

Pakistan's Police between Centralization and Devolution

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Norsk Utenrikspolitisk Institutt
Norwegian Institute of International Affairs

NUPI Report

Publisher: Norwegian Institute of International Affairs
Copyright: © Norwegian Institute of International Affairs 2010
ISBN: 978-82-7002-284-7

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Summary

'Civilianizing' conflict resolution is a key concept in the West's strategy in Afghanistan and the region. President Obama's long-awaited review of the Afghanistan conflict proposed a 'civilian surge' for Afghanistan, and the Enhanced Partnership with Pakistan Act – better known as the Kerry-Lugar-Berman Bill – explicitly ties security aid to progress in emancipating Pakistan's civilian government from military influence. A major aspect of this strategic reorientation has been a renewed focus on the role of the civilian police. This paper examines the challenges faced by a proposed police-based counter-insurgency strategy for Pakistan by placing them in the context of the limitations faced by the police. Historically, the ambit of policing has been limited, in terms of geographical reach as well as vertical penetration of local communities. A brief account of colonial mechanisms of governance and their effects on policing is provided, to highlight the path-dependencies created by British indirect rule and divide-and-rule for modern Pakistan. Ignorance of the history of policing and of the political struggle over police control has led foreign donors to support attempts at centralizing security governance, worsening the state's crisis of legitimacy and arguably heightening insecurity. The complex history of these failed attempts at governance reform shows how difficult it is to ignore the highly political nature of all such undertakings.

The present research was made possible through a grant from the Norwegian Ministry of Foreign Affairs.

Introduction

Pakistan's latest budget has worrying implications for US military and civilian strategy in the region. It proposes another 30% increase in spending on the country's already bloated military apparatus, which is rumoured to consume 21% of the national budget (Rashid, 2010). Pakistan's top military brass have indicated that they are likely to spend the bulk of the new budgetary allocation on pursuing their long-standing strategy of developing defensive capabilities and 'strategic depth' vis-à-vis India, rather than on fighting the growing militant insurgency inside their own borders. Recent reports about collusion of Pakistan's secret service ISI with the Afghan Taliban, with knowledge of President Asif Ali Zardari, have given support to these suspicions (Waldmann, 2010). They deal a blow not only to those hoping for a strategic re-orientation away from proxy warfare but also to those advocating an emphasis on a civilian strategy for countering militancy in the region. Recent policy initiatives have attempted to strike a balance between a civilian and a military response to counter-insurgency.

The latest US foreign aid package, provided within the framework of the 'Enhanced Partnership with Pakistan Act' (the Kerry-Lugar-Berman Act), is set to end the long-standing policy of unquestioning support for Pakistan's military. Security and development aid will be provided only to civilian governments and under the condition that 'the security forces of Pakistan are not materially and substantially subverting the political or judicial processes of Pakistan'.¹ These provisions do not only apply to the national government: they also mandate a support for 'police professionalization, including training regarding use of force, human rights, and community policing' ring-fencing some USD 150,000,000 for this purpose. The emphasis on police aid and policing is part of an attempt to free the USA from its close association with Pakistan's military and the various unpopular regimes it has spawned. Partnering with the civilian security sector, it is argued, will temper the crisis of legitimacy that has engulfed the Pakistani state as well as the long-standing US support of its military. Despite significant public support for army operations in Swat and, to a lesser extent, in Waziristan, senior military officers have expressed concern that engaging in internal warfare will not only be economically wasteful and inefficient but also undermine army morale (Fair, 2009b). Furthermore, the army leadership is unwilling to re-assess its strategy in light of the militant threat because it is preoccupied with the threats from its powerful neighbour and the scenario of an increasing Indian influence in Afghanistan. The traditional pursuit of 'strategic depth' against India, in addition to a lack of counter-insurgency capacity, make it unlikely that the military will adopt a COIN strategy.

¹ <http://thomas.loc.gov/cgi-bin/query/D?c111:3:./temp/~c111jl56s9:>

(See Lalwani, 2009.) There are also more substantial reasons proffered for supporting the civilian security sector, pertaining to characteristics of police and policing themselves. Under-funded and less entrenched in the state apparatus than Pakistan's powerful military, the police are said to have expressed a greater will to reform (Fair, 2009a: 5). Substantive arguments have also been made for the police as a superior counter-insurgency force, not least since police forces have an advantage over the military in gathering timely and local intelligence. (See Fair & Ganguly 2008; Ganguly & Fidler, 2009; Corum, 2006.) Operating permanently in the community, members of the police force are better able to collect 'community intelligence' (Hassan, 2009: 20). Therefore, it is argued, the police can play a pre-emptive and dynamic role in countering militancy, while the military should be restricted to static functions such as protecting high-value infrastructures (Fair, 2009a: 5). The nature of information to be gathered by the police is another aspect of the civilian character of police-based counter-insurgency. The idea of prioritizing generally accessible community information over secret information collected by undercover agents is a crucial part of 'intelligence-led' policing, which has gained increasing popularity within the international policing community.²

In recommending a police-led counter-insurgency strategy for Pakistan, commentators also refer to successful historical precedents. As Corum writes in his comparative study of counter-insurgency operations about British Malaya in the 1950s:

In Malaya, a key element in turning the situation to the government's favour was the program to reform and retrain the police and make it a more professional body that could interact with the civilian population more effectively (and thus gain good intelligence), and act efficiently on the intelligence it received.(Corum, 2006:37)

In this as in other cases of successful police counter-insurgency operations, rapid and thorough professionalization of the force seems to have been the key. Yet it would be premature to draw conclusions for the policing of insurgency today. The high levels of investment in training facilities as well as a surge in manpower to allow for intensive, in-service retraining of officers were obvious factors in these earlier operations. (See Stubbs, 1990.) A similar policing surge in Pakistan today, with its vastly different terrain and a much larger population, would require an even larger outlay, especially considering the staffing situation, investigative capacity and status within the community of the police.

² For a critical assessment of this model see Kleiven, 2007.

Pakistan has only about 350,000 police personnel for a population of 170 million inhabitants. In the 16-million city of Karachi, the commercial hub and Pakistan's most crime-ridden city, the police force numbers only 29,000. Lahore, with 10 million inhabitants, has only 25,000 police. In addition, mandated strength is rarely reached. This is especially the case in rural areas, where most of the crime occurs.

Even more important than resource constraints is the lack of professionalization. Representation and repression rather than investigation and intelligence are its primary modes of operation. Until 2002, Pakistan's antiquated police laws did not provide for a separate investigative branch at all. Even after the promulgation of new police laws, the newly-created investigative branches have never come close to reaching mandated strengths in terms of staffing, equipment and budget in the individual police districts. The recent UN report on the murder of former Prime Minister Benazir Bhutto further highlighted the lack of investigative capacity in the context of a high-profile case.³ In the pursuit of an investigation the police frequently have to avail themselves of army resources, especially regarding radio communications and the tracking of mobile phones. The absence of direct access to a national ID database makes the police dependent on the National Database and Registration Authority (NADRA) for the purposes of identification, on a pay-per-use basis.⁴ The dependence of the police on more powerful institutions is a function of the politicization of policing.

The police do not, as a general rule, undertake lengthy and complex investigations on their own initiative but only at the behest of political elites at the federal, provincial or district level. Just as in colonial times, the police are a symbol of political power and an instrument of oppression rather than an independent institution with a distinct professional capacity – a crucial precondition for a police-led counter-insurgency strategy. A clear illustration of this is the widespread use of police officers for the protection and escorting of political notables and for largely ceremonial guard duties. It is estimated that out of the 180,000 police in the Punjab, Pakistan's most populous province, only 40,000 are permanently stationed in police stations, whereas the rest are deployed for VIP security and traffic policing. About 6000 policemen alone are said to be permanently guarding the four private and official residences of the Punjab Chief Minister, Shabaz Sharif.⁵

³ http://www.un.org/News/dh/infocus/Pakistan/UN_Bhutto_Report_15April2010.pdf. The report states that the actions of the Rawalpindi district police irreparably damaged the investigation through its mishandling of the crime scene. It also highlights parallel investigations by Pakistan's military intelligence services, the findings of which were only selectively shared with the police.

⁴ Interview with PSP Police, Rawalpindi, 20 February 2010, Islamabad.

⁵ Interview with SSP investigation Lahore, 27 January 2010.

In keeping with the colonial legacy as an instrument of the powerful – and generally viewed as the most corrupt and distrusted of the country’s institutions⁶ – Pakistan’s police are hardly in a position to aspire to the level of trust necessary for benefitting from community intelligence. Complaints are frequently withheld; and illegal arrest, detention and police brutality are rife. Thus, it is unsurprising that overall confidence in the police is low, with only 22 per cent of households stating that they would contact the police on a matter of public safety (Corruption in Pakistan Baseline Survey CIET 2003). Given the poor standing of police, it cannot be expected that the police elicit community intelligence, much less act upon it.

Yet, the question remains whether capacity is the main obstacle preventing Pakistan’s police from becoming an effective counter-insurgency force, and whether professionalization and the ‘policing surge’ currently advocated by donors and think-tanks would bring the institution closer to fulfilling such a role. In the following I will argue that the weakness of Pakistan’s police is the result of its institutional history and the governance mechanisms within which it operates. Consequently, simply increasing capacity will make very little difference to its overall effectiveness. Policing in Pakistan requires what Goldsmith (2003: 17–18) has called ‘grey analysis’ – taking into account the fact that not all police forces are created equal in terms of their objectives, that they do not always represent the state, and that they are not the only institution fulfilling police functions. The ability of the police to penetrate Pakistani society is limited both ‘horizontally’ as well as ‘vertically’ by design rather than by lack of state capacity.

Horizontal Limits – Pakistan’s Frontiers

Any engagement with the question of the role Pakistan’s civilian security forces could play in countering militant insurgency needs to contend with both the many civilian and non-civilian security forces operating inside the country and the extent to which ‘policing’ in the Western sense remains restricted to certain areas of the country. Especially along the frontier, where the problem of militancy is most acute, the combination of these factors produces a crisis of legitimacy that conventional policing would only exacerbate.

In the Federally Administered Tribal Areas (FATA) adjoining Khyber-Pukhtoonkwa (formerly known as NWFP) and the Provincially Administered Tribal Areas (PATA) of the same province, organiza-

⁶ Transparency International’s 2010 National Corruption Perception Survey for Pakistan lists the police as the most corrupt institution, replicating findings from all previous TI reports.

tions such as the Tehrik-e-Taliban Pakistan (TTP) are not merely contesting sovereign state territory. These differently governed spaces – or ‘frontiers’ to use the colonial terminology – constitute not only a geographical periphery but also areas of limited sovereignty. The state retains the status of an overlord, but in practice its authority does not reach past the political agents who rule by the time-honoured principle of indirect rule, supervising various local power equilibriums among bureaucrats, politicians, tribal elders and multiple security providers. These include quasi-military policing forces under the authority of the Federal Ministry of the Interior, such as the Frontier Constabulary and the Frontier Corps, as well as provincially established forces under *de facto* control of tribal elders, such as Lashkars and Levies.⁷

Whereas in Pakistan's provinces the police are bound by law, and the citizens can, at least in theory, take recourse to the court system, the Frontier system of governance is much more restricted in this regard. It is based on a colonial arrangement centred on the political agents, the tribal elders or *maliks* and the 1901 Frontier Crimes Regulation (FCR) legislation. The political agent, a senior bureaucrat, combines executive, judiciary and administrative power and also determines the distribution of centrally allocated development funds that are often used for patronage purposes. Similarly, the *malik* system is a remnant of British indirect rule of the frontier and is based on the assumption of a functioning traditional tribal structure ruled by patriarchal elders according to principles of *pukhtoonwali* and *riwaj* (custom). Both customary law and traditional leadership structure were formalized in the Frontier Crimes Regulation of 1901 which, with some changes, remains valid today. The implications for the local populations have been well documented. The FCR allows for collective punishment, the confiscation of property, the blockading and demolition of villages without a right to appeal through the formal court structure or legal representation. (See ICG, 2009, as well as Haider, 2009.) In addition, Article 247 of Pakistan's Constitution limits its jurisdiction to Pakistan's four provinces, effectively withholding citizenship rights from FATA residents.

It remains a moot point whether the FCR constituted a faithful rendering of customary practice into codified law at the time, or subverted the law for the political benefit of the colonial government. The fact remains that the social structures on which the *malik* system was based have changed, sometimes radically so. The flow of resources into the tribal areas no longer follows the administrative hierarchy

⁷ In the wake of the failure of the 2002 Police Reforms, the provincial assembly in Balochistan has re-established the informal, tribal Levies forces, limiting the ambit of policing in the province to urban areas. Levies and Lashkars have also been raised in Khyber-Pukhtoonkaw, the former NWFP, in response to recent increases in militancy. See Ali, 2010.

based on political agents and tribal elders: the FATA economy has seen a great influx of money from foreign remittances and cross-border smuggling since the 1960s, effectively undermining the powers of control and patronage of the traditional political elites.⁸ The traditional *malik* is a figment of the Western orientalist imagination and a mythical image harnessed by Pakistan's bureaucrats to rhetorically invoke the imagined stability of a traditional political structure that has in fact ceased to function.

Tinkering with the existing FCR framework has not solved the underlying problem of an obsolete colonial governance mechanism. Even though the vote was granted to FATA residents in 1996 and President Zardari recently amended the FCR in 2009 to allow for full party competition in the area, the power to make law effective for FATA still lies with the presidency, in effect nullifying political representation (ICG, 2009). The Pakistani Taliban have merely swept away remnants of an already defunct system of governance by killing many tribal elders loyal to the government and by getting the remaining few to acquiesce in their presence and activities (Haidar, 2009). As the various attempts at negotiated settlements with Islamic militant groups – most notably the TNSM in Swat – have shown, the state has sought to extend the mechanism of indirect rule to include new actors into the colonial bargaining structure. In a scenario where the mechanisms of indirect rule are effective, the state tolerates and even encourages the primacy of local norms over the national constitution. Through its political agent, the state can structure incentives in such a way that local vassals enforce the writ of the state although they operate outside of the state. (See Wilke, 2009: 23.)

The failure to co-opt militant actors into the indirect rule arrangement between political agent and tribal leaders demonstrates the limits of this colonial mode of governance. The current crisis in the frontier has resulted in rapid and comprehensive change. There is growing pressure for the federal executive to consider meaningful political and legal reform in FATA. Yet recent reform efforts in other parts of Pakistan's periphery do not indicate that the extension of full constitutional rights to the denizens of FATA is likely, in the short to medium term. A new and ambiguous precedent has been set with the creation of 'local citizenship' in Azad Jammu and Kashmir and the newly created entity of Gilgit-Baltistan: colonial-style departments such as the Federal Ministry of Kashmir and Northern Affairs (KANA) and the Ministry of States & Frontier regions (SAFRON) continue to run these two entities from the centre; all budgetary decisions are made by the

⁸ These transformations of the social structure of Pakistan's tribes have been described with reference to Swat and Dir by anthropologists such as Barth and Keiser. They predate the Soviet invasion of Afghanistan by many years and cannot be reduced to the rise of militancy. See for example Keiser, 1986.

ministry; the local inhabitants have no direct representation in parliament and are effectively second-class citizens caught in a constitutional limbo.⁹ There exist quite a number of peripheral areas governed in this fashion from the centre where benefits of citizenship are awarded instrumentally by the federal executive in line with security considerations, with an eye to preserving staging areas for cross-border proxy warfare in Indian-administered Kashmir and in Afghanistan. Given the continuing instability of Afghanistan and the uncertainty surrounding the withdrawal of the coalition troops there, it is unlikely that the Pakistani army will relinquish its position as chief arbiter of security matters and assent to the introduction of civilian policing in FATA.

Under these circumstances, it is difficult to see the law as anything else but an *arcanum dominationis*, an instrument of oppression, and its often self-styled enforcers as oppressors. The many providers of security (and insecurity), with often overlapping and un-specified mandates, perpetuate the conditions that make Islamic radicalism attractive: oppressive laws, unaccountable political elites, the absence of basic service delivery, rising insecurity and displacement through military campaigns. The security situation is such that police are more likely to become targets, as symbols of a discredited political agency system. Neither the political mechanisms nor the legal foundations for the operation of a civilian police force as understood by the West are currently in place. The failure of indirect rule in the frontier and large parts of Balochistan throws into sharp relief the structural limitations of policing in Pakistan's heartland as well.

Policing the Centre

The potential for civilian security forces to assume a greater role in Pakistan's struggle against militancy is not only limited by the political vacuum in Pakistan's periphery. The inability of state institutions to engage with and penetrate civil society also prevents effective policing in those areas where people enjoy the full protection of the law and where there is a semblance of constitutional normality. Even in Pakistan's central areas policing must not be imagined as the legitimate exercise of authority by a professional government agency.

As an institution, the police enjoy little independence, with jurisdiction over policing shared by central, provincial and, to some extent, local government. These multiple lines of control are constituted by bureaucrats and not by elected politicians, the latter having little or no input in policing matters. The provincial ministries of the interior have

⁹ Mohammad Sarwar Khan, interview 24 February 2010, Asian Development Bank Pakistan Resident Mission, Islamabad.

neither the knowledge nor the capacity to engage in effective policy-making regarding matters of policing at present.¹⁰ Recent reforms notwithstanding, the considerable skills and expertise possessed by Pakistan's bureaucracy remain concentrated within the elite cadre of the District Management Group, especially at the level of the District Commissioner.

This colonial-era tier of government has an advantage over civil society organizations as well as other elected and unelected branches of government because of its vast knowledge of the local territory and its people. This position is to create a local balance of power between competing groups, described by Boris Wilke as 'divide and rule'. The state and its corporations – military, bureaucracy, state-owned businesses – act in a patrimonial fashion, through the strategic distribution of offices and cooptation, expanding the remit of rule in a process that excludes civil society. This mode of governance by 'divide and rule' is not based on elections or any significant process of state–civil society interaction but includes the exercise and threat of violence as an important bargaining strategy (Wilke, 2009: 19). It is in this context that local police forces attain *political* significance despite – or because of – their incapacity to operate as a state agency. The 'management' of local politics, of elections, the harassment of civil society activists, journalists and politicians who have fallen out of favour with the state bureaucracy for manipulating cases, false testimony and meddling in ongoing investigations remains an important part of policing, as does the provision of symbols through the discharge of escort, guard and VIP duties. Even in the absence of a permanent state of emergency as sanctioned in Pakistan's periphery by devices like the Frontier Crimes Regulation, the militarization of the police and policing and the reliance of the police on military personnel and resources indicate that 'civilian policing' plays only a subordinate role in security governance.

The political and military character of policing has historical origins that have set important precedents for Pakistan at several junctures. The pattern of executive control of the police by a powerful and independent yet also increasingly overstretched District Magistrate and his officers was a direct response to growing British sensitivity about actual and potential political unrest in the wake of the Indian mutiny of 1857. As a result, the police were settled with functions that exposed the limited degree to which British colonial governance had managed to penetrate Indian society and the extent to which it relied on local elites and their networks of patronage. (See Yang, 1989.) From the second half of the 19th century onwards, the police in British India were expected to serve as a back-up force for an Indian army whose

¹⁰ Ibid.

loyalty had become suspect, to engage in political surveillance of nationalist activity and labour unrest, to confront the challenges of steep rises in crime connected to industrialization and urbanization, to stem the tide of communal violence and even to implement the sanitary measures enacted in response to the outbreak of epidemics (Khalid, 2009). All this came in addition to the primary functions that policing had played in India before the onset of Crown rule, mainly the extraction of taxes. It demonstrates the extent to which the colonial state had, willy-nilly, become enmeshed in the social regulation of a subject population that it did not have the capacity nor the means to penetrate, control and administer. In addition, the state found itself in the midst of major social, political and economic upheaval. This combination of a securitized policy with limited capacity and the consequent adoption of indirect rule was to prove crucial in the further development of policing in British India and modern Pakistan.

Firstly, the police became militarized in organization and outlook. In many areas, the police forces were made up of former military men, and the training of police officers generally included military drill. To all intents and purposes the police took on the form of an armed countryside gendarmerie rather than an investigative force. (Killingray, 1997: 171)

Secondly, in response to the distrust of 'the natives' in the aftermath of the uprising of 1857, the division of the police into local, native police forces and an elite, gazetted corps of European officers became even more pronounced and formalized. The Fraser Commission report of 1902/1903 explicitly discouraged the promotion of native officers to gazetted ranks, all while noting that the lack of social prestige and of adequate pay constituted the most important impediment to the hiring of better-quality police personnel. The colonial government nevertheless readily availed itself of the village police operating in many instances at the behest of the feudal landowner or *zamindars* because it could at least ensure a modicum of social stability, if not mobilize outright political support. As David Arnold notes in his landmark study on colonial policing in Madras, the very nature of 'native policing' served to entrench existing social relations.

The recruitment of constables from locally dominant communities (albeit from poorer strata) gave them a bias towards the richer peasants, landlords and village heads and against the peasants and labourers of subordinate castes. Deference to men of wealth and power was too prevalent a social trait for the subordinate police to be immune, despite their official responsibility. (Arnold 1986: 36)

Yet the separation of the police service into officers and subordinate police did not mean a weakening of the colonial state. To the contrary: even if the state lacked the capacity to structure local power-relations directly under mechanisms of divide and rule it could, through the powerful bureaucratic representative, channel benefits selectively towards local vassals to represent the state's interests on its behalf. Influence over the police in colonial India was among the most important spoils for elites collaborating with the colonial state. As Yang (1986) has noted, the devolution of authority to the District Commissioner after the Bengal famine of 1866 allowed for more effective coordination of local landowners and other notables with the objectives of colonial policy. Retaining this bifurcated structure in the service was therefore as much an expression of the limited capacity of colonial rule as well as the result of political convenience. The corruption and brutality of a widely despised local constabulary could be attributed to the failings of a 'native' agency, allowing the colonial government to evade responsibility for the state of policing (Khalid, 2009: 67). At the same time, authority over the local police propped up a pliable landed gentry, at greatly reduced cost to the Empire.

A third feature of policing in colonial India arising directly from the 1857 mutiny was the cementing of dual control of the police in the shape of the 1861 Police Act. Protecting the discretionary use of police powers by the colonial bureaucracy became of paramount importance. Under this model, the District Commissioners and their subordinates, the representatives of the colonial government, could interfere in the Superintendent's running of the police on the grounds of public safety and the 'maintenance of law and order' (Suddle, n.d.). In practice, this elastic legal provision resulted in a constant state of emergency, enabling the executive to interfere in policing matters for reasons of political expediency. That this practice was widespread is borne out by the report of the Fraser Commission, constituted by Lord Curzon in order to investigate the deplorable state of policing in British India in 1902/1903. It noted that

The purpose of Police Act 1861 was not to create a system of dual control but merely to provide for a reserve of authority outside the police organization, to be exercised by the District Magistrate only sparingly and in very specific situations, while the day to day police work was to be directed and controlled solely by the senior officers of police.(Fraser Commission Report 1903/1965)

Yet the Commission recommended that the same practice be continued, as maintaining the authority of colonial rulers was deemed more important than the administration of justice. In the context of rising

nationalist agitation and communal violence District Magistrates made full use of their emergency powers to arrest political activists, censor publications and violently suppress demonstrations.

To counterbalance the problematic organizational set-up of the police, attempts were made to professionalize the service while maintaining the political benefits of indirect rule. These colonial-era attempts were primarily aimed at improving police capacity to gather political intelligence by infiltrating nationalist and labour movements, not at improving the investigation of crime. This led to the creation of Criminal Intelligence Departments (CIDs) across India, as well as a great increase in the number of serving police officers. Between 1938 and 1943 alone, the number of police serving in India increased from 190,000 to over 300,000 men. (See Killingray, 1997: 173, 174). Policing became further politicized by the addition of intelligence functions and by improving the repressive capacity of an apparatus already despised by Indians and viewed with ambivalence and suspicion by the colonial authorities themselves.

Both the frontier system, with its combination of executive control through political agents and militarized policing, as well as the mechanisms of divide and rule under the aegis of a powerful bureaucracy, have persisted. The Police of India Act remained in force from 1861 until the early 21st century, not only in Pakistan but across much of what used to be British India. Dual control of the police force and the bifurcation into subordinate personnel and an officer class continued. There still is among senior police a perception of the local police forces as brutal, corrupt and impervious to change, necessitating the superimposition of a separate tier of gazetted officers. This is still reflected in the separate recruiting streams for the police in Pakistan today. Members of the Police Service of Pakistan (PSP) are recruited through an all-country civil service exam into the country's elite civil service, the District Management Group. The officer class and the local *thana* form two very distinct policing cultures, with little to link them institutionally. Promotion opportunities for police constables are limited and very seldom lead to their becoming officers. As for officers, they are trained predominantly at provincial police academies and the National Police Academy in Islamabad, and have comparatively little experience of local policing. Police training manuals at these institutions also reflect the continuity of outlook and self-understanding of police work between colonial India and modern Pakistan. The heavy reliance on drilling, on crowd control, *lathi* charges and musketry indicates a military ethos with a focus on crowd control. (See Fashuddin, 2009.) There also continues to be substantive evidence for the politicization of policing at the local level at the behest of powerful interests. The introduction of democratic competition

for offices at the local level, attempted at several stages in Pakistan's history, has tended to reinforce this tendency, with electoral politics becoming yet another facet in the pursuit of a local balance of power through indirect rule and divide-and-rule tactics. The intimidation of political activists, the 'management' of elections and, not least, the framing of false cases against candidates for political office are common, and their apparent effectiveness in influencing electoral outcomes has raised the stakes in the struggle for control over policing. Any attempt to change the long-standing structure of policing in Pakistan is therefore by definition a highly political affair.

The politics of police reform provide good indications regarding changes in power relations between the most important institutions with a stake in policing – the army and the bureaucracy as well as the centre and the provinces. The struggles over the 2002 Police Reforms, the most ambitious and comprehensive security sector reform package designed in South Asia to date, are interesting not because of what they tell us about the state of policing, but because of what they reveal about the nature of the state.

Pakistan's Police Reforms

Attempts to reform policing in the subcontinent go back to the British East India Company and its attempts to instil a measure of neutrality into local policing by introducing the *darogar* system. In essence, this consisted of the idea that communities should be policed by non-local officers who stood outside prevailing power structures. However, the system was abolished after a brief trial period in 1803, as the transferred constables were completely ignored by local elites. (Robb, 1991) The bifurcation of policing and the consequent reliance on village police was more a grudging accommodation than planned policy. Not only had the reform of policing mechanisms proved unfruitful on previous occasion, but 'traditional' policing also proved to be cost-effective, as staffing local administrations with British officers would have been prohibitively expensive. Policy-makers were keenly aware that community ties frequently overshadowed official duties. Official complaints against low-ranking police officers were often phrased in terms of social class and character, the argument being that the considerable income differentials between police constables and the officer classes made it inevitable that pay would have to rise in order induce those of higher social standing to join the service. That, however, would have undermined the rationale of indirect and divide-and-rule practised by the British. The subordinate police needed to remain a pliable instrument in the hands of local land-owners, entrusted by the colonial bureaucrats with upholding 'public order' and facilitating the

extraction of land taxes without incurring undue additional expenditure.

The over 30 reports on the state of policing during the colonial period in British India and subsequently, in Pakistan, consistently highlighted the problematic aspects of this contradiction. They pointed to police corruption, brutality and inefficiency, and analysed some of its causes – among them, low remuneration, lack of a transparent and fair system of hiring, promotion and transfer, as well as the lack of suitable training and equipment.

Everywhere they went the Commission heard the most bitter complaints of the corruption of the police. ... The police system seems to the Commission to have aggravated the evil both by under-paying the constable by assigning to him duties which he is not qualified to perform. (Fraser Commission Report, 1903/1965: 23)

There has been no dearth of proposals for addressing these issues. Indeed, the continuity of recommendations regarding police reform both during the colonial and the post-colonial period is remarkable. Ever since the 1850s, reports on the state of policing in South Asia have recommended abolishing the dual-control model, and introducing a more decentralized and professional system of policing under the authority of superintendents and commissioners of police, as pioneered in the United Kingdom under the Peel Commission of 1839.¹¹

The first time these demands resulted in actual police legislation in Pakistan was under the military rule of General Pervez Musharraf in 2002. The Police Order 2002 was part of a whole raft of reform legislation enacted by decree under the aegis of the presidential think-tank, the National Reconstruction Bureau (NRB). It represented the first major overhaul of policing legislation since 1861, and – on paper at least – gave Pakistan the most advanced policing legislation in the whole of South Asia. Hailed as a major milestone in governance reform, it commanded substantial support from the donor community. The Asian Development Bank committed USD 350 million to the Government of Pakistan as part of a nation-wide ‘Access to Justice Support Program.’ In one fell swoop, this ambitious reform agenda attempted to bypass the intermediaries of the colonial era.

The Police Order 2002 and the Criminal Procedures Amendment Act 2001 abolished the executive magistracy and, with it, all bureaucratic control over policing at the local level. One bureaucrat correctly de-

¹¹ Originating in the dissenting opinion of the Maharaja of Dharbanga contained in the Fraser Commission Report, Karachi 1965.

scribed the objective of the Police Order 2002 as the removal of authority of the DMG over all matters concerning the police (Dogar, 2009). Within one year, the military government had effectively swept away the entire colonial edifice on which the power of the bureaucracy had depended. The professionalization agenda envisaged for the police in these pieces of legislation entailed, at least in theory, a unitary command structure converging towards the centre. It would allow the state to project its power directly, bypassing both provincial and bureaucratic intermediaries. This centralization of power was supposedly counterbalanced by separating executive, judicial and administrative functions from within the magistracy. The powers of the District Commissioner were devolved to the judicial magistrate of the district, while a District Co-ordination Officer was given administrative powers under the indirect influence of the elected representative of the district, the Nazim. The District Police Officer (DPO) was made responsible for policing of the district, in coordination with the District Nazim.

Furthermore, Article 8 of the Police Order 2002 provided for the establishment of the police divided along *functional* lines into branches, divisions, bureaus and sections.¹² Article 18 required that all registered cases be investigated by the investigation staff in the District under supervision of a Head of Investigation. The same article also provided for the constitution of an Investigation Wing made up of investigation staff in each police station under an Officer-in-Charge (OiC) Investigation.

Public oversight committees, replacing the bureaucratic oversight functions exercised by the magistracy, were another important feature of the Musharraf police reforms. Public Safety Commissions (PSCs) were established to oversee policing, including approval of annual policing plans, monitoring of delivery of annual performance targets, and assisting in the appointment of Provincial Police Officer. By providing for the establishment of these bodies at the district, provincial and federal levels, the police reforms sought to ensure greater control over police functioning and a reduction in organizational corruption. These PSCs were given a civilian orientation through the inclusion of independent members.

Apart from the complexity and the plethora of new institutional structures provided for by the legislation, there are several interpretations possible regarding the political subtext. On the one hand, the Police Order 2002 can be read as an attempt by Pakistan to bring various components of internationally recognized good practice to bear on policing. The Police Order itself as well as the publicity surrounding its

¹² http://www.nrb.gov.pk/law_enforcement/index.html

promulgation highlighted terms like 'professionalization', 'functional separation', 'civilian oversight' and 'de-centralization', as well as other concepts familiar from the language of New Public Management (NPM). Yet scratching the surface of the sterile language in which they were clad reveals significant conflict between historically entrenched, colonial modes of governance and the attempt to create a centralized security state by a military dictatorship, mediated by international donors.

In many outlying areas, the structures of indirect rule were bypassed through the militarization of security, large-scale state-led development projects in infrastructure and systematic economic exploitation of natural resources.

This has been especially apparent in Balochistan, where the Musharraf regime sought more efficient exploitation of the natural gas reserves through the construction of a deep seawater port facility (Gwadar), and the transformation of the province into a regional energy corridor with investment support from China. Boris Wilke (2009) has analysed how this process of economic exploitation has necessitated the militarization of security in the province, pitting the agencies of the central state against the tribal and other beneficiaries of indirect rule. This re-centralization of security governance and the subsequent power-struggles have led to more conflict and greater insecurity among a population that sees the agents of state security largely as invaders.

While Balochistan may constitute an extreme case of a rapid and at times violent transformation from colonial and indirect to centralized security governance in Pakistan's periphery, there are several structural similarities to be found in the struggle over police reforms in country's heartland itself. Here, the primary intermediaries of a colonial-style divide-and-rule policy – the bureaucracy – found themselves sidelined by simultaneous processes of centralizing security governance. The stakes in this struggle have been raised by attempts to cement military rule through populism, with the creation of various forms of elected local government.

Devolution has been adopted as a constitutional re-engineering strategy by military regimes in Pakistan throughout its history (Cheema, Kwaja & Qadir, n.d.). By creating local democratic structures, the non-representative centre attempts to build a new class of local political clients in order to cement its grip on power by referenda or other kinds of caesarist acclamations of leadership. When engaged in by non-democratic regimes, decentralization can thereby serve as a strategy for concentrating power at the centre. Throughout the entire police reform process in Pakistan, the military executive at the centre

remained firmly in control. Even though the 1973 constitution grants considerable policing powers to the provinces, the Police Order 2002 was passed as federal laws by decree, not by federal and provincial assemblies. The lack of legitimacy of reforms enacted under the aegis of a military dictatorship and the bypassing of the long-standing colonial structures of governance set the tone for the ensuing conflicts over its implementation. These debates have assumed a special urgency not only in light of the international focus on Pakistan's militants but, more importantly, as a result of the rapidly deteriorating security situation, as evidenced by the rise in violent crime and widespread perceptions of increasing insecurity among the population.¹³ Much of this is blamed directly on the police reforms themselves. As a study conducted by the Asian Development Bank (ADB), the major funding agency for the reforms discussed here, stated:

Of most concern, it seems that weakness in external oversight of the police have made the police less governable. The consequence is that ... the incidence of police excess and torture during pre-trial detention has increased markedly, along with the perception that police are unresponsive to increasing violence ... As a result police reforms are in serious danger of being perceived as a one-way street on which the police has simply secured more resources and autonomy while becoming less accountable.(ADB, DFID & WB 2004: Overview, p. 9)

Members of the bureaucracy have opposed the very ideas on which the reforms were based, because these were seen as undermining its traditional authority. They argued that the creation of a professional police hierarchy, bypassing the province-level home ministries and abolishing the executive magistracy, had placed policing beyond the reach of any mechanism of checks and balances, as the new public oversight bodies were on the whole dysfunctional. (See Dogor, 2009.) Those opposed to the legislation have argued that it has led to a breakdown of law and order at the local level, the Police Order openly being referred to as the 'Police Disorder' by senior bureaucrats and police officers.¹⁴ The opposition to these reforms betrays a great concern about central government bypassing the bureaucracy. As one senior bureaucrat has noted, 'the sole objective of the PO was to sideline the DMG in all matters concerning policing' (Dogor, 2009). Echoing concerns already voiced in the early report by the Asian Development Bank, bureaucrats have argued that the absence of the executive magistracy means that the police are completely out of control, without a strong institution to keep them in check. The functional separation,

¹³ On crime figures in the Punjab, arguably one of the better policed parts of the country, see the very useful figures compiled by Fasihuddin (n.d.).

¹⁴ Interview Mahmoud Alam Masud, PSP, National Police Academy, Islamabad, 20 February 2010.

akin to a specialization of the police force into separate wings for investigative and other duties, has, in their view, created a top-heavy institution that lacks the necessary unity of command and encourages corruption. With the failure of a civilian oversight institution, lacking both funding and police cooperation, it falls to the newly created local judicial branch to control police excesses. This is a function that this weak and under-resourced institution cannot fulfil.¹⁵ As a senior police officer further pointed out, the police code of honour strongly discourages officers from making judicial complaints regarding the misconduct of fellow officers.¹⁶ Senior bureaucrats therefore support the re-introduction of the executive magistracy with its powers to direct and control local policing as well as its authority over political assemblies and 'crowd control' (Dogor, 2009). Objections to the abolition of the executive magistracy were, on the one hand, framed in technocratic terms of public order, checks and balances, and the ability to exercise control over wayward elements within the local police as well as over 'processions' and 'crowds'. This standard discourse, familiar from colonial times, was supplemented by a judicial-constitutional angle. Accordingly, the office of the executive magistracy was deemed to enjoy constitutional protection as the result of the Law Reforms Ordinance 1972 (Dogor, 2009). The arguments about police reform on the whole sidestepped the entire question of the legitimacy of reform. The argument was less about the police itself, and more about defending the long-standing practice of divide-and-rule against the intrusion of a modernizing military dictatorship and its attempts to centralize and monopolize the means of violence within Pakistan.

Conclusions

The constitutional re-engineering agenda operating in the background of these reforms meant that, in the face of determined opposition, Pakistan's military regime had to compromise on implementation from the very beginning. During the brief period in which the Police Order was on the statute book it underwent considerable change in order to placate opposition from the provincial administrations and the bureaucracy. (See Shigri, 2003.) The weakening of the centre in the face of Musharraf's ineffective second coup in 2007 and the subsequent period of instability surrounding the transition to civilian rule in 2008 saw the provinces taking the initiative in scuppering the remainders of a Police Order that had never really been in effect. With the onset of 2010 came the emergence of increasing provincial divergence in policing legislation. Having argued that federal legislation regarding policing was null and void, the provincial legislatures let the pro-

¹⁵ Interview Sarwar Khan ADB Islamabad, 24 February 2010.

¹⁶ Interview Fasihuddin, PSP, 26 February 2010, Islamabad.

visions of the Police Order expire at the end of 2009 and started replacing them with provincial legislation. Punjab was the first province to present a significantly amended Police Order in early 2010; other provinces are likely to follow its lead. The new provincial police orders contain provisions that see the bureaucracy clawing back their powers to oversee policing. Most significantly, 2010 has seen the reintroduction of the executive magistracy in all four provinces of the country. In some districts, the functional separation provisions of the Police Order 2002 have been substantially reversed, and public oversight functions are being watered down even further from the previous amendments of the Police Order in 2004 and 2006. In the main, they have been devolved upwards towards provincial home ministries. In matters of security governance, there has been a return to the familiar mechanisms of divide-and-rule.¹⁷

These are no more suitable for confronting the country's security challenges than they were before Pakistan's brief episode of police reform. If anything, the past ten years have demonstrated the limits of the colonial *modus operandi* in matters of security governance. Militant and other criminal networks have spread their tentacles from Pakistan's periphery into the mainland, their sophisticated modes of operation making the obsolescence of the police even more apparent. At the same time, donors have continued to support police 'capacity building' on the assumption that they are strengthening a technically weak but in essence effective institution of the state. This brief presentation of the politics of policing and police reform should lead us to question this assumption.

Pakistan is not a state of the Weberian type, and the police are only one of many potential providers of security – and not necessarily 'for' or 'of' the state. The limited sovereignty enjoyed by the Pakistani state is not a sign of weakness or lack of capacity, but the result of long-standing and flexible patterns of security governance. The exercise and the threat of violence are inherent in the way in which networks of elite families and tribes stake their claims for resources, recognition and territory. Indirect rule and divide-and-rule mechanisms have legally cemented the decentralized exercise of violence. The police, although institutionally weak, have been a politically important bargaining chip for colonial and post-colonial bureaucracies seeking to establish pliable local clients. Attempts to create a security state in the image of a Western 'Leviathan' have been the result of Pakistan's modernizing dictatorships and have inevitably been externally supported and mediated. This has created a substantial legitimacy deficit of state institutions and of their reform projects, with a recalcitrant population

¹⁷ Afzal Shigri (2010) has referred to the roll-back of the Police Reform and the return of informal local policing in Balochistan as a 'return to the dark ages'.

figuring as a mere object and collateral. Such centralization – whether undertaken on government initiative as in the case of Balochistan, in response to militancy as in FATA, or under the guise of comprehensive legal reform – has been violent and destabilizing. As the struggle over Musharraf's police reforms has demonstrated, it has led to fierce power struggles among local clients, the provincial bureaucracy and the centre over the control of what the British Raj referred to as 'the most ubiquitous agency' (Zetland 1924, p 116).

Yet despite the evidence from the failure of the latest attempt to create a Pakistani Leviathan, there is already talk of 'mainstreaming' parts of Pakistan's volatile periphery. Liberal reformers have suggested, among other things, that FATA become a full part of Pakistan – in the face of considerable evidence that its denizens largely reject such full-scale incorporation.¹⁸ Stoking the fear of a 'weak' or 'failing' state, destabilizing the whole of South and Central Asia allows ruling elites to strategically manipulate the language of 'decentralization', of 'accountability' and 'security sector reform', in order to extract massive resources from the donor community. Donors, in turn, can legitimize their support for centralizing security sector reform in terms of 'capacity building' and 'rule-of-law reform'. Pakistan's civilian and military elites, together with the donor community, remain enthralled by the state-building project, even in the face of mounting costs.

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¹⁸ See the surveys conducted very recently in FATA, available at www.understandingfata.org

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