed.”

Ahmed Khan, who would be called “the ablest of our loyal Mohammedan gentlemen.” In the wake of the so-called Sepoy Mutiny of 1857, Syed Ahmed Khan, who was at the time posted in Bijnore as a subordinate judge, wrote the *asbaab-e baghavat-e hind* (Causes of the Indian revolt). In this 1859 pamphlet, though he cited a lack of native representation as one of his complaints, he distanced himself from the previous Muslim kings, penning a particularly cutting appraisal of Bahadur Shah Zafar, the last Mughal Emperor:

No one ever had the slightest hope that the King of Delhi would revive the Empire. The eccentricities and follies of the King and of his house had lost him all respect in the eyes of the world. It is no doubt true that people outside the walls of Delhi, who were less well informed as to his conditions, his mode of life, and his general incompetence, did look on him as emperor. The Hon’ble East India Company, they believed to be his Viceroy. But those who lived in and about Delhi held him in no esteem whatever. Hence it happened that when the king was virtually deposed, no Hindustanee felt the slightest regret.

Syed Ahmed Khan would go on to establish himself as an unflappable supporter of the British. He tried to prove to the British that other Muslims would follow suit if the British gave them patronage and protected them from the non-Muslim majority. Syed Ahmed Khan’s relationship with the British went beyond a mere willingness to work with the *de facto* rulers. He held a deep admiration for their educational system. It was under his influence that the Muhammadan

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341 George Farquhar Irving Graham, *The Life and Work of Sir Syed Ahmed Khan* (Karachi: Oxford University Press, 1974), page 33 (second page of Chapter four — my version was a limited printing with odd pagination which corresponds to the Pakistani but not general Oxford edition). I should also mention Syed Ameer Ali, the first Indian to sit on the Privy Council, the highest court of appeal in the empire, who was a Muslim, a Shi’a and a serious modernist thinker. On his interpretation of Islam, see Martin Forward, *The Failure of Islamic Modernism? : Syed Ameer Ali’s Interpretation of Islam* (Bern ; New York: Peter Lang, 1999).

342 The document was written between 1858-1859 and local translations were made available early, but the official translation by his friend Colonel G.F.I. Graham (who wrote *The Life and Work of Sir Syed Ahmed Khan*) was not available till 1873. Ahmed Khan did not speak English, at least in his official capacity. He worked as a judge primarily in Persian, the language of power that was about to be phased out.

Anglo-Oriental College would be founded, later known as Aligarh Muslim University. His loyalist tendencies would put him at odds with other Muslim colonials, such as Jamal ad-Din al-Afghani. Syed Ahmed Khan’s focus, however, was explicitly on what was best for Muslims of South Asia. Pan-Islamism held little interest for him. He was willing to work with the powers that be and encouraged Muslims to give up the parochialism encouraged by certain groups of the ‘ulama that were cautioning against learning English and cooperating with the British. Syed Ahmed Khan’s legacy reflected the belief that the “goods” of modernism, such as women’s education, the critical study of religious texts, and the embracing of science and technology, could be integrated into the lives of Muslim elites without losing their identity as Muslims. Even the narrative of Muslim decline was acceptable to Syed Ahmed Khan, as long as it contained the seeds for a future Muslim renaissance catalyzed by embracing an English education.

David Lelyveld, in his excellent study of Aligarh, found that a culture of political quietism persisted in the first generation of graduates, owing both to Syed Ahmed Khan’s influence, but also the tendency to take work either in governmental posts or in law. In that era, native judicial appointees and government service holders were required to remain aloof from politics, even when the issue concerned with the future governmental system of India. In the first generation, this quietism would complement the general risk aversion of the legal profession. As a result, it gave rise to a generation of Muslim natives committed to British rule.


346 Lelyveld, Aligarh's First Generation : Muslim Solidarity in British India., 320-325. Aligarh would, of course, go on to feature prominently as the alma mater of a number of important independence agitators as well, including Liaqat Ali Khan and Khawaja Nazimuddin (Ayub Khan studied at Aligarh but did not complete his degree.).
Of the nearly six hundred graduates between 1877-1900, 317 would enter governmental service in some capacity, another 144 took up law. And though the cream of the crop would make their way to England for legal training at the Inns of Court, domestic education developed a great deal in the final decades of the nineteenth century. Institutions such as Government College in Lahore attracted Muslims hopeful for placements in governmental service or the law. Graduates of the Government College would include Muhammad Iqbal (a sometime barrister) and Muhammad Munir.

The Munirs, unlike many other Muslim families, had a long lineage of serving the British. Munir writes with some pride that his grandfather fought as a “Viceroy’s commissioned officer” in the “renowned 28th Punjabies,” a unit raised to bolster British defenses during the revolt of 1857. His father, a surgeon in the State medical service, groomed his son for the legal pursuits, as he had seen “lawyers performing wonders.” The law held a special place for young men of means in Punjab. The Civil Justice Committee reported in 1925 that in Punjab there was “almost passionate love of litigation” and that Punjabis were “greatly addicted to litigation and the litigation is of a more serious nature than in most provinces.” A majority of the suits would deal with interests in land; for the children of landholders, law became a pursuit

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348 Ibid., 20.
that promised stability.\textsuperscript{351} It comes as no surprise that a large number of lawyers took leadership positions in the movement for partition. In their minds they may simply have been pressing the notions of liberty enshrined in the “rule of law” against the fissures in the British understanding of themselves as liberators rather than oppressors.

4.3 Colonial Structures in the Post-colony

As historian Ayesha Jalal has noted, at the time of partition the political ideal in the former colonies was the creation of Westminster style of democracy, including a rigid separation of powers that was ostensibly protected by a robust judiciary.\textsuperscript{352} In practice, however, she finds that “one of the more enduring legacies of colonial rule” was a system of “formal democracy with bureaucratic authoritarianism.”\textsuperscript{353} Of the 1,157 officers in India in 1947, only nine percent or 101 were Muslims. Of these, 95 came over to Pakistan and were joined by 50 British officers rehired as independent contractors. There were 157 judges and diplomats, with about 25% having fifteen or more years of experience.\textsuperscript{354} The members of the civil service after partition continued to be trained throughout the commonwealth, often spending a year or more in Australia, Sri Lanka, or England. Eventually this system would change. Ralph Braibanti, an

\textsuperscript{351} Despite the current obsession in Indian popular cinema on historical uprising narratives, in particular resistance efforts against the British, whether in cricket or as a retelling of the revolt of 1857, chances are that the most regular adversarial encounters between the British and natives in India took place in the courtroom.

\textsuperscript{352} On the subject of colonial systems continuing in the post-colony period, I would also recommend Jalal Malik’s \textit{Colonization of Islam}, with one caveat — his use of the phrase “colonial sector” will confuse unless you rehearse his definition from chapter to chapter. Jamal Malik, \textit{Colonization of Islam : Dissolution of Traditional Institutions in Pakistan} (New Delhi: Manohar, 1996).


American academic from Duke University who was employed as Chief Advisor to the Civil Service Academy in Pakistan, was hired to assist the transition from a system of “Platonic guardianship” preferred by the British to the “egalitarian” American model. The task proved challenging. As Braibanti observed, having a stable if paternalistic body of administrators to counter instability was preferable to the dissolution of the state. A strict adherence to the secular values of the British elite corps of the civil service made it possible for the nation to survive the initial turmoil:

The vision of creating a new state based on a common religion and unquestioned devotion to the Quaid-i-Azam [Muhammad Ali Jinnah] and the Quaid-i-Millat [Liaqat Ali Khan] provided a remarkable strength and zeal which for two or three years seemed to make up for the more mundane problem of scarcity of experienced executives. But the diminution of this enthusiasm was not quickly enough supplanted by the strength of a highly rational bureaucratic organization; consequently the corrosive effect of internal stresses was revealed. In retrospect, it is probably wise that Pakistan continued its identification with the British system of administration, for this resulted in reinvigoration of the transplanted ideas and structures of bureaucracy by contact with their source. Continued identity with such wellsprings is an important factor in maintaining the pristine vigor of externally introduced ideas.355

Although the civil service was secular in both training and official practice, members remained extremely sensitive to charges that they or members of the executive were acting in an un-Islamic fashion. For example, the magazine The Morning News, which had accused the government of being elitist, was banned using a colonial regulation that allowed for censorship

355 Ibid., 381. Callard makes similar comments about their exclusivity, their autocratic nature and the knowledge that, “[w]hether European or Indian, the young recruit to the I.C.S. was bound to feel that he belonged to a small elite group of ‘guardians’”—the ‘steel framework’ upon which the integrity of the state depended. Keith B. Callard, Pakistan : A Political Study (London: Allen & Unwin, 1957)., 287.
in cases in which the government was brought into contempt. The paper’s accusation was alleged to be contrary to the spirit of Islam.356

The civil service and executive would find their strongest supporter in Justice Muhammad Munir, who in the Munir Report and the Tamizuddin line of cases would denounce public reliance on Islam for political ends and expand the reach of secularised colonial law. Much has been made of justice Munir’s secularism as highlighted in his official judgements and in his eponymous report. There has been, however, a tendency to focus solely on his secularism, overlooking his parallel cultivation of an Islam that could function within the confines of a secularised political order.357 Secularism, it turn out, comes in many varieties. During the early “Orientalist” period, for example, the Hastings plan allowed for the endorsement of religious elites using the same model of patronage employed by the princely states. By the time the “Anglicist” phase gained dominance and there was a shift in educational policy pursuant to Macaulay’s Minute, secularism in India had begun to mimic English varieties in which oaths of fealty to the nation supplanted religious sectarianism. The state needed to distance itself in this phase, at least officially, from the expansion of missionary activity in India. We can see a shift in the meaning of secularism during the colonial period in the system of higher education. Universities like Aligarh taught religion as a subject, but religion was clearly separated from

356 Henry Frank Goodnow, The Civil Service of Pakistan; Bureaucracy in a New Nation (New Haven,: Yale University Press, 1964)., 100-102 and 201-205. The case dealt with the government using a polo ground that was inaccessible to regular persons for Eid celebrations. The article in the paper critiqued the choice of venue. The Security of Pakistan Act was eventually declared unconstitutional on December 20 1957, by the Supreme Court presided over by Munir.

357 Asad Ahmed, ”Advocating a Secular Pakistan: The Munir Report of 1954,” in Islam in South Asia in Practice, ed. Barbara Daly Metcalf (Princeton: Princeton University Press, 2009). Kindle Edition, Chapter 32. The article serves as an excellent introduction to the many issues at play in the report but does not discuss (nor does it need to as a basic introduction) the constitutional crisis at play or the judicial exclusion of Islam that followed on the heels of the report’s submission.
other “secular” subjects. The methods of instruction in religion were different from those used in other subjects and the western-educated faculty relied on 'ulama, such as those of the Deoband, to teach religious subjects. At governmental colleges, such as those of Calcutta and Allahabad, theology would lose out to a focus on religion as a literary study with an emphasis on Arabic language.\textsuperscript{358} Syed Ahmed Khan’s goal was to create a class of “educated gentlemen” who would engage in a personal study of religious subjects in order to derive their own conclusions, not relying on traditional study of a particular doctrine.\textsuperscript{359} Ahmed Khan attributed what he saw as the utter stagnation of Islam to a disenchantment with traditional learning. He promoted a new educational system that sidelined religion as a private affair, useful for cultivating moral citizens who wanted to embrace the benefits of modernity.\textsuperscript{360} This particular brand of secularism, which would focus on cultivating Muslim \textit{qaum} as opposed to \textit{umma}, i.e., a privileging of the “ethnic” community of South Asian Muslims over merely co-religionists,\textsuperscript{361} would come to dominate the political organization of Muslims in South Asia. This secularised Muslim identity would be the kind that Munir in his best-selling \textit{From Jinnah to Zia} would claim that the founder of Pakistan had championed. It may seem strange that Munir’s secularism, which is often mistakenly translated into Urdu as \textit{la dini} (irreligious or without religion), has been the focus of a number of

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\textsuperscript{359} Ibid.

\textsuperscript{360} For his efforts, Ahmed Khan would have a number of journals and publications directed against his modernization scheme, including fatwas issued by the Barelvis. See Metcalf, \textit{Islamic Revival in British India: Deoband, 1860-1900}.\textsuperscript{361} Lelyveld, "Disenchantment at Aligarh: Islam and the Realm of the Secular in Late Nineteenth Century India." See also Syed Ahmed Khan Bahadur, \textit{Translation of the Report of the Members of the Select Committee . . .} : India. \textit{Education Dept. Select Committee for the Better Diffusion and Advancement of Learning among Muhammedans of India} (1873); Saleena Karim, \textit{Secular Jinnah: Munir's Big Hoax Exposed} (London: Exposure Publishing, 2005); \textit{Secular Jinnah & Pakistan : What the Nation Doesn’t Know} (Karachi: Paramount Publishing Enterprise, 2010). During the constitutional debates in Pakistan it was neither \textit{umma} nor \textit{qaum} which was used in the documents drafted by the joint conferences of the \textit{ulema}. They preferred the term \textit{millat}.
popular press books that denounce him, considering that he also authored two books and number of widely read articles on Islam.362

4.4 South Asian Islamic Modernism and Muhammad Munir

Muslim modernists, as discussed in the last chapter, tend to engage in a two-step dance. Firstly, they tend to accept that history is a progression that requires religion adapt to the circumstances of the age. Slavery, for example, which may have been acceptable in seventh century Arabia, no longer fits with understandings of modern human rights. This first step requires that the modernist develop a contextual approach to religious doctrine and law. The second step is identifying which of the goods of modernity (universal suffrage and scientific development are common candidates) can be posited as having a causal relationship to the disparity in development between “Western” and “Islamic” societies.

This conflation of civilizational status, history, and development makes villains of traditional religious power holders and heroes of English educated elites. Iqbal, the poet-philosopher cum modernist, contemplated this plight in Zuhad Aur Rindi (Virtue and Vice) by mocking a traditionalist whom the poet sees as harbouring self-aggrandizing conceit in order to gain followers. The traditionalist has the audacity to accuse the poet of being a sinner because of his love of western things and of wanting to create “some other Islam:”

362 Karim, Secular Jinnah: Munir’s Big Hoax Exposed; Secular Jinnah & Pakistan : What the Nation Doesn’t Know. The 2010 book by Saleena Karim is a restatement of the first, which in turn is entirely based on a favorite quote of Jinnah’s that Munir may have incorrectly transcribed. The books oscillate between attacking Munir and proving that Jinnah was secretly quoting the Qur’an when giving his speeches. They represent an entire genre of literature in Pakistan and in diasporic communities of Pakistanis that are devoted to arguing the Islamic promise of Pakistan with quotes from various hadith and the Qur’an.
Iqbal’s Islam, like Muhammad Asad’s, focused on the applicability of religion as a middle way between the Scylla of predatory capitalism and the Charybdis of radically atheistic communism. Both Iqbal and Asad allowed for the enjoyment of the goods of progressive education and societal modernization and both stressed that religion operated as a source of stability. As Iqbal puts it, “the eternal gives us a foothold in the world of perpetual change.”

For Iqbal an Islamic state would be committed to upholding God’s law, but in a dynamic and revitalised form through the consensus (ijma) of believers committed to ijtihad. This may not be possible in the current state of affairs and Muslims should therefore cling to a “perfect man” (insan-i-kamil), something similar to a Nietzschean Übermensch. According to Iqbal, humanity was approaching its own perfection through evolution and true democracy was “spiritual democracy” in which the insan-i-kamil would lead. As he would write in his poem jamhoriyat (democracy):

You seek the treasures of an alien philosophy
From common, low-grade people, themselves poor of mind.
Ants crawling on the ground cannot attain

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363 Muhammad Iqbal, *Bang-I Dara* (Hayderabad: Ghulam Muhyi al-Din), 50-53. Brutally literal translation mine. I quote two poems in this work, Iqbal here and Faiz Ahmed Faiz in the conclusion. In including the Urdu, I am following in the footsteps of Ayesha Jalal in *Self and Sovereignty* of including the original, but I have personally translated these two poems and would prefer that the original be displayed so that it retains its majesty in the face of my own “brutal” renditions.

The heights of wisdom of a Solomon.

Avoid the method of democracy

Become the bondman of someone of ripe intelligence;

For a few hundred donkeys cannot have combined,

The brains of one man, of one *homo sapiens*.\textsuperscript{365}

Iqbal shared certain sentiments with colonial paternalism, in particular the belief that a system run by the common man could be dangerous. If, however, the dynamic spirit of Islam was restored and the down-trodden were elevated, then in time a true spiritual democracy might be possible. Though he was a barrister, Iqbal did not offer a clear program by which these ideas would be implemented. Muhammad Asad, who spent considerable time with the poet-philosopher, claimed to be inspired by Iqbal, but so would nearly every public religious movement in Pakistan after partition.

Iqbal shared a second sentiment with his colonial heritage. A spiritual and moral rejuvenation was possible, he said, if Muslims embraced “the principle of movement” in Islam and were able to adapt to a world in constant flux by clinging to the foothold in the eternal. In 1930, during the Allahabad Address, he claimed that this principle manifested in the aspiration to found a territorial state for Muslims. A nation founded on a shared religion, he maintained, was a better source of unity than mere territory, ethnicity, or language.\textsuperscript{366} Although Iqbal’s two-

\textsuperscript{365} M. Iqbal, M.S. ʻUmar, and Iqbal Academy, *Iqbal: Collected Poetical Works (English Translation)* (Iqbal Academy, 2000)., 97.

nation theory drew upon the colonial classifications of Muslim and Hindus as separate nations, Iqbal believed that Muslims stood to gain from a perpetuation of the historical scheme.

Iqbal’s engagement of Islam would inspire much of Munir’s *Islam in History* (1974). Munir deals primarily with Iqbal’s *The Reconstruction of Religious Thought in Islam*, especially in his thoughts in chapter 6 on the “principle of movement,” but he does not reach the same conclusions as the *Muffakir-i-Pakistan* (the thinker of Pakistan). Iqbal inspired Muslims to think critically about their religion. For Munir this would mean a right to dissent from even the opinions of paragons like Iqbal himself. For example, Iqbal expanded his suspicions of the Ahmedis (he thought of them as colonial collaborators) into a theoretic dimension, challenging their claims on the notion of finality of the prophethood. Munir would not go so far. Relying on the precedent of colonial courts, he argued that any person who claimed to be a Muslim qualified as one. Any definition more detailed than this meddled in what he considered the private affairs of individuals. Munir’s *Islam in History* is what some would call a Whig history. In this approach, a commitment to the scientific method allows one to prove that secular democracy sits at the pinnacle of political organization. Jinnah also shared these assumptions, but Munir took this belief a step further, maintaining that the scientific method itself was a jewel of Islamic civilization:

To conclude, the scientific method is a purely Muslim invention and though while the Muslims were pursuing it there was no dramatic invention, and internal and external circumstances ended this period about the beginning of the 12th century,

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367 Iqbal would level some harsh criticisms of the Ahmadiyya movement, but he did not go so far as to call all Muslims to denounce them. He saw the potentiality in what he called “heresies” to contribute to the evolution and rejuvenation of the faith. In this chapter I will use the term Ahmadiyya and Ahmedi interchangeably.


369 Ibid., 290.
Renaissance in Europe [sic] was the result of this Muslim contribution and as soon as science was released from Christian dogmatism it revived with such a force and universality that within the course of two centuries it changed the face of the world and invention after invention and discovery after discovery brought the world to the present stage where man can walk on the moon…. The sad fact however, is that while on the clues given by early Muslims the western world has achieved results only some of which have been mentioned above we have had no share in them. On the contrary we keep deriding them as materialism, westernism, modernism as though these terms indicated something abhorrent to Islam and foreign to our genius, the only asset of which we claim to be proud of being spiritualism [sic], as if spiritualism is something opposed to and completely independent of matter.370

For Munir, and for a number of other Muslims, Iqbal complemented Syed Ahmed Khan’s program with an intellectual justification for modernization.

In the parlance of the times, accepting modernization involved negotiating a position that could deal with the claims of science and the scientific method. For Muslims like Munir and Jinnah, this negotiation did not necessarily have to devolve into scientism and atheism. They believed that a privatization of religion in a manner similar to Rawls would foster an operational secularism without risking the dangers of nihilistic communism, as he argues in this passage from Islam in History:

Islam *prima facie* seems to be out of place because its basic doctrine is unity of God and Revelation whereas the present world represented by almost all the advanced countries is arranging its affairs and regulating all its activities believing in the superiority of its own reason and intellect and unguided and uninfluenced by any supernatural agency. In other words all these States are secular. The word secularism is apt to be misunderstood and is sometimes taken to mean as implying disbelief in God. This is not so. A secular State does not mean that its citizens and legislators do not believe in God; it means no more than this that they arrange their

370 Ibid., 211.
secular or worldly affairs without reference to any supernatural or heavenly power.\textsuperscript{371}

The equation for Munir is simple: if the advanced nations of the world are secular and this secularity has allowed them to achieve their current state of greatness, then any nation that aspires to greatness must therefore be secular. Munir would share with Iqbal a lack of sympathy for the Khilafat Movement and an admiration for the secular democratic reforms in Turkey.\textsuperscript{372}

But how, for proponents of a secularised “spiritual democracy,” was Pakistan to be kept on the right track? We may glean Munir’s response to this question from the Munir report and his holdings in the Tamizuddin line of cases.

## 4.5 Munir’s Report

One of the few academic first-hand treatments of the crisis leading up to the declaration of martial law in 1953 is Leonard Binder’s \textit{Religion and Politics in Pakistan}.\textsuperscript{373} His initial purpose when he began his dissertation research was to report on what he saw as the three major shifts in the nature of an Islamic state in Pakistan as it was being negotiated during the constitutional convention. He would witness the promulgation of the 1956 Constitution, but he also reported on the nature of the demands for an Islamic constitution by the various religious groups. To his mind the heightened agitations against the Ahmadis had three additional consequences. First, it required the ‘ulama to take an official political stand that went beyond a

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\textsuperscript{371} Ibid., 204.

\textsuperscript{372} Iqbal and Sheikh, \textit{The Reconstruction of Religious Thought in Islam.}, 128-129. In Munir see chapter XII in Munir, \textit{Islam in History}.

\textsuperscript{373} Binder, \textit{Religion and Politics in Pakistan}. Another contemporary account has been discussed in the chapter on W.C. Smith. Keith Callard would also publish a contemporary analysis, but to the best of my knowledge he was not there for the revolt. Callard, \textit{Pakistan : A Political Study}.
simple a religious denouncement of the so-called “Ahmadi heresy.” They were pushed into this position by groups like the Ahrar, a conservative Deobandi-influenced militant group-cum-political party that outsiders believed to have ‘ulama loyalties. Members of the Ahrar worked with the government on constitutional subcommittees and were generally treated with great deference by officials. Second, this criticism caused the ‘ulama to ally closely with Maududi. Last, because of this allegiance the ‘ulama were sucked into a political movement that turned violent and resulted in the declaration of martial law. As a result of these three factors, the suggestions for the so-called Islamicization of the Constitution by the Board of Ta’limat-i-Isamia, which represented the ‘ulama, were largely ignored. The next few years would see the Constituent Assembly disbanded, pursuant to Munir’s decision in the Tamizuddin case, and a constitution that was drafted by Ivor Jennings and promulgated by a non-representative government come into effect in 1956. Munir had no small part to play, as his report would effectively derail ‘ulama involvement in the drafting process.

The incendiary demands of the agitators included the declaration of the Ahmadis as non-Muslims and the subsequent removal of prominent Ahmadis from their posts, including the removal of Muhammad Zafarullah Khan from the foreign ministry. Kindling for the bonfire included an alleged coup attempt by an Ahmadi general. The allegation was sparked by the widely-held belief that the Ahmadi were traitors who were collaborating with the British and were trying to sabotage the process of Islamization. One must remember that groups like the

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375 A number of the complaints against the Ahmadis came from Maududi’s tract on the “Qaidiani Problem” which was widely distributed before the crisis. Maududi, Qadiani Masla. The Rawalpindi conspiracy was a coup attempt by Major General Akbar Khan, an Ahmadi. The problem with it being labeled an Ahmadi Conspiracy is that it was a Soviet-backed leftist coup that had little if anything to do with religion.
Ahrar were initially allied with the Congress party and were against the idea of Pakistan, as were leaders such as Maududi and a number of the ‘ulama. It was only after the British settled on partition that a number of these groups climbed on board the Pakistan idea. Once Pakistan became a reality, these groups wanted to pressure the very Muslim League leaders who had invoked popular Muslim sentiment in the vote for partition by their slogan of “Islam in danger” to continue integrating a militant Islam into the state. Finally a series of demonstrations, a mosque burning, a few murders, and open riot, all coupled with a lack of political will and with strong political sympathy for the rioters, led to the declaration of martial law.

The Report of the Court of Inquiry 1954 (the Munir report) was presided over by Munir, who was then Chief Justice of the Punjab High Court, and his subordinate Justice Malik Rustam Kayani. The terms of reference for the investigation and the report, pursuant to the Punjab Act II of 1954, were as follows: “(1) the circumstances leading to the declaration of Martial Law in Lahore on 6th March 1953; (2) the responsibility for the disturbances; and (3) the adequacy or otherwise of the measures taken by the Provincial civil authorities to prevent, and subsequently to deal with, the disturbances”.376 The court of inquiry would interpret the terms liberally. Under the heading “subjects touched,” the justices would make the following claim:

In this part of the inquiry almost every important branch of human knowledge was touched—religion, philosophy, science, ethics, attributes of God, anthropomorphism, reason and revelation, exegetics, cosmology, creation, time and space, origin and destination of man, aim and object of life, functions of the State and the church, sovereignty, democracy and theocracy, subjects, as the sequel will show, by no means irrelevant to the inquiry. The issues underlying [sic.] the inquiry, which frequently emerged in all their directness and with all their implications, are so deep and fundamental that a reply to them one way or the other

can make or mar the new State of Pakistan and entirely change the future course of her history.  

Not only was the mandate, in the eyes of the justices, meant to be interpreted broadly, but the outcome, they declared prophetically, would be critical to the future of Pakistan. While it may seem strange that an investigation into the declaration of martial law to quell riots would touch so expansive a series of subjects, the coverage clues the reader in to the larger significance of what appears, at first, to be a simple bureaucratic report.

The report itself weighs in at a hefty 387 pages. It is culled from 3,600 pages of written statements and 2,700 pages of evidence presented over the course of 117 sittings. It is a full one hundred pages longer than the famous 1919 Hunter Committee report into the disturbances in Punjab, a report that, under a similarly broad mandate, had shaken the British hold on India.  

The underlying purpose of the Munir report, it would be fair to posit, was to highlight the dangers of religious infighting among Muslims and how these internecine struggles could potentially derail the process of nation building in which Pakistan was still mired. To prove this point to the larger public, Munir included in the report what is, in essence, a tract defending Jinnah’s vision of a secularised republic against Maulana Maududi and others who were calling for a “theo-democracy.”

Munir and Kayani were well aware that legal decisions were

377 Ibid., 6.


379 Theo-democracy being the term coined by Maududi for the type of Islamic state he envisioned. Ayatollah Khomeini was influenced by Maududi when formulating his theory of the Guardianship of the Jurisconsults, the
hungrily consumed by the public, especially through their publication in both English and Urdu daily newspapers. In the case of a public inquiry involving important personages, the readership would be greater still. The embedded public dialectic makes the Munir report a fascinating read.

The report also contains a few oddities. First, laws of evidence, we learn, were suspended during the investigation. The justices took their task to be of such paramount importance that any bar to the truth, including the restrictions against hearsay, should be eliminated. Second, the tone of the report and the report’s stated purpose, to discover and publish the truth, were sometimes at odds. As the leaders of the Jama’at-i-Islami noted in their criticisms of the report, the drafters wrote in a high-minded English style that was pregnant with witticisms. This had the effect of casting the ‘ulama in the role of buffoons. Take, for example, what the justices say after asking the leaders of a number of schools how they would define a Muslim:

Keeping in view the several definitions given by the ulama, need we make any comment except that no two learned divines are agreed on this fundamental. If we attempt our own definition as each learned divine has done and that definition differs from that given by all others, we unanimously go out of the fold of Islam. And if we adopt the definition given by any one of the ulama, we remain Muslims according to the view of that alim but kafirs according to the definition of everyone else.

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380 Braibanti, "Bureaucracy and Political Development.", 412.

The ‘ulama must have been confused by the friction between the actual proceedings and the stated goals of the commission. They would have had a certain familiarity with legal cases, of course. Courts were extremely popular public venues, paramount in both honour and respectability of outcome.\textsuperscript{382} For the Munir report, however, the familiar rules had changed. This was no longer a traditional court enforcing the mandate of the British Empire; these were Muslim judges in a country that had recently affirmed its commitment to Islam in the Objectives Resolution. The line of questioning which asked them to define a Muslim invoked their expertise as representatives of their respective institutions. As such, they would have been compelled to respond in the manner of a fatwa. The ‘ulama themselves would have been aware of the non-binding nature of a fatwa. They were simply rendering their own definitions, certain that there would have been multiple varying definitions from their colleagues. Finding the justices invoking the competition between definitions to prove that there could be no agreement among multiple schools or thinkers must have seemed like a strange connection in a larger network that affirmed tolerance and the multiplicity of interpretive possibilities in Islamic legal opinions.\textsuperscript{383}

Another major concern that Munir had asked the ‘ulama to respond to was the question of the Islamic state. Despite the fact that the ‘ulama had put forward a compromise document


\textsuperscript{383} Studies such as Muhammad Qasim Zaman’s recent efforts have highlighted this very point, as a number of political science studies of Pakistan continue to focus on the rigidity and backwardness of the ulema. See gen. Zaman, \textit{The ‘ulama in Contemporary Islam : Custodians of Change}; Muhammad Qasim Zaman, \textit{Ashraf ‘Ali Thanawi : Islam in Modern South Asia}, Makers of the Muslim World (Oxford: Oneworld, 2008). Barbara Metcalf would also recall being told repeatedly by Orientalists, after she had already completed her field research and was staying at Darul Uloom Deoband (their transliteration) as their guest, that the people of the Deoband would never talk to her. Metcalf, \textit{Islamic Revival in British India : Deoband, 1860-1900}. 
entitled the “Basic Principles of Islamic State” in 1951 in which thirty one members representing different schools agreed on the basic principles, when on the stand they failed to toe the party line. Perhaps owing to a confusion about how their interests would be best served, or perhaps through a commitment to the sanctity of the legal proceedings, each group expressed how they individually understood the requirements of Islamic statehood. Munir’s analysis of the contending 'ulama definitions of the Islamic state is cunning. Before presenting their opinions, he sets them up by providing the following quote from Jinnah’s address on the 11th of August 1947:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of state…. Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.384

Munir and Kayani would take this quote as proof that Jinnah (they call him Quaid-i-Azam) intended the new state to be “a modern democratic state, with sovereignty resting in the people and the members of the new nation.”385 Invoking Jinnah’s title and his respected opinion, they then depict the agitators as people who have qualms about the nature of representative democracy, who violate Jinnah’s explicit directive that religion should be private, and who relegate non-Muslims to the status of dhimmis.386 In essence, the section on the Islamic state in the report was structured to throw into disrepute the fundamental loyalties of Maududi and the

385 Ibid., 201.
386 Ibid. 201-221.
‘ulama.’\(^{387}\) The quote would go on to be a favorite of the secular leaning elite—it still makes annual appearances in op-ed pieces for the Day of Independence. The sentiments in the quotation also feature as the basis for Munir’s banned book criticizing Zia ul-Haq.\(^{388}\)

The Munir report was intended to discredit the ‘ulama, but it also served as a more general critique of politicians’ tendencies to invoke Islam for short term political goals. To that end, it favoured an elitist, secular civil service over lowly democratically elected politicians. Of the service, the report proclaimed: “[a] strong administrative service is God’s own boon to people—and a boon unto the Government also, if the Government is that of the people”.\(^{389}\) The stability of a democracy, the report assumed, rested in a strong, politically neutral administrative service of the type reflected in British parliamentarian culture. Since at the higher ranks of the service the training was largely in England or Australia, part of their neutrality would have been a secularism inculcated during their training.

The report ends with a criticism of the way the events under review had been handled by elected officials. In essence, the justices argued that, had the Ahrar been dealt with as a pure police concern, the situation could have been resolved easily. Politicians, however, muddied the waters by supporting what they saw as an intense popular movement against an already unpopular minority. Had they come out in support of the Ahmadis, they would have been exposed to criticisms seeping from the various ‘ulama camps. Underlying all this was a concern for the political future of Pakistan. With no constitution in place, Pakistanis might turn either to

\(^{387}\) Rehman’s first chapter about the changing of public opinion on this issue is a worthwhile read. Inamur Rehman, *Public Opinion and Political Development in Pakistan 1947-1958* (Karachi: Oxford University Press, 1982).


\(^{389}\) Munir and Kayani, "Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to Enquire into the Punjab Disturbances of 1953."
a secularised, republican form of government or a new ideological state. For Munir, the middle ground between these positions was similar to the position that W. C. Smith would describe in his *Pakistan as an Islamic State*: a state that was Islamic because of the religion of its population and not because of the revival of some historic ideal. A populism of the form denounced by Iqbal was a real danger. In a nation with eighty percent illiteracy, Munir’s fear was that politics would devolve into emotional appeals to Islam.

Munir would end the report with the following statement: “But if democracy means the subordination of law and order to political ends—then Allah knoweth best and we end the report.” Perhaps the last oddity in a report filled with strange declarations, the concluding sentence mimics the formula of a *fatwa*. Whether the line was intended as dark humor to chide the ‘ulama, or whether it was a genuine expression of humility, it seems out of place in a report dedicated to hamstringing the uses of Islam for political gain. Perhaps Munir really did intend the report to be a *fatwa* on the dangers of politicised Islam issued by a leading *alim* of the court to the people of Pakistan.

With the ‘ulama on the back foot, the next head that had to roll was that of Khwaja Nizam-ud-Din, the then prime minister. This move would prove to be the first flexing of “reserve power” muscle by Gulam Muhammad, the Governor-General and a former graduate of Aligarh. Nizam-ud-Din refused to step down and appealed to the courts for intervention. It was his misfortune to encounter in the courtroom the recently-elevated Chief Justice Muhammad Munir. In his finding, Munir, strongly privileging the central executive, concurred with the

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390 Smith, *Pakistan as an Islamic State*.

Governor-General that he was vested with the reserve powers of the British monarch. Munir seems to have believed that, if Jinnah’s vision of a secular democratic state inspired by Islamic values was to be saved, and if Pakistan was to be put back on track, the administrative organs and the central executive had to be bolstered. Islamic sloganeering, however, continued to be a factor after the case, even intensifying to the point that they came to dominate certain political discussions, especially as the Muslim League began to fear for its position and to look for allies that had the ear of the people. Other factors began to emerge from the background, including the language crisis between East and West Pakistan, extensive corruption, and the embarrassing situation of a Constituent Assembly that had still not produced a constitution.392

4.6 A Governor-General in Queen’s Clothing

When the British quit India in 1947, the constitutional structure they left behind was the Government of India Act of 1935 as modified by the Indian Independence Act of 1947.393 The Independence Act created two dominions under the Commonwealth of Nations, laid out the means for the division of the territory, and specified the powers of the Governor-General, who was to continue operating as an imperial agent until the new domains had either drafted a constitution or severed British legal oversight by statute. Until such time, the Privy Council would continue to operate as the highest court of appeal and petitions for removal of the

392 The problem with corruption was so acute that Liaqat Ali Khan in 1949 introduced the Public and Representative Officers Disqualification Act (PRODA), which allowed the Governor-General to charge politicians with misconduct and force them to quit public political life for ten years. This power could also be exercised by any politician paying a 5,000 rupee security, to be forfeited if the charges were unsubstantiated. The legislation was abused as a technique to politically bully opponents. The very existence of the legislation highlights the corruption problems that plagued Pakistan from the outset, and which have only intensified with time.

Governor-General would have to be addressed to the monarch. (At the time of partition, there was not really a robust discussion of whether the common law would continue to apply. It was perhaps assumed, at least by the legally trained elite involved in partition, that the baby need not be thrown out with the bathwater. Post-colonial states like Pakistan and India may have gained the power to legislate for themselves, but the ancient, unwritten law of the British would still be operative on alien soil.) India, fearing continued interference, would sever British oversight by drafting a constitution that repealed the Indian Independence Act and retired the post of Governor-General, all within two years of independence.

Pakistan would not fare so well. The Constituent Assembly, led by Muhammad Ali Jinnah, was the primary body entrusted with both developing new legislation for Pakistan as well as drafting a constitution. The Assembly suffered from a number of setbacks, including the death of its leader within the first year of independence. The difficulty of governing a nation bifurcated by the largest chunk of the former imperial holdings cannot be overstated. Government functionaries from East Pakistan found themselves traveling long distances for short sessions. Membership in the Constituent Assembly was based on the one representative per million persons policy used in India, but whereas India had 450 members in its governing assembly, Pakistan began with an authorised membership of only 69. In its constitutional capacity, the Constituent Assembly met for only 116 days before it was dissolved in 1954; in its legislative capacity, it met for only 244 days over the course of seven years. Attendance fluctuated heavily, between a low of 28 and a high of 57 members. In addition, the domination of the Muslim League served to frustrate candidates, with party politics frequently getting in the

\[394\] Callard, *Pakistan: A Political Study*, 80. Callard numbers for the Constituent Assembly are adjusted for some irregularities in the data.
way of both legislating and constitution drafting. Other issues, as reported by Keith Callard, included members suddenly giving up on Pakistan and departing for India without resigning, members taking on other roles in government and thus compromising their time for the Assembly, and members being imprisoned at certain points in their tenure. An additional tension was that politicians, having relied on “Islam in danger” slogans to win Pakistan, now found themselves facing the ‘ulama and groups such as the Jama’at that, in the vacuum created by Jinnah’s death, had grown powerful on the same slogan. Controlling the ‘ulama was not intrinsically difficult; they were generally opposed to direct political involvement and, when sufficiently appeased, would certify “Islamic” legitimacy. Maududi and the Jama’at, however, demanded more. They wanted an “Islamic revolution.” Maududi developed a Draft Constitution for Pakistan in which he, like Muhammad Asad, posited a political schema that would use the powers of the modern state form to transform its citizens. The elites, such as Munir, realised the dangers in further unsettling a country that was already struggling to sever the umbilical cord to the British.

In 1954 the Governor-General, citing its failure to produce a constitution and its loss of popular confidence, locked the doors to the chamber of the Constituent Assembly and dissolved the body. The Assembly had, however, drafted a constitution. The real reason for the dissolution, many alleged, was Governor-General Gulam Muhammad’s dissatisfaction with the curtailment of the authority of the central executive in the draft. Tamizuddin Khan, the president of the Assembly, filed suit in the Sindh high court requesting writs of quo warranto and mandamus, which were demands for proof that the government had the power to do what it did.

395 Ibid., 77-85.
396 Maudoodi and Ahmad, The Islamic Law and Constitution.
The suit was, in essence, an injunction against the dissolution. In Sindh, the appellants hired one of the finest barristers in the empire, Denis Nowell Pritt, who had famously defended Ho Chi Minh against extradition, and the defense secured representation from Ivor Jennings. Jennings had previously worked as an advisor to the Assembly on the constitution and was famous for writing the most influential extant treatise on cabinet government and constitution in the Commonwealth. Though his services as an attorney were secured for seven times the annual salary of the chief justice of Pakistan, the government lost in the Sindh court.\textsuperscript{397} The case was then sent to the Federal Court (i.e. the Supreme Court), where it landed in Munir’s lap.\textsuperscript{398}

Initially Munir attempted to have the case resolved by arbitration, but when that fell through he declared: “[t]his is a political case, You should have brought it to the marches (the people), but as you have brought it to us and we are seized with it, we will decide it.”\textsuperscript{399} The government for its cause would hire famed jurist Kenneth Diplock (later of the infamous Diplock juryless courts in Northern Ireland fame) and with Jenning’s support, it would craft a defense that would cause the Court “to wade through the entire history of Constitutional Law of England, the colonies, ceded and conquered countries and the Statute of Westminster Dominions.”\textsuperscript{400} I suspect that Munir appreciated the opportunity to wax poetic on how Pakistan fit snugly within the traditions of the common law. The 188-page decision would contemplate the origins of

\textsuperscript{397} Allen McGrath, \textit{The Destruction of Pakistan’s Democracy} (Karachi: Oxford University Press, 1996).
\textsuperscript{398} For an excellent legal analysis of the line of cases see Newberg, \textit{Judging the State : Courts and Constitutional Politics in Pakistan}.
\textsuperscript{399} Quotes in McGrath, \textit{The Destruction of Pakistan’s Democracy}., 175, citing his interview with the Deputy Clerk of the Court.
\textsuperscript{400} Chaudhri, \textit{Chief Justice Muhammad Munir: His Life, Writings, and Judgements}., 262.
democracy, the history and logic of the relationship of the crown to parliament, and the nature of
dominion status.

The essence of the question for the Sindh court and the Supreme Court review was how
to interpret the powers of the Governor-General, in particular the following section of the
Independence Act:

6. (3) The Governor-General of each of the new Dominions shall have full power
to assent in His Majesty’s name to any law of the Legislature of that Dominion and
so much of any Act as relates to the disallowance of laws by His Majesty or the
reservation of laws for the signification of His Majesty’s pleasure thereon or the
suspension of the operation of laws until the signification of His Majesty’s pleasure
thereon shall not apply to the laws of the Legislature of either of the new
Dominions.401

Essentially the clause was written to allow the new Dominions to create law without assent from
the British Monarch, requiring instead assent of the Governor General. The review court would
draw from this dense clause the following two questions, first, whether the Governor-General’s
assent was necessary for all legislation by the Assembly in its legislative capacity, and second,
whether the Sindh court had the subject matter jurisdiction to hear the case. The Court ruled in
the affirmative on the first matter and in the negative on the second. The first matter, the assent
of the Governor-General, turned on an amendment to the Government of India Act that
parliament had passed in 1954 which allowed courts to issue writs of habeas corpus, mandamus,
quo warranto, and certiorari. The Court in this case found that without the assent of the
Governor-General, the amendment did not automatically operate in an independent dominion. In
singularly privileging the powers of the monarch in the form of the Governor-General, Munir

401 India (Dominion), Indian Independence Act, 1947.
privileged a non-elected foreign agent over a native Assembly that had already passed a number of laws, all without the assent of the Governor-General. He took a strict constructionist, or positivist, line, arguing:

It has been suggested by the learned Judges of the Sindh Chief Court and has also been vehemently urged before us that if the view that I take on the question of assent be correct, the result would be disastrous because the entire legislation passed by the Constituent Assembly, and the acts done and orders passed under it will in that case have to be held void. On this part of the case I do not wish to say anything more than the sole question before us is whether the Governor-General’s assent was obtained to the Government of India (Amendment) Act of 1954.402

Munir used the opportunity of the review to make a definitive statement about the nature of dominion status and the continuing relevance and powers of the crown and her agents in the post-colony. The only dissenting opinion, that of Justice Cornelius, would similarly focus on whether or not assent was required. Cornelius took into consideration, however, the profound embarrassment that the ruling would give to the elected politicians in the Assembly by legislatively reverting Pakistan, in essence, to 1947.

In the aftermath of the case, it would be discovered that Gulam Muhammad, fearing the court not ruling in his favor, worked with Jennings to develop Emergency Ordinance no. IX of 1955. Jennings would go on to draft a number of un-democratic constitutions for other nations, including Nepal. In these drafts, he would privilege royal power to suspend the constitution and the government to give the king “a buffer” against a society not ready for democratic

A recent study by Mara Malagodi concludes that “[a]ll of his [Jennings’s] constitutional endeavors in South Asia were followed by bouts of authoritarian rule, mostly by the actors whose position Jennings had propped up in his constitutional advisory work.”

Gulam Muhammad would proceed to implement the emergency order in the year following the Tamizuddin ruling.

Gulam Muhammad’s attempt to ratify the legislation thrown out in the earlier case would bring him again before Munir. In Usif Patel and 2 others v. the Crown, Munir ruled that the Governor-General did not have the power to validate legislation retroactively passed by the Assembly he had dissolved.

Paula Newberg writes that, though this second ruling may have taken some of the sting out of the Tamizuddin holding by not allowing the Governor-General to act both as a legislature and the crown, the case would become moot after the advisory opinion in the Special Reference case. Gulam Muhammad had posed four concerns to the court for consideration: What are the powers and responsibilities of the Governor-General before a new Constituent Convention passes the necessary legislation? Will the laws necessary for protecting the state continue to function until the new Constituent Convention? Was the Constituent Assembly rightly dissolved by the Governor-General? Will the future Constituent Convention have the power to legislate? In response to the third question, the one about the legitimacy of the dissolved Constituent Assembly, the Court found that the Assembly had become unaccountable.

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403 Mara Malagodi had discussed Jenning’s spotty legacy in an article that is a necessary response to any of the generally laudatory works on Jennings. Mara Malagodi, “‘the Oriental Jennings’: An Archival Investigation into Sir Ivor Jennings’ Constitutional Legacy in South Asia,” Legal Information Management 14, no. 01 (2014).

404 Ibid., 36.


406 Jennings, Constitutional Problems in Pakistan, 257-350.
to the democratic process and needed to be removed. Munir would cite Blackstone, as he had done in *Tamizuddin*, and claimed the Assembly had become a “permanent legislature” which was the “worst calamity that could befall a people.” To answer the first and second questions about the powers of the Governor-General and what the state needed to survive, Munir would look to Bracton. In citing the following Latin maxims, Munir would elegantly and in “sonorous Latin” expound the doctrine of necessity: “*id quod alias non est licitum, necessitas licitum facit,*” “*salus populi suprema lex,*” and “*salus republicae est suprema lex.*” The phrases may be translated, as “that which is not licit, necessity will make so,” “safety of the people is the supreme law,” and “safety of the republic is the supreme law.” He would further turn to a famous constitutional revolutionary cum autocrat, Oliver Cromwell, and his famous declaration: “If nothing should be done but what is according to the law, the throat of the nation might be cut while we send for someone to make a law.” While Munir’s response to Gulam Muhammad seems to be a simple affirmation of the right to authoritarian rule, we have to keep in mind that the court in this period was between a rock and a hard place. It was dealing with a strongman who was giving them the opportunity either to justify their continuing relevance or to risk being discarded. Munir would retrospectively call the process of drafting an opinion that would retain some of the court’s dignity while still acquiescing to the Governor-General “judicial torture.”

One of the problems underlying the cases, as Paula Newberg has noted, were “unarticulated and undifferentiated ideas about democracy.” Jinnah’s vision of democracy

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407 Ibid., 286-287.
408 Ibid., 298-299.
409 Ibid., 299.
was as vague and formalistic as his ideas about Islam, and this approach was strongly present in the Supreme Court as well.\textsuperscript{411} For Munir, the cases under discussion were to be decided by logic and reason and by the emotionalism embedded in feelings of national fervor or religion. Implicit in his rulings, however, was a particular way of understanding and approaching the legacy of colonialism in a positive light. In a manner that has more recently become popular in the rhetoric of Niall Ferguson, Munir accepted a colonial version of history in which conquering nations came as a force to bring liberty. The reason he could rely on authorities such as Blackstone, Maitland, and Bracton is that Munir saw Pakistan as part of the living tradition of the common law, a law which the authorities he cited considered the pinnacle of human reason.

4.7 Conclusions

Munir would defend the judgment in the \textit{Tamizuddin} line of cases until his dying day. His successors on the Supreme Court would criticise his tenure in the \textit{Asma Jilani} case, claiming that the woes of the nation began with \textit{Tamizuddin}.\textsuperscript{412} In his defense, Munir would frequently cite the favorable review of his rulings that Jennings gave in \textit{Constitutional Problems in Pakistan}, conveniently omitting the fact that Jennings was counsel for the government in the lower court runup to \textit{Tamizuddin}. He would note at length the positive reviews of his judgments in the \textit{Dosso} line of cases establishing the right of revolution for military coups, without critically looking at the human rights records of the nations whose scholars were citing him.\textsuperscript{413} Munir was clearly not a consequentialist. He is mostly remembered as a legal positivist, sometimes even as an authoritarian positivist—Allen McGrath critiqued him for politicking from

\textsuperscript{411} Ibid., 61.
\textsuperscript{412} PLD 1972 SC 139 (name had changed from FC to SC)
\textsuperscript{413} Chaudhri, \textit{Chief Justice Muhammad Munir: His Life, Writings, and Judgements}. 
the bench.\textsuperscript{414} He has, however, been too quickly relegated to the historical dustbin. In my opinion, Munir’s cases reflect an extraordinary legal mind committed to implementing the law as he understood it, as a noble profession which operated according to its own logic, accountable only to other courts of equal standing elsewhere in the Commonwealth. Law as he learned it, however, was primarily a tool for maintaining order. In the case of Pakistan, he felt that the law required the erection of a wall between religiously influenced politics, which he had proved was dangerous, and a secularised society that drew its moral and ethical spirit from Islam, as proposed by Jinnah. I suspect Munir would have found comfort in the wisdom of a legal authority that Iqbal once cited by the name of Tartushi (c. 1059-1126), who famously declared: “Forty years of tyranny are better than one hour of anarchy.”\textsuperscript{415}

A number of Muslim modernists would narrate the moment in which they realised that either the religion as they learned it or as they saw it being practiced was out of step with what they understood to be progress. In the case of Munir, two events stood out for him. First, his mother’s devotion to what he called a “fraudulent pir,” a local saint that Munir suspected was a huckster.\textsuperscript{416} The second event happened at a college badminton match. Munir uttered “Oh my God” when he missed a shot. His Hindu friend chided him for “talking of God in the twentieth century” and suggested that he read Nietzsche. When Munir read the philosopher’s works, “wave after wave of perplexing questions and ideas” flooded his mind.\textsuperscript{417} He would go on to devote himself to studying science, astronomy, and economics and to applying “scientific

\textsuperscript{414} McGrath, \textit{The Destruction of Pakistan’s Democracy}.


\textsuperscript{416} Munir, \textit{Highways & Bye-Ways of Life}., 8.

\textsuperscript{417} Ibid., 14-18.
techniques” to the study of religion. His approach, as detailed in Islam in History, operates on the assumption that the claims of science are all true, especially the claims of the physical sciences. Munir believed that science and the scientific method owed its development to the ways in which Muslims engaged the Qur’anic injunction to seek signs in nature using reason. Like many deists before him, he found God in the atom or the monad. On this point he cited the nineteenth century scholar Muhammad al-Fudali, who Munir claims spoke of “the appearance and disappearance of entities by the free will of Allah and if an entity is the same thing as a monad, his conclusions receives full support from the scientific phenomenon that the atoms hop…. This hopping could therefore, erratic as it is, only be by a third force and that must be the free will of Allah.” This attempt to marry quantum tunneling to theology would mark much of modernist thinking, and in the case of Munir would lead him to the following observation:

To conclude while neither any philosopher nor any scientist has been able to disapprove [sic] His existence or to explain the drama of creating, religious experience of a series of prophets in different parts of the world testifies to His existence and the design and order visible in the universe leads to the irresistible conclusion of a Super Architect of the Universe who is the First Cause of all creation.

After working his way through a wide range of thinkers, including Marx, Feuerbach, Hegel, and Nietzsche, Munir finds their arguments for atheism and agnosticism unconvincing, as they

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418 See for example: “It is He who sends down water for you from the sky, from which comes a drink for you, and the shrubs that you feed to your animals. With it He grows for you grain, olives, palms, vines, and all kinds of other crops. There truly is a sign in this for those who reflect. By his command He has made the night and day, the sun, moon, and stars all of benefit to you. There truly are signs in this for those who use their reason.” Q16:10-13 M. A. Abdel Haleem, The Qur’an, Oxford World's Classics (New York: Oxford University Press, 2005), 166-167.

419 Munir, Islam in History., 265.

420 Ibid., 266.

421 Ibid., 269.
cannot explain the principles of quantum physics. The deist position, he feels, is the most sustainable position, given the developments in science, and if Muslims in general and those in Pakistan in particular are to move forward, their thinking must adapt to the times.

Munir argues the political uses of Islam mask its true message of equality and social justice, that the crude machinations in Pakistan have resulted in merely a fetishizing of Islamic concepts for short-term gain, as in the case of the riots in Lahore. If Islam is to be judged, he argues, on the way that people treat each other in a so-called Islamic state, Pakistan is in trouble: “Your shoes may be stolen from a mosque and black market [sic] is a normal feature of trade. Is this the special type of manhood intended to be created in a country which claims to monopolise Islam...? From this state of affairs, one is led to the question whether Islam has been wasted on us or we of an Islamic state have outgrown Islam?”

He claims that Qur’anic values hold more sway in the West and in countries like Turkey than they do in Pakistan, where they tend to be subject for vibrant argument but little action. After his retirement in 1960, Munir would continue to argue for the salience of his vision of an Islam appropriate for Pakistan, especially in the face of Pakistan’s collapsible model of democracy and the loss of East Pakistan. The last major public affair he would embroil himself in was his book criticizing Zia-ul-Haq’s attempt to revive an Islamic state in the form of the Nizam-al-Mustafa, a Frankenstein’s monster cobbled together from totalitarianism, a narrowly tailored understanding of Islam, and a particularly brutal means of implementing Zia’s vision.

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422 Ibid., 293.
423 Ibid., 243.
Jinnah never defined Islam for his nation. The main way in which he would invoke Islam was as a national identifier (hence his support of the two-nation theory) and not primarily as a theological consideration. The modern definition of religion, the Protestant understanding of it as private and individual, seems to have been the version he promoted in his speeches. An Islamic state to Jinnah would have been, like the one defined by W.C. Smith, a state made by Muslims. This bare minimum, self-identifying approach, the one used by the imperial courts, would have made sense to Jinnah and Munir, who both were products of the legal education of empire. Jinnah’s name remains charged with enormous potency in Pakistan—his mausoleum continues to be a site for injecting vigor into political campaigns—and Munir would use this ideological kinship between himself and the Quaid-i-Azam as the basis for his analysis of the state in From Jinnah to Zia. The book, a condemnation of Zia’s Islamicization projects, attacked the dictator for failing to ground himself in Jinnah’s thought.

I return, in conclusion, to Munir’s quote from the start of the chapter in which he ponders whether democracy in its western form really suits Pakistan. Munir, we noted, echoes a similar sentiment found in Iqbal’s poetry. Democracy was only possible, Munir believed, if a population was educated, the gross exploitation of the poor was curbed, and the corrupting influence of politics checked. He would jealously guard the secular nature of the courts, once calling a lower court justice a “judicial misfit” for acquiting an accused on the basis of swearing.

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424 The site, a news program recent discovered, is used for sexual intercourse by young couples for the relatively low fee of Rs. 2,500 (about 40 USD – the monthly salary of an average person in Pakistan). It says something about the continued power latent in his name that it is even sexually fetishised. For a potently patriotic assault on the practice see: @arynewsofficial, "Quaid's Grave Room Rented out to Couples for Rs 2.5k Only, Reveals Sar-E-Aam - Aaryews.Tv, Pakistan News-Latest,Breaking News,Live Videos,” (2014).

425 Munir, From Jinnah to Zia.

426 Maududi would strongly agree.
his innocence on the Qur’an. I suspect that, to his mind, the British civilizational project had been largely successful in India, and that it was up to the newly independent states to continue implementing reforms until they reached a level where they were capable of governing themselves in a democratic fashion. Islam offered all the moral and ethical tools to accomplish the process of modernization, if only people were educated enough not to be swayed by its emotional appeal. Perhaps Munir would feel some vindication of his views in the mess his countrymen would make of areas in which secular law and religious law combined, as we shall see in the treatment of blasphemy in the next chapter.
Chapter Five

Blasphemy in Three Transformations; the Post-Colonial Problems of an Islamic State

5.0 Chapter Five

5.1 Introduction:

5.1.1 Setting the Stage: Taseer and Bhatti

The year 2011 brought renewed interest in Pakistan’s blasphemy laws, largely because of two high profile assassinations. On January 4th 2011, Salman Taseer, the Governor of Punjab, was gunned down by his bodyguard for voicing opposition to abuses of the blasphemy law. On March 2nd, members of the Tehrik-i-Taliban427 claimed responsibility for the murder of Shahbaz Bhatti, Pakistan’s first minority affairs minister (and the only Christian in cabinet), who had become increasingly vocal about his opposition to the wording of the blasphemy law. Both cases share a common thread, in that both men redoubled their opposition to the blasphemy law following the imprisonment of Asia Noreen, a Christian woman accused of blasphemy.

The facts are sketchy, as is often the case in 295C proceedings at the lower court level, but the relevant points are as follows. Asia Noreen, or Asia Bibi, engaged in an argument with fellow farm hands following their refusal to drink water that she had fetched, alleging that the

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427 The Tehrik-i-Taliban is not directly affiliated with the Taliban in Afghanistan. They are frequently referred to in the international press as the Pakistani Taliban and share a number of familial traits with their Afghan brethren, but were founded between 2002 and 2007 in Kyber Paktunkhwa (formerly known as the North-West Frontier Province, NWFP, which runs along Pakistan’s western border with Afghanistan) as a reaction to the U.S.-led military campaign in the wake of the September 11th terrorist strikes.
water had become tainted by her touch. The complainants alleged that she made blasphemous remarks regarding the Qur’an and Prophet Muhammad during the ensuing argument and filed their complaint with a local cleric. The cleric formed a mob and led it to her home. Following a violent altercation, she was taken into police custody, ostensibly for her own safety. An inquiry was conducted and she was charged under Section 295 C of the Pakistan Penal Code. The section reads:

295 C Use of derogatory remark etc., in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Doubt has been cast on the investigation, the accusers, and the proceedings which led to her imprisonment. The real cause, it has been alleged, was a property damage dispute. Suspecting foul play, and after receiving numerous petitions from human rights groups, Salman Taseer intervened and encouraged President Zardari to pardon Asia Bibi. In addition, the case spurred Taseer to become an active critic of the blasphemy law, for which he became the “subject of various fatwas.” He frequently posted criticisms of the law on his Twitter page, publically agitating for revisions to the law, citing its disproportionate application to minorities and its

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428 Other versions of the story allege that the argument ensued because she drank from a well reserved for Muslims and was accused of poisoning or tainting the well. Associated Federated Press, "Jailed Christian Mother Asia Bibi 'Well': Husband," Dawn News, http://dawn.com/2012/01/04/jailed-christian-mother-asia-bibi-well-husband/.

429 Pakistan. and M. Mahmood, The Pakistan Penal Code, 1860 : With Case Law and Amendments up-to-Date, 1st ed. (Lahore: Al-Qanoon Publishers, 2006)., 888. The Federal Shari’at Court has subsequently ruled that the law violated the injunctions of Islam, and that the death penalty is the only appropriate punishment for the crime.

general abuse as grounds for revision. For these critiques and others, Salman Taseer was assassinated. Soon after, Shahbaz Bhatti was assassinated for his own opposition to the blasphemy law.

The deaths of Taseer and Bhatti prove a compelling backdrop for a discussion of blasphemy laws as they have been framed in Pakistan. This chapter will be a discussion of the crime of blasphemy in three transformations. My purpose in framing a discussion of the law in three phases, or transformations, is to stress the importance of the evolution of the law, how it borrows from a number of legal and religious traditions and how its colonial origins continue to influence its post-colonial history.

I begin with a discussion of blasphemy in the classical Islamic legal tradition, using specific examples from the “Islamic state” in Cordoba. I then trace the specific history of the blasphemy law in Pakistan, elaborating on its first transformation, through which blasphemy became a common law cause of action, and looking at how it arrived in the colony. The second transformation is be a discussion of how the law has changed as a result of both democratic and dictatorial regimes in Pakistan. The final transformation is a discussion of the current state of the blasphemy law, which more resembles a law of sedition than a prohibition against mispeak on matters of faith. Blasphemy serves as a compelling test case for how a state juggles liberal commitments (enshrined in a constitution) and religious commitments (also enshrined in a constitution). I argue that blasphemy offers a unique site that allows us to analyze the delicate juggle of the frequently conflicting sources of legitimacy that confront a modern territorial Islamic nation state. Liberal political and international legitimacy is undergirded by critique and

free speech, whereas Islamic legitimacy may be rooted in guarding the honor of God and his Prophet. The framework for analysis is shaped by Talal Asad’s genealogical approach and his recent reflections on blasphemy.

5.1.2 Framework for Analysis

Talal Asad has been, over the course of his career, an astute observer of the “problem” posed by the influx of Muslims into the “West.” He frames his concerns around six issues. As they provide a framework for my concluding analysis, they merit some exploration. The first is that blasphemy serves as a marker of the “clash of civilizations,” which is to say that the objections raised by [some] Muslims in response to the Rushdie affair and the Danish cartoons reflects a disconnect between the essential liberal democratic value of free speech and religious protectionism. Free speech, he argues in his second point, is not free from regulation, even in liberal societies. For example, he notes that patent law and indecency law (e.g., regulations on child pornography) constitute “acceptable” regulations of free speech in liberal societies. Furthermore, Asad cautions us not to oversimplify the issue into merely free speech (good) vs. upholding of irrational taboos (bad) and to see blasphemy as a form of “violence done to human relations that are invested with great value.”

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433 For his purposes, Asad defines “liberal” rather loosely: “[L]iberalism today provides its advocates with a common political and moral language in which to identify problems and to dispute. Such ideas as individual autonomy, freedom, national self-determination, limitation of state power, rule of law, and religious toleration belong to a space, not least when they are debated. It is precisely the contradictions and aphorisms in the language of liberalism that make the public debates among liberals possible, in a space that is vigorously defended against those who would introduce a radically different language.” "Reflections on Blasphemy and Secular Criticism," in Future of the Religious Past, ed. Religion : beyond a concept (New York: Fordham University Press, 2008)., 584.

434 Ibid., 589.
Asad’s third point touches on the problem of a liberal secular society dealing with authenticity of belief as a basis for acting on offence. In the classic shari’ā tradition, he argues, the punishments for apostasy are justifiable on the grounds of political and social consequences, not on the protection of the honour of God.\textsuperscript{435} Charges such as apostasy and blasphemy must therefore be founded on externally manifested signs (as discussed infra), and not on inferred or coerced belief.\textsuperscript{436} Tests for authenticity of belief, Asad goes on to argue, devalue the moral passion of the believer faced with a blasphemous utterance: “[o]ne consequence of that devaluation is that it becomes difficult for the secular liberal to understand the passion that informs those for whom, rightly or wrongly, \textit{it is impossible to remain silent when confronted with blasphemy}, for whom blasphemy is neither ‘freedom of speech’ nor the challenge of a new truth but something that seeks to disrupt a living relationship.”\textsuperscript{437} For Asad, the objection of the offended is not to the expression of disbelief of the offender, but rather to the violence caused by the utterance.

Asad’s fourth reflection, rethinking blasphemy as a form of violence, is compelling. He argues that the reimagining of religion in modern secular liberal states has involved a distancing of religion from violence, citing as an indication Archbishop of Canterbury Rowan Williams’s peculiar formulation of blasphemy in one of his sermons. Williams argues that believers’ committing violence to protect the honor of God is \textit{ipso facto} blasphemous because it assumes

\textsuperscript{435} Ibid. 592-293.
\textsuperscript{436} Ibid., 593.
\textsuperscript{437} Ibid., 596. Emphasis in original.
that God cannot protect God\textsuperscript{438} and that the intervention of humans is necessary.\textsuperscript{439} Williams calls this hubris “the fantasy which fuels every kind of pathological violence.” It is the struggle for humans to assert power in situations where they have none. For Asad, Williams’s reformulation is contrary to Christian history, which has been liberally peppered with the杀人 of those accused of blasphemy.\textsuperscript{440} Asad attributes this paradigm shift to the rise of what he calls secular critique, which has contributed to the delegitimization of violence in religion (or at least in the way it is practiced in the Europe).

Secular criticism or critique, Asad argues, is traceable to the Enlightenment. During the Enlightenment, rationality cemented by critique brought to an end the “unending war of doctrines.”\textsuperscript{441} In the twentieth century, critique forms the central pillar of determining what is scientific fact (i.e., what can be falsified)\textsuperscript{442} and faith necessarily fails this test, because it resists rational critique and is therefore neither neutral nor objective.\textsuperscript{443} As such, critique and criticism become what Asad calls a “sign of the modern.”\textsuperscript{444} Even more, “[i]t has become a duty, closely connected to the right to free expression and communication.”\textsuperscript{445} Secular western polities are maintained by critique exercised in the freedom of speech. Pakistan and other religious states,

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\textsuperscript{438} My apologies for the awkward formulation, but it is premised on the ethical commitment of not gendering God.  \\
\textsuperscript{439} Here Asad is citing the Archbishop of Canterbury’s Sermon from York Minster of July 9\textsuperscript{th} 2006. Rowan Williams, "Archbishop of Canterbury's Sermon from York Minster " http://www.episcopalarchives.org/cgi-bin/ENS/ENSpress_release.pl?pr_number=070906-1-A.  \\
\textsuperscript{440} Asad, "Reflections on Blasphemy and Secular Criticism.", 599.  \\
\textsuperscript{441} Ibid., 602.  \\
\textsuperscript{442} Ibid.  \\
\textsuperscript{443} Ibid.  \\
\textsuperscript{444} Asad’s analysis is commensurate with the persistence of the secularization thesis, especially in the polemical tracts of thinkers such as Richard Dawkins. Though Asad does not discuss the secularization thesis, the connection may be drawn from his analysis.  \\
\textsuperscript{445} Asad, "Reflections on Blasphemy and Secular Criticism.", 604. Emphasis in original.  
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which rely on faith for an important dimension of legitimacy and loyalty, must necessarily reshape the limits of the freedom of speech. Such states remain sustainable only if a delicate balance is struck between sources of legitimacy.

5.2 Blasphemy in Islamic Jurisprudence and in Pre-Penal Code India

5.2.1 In Islamic Jurisprudence

Generally, blasphemy in Islam is a broad concept which corresponds loosely with the idea of insult (sabb) but specifically directed against God, the Prophet Muhammad (sabb al-rasul), or other Qur’anic prophets, the companions of the Prophet (sabb al-sahabah), the wives of the Prophet Muhammad, and historical objects venerated by the Muslim community.446 The concept of insult (translated here as revile) appears in one verse in the Qur’an (6:108):

[Believers] do not revile those they call on beside God in case they, in their hostility and ignorance, revile God. To each community We make their own actions seem alluring, but in the end they will return to their Lord and He will inform them of all they did.447

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446 “Shatm and sabb as phenomena of ordinary interpersonal relations are described in works of different literary genres. When directed against God, the prophet Muhammad, other Kur’anic prophets, Muhammad’s Companions, historical personalities, or objects venerated by the Muslim community or by different groups within this community, shatm is considered as an act of blasphemy and unbelief (kufr) which may entail legal prosecution. Other terms that are used less frequently in order to describe particular acts of blasphemy and that can be treated as synonymous with shatm in a broader sense are la’n (cursing, malediction), ja’n (accusing, attacking), idha” (harming, hurting), or the verb nada with the preposition min (to do harm to somebody, to defame). Lutz Wiederhold, "Shatm," in The Encyclopaedia of Islam: Supplement, ed. Clifford Edmund Bosworth (Leiden: E.J. Brill, 2004)., 725.

447 Emphasis mine. Abdel Haleem, The Qur’an., 88. The root words of insult in Arabic are s-b-b which is found translated here as revile (tasubbu and fa-yasubbu).
The verse has been held to be a prohibition against insulting the faith of others (even if they offer insult to Muslims) on the assumption that the “others” are acting in ignorance. However, Lutz Wiederhold indicates that, though the tradition had cemented its opprobrium against blasphemy by the eighth century (CE), there was a lack of consistency in opinion. In many of the juristic treatises up to the modern era, insult to God or the Prophet is omitted from sections on offenses that constitute *ridda*. However, as many of the manuals contained a “paragraph that declares that the one who violates the consensus of the Muslim community is a *kafir*,” the charge was frequently deployed as a tactic in cases of tension between Shi’a and Sunni Muslims.

Shi’as frequently found themselves the targets of blasphemy and apostasy proceedings owing to the practice of *tabarra*, a shunning of the first three “Sunni” caliphs, certain companions, and particular wives of Muhammad. As illustrated by Lutz Wiederhold, the crime of blasphemy as applied to the Prophet developed within the first two centuries after his death, but it would take longer for the inclusion of blasphemy against the companions to take hold — in particular, it develops in response to sectarianism. Although the idea of insult against the Prophet and his companions enters the legal literature early, it exists as a subset of those who turn against the “consensus of the community,” the *ijma al-ummah*, and thereby render the Shi’a *kafir*. From the eighth to the thirteenth centuries, blasphemy evolves into a distinct crime, as evidenced by Taqi al-Din al-Subki, a Shafi jurist’s formulation. According to al-Subki,

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448 Wiederhold, “Shatm.”, 726.
449 Ibid.
450 Ibid., 726-727.
blasphemy was a crime of degrees that was directed against the Prophet and his companions, with the less severe degrees constituting a sin (fisq) and the most extreme constituting a declaration of kufr. The crime could be repented (istitaba), and punishments, the most extreme of which was death, could be applied only after a refusal to repent. Widerhold cites the case which prompted al-Subki’s formulation:

According to al-Subki, on Monday, 16th Jumada I 755/9 June 1354, the man had entered the Umayyad Mosque and refused to pray the midday prayer (zuhr) with the believers gathered there. Instead, he had abused Abu Bakr, ‘Umar b. al-Khattab, ‘Uthman b. ‘Affan and others, claiming that these Companions had violated the rights of the Prophet’s descendants by withholding from Fatima, the Prophet’s daughter and wife of ‘Ali b. Talib, her inheritance after the Prophet’s death. The blasphemer’s abuse directed against the first three of the Rightly Guided Caliphs, suggests that he was an adherent of Shi’i views. A few days after the incident, the man was sentenced to death and executed after he had been asked to repent (istitabah) several times but refused to do so.

In this case, the accused commits his act openly and notoriously and refuses the option of repentance before being sentenced. The killing may be reasonably interpreted as a punishment for sedition, a thread Mohammad Hashim Kamali elaborates on in his Freedom of Expression in Islam. Kamali argues that traditionally there is little distinction made between the blasphemy

452 Ibid., esp. 62-64.
453 Ibid., 47-48. Wiederhold goes out of his way to mention a corroborating account from the same period in which the author does not mention istaba, which might make sense as Maliki jurisprudence generally does not allow for repentance for insulting the Prophet. See Wiederhold fn 44 in the aforementioned article.
and the allied concepts of apostasy (*ridda*), heresy (*zandaqa*), and the denial of Islam (*kufr*). Blasphemy, a number of jurists argue, is in effect a speech act that renders one an apostate.

Kamali distinguishes blasphemy by Muslims and non-Muslims, postulating that only the former can be guilty of apostasy even though both can commit blasphemy. Scholars generally define blasphemy broadly, and the four primary Sunni legal schools (Maliki, Hanbali, Shafi, and Hanafi) differ primarily on the permissibility of repentance, the acceptability of repentance, whether the person was born Muslim or not, whether the same punishment should be applied to a protected non-Muslim (*dhimmi*), and whether female apostates or blasphemers should face the same punishment as men. In Kamali’s approximation, the closest parallel to blasphemy in the modern era is high treason. Since both religious authority and political authority were vested in the Prophet, rejection of the religious authority was tantamount to rejection of the political authority and so was punished harshly.

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454 Kamali disagrees with this position. He argues that “[s]imple disbelief is not the same as disbelief which is contemptuous and hostile to the belief-structure of Islam and the sensibilities of its followers.” The attempt to combine blasphemy with apostasy and disbelief is indicative of weakness on other grounds: it would be difficult to implement the principle of the Qur’anic proclamation “there is no compulsion in religion” (II:256) if blasphemy and apostasy were treated as a unified concept. Mohammad Hashim Kamali, *Freedom of Expression in Islam*, Rev. ed. (Cambridge: Islamic Texts Society, 1997), 216.

455 Ibid., 214.

456 Ibid., 217.

457 Ibid., 218. Anver Emon in a fascinating exploration of apostasy in Islamic tradition highlights the extraordinary flexibility of the ways that apostasy cases would be dealt with. In the case of a *dhimmi* insult of the prophet would have different consequences depending on which school held sway ranging from a cancellation of the contract of protection (which could result in an effective death sentence) to various “discretionary actions”. Emon further elaborates the ways in which an apostasy trial in Afghanistan was elevated to a trial about the nature of Afghani citizenship. See. Anver M. Emon, "On the Pope, Cartoons, and Apostates: Shari&#039;a 2006," *The Journal of Law and Religion* 22, no. 2 (2006).

458 It would be prudent here to raise Sherman Jackson’s critique of Kamali’s text. “In many ways, this book is a handsome reflection of one of the major problems confronting modern Muslims -- namely, the crisis of authority, or the lack of viable and recognized mechanisms with which to validate their own views. Modern *ijtihād* may be viable, but it is not fully recognized. Tradition may be recognized, but it does not always (certainly not easily) provide viable solutions. Modern writers are thus forced into a plainly ambivalent relationship with both tradition and *ijtihād*. And their works often take on the dual appearance of being both primary and secondary sources. Readers will no doubt detect this characteristic in Kamali’s work.” Sherman A. Jackson, "Book Review: Mohammad Hashim Kamali, *freedom of Expression in Islam* (Cambridge: Islamic Texts Society. 1994).
political expediency and abandoned it after the death of the Prophet; the harshness of penalties for blasphemy, which could include death, were designed to punish publically such betrayals of the community.\(^459\)

### 5.2.2 Muslim Blasphemers in Cordoba

How these foundational interpretations played themselves out can be seen in events from Cordoba, which introduced Maliki principles of substantive law in the ninth century. In Maliki jurisprudence generally, blasphemers are not allowed to repent. In the cases explored by Isabel Fierro in al-Andalus, however, there seemed to be considerable disagreement between the different Maliki scholars on how to approach the various components of blasphemy.\(^460\)

The first case involves a nephew of the favorite concubine of the former amir, the father of ‘Abd al-Rahman. Yahya Ibn Zakariya al-Hassab, the accused, declared in jest during a rainy day that “the cobbler has started to water the skins.”\(^461\) The case was referred directly to the amir and not to a court. He in turn consulted with five fuquha, including ‘Abd al-Malik Ibn Habib, the chief Maliki faqih. Four urged clemency and a short prison term or flogging, judging that the statement was made in jest, but Ibn Habib argued that, regardless of intent, “the Lord that we

\(^{459}\) Shemeem Burney Abbas devotes her book to highlighting attempts by various Muslim polities to use blasphemy as a means of enforcing orthodoxy and punishing sedition (she also draws the link between Cordoba and the case of Pakistan). Shemeem Burney Abbas, *Pakistan's Blasphemy Laws: From Islamic Empires to the Taliban*, First edition. ed. (Austin, TX: University of Texas Press, 2013).


\(^{461}\) Fierro, "Andalusian "Fatawa" On Blasphemy. ", 104. *Bada’a l-harraz yarussu juluda-hu*. Though not indicated in Fierro’s article I suspect that the objection was the reference to God in jest, this reading is in line with that of Declan Patrick O’Sullivan in his unpublished dissertation. See Declan Patrick O’Sullivan, "Punishing Apostasy: The Case of Islam and Shari'a Law Re-Considered" (Durham University, 2003), 375.
worship has been insulted. If we did not defend him, we would be bad servants, and should we not be His worshippers.”\textsuperscript{462} The amir agreed with Ibn Habib and the accused was executed by being crucified and stabbed to death.

The second case involved the faqih Ibn Habib as well. The accused on this occasion was his brother, Harun ibn Habib. Harun was accused of the following two outbursts:

a) One man asked him for a ladder in order to repair a mosque. Harun’s answer was: “I would give it to you if you were to repair a church (\textit{kanisa})”. The man expressed his surprise, reminding Harun that the mosque was superior to the church. Harun answered: “No, by God. I have realized that he who is devoted to Allah (i.e. the Muslim) is left in the lurch, whereas he who is devoted to the synagogue and the church (i.e. the Jew and the Christian) is respected and in a good situation.”

b) Two men visited Harun, who was sick. Inquiring about his health, they received this answer: “During my illness I have suffered so much that had I killed Abu Bakr and ‘Umar, I would not have deserved such punishment.”\textsuperscript{463}

‘Abd al-Malik Ibn Habib, who mounted the defense for his brother, argued that, first, there was only one witness, failing the Qur’anic requirement of two witnesses (Sura 2:282). Second, he cited Umar ibn al-Khattab’s claim that “[i]f a Muslim hears another Muslim saying something bad, he must force himself to find a way to interpret his words in a good sense.”\textsuperscript{464} Harun’s first outburst, therefore, should be interpreted as a criticism of the faults of his age and not a claim that any other religion was superior to Islam. On the second point, Ibn Habib argues for clemency based on mental state and claims that Harun should be punished for being a loudmouth prone to such outbursts, but that the punishment should not necessarily result in his death. Ibn

\textsuperscript{462} Fierro, "Andalusian "Fatawa" On Blasphemy.", 105.
\textsuperscript{463} Ibid.,106. Parentheticals in the original.
\textsuperscript{464} Ibid.,106.
Habib concludes with a personal plea, claiming that the other authorities who were consulted and who recommended death were trying to harm his position as the leading jurist and that, if the amir did not grant some leniency, he would refuse to work for him in future cases. The aggregate of these factors resulted in the lighter punishment of imprisonment and a “severe scolding.”

The two cases illustrate three significant points. First, there was no established tradition, either in the legal school or in the tradition, to which the fuqaha could turn; these cases were dealt with de novo. Second, both cases had serious political implications. In the first case, the malfeasor was a high-ranking member of society who had been censured repeatedly for bad behavior. His execution would highlight the commitment of the amir to Islam by enforcing the sharʿi regulations. Such a demonstration would have been necessary; the political situation of the government in al-Andalus during the early period was unstable in the extreme, with numerous revolts from Christians, Berbers, and even other Arab forces.465 The second case may also be read as having political motivation—namely, the desire of the amir to secure the support of the most powerful jurist of his age. Note also that both cases were decided by a political figure, the amir, and not by the judges or the jurists directly. The third point we may draw from these cases is that insult against the companions may not be as serious as insult against God, and,

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465 For an overview of the profoundly complicated political maneuvering in al-Andalus see Mahmoud Makki, “The Political History of Al-Andalus (92/711-897/1492),” in The Legacy of Muslim Spain, ed. Salma Khadra Jayyusi (Leiden ; Boston: Brill, 1994), and Pierre Guichard, “The Social History of Muslim Spain from the Conquest to the End of the Almohad Regime (Early2nd/8th-Early 7th/13th Centuries),” in The Legacy of Muslim Spain, ed. Salma Khadra Jayyusi (Leiden ; Boston: Brill, 1994).
as Fierro notes, the two cases do not refer to each other, which may indicate that they were treated as fundamentally different causes.466

5.2.3 Non-Muslim Blasphemers: The Christian “Martyrs” of Cordoba

Between 850 and 859, forty-eight Christians were executed in Muslim-ruled Cordoba for offences against Islam, including blasphemy and apostasy. Although Muslims were in the minority, they had secured a modicum of political power in the city and the surrounding regions. Sensitive to their minority position, Muslim rulers allowed for a “relaxed legal climate” without the strictures of dhimmi (protected minority) status, as it was interpreted by the dominant and conservative Maliki school, being applied. Christians practiced their faith officially unmolested, with the notable exceptions of blasphemy and apostasy.467 As Kenneth Baxter Wolf has discussed in his study of the “martyrs,” Andalusian Christians were trying to manipulate the state into killing them in order to achieve martyrdom in a situation in which there was no state-mandated persecution against Christians.468

466 Fierro, "Andalusian "Fatawa" On Blasphemy." Keeping in mind that the notion of precedence is not as revered in traditional jurisprudence as it is in the modern common law legal system.

467 Kenneth Baxter Wolf, Christian Martyrs in Muslim Spain, Cambridge Iberian and Latin American Studies (Cambridge Cambridgeshire; New York: Cambridge University Press, 1988), 15. Scholarship on the “martyrs” has been contentious owing to the current political climate in Europe. Nationalist historians have tended to rely uncritically on martyrologies, such as the accounts of Eulogius, that demonised Muslim rule and valorised those killed for opposing the state. I add the qualification “officially” to “unmolested” because there are a number of instances of Christians being harassed during this period by members of the public.

468 Ibid.
Two cases are powerfully illustrative of how the laws against blasphemy were applied to non-Muslims in an “Islamic state.”\textsuperscript{469} In the earliest case, a priest by the name of Perfectus was intercepted by a group of Muslims on his way to market and asked to elaborate on his faith and share his opinions of Jesus and Muhammad.\textsuperscript{470} He initially refused. His audience encouraged him by offering him protection from persecution, and “he proceeded, in Arabic, to decry Muhammad as one of the false prophets foretold by Christ and as a moral reprobate who had seduced the wife of his kinsman.”\textsuperscript{471} Though Perfectus left the initial confrontation in peace, he was later accosted by members of the same group, who then dragged him to the court to levy charges against him on counts of blasphemy. He denied his guilt initially, but when he realised that he would not be freed, he repeated his denouncement and was executed by beheading. In this case, the insult was offered publicly, albeit under an oath of protection, but the oath did not suffice to eliminate the intentionality component. The repetition of his criticism while in custody may have given the state a legitimate ground for his execution.

In the second case, an educated nobleman by the name of Isaac, who had trained in Arabic and had served the government as the \textit{katib al-dhimam} (secretary of the covenant), retired to a monastery. Three years later the following transpired:

[O]ne day he left his retreat and returned to Cordoba. Approaching the emir’s palace where he had once been employed he asked the \textit{qadi} (judge) for some instruction in the fine points of Islam. No sooner had the official begun to

\textsuperscript{469} One note of caution with these cases: they were never recorded in any Muslim sources and a majority of the information we have about these cases are from the martyrological accounts of Eulogius and Albarus. For an overview of how these deaths have been variously interpreted see Igor Pochoshajew, ”Martyrs, Madmen or Criminals: Christian Selfsacrifications in 9th Century Cordoba from the Prospective of Different Historiographical Traditions,” (Universitat Rostock E-Publikationen, 2008).

\textsuperscript{470} Wolf, \textit{Christian Martyrs in Muslim Spain}., 45.

\textsuperscript{471} Ibid.
elaborate on the life of Muhammad when the monk burst out with a vituperative attack against Islam claiming that its “prophet” was languishing in hell for having misled the Arabs. The qadi was so dumbfounded [that] his first reaction was to slap Isaac but he restrained himself when his counsellors reminded him that Islamic law protected the accused from physical harm prior to sentencing. At the suggestion that he must either be drunk or mad to disparage Islam in the presence of a qadi, Isaac assured him that the “zeal of righteousness” compelled him to speak out against Islam and that he was prepared to die for his indiscretion.  

Isaac’s public display of defiance by insulting the Prophet before a judge had to be answered quickly. He was decapitated, his body displayed, and his body finally cremated to prevent the accumulation of relics. In this case, there was no talk of repentance; the accused intended to be killed for his actions. This case would set a precedent. The majority of the “martyrs” would also make use of the law against blasphemy in order to achieve martyrdom.

In these cases, according to Mahmoud Makki, the government collaborated with the clergy to limit such public displays to a minimum. Both the rulers and the ruling Christian clergy benefitted from peaceful relations between the two communities. This status quo could be undermined by not prosecuting public acts of sedition that raised questions about whether the state could protect the good name of its prophet. One factor missing from the reports of these cases is the possibility of conversion. According to Abdelmagid Turki’s survey of various schools, nearly all of them held that a sincere conversion to Islam could offer absolution from a charge of blasphemy. On the other hand, this omission from the record makes sense, given the biased nature of the sources that recorded these lives of the “martyrs.”

472 Ibid., 44.
473 Makki, "The Political History of Al-Andalus (92/711-897/1492).", 29.
5.2.4 Pre-Colonial South Asia

The Mughals who ruled much of South Asia before the British colonial incursions generally adhered to the Hanafi school of law, which is still one of the most prevalent schools in Pakistan. Hanafis generally maintain that the blasphemer should be asked to repent (*istitahab*), and it was held that the criminal, once apprehended and charged, should be given three days to repent. Repentance is meaningful only if it is not coerced under duress (with the caveat that you may be killed if you don’t repent not being duress). Repentance took the form of reciting the testimonial of faith (*kalimat al-shahadah*). For non-Muslims, there must also be an adequate expression of remorse.475 The Mughal traditions also retained the use of apostasy, a topic often associated with blasphemy, as a political tool. Aurangzeb, at the conclusion of the succession struggle for the throne, paraded his brother Dara Shukoh through Delhi. Fearing that he had raised public sympathy for his brother, he consulted with his sister Raushan Ara and his advisors and decided on a death sentence. With his case validated on the grounds of apostasy from Islam and idolatry by the official *‘ulama*, Dara Skukoh was executed on August 30, 1659.476

Aurangzeb features rather prominently in the history of Islamic law in South Asia. Early in his reign he commissioned one of the most expansive manuals of *fiqh* ever produced, the *Fatawa-e-Alamgiri*.477 Each section of the text was compiled by chief editors, who then forwarded their work to Shaikh Nizam, the overseer of the whole project, who in turn read the

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477 Note the original was written in Arabic, but authoritative versions are available in Urdu (and Farsi).
The Fatawa was intended as a comprehensive reference work of Islamic law. It is loosely structured around themes such as “divorce” (talaq) and the manumission of slaves and is built upon a question and answer style, a statement of law followed by a gloss and discussion of the various points of law with references to relevant authorities. On the theme of blasphemy, the text has a lengthy discussion of kalma kafir, phrases that amounted to apostasy which would render the speaker outside Islam. For example, saying that there is more truth (sach) to be found in the words of someone other than the Prophet Muhammad renders the speaker an apostate. However, despite the prominence of the Fatawa, the collection remains remarkably untranslated in English, though the portions on the law of sale found their way into Neil Baillie’s The Moohummudan Law of Sale and The Land Tax of India.

479 Ibid., 214.
480 My translation conveys the essence of the kalama kafir but the original is a little more formulaic. I suspect that the intention of the framers was that mistake be avoided by structuring the formula to afford a degree of certainty. Other examples would be arguing that “God is in the sky,” which would not constitute kalama kafir unless the person “pointed at the sky” while saying it. Again, the formula seems to be structured to avoid mistake, however avoidance of mistake is not the same as requiring intentionality, as the assumption is that a sufficient intention can be implied from the circumstances of the utterance (i.e. pointing). Syed Ameer Ali and Abu Ubaidulla, Fatawa-E-Alamgiri, 10 vols., vol. 3 (Lahore: Rahmani Publishers), 468. One point that bears mentioning is that the section on kalama kafir highlights a deep distrust of women. In particular, the drafters feared that women would sabotage the correct raising of children, become apostates to escape marriage, or engage in pagan practices. Though it is not unusual to have texts in the period conceptualize women as wards of their husbands, the lengthy discussion of women as a suspect category in the fatawa-e-alamgiri bore a few lines in a footnote, especially since apostasy to escape marriage became the thrust behind the Dissolution of Muslim Marriages act in 1939. For a further discussion of this fascinating legal oddity, see: Muhammad Khalid Masud, "Apostasy and Judicial Separation in British India," in Islamic Legal Interpretation: Muftis and Their Fatwas, ed. Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers (Cambridge, Mass.: Harvard University Press, 1996). and Chapter 3 in Zaman’s excellent recent contribution, Zaman, Ashraf ‘Ali Thanawi : Islam in Modern South Asia.
British administrators relied primarily on Marghinani’s *Hidaya* and the Sajawandī’s *as-Sirajiyya*, which in their nineteenth century colonial translations lacked any extensive discussion of blasphemy or apostasy. Apostasy finds some small mention in Hamilton’s translation of the *Hidaya* in the sections on lapidation generally, in particular in his discussion of compulsion and the law of agency. Despite having a robust jurisprudence on blasphemy and apostasy, the version which found itself enshrined in the Indian Penal Code of 1860 had very little to do with Islamic jurisprudence or the tradition as it was shaped in the South Asian context.

### 5.3 Transformation I: Blasphemy Comes to the Colony

The primary drafter of the Penal Code, was none other than Thomas Babington Macaulay. He based the entirety of the content of the code, as one scholar has argued, on English law, not out of any sense of juridical superiority but rather because it was the only system with which Macaulay was familiar. Though codification—in the continental Code Napoleonic sense—was largely a failure in England, it was far more successful as a legal export. Drawing upon codification models from French and Lousianan sources, as well as combining a healthy dose of English utilitarian philosophy, the draft was available as early as

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482 The needs of the company were focused on the conditions which would invalidate contracts. As such, a majority of the corpuses on law are concerned with contract law, property law (including ownership of slaves), and the law of sale. ‘Alī ibn Abī Bakr Marghīnānī and Charles Hamilton, *The HedāYa or Guide; a Commentary of the Mussulman Laws*, 4 vols. (London:, Printed by T. Bensley, 1791). Sirāj al-Dīn Muḥammad ibn Muḥammad Sajāwandī, William Jones, and Almaric Rumsey, *Al Sirajiyyah, or, the Mahommedan Law of Inheritance, Reprinted from the Translation of Sir William Jones, Published at Calcutta, in 1792* (Lahore: Premier Book House, 1971).

483 Macaulay’s *Minute* on education continues to serve as the finest example of the creation of a comprador class by a colonial power. See gen. Macaulay, "Minute by the Hon’ble T. B. Macaulay, Dated the 2nd February 1835."


1837, but it would take three decades and a rebellion for it to pass into law in 1862, three years
after the death of its progenitor.\textsuperscript{486}

Nicholas Dirks has referred to colonialism as a “cultural project of control.”\textsuperscript{487} The
project in British India shifted from record and conquer to demolish and replace, at least in the
case of Islamic law. Islamic law now was exiled from the more robust Anglo-Muhammedan
law\textsuperscript{488} to the lonely island of family law. What remained of religion in penal regulations was
confined to three sections in Chapter XV entitled “Of Offences Relating to Religion.” The
principle behind the chapter, as stated in the commentaries, was “that every man should be
allowed to profess his own religion, and that no man should be suffered to insult the religion of
another.” (Machperson 1861)\textsuperscript{489} Of section 298, the broadest in scope and related to the
intentional wounding of religious feeling, the drafters said: "We wish to allow all fair latitude to
religious discussion, and at the same time prevent the professors of any religion from offering,
under the pretext of such discussion, intentional insults to what is held sacred by others." \textsuperscript{490} The
code punished speech or gestures which were deliberately intended to wound religious feeling.

\textsuperscript{486} Regulation XIV of 1827, under the auspices of the Bombay Presidency constituted an early attempt at developing
a penal code for India, but it was generally recognised as a stopgap measure until the promulgation of the official
Indian Penal Code.

\textsuperscript{487} Cohn, \textit{Colonialism and Its Forms of Knowledge : The British in India.}, ix.

\textsuperscript{488} “[A] mixture of English and Islamic laws, concepts, institutions, and jurisprudence that developed in British
colonial India between the eighteenth and twentieth centuries. Although not an official designation, Anglo-
Muhammedan law’ came to be used as a term of convenience to distinguish this legal system from both English and

& Co., 1861), 217. Morgan was chief justice of the Allahabad High Court from 1866-1871 and moved to the
Madras High Court (again as chief justice), where he served from 1871-1879.

\textsuperscript{490} A warm expression dropped in the heat of controversy, or argument urged by a person, not for the purpose of
insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own
will not fall under the definition contained in this Clause.” Ibid., 221.
These religion clauses of the Indian Penal Code actually represent an important divergence from the common law cause of blasphemy as framed by Lord Hale in 1676. Before the watershed *Rex v. Taylor* in 1676, blasphemy cases fell under the subject matter jurisdiction of the courts of Star Chamber and High Commission, which were abolished in 1641 by the Habeas Corpus act 1640 and the Triennial Act respectively.\(^{491}\) During the interim period the Long Parliament and its successor the Rump Parliament passed two pieces of legislation pertaining to blasphemy and heresy.\(^{492}\) Both, however, were rendered toothless by Parliamentary infighting on the uses of the Bible as a primary source of law, and the matter remained unresolved until it ripened in *Taylor’s Case*.\(^{493}\) (Visconsi 2008) John Taylor\(^{494}\) had been arrested for making certain claims in the presence of “subjects of the king worthy of belief.” The court transcript deserves quoting at length, both for the care exercised by the court reporter in his numerous parentheticals and for the jarring nature of Taylor’s claims:

\[
\text{[John Taylor] falsly, maliciously, advisedly, and with a loud voice did publish to wit, ‘Christ (meaning our Lord Jesus Christ, the only begotten son of Almighty God) is a whore-master, and religion (meaning the christian religion) is a cheat, and professors (meaning the professors of the christian religion) is a cloak, and they (meaning the said christian religion, and the profession of the said religion) are both cheats, and all the earth is mine, (meaning his the said J.T.) hither, and I am a king’s son, my father sent me (meaning him the said J.T.) hither, and made me (again meaning the said J.T.) a fisherman to take vipers and I (meaning himself the said J.T.) neither fear God, devil nor man, and I (meaning himself the said J.T.)}
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\(^{492}\) An Ordinance for the punishing of Blasphemies and Hereses in 1648 and the Act against Several Atheistical, Blasphemous, and Execrable Opinions, derogatory to the honor of God and destructive to humane Society of 1650. Ibid.

\(^{493}\) See gen. Ibid.

\(^{494}\) In the court reports by Joseph Keble, Taylor is spelled Tayler. M. A. Robertson and Geoffrey Ellis, eds., *English Reports, Vol. 86: King’s Bench 15*, vol. 86 (London: Stevens & Sons Ltd., 1908), 906. (Alternative citation: Dominus Rex and Tayler: Slander 3 Keble, 608.)
am a younger brother to Christ, (meaning our Lord Jesus Christ) an angel of God (meaning an angel of the Almighty God) and no man fears God but an hypocrite, Christ (meaning our Lord Jesus Christ) is a bastard, God damn and confound all your gods, Christ (meaning our Lord Jesus Christ) is the whore’s (meaning the blessed virgin Mary, mother of our Lord Jesus Christ) master[.]\[^{495}\]

In his decision, Lord Hale extends the jurisdiction of the King’s Bench to hear the case and formulates the entire basis for the common law cause of blasphemy:

These words though of ecclesiastical cognizance, yet that religion is a cheat, tends to dissolution of all government, and therefore punishable here, and so of contumelious reproaches of God, or the religion establisht; which the Court agreed and adjudged. An indictment law for saying the Protestant religion was a fiction for taking away religion, all obligation to government by oaths, &c. ceaseth, and Christian religion is a part of the law it self, therefore injuries to God are punishable as to the King, or any common person.\[^{496}\]

The formulation thus stated makes a compelling argument: oaths received by the government are validated by the law, the law itself is built upon Protestantism, and to call religion into question therefore subverts the nation. Furthermore, it creates the cause of blasphemous libel,
which is to say that it creates in common persons the right to sue for blaspheming. David Nash argues in his *Blasphemy in Modern Britain* that an attack upon Christianity was an attack upon government, society, and morality simultaneously.\(^{497}\)

### 5.4 Transformation 2: Pakistani Reforms of the Blasphemy Law

#### 5.4.1 Zia and Islamicization

One of the most important particularities of the laws against religious insult and injury as construed in the Indian Penal Code of 1860 is the intentionality component. As stated in the statute, it was designed to, “prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others.”\(^{498}\) This version of the law migrated to Pakistan in 1947 as part of the larger packet of laws inherited from the British Raj. The most substantive changes to the law came during the dictatorship of Zia ul-Haq. Zia’s broader plan of “Islamization” included extensive reforms to the blasphemy laws. His intention was to reform Pakistan and to bring in back to its original mission. In his first address to the nation, Zia declared: “Pakistan which was founded on the basis of Islam, will remain based on Islamic foundations. To that end an Islamic rule [of law] must be established.”\(^{499}\)

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Following the failure of previous administrations to prevent civil war, Pakistan of the 1970s suffered from an existential crisis stemming from the new reality of having a smaller Muslim population than either Bangladesh or India. One means of rejuvenating Pakistan’s promise was to reaffirm its commitment to Islam. In 1974, Bhutto tried unsuccessfully to do just that by championing the Second Amendment to the Constitution. Constituting an abandonment of the colonial policy of classifying religious persons through a process of self-identification in legislation such as The Muslim Personal Law (Shari’at) Application Act of 1937, the Second Amendment defined a Muslim as one who affirmed the finality of Muhammad’s prophethood (known as the seal of the prophets, the *khatam al-nabiyyin*):

\[
(3) \text{A person who does not believe in the absolute and unqualified finality of The Prophethood of MUHAMMAD (Peace be upon him), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after MUHAMMAD (Peace be upon him), or recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law.}
\]

The legislation targeted the Ahmedi (Ahmediyya) minority, a Muslim millenarian movement that follows the teachings of Mirza Gulam Ahmed (1835-1908), whom they believe to be a Prophet. This led in turn led to a purge of all Ahmedi members from public office and the military. As a result, Bhutto temporarily secured the support of even the most radical Islamist groups. In addition, the new constitution of 1973 contained an “Islamic conformity” clause

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500 The act contains no definition of a Muslim, rather it requires that the appellant merely claim to be a Muslim. See gen. Government of India, "Muslim Personal Law (Shari’at) Application Act, 1937," http://indiacode.nic.in/.  
502 For an excellent work on a community which has relatively little written on them that is not either sponsored by the community or generated by vitriolic polemicists see gen. Antonio R. Gualtieri, *The Ahmadis : Community, Gender, and Politics in a Muslim Society* (Montreal: McGill-Queen's University Press, 2004).
requiring that, “[a]ll existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah…and no law shall be enacted which is repugnant to such injunctions.”

Following the election on March 7, 1977, accusations of vote rigging surfaced. Bhutto’s initial reaction was to use his private police force, the Federal Security Force (FSF), to suppress dissenters, which only made things worse. The Jama’at-e-Islami, the Jama’at-ul-’ulama-e-Islam, and the Jamiat-ul-’ulama-e-Pakistan accused Bhutto of “desecrating the religion and undermining Islamic practices.” Bhutto tried to calm the worsening situation by implementing bans on alcohol and gambling. When even these efforts failed, he declared martial law in order to suppress general revolt. This was to be his last official mistake, as the army moved in and then proceeded to stay.

Husain Haqqani, the former Pakistani ambassador to the United States, commented that in Zia burned “the fire of a true believer.” This was a stark contrast to the largely secularist leanings of the British-trained military top brass before Zia, who had been purged by Zulfikar Ali Bhutto in a bid to secure an obedient ally in the army. Shortly after assuming control, Zia,

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504 Lawrence Ziring, Pakistan: At the Crosscurrent of History (Oxford: Oneworld, 2003), 158.


506“’In the armed forces, he [Bhutto] conducted two purges in quick succession, first to get rid of the five top generals – ‘fat and flabby’, as he appropriately called them – who had dominated the government before and during the Bangladesh crisis, and then to purge the commanders, notably General Gul Hasan and Air Commodore Rahim, who ha been instrumental in the transfer of power to Bhutto himself.’”Ahmad Aijaz, Lineages of the Present: Ideology and Politics in Contemporary South Asia (London ; New York: VERSO, 2000), 25. Ahmad at length ways in which the direct consequences of the numerous shakeups in the military and the instability between Pakistan, India and Bangladesh had resulted in a particular vulnerability to incursions by the Jama’at-i-Islami into the army and by extension the general politics of the country via Zia. Ahmed argues that Bhutto may even have won the election
despite international outcry, arrested (on a dubious murder charge), tried, and executed Bhutto in 1979. Central to Zia’s reform plans was the adoption of the Jama’at-e-Islami’s platform for establishing a Nizam-e-Mustafa, literally “the system of the Prophet.” In an interview with British Journalist Ian Stephens, Zia clarified:

The moral fiber of the society has been completely broken and this was done basically in the last seven and a half years. Mr. Bhutto’s way of flourishing in this society was by eroding its moral fiber…. Therefore, to my mind the most fundamental and important basis for the whole reformation of society is…the moral rejuvenation which is required first and that will have to be done on the basis of Islam, because it was on this basis that Pakistan was formed…. We are not going back to Islam by choice but by the force of circumstances.\(^\text{507}\)

Zia saw law and legal reform as a tool for redeeming society, but it would only be successful if it were sufficiently Islamic. To accomplish this goal, Zia implemented, under martial administration, a number of constitutional changes. In his first Constitutional Amendment Order of 1979, Zia established the Shariat Bench of the Superior Courts and conferred jurisdiction on the High Court to strike down any law determined repugnant to Islam.\(^\text{508}\) A definitions section was added to the Constitution that explicitly defined the Ahmedis and those that could be construed to be Ahmedis as non-Muslims.\(^\text{509}\) Similarly, a number of changes were made to the

\(^{507}\) Quoted in Haqqānī and Carnegie Endowment for International Peace, Pakistan: Between Mosque and Military., 135.

\(^{508}\) Interestingly, the review power did not apply to the Constitution, Muslim personal law, or procedural laws of the courts. The Amendment Order further protected the financial sectors from changes, including the protection of interest for three years (later extended to a ten-year exemption in 1985). Constitutional (Amendment) Order, 1979: President’s Order 3 of 1979. Pakistan, “The Constitution of the Islamic Republic of Pakistan.” On the 27th of May 1980 the power to review on repugnancy grounds was granted to the Shari’at Bench.

\(^{509}\) Section 260 Definitions includes the following: “non-Muslim means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist, or Parsi community, a person of the Quadiānī Group [Ahmedi] or the Lahori Group who call themselves ‘Ahmadis’ or by any other name or a Bahai, and a person belonging to any of the Schedule Castes.” Ibid.
penal code and the rules of evidence as part of Zia’s larger plan of “Islamicization.” The Hudood Ordinances of the penal code were designed to bring Pakistan into conformity with what Zia felt were central Islamic values. They included reforms of the “Qanoon-e-Shahadat”, or the laws of evidence, where new requirements were introduced that weakened the testimony of women and non-Muslims.\(^{510}\) The punishments brought in under the Ordinances included floggings, amputations, and a series of zina (illicit sexual conduct) laws that were summarily condemned by human rights groups.\(^{511}\)

Zia’s penal code revisions also included a number of changes to the blasphemy laws grouped under the “Religious Offense” category of the penal code.\(^{512}\) His reforms represent both a narrowing of the applicability of blasphemy to other religions and a broadening of the protection of Islam. Sections 295 and 298 of the penal code, a general prohibition against intentional religious insult, resemble the original version proposed in the nineteenth century.\(^{513}\) Sections 296 and 297 punished the disruption of religious assembly generally and 297 was a general prohibition against uttering words, etc., with deliberate intent to wound religious feelings:

Section 295 reads: “Injuring or defiling place of worship, with Intent to insult the religion of any class: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction damage or defilement as an insult to their religion. shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 298 reads: “Uttering words, etc., with deliberate intent to wound religious feelings: Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.”


\(^{511}\)See gen. Ibid.

\(^{512}\)Zaman also discusses one of the more interesting changes, which made madrassa education sufficient for governmental posts. Zaman, The ‘ulama’ in Contemporary Islam : Custodians of Change. 83-86.

\(^{513}\)Section 295 reads: “Injuring or defiling place of worship, with Intent to insult the religion of any class:

designed to penalise trespass on burial places.\textsuperscript{514} 295B was new, punishing the defilement or misuse of the Qur’an, with the penalty of commission being life in prison. 298A, B and C all were all targeted at Ahmedi beliefs and practices.\textsuperscript{515} The laws criminalised Ahmedi religious

\textsuperscript{514} Section 297 reads: “Disturbing religious assembly: Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both... Trespass on burial places, etc.: Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a deposition for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.” Ibid.

\textsuperscript{515} Section 298A reads: “Use of derogatory remarks, etc., in respect of holy personages: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle- bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Section 298B reads: “Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places:

(1) Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name) who by words, either spoken or written, or by visible representation

(a) refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as "Ameer-ul-Mumineen", "Khalifatul-Mumineen", Khalifa-tul-Muslimeen", "Sahaabi" or "Razi Allah Anho";

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as "Ummul-Mumineen";

(c) refers to, or addresses, any person, other than a member of the family "Ahle-bait" of the Holy Prophet Muhammad (peace be upon him), as "Ahle-bait"; or

(d) refers to, or names, or calls, his place of worship a "Masjid";

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Quadiani group or Lahori group (who call themselves ‘Ahmadis’ or by any other name) who by words, either spoken or written, or by visible representation refers to the mode or form of call to prayers followed by his faith as ‘Azan’, or recites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 298C reads: “Person of the Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith: Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahadis’ or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites other to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with
expression by restricting the personages they could refer to as the being part of the family of the Prophet (ahl al-bayt), not allowing them to call their place of worship a masjid, and forbidding them to refer to their call to prayer as the azaan. Of these Ahmedi-targeted laws, the aforementioned section 295C was the most sweeping expansion and has resulted in the most extensive applications and abuses.

In a study of the uses of the Religious Offense clauses between 1960 and 2007, Osama Siddique and Zahra Hayat document a steady increase following the passage of Zia’s reforms, especially after 2000, in the number of cases citing the clauses. However, there is little information by way of actual rulings, as these cases occur primarily at the trial court level where judicial recordkeeping is poor. Despite these limitations, the authors found that, of the first forty cases that were granted appeal in the courts after 2000, the defendants in fifteen of the cases were Ahmadis and in five instances Christians. These statistics indicate a sad trend. Minorities, which make up less than three percent of Pakistan’s population, are defendants in about fifty percent of the blasphemy cases. Moreover, the authors found that:

Of the twelve cases which were decided on merits, the accused were acquitted in eleven and in only one was a sentence of life imprisonment confirmed. In all eleven cases of acqittals on merits, the appellate courts pointed out weaknesses, inconsistency, and lack of veracity of evidence as a major determinative factor persuading them to return a verdict in favor for the accused. Additionally, in seven of these eleven cases, the court also pointed out various procedural violations and problems with the investigative, prosecutorial, and trial processes that proved instrumental in defeating or weakening the prosecution’s case. Very significantly,

imprisonment of either description for a term which may be extended to three years and shall also be liable to fine.”

Ibid.

516 Pakistan, "Pakistan Penal Code (Act Xlv of 1860)."


518 Ibid.
in eight out of these eleven cases, the courts found *mala fides*—such as personal enmity, religious rivalry, property disputes, etc.—to have played an important role in the implication of the accused… 

As the following examples will show, many of these trials stem from trumped up charges, or *mala fides*.

### 5.4.2 The Trials of the Masihs

In 1993, in the Gujranwala district of Punjab province, a complaint was filed against three Christians. Salamat Masih an adolescent of 12 or 13, Mansoor Masih, and Rehmat Masih (two unrelated adults) were charged with defiling a mosque by throwing pieces of paper with words that were “derogatory to the Holy Prophet” near the area for performing ablutions. Additionally, the defendants allegedly wrote “derogatory” words about religion and the Prophet on the outer walls of the mosque.

If the facts in the case are straightforward, the procedural history is anything but. After the police report was filed, their trial began in the Gujranwala district, but, as is often the case with blasphemy proceedings, it had to be moved owing to extensive security concerns. The trial started in Lahore in 1994, and after a hearing in the court, the defendants were attacked by gunmen on the steps of the courthouse, resulting in the death of Mansoor Masih and serious injury to Salamat and Rehmat. The trial itself was plagued with witnesses withdrawing from the proceedings, relying on hearsay in their testimony, and refusing to repeat the blasphemies.

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519 Ibid.
520 Ibid.
they allegedly saw. The nature of this oral testimony made it impossible to assign proportionate penalties relative to the severity of blasphemy, as in the classical tradition. Nor was there any room for judicial prerogative: the Federal Supreme Court has declared that the mandatory minimum penalty for blasphemy is death. The survivors were accordingly sentenced to death by the Sessions Court and the case was appealed to the Lahore High Court. During the seven days of the High Court hearing there were violent demonstrations outside the court directed at the accused, the lawyers, and the judges in the case. In addition, the Jama’at Ahl-i-Sunnat and the Muttahida ‘ulama Council of Sargoda offered one million rupees and three hundred thousand rupees respectively for the killing of Salamat and Rehmat. Citing extraordinary failures in the evidentiary proceedings of the case, as well as a number of procedural flaws, the Lahore High court acquitted the accused, and they were granted asylum in Germany, thanks to the efforts of a number of churches. Their departure did not end the rioting, however. The home of the attorney for the defense was attacked by men in the possession of a “haversack filled with instruments good for shooting, slaying and strangulation.” The last casualty of the proceeding would follow years after, when Arif Iqbal Bhatti, the judge responsible for the acquittal, was gunned down in his chambers.

522 Siddique and Hayat make a similar point about oral testimony in their article: Siddique and Hayat, "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan-Controversial Origins, Design Defects, and Free Speech Implications.", at fn. 101. Despite efforts to have the law amended, the government continues to refuse to exercise any political will on this powder keg issue. For an example of evidentiary law in the classical period see: Baber Johansen, "Signs as Evidence: The Doctrine of Ibn Taymiyya (1263-1328) and Ibn Qayyim Al-Jawziyya (D. 1351) on Proof," Islamic Law and Society 9, no. 2 (2002).

523 About $32,250 and $9,650 at the average exchange rate of USD to PRK in 1995, according to the United States Federal Reserve Bank of New York.

5.4.3 The Case of Younus Shaikh

Whereas in the case of the Masihs the blasphemy law was directed against a religious minority, in the case of Dr. Muhammad Younus Shaikh the law was applied against a self-proclaimed “secularist Muslim” who was a founder of The Enlightenment, a “rationalist” organization in Pakistan. Younus Shaikh claimed that the charges levied against him flowed from a nexus of events which began when he was threatened by Brigadier Shaukat Qadir, a then member of military intelligence (the ISI), owing to Shaikh’s suggestion that the military cease sponsoring terrorism at a meeting of the South Asian Union in Islamabad. Two days later, he was summarily dismissed from his post as lecturer at Capital Medical College, and two days after that he was arrested on blasphemy charges. In a reflection on his experience, he elaborated on his arrest:

The charges against me centred on some utterances I was alleged to have made in the course of a lecture at the college on 2nd October 2000, that neither the Prophet of Islam nor his parents could have been Muslims before Islam was revealed to the Prophet. I was also alleged to have said that the Prophet was unlikely to have shaved under his armpits since the custom was probably unknown to his tribe at the time. These remarks were interpreted by my accusers, the Mullahs, as an insult to the Prophet. I did not actually make the alleged remarks. The mullahs themselves never heard me make any such remarks, nor did they investigate whether any such incident had ever occurred. In fact, I gave no lecture at the time alleged. During the course of the trial the chief witness against me was totally discredited. He admitted that he was not actually present in the college on the day the alleged remarks were made.\footnote{This nexus of events is the story as narrated by Shaikh.}

His trial was held in the summer of 2001 and he was pronounced guilty of insulting the Prophet, fined 100,000 rupees, and sentenced to death by hanging. 527 He appealed and, after being held in solitary confinement for two years, succeeded in securing a retrial.

Shaikh was forced to defend himself, as no lawyer was prepared to defend his case. According to Shaikh, the courtroom was filled with “mullahs and the Pakistani Taliban.” He argued only points of law and succeeded in gaining an acquittal on November 21st, 2003. Owing to continuing threats against his life, Shaikh was granted refugee status in Switzerland. Though it is uncertain whether, as Shaikh claims, his statement about the South Asia Union led to his detention, it is readily apparent that blasphemy law in Pakistan has evolved well beyond any use of blasphemy in the Islamic historic tradition or in the British legal tradition.

5.5 Transformation 3: The Legacies of Blasphemies Past

The merger of sedition and blasphemy in England was made possible by the Act Respecting the Oath to the Succession, the Succession to the Crown Act of 1534. Essentially, the Act demanded that all those asked swear allegiance to the crown forewear allegiances to any foreign powers, in particular the Pope. Thomas Moore was found guilty of treason on grounds which included his refusal to recognise King Henry VIII’s marriage and his self-appointed role as the supreme head of the Church. The history is a bit more complicated, but the short of it is that Moore was put to death for political treason on a matter of religious belief. The merging of

527 Traditional Muslim accounts detail that though Muhammad was not a “Muslim” before the revelation, he was a still a Muslim in the sense that he submitted to an Ur God named Al-lah (the one).
the political and religious powers in the monarchy in England represented something of a watershed for British blasphemy proceedings. Under the old “two swords” theory of governance, the Church held religious authority and the King or Emperor temporal authority. Blasphemy under this conception was an insult to the church punished by the king and disobeying the king could be punishable by damnation. Henry, by creating a new church, claimed both swords for himself.

The creation of a new church bound by a territorial nation state in which the sovereign commanded both spiritual and temporal authority usurped the traditional ecclesiastical jurisdiction over matters of blasphemy and apostasy and rendered them the supreme crime against the crown, treason. As Lord Hale decided in Taylor’s Case, Christianity was part of the law of England and to oppose it was to effectively engage in seditious conduct. Under the common law, sedition or seditious libel is a statement said with seditious intent. Seditious intent, as defined by James Fitzjames Stephen (1829-1894), the great jurist, author of England’s aborted nineteenth century criminal code and also responsible in part for the Criminal Code of India of 1860, was

an intention to bring into hatred or contempt, or to excite disaffection against the person of, Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty’s subjects to attempt otherwise

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528 Of the “two swords,” Pope Gelasius would write to Emperor Anastasius: “Two [swords] there are, august emperor, by which this world is chiefly ruled, the sacred authority of the priesthood and the royal power…. If the bishops themselves, recognizing that the imperial office was conferred on you by divine disposition, obey your laws so far as the sphere of public order is concerned…with what zeal, I ask you, ought you to obey those who have been charged with administering the sacred mysteries [in matters of religion]…” Quoted in Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition (Cambridge, Mass.: Harvard University Press, 1983), 92.
than by lawful means, the alteration of any matter in Church or State by law established.\textsuperscript{529}

The connection, as illustrated by legal historian G.D. Nokes, is that, “that when the word blasphemous was first used judicially it was employed to describe an extension of the offence of seditious words. For more than a hundred years after that decision the intimate relationship of seditiousness and blasphemous offenses was maintained.”\textsuperscript{530} The relationship between sedition and blasphemy was gradually whittled down by the nineteenth century; blasphemy would evolve, owing largely to a number of high-profile freedom of speech cases, into an obscenity issue.

Blasphemy is, in short, a rather slippery beast. Before the Protestant reformation, blasphemy trials were often subsumed under the then more relevant category of heresy or opposition to the official Church teachings. This evolved into quasi-sedition hearings in the merger of blasphemous libel and seditious libel, and evolved again into obscenity hearings, before finally being abandoned entirely in England by the Criminal Justice and Immigration Act of 2008.\textsuperscript{531} The evolution of blasphemy law in England mirrors larger developments in European sensibilities about secularism and the state. Pakistan’s constitution, like the original Objectives Resolution, reverses this evolution by conflating religious and political concerns.


\textsuperscript{530} Quoted in Levy, Blasphemy : Verbal Offense against the Sacred, from Moses to Salman Rushdie., 224.

\textsuperscript{531} “Criminal Justice and Immigration Act 2008,” (Statute Law Database, 2011).
The Pakistani Constitution specifies in the Preamble that “Sovereignty belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by him is a sacred trust.” Moreover, the introduction specifies Islam as the state religion, and the First Chapter limits speech in Pakistan on the basis of “reasonable restrictions” in the “interest of the glory of Islam.” In effect, the state is required to safeguard the reputations of the Prophet and his companions as a matter of the national political interest. Herein lies the great tragedy of Salman Taseer and Shahbaz Bhatti. Their deaths reflect the third transformation of the law, the stage at which a transgression of laws deemed necessary for the protection of the “glory of Islam” becomes sedition of the blasphemous variety.

5.6 By Way of Conclusions

Rudolph Peters in his study *Crime and Punishment in Islamic Law* discusses at length some of the motivations that prompt the Islamic enforcement of the sort of blasphemy laws that have fallen out of fashion in the European and American traditions. “The crucial element,” he says,

[I]s that Muslims, in order to be good Muslims, must live in an Islamic state, a state which implements the Shari’a. It is not sufficient that such a state give Muslims that choice to follow or not to follow the Shari’a; it must actually impose the Shari’a on them, by implementing the Islamic criminal law. Preaching and admonition do not suffice, and a big stick is needed to change behavior in an Islamic direction. Islamic criminal law is a tool to impose an Islamic moral order on society, by

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enforcing rigorous rules, especially in the fields of sexual morality, blasphemy and the consumption of alcohol and drugs.\textsuperscript{533}

For a state to be judged legitimate in the eyes of Muslims, according to this explanation, it must have the ability to enforce religious regulations. In Pakistan, the state is torn between the desire to represent itself as a liberal political order worthy of the independence it won from colonialism and the desire to be legitimate in the eyes of a large number of citizens demanding that Islam be defended and the laws derived from its traditions be respected.

In exploring the complicated genealogy of blasphemy in Pakistan, it was my aim to highlight the multiple legacies that are being negotiated in a modern territorial Islamic state. Blasphemy has historically been deployed, in both the Muslim tradition and the common law tradition, to strengthen the political state. In Cordoba and in England, as we have seen, the state was able to demonstrate its power by publicly trying, sentencing, and executing blasphemers. Pakistan’s more modern attempt to achieve these ends ultimately fails. Despite the many hundreds arrested and convicted of blasphemy, the state has yet to put a single person to death on these grounds. The state derives a potent benefit, nonetheless, from keeping the laws on the books and, as we see by the two political assassinations in 2011, they may not even have the political mandate to alter these laws, despite international outcry. The grim task of punishing alleged blasphemers is left, as a consequence, to mobs and bounty killers.\textsuperscript{534} Ironically, these extrajudicial killings actually tend to undermine the rule of law, since the lack of action against


these killers and against those that invoke blasphemy falsely creates a culture of permissiveness. One gets the picture of a state armed with a gun, but refusing to pull the trigger and handing the gun off to players outside the pale of law.

The legacy of positive law to systematically squeeze out opponents, eschew variance, and champion clarity when applied to the case of blasphemy is particularly dangerous, in part because it abandons older traditions of trying to bring apostates or blasphemers back into the fold through repentance or conversion. In addition, whereas the amir in Cordoba or the Mughal Emperor could rely on the powerful pietistic authority of fuquha to give validity to his decisions, in modern Pakistan authorities find themselves relying on authorities fragmented between vestiges of formal madhabs, TV and radio mullahs, and anti-state groups such as the Pakistani Taliban, who a few years ago tried to set up an Islamic state in the SWAT valley, formally rejecting Pakistan’s mantle.

535 Anver Emon makes the following astute observation. “that if Rule of Law denotes a claim space defined and delimited in part by the mutually constitutive relationship between the law and the enterprise of governance then hegemony is an inevitable consequence. While post-colonial theorists may principally locate that hegemony in the European colonial period of the nineteenth and twentieth centuries, this study suggests that by viewing Shari’a as Rule of Law, that hegemonic potential can be located no less in the premodern Islamic imperial past, than in the European colonial period, and in the modern post-imperial, post-colonial present as Muslim elites (whether in minority or majority contexts) continue to look to premodern fiqh for answers to modern questions about governance amidst the diversity of people and the law.” In Emon, Religious Pluralism in Islamic Law: Dhimmis and Others in the Empire of Law., 259. I agree with his linking of the project of hegemony to the nature of the postcolonial state, and his observations are in line with the Jamal Malik’s analysis of the “colonial sector”.
Chapter Six
Beyond Pakistan

6.0 Chapter Six: Conclusion

This dissertation has been an exploration of colonial lineages of the Islamic State in Pakistan as it was framed by actors empowered by the colonial project. They were amongst the voices that informed Pakistan’s dynamic struggle to integrate modern statehood and Islamic tradition. Other Muslim nations have their own stories, of course, but the story of Pakistan, the twentieth century’s most iconic and observed merger of the struggle’s theory and practice, stands out. For this reason, the lessons learned in Pakistan, both positive and negative, are the ones that current and future efforts to address the issues of Islam and the modern state must confront. It would be far beyond the scope of this work (and an act of hubris) to try to say how these lessons should be applied. I end, though, with the briefest look at the way one modern movement—one that has found a home in Pakistan itself—engages and carries forward the historical dialogue documented on these pages.

In 2009 the Pakistan Army successfully launched Operation Black Thunderstorm to oust a Taliban insurgency in the idyllic Swat Valley.\(^\text{536}\) Whereas typical Pakistan military operations, such as the ongoing Army operations in Baluchistan, have been directed toward maintaining

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\(^{536}\) The name is eerily similar to Operation Black Thunder launched by the Indian government in the late 1980s to oust Khalistan separatists holed up in the Golden Temple. The incidents in Swat were quelled by the military and a large number of persons were apprehended. The death toll stands at 150 army deaths and ten times the number of Taleban dead. A number of the Taleban prisoners remain in detention under brutal conditions without trial or due process and their families continue to agitate for their release.
national sovereignty against separatists, the operations against the Taliban in Swat targeted a threat to Pakistan’s Islamic credentials. Army rhetoric rose to the challenge and invoked potent Islamic themes. Thanks to a general press blackout during the offensive, the military version of the story dominated the news. Even the very title of the operation reminds hearers of the Qu’ran’s Sura Al-Ra’d. According to the sura, *ar-ra’d*, the thunder, is “sent to smite whom God wills.”

The official army website transformed the army dead into *shaheed* (martyrs). The operation was, however, only possible due to a major shift in public opinion, which had finally turned against the Taliban in the wake of disruptions caused by multiple waves of suicide bombers crashing into major Pakistani cities. For many Pakistanis, the last straw came in the form of a brutal YouTube video that showed a woman being lashed by insurgency rebels for consorting with a young man. This event was important in breaking the long ambivalence of the military and the ISI toward the Taliban. The operation was successful in quelling the uprising, but the real significance of the movement was that it was the death knell of the “Islamist” enchantment with the traditional model of the nation state. The Taliban in Swat were primarily focused on displacing the national government and doing so by declaring an Islamic state or a territory where the *shari’a* would be the *suprema lex*.

The new kind of Islamic state envisioned by the Taliban is a far cry from the liberalised Islamic state imagined by Smith. Nor does it have any of the romance of Muhammad Asad’s vision or the grand aspirations of Maududi’s. It represents a new stage of post-colonial disenchantment. In the first generation of post-colonial thinkers, those that were once the colonial elite, the nation state factored heavily in the new Islamic state equation. The powers of

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537 Quran 13:13
the nation state, they opined, could be harnessed to Islamic purpose. The decades after partition, which have served as a laboratory for this early conception, proved that Islamic integrity was difficult to maintain in the post-colonial state. Corruption, military dictators, and weak democratic regimes gave ammunition to skeptics in Pakistan who feared the results of marrying Islam to a secular nation state. By the 1980s, a massive influx of resources from petro dollars and from investments in American strategic interests, mostly funneled to displaced dissidents in Afghanistan by way of Pakistan, changed the game. After September 11th and the ensuing American-led military operations in the Middle East, a combination of local insurgents and battle-hardened veterans from Afghanistan arrived in Pakistan. These new feral groups made Pakistan’s home-grown Jama’at seem domesticated by comparison.

In the wake of these events, Sufi Muhammad, part of the leadership of the Jama’at, drifted to a more radical position. Sufi Muhammad was the founder of the Tehrik-i-Nifaz-i-Shari’at-i-Muhammad (TNSM), the movement for the enforcement of shari’a that has often been classified with the Pakistani Taliban. He made a name for himself after recruiting and leading hundreds of young men to fight in the “jihad against the American invasion” in Afghanistan 2001. Muhammad was subsequently arrested and his son-in-law Maulana Fazlullah took over the TNSM. Fazlullah, alias “Radio Mullah,” became the voice of the insurgency. He would station motorcycles with illegal radio emitters to broadcast murder lists of local politicians and power brokers as well as to agitate for the release of Sufi Muhammad. Eventually the movement turned more violent. A peace was negotiated, with Sufi Muhammad, freshly released from prison, as a broker. By the terms of the peace, the Pakistan government, in return for a cease-fire, would allow the Taliban (including the TNSM) to administer shari’a in the Malakand
District (including Swat).\textsuperscript{538} The agreement was called by the then U. S. Secretary of State Hilary Clinton an “abdication” to the Taliban. One of the oddities of the so-called insurgency was that it had powerful grassroots support. Like the Taliban in Afghanistan, the Swat insurgents, promising the rule of law rooted in the pristine \textit{shari’a} of the first four caliphs, were initially hailed as saviors.

The conditions that resulted in the situation in Malakand have their roots in the colonial policies maintained by the Pakistani government. One of the most famous colonial accounts of the Pathans\textsuperscript{539} who live in the District may be found in writing of Mountstuart Elphinstone (1779-1859). Before his stint as Lieutenant-Governor of Bombay, Elphinstone distinguished himself as a diplomat, becoming the first British envoy to the court in Kabul in 1808. He would later draft his observations and publish them as \textit{An Account of the Kingdom of Cabul}. This sprawling report of nearly seven hundred pages is populated by details on geography, flora, and fauna, as well endlessly entertaining assessments of the character and culture of the natives. Unlike many populations that the British administered, Pathan “eccentricities” received a grudging acceptance, as the following excerpts from the \textit{Account} illustrates:

\begin{quote}
The English traveler from India…would admire their strong and active forms, their fair complexions and European features; their industry, and enterprise; the [sic.] hospitality, sobriety and contempt of pleasure, which appear in all their habits; and,
\end{quote}

\textsuperscript{538} Ayesha Jalal argues that this was a strategic decision and not a capitulation. Ayesha Jalal, \textit{The Struggle for Pakistan: A Muslim Homeland and Global Politics} (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2014). For those reading the footnotes closely, Ayesha Jalal’s new book may be the best single volume history of Pakistan in print – and I say that with absolutely no reservations.

\textsuperscript{539} I use the term in the same manner as Charles Lindholm. His explanation: “I have used the word Pathan throughout this article since I am talking about both the Pukhtun and the Pushtun people of Afghanistan and Northern Pakistan who speak slightly different dialects (Pukhtu and Pushtu). A term which would include both would be Afghan, but this might be confused with national designation, so I have chosen to keep the British word ‘Pathan’, which includes both Pukhtun and Pushtun peoples.” Charles Lindholm, \textit{Frontier Perspectives: Essays in Comparative Anthropology} (New York: Oxford University Press, 1996), 16.
above all, the independence and energy of their character…. On the whole, his impression of this new acquaintance would be favorable…. [H]e would reckon them virtuous, compared with the people to whom he had been accustomed [i.e. other South Asians].

To sum up the character of the Afghauns in a few words; their vices are revenge, envy, avarice, rapacity and obstinacy; on the other hand, they are fond of liberty, faithful to their friends, kind to their dependents, hospitable, brave, hardy, frugal, laborious and prudent. And they are less disposed than the nations in their neighbourhood to falsehood, intrigue, and deceit.

Elphinstone would link the manner and behavior of the Pathans, by way of Thucydides, to the classical Greeks, praising their manliness and codes of honor. This romanticised, untameable “barbaric Europeanness” had been further confirmed by a number of failed attempts to bring the Pathans to heel. Envoys had been previously killed or sent home humiliated. After the debacle of the First Anglo-Afghan War (1839-1842), Britain demanded a change of policy. The high cost of maintaining outposts in dangerous areas resulted in the gradual phasing out of the Forward Plan in favor of the more modest Close Border Policy. This Policy involved “masterly inactivity” and essentially allowed the Pathans to govern themselves with minimal interference. Charles Lindholm has argued that this change in policy helped the British save face after the war. It was in the best interests of the British to think of the Pathans as able and fierce—if not bloodthirsty—warriors for whom the only effective means of governance was local self-

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541 Ibid., 253.
542 Ibid., 230.
rule with limited British oversight. Consequently, the territories of the Pathans remained undeveloped in terms of a westernised judicial system or basic colonial infrastructure. The British, justifying their policies by the indomitable nature of the Pathans, withheld from them the tools of what Foucault would call “governmentality.”

In 2009 the London-based *The Times* published an article entitled, “*The Hard Lesson of Afghanistan: Little Has Changed in 200 Years,*” in which a British journalist cum pop-historian begged Britons not to forget their history. Elphinstone, he laments, had it right two hundred years ago: the British venture to render Pathans governable in modern Afghanistan would be as hopeless as earlier attempts. The author reaffirms Elphinstone’s insights on the Pathan character, fetishizing Pathan fierceness, ungovernability, and xenophobia. He concludes with an anecdote from Elphinstone’s encounter with a tribal leader: “‘We are content with discord, we are content with alarms, we are content with blood,’ the old [Pathan] man said. ‘But we will never be content with a master.’”

A government website from Pakistan at the time of the crisis in Swat said about the “warlike Pukhtoons, who live in NWFP and the adjoining areas of Afghanistan” that they were “a race apart, a chosen people, and no one has ever managed to subdue them. The Mughals, Afghans, Sikhs, British and Russians have suffered defeat at their hands.” Affirming this longstanding colonial policy and ethnography, Pakistan negotiated a bizarre relationship with the various tribes that allowed for relative autonomy subject to a local regulatory system. Although the system had certain benefits in its flexibility, grievances against

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544 Lindholm, *Frontier Perspectives: Essays in Comparative Anthropology.*, 10


546 Ibid.

547 Government of the NWFP, "About the Nwfp."
those in power or against general systemic corruption fell on deaf ears. In some cases, simple
civil disputes would reach a court but await trial for years. In others, tribal jirgas (councils)
decided cases based on local interests, including clan honor, a practice for which they have been
frequently critiqued, both domestically and internationally.

Because of the civil chaos resulting from Pakistan’s arrangements with the Pathans, the
promise of an Islamically guaranteed system of justice had powerful purchase with the local
population. In a BBC news article entitled “Swat Taleban find Sharia a challenge,” a Pakistani
journalist who writes frequently for Dawn Pakistan (an English daily) documents the shari’a
legal procedures in the Taliban courts in Swat.548 One of the cases discussed in the article is that
of a man who sued the Taliban to keep them from building a dirt path over his land. In a part of
Pakistan where might makes right, for a small landholder to successfully sue the local strong-
arms was no small feat. The judge took great pride in the power of the law, supported by the
Qur’an, to return a verdict in favor of chote log (the little people). An eyewitness stated that “the
members of the Taliban refused to accept the decision and said they would take it up with senior
Taliban commanders.”549 The judge, however, stood his ground and was supported by the other
qadis in attendance. Others waiting at the court lauded the streamlined procedure and quick
resolution. One qadi, Maulana Rahman, was said to have personally heard over 100 cases
between February 18th and March 24th, 2009. The fees for this system were a nominal Rs. 20,
the price for a plate of food, and there was no requirement for an attorney. Whereas in the

548 Syed Shoaib Hasan, "Swat Taleban Find Shari’a a Challenge,"

Little is known of them independently and most information comes through news dispatches and social media
sources, information they release themselves

549 Ibid.
federal judicial system all pleas are still required to be in English, these courts used the vernacular. There was even a system of judicial review in place; cases were tiered according to *ilaqa* (area), overseen by the *zila* (district) and a divisional court. The level of sophistication in these proceedings highlights the importance of a functioning judiciary for developing Islamic legitimacy.

These events in Swat are mirrored in the so-called “Islamic State” movements in the Middle East, with governance by Islamic law taking precedence even over securing territorial sovereignty. One must begin with the caveat that little is known of these movements independently and most information comes through news dispatches and social media sources based primarily on information generated by ISIS, the Islamic State of Syria and Iraq. The *Da’ish*, as it is known locally, is the newest player on the scene in the Middle East. An international movement consisting of militant veterans and idealistic youth, it has set its sights on destabilizing local nation states and replacing them with a Caliphate. One recent report on their activities points out the speed with which they promote Islamic legitimacy by establishing *dawa* (religious outreach) programs in acquired territories and how they press for the rule of law by setting up Islamic courts.\(^550\) In a way similar to the Taliban in Swat, ISIS uses efficient governance to fill a vacuum created by defunct legal systems and corrupt social welfare programs. As cases are adjudicated quickly without the extensive processes of the colonial legal system, these movements experience massive upswings of popularity at the local level.\(^551\)


\(^{551}\) An obligatory note is necessary highlighting the fact that minorities and women have been the main losers of the new regime. I suspect they were not much better served in the old system, but the outcomes are brutal particularly in cases of the Shia and Yazidi minorities.
and the Taliban in Swat represent a similar paradigm shift in the evolving use of the Islamic state without the nation state.

Pakistan was the first modern nation state established for a religious minority. This dissertation has been an exploration of intellectual debates about what it meant to be an Islamic state in the early post-colony, how its relationships to tradition and colonial artifice were negotiated, and what were the outcomes of these engagements. The Islamic state continues to exercise a pull on Muslim sentiments. Today, however, the Islamic state is not merely a romantic ideal from the past, but a reality-based critique of modes of governance that benefit the powerful against the disenfranchised. In the early decades of Pakistan statehood, the Islamic state was seen as a means of cultivating a space where Muslims could reclaim self-worth from colonialism. Now it serves as a means of challenging these same states as they drift into disarray, corruption, and oppression.

The revolutionary spirit of the modern Islamic state is profoundly captured by Faiz Ahmed Faiz, who penned the following verses at the ascendency of Zia. The poem recalls the apocalyptic dynamism of the Meccan verses of the Qu’ran, and offers solace in the imagery of comfort and rest. The combination of warning and promise is captured in the haunting refrain “we will see, we will see.” He writes:

Works Cited:

Abbas, Shemeem Burney. *Pakistan's Blasphemy Laws : From Islamic Empires to the Taliban.*  

552 With the caveat, of course, that groups like ISIS are not necessarily maintaining a just living order.  


Alqasmi, S. A. S. *Do Bhai: Abul Ala Maududi Aur Imam Khomeini*. Deoband: Shaikhul Islam Academy, N.D.


———. The Unromantic Orient [in German] [Unromantisches Morgenland, aus dem Tagebuch einer Reise]. Translated by Elma Ruth Harder. 2004.


"File 18-I(C)/1934 Expulsion of Undesirable Foreigners from Kashmir (Case of Leopold Weiss Alias Mahamad Asad Ullah Vyce)." (1934).


Kramer, Martin. "The Road from Mecca. Muhammad Asad and Islam."


——-. "The Roots of Muslim Rage."


Macaulay, Thomas Babington. "Minute by the Hon'ble T. B. Macaulay, Dated the 2nd February 1835."


Macintyre, Ben. "The Hard Lesson of Afghanistan: Little Has Changed in 200 Years."
TimesOnline (2008).
http://www.timesonline.co.uk/tol/comment/columnists/ben_macintyre/article5141513.ece

Mackenzie, John. Austral Africa; Losing It or Ruling It. 2 vols London,: S. Low. Marston, Searle & Rivington, 1887.


Marghînānî, ʻAlī ibn Abī Bakr, and Charles Hamilton. The HedâYa or Guide; a Commentary of the Mussulman Laws. 4 vols London,: Printed by T. Bensley, 1791.


