ETHNIC FEDERALISM IN PAKISTAN: FEDERAL DESIGN, CONSTRUCTION OF ETHNO-LINGUISTIC IDENTITY & GROUP CONFLICT

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Region-based political groups in Pakistan have historically mobilized for political power largely around ethnic and linguistic identities. Since colonial times, there has been a history of political bargaining by groups in the Indian subcontinent along ethnic lines.[1] From amongst the different ethnic groups that formed part of Pakistan at its inception, the Bengalis, Sindhis, Pakhtuns and Balochis were, at different moments in pre-partition India, known for their vociferous political agitation against the British colonizers.[2] To varying extents, their political agitation in the late nineteenth and early twentieth centuries took the form of organized movements that called for British withdrawal from India on the one hand and territorial and political independence for these groups on the other.[3] With the creation of Pakistan and the merging of these groups into a single polity, the groups' demands for territorial independence transformed into agitation for regional political autonomy within the new nation-

1. *See, e.g.*, TAHIR AMIN, ETHNO-NATIONAL MOVEMENTS OF PAKISTAN: DOMESTIC AND INTERNATIONAL FACTORS 65-72 (1988).

2. *Id.*

3. *See, e.g.*, Dietrich Reetz, *In Search of the Collective Self: How Ethnic Group Concepts were Cast through Conflict in Colonial India*, 31 MODERN ASIAN STUD. 285 (1997) [hereinafter Reetz, *In Search of the Collective Self*]. *See also* Paul Titus & Nina Swidler, *Knights, Not Pawns: Ethno-Nationalism and Regional Dynamics in Post-Colonial Balochistan*, 32 INT'L J. OF MIDDLE EAST STUD. 47, 47 (Feb. 2000) [hereinafter Titus & Swidler, *Knights, Not Pawns*].

state.[4] While these ethnic movements had their roots in colonial India in many ways, other group agitations for political autonomy emerged in the post-colonial environment. In fact, some of the most visible contestations that Pakistan has encountered since independence relate to federal-province relations and ethno-national movements, such as the hostile secession of East Pakistan in 1971, massive military operations in the province of Balochistan to suppress nationalist-secessionist movements in the 1970s and again under General Musharraf in the 2000s, and the current ethno-politically motivated killing sprees in the largest city and commercial center of Karachi.

There is a sizeable and growing corpus of scholarship on the twin phenomena of ethno-nationalism and ethnic conflict in Pakistan. Underlying much of this positive analysis is the argument that the institutional imbalance that Pakistan inherited at the time of independence in the form of a "bureaucratic-military oligarchy"[5] was responsible, in large part, for the hardening and persistence of ethnicity-based politics. For instance, leading sociologists and historians argue that the imposition of a dominant Islam-based state ideology by the "oligarchy" on a highly heterogeneous population stifled the development of political institutions and largely foreclosed participation in democratic processes. This contributed to an intensification of mobilization for access to power through the medium of ethnic identity.[6] In a variation on this theme, others contend that the primary determinant of the episodic rise and decline of ethno-national movements was the quality of the interaction between the state elite (including democratic forces) and the ethnic elite. In this account, both the state and ethnic elite were dynamic entities. Thus, ethno-nationalism tended to decline in response to state policies that led to greater power-sharing arrangements, and *vice versa*.[7] Still others propose that the disproportionately high representation of certain dominant ethnic groups in the civil bureaucracy and military fuelled a common perception that these central authorities were partisan ethnic actors, thus provoking ethnic re-

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4. Amin, *supra* note 1, at 57-112.

5. The term was coined by Hamza Alavi. Hamza Alavi, *Class and State in Pakistan, in* Pakistan: The Roots of Dictatorship: The Political Economy of a Praetorian State 40, 66 (H. N. Gardezi & J. Rashid eds., 1983) [hereinafter Alavi, *Class and State in Pakistan*].

6. Hamza Alavi, *Pakistan and Islam: Ethnicity and Ideology, in* State and Ideology in the Middle East and Pakistan 73, 105-110 (Fred Halliday & Hamza Alavi eds., 1988) [hereinafter Alavi, *Ethnicity and Ideology*].

7. Amin, *supra* note 1. Other scholars propose that ethno-national movements in Pakistan respond to multiple factors in addition to state elite. Iftikhar H. Malik, State and Civil Society in Pakistan: Politics of Authority, Ideology and Ethnicity 187 (1997) (arguing that "[t]he state, the political economy, urbanisation, social mobility, new class formation, global and national changes in communication, education and entertainment, as well as expansion of national cultural and related institutions" have transformed ethnic identities in Pakistan); Feroz Ahmed, Ethnicity and Politics in Pakistan 261-68 (1998) (arguing that various economic, demographic, political and cultural changes have affected ethnic identification in significant ways).

actions.[8] More recently, political scientists have asserted that the efforts of the bureaucratic-military leadership to use coercive centralizing and homogenizing tactics to consciously counter ethnic plurality resulted in an ethnic backlash.[9] In this view, state actors actively pursued policies of ethnic discrimination against non-dominant ethnic groups, forcing the latter to respond through an ethnic agenda. A similar view points to the possibility that ethnic divides were manufactured by the military for legitimizing its direct involvement in politics on the ground that military intervention was necessary for quelling internal ethnic conflicts.[10]

It is interesting to note that even though most of this literature dwells on the political demands of ethnic groups for regional autonomy, it remains mute on the use of federal structures by the state to marginalize, or conversely amplify the dominance of, certain regional groups. This is despite the fact that experimentation with federal solutions to ethnic diversity and conflict has its roots in colonial times, and ethnic conflict over regional autonomy has centered on the design and structure of federal power-sharing arrangements.[11] Nevertheless, there is a curious disconnect between the two bodies of scholarly work: the one on ethnicity-based politics and ethnic conflict, and the other on federal politics and federal design. Only very recently have some political scientists begun to appreciate the many intersections between these two phenomena in Pakistan, and to demonstrate that ethnicization of politics (or the process of articulating economic and political contestations through ascriptive ethnic identities) and ethnic conflict are functions, amongst other things, of state policies and interventions that exclude certain groups from political participation by engineering and manipulating federal structures.[12]

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8. Samina Ahmed, *Centralization, Authoritarianism, and the Mismanagement of Ethnic Relations in Pakistan*, *in* GOVERNMENT POLICIES AND ETHNIC RELATIONS IN ASIA AND THE PACIFIC 83, 83 (Michael Brown & Sumit Ganguly eds., 1997).

9. Rasul Bakhsh Rais, *Politics of Ethnicity and Democratic Process in Pakistan*, *in* ETHNO-NATIONALISM AND THE EMERGING WORLD DISORDER (Gurnam Singh ed., 2002); ADEEL KHAN, POLITICS OF IDENTITY: ETHNIC NATIONALISM AND THE STATE IN PAKISTAN 61-68 (2005).

10. Irm Haleem, *Ethnic and Sectarian Violence and the Propensity towards Praetorianism in Pakistan*, 24 THIRD WORLD QUARTERLY 463, 469-72 (2003); Asaf Hussain, *Ethnicity, National Identity and Praetorianism: The Case of Pakistan*, 16 ASIAN SURV. 918, 921-23 (1976).

11. *See generally* Khalid Bin Sayeed, *Federalism and Pakistan*, 23 FAR EASTERN SURV. 139 (Sep. 1954); Mohammad Waseem, Federalism in Pakistan (Aug. 2010) (unpublished manuscript, *available at* http://www.forumfed.org/pubs/Waseem-Fed-Overview.pdf); Yunas Samad, *Managing Diversity in Pakistan: Going Beyond Federalism* (Sustainable Development Policy Institute, Working Paper No. 131, 2013), *available at* http://www.sdpi.org/publications/files/Managing%20Diversity%20in%20Pakistan%20Going%20Beyond%20Federalism%20(W-131).pdf) [hereinafter Samad, *Managing Diversity in Pakistan*]; Jami Chandio, The Crisis of Federalism in Pakistan: Issues and Challenges (Oct. 2013) (unpublished manuscript) (available on file with Journal on Ethnic & Racial Justice).

12. *See* Katharine Adeney, *Democracy and Federalism in Pakistan*, *in* FEDERALISM IN ASIA 101 (Baogang He et al. eds., 2007) [hereinafter Adeney, *Federalism in Pakistan*]; KATHARINE ADENEY, FEDERALISM AND ETHNIC CONFLICT REGULATION IN INDIA AND PAKISTAN (2007). *See also* Muhammad Mushtaq, *Managing Ethnic Diversity and Federalism in Pakistan*, 33 EUR. J. OF SCI. RES. 279 (2009); Samad, *Managing Diversity in Pakistan*, *supra* note 11.

This article adopts a distinct approach based on federal design to explore linkages between "ethnic federations" that serve to accommodate longstanding political demands on the basis of identity recognition on the one hand, and the homogenization of new groups around ethnic identity for political visibility, competition and gain, and the resultant worsening of ethnic conflict on the other. Pakistan is a prominent example, as well as a highly fertile ground for the study, of this form of federalism. While there are multiple typologies of an ethnic federation depending on the historical and geographical context, this article relies on a broad formulation proposed by Joszef Juhasz[13] which aptly captures the proposed nature of the federal structure in Pakistan under the original Constitution of the Islamic Republic of Pakistan, 1973 as promulgated in 1973 ("1973 Constitution").[14] Juhasz defines ethnic federations as countries "which are nationally and ethnically heterogeneous and work in a federal structure at least partially based on national and ethnic heterogeneity,"[15] and further, "where integrative national political consciousness and a strong separate identity are simultaneously present."[16] Put another way, ethnic federations allow for the integration of dual identities and ideologies based on common citizenship and group distinctiveness in a single federal structure.

One of the endeavors of an ethnic federation is to re-orient ethnicity-based collective action into non-violent politics.[17] A number of ethnically heterogeneous countries have recently experimented with the ethnic federation model for defusing ethnic conflict.[18] However, the persistence of highly turbulent, violent, and sometimes secessionist ethnic conflict within sub-national units in Pakistan and elsewhere suggests that ethnic federalism has its limitations. Increasingly, it appears that ethnic federa-

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13. Jozsef Juhasz, *Ethno-Federalism: Challenges and Opportunities*, MP 3 Etno-federalizam 245, (2005) [hereinafter Juhasz, *Ethno-Federalism*].

14. *See* The Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter 1973 Constitution], *reprinted in* M. Mahmood, The Constitution of the Islamic Republic of Pakistan: A comprehensive and detailed commentary with a comparative study of the Constitutions of Pakistan, 1956 and 1962 (1973).

15. Juhasz, *Ethno-Federalism*, *supra* note 13, at 246.

16. *Id.* at 247.

17. Some scholars propose that "[f]ederalism works because it transfers the target of political mobilization from the national to the provincial centers, shifts conflicts in homogenous provinces to intraethnic divisions, and gives ethnic groups local autonomy." Rita Jalali & Seymour Martin Lipset, *Racial and Ethnic Conflicts: A Global Perspective*, 107 Pol. Sci. Quarterly 585, 601 (1992-1993) [hereinafter Jalali & Lipset, *Racial and Ethnic Conflicts*]. Others distinguish between ethnically dispersed and centralized systems in evaluating the nature and intensity of such conflict. Donald L. Horowitz, Ethnic Groups in Conflict 37-40 (2nd ed. 2000) [hereinafter Horowitz, Ethnic Groups in Conflict]. *See also* Donald L. Horowitz, *The Many Uses of Federalism*, 55 Drake L. Rev. 953, 956-62 (2007).

18. Prominent examples include Nigeria and Ethiopia. *See, e.g.*, L. Adele Jinadu, *Federalism, The Consociational State, and Ethnic Conflict in Nigeria*, 15 Publius, Federalism and Consociationalism: A Symposium 71, 72-73 (1985); Ethnic Federalism: The Ethiopian Experience in Comparative Perspective (David Turton ed., 2006). For examples in Asia, *see* Federalism in Asia (Baogang He et al. eds., 2007). For examples in Europe, *see* Multinational Federalism: Problems and Prospects (Michel Seymour & Alain-G. Gagnon eds., 2012).

tions, in certain conditions, are likely to worsen ethnic cleavages and exacerbate, rather than defuse or contain, ethnic conflict.[19] Scholars refer to this worsening of ethnic conflict as the "minorities-within-minorities" problem.[20] According to Peter Schuck, the minorities-within-minorities problem emerges when "a federating polity that organizes a sub-unit around a particular mode of ethnic representation and patronage may actually exacerbate existing intra-ethnic conflicts in that sub-unit, thus encouraging new and more ardent minority claims for political recognition, greater autonomy, or even full independence."[21] The Pakistani example shows that, quite apart from fuelling *intra*-ethnic confrontation, ethnic federations tend to compel, deepen and reify *inter*-group cleavages on the basis of ethnic identity, thus also aggravating *inter*-ethnic conflict at the sub-national level.

Before framing and enlarging upon the "federal design" approach that this article advances for explaining the minorities-within-minorities problem, it is necessary to clarify that this approach does not seek to establish an unqualified normative argument about the ineffectiveness of ethnicity-based federal systems in counteracting ethnic conflict. Rather, it proceeds on the premise that the likelihood of the occurrence and the intensity of the minorities-within-minorities problem are contingent on the confluence of certain historical and structural conditions. Accordingly, it aims to identify specific conditions under which the minorities-within-minorities problem is likely to become so intractable as to call into question the political logic and wisdom of promoting federalism as an instrument for the resolution of ethnic conflict.

Having laid out this broad qualification, the proposed "federal design" framework can be stated in the following terms. When the establishment of an ethnic federation is accompanied by a reversal in the historical power relations between a backward local majority and a dominant minority group through the political recognition of the former as a *de jure* ethnic group at the sub-national level, there is a tendency toward the ethnicization of the minority group's identity and an intensification of ethnic hatred and conflict between the two groups. Put another way, the thrust of this federal design argument lies in the introduction of an ethnicity-based federal structure that reverses the dominant position of the minority group by granting autonomy to the local majority on the basis of a privileged *de jure* ethnic identity. The argument is, therefore, predicated on the pre-federalization relationship between groups situated in geographical proximity, one of which is a marginalized local majority group and the other a dominant minority group typically perceived as

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19. For a comprehensive synthetic review of the arguments against the use of ethnic federalism as an instrument of ethnic conflict management, *see* Asnake Kefale, Federalism and Ethnic Conflict in Ethiopia: A Comparative Regional Study 11-13 (2013).

20. Peter H. Schuck, *Citizenship in Federal Systems*, 48 Am. J. Comp. L. 195, 203 (2000). Although Schuck's ideas are based on a comparative analysis of federal systems in the North America, Europe and Australia, they offer important insights on federated states in general.

21. *Id.* at 203.

non-indigenous by the majority group. The reversal of the dominant group's historical power through federalization necessitates inter-ethnic differentiation within the newly autonomous sub-national unit, leading to a significant rise in ethnic conflict between the majority and minority groups as well as the long-term instrumentalization of this conflict for political purposes.

As a vehicle for analysis of the federal design explanation for the minorities-within-minorities problem in Pakistan, this article presents a case study of the interface between the "Sindhis," a "*de jure* group" whose ethnically-based identity was formally recognized under the federal structure introduced by the 1973 Constitution, and the "Muhajirs," a "minority group" that resides within the constitutionally demarcated territory of the *de jure* group. The Sindhis are a predominantly agrarian population and consider themselves to be an indigenous group settled for centuries in the second most populous province of Sindh in southeast Pakistan. The Muhajirs – literally refugees or migrants – essentially were Muslim refugees from the Muslim-minority regions of Northern and Central India. At the time of partition of the Indian Subcontinent in 1947, they chose, or were compelled, to shift their domicile to Pakistan, and settled in urban Sindh. Since the 1970s, the inter-ethnic conflict between Sindhis and Muhajirs (and more recently, other ethnic groups) has engulfed the largest urban industrial and commercial metropolis of Karachi in unrelenting turmoil and bloodshed. This article explains the ethno-centrism of the Muhajirs from the perspective of the impact of the federal structure of the 1970s and the paramount role it played in introducing structural constraints in the avenues available to them for political mobilization and accommodation. It argues that the new federal dispensation introduced by the 1973 Constitution was an ethnic federation, which organized political power along ethno-linguistic lines by creating *de jure* groups and providing constitutional protection to their ethno-centered policies. This triggered a reversal in the dominant status of the Muhajirs, compelling them to reinvent themselves as an ethno-linguistic group in their struggle for political empowerment. Thus, in Sindh, the ethnic federation of the 1970s perpetuated the very problem of ethnic strife that it was designed to curtail.

The proposed view that an ethnic federation, when accompanied by a reversal of minority-controlled power relations, may significantly contribute to ethnicity-based mobilization of minority groups that have been ethnically-neutral in the past, questions the conventional scholarly opinion that Muhajir nationalist demands emerged in response to relative economic deprivation.[22] It is also in marked opposition to the popular ac-

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22. Farhat Haq, *Rise of the MQM in Pakistan: Politics of Ethnic Mobilization*, 35 Asian Surv. 990, 991-993 (1995) [hereinafter Haq, *Rise of the MQM*]; Moonis Ahmar, *Ethnicity and State Power in Pakistan: The Karachi Crisis*, 36 Asian Surv. 1031, 1040 (1996) [hereinafter, Ahmar, *Karachi Crisis*]. *See also* Mohammad Waseem, *Affirmative Action Policies in Pakistan*, 15 Ethnic Stud. Rep. 223 (1997) [hereinafter Waseem, *Affirmative Action Policies*].

count that the ethnicity-based organization of the Muhajirs was perpetrated by military and intelligence agencies.[23]

Part I of this article begins with setting out the conventional explanations for the ethnic mobilization of the Muhajirs in the context of the creation of an ethnicity-based Muhajir political party in the 1980s, known as the Muhajir Qaumi Movement (Muhajir National Movement or "MQM"). It then articulates the main hypotheses for the alternative theoretical framework of "federal design" for studying the minorities-within-minorities problem in the case of the Sindhi-Muhajir conflict.

Parts II and III analyze the Sindhi-Muhajir conflict using this new optic of federal design. Part II focuses on the pre-federated power relations between the Sindhis and the Muhajirs in the new state of Pakistan. It provides a historical backdrop to the ethnic consciousness and political disempowerment of the Sindhis on the one hand, and the entrenchment of Muhajir dominance on the other. Part III deals with the introduction of an ethnic federation in the early 1970s, and its implications for inter-group relations in Sindh. In particular, it critically examines the historical and political motives for ethnicity-based federalization, the ethno-centered attributes of the new federal structure based on selective *de jure* recognition of local majority groups, and a reversal of Sindhi-Muhajir power relations and reinforcement of inter-group cleavages through federalization. Both Parts II and III draw on and frame their analysis around Schuck's discussion of the factors that are likely to deepen, or otherwise ameliorate, the minorities-within-minorities problem in federal systems. These include the geographical distribution of sub-national groups, the nature and salience of social cleavages and political identities, the extent of reinforcement or dampening of existing cleavages through federalization, the pace at which the federated power-sharing arrangements are introduced, and the manner in which such power-sharing arrangements come about (by negotiation or by imposition).[24]

In light of the preceding analysis, Part IV presents a theoretical discussion on the minorities-within-minorities problem in ethnic federations. Further, it argues that, to the extent that an ethnicity-based federal structure is increasingly viewed as a possible mechanism for ameliorating conflict in ethnically heterogeneous societies, the minorities-within-minorities problem is not an isolated occurrence. Persistent and violent ethnic conflict resulting from the reversal of historical power relations between majority and minority groups in federal systems is a phenomenon that has much broader relevance, and as such deserves greater attention from both scholars and policymakers. Part V provides a critical appraisal of the link between federalism and the management of inter-ethnic diversity in Pakistan today. Additionally, it briefly discusses the current federal framework and its implications for ethnicity-based politics and group

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23. Proponents of this view from amongst political parties include the Jamaat Islami (JI), the Pakistan People's Party (PPP), and various Sindhi nationalist parties. Nadeem F. Paracha, *MQM: The Missing Link*, DAWN Oct. 23, 2011, *available at* http://www.dawn.com/news/668366/smokers-corner-mqm-the-missing-link.

24. Schuck, *supra* note 20, at 212-13.

conflict, especially the question of rights of minority groups in the provinces.

Part I: Federal Design and Ethnic Conflict in Pakistan – A New Framework

1. Conventional Explanations for the Ethnic Mobilization of the Muhajirs

It is useful to begin with a genealogy of the Sindhi-Muhajir relationship and the relation of both groups with the center in order to contextualize the conventional explanations for the ethnic mobilization of the Muhajirs. The Sindhi-Muhajir conflict can be divided into five phases. In the first phase, 1947 to 1958, the Muhajirs (along with the Punjabis) comprised the dominant group in the central civil administration as well as the ruling elite, and the Sindhis were politically and economically marginalized both at the central and provincial levels. During the second phase, 1958 to 1969, the rise of the military as the dominant state institution somewhat undermined the position of the Muhajirs at the center, while the Sindhis lost further provincial autonomy, first under martial law and then under a military-imposed constitution. The third phase, 1970 to 1977, witnessed the introduction of a new consensus-based federal structure. This enhanced the relative political position of the Sindhis by granting Sindh a *de jure* nationalist identity along with provincial autonomy. The Muhajir population, on the other hand, became less visible in the center and the province, and was compelled to mobilize in response to Sindhi nationalism on the basis of a newly-articulated ethnic identity. Muhajir ethnic demands reached their apogee in the fourth phase, 1977 to 1988, with the formation of MQM, an ethnicity-based Muhajir political party. Simultaneously, Sindhi provincial autonomy declined under the military dictatorship of General Zia-ul-Haq. In the fifth phase, 1988 onwards, MQM has attempted uneasy and fragile, though in some ways propitious, political accommodations at the federal and provincial levels with political parties within and without Sindh.[25]

Along this historical continuum, the fourth phase is the most well-documented. It is during this phase that a Muhajir ethno-nationalist student pressure group known as the All Pakistan Muhajir Students' Organization ("APMSO") emerged. APMSO was created in June 1978 to agitate against the differential effects of the policies of Zulfikar Ali Bhutto, the founder of the Pakistan People's Party ("PPP") and the first popularly elected head of state of Pakistan.[26] Bhutto was an indigenous Sindhi from a feudal background, revered by Sindhis as a symbol of Sindhi nationalism. His political career was prematurely terminated by General Zia-ul-

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25. For a quick glance at these alliances over the past twenty-five year period, *see* Sabir Shah, *25-Year History of MQM's Politics, its Friends and Foes*, The News, Aug. 3, 2013, *available at* http://www.thenews.com.pk/Todays-News-2-194058-25-year-history-of-MQMs-politics-its-friends-and-foes; *Timeline: A History of MQM*, Dawn, May 25, 2013, *available at* http://www.dawn.com/news/1027569/timeline-a-history-of-mqm. *See also* sources cited *infra* note 32.

26. *See, e.g.*, Haq, *Rise of the MQM*, *supra* note 22, at 997; Charles H. Kennedy, *Politics of Ethnicity in Sindh*, 31 Asian Surv. 938, 947-48 (1991) [hereinafter Kennedy, *Politics of Ethnicity in Sindh*].

Haq's military *coup* in 1977. Sindhis virulently opposed General Zia-ul-Haq's martial law and the subsequent execution of Bhutto, which they perceived to be an organized crime against the Sindhi community.[27] On the other hand, for the Muhajirs, "General Zia-ul-Haq's martial law came as a welcome stock-taking breather."[28] Ostensibly, APMSO was born in this milieu as an organization articulating the interests of a constituency of Muhajir students in urban Sindh in response to growing Sindhi nationalism. In 1984, APMSO graduated from a student pressure group to a full-fledged political party known as the MQM.[29]

MQM originally represented the interests of the urban middle and lower middle classes amongst the Muhajirs, but rapidly extended its ethno-nationalist mandate to encompass a broader part of the Muhajir community. With its high degree of public mobilization in Karachi, Pakistan's economic and industrial hub, the MQM electorally decimated the non-ethnic Islamist parties like the Jamaat Islami ("JI") and the Jamiatul Ulema-i-Pakistan ("JUP") that had hitherto claimed the bulk of popular Muhajir votes.[30] MQM won its first electoral victory in 1987 in local body elections in urban Sindh, and again made its mark in the general elections of 1988 and 1990.[31] By 1991, MQM had established a virtual monopoly over political representation of the Muhajir community. Since then, not only has it dominated the politics of urban Sindh but has also made a visible impact on larger provincial and national politics.[32]

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27. Bhutto was convicted of a conspiracy to murder a political adversary in an extremely controversial and politicized trial conducted under Zia's tightly controlled martial law regime. Despite several international appeals for clemency and commutation of sentence, Bhutto was hanged in April 1979. *See generally* VICTORIA SCHOFIELD, BHUTTO, TRIAL AND EXECUTION (1979). Bhutto's supporters and sympathizers refer to his execution as "judicial murder." *See, e.g.*, Kennedy, *Politics of Ethnicity in Sindh, supra* note 26, at 947; Zahid Gishkori, *Govt to reopen ZA Bhutto 'judicial murder' case*, EXPRESS TRIBUNE, Mar. 29, 2011, *available at* http://tribune.com.pk/story/139213/govt-to-reopen-za-bhutto-judicial-murder-case/.

28. Arif Azad, *MQM and Growth of Ethnic Movements in Pakistan*, 31 ECON. & POL. WKLY. 1061, 1062 (May 4, 1996) [hereinafter Azad, *Ethnic Movements in Pakistan*]. Muhajirs were actively involved in anti-Bhutto agitation launched by the Pakistan National Alliance ("PNA") just before the March 1977 general election. *See generally* Adeem Suhail, The Pakistan National Alliance of 1977 (May 2011) (unpublished Master of Arts dissertation, University of Texas at Austin) (on file with University of Texas Libraries, Digital Repository).

29. *See, e.g.*, Ahmar, *Karachi Crisis, supra* note 22, at 1033.

30. *See* Babar Ali, *Sind and Struggle for Liberation*, 22 ECON. & POL. WKLY. 402, 403 (Mar. 7, 1987). For an account of Muhajir support for religious parties (particularly the JI) prior to the formation of the MQM, *see* SARAH ANSARI, LIFE AFTER PARTITION: MIGRATION, COMMUNITY AND STRIFE IN SINDH, 1947-1962 172-81 (2004) [hereinafter ANSARI, LIFE AFTER PARTITION].

31. For instance, in the 1988 provincial assembly elections, the MQM obtained almost 70% of the vote share in Karachi alone. Hariz Gazdar, *Karachi's Violence: Duality and Negotiation* 5 (2011) (unpublished manuscript) (on file with the Collective for Social Science Research).

32. For a succinct discussion of the rise of the MQM and its political development from the late 1980s to the mid-1990s, *see* Abbas Rashid & Farida Shaheed, *Pakistan: Ethno-Politics and Contending Elites*, (Jun. 1993) (unpublished manuscript) (on file with the United Nations Research Institute for Social Development (UNRISD)); Haq, *Rise of the MQM, supra* note 22, at 998-1003. For a more contemporary analysis, *see* Bilal Baloch, *The Role of Leadership and Rhetoric in Identity Politics: Muttahida Qaumi Move-*

The Sindhi-Muhajir polarization worsened dramatically with the emergence of the MQM, as did the conflict between the MQM and other economic ethnic migrants in Sindh.[33] The intensifying ethnic violence finally brought the MQM into a hostile confrontation with the Pakistan army in 1992, leading to a split within the MQM, the creation of a breakaway faction known as MQM-Haqiqi (meaning "authentic"), and the self-exile of the MQM leader, Altaf Hussain. The army operation, "Operation Cleanup," was justified on the pretext of removing anti-social elements from the city, but primarily and heavily targeted the MQM.[34] In late 1994, the army withdrew from Karachi and was replaced by paramilitary troops, but acts of violence continued in urban Sindh, further rupturing relations between the MQM and the center. During this time, the MQM put forward a demand for a separate province for the Muhajirs carved out of the urban areas in Sindh along with provincial autonomy.[35] However, by July 1997, the MQM claimed to have transformed from an ethnicity-based political party to a national party, expanding its electoral appeal to non-Muhajir groups.[36] Evidently, this has not resolved the problem of ethnic conflict in urban Sindh. The party continues to operate as a kind of a diaspora movement since the 1990s, with its leadership settled in the United Kingdom, and is frequently accused of indulging in fascist practices. Further, as the third largest political party up until the general election in 2013 (when it was pushed to the fourth position by the Pakistan Tehreek-e-Insaaf) and the second largest in Sindh, the MQM has periodically used its electoral victories to destabilize political coalitions, both at the center and in the province. Violence appears to have been normalized in Karachi politics because of MQM's geographical leverage over Karachi and its ability to weaken state power.[37]

The leading explanation put forward by historians and political scientists for the creation of the MQM is a kind of class-based explanation for ethnic mobilization. These scholars contend that group differentials in economic wealth, institutional underrepresentation, and diminished access

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ment (MQM), a Case Study, Al Nakhlah, Online J. on Southwest Asia & Islamic Civilization (Winter 2012), http://alnakhlah.org/2012/01/01/the-role-of-leadership-and-rhetoric-in-identity-politics-muttahida-qaumi-movement-mqm-a-case-study-by-bilal-baloch/.

33. Akmal Hussain, *Karachi Riots of December 1986: Crisis of State and Civil Society in Pakistan*, 22 Econ. & Pol. Wkly. 450, 450-451 (Mar. 14, 1987).

34. *See, e.g.*, Mohammad Waseem, *The MQM of Pakistan: Between Political Party and Ethnic Movement*, *in* Political Parties in South Asia 177, 184-85 (Subrata K. Mitra et al. eds., 2004); Ahmar, *Karachi Crisis*, *supra* note 22, at 1034-35.

35. *See, e.g.*, Ahmar, *Karachi Crisis*, *supra* note 22, at 1042-43.

36. The official nomenclature of the MQM was changed from "Muhajir" to "Muttahida" Qaumi Movement (United National Front) to signal the re-orientation of MQM's political objectives and ideology. A detailed investigation of this political transformation can be found in Noman Baig, From Mohallah to Mainstream: The MQM's Transformation from an Ethnic to a Catch-All Party (2008) (unpublished Master of Arts thesis, University of Victoria) (*available at* https://dspace.library.uvic.ca:8443/bitstream/1828/914/1/Thesis.pdf). *See also* Papiya Ghosh, *The Changing Discourse of the Muhajirs*, 28 India Int'l Centre Quarterly, Relocating Identities 57 (2001) [hereinafter Ghosh, *Changing Discourse of the Muhajirs*].

37. Nichola Khan, Mohajir Militancy in Pakistan: Violence and Transformation in the Karachi Conflict 8 (2010).

to the center led to an acute sense of economic deprivation among middle class Muhajirs vis-à-vis the Sindhis during General Zia's rule in the 1980s.[38] They rely, amongst other things, on data based on the ethnic quota system for recruitment in the Pakistani civil service and educational institutions to demonstrate that by the mid-1980s there was an overall proportional decrease in Muhajir representation in these institutions.[39] They further argue that the volte-face in the Muhajirs' economic conditions compelled them to shed their national "Pakistani" identity in favor of a manufactured ethnicity based on new political demands.[40] According to this account, the discontent among the Muhajirs was a case of actual, albeit relative, deprivation among the middle and lower classes, leading to political mobilization around a new ethno-linguistic identity.[41] The MQM's Charter of Resolutions of 1988 ("1988 Charter"), which systematically articulated nationalist Muhajir demands for the first time, appears to reflect this sense of deprivation, particularly vis-à-vis the Sindhis.[42] Be that as it may, the argument of economic deprivation needs

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38. *See, e.g.*, Haq, *Rise of the MQM*, *supra* note 22, at 993 (arguing that a "majority of the Urdu-speaking Muhajirs see a wide gap between what they get and what they feel they are entitled to"); Ahmar, *Karachi Crisis*, *supra* note 22, at 1033 (arguing that "[the Muhajirs'] economic and political sense of deprivation reached its peak during [the Zia years] and by the mid-1980s there was enough fertile ground to raise the slogan of "Mohajir nationalism""); Waseem, *Affirmative Action Policies*, *supra* note 22, at 223; Yunas Samad, *In and Out of Power but not Down and Out: Muhajir Identity Politics*, *in* PAKISTAN: NATIONALISM WITHOUT A NATION? 63, 66-68 (Christophe Jaffrelot ed., 2002) [hereinafter Samad, *Muhajir Identity Politics*]; Charles H. Kennedy, *Pakistan: Ethnic Diversity and Colonial Legacy*, *in* THE TERRITORIAL MANAGEMENT OF ETHNIC CONFLICT 143, 161, 163 (John Coakley ed., 2003).

39. By 1983 (a little more than a decade after the introduction of the ethnic quota system in Sindh in urban-rural sectoral terms), the Muhajir representation in the bureaucracy declined from 30.1% to 17.4% for all grades and 33.5% to 20.2% for senior grades. Waseem, *Affirmative Action Policies*, *supra* note 22, at 234. Waseem argues that that the ethnic quota "greatly alienated *mohajirs* as it effectively closed the doors on many of them for entry into these institutions and services. This created a widespread feeling of despair among the *mohajir* youth who took to a militant form of nationalism. . .within a decade and a half of the extension of the quota system to the urban and rural sectors in Sindh." *Id.* at 229.

40. *See generally* Haq, *Rise of the MQM*, *supra* note 22, at 990 (arguing that the "MQM's claim that . . . *muhajirs* . . . constitute a fifth nationality in Pakistan was. . .a redefinition of political identity (Mujahir) for a community that had previously shunned particularistic ethnicity in favor of a broader Muslim Pakistani identity"); Ahmar, *Karachi Crisis*, *supra* note 22, at 1036 (arguing that the MQM's "demands for a new administrative setup and better socioeconomic status is totally contradictory to their [Muhajirs] previous 40 years of consistent opposition to the erosion of state power").

41. The claim that groups may articulate grievances over economic deprivation through mobilization of ethno-linguistic identities appears to be grounded in political science literature that compares federal and unitary systems in relation to material inequality and its effect on ethnic mobilization. *See, e.g.*, Kristin M. Bakke and Erik Wibbels, *Diversity, Disparity, and Civil Conflict in Federal States* 59 WORLD POL. 1 (2006).

42. Amongst other things, the 1988 Charter demanded recognition of Urdu as the official language of Sindh; recognition of the Muhajirs as the "fifth nationality" of Pakistan, commensurate with that of the Punjabis, Sindhis, Pakhtuns and Balochis; holding of a 'fair' national census (on the basis that the 1981 census underreported Karachi's population and hence the size of the Muhajir community); abolition of

to be further nuanced, as it falls short of adequately explaining why the new Muhajir identity was not articulated on the basis of class discrimination, or conversely, why it was premised on ethnicity. Though the 1988 Charter was facially concerned with ethnic quota and language issues, it articulated the demands of the urban middle and lower classes that were most affected by preferential policies. At the same time, the MQM claimed to politically represent the Muhajir community as an ethnic whole, and electoral results 1988 onwards demonstrated a more or less homogenous Urdu-speaking Sindhi urban electorate in support of the MQM. What remains largely unexplained in this account is the mobilization, broadly speaking, of a cross-class ethno-cultural identity instead of a distinct Sindhi urban middle class identity.

Feroz Ahmed is perhaps the only notable scholar to substantively engage with the question of why there has been a rise of political mobilization through the medium of ethno-nationalist demands in recent decades in Pakistan. As one of the leading thinkers on ethnic politics in Pakistan, Ahmed's observations merit independent discussion. Ahmed acknowledges that the Muhajirs "followed the model of the deprived or dominated groups (Bengali, Sindhi) to blame ethnic discrimination for its plight rather than following the model of the dominant (Punjabi) group of blaming the "system" or class oppression. It manipulated the cultural symbols of its group to mobilize the rest of the classes of its ethnic group in a militant nationalist movement."[43] Ahmed contends that group-based ethnic demands in Pakistan – in the case of the Muhajirs and more generally – are the result of an "overlapping of class and ethnicity" which, "by preventing the formation of cross-cutting cleavages, not only makes inter-ethnic collaboration more difficult, it promotes class collaboration within the groups which perceive themselves to be threatened from outside."[44] By "overlapping of class and ethnicity" Ahmed seems to be referring to the virtually homogeneous class base of the political leadership of regional political parties. For instance, the MQM's leadership is mostly drawn from the urban middle class, while that of the PPP is largely composed of Sindhi landowning elite. In Ahmed's view, these marked class divergences at the political party level have tended to heighten intragroup class collaboration within the two groups in general.[45] Much as this analysis provides interesting insights into why the two groups continue

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ethnic quotas in favor of Sindhis, and implementation of a merit-based system of representation in the federal bureaucracy and educational institutions on the basis of population, or, failing that, an increase in the proportion of seats allocated to urban Sindh; repatriation of the Urdu-speaking group known as the Biharis (who opted to migrate to Pakistan at the time of the secession of Bengal in 1971) from Bangladesh to urban areas of Sindh; grant of Sindh "domicile certificates" only to individuals resident in Sindh for twenty years, with the exception of repatriated Biharis; termination of interprovincial migration and return of Afghan refugees from urban Sindh to the Afghan border; and a greater share of provincial revenue for development of infrastructure and amenities in urban Sindh. *See, e.g.*, Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 948-49.

43. Feroz Ahmed, *Pakistan: Ethnic Fragmentation or National Integration?*, 35 Pak. Dev. Rev., Part II, 631, 644 (Winter 1996).

44. *Id.* at 645.

45. *Id.*

to compete on the basis of ethnicity-based politics of exclusion, it does not directly address the question of the underlying causes for the rise of Muhajir ethno-nationalism.

Some political groups as well as a few scholars offer an alternative explanation for the ethnicization of the Muhajir identity. They explain the creation of the MQM as a feat of political engineering by the military and intelligence services. They allege that General Zia-ul-Haq conceived and nurtured Muhajir ethno-nationalism as a counterpoise to his arch political rival Bhutto and the PPP, and to growing Sindhi nationalism in general. This claim primarily rests on the timing of MQM's birth. The MQM was created only months after General Zia brutally crushed a PPP-sponsored anti-martial law movement in rural Sindh in 1983, known as the Movement for the Restoration of Democracy ("MRD").[46] Sindhis had, so to speak, "become a thorn in the flesh of the military government," causing Zia to "cast around for potential political counterweights to neutralise rural Sind's radical politicisation."[47] This is a highly de-historicized explanation for the emergence of the MQM. Given that the Muhajirs had directly suffered the repercussions of the militarized state under General Ayub Khan in the 1960s, the assertion that MQM was the brainchild of the armed forces requires much more rigorous evidence. That the rise and electoral success of MQM may partially have been an "unintended consequence" of General Zia's policies is a much more plausible view. There is no gainsaying that to the extent that the interests of the Muhajir community and the military converged in respect of opposition to the PPP, the military's policies may have created the space required by the MQM to penetrate the political milieu as a full-fledged political party.[48] But to attribute a deeply complex historical phenomenon like Muhajir nationalism to the individual will of a military dictator is reductionist at best, and disingenuous at worst.

The following section takes a closer look at the alternative "federal design" argument proposed by this article to explain the ethnic mobilization of the Muhajirs.

2. Federalization & the Minorities-within-Minorities Problem: The Case of Sindh

In the context of Pakistan's experience with an ethnicity-based federal structure, the Sindhi-Muhajir case study provides a perspicuous instance of the role of federal design in spurring the minorities-within-minorities problem. The group dynamics obtaining in the province of Sindh, namely

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46. For an account of the MRD, *see generally* Khalid Bin Sayeed, *Pakistan in 1983: Internal Stresses More Serious than External Problems*, 24 ASIAN SURV. 219, 220-23 (Feb. 1984). *See also* Stephen Zunes, Pakistan's Movement for the Restoration of Democracy (1981-1984), http://www.nonviolent-conflict.org/index.php/movements-and-campaigns/movements-and-campaigns-summaries?sobi2Task=sobi2Details&sobi2Id=24.

47. Azad, *Ethnic Movements in Pakistan*, *supra* note 28, at 1062.

48. *See*, *e.g.*, AMIN, *supra* note 1, at 281. However, this view neither fully explains the ethnic mobilization of the Muhajirs nor negates the main thesis of this article that the ethnicization of the Muhajir identity had its roots in the ethnic federation of the 1970s.

the historical co-relation of an ethnically-neutral dominant minority group (Muhajirs) with an ethnically-conscious but marginalized local majority group (Sindhis), make the region especially suitable for such an inquiry. Of all the provinces in modern day Pakistan, Sindh's ethnic and cultural identity is in many ways the most well-developed and cohesive, extending back at least 1200 years. Moreover, unlike other provinces which were either partitioned or remained physically contiguous with regions in neighboring states, Sindh's colonial geographical boundary remained intact on Pakistan's creation in 1947.[49] In contrast to the substantial history of the ethnically-articulated identity of the Sindhis, the Muhajirs who settled in urban Sindh were of heterogeneous origin.[50] For more than two decades, they projected themselves as "Pakistani nationals" and consistently rejected a parochial, regional identity. The Muhajir claim to a distinct "nationality" at par with the *de jure* groups as a rational response to the introduction of an ethnic federation in the early 1970s, presents a highly instructive example of the effects of ethnicity-based federal design on minority group mobilization and the escalation of ethnic conflict.

Sindh is also important from the perspective of the minorities-within-minorities problem for other reasons. By 1973, the federalization experiment was aborted in both the North-West Frontier Province ("NWFP") and Balochistan.[51] Thus, arguably, the local majority ethnic groups in these regions (Pakhtuns in the NWFP and the Baloch in Balochistan) did not have any real opportunity to create a *de jure* identity despite notional assurances in the 1973 Constitution. This left behind Sindh as the only province (apart from the hegemonic province of Punjab) where the new federal arrangements were implemented and could be fully observed. In light of this "short-lived federalism" in the NWFP and Balochistan,[52] it is both crucial and necessary to concentrate on Sindh in order to gain insights into the nexus between federal design and intra-provincial relations.

Based on the Sindhi-Muhajir case study, this article lays down the following set of hypotheses in the context of the federalization process in Pakistan in the early 1970s. The overarching hypothesis is that the 1973 Constitution created, for the first time, *de jure* provincial autonomy and self-government for Pakistan's four main provincial units in a manner that significantly enhanced the constitutional-political recognition of the ethno-linguistic groups with which the provinces were symbolically and historically related.[53] Thus, the new constitution established an ethnic fed-

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49. Ethnic groups in the NWFP (Pakhtuns) and Balochistan (the Baloch) extend beyond the borders of Pakistan into neighboring Iran and Afghanistan. Feroz Ahmed, *The National Question in Sindh*, Pak. Forum Sep. 1972, at 10, 15 [hereinafter Ahmed, *National Question in Sindh*].

50. *See generally* Oskar Verkaaik, *A People of Migrants: Ethnicity, State and Religion in Karachi*, Comp. Asian Stud. no. 15, 40-45, 73 (1994).

51. Amin, *supra* note 1, at 122-28.

52. *Id.*

53. *See generally* Oskar Verkaaik, *Reforming Mysticism: Sindhi Separatist Intellectuals in Pakistan, in* Popular Intellectuals and Social Movements: Framing Protest in Asia, Africa and Latin America 70 (Michael Baud & Rosanne Rutten eds., 2004)

eration. It is essential to make this hypothesis explicit, as Pakistan is seldom acknowledged as an ethnic federation.[54] Founded on a broad consensus on the need for provincial autonomy, the new Federal Republic implicitly recognized the faulty constitutional design propounded by the previous constitutions of Pakistan in respect of the structure of center-province relations in general, and relations between ethnic groups in particular. It provided, instead, for a federal contract among the leaders and elected representatives of the four main ethno-linguistic groups in Pakistan – Punjabis, Sindhis, Pakhtuns, and the Baloch – and was intended to equip these groups with enhanced political bargaining vis-à-vis each other and the center.[55] As a result, the Sindhis in Sindh, the Pakhtuns in the NWFP and the Baloch in Balochistan were ostensibly granted greater visibility and leverage in the political process. This "*de jure*" argument is somewhat superfluous in the context of Punjab because of its hegemonic control of state institutions and resources.[56]

In the case particularly of Sindh, the article hypothesizes that the elevation of the Sindhis to an autonomous *de jure* status had important consequences for the nature of ethnic politics and conflict at the intra-provincial level. On the one hand, it led to the amplification of political and economic bargaining along ethnic lines and a further entrenchment of traditionally recognized ethnic identities. In particular, the formal ethnicity-based autonomy of the Sindhis enabled them to implement an ethno-centered political agenda in the province. On the other hand, the increased visibility and identity entrenchment for the Sindhis meant that other groups that did not conform to a *de jure* ethnic identity were disenfranchised from the political process. This was especially so in the case of the Muhajirs for whom the federalization process entailed a reversal of dominance and privilege. In the circumstances, the only effective route available to the Muhajirs for group mobilization for political visibility, competition, and gain was through the construction of an ethno-linguistic identity. But quite apart from the homogenization of the Muhajirs around a nationalist ethnic identity, the new federation deeply intensified the ethnic hatred and conflict between Sindhis and Muhajirs by reversing histor-

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(arguing that "the Pakistan People's Party. . .acknowledged ethnic identity as a legitimate form of loyalty within the context of Pakistan, partly giving in to the demands of the ethnic movements").

54. Notable exceptions include Katharine Adeney, Regionalism, Identity, and Reconciliation: Federalism in India and Pakistan (Apr. 2000) (unpublished manuscript) (on file with author); Katharine Adeney, *The Limitations of Non-consociational Federalism: The Example of Pakistan*, 8 ETHNOPOLITICS 87 (2009) [hereinafter Adeney, *Limitations of Non-consociational Federalism*].

55. *See generally* AMIN, *supra* note 1, at 11-12 (describing the new constitutional framework as engendering "a multi-national socialist community" and arguing that the "ethnic elites, also drawing upon the socialist tradition demanded the recognition of a nationality status with the ultimate right of secession").

56. *See generally* Yunas Samad, *Pakistan or Punjabistan: Crisis of National Identity*, 4 INT'L J. OF PUNJAB STUD. 10 (1995) (coining the term "Punjabistan" to highlight the hegemonic position of Punjab over other regions of Pakistan). *See also* Ian Talbot, *The Punjabization of Pakistan: Myth or Reality?*, *in* PAKISTAN: NATIONALISM WITHOUT A NATION? 51 (Christophe Jaffrelot ed., 2002) (exploring the basis for Punjabi predominance in Pakistan's politics).

ical power relations. Parts II and III, collectively, present the federal design argument in the context of the Sindhi-Muhajir case study, and examine the conditions under which political intervention in the form of an ethnic federation results in an intractable minorities-within-minorities problem.

Part II: Sindh's Encounter with Muhajir Dominance: Inter-Group Relations in Pre-Federated Pakistan

1. Sindhi Nationalism, Politics of Geography and Provincial Autonomy

The British Crown assumed direct administration of India through the Government of India Act, 1858 which formalized India's status as a colony of the British government.[57] By this time, the greater part of the territory that was subsequently consolidated into Pakistan in 1947 was firmly under British control, with the exception of Balochistan. Bengal was one of the earliest territories to be annexed by the British East India Company in 1757.[58] Sindh was next, conquered from the ruling Talpurs in 1843[59] and maintained as a separate state until 1847, when it was joined with the Bombay Presidency.[60] The area comprising modern day Punjab and the NWFP[61] was annexed in 1849[62] Balochistan was a late addition to British India, only succumbing in the late nineteenth century after a string of treaty negotiations with the Khan of Kalat[63] and the cession of various Pakhtun territories by the Afghans.[64] In consolidating the conquered regions, the British generally incorporated changes in boundary definitions only where these reflected political, economic or military interests. In the case of Sindh, for example, its temporary annexation with Bombay was premised on commercial grounds.[65] But although the colonial regional boundaries were not premised on ethnic divisions, the British created a system of ethnic hierarchies through colonial designations which effectively translated into social and economic spatial disparities. The role of

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57. The Act enabled the British Crown to wrench administrative control of the Indian colony from the British East India Company. *See, e.g.*, Stanley Wolpert, A New History of India 239 (2000).

58. *See, e.g.*, Brijen K. Gupta, Sirajuddaullah and the East India Company, 1756-1757: Background to the Foundation of British Power in India 26 (1962).

59. Theodore P. Wright, Jr., *Center-Periphery Relations and Ethnic Conflict in Pakistan: Sindhis, Muhajirs, and Punjabis*, 23 Comp. Pol. 299, 301 (1991) [hereinafter Wright, *Center-Periphery Relations*].

60. Swarna Rajagopalan, *Demarcating Units, Re-distributing Authority: Pakistan, India, Sri Lanka*, *in* Re-distribution of Authority: A Cross-Regional Perspective 7, 9 (Jeanie J. Bukowski & Swarna Rajagopalan eds., 2000).

61. The NWFP was renamed "Khyber Pakhtunkhwa" by the Eighteenth Constitutional Amendment in 2010. *See* sources cited *infra* notes 264 and 265. This article adopts the old nomenclature of "NWFP" for the purpose of historical accuracy unless referring to the province in the post-2010 era.

62. Rajmohan Gandhi, Punjab: A History from Aurangzeb to Mountbatten 185-87 (2013).

63. *See* Javed Haider Syed, *The British Advent in Balochistan*, 28 Pak. J. of Hist. & Culture 53, 62, 64 (2007).

64. Titus & Swidler, *Knights, Not Pawns*, *supra* note 3, at 48.

65. *See, e.g.*, Rita Kothari, *Sindhis: Hardening of Identities After Partition,* 39 Econ. & Pol. Wkly. 3885, 3885 (Aug. 28, 2004).

the British in promoting internal communalism and entrenching ethnic stereotypes is well documented.[66] Ethnic groups that were "selected as collaborators or channels for the transmission of government patronage" during the colonial era retained their privileged, and sometimes hegemonic, positions in the post-colonial environment, while other groups that were of peripheral interest were politically marginalized.[67]

Historically, Sindh's remote location relegated it to a peripheral position from the centers of power. In the late eighteenth century, the Baloch tribe of the Talpurs wrested Sindh from the Mughals. The Talpurs became *de facto* landowners in the region and instituted a highly repressive feudal system, such that by the time the British conquered Sindh in 1843, it had "developed into becoming more of a fiefdom of the local elite rather than a part of the central power."[68] Instead of displacing the power of the landed aristocracy in Sindh, the British annexed Sindh to the Bombay Presidency in 1847, enabling the affluent Hindu merchant community in Bombay to monopolize commerce in the region.[69] Thus, even prior to the creation of Pakistan, "Sindh, although linguistically homogeneous, was bifurcated along communal lines between a rapidly modernizing urban Hindu population and a rural Sindhi peasantry."[70] In response to this economic threat, the indigenous petty traders of Sindh (both Muslims and Hindus) mobilized public opinion in favor of separating Sindh from the Bombay Presidency.[71] With support from the two major indigenous Indian political parties – the All India Congress and the All India Muslim League – early isolated efforts advocating separation matured into a large-scale Sindhi nationalist movement by the late 1920s.[72] This movement was based, amongst other things, on a kind of a nativist claim to cultural-linguistic uniqueness as well as to an enduring history of territo-

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66. *See generally* Tayyab Mahmud, *Mapping Intellectual/Political Foundations and Future Self Critical Directions: Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219, at 1228 (1999) (arguing that "[t]he colonial response was to construct categories of caste, tribe, nation and communal/religious groups, to read race into them, and to locate them within the hierarchical order of History."); Paul Titus, *Honor the Baloch, Buy the Pushtun: Stereotypes, Social Organization and History in Western Pakistan*, 32 MODERN ASIAN STUD. 657 (1998). *See also* BERNARD S. COHN, COLONIALISM AND ITS FORMS OF KNOWLEDGE: THE BRITISH IN INDIA (1996) (analyzing the construction of the British colonial empire as a cultural and intellectual endeavor).

67. *See* Jalali & Lipset, *Racial and Ethnic Conflicts*, *supra* note 17, at 599; David A. Washbrook, *Ethnicity and Racialism in Colonial Indian Society*, *in* RACISM AND COLONIALISM: ESSAYS ON IDEOLOGY AND SOCIAL STRUCTURE 143, 156-58, 165-66 (Robert Ross ed., 1982); HUSAIN KASSIM, ISLAMICATE SOCIETIES – A CASE STUDY OF EGYPT AND MUSLIM INDIA: MODERNIZATION, COLONIAL RULE, AND THE AFTERMATH 57-63 (2012).

68. Adeel Khan, *Pakistan's Sindhi Ethnic Nationalism: Migration, Marginalization, and the Threat of "Indianization,"* 42 ASIAN SURV. 213, 214 (2002).

69. *See* ANSARI, LIFE AFTER PARTITION, *supra* note 30, at 21-22, 33-34. *See also* HAMEEDA KHUHRO, THE MAKING OF MODERN SIND: BRITISH POLICY AND SOCIAL CHANGE IN THE NINETEENTH CENTURY 191-295 (1978).

70. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 942.

71. *See, e.g.*, S. Sathananthan, *Sindhi Nationalism and Islamic Revolution in Pakistan*, 37 INT'L STUD. 227, 227-29 (2000).

72. Swarna, *supra* note 60, at 10.

rial independence and geographical and topographical distinctiveness.[73] This long Sindhi nationalist struggle culminated in the separation of Sindh from Bombay and the granting of provincial autonomy to the region in 1935.[74] Sindh was thus one of the last colonial sub-units – from amongst the regions that would subsequently join Pakistan – to gain political representation through a provincial legislative assembly.

Nevertheless, because of the mobilization of the Sindhi political identity around the issue of a separate, bounded territory, Sindh was one of the first provinces to extend unequivocal support to the All India Muslim League's proposal to create a loose federation combined with substantial provincial autonomy for the Muslims of India under the Lahore Resolution of 1940 ("Lahore Resolution").[75] Similarly, the Sindh Legislative Assembly was the first to officially assent to an independent state of Pakistan on the basis of the assurances of regional autonomy in the Lahore Resolution.[76] It was within this milieu of an ethno-nationalist struggle for territorial, cultural and linguistic preservation and provincial autonomy that the Sindhis encountered a sudden demographic threat from refugee migrants, including a "traumatic linguistic shock."[77]

2.   Makings of Inter-Group Cleavages and Entrenchment of Muhajir Dominance

The migration patterns in the population census of 1951 show that of the more than 7 million refugees who migrated to Pakistan at partition, about 5 million settled in the Punjab, while more than one million settled in Karachi (0.61 million) and other urban areas of Sindh (0.5 million).[78]

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73. *See, e.g.*, Mohammed Ayoob S. Khuhro, *A Story of the Sufferings of Sind: A Case for the Separation of Sind from the Bombay Presidency (1930), in* Documents on Separation of Sind from the Bombay Presidency 196, 198-207 (Hameeda Khuhro ed., 1982).

74. Provincial autonomy was granted for the first time to the regional units in colonial India under the Government of India Act, 1935, the last pre-independence constitution. *See, e.g.*, Mian Raza Rabbani, A Biography of Pakistani Federalism: Unity in Diversity 53-57 (2011) [hereinafter Rabbani, Pakistani Federalism]; Raja M. Ali Saleem, *The Special Parliamentary Committee on Constitutional Reforms and the Concurrent List* 8-9 (Jan. 2010) (unpublished manuscript) (on file with the Journal on Ethnic & Racial Justice).

75. Different political groups have interpreted this landmark text differently: as a Commonwealth of Muslim States; as a loose federation or a confederation; and as a federation with significant provincial autonomy. The Lahore Resolution states: ". . .no constitutional plan would be . . . acceptable to the Muslims unless it is designed on the following basic principle, viz. that geographically contiguous units are demarcated into regions which should be constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North Western and Eastern Zones of [British] India should be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign." Shafique Ali Khan, The Lahore Resolution: Arguments For and Against (History of Criticism) 2-3 (1988).

76. Tanvir Ahmad Tahir, Political Dynamics of Sindh 1947-1977 118-20, 135 (2010) [hereinafter Tahir, Political Dynamics of Sindh].

77. Wright, *Center-Periphery Relations*, *supra* note 59, at 303.

78. Muhammad Feyyaz, Ethnic Conflict in Sindh, Background Paper, Pildat, at 13 (Oct. 2011) *available at* http://www.pildat.org/Publications/publication/Conflict_Management/EthnicConflictinSindhOctober2011.pdf.

Unlike the class of immigrants that moved from the Indian to the Pakistani half of the region known as the Punjab,[79] the Muhajirs who settled in Sindh found themselves in an alien environment with no organic links of language or culture to the predominantly rural Sindhi host community.[80] The influx of the Muhajirs into Sindh rapidly transformed the ethnic demography of the province, and Karachi, in particular, "overnight became a mohajir city."[81]

Though complications in the rehabilitation and resettlement process of the Muhajirs continued for some years after partition, they were widely perceived, from the outset, as a politically, socially and economically ascendant class because of their entrepreneurial background and their role as vanguards of industrialization in Pakistan.[82] The Muhajirs also displayed a tendency to propagate their urban Mughal culture as superior to the rustic and unsophisticated culture of the Sindhis.[83] Their language, Urdu, the symbol of the struggle for an independent Pakistan in pre-partition India, was at the center of this cultural chauvinism.[84]

The territorial urban concentration of the Muhajirs encouraged insularity from the very beginning and entrenched a number of cleavages vis-à-vis the Sindhis, including linguistic differentiation and occupational segregation. The two pre-federalization factors that Schuck identifies as highly potent in determining the intensity of the minorities-within-minorities problem – namely social cleavages and the geographical concentration of minority groups – were thus both present in Sindhi-Muhajir relations from the outset. It is estimated, for instance, that the isolation of the Muhajirs in the urban cities of Sindh and their resistance to assimilation into mainstream Sindhi culture translated into an almost 20% decline in the number of Sindhi speaking people in Sindh (Karachi included).[85] The heightening of these cleavages through the policies of the ruling elite in favor of the Muhajirs in pre-federated Pakistan encouraged a binary relationship of dominance and backwardness between the two groups.

Two executive decisions instituted in the first year of independence by Muhammad Ali Jinnah – the founder and first Governor General of Paki-

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79. IAN TALBOT, PAKISTAN: A MODERN HISTORY 109 (1998). The immigrants in the Punjab integrated into the local population with relative ease, and gradually shed their migrant identity. *See* Sarah Ansari, *The Movement of Indian Muslims to West Pakistan after 1947: Partition-Related Migration and its Consequences for the Pakistani Province of Sind*, *in* MIGRATION: THE ASIAN EXPERIENCE 149 (Judith M. Brown & Rosemary Foot eds., 1994).

80. FEYYAZ, *supra* note 78, at 13. Sindhi cities and towns had been the hub of the Hindu community since colonial times. At partition, the outmigration of these Hindus from Pakistan equaled the in-migration of the Muhajirs into urban Sindh. *See* Kothari, *supra* note 65, at 3888.

81. FEYYAZ, *supra* note 78, at 13.

82. *See* Theodore P. Wright, Jr., *Indian Muslim Refugees in the Politics of Pakistan*, 12 J. OF COMMONWEALTH & COMP. POL.189, 195-96 (1974) [hereinafter Wright, *Indian Muslim Refugees*]; FEYYAZ, *supra* note 78, at 14.

83. Tariq Rahman, *Language and Politics in a Pakistan Province: The Sindhi Language Movement*, 35 ASIAN SURV. 1005, 1008 (1995) [hereinafter Rahman, *Sindhi Language Movement*].

84. *Id.* at 1008-09.

85. Ahmed, *National Question in Sindh, supra* note 49, at 11.

stan – were particularly important in this regard.[86] The first of these was the promotion of Urdu as the national language on the pretext of national unity and cohesion.[87] The imposition of Urdu was particularly problematic and exigent for the Sindhis.[88] Unlike other provinces where the percentage of Urdu speakers was very small, Sindh had witnessed a high volume of Muhajir immigration. The new language policy was thus bound to advantage the Muhajirs at the expense of indigenous Sindhi speakers in cultural as well as economic and educational terms. Further, the imposition of Urdu had the effect of undermining the role of Sindhi as the only other language in Pakistan with the status of a "language of literacy," and was perceived by Sindhis as a challenge to their deeply historical ethno-linguistic identity.[89]

The second decision was to detach the capital city of Karachi from Sindh and convert it into a separate federal district.[90] This not only occasioned significant loss of revenue to Sindh,[91] but also triggered one of the earliest struggles for provincial autonomy in the new state. Sindh's indigenous Chief Minister, Muhammad Ayub Khuhro, was dismissed from the Sindh Assembly for opposing this change despite enjoying majority support in the Assembly.[92] The founder of Sindhi nationalism, Ghulam Murtaza Syed, openly asserted that Sindhis were victims of "Punjabi-Muhajir imperialism" and that the interests of the Sindhis were not served by a strong central government.[93] By 1958 the use of Sindhi was banned in university exams in educational institutions in Karachi, and "language became a major symbol of the sense of deprivation – cultural, educational, economic and political – to both Sindhi leaders and the emerging middle class intelligentsia."[94] The Muhajir elite implemented similar policies in other urban cities in Sindh. In the words of Akbar

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86. *See* Ansari, Life After Partition, *supra* note 30, at 62. For the political context behind Jinnah's decision to assume the Governor Generalship of Pakistan at independence, *see* Ayesha Jalal, *Inheriting the Raj: Jinnah and the Governor-Generalship Issue*, 19 Modern Asian Stud. 29 (1985).

87. Ahmed, *National Question in Sindh*, *supra* note 49, at 11.

88. *Id.* at 14.

89. Sindhi was retained as the official language of Sindh even after the British conquest of the province. When Sindh became a separate province, Sindhi was adopted as the medium of instruction in state schools, and had a privileged status in the province at the time of partition because of its usage in journalism, the judiciary, and in the lower levels of administration. Tariq Rahman, *Language, Politics and Power in Pakistan: The Case of Sindh and Sindhi*, 17 Ethnic Stud. Rep. 21, 26 (1999) [hereinafter Rahman, *Case of Sindh and Sindhi*]. Also, because of the adoption of Sindhi as a medium of instruction for most educational institutions, "resistance against perceived domination by the centre came to be expressed primarily through linguistic and cultural symbols." *Id.*

90. *See* Swarna, *supra* note 60, at 11.

91. Nadeem Qasir, Pakistan Studies: An Investigation into the Political Economy 1948-1988 24 (1991). The central government's "compensation" to Sindh for this loss of revenue, which was estimated at between 600 and 800 million rupees, was a mere six million rupees. *Id.* Allegedly, even this meager amount was never paid. Tahir, Political Dynamics of Sindh, *supra* note 76, at 183.

92. Tahir, Political Dynamics of Sindh, *supra* note 76, at 177-79.

93. G. M. Syed, A Nation in Chains, *Ch. 3: Sind's Concept of Pakistan* (1974), *available at* http://gmsyed.org/nation/saeen-book5.htm.

94. Rahman, *Sindhi Language Movement*, *supra* note 83, at 1010.

Zaidi, "[t]he creation of Karachi as the capital of Pakistan and its disarticulation from the administrative boundary of Sindh gave further impetus to refugee power, both real and perceived. Thus refugee identity was quickly concretised within the new state and the refugees emerged as the ruling ethnic group within Pakistan."[95]

Both the formalization of the dominant status of Urdu and the recognition of Karachi as a geographically discrete region had the effect of magnifying and reifying preferential access to resources in favor of the Muhajirs. Since language is a convenient marker of communal identity and an instrument of group mobilization, Urdu's higher status directly translated into greater access of its speakers to political and economic advantage. At the same time, the geographical concentration of the Muhajirs in an urban-federal area and the urban-rural divide between the Muhajirs and Sindhis ensured that just as the Muhajirs' access to the center was enhanced and pressures to assimilate with the Sindhis lessened, the Sindhis were pushed to the periphery even within their own province.[96]

The decision of the central government to implement a system of ethnic preferences or quotas for institutional representation in the officer level ranks of the federal bureaucracy served as yet another bonus for the Muhajirs. In colonial India, an indigenous Anglo-vernacular educated section of the urban middle class dominated the bureaucracy.[97] A striking characteristic of this urban class in Pakistan at independence was its concentration in one ethnic group, the Punjabis,[98] who continued to command the state and government apparatuses in the absence of well-established representative institutions.[99] Within the first few years of independence, the high-ranking membership of the federal bureaucracy came to be shared by the Muhajirs, who were well-educated as a demographic group and had traditionally held important positions in the colo-

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95. S. Akbar Zaidi, *Sindhi v. Mohajir in Pakistan: Contradiction, Conflict, Compromise*, 26 Econ. & Pol.Wkly. 1295, 1295 (May 18, 1991).

96. Keith Sipe, Karachi's Refugee Crisis: The Political, Economic and Social Consequences of Partition-Related Migration 268 (1984).

97. Hamza Alavi, *Nationhood and the Nationalities in Pakistan*, 24 Econ. & Pol. Wkly. 1527, 1527 (Jul. 8, 1989) [hereinafter Alavi, *Nationhood and the Nationalities in Pakistan*]. The prestigious Indian Civil Service was originally exclusively British, but gradually broadened its recruitment policy to include Indian candidates with a British classical education through a competitive, examination-based process in the latter half of the nineteenth century. The earliest Indian recruits were assigned to district level administrative functions, and later to the higher administrative levels of divisions and provinces. *See generally* Malti Sharma, Indianization of the Civil Services in British India (1858-1935) 49-64, 198-249 (2001).

98. Alavi, *Nationhood and the Nationalities in Pakistan*, *supra* note 97, at 1528. Alavi refers to this urban educated class as the "salariat" and argues that it represents the dominant urban elite in most post-colonial societies with a predominantly agrarian production base. According to Alavi, the concentration of Punjabis in Pakistan's "salariat" distinguished it from the Indian bureaucracy, whose educated urban class was spread across different groups. *Id.*

99. *See* Charles H. Kennedy, *Policies of Ethnic Preference in Pakistan*, 24 Asian Surv. 688, 690-91, 696-99 (1984) (arguing that, in addition to ethnic diversity and unequal regional development, the "developmental gap" between bureaucratic and representative institutions was one of the main rationales for the adoption of policies of preference.

nial civil administration.[100] The quota system created even further disparities between the dominant Punjabi and Muhajir groups and other ethnic groupings in Pakistan.

The earliest federal quota system was introduced simultaneously with the elevation of Karachi to a special federal status in 1948. It laid down a 15% quota for the category of "potential migrants from India" in addition to a separate quota for Karachi.[101] This stipulation was widely viewed as unduly favorable for the Muhajirs who were already overrepresented in the bureaucracy. To allay opposition to the scheme, the special category for migrants was abolished and replaced by the new category of "merit" in the revised federal quota of 1950, which required 20% of the vacancies to be filled on merit on the basis of competitive examinations. Ostensibly, the revision did not make the quota fairer in its distribution as merit-based recruitment also guaranteed jobs for Punjabis and Muhajirs on the basis of their higher educational qualifications.[102] While Sindh, Balochistan, the NWFP, the Federally Administered Tribal Areas ("FATA"), and Kashmir – all highly underrepresented areas in the federal bureaucracy – were collectively allocated a quota of 15%, 2% of the seats were reserved for Karachi alone. Thus, in addition to its existing monopoly over, and its privileged access to, federal jobs through merit-based recruitment, Karachi obtained a share that was substantially higher than its proportion in the national population. The range of quotas also steadily expanded in the early 1950s from the federal bureaucracy to the Federal Public Service Commission and departmental recruitment for posts in the central government. As originally designed, the quota applied to approximately one hundred vacancies a year. By 1971, the quota was in use for approximately 2,000 entry-level positions in the federal government each year (an increase of over 2000% in 22 years).[103]

3. The One Unit Plan: Bipolar Federation, Militarization of the State, and the Rise of Sub-Nationalism

Despite inheriting a federal form of government with functional provincial legislatures, the new state rapidly lapsed into a highly centralized system.[104] Amongst other things, one of the reasons why the Punjabi-Muhajir central leadership resisted democratization and provincial autonomy was because Bengal – Pakistan's largest and physically isolated province, containing over half its population[105] – was bound to dominate

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100. In the virtual absence of institutions ensuring governmental responsiveness, the "denial of civilian bureaucratic office in Pakistan is functionally equivalent to the denial of political representation") [hereinafter Kennedy, *Policies of Ethnic Preference in Pakistan*].

101. Waseem, *Affirmative Action Policies*, *supra* note 22, at 227-28.

102. *Id.*

103. Kennedy, *Policies of Ethnic Preference in Pakistan*, *supra* note 99, at 692-93.

104. *See generally* Tahir Kamran, *Early Phase of Electoral Politics in Pakistan: 1950s*, 24 SOUTH ASIAN STUD. 257, 257-60 (Jul.-Dec. 2009); Khalid Bin Sayeed, *Federalism in Pakistan*, 23 FAR EASTERN SURV. 139, 139-40 (Sep. 1954).

105. Up until 1971, Pakistan was not territorially contiguous. Bengal, its largest province (both in terms of land mass and population), was situated on the eastern tip of the Indian subcontinent, while the remaining four provinces were carved out of the

the federal government.[106] With unrest brewing in Bengal over the issue of political representation, the elite from both wings of the country orchestrated a bargain agreement that would forestall provincial autonomy within the west wing while offering representational parity to Bengal in the east.[107] The result was the "One Unit" scheme or parity formula, which provided for the merger of all four regions in West Pakistan – Punjab, Sindh, the NWFP and Balochistan – into one politically homogenous unit to counterbalance Bengal's numerical strength.[108]

Though the One Unit was primarily aimed at limiting the influence of Bengal, it undermined the provincial autonomy of all the other ethnic groups vis-à-vis the dominant Punjabis and Muhajirs. Not only did parity mean lack of provincial autonomy and a major reorientation of provincial resources to national projects, it also entrenched the hegemonic *status quo* of these dominant groups. Not surprisingly, the only popular support for the One Unit plan in West Pakistan came from the Punjabis and Muhajirs.[109] Sindh, on the other hand, strongly opposed the loss of its provincial status and viewed the One Unit scheme as "an attempt to establish Punjabi domination over the smaller provinces and negate their regional autonomy and ethnic identity."[110] The Sindh Awami Mahaz ("SAM") – the political party of the Sindhi nationalist G. M. Syed – was one of the leading opponents of the One Unit. The SAM was instrumental in forming a cross-regional "anti-One Unit Front" (including other par-

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northwestern boundary of British India. The two 'wings' of the new country were physically separated by more than a thousand miles of putatively hostile Indian territory. *See generally* Rounaq Jahan, Pakistan: A Failure in National Integration 10-12 (1972) [hereinafter Jahan, Failure in National Integration]. The Bengalis comprised the largest indigenous and regionally discrete population in the new state (54%) and had been at the forefront of the freedom movement for Pakistan along with the Muhajirs. As a regional group, however, Bengalis were discriminated against in the upper levels of the bureaucracy and military, and had virtually no control of their industry and commerce. *See generally* Philip Oldenburg, *"A Place Insufficiently Imagined": Language, Belief, and the Pakistan Crisis of 1971*, 44 J. of Asian Stud. 711, 711-12 (Aug. 1985); Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 688.

106. *See* Alavi, *Class and State in Pakistan*, *supra* note 5, at 81; Yunus Samad, A Nation in Turmoil: Nationalism and Ethnicity in Pakistan, 1937-58 194 (1995) [hereinafter Samad, A Nation in Turmoil].

107. For details on the events leading up to this agreement and its general reception, *see* Shireen M. Mazari, *Ethnicity and Political Process: The Pakistani Experience*, Inst. of Strategic Stud. 1, 6-8 (Nov. 2002).

108. Establishment of West Pakistan Act, 1955. *See also* Swarna, *supra* note 60, at 12; Craig Baxter, *Pakistan Votes – 1970*, 11 Asian Surv. 197, 199 (Mar. 1971) [hereinafter Baxter, *Pakistan Votes*].

109. *See* Samad, A Nation in Turmoil, *supra* note 106, at 173-74 (arguing that the Punjabis and Muhajirs were the most vocal proponents of a centralized state, and that the establishment of the One Unit was a vehicle for entrenching their domination). *See also* Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 942.

110. Khan, *supra* note 68, at 220. The Sindhi Chief Minister, Abdus Sattar Pirzada, was removed because of his open opposition to the parity formula. Pirzada's replacement with a more pliant Chief Minister was instrumental in the acceptance of the parity formula by the Sindh Assembly. Khalid B. Sayeed, The Political System of Pakistan 78 (1967).

ties from Sindh, the NWFP, Balochistan and Bahawalpur) to agitate against the dilution of provincial autonomy.[111]

The One Unit plan, having been formalized through compliant provincial assemblies as well as the new Constituent Assembly, was incorporated into the first formal indigenous constitution of the country, the Constitution of Pakistan, 1956 ("1956 Constitution").[112] The 1956 Constitution deceptively referred to Pakistan as a "federal republic."[113] In reality, it provided for a bipolar federation with a unicameral legislature known as the National Assembly which contained 300 seats divided equally between West and East Pakistan in line with the parity formula.[114] The 1956 Constitution, however, was extremely short-lived. The new military regime of General Ayub Khan that took over the reins of power from the obsolescing bureaucratic elite through a *coup* in 1958 abrogated the Constitution. Nevertheless, it retained the One Unit structure to maintain control of the provinces in West Pakistan.[115]

The discontent over the One Unit in West Pakistan manifested in the growth of ethno-nationalist sentiment, the hardening of regional ethno-linguistic identities, and the resurgence of various regional political parties and movements.[116] In Sindh, in particular, Ayub Khan's government attempted to completely suppress the use of Sindhi.[117] Urdu replaced Sindhi as the medium of instruction and competitive examinations; the Sindhi Department at the University of Karachi was abolished; and Sindhi primary schools in Karachi were converted into Urdu-medium schools.[118] In late 1966, a group of indigenous Sindhi students staged demonstrations in support of the Vice Chancellor of the University of Sindh in Hyderabad who had proposed Sindhi as a medium of instruc-

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111. The SAM was formed in 1953 with the recognition of "the *de facto* existence of separate nationalities" in Pakistan as its central ideology. G. M. Syed demanded full provincial autonomy and the re-merger of Karachi with Sindh, leaving only defense, foreign affairs and currency with the center. R. Afzal, Political Parties in Pakistan 1947-58 104 (1979).

112. Rabbani, Pakistani Federalism, *supra* note 74, at 60.

113. *Id.*

114. Adeney, *Federalism in Pakistan*, *supra* note 12, at 105-06.

115. *See* Ayesha Jalal, Democracy and Authoritarianism in South Asia 56-59 (1995). The Constitution of Pakistan, 1962 ("1962 Constitution"), which was the brainchild of General Ayub Khan, constituted a setback even to the nominal bipolar federation proposed by the original One Unit scheme in the 1956 Constitution. For instance, it omitted the reference to a federation and effectively curtailed the possibility of a federal system by enabling the President to appoint provincial governors for direct control of provincial cabinets. *See generally* K. J. Newman, *The Constitutional Evolution of Pakistan*, 38 Int'l Aff. 352, 361-62 (Jul. 1962).

116. Prominent examples include the Siraiki Language Movement in West Punjab, *see* Saiqa Imtiaz Asif, *Siraiki Language and Ethnic Identity*, 7 J. of Res. (Faculty of Languages and Islamic Studies) 9 (2005); the Baloch National Movement, *see* Frederic Grare, *Pakistan: The Resurgence of Baluch Nationalism*, 65 Carnegie Papers (Jan. 2006); the Sindhudesh Movement established in 1967 by G. M. Syed for the creation of a Sindhi state, *see* Syed, *supra* note 93; and the Bengali secessionist movement led by Mujib-ur-Rahman's Awami League in East Pakistan, *see* source cited *infra* note 151.

117. Mohammad Shafi, *Language Controversy in Sindh*, Pak. Forum, Aug. 1972, at 9; Rahman, *Case of Sindh and Sindhi*, *supra* note 89, at 29.

118. Tahir, Political Dynamics of Sindh, *supra* note 76, at 462-67.

tion and examination at the university level. The police brutally disbanded one such student demonstration on orders from an Urdu-speaking commissioner of the Hyderabad Division. Several students were killed, while many were arrested, providing Sindhi nationalism an effective symbol of resistance against the military government.[119]

The military government also pushed for other larger transformations in Sindh for the benefit of Punjabi and Pakhtun interests, as these groups predominantly occupied the ranks and officer corps of the military. In the 1960s General Ayub Khan shifted the seat of national government from Karachi to Rawalpindi (and later Islamabad) in northern Punjab.[120] This meant that Karachi could no longer claim the advantages of an independent federal administrative unit and would be clubbed with Sindh for revenue allocation and other administrative purposes. At the same time, the military government adopted aggressive economic policies that concentrated industrialization and economic development in Karachi. As part of this development program, the government incentivized inter-provincial migration from the Punjab and NWFP into Sindh, bringing the Muhajirs into competition with other ethnic groups and also leading to riots between Muhajirs and the migrant Pakhtuns. Muhajir grievances against the military government came out into the open in the 1965 presidential election, when Muhajir communities demonstrated support for Ayub Khan's contender, Fatima Jinnah (Jinnah's sister).[121]

But even with the territorial merger of Karachi to Sindh and the influx of domestic migrants in the province, the Muhajirs were not worse off under Ayub Khan's regime in terms of their control over and access to state employment, or in their virtual monopoly over industry. Throughout the 1960s and even into the early 1970s, they had a disproportionate share in both government and private institutions. With only 8% of the total population share, they held 33.5% of the gazetted positions in the civil administration.[122] Moreover, estimates show that Muhajirs controlled over half of Pakistan's industrial assets, and comprised more than two-thirds of the industrial workforce in Karachi.[123] In addition to their historical overrepresentation in the entrepreneurial and industrial sectors, they emerged as the largest class of executive officers in new public corporations, set up during General Ayub Khan's regime, in which recruitment was not regionally defined through ethnic quotas.[124] The Muhajirs also preserved their dominant position in their relations with the Sindhis. The military government's strategy of imposing Urdu as a vehicle for national integration and suppression of ethno-linguistic cleavages in continuation of past policy ensured that the Muhajirs retained their socio-economic privileges even if they were no longer direct beneficiaries of state patronage. In contrast, the Sindhis held only 2.7% of gazetted jobs and only

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119. *Id.* at 525-27.
120. Wright, *Center-Periphery Relations*, *supra* note 59, at 302.
121. FEYYAZ, *supra* note 78, at 15-16.
122. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 942-43.
123. TAHIR, POLITICAL DYNAMICS OF SINDH, *supra* note 76, at 452.
124. Waseem, *Affirmative Action Policies*, *supra* note 22, at 235.

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3.6% of the executive positions in public enterprises.[125] Indeed, rural Sindh became even more impoverished under the military government as a result of the allocation of barrage land to Ayub Khan's Punjabi and Pakhtun constituencies in the military.[126] It is estimated that well over one million acres out of a total of two and a half million acres of barrage-irrigated land was given over to "defense personnel" and other settlers, many of whom became absentee landlords.[127]

That said, as Theodore Wright asserts, the militarization of the state set in motion the "peripheralization" of the Muhajirs from the center,[128] the consequences of which were not immediately apparent. The aggregation of various factors – including the collapse of Ayub Khan's military government, the institution of the first democratic government, and the rise of an ethno-nationalist movement in and the secession of East Pakistan in 1971 – provided the impetus for cementing a more inclusive federal structure that would politically accommodate the demands of various ethno-nationalist movements and contain the spiraling ethnic unrest.[129] Without a direct link to the center in a federated Pakistan, the Muhajirs were politically vulnerable to the capture of the new sub-national locus of power by Sindhi nationalists. Part III looks at the new ethnic federation of the 1970s and the reversal of Muhajir dominance.

Part III: The Ethnic Federation of the 1970s and the Ethnicization of Politics in Sindh

In addition to the two factors that affect inter-group relations in the pre-federated state – namely social cleavages between, and geographical concentration of, groups – Schuck outlines three factors that are likely to be significant in determining the emergence and intensity of the minorities-within-minorities problem in the federated state. These include the effects of the new federal structure on existing cleavages, the pace at which the federal power-sharing arrangements are implemented, and whether the power-sharing arrangements are negotiated or imposed. These factors, particularly the overall impact of the federation on inter-group cleavages, are in turn connected with the historical and political motives and agendas for federalization as well as the larger center-periphery structure and ethnicity-based features of the new federation. Part III begins with an analysis of the motives and agendas driving the federalization process in Pakistan in the 1970s and how these influenced the form and ethnicity-related attributes of the new federal republic. It then underscores the ethnicity-based politics resulting from the new power structure in the Sindhi-Muhajir context and the reversal in the political

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125. Kennedy, *Politics of Ethnicity in Sindh, supra* note 26, at 942-43.
126. Amin, *supra* note 1, at 86.
127. Feyyaz, *supra* note 78, at 15.
128. Wright, *Indian Muslim Refugees, supra* note 82, at 302.
129. There was a surge in regional movements in Pakistan in the early 1970s. These movements were significantly influenced by, amongst other things, the ethno-national movement in East Pakistan as well as the subsequent dismemberment of the region from the country. Amin, *supra* note 1, at 113-19.

dominance of the Muhajirs and the ethnicization of the Muhajir identity. Finally, it reviews Schuck's factors in light of the Sindhi-Muhajir conflict.

1. *Democratic Transition and Ethno-Nationalist Triumph*

Events in the aftermath of the 1965 presidential election provoked a country-wide pro-democracy movement against General Ayub Khan's military government.[130] In 1969, an ailing Ayub Khan was forced to resign following nationwide rioting against his regime's perceived corruption, ineffective and discriminatory economic policies, and Pakistan's ill-advised involvement in the 1965 war with India.[131] The downfall of the military regime paved the way for the country's first attempt at democratic transition. General Yahya Khan provisionally succeeded Ayub Khan as the President to hold elections and formally transfer power to democratic representatives.[132]

The debate over the form of federation and the fate of the One Unit dominated the political atmosphere. In Sindh, this debate was heavily animated by the question of whether Karachi should merge with the larger province. The Sindhi nationalist position on this question was by and large in favor of merging Karachi with Sindh, but the Muhajir leadership was split over two possible options.[133] The National Students Federation ("NSF") – an organization that dominated student politics in Karachi – wanted to give Karachi the status of an autonomous province.[134] On the other hand, the prominent Muhajir politician Z. H. Lari wanted merger on the condition that a separate electorate for urban Muhajir constituencies be created for both the national and Sindh provincial assemblies.[135] It appears that a significant section of the Muhajirs supported the second option, fearing that under a federalized democratic set-up, a separate Karachi province would leave other Muhajir-majority urban areas in Sindh completely vulnerable to Sindhi nationalists.[136] Demanding a federally controlled status for Karachi would also risk exposing Karachi to the vicissitudes of the Punjabi-Pakhtun dominated center.[137]

Realizing that dissolving the One Unit may strategically take the steam out of nationalist agendas, Yahya Khan laid out the general framework for the future constitution in March 1970. The "basic principle" of the new constitution was that Pakistan was to be a federal republic with "maximum provincial autonomy":

> The basic principle of the new Constitution is that it must be a true federal one in which powers including legislative, administrative and financial shall be so distributed between the Federal Govern-

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130. *See* Riaz Ahmed Shaikh, *1968 – Was It Really a Year of Social Change in Pakistan?*, *in* SIXTIES RADICALISM AND SOCIAL MOVEMENT ACTIVISM: RETREAT OR RESURGENCE 73, 73-74 (Bryn Jones & Mike O'Donnell eds., 2012).
131. *Id.* at 82-85.
132. Baxter, *Pakistan Votes*, *supra* note 108, at 197.
133. TAHIR, POLITICAL DYNAMICS OF SINDH, *supra* note 76, at 556-59.
134. *Id.*
135. *Id.* at 556-57.
136. *Id.* at 557-59.
137. *Id.*

ment and the provinces that the provinces shall have maximum autonomy, that is to say, maximum legislative, administrative and financial powers, and the Federal Government shall have adequate powers including legislative, administrative and financial powers to discharge its responsibilities in relation to external and internal affairs and to preserve the independence and territorial integrity of the Country.[138]

In July 1970, the One Unit was dissolved, and with it the parity of political representation between West and East Pakistan.[139] Four new provinces were constituted in the west wing: Punjab, Sindh (including Karachi), the NWFP and Balochistan (which was raised for the first time to full provincial status by merging the administrative divisions of Quetta and Kalat).[140] With the breakup of the One Unit, the structure that had mediated political conflict between the economically dominant but numerically weak Muhajirs and numerically dominant but economically weak Sindhis vanished overnight.

Yahya Khan's Legal Framework Order ("LFO") served as the interim constitution for conducting the first general election.[141] It reiterated his commitment to holding elections on the principle of "maximum autonomy" for provinces.[142] Importantly, the LFO laid down fundamental principles on the basis of which the new constitution was to be drafted. First and foremost, Pakistan was to be a "federal republic" in which all the newly formed provinces and territories were to be "so united in a federation that the independence, the territorial integrity and the national solidarity of Pakistan are ensured and that the unity of the federation is not in any manner impaired."[143] Second, the "Islamic ideology" which was the "basis for the creation of Pakistan" was to be "preserved."[144] Third, the "fundamental principles of democracy" were to be ensured through "direct and free periodical elections to the federal and the provincial legislatures on the basis of population and adult franchise."[145] Fourth, the "fundamental rights of the citizens" were to be guaranteed, and the independence of the judiciary was to be secured both generally and in terms of the enforcement of the fundamental rights.[146] Finally, apart from pro-

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138. President Yahya Khan, Address to the Nation (Mar. 28, 1970), *in Bangladesh Documents, vol – I, 44-49*, Morning News, Karachi, Mar. 29, 1970, *available at* http://www.profile-of-bengal.com/p-b/www.profile-bengal.com/0328_70_yahya_add ress.htm.

139. Province of West Pakistan (Dissolution) Order, No. 1 (1970) (Pak.).

140. *Id*. These newly formed provinces were not entirely congruent with the pre-One Unit status. For instance, the state of Bahawalpur was merged into Punjab, while the state of Khairpur was merged into Sindh. Additionally, the new territorial arrangement also included the Islamabad Capital Territory and the Centrally Administered Tribal Areas. *Id.*

141. *See* Legal Framework Order, No. 2 (1970) (Pak.), *available at* http://pakistanspace.tri pod.com/archives/70lfo.htm.

142. The LFO incorporated Yahya Khan's earlier pronouncement regarding the federal nature of the new constitution. *Id.* at 20(4).

143. *Id.* at 20(1).

144. *Id.* at 20(2).

145. *Id.* at 20(3)(a).

146. *Id.* at 20(3)(b).

vincial autonomy, the new constitution was to ensure equality in the following terms: that the "people of all areas in Pakistan shall be enabled to participate fully in all forms of national activities" and that, within a specified period, "economic and all other disparities between the Provinces and between different areas in a Province are removed by the adoption of statutory and other measures."[147]

Clearly, by "maximum autonomy" Yahya Khan did not mean a confederation. In fact, the emphasis on the "unity of the federation" was a signal to nationalist parties to dilute extreme positions on the question of the federal structure, and at the same time to avoid erosion of the center's power as much as possible. In addition, the LFO imposed a time limit of one hundred and twenty days for framing the new constitution, and made the latter subject to authentication by the President.[148] These procedural safeguards meant that the final constitutional settlement would have to accommodate the military's interest in preserving the center.

The results of the general election reflected the deep ethno-nationalist divisions that had come to dominate the Pakistani polity. Because of the polarization of the political spectrum between centralist and regionalist parties, one important characteristic of the electoral contest was that no one party won a national majority across the East-West divide. The electoral results in East Pakistan also demonstrated a fairly homogenous voter base, while the remaining four western provinces as a whole were much more fragmented. Further, all parties espousing a right-wing, anti-socialist or centralist agenda, whether in terms of maintaining the One Unit policy or generally resisting provincial autonomy, were decimated in favor of those supporting some level of regional autonomy along with economic reforms loosely defined as "socialist."[149]

The winners included the Awami League in East Pakistan ("AL"); and the Pakistan People's Party ("PPP") and the National Awami Party ("NAP") in West Pakistan.[150] The AL, led by the Bengali nationalist Sheikh Mujibur Rahman, put forward the "Six Point Plan" which completely rejected the One Unit and demanded the implementation of a loose federal or confederal structure between East and West Pakistan with only foreign affairs and defense vesting in the center.[151] The PPP was formed in the late 1960s by Zulfikar Ali Bhutto, a scion of an influential

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147. *Id.* at 20(5)(b).

148. *Id.* at 24, 25.

149. In the former category were parties like the Council Muslim League ("CML"), Quaid-e-Azam Muslim League ("QML"), Pakistan Democratic Party ("PDP"), and JI, which mostly drew their support from the landlord and capitalist classes of Punjab, Sindh and the NWFP. The only exception was the JI whose vociferous anti-socialist and pro-One Unit rhetoric made them moderately popular with the lower middle classes in Karachi and some urban areas in Punjab. *See 'Islam Lovers' Routed*, PAK. FORUM, Dec. 1970-Jan. 1971, at 9 [hereinafter *Islam Lovers' Routed*].

150. *Id.*

151. *See 6-points*, PAK. FORUM, Apr.-May 1971, at 8, 8 [hereinafter *Six Points*]. For a succinct account of the political organization and historical development of the AL and its role in Pakistani politics, *see* M. Rashiduzzaman, *The Awami League in the Political Development of Pakistan*, 10 ASIAN SURV. 574 (Jul. 1970).

Sindhi feudal family, in opposition to the Ayub Khan regime.[152] Bhutto merged the leftist radicalism of the 1960s with his agenda of "Islamic socialism" through his anti-imperial rhetoric and populist appeal.[153] By 1969, he had established a strong base of political support in the Punjab and rural Sindh. The NAP, on the other hand, was an amalgamation of ethno-regional parties headed by the Pakhtun leader Khan Abdul Wali Khan and his Baloch colleague Ghaus Bakhsh Bizenjo.[154] The most ardent and consistent supporters of provincial autonomy were the AL in the East and the NAP in the West. The PPP also argued in favor of provincial autonomy, but its multifaceted mandate had a broader appeal across provinces, classes and vocational groups.[155] Moreover, the PPP was not as regionalist in its approach as the AL or the NAP, and preferred a more balanced division of powers between the center and the provinces. Nevertheless, all three parties bent towards provincial autonomy, a leftist economic agenda including nationalization of banks and industries, and a relatively secular ideological framework.[156]

In a persuasive demonstration of Bengali dissatisfaction with the West Pakistani regime, Mujib-ur-Rahman's ethno-nationalist AL won all but two of the East Pakistan seats in the constituent National Assembly, thus gaining a firm majority in the central government without even winning a single seat in West Pakistan.[157] Compared to AL's landslide victory, the PPP came in a poor second nationally but managed an electoral majority in the West, gaining the bulk of its support from the Punjab and rural Sindh (including the strongholds of Sindhi nationalism).[158] Electoral results in the provincial legislatures of East Pakistan, Punjab and Sindh also followed a similar pattern, which meant that the PPP would effectively dominate the Punjab and Sindh Assemblies in the West.[159] In the NWFP and Balochistan, the NAP gained a plurality victory and formed coalition governments with the JUI.[160]

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152. *See generally* Philip E. Jones, The Pakistan People's Party: Rise to Power (2003).

153. For Bhutto's characterization of "Islamic socialism," *see* Anwar H. Syed, *Z. A. Bhutto's Self-Characterizations and Pakistani Political Culture*, 18 Asian Surv. 1260-63 (Dec. 1978).

154. The NAP was formed in 1957 for the purpose, amongst other things, of creating a single opposition platform to the One Unit. M. Rashiduzzaman, *The National Awami Party of Pakistan: Leftist Politics in Crisis*, 43 Pacific Aff. 394, 395 (Autumn, 1970). The NAP originally fused several regional parties from both West and East Pakistan, but split into two factions in 1967, with the West Pakistan faction led by Khan Abdul Wali Khan. *Id.* at 398.

155. The PPP's electoral base in the Punjab consisted mainly of industrialists, urban professionals, middle class youth, workers and peasants. In contrast, in Sindh the PPP was supported largely by prominent landlords, while also benefiting from the traditional hold of the landlords over the peasants. Feroz Ahmed, *Has the People's Rule Arrived? – II*, Pak. Forum, Mar. 1972, at 4, 5.

156. For a summary of the political parties and their manifestoes, s*ee Political Parties: Where do they Stand on the Issues?*, Pak. Forum, Oct.-Nov. 1970, at 6.

157. For commentary on the electoral results of 1970-1971, *see Islam Lovers' Routed, supra* note 149; Baxter, *Pakistan Votes, supra* note 108, at 210-17.

158. *Islam Lovers' Routed, supra* note 149, at 10, 12.

159. For specific data on provincial assembly elections, *see Elections*, Pak. Forum, Feb.-Mar. 1971, at 10 [hereinafter *Elections*].

160. *Id.*

As for the Muhajir stronghold of Karachi, the electoral result told a story that was "totally out of tune with the radical mood of the rest of the country."[161] Out of the seven National Assembly seats from Karachi, five went to right-wing candidates (including JI and JUP), and only two went to the PPP.[162] Similarly, in the Sindh Assembly election, the JUP dominated the Urdu-speaking urban areas of Karachi, Hyderabad and Sukkur.[163] However, overall, from among a total of sixty-two members in the Sindh Assembly, only eleven represented the Muhajir electorate.[164]

2. *Provincial Autonomy, Secession of East Pakistan, and "Multinationalism"*

The AL's colossal victory in East Pakistan promised it a clear majority in the central government as well as complete control over the constitution-making process. Quite apart from the fact that this in itself was a troubling factor for the West Pakistani leaders and the military regime, the AL's Six Point Plan of regional autonomy in a confederated Pakistan was very openly at odds with General Yahya Khan's concept of a federal republic in the LFO. Within the LFO framework, there was an inherent tension between the concepts of "maximum autonomy" and the "unity of the federation." The deliberately overbroad terminology that reserved power to the center to "preserve territorial integrity" provided an avenue to the center to supersede provincial autonomy on vague grounds. In contrast, the Six Point Plan unambiguously demanded a confederation, with only defense and foreign affairs (defined narrowly as excluding foreign trade and aid) in the federal portfolio.[165]

Zulfikar Ali Bhutto was of the view that the Six Point Plan was a formula for Pakistan's disintegration, arguing that a "federation" between two virtually sovereign states in respect of only two matters of common interest, "even if it manages to survive foreign aggression or intervention, would rapidly go asunder."[166] The essential condition of a federation, he contended, was "a real national unity cemented by the authority of the Federal Government" which could only be built "on the basis of identity in respect of the economic system and the fundamental laws."[167] Moreover, Bhutto reasoned that the AL's absolute majority in the new Constituent Assembly did not entitle it to draft a constitution by itself as it equally impacted the two wings of the country, and asserted that the subject of a new constitution required an open discussion amongst a wider net of stakeholders followed by a reference to the "peo-

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161. *Islam Lovers' Routed*, *supra* note 149, at 12.
162. *Id.* at 12 (the commentator claims that the "right wing gain in Karachi. . .can be attributed to the identity crisis of urdu speaking Muhajirs who were exploited by Mullahs in the name of religion and an imaginary Sindhi threat").
163. *See Elections*, *supra* note 159.
164. Tahir, Political Dynamics of Sindh, *supra* note 76, at 631.
165. *Six Points*, *supra* note 151, at 8.
166. *Id.* Bhutto later referred to the Six Point Plan as a "veiled charter for a confederation which contained the genesis of constitutional secession." Zulfikar Ali Bhutto, The Great Tragedy 12 (Sani Panhwar ed., 1971), *available at* http://bhutto.org/Acrobat/THE GREAT TRAGEDY.pdf [hereinafter Bhutto, Great Tragedy].
167. *Six Points*, *supra* note 151, at 8.

ple of Pakistan" for a final decision.[168] Sheikh Mujib-ur-Rahman, on the other hand, used the AL's overwhelming mandate to insist upon framing the new constitution on the basis of the Six Point Plan without input from any other political party. The political deadlock between General Yahya Khan, Bhutto and Mujib-ur-Rahman led to a military operation in March 1971 by the Pakistan army to quell Bengali resistance in East Pakistan.[169] The debacle culminated in a military conflict between India and Pakistan that ended with the dismemberment of Pakistan and the creation of Bangladesh in December 1971.[170]

The hardening of ethno-linguistic identities in the post-secession era created a politically charged environment that generally demanded an inclusive state-building process that would allow for a viable accommodation of ethnic claims while safeguarding national unity. As Bhutto's rejection of the Six Point Plan demonstrated, the formulation of the new constitution necessitated a consensus of the representatives of all the provinces of Pakistan. The imposition of a constitution by the majority party alone was politically unviable and likely to lead to greater ethnic unrest and secessionist threats. With AL out of the picture, consensus-building for the new constitution revolved around two political parties – the PPP and the NAP – and the three main political actors representing these parties – the Sindhi leader Bhutto, the Pakhtun leader Khan Abdul Wali Khan, and the Baloch leader Ghaus Bakhsh Bizenjo.[171]

The political ideologies of these parties and actors significantly influenced the future federal ethos. Out of all these ideologies, Bhutto's was the hardest to reconcile. In the 1950s, Bhutto had opposed the One Unit plan, which in his opinion was certain to "augment disintegration,"[172] and had instead argued in favor of regional sovereignty and autonomy within a federal Pakistan. As a spokesperson for his own province Sindh he espoused "equitable distribution of political power" among all the federating units.[173] Yet, in 1958 he joined Ayub Khan's government – first the martial law regime and later the Presidential cabinet system which retained the One Unit – and remained Ayub's close advisor for almost a decade. Responding to the Bengali secession, Bhutto claimed:

> The tragedy of Pakistan lies in the fact that although federalism is most appropriate for our conditions, for the last twenty-three

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168. *Id.*

169. *See generally* Richard Sisson & Leo E. Rose, War and Secession: Pakistan, India, and the Creation of Bangladesh (1990).

170. G. W. Choudhury, *Bangladesh, Why It Happened*, 48 Int'l Aff. 242, 242 (Apr. 1972).

171. Hafeez Malik, *The Emergence of the Federal Pattern in Pakistan*, in Contemporary Problems of Pakistan 45, 45 (J. Henry Korson ed., 1974) [hereinafter Malik, *Emergence of the Federal Pattern in Pakistan*]. The NAP formed a coalition government in the NWFP with the JUI. *Id.* at 48. On the question of federalism, however, the JUI's role and input was considerably overshadowed by the other two parties. On the other hand, it seems that the JUI was successful in extracting compromises, particularly from the PPP, on Islamic provisions in the new Constitution. *See generally* Fazlur Rahman, *Islam and the New Constitution of Pakistan*, in Contemporary Problems of Pakistan 30 (J. Henry Korson ed., 1974).

172. Anwar H. Syed, *The Idea of a Pakistani Nationhood*, 12 Polity 575, 590 (Summer 1980).

173. *Id.*

years Pakistan has been. . .a federation in name only. In practice, it has remained a quasi-unitary State. . .The spirit of federalism and the rules of co-existence were sacrificed at the altar of ambition. In the name of a "strong center" the powers of the provinces were weakened to the point of being extinguished.[174]

But while Bhutto castigated the "quasi-unitary State" for the loss of East Pakistan, he justified his own rejection of Bengali demands for federalism in his initial address to the National Assembly in the following terms: "People's Party rejected the Six Points. . .it was indeed a unique constitutional proposal. . .We, too, stood for maximum provincial autonomy, but at the same time desired a viable center."[175]

Similar contradictions abounded in the identity of Bhutto's party, the PPP. The PPP had effectively abstracted from G. M. Syed – and his Sindhi separatist movement for an autonomous "Sindhu Desh" – the articulation of Sindhi grievances.[176] The PPP had what Jaffrelot calls a complex "dual identity": "on the one hand it presented itself as a national party, on the other it was perceived as the spokesman for a particular community, the rural Sindhis."[177] Thus, the PPP was defined as much by an ethno-nationalist agenda as the Sindhi nationalist movement or the NAP despite its appeal as a national federal party.[178]

The NAP's ethno-nationalist agenda advocated a confederative system with "complete provincial autonomy," leaving defence, foreign affairs and currency with the center.[179] In the constitutional negotiations that followed the secession of East Pakistan, the NAP grounded this proposal in a "multinationality thesis."[180] The multinationality thesis was an attempt to reconstruct the idea of Pakistan as a coalition of four distinct ethnolinguistic nationalities: Punjabis, Sindhis, Pakhtuns and Balochis.[181] Ostensibly, the NAP's articulation of "multinationalism" reflected, amongst other things, a sense of cultural and linguistic self-preservation.[182] However, others suggest that it was an effective political strategy on the part

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174. BHUTTO, GREAT TRAGEDY, *supra* note 166, at 5-8.

175. President Zulfikar Ali Bhutto, Inaugural Address to the National Assembly (Apr. 14, 1972), quoting from Craig Baxter, *Constitution Making: The Development of Federalism in Pakistan*,14 ASIAN SURV. 1074 (Dec. 1974), at 1079 [hereinafter Baxter, *Development of Federalism in Pakistan*].

176. Wright, *Center-Periphery Relations, supra* note 59, at 304.

177. Chritophe Jaffrelot, *Interpreting Ethnic Movements in Pakistan*, 37 PAK. DEV. REV., Part I 153, 160 (Winter 1998).

178. AMIN, *supra* note 1, at 94.

179. Baxter, *Development of Federalism in Pakistan, supra* note 175, at 1078.

180. Malik, *Emergence of the Federal Pattern in Pakistan, supra* note 171, at 47.

181. *Id.* Some scholars of the time also described Pakistan (or West Pakistan) in terms of four nationalities. *See, e.g.*, Ahmed, *National Question in Sindh, supra* note 49, at 10-11 (asserting that "[b]y all historically accepted definitions the present day Pakistan is a multi-national state with four major nations, i.e. the Punjabi, the Pashtun, the Sindhi and the Balochi nationalities"). *See also* YU. V. GANKOVSKY, THE PEOPLES OF PAKISTAN: AN ETHNIC HISTORY (Igor Gavrilov trans., 1964).

182. *See, e.g.*, IN SEARCH OF SOLUTIONS: THE AUTOBIOGRAPHY OF MIR GHAUS BUKSH BIZENJO 99 (B. M. Kutty ed., 2009) [hereinafter IN SEARCH OF SOLUTIONS]. Bizenjo, one of the NAP's Baloch leaders, states that "we should unite and fight for the political and economic rights of different nationalities within the framework of Pakistan" and that the "central theme of our struggle should consist of the demand

of the NAP to justify parity with the PPP in the constitution-making process.[183] In fact, the NAP's vanguard, Wali Khan, analogized the NAP's claim to being an equal partner of the PPP in the constitutional consensus, to PPP's rejection of the AL's claim to an exclusive mandate to formulate a new constitution before the secession. In an interview with Feroz Ahmed in 1972, Wali Khan openly opposed Bhutto's attempts to monopolize the constitution-making process:

> I can only throw back at his [Bhutto's] face his own argument which he had advanced against Sheikh Mujibur Rahman that although he was in an overall majority at the Center he, because of his majority being confined to one province which had an absolute majority, didn't have the right to rule over the other provinces. I am going to confront him with the same argument because he has an absolute majority in the province of Punjab which is 65% of the population of whatever is left of Pakistan. That does not entitle him to rule over the other provinces or to brag that the great majority of the people are behind him. He seems to forget very conveniently that in Baluchistan he has not got a single member either in the Provincial or the National Assembly. He also very conveniently forgets that it was in the Frontier province where Mr. Bhutto himself lost an election.[184]

Whatever political and strategic motives underlay the multinationalist agenda of the NAP, it had several important repercussions that became evident both in the interim constitutional accords of 1972 and the 1973 Constitution. The accommodation of the NAP ideology meant, at the very least, a federal constitution that granted *de jure* recognition to the four main nationalities of Pakistan along with some measure of provincial autonomy. A spectrum of claims existed regarding the nature of the federal structure, ranging from a center with overriding powers for the preservation of Pakistan's "territorial integrity" and "national solidarity" (as in Yahya Khan's LFO), to a kind of a coordinate system with a common economic system controlled by the center (as in Bhutto's formulation), to a loose federation or confederation in which the center had a limited portfolio of defense, foreign affairs and currency but was otherwise subordinate to the federating states (as in NAP's proposal). The constitution would, therefore, have to incorporate some consensus-based articulation of provincial autonomy in the aftermath of widespread dissent against the One Unit plan. In addition, the monopolization of the constitution-making process by ethno-nationalists left little room for the representation of minority groups that did not belong to the four *de jure*

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that . . . [e]ach nationality shall be free and autonomous in terms of its language, culture, customs, traditions and lifestyle." *Id.*

183. Malik, *Emergence of the Federal Pattern in Pakistan*, *supra* note 171, at 47.

184. Wali Khan and Feroz Ahmed, *Interview with Wali Khan*, Pak. Forum, Middle East Research and Information Project, Jun.-Jul. 1972, at 11.

identities under the multinationality thesis or those like the Muhajirs who lacked a historical claim to a regional identity.[185]

3. Incomplete Federalization: Centralist Constraints on Provincial Autonomy & De Jure Groups

The characterization of the new federal republic in the 1970s as an ethnic federation defined by the concept of "four nationalities" or "multinationalism" is highly important to understanding ethnicity-based politics in contemporary Pakistan. At the same time, it is necessary to recognize the broader constraints on the degree of power-sharing under the 1973 Constitution. The secession of East Pakistan and the threat of further disintegration on the one hand, and the centralizing tendencies and multiple political agendas of the ruling party (the PPP) on the other resulted in an ethnicity-based federal structure with a strong central government and severely limited provincial autonomy.

The inherent tension between the disaggregative pressures of NAP's multinationalism and the integrationist strategy of PPP to maintain a "viable center" significantly shaped the overall process of constitutional negotiation as well as the structure of center-periphery relations in the 1973 Constitution itself. One of the earliest reflections of this tension was Bhutto's decision in January 1972 to continue martial law and delay the convening of the provincial assemblies for the purpose of consolidating his position in the center. After much bargaining between the PPP and the NAP-JUI, the elected assemblies were eventually inaugurated in April 1972, and an interim constitution passed prior to finalizing a new constitution.[186] The Interim Constitution of the Islamic Republic of Pakistan, 1972 ("Interim Constitution") contained several important principles that were carried forward into the 1973 Constitution.[187] It described the status of the provinces in the proposed federation as "autonomous with such limitations on their powers and authority as might be prescribed."[188] The inclusion of "limitations" on provincial autonomy evidently diluted the notion of "complete provincial autonomy" proposed by the NAP, and again led to protracted negotiations before the constitution committee could reach a consensus on, amongst other things, the center-province division of power.[189]

The final consensus-based provisions in the new Constitution established, for the first time, an ethnic federal structure based on symmetrical provincial autonomy to the four main provinces of Pakistan. It afforded provincial demands greater political visibility at the level of the federal government by introducing a bicameral legislature in which the National Assembly (lower house) was based on proportional representation and

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185. *See* Malik, *Emergence of the Federal Pattern in Pakistan, supra* note 171, at 47-48 (arguing that the "ethnic regionalism" of the NAP "leaves little ideological room for the Muslim Muhajirs").

186. *See Tripartite Accord*, PAK. FORUM, Apr.-May 1972, at 23.

187. THE INTERIM CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN (1972) [hereinafter INTERIM CONSTITUTION].

188. *Id.* at Preamble.

189. Malik, *Emergence of the Federal Pattern in Pakistan, supra* note 171, at 52.

the Senate (upper house) was based on the principle of equality of representation among the provinces.[190] Various new provisions attempted to institutionalize consultative mechanisms between the federal and provincial governments. For instance, the Council of Common Interests ("CCI"), consisting of provincial chief ministers and an equal number of ministers of the federal government nominated by the Prime Minister, was intended to facilitate center-province dialogue on matters affecting provincial policymaking.[191] Similarly, a National Finance Commission ("NFC"), consisting of federal and provincial ministers, was established to advise on matters of revenue between the federation and the provinces.[192] At the provincial level, the 1973 Constitution lay down a pre-determined number of seats in each of the four provincial assemblies on the basis of population ratio.[193] The division of legislative power between the federal and provincial governments was structured, as before, through two different legislative lists: a federal legislative list and a concurrent legislative list on which both the federal and provincial governments were entitled to legislate, with the caveat that federal law would prevail in case of a conflict.[194] All residuary powers not expressly laid down belonged exclusively to the provincial legislatures.[195] Interestingly, the ambit of federal powers vis-à-vis provincial powers in the 1973 Constitution was wider than in the previous constitutions, which meant that the actual subjects upon which provincial governments could legislate were comparatively fewer than in the past despite the notion of "provincial autonomy" being one of the focal points of the new constitutional settlement.[196] This was a clear indication of the PPP's better bargaining position vis-à-vis the NAP-JUI in defining

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190. The National Assembly originally consisted of 200 members, with each province allocated seats on the basis of the population reported in the last preceding officially published census 1973 Constitution, *supra* note 14, at Art. 51. The Senate – which had 63 members, of which 14 were elected from each province, 5 from FATA, and 2 from the Federal Capital of Islamabad – lacked significant powers and any effective role in the passage of money bills and the budget. *Id.* at Art. 59.

191. Examples of these matters include railways, industrial development, and use, distribution and revenue collection in respect of natural gas and minerals. *Id.* at Art. 153 (read with Part II of the Legislative List).

192. Some of the important functions of the NFC include distribution between federation and provinces of tax proceeds, grants-in-aid by federal government to provincial governments, exercise by federal and provincial governments of borrowing powers conferred by the Constitution, and any other matter relating to finance referred to the NFC by the President. *Id.* at Art. 160.

193. The original distribution of seats for provincial assemblies was as follows: Punjab, 240; Sindh, 100; NWFP, 80; and Balochistan, 40. *Id.* at Art. 106.

194. *Id.* at Art. 143.

195. *Id.* at Art. 142.

196. Syed Jaffar Ahmed, Overview of the Constitution of Pakistan, PILDAT, Briefing Paper No. 17 16 (Aug. 2004). Ahmed outlines five criteria against which the federal character of a constitution can be evaluated: (a) division of legislative power; (b) nature of the federal legislature; (c) role of the judiciary; (d) role of the federating units in the process of constitutional amendment; and (e) nature of emergency provisions and their impact on legislative and executive functions of the federating units. According to Ahmed, the original 1973 Constitution fell short of creating a viable federation on the basis of almost all these criteria. In particular, the distribution of legislative power between the provincial and federal legislatures was highly skewed in favor of a centralized government, and provincial autonomy was further

the degree of power-sharing between the center and the federated units. Thus, while the ideational bedrock of the 1973 Constitution was the recognition of the four main territorial groups as *de jure* ethnic groups, the new ethnic federation granted only partial legislative and administrative autonomy to the sub-national units.

The deep tension between multinationalim and centralization was also manifested in the actual implementation of the 1973 Constitution. Only weeks before the new Constitution was passed, Bhutto dismissed the provincial government of the NAP-JUI in Balochistan in February 1973 on the pretext of tribal unrest in the region.[197] A military operation followed in the province to quell an alleged Baloch insurgency.[198] The NAP-JUI government in the NWFP resigned in protest.[199] The 1973 Constitution was passed in the midst of this political crisis in April 1973, and several NAP leaders were arrested on the occasion of the formal promulgation of the new Constitution on August 14, 1973.[200] The irony of this "consensus-based" constitution-making process was that, out of the three minority provinces, the 1973 Constitution was initially only implemented in Sindh, with the other two provinces of the NWFP and Balochistan falling under PPP-controlled governor's rule. The new federation, therefore, was "incomplete" in both senses of provincial autonomy and selective implementation.

Nonetheless, from the vantage point of Sindhi nationalism, the new federation created *de jure* representation to allow Sindhis to politically dominate Sindh. The center-bias in the federal design had broader implications for center-periphery relations, but did not hinder the construction of these autonomous ethnic identities. What mattered was that both the Interim Constitution and the 1973 Constitution expressly granted the provinces lawmaking powers over three subjects that were central to the Sindhi ethno-nationalist political agenda, namely the regional status and use of provincial languages, educational policies, and ethnic preferential policies.[201] Provincial legislatures had the authority to make laws pre-

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undermined by broad presidential powers to issue proclamations of emergency in the provinces. *Id*.

197. For one account of this unrest, *see* Karim Bizenjo, *The Terror of Gov. Bizenjo*, PAK. FORUM, (May-Jun. 1973), at 30.

198. *See* LAWRENCE ZIRING, PAKISTAN IN THE TWENTIETH CENTURY: A POLITICAL HISTORY 391 (1997); Titus & Swidler, *Knights, Not Pawns*, *supra* note 3, at 61-63.

199. IN SEARCH OF SOLUTIONS, *supra* note 182, at 93.

200. Despite the fact that the NAP leaders and their ideologies were in large part encapsulated in the consensus reflected in the 1973 Constitution, Bhutto banned the NAP in 1975 on the pretext that it was promoting secessionist tendencies in the NWFP and Balochistan. The Bhutto government contended that the NAP's theory of four nationalities was subversive of Pakistani sovereignty and unity. The Supreme Court affirmed the declaration of the government. *See* Pakistan v. Abdul Wali Khan, PLD 57 (1976) (Pak.).

201. Bhutto's policy of simultaneously monopolizing power at the center and shoring up Sindhi autonomy was not inherently contradictory. Neither was his interest in supporting provincial autonomy in Sindh purely ideological. At least partially, the PPP's policies were motivated by a desire to politicize ethnic identities in order to undercut opposition to the party's status as a national political player and its rule at the center. Provincial autonomy in Sindh provided the PPP with an instrument to

scribing measures for "the teaching, promotion and use of a Provincial language in addition to a national language,"[202] and for setting their own quotas for provincial jobs.[203] Additionally, both provincial governments and local authorities could prescribe "in relation to any class of service under that Government or authority conditions as to residence in the Province prior to appointment under that Government or authority."[204] These enabling provisions put in the hands of the Sindh Assembly the discretion to give preference to the Sindhi language in educational and other enterprises, to enhance Sindhi representation in provincial government institutions, and to set conditions of residence or domicile to facilitate recruitment from rural Sindh.[205] That the new federation granted limited provincial autonomy, or that a Sindhi party controlled the federal government, were factors that were merely incidental to the promotion and implementation of this agenda. The following section takes a closer look at the Sindhi ethno-nationalist policies arising from the institutionalization of the new ethnic federation, and its effects on group relations.

4.   De jure Sindhis and Minority Muhajirs: Impact of the Ethnic Federation on Inter-Group Cleavages and the Construction of a New Ethno-Nationalist Identity

Between 1972 and 1973, the PPP government announced plans for and implemented a number of measures that Muhajirs perceived as tools of ethnical subjugation. Though, arguably, the PPP was operating under larger ideological influences of the time, including socialism and a centrally planned economy, some of these measures quite directly enhanced the position of the Sindhis vis-à-vis the Muhajirs. One of these measures was the revival of the federal ethnic quota system and the introduction of provincial ethnic quotas under the Interim Constitution. At the federal level, the new quota system scaled down the proportion of seats to be filled on merit from 20% to 10%, and neatly defined separate shares for the four provinces roughly in accordance with their relative populations:

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fulfill the twin objectives of centralizing power and appeasing its Sindhi constituencies. Amin, *supra* note 1, at 128-37.

202. Interim Constitution, *supra* note 187, at Art. 267(2) read with Provincial Legislative List II, ¶¶ 16, 53. For the equivalent provision in the 1973 Constitution, *see* 1973 Constitution, *supra* note 14, at Art. 28 read with Art. 251(3).

203. Interim Constitution, *supra* note 187, at Provincial Legislative List II, ¶ 6. The new quotas were formalized simultaneously with the promulgation of the 1973 Constitution in August 1973. Kennedy, *Policies of Ethnic Preference*, *supra* note 99, at 693.

204. Interim Constitution, *supra* note 187, at Art. 24(2). For the equivalent provision in the 1973 Constitution, *see* 1973 Constitution, *supra* note 14, at Art. 27(2).

205. The Interim Constitution was also speckled with references to the improvement of "backward classes" through affirmative action policies. *See* Interim Constitution, *supra* note 187, at Art. 19(4) (declaring that "[n]othing. . .shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens"), Art. 34 (stating that "[s]pecial care should be taken to promote the educational and economic interests of people of backward classes or in backward areas"), and Art. 36 (providing that the "people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan").

Punjab 50%, Sindh 19%, NWFP 11.5%, and Balochistan 3.5% (additionally, 10% seats were reserved on "merit," while Northern Areas and FATA received 4% and Azad Kashmir 2%).[206] This new quota system did not provide for a separate share for Karachi. Instead, it bifurcated Sindh along urban-rural lines by providing separate quotas for urban Sindh (Karachi, Hyderabad and Sukkur) and rural Sindh.[207] Urban Sindh received 40% of the quota's share (7.6% of the total seats for a population of 6.8%) while rural Sindh received 60% (11.4% of the total seats for a population of 13.8%).[208] In the provincial quota for Sindh, recruitment followed the federal designation of "rural" and "urban."[209] Shortly after the reintroduction of the quota system, the Sindh Assembly passed an ordinance laying down strict rules for the definition of a "rural Sindhi" to curb bogus domiciles.[210]

Simultaneously, the PPP government announced the nationalization of ten basic industries as part of its "Islamic socialist" agenda.[211] This was followed by the nationalization of the education sector which aimed to restructure primary through graduate and professional school programs. Accordingly, most universities were to be nationalized and subjected to provincial government regulation within two years from October 1972.[212] Interestingly, the application of the quota system to admission in educational institutions was unique to Sindh, and was to be undertaken on the basis of the urban-rural configuration.[213]

Prima facie Bhutto's nationalization policies were not targeted at improving the economic status of the Sindhis vis-à-vis Muhajirs, especially given the fact that the objective of the nationalization project was to take over the management of various corporations and institutions without necessarily disturbing their ownership.[214] Nevertheless, some aspects of these policies did serve to create ethnic differentiation between Sindhis and Muhajirs. For instance, the new ethnic quotas based on the urban-rural divide in Sindh came to be applied to nationalized private sector industries as well as educational institutions, thus greatly increasing the vocational and educational opportunities available to rural Sindhis at the expense of the urban population. This disparate impact was reinforced by the fact that nationalization of industry inevitably affected the largest in-

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206. Waseem, *Affirmative Action Policies*, *supra* note 22, at 229-30.

207. *Id.* at 230.

208. *Id.*

209. *Id. See also* Kennedy, *Policies of Ethnic Preference in Pakistan*, *supra* note 99, at 694.

210. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 945.

211. *See* Zulfikar Ali Bhutto, *Pakistan Builds Anew*, 51 FOREIGN AFF. 541, 543 (Apr. 1973). *See also* Saeed Shafqat, *Public Policy and Reform in Pakistan, 1971-1977: An Analysis of Zulfikar Ali Bhutto's Socio-Economic Policies*, 11 J. OF SOUTH ASIAN & MIDDLE EASTERN STUD. 37, 40-45 (Spring 1988).

212. *See generally* J. Henry Korson, *Bhutto's Educational Reform*, *in* CONTEMPORARY PROBLEMS OF PAKISTAN 119, 121-25 (J. Henry Korson ed., 1974).

213. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 945; Waseem, *Affirmative Action Policies*, *supra* note 22, at 239.

214. W. Eric Gustafson, *Economic Reforms under the Bhutto Regime*, *in* CONTEMPORARY PROBLEMS OF PAKISTAN 81, 81-82 (J. Henry Korson ed., 1974).

dustrial concerns which were disproportionately owned and managed by Karachi-based Muhajir entrepreneurs.[215]

Likewise, Bhutto's reforms of the civil bureaucracy also contributed to minimizing as much as possible the disproportionate influence of the Muhajirs in the administrative set-up. Bhutto purged the civil services of about 1,300 members in early March 1972 through dismissals and premature retirements. It is estimated that well over 500 of these members were largely Muhajirs from Sindh.[216] At the same time, between 1973 and 1977, almost 5,500 new appointments were made through a new system of lateral entry that enabled the government to induct its own candidates into the bureaucracy.[217] In 1974, Mumtaz Ali Bhutto – the Chief Minister of Sindh – is even reported to have stated that he had "ordered that all new appointments in railways, telecommunications and National Shipping Corporation should be made from among Sindhis so that the provincial quota hitherto ignored was fully met."[218]

While most of these policies were gradually implemented, the most immediate and visible ethnic contestation between the Sindhis and Muhajirs centered on the question of language. Agitation over this issue had been building up since 1969 as part of the debate surrounding education policy in Sindh. While Sindhi nationalist groups demanded the recognition of Sindhi as a medium of educational instruction, sections of the Muhajir intelligentsia reasserted the status of Urdu as central to the ideology of Pakistan.[219] Various Muhajir groups, including student leaders, attempted to galvanize public opinion in Urdu-speaking communities against the adoption of the Sindhi language.[220] Soon after the elections, the language-based group divide escalated when the Board of Intermediate and Secondary Education resolved to introduce Sindhi as its official language, though without undermining Urdu's position as the national language. Protests by Muhajir groups who perceived this resolution as a first step in diluting the status of Urdu quickly degenerated into violent Sindhi-Muhajir clashes.[221] While the language controversy continued, the larger inter-party politics between the PPP and the NAP-JUI threatened to add fuel to the fire. In May 1972, soon after the passage of the Interim Constitution, the newly autonomous NAP-JUI governments in the NWFP and Balochistan adopted Urdu as the official language in order to, amongst other things, isolate the PPP government in Sindh over the language issue.[222] However, instead of pushing the Sindh government into a defensive corner, this measure only served to further polarize the agitation, with Mumtaz Ali Bhutto openly declaring in June 1972 that he

215. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 945.

216. Tahir, Political Dynamics of Sindh, *supra* note 76, at 637.

217. *See* White Paper on the Conduct of the General Elections in March 1977, Government of Pakistan, Rawalpindi 61 (Jul. 1978). *See also* Charles H. Kennedy, *Analysis of the Lateral Recruitment Program to the Federal Bureaucracy of Pakistan, 1973-79*, 3 J. of South Asian & Middle Eastern Stud. 42 (Summer 1980).

218. Tahir, Political Dynamics of Sindh, *supra* note 76, at 667.

219. *Id.* at 668.

220. *Id.* at 669.

221. *Id.* at 570-72, 605-12.

222. Ahmed, *National Question in Sindh*, *supra* note 49, at 14-15.

would fulfill his election promise to restore the Sindhi language to its pre-One Unit eminence and that if he "had ten lives, all those" would be sacrificed "over the name of Sind."[223]

In July 1972, the Sindh Assembly, dominated by Sindhi-speaking members of the PPP, passed a language bill ("Language Bill") declaring Sindhi to be the provincial language of Sindh.[224] During the passage of the Language Bill, the "house was divided completely on ethnic lines," as only Urdu-speaking representatives of the Muhajir electorate (eleven in number) opposed the Bill.[225] These representatives apprehended that the Language Bill was sufficiently vague and open-ended to allow for the suppression and eventual exclusion of Urdu from government services and educational institutions in Sindh.[226] In the immediate aftermath of a protest walkout by the Urdu-speaking members, Sindhi-Muhajir riots broke out in Muhajir-dominated urban areas of Sindh, leading to an army operation and curfews in Karachi and Hyderabad.[227] The scale of violence was unprecedented, as the riots "spread from city to city and village to village like a prairie fire."[228] The immediate trigger for the riots was the Language Bill, but "the question was really one of power in Sind, and language was the apparent bone of contention."[229] It appears that the language controversy was an accumulated reaction to the several pro-Sindhi and anti-Muhajir policies announced by Bhutto earlier the same year.

In the immediate aftermath of the language riots, the PPP government was pressed into negotiating a settlement with the Muhajir representatives according to which Muhajirs were granted a twelve-year reprieve from the Sindhi language requirement for recruitment into the civil service and other government jobs.[230] As part of this compromise solution, Urdu-speaking representatives demanded: that Karachi would be granted the status of a separate Muhajir province or "Mahajaristan" bolstered by Urdu-speaking Bihari migrants from Bangladesh[231]; that the office of the Governor of Sindh would be handed over to a Muhajir[232]; that Muhajirs would be allocated additional seats in the provincial government[233]; and that the existing preponderance of the Muhajirs in the federal and provincial civil services would not be reversed through preferential quotas that favored Sindhis.[234] Violence subsided only after this formula for Sindhi-Muhajir reconciliation was accepted by the government.

223. Rahman, *Sindhi Language Movement*, *supra* note 83, at 1013.

224. The Sindh (Teaching, Promotion and Use of Sindhi Language) Bill, 1972 (Pak.), *reprinted in* Sindh Government Gazette, Extraordinary, Jul. 22, 1972 (Pak.).

225. TAHIR, POLITICAL DYNAMICS OF SINDH, *supra* note 76, at 677.

226. *Id.* at 677-78.

227. Rahman, *Sindhi Language Movement*, *supra* note 83, at 1014; Rahman, *Case of Sindh and Sindhi*, *supra* note 89, at 29.

228. *Behind the Language Riots*, PAK. FORUM, Sep. 1972, at 19.

229. Rahman, *Case of Sindh and Sindhi*, *supra* note 89, at 30.

230. The Sindh (Teaching, Promotion and Use of Sindhi Language) Ordinance, 1972 (Pak.), *reprinted in* Sindh Government Gazette, Extraordinary, Jul. 22, 1972 (Pak.).

231. Wright, *Center-Periphery Relations*, *supra* note 59, at 199.

232. Moonis Ahmar, Pakistan: The Sindhi-Mohajir Conflict (2002) (unpublished manuscript, on file with author).

233. SYED, *supra* note 93.

234. *Id.*

Both the PPP and the Urdu-speaking members of the Sindh Assembly from JI and JUP negotiated through a distinctly ethno-nationalist vernacular. With the displacement of "official nationalism" by "multinationalism" through the new ethnic federation, and the resultant reversal of Muhajir dominance, the Muhajirs could not stake their claims either through a neutral Pakistani national identity or on the basis of class oppression in the presence of cross-class concerns over cultural, linguistic and political capitulation to the Sindhis. In this context, the assertion of political autonomy by the Muhajir constituency through an ethno-linguistic identity was not only an attempt at group differentiation from the Sindhis for the purposes of preserving group dominance, but a way of claiming a *de jure* identity culturally at par with the other four nationalities.[235]

But some questions still remain. What were the real motivations behind the language riots? Did they signify a deeply felt collective consciousness of a new group-based identity or were they the result of the political machinations of a few? Did the Muhajir demands for a moratorium on the implementation of the Language Bill and a separate province on the basis of a distinct Muhajir nationality emerge from a consensus across the Muhajir community? Put another way, how genuinely group-based and socially-inclusive was the articulation of a distinct ethno-linguistic nationality by the Muhajir political representatives? The existing literature on the language riots points to three main narratives on the nature and motivations behind the emergence of Muhajir nationalism. The first of these is the "Muhajir communalism" narrative propounded by the Sindhi nationalist G. M. Syed. According to Syed the language riots were "master-minded" and led by the JI and JUP representatives in the Sindh Assembly who encouraged communalism amongst the Muhajirs and incited "deliberate acts of provocation by organized bands of Muhajir hoodlums."[236] At the same time, the Sindhi nationalists castigated Bhutto and the PPP government for conspiring with the "Muhajir-Punjabi" bloc to suppress the rights of the Sindhis through the "intellectual imperialism of Urdu."[237] The second narrative is the "capitalistic exploitation" perspective of the leftist-socialist Sindhi intellectual, Feroz Ahmed. Ahmed asserts that the so-called "Urdu movement" that came about in reaction to the Language Bill was planned, financed and executed by a wide variety of interests in order to create a pretext for military intervention in politics.[238] The third perspective of "political party compe-

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235. In the words of Nawab Muzaffar Khan, a Muhajir autonomist, "[i]f the anti-Pakistan elements were allowed to continue their campaign of four nationalities, then the Mohajirs would be within their rights to press the demand of fifth nationality for themselves – and they would assert their right, come what may." Tahir, Political Dynamics of Sindh, *supra* note 76, at 697.

236. Syed, *supra* note 93.

237. *Id.*

238. Feroz Ahmed, *The Politics of Language Riots*, Pak. Forum Sep. 1972, at 2. These interests allegedly included Karachi-based monopoly capitalists who were opposed to the PPP's policy of nationalization; bureaucrats-turned-landlords who had usurped *Hari* land but which land was now vulnerable to compulsory acquisition by the government under PPP's land reform policies; various right-wing parties aligned

tition" as put forward by Tanvir Tahir contends that Urdu-speaking NAP members, who had lost elections to JI candidates in Muhajir dominated constituencies in urban Sindh in 1970, latched on to the opportunity created by the language riots to win political favor with the Muhajirs.[239] For instance, the first organized effort to declare the Muhajirs the "fifth nationality" came only two days after the riots from the "Urdu Qaumi Council" formed by the General Secretary of the NAP, Mahmud-ul-Haq Usmani.[240] Tahir concedes, however, that this was not the sole voice for Muhajir nationalism. Similar demands came from the NSF, which had argued for an autonomous Karachi province even at the time of the 1970 elections, as well as other smaller groups over the course of the next few years.[241]

These three narratives of the makeup of Muhajir nationalism following the language riots – Muhajir communalism, capitalistic exploitation, and political party competition – are by no means mutually exclusive. In fact, they all reinforce the larger point that the "multinational" nature of the new federal politics created opportunities and pressures for the ethnicization of group identity for political mobilization. Since the new federation was an ethnic federation, group visibility in the corridors of political power and representation for the Muhajirs depended on the construction of an ethnic identity that engaged with and made claims on the political institutional structures through the newly embedded ethno-nationalist patois. Whether the construction of this identity originated through an internal consensus of the Muhajir community or more particularly through influential political actors claiming to represent the community at large, or whether it first emerged as a byproduct of or in collaboration with forces and interests external to the Muhajir community, is not of instrumental consequence. What is crucial is that a multinational federal design generates and reinforces the necessary pressure and space for ethnicity-based politics. An "ethnic" Muhajir identity was already well mobilized in the 1970s along both linguistic and urban-rural lines in response to ethnic federalism. This brought along with it claims not only for a territorially defined ethnicized group identity from certain quarters, but also a recognition that if the Muhajirs were to engage with the new federal politics, they would have to galvanize their efforts through a political party that represented their transforming needs and that could compete with other parties that seemed largely to be cut across ethnic and regional lines.[242] Some years later, the MQM provided a political organizational structure for this already mobilized identity, incidentally only months prior to the revival of the 1973 Constitution by General

closely with the Punjabi establishment; educational enterprises whose institutions were under threat from nationalization policies that did not offer any compensation; and anti-PPP press barons. *Id.*

239. TAHIR, POLITICAL DYNAMICS OF SINDH, *supra* note 76, at 696.

240. *Id.* at 696-97.

241. *Id.*

242. Ahmar, *Karachi Crisis*, *supra* note 22, at 1038.

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Zia-ul-Haq in the mid-1980s.[243] Referring back to Schuck, the three factors that influence the intensity of the minorities-within-minorities problem in a federated society include the overall effect of the federal system on the social cleavages underlying inter-group relations, whether the system is introduced immediately or incrementally (suggesting that an incremental process of power-sharing may be more beneficial in curtailing ethnic strife), and whether the federation originates through inclusive processes or imposition. In line with Schuck's first proposition, the Sindhi-Muhajir case study shows that there is nothing inherently conflict-alleviating about an ethnic federation, and that under conditions of reversal of historical inter-group power relations, it is, in fact, counterproductive. The case study, however, does not sit well with Schuck's second proposition. The ethnic federation of the 1970s was an incomplete federation, both because it was highly centralized, and because it was selectively implemented in Sindh. Moreover, it went through a premature demise in the 1980s with the militarization of the state. It was only in 2010 that the federation was revived and implemented in all four provinces for the first time. Regardless, the original ethnic federation deeply intensified inter-ethnic conflict in Sindh. This would suggest that the important conflict-exacerbating factor is the actual lawmaking powers that accompany federalization, the extent to which they facilitate or even prompt majoritarian ethno-nationalist agendas, and the extent to which they reverse inter-group dominance. Whether the process is slow, incremental and discontinuous or whether it is sudden and immediate does not necessarily influence the gravity of the minorities-within-minorities problem. As for Schuck's third proposition, the case study is inconclusive. Clearly, the Muhajirs, as an ethno-political group, were entirely excluded from the constitutional negotiations leading up to the 1973 Constitution. At the same time, there is nothing to indicate an obverse outcome of Sindhi-Muhajir relations in the event that Muhajirs were stakeholders in the process, given the broader transition in minority-majority power dynamics.

Part IV: Theoretical Insights on Minorities-within-Minorities in Ethnic Federations

The Sindhi-Muhajir example generates interesting observations about the conditions under which an ethnic federation has the effect of ethnicizing group identities and giving rise to or exacerbating, instead of alleviating, ethnic conflict at the sub-national level. Generalizing from the case study, this article argues that the dominance of the minority group and the backwardness and indigenousness of the *de jure* group in the pre-federated era are critical factors underlying the minorities-within-minorities problem in an ethnic federation.The following discussion engages with theoretical frameworks based on the works of Donald Horowitz and Amy Chua to critically examine the role of these factors in situations of ethnic conflict. This critical examination also aims to outline the contribu-

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243. *See* Samad, *Muhajir Identity Politics*, *supra* note 38, at 65 (commenting on the need for distinguishing Muhajir identity politics, which was about "construction of a community," from the MQM, which was a "political entity").

tion of the "federal design" argument to the existing theoretical insights offered by Horowitz and Chua. In light of this discussion, the article elaborates on the broader occurrence and relevance of the minorities-within-minorities problem in ethnically heterogeneous societies.

1. Sindhi-Muhajir Conflict: The Binary of Dominance-Backwardness and the Claim to Indigenousness

Donald Horowitz's analysis of ethnic groups in conflict is helpful in understanding the dynamic of group dominance and backwardness in post-partition Pakistan.[244] Horowitz highlights the role of relative backwardness and the claim to indigenousness in delineating the course of group conflict in post-colonial societies.[245] He claims that a group's geographical location vis-à-vis the colonial center largely determines that group's level of economic development and modernization in the future.[246] This differential distribution of colonial opportunities translates into economic backwardness for some groups.[247] Especially where the colonial administrative apparatus is built on a "substructure of ethnic government," economic disparities created by "locational influences" are bound to be interpreted through the medium of ethnicity, thus fostering ethnic conflict between backward groups and other more advanced groups.[248] Horowitz further suggests that where economic backwardness conjoins with a group claim of legitimacy on the basis of indigenousness, the ensuing conflict is likely to be centered on demands for ethnic preferences in employment, education and business. Backward, indigenous groups often make "immoderate" claims to preferential treatment while at the same time advocating political exclusion for their immigrant, advanced counterparts.[249] In turn, the latter justify their privileged position on the principles of equality and merit.[250] While this is useful as a broad framework for identifying the colonial roots of ethnic conflict in post-colonial states, it does not offer reasons for the ethnicization of the identity of historically dominant and ethnically neutral groups like the Muhajirs (in Horowitz's terms, the "advanced" groups). In other words, as a general theory of ethnic conflict, it does not aim to explain inter-ethnic conflict in federal systems, or under what conditions such conflict becomes unusually intractable.

Amy Chua's positive theory of "market dominant minorities" provides a more narrowly defined framework than Horowitz's for examining the behavior of ethnic groups in post-colonial states.[251] Chua's thesis concerns the post-War world of globalization in which free market democracy disproportionately empowers an ethnic minority, typically perceived

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244. HOROWITZ, ETHNIC GROUPS IN CONFLICT, *supra* note 17.
245. *Id.* at 167.
246. *Id.* at 151.
247. *Id.*
248. *Id.* at 149-56.
249. *Id.* at 214.
250. *Id.* at 213-15.
251. AMY L. CHUA, WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY 95 (2004).

to be a non-indigenous group, at the expense of indigenous majorities. Chua's chief claim is that the concentration of wealth in minority groups creates a vicious downward spiral of poverty among disempowered indigenous majorities, leading to ethnic hatred against the affluent minority groups.[252] In Chua's account, therefore, ethnic conflict is not merely a symptom of economic backwardness but reflects group antagonism against the disproportionate accumulation of wealth and control over resources by a numerically weaker group that is perceived to be an ethnic "outsider."[253] Chua asserts that empowering the poor or disenfranchised majorities of the world is not an adequate solution to conflict in such situations because ""ethnicity" is a fluid, artificial and dangerously manipulable concept."[254]

Chua suggests that, in this atmosphere, the dominant group is likely to invoke a posture of ethnic neutrality and appeal to broader principles of ideology, nationalism and meritocracy in an attempt to justify and maintain its political, social and economic advantage.[255] In contrast, the dominated group is likely to challenge the position of the dominant group through an ethnic backlash against the policies and institutional structures that strengthen the status of the dominant group at the expense of the dominated group.[256] In Chua's scheme, the institutional structure that fuels this backlash is the free market, which is viewed as the instrument of dominance.[257]

This dialectic is very well reflected in the Sindhi-Muhajir paradigm. Although it is important to emphasize that Chua explains ethnic conflict in terms of the twin processes of globalization and democratization and is not directly concerned with sub-national minorities in a federal structure, there are interesting similarities between the dominant minorities that Chua studies and the relations between the Muhajirs and Sindhis during the first decade of Pakistan. In both cases, the relative dominance of the minority group is a contributory factor in generating inter-ethnic conflict. The Muhajirs were the dominant players in terms of access to and participation in civil administration and other public and private employment. This institutional dominance effectively translated into dominance over the state apparatus, economic revenue, employment, national resources, and national policy. For as long as the Muhajirs were in a dominant position, they portrayed themselves as "Pakistanis" united by the bonds of Islam and the national language. "Muhajir [ethno-political] demands were conspicuous by their absence" because Muhajirs constituted part of the core of the nation state and their "'communal interests' were indistinguishable from the interests of the national elite."[258] Hamza Alavi, a Pakistani sociologist, refers to this tendency of the Muhajirs to articulate their identity in ethnically neutral national terms as "official nationalism"

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252. *Id.* at 110.
253. *Id.* at 18.
254. *Id.* at 113.
255. *Id.*
256. *Id.* at 147.
257. *Id.*
258. Kennedy, *Politics of Ethnicity in Sindh*, *supra* note 26, at 943-44.

or the promotion of "a national identity that is not spontaneously gener-
ated from below, but is imposed from above by those at the heart of the
power structure in the country, in reaction to powerful sub-national
movements that evoke a far more powerful popular response."[259] As a
counterpoise to the "official nationalism" of the Muhajirs, Sindhis por-
trayed themselves as an indigenous ethnic group with a self-consciously
and territorially well-defined ethno-linguistic identity, while viewing
Muhajirs as a non-indigenous immigrant group. Through this moral
claim to indigenousness, Sindhi nationalists sought to challenge the dis-
proportionate representation of Muahjirs in the civil bureaucracy, as well
as the displacement of the indigenous Sindhi language by Urdu. The per-
ceived instruments of Muhajir dominance – the state administration and
the Urdu language – thus became the targets of a Sindhi backlash that
demanded the political neutralization of the latter.

Chua's theory is also relevant in explaining the lack of a popular dem-
ocratic consensus over the federal structure in Pakistan. According to
Chua, until the minority group is able to maintain its market dominant
position, the structural and distributive mechanisms of free market de-
mocracy continue to benefit the dominant group at the expense of the
dominated majority. In other words, in the presence of a market domi-
nant minority, putative democratic institutions and processes are highly
exclusionary and limited in terms of scope, accessibility and participation.
In the Sindhi-Muhajir context, facts demonstrate an analogous trend. Cer-
tain politicians and special committees appointed to draft a new constitu-
tion attempted to formulate a decentralized form of government that
would secure provincial autonomy. But the ruling bureaucratic elite,
mostly composed of Muhajirs and Punjabis, was highly resistant to a fed-
eral structure that would grant substantial *de jure* political autonomy to
majority ethnic groups to the detriment of their own *de facto* political and
economic power. For the Muhajirs, federalism was a zero-sum game, as it
was likely to empower the indigenous Sindhi population at the expense
of the Muhajir community because of their numerical inferiority and lack
of a popular political base in Sindh or in Pakistan as a whole.

Once again, however, Chua does not directly address the particular
problem of ethnic conflict resulting from the ethnicization of dominant
minorities. Like Horowitz, she is concerned instead with group conflict
between a backward, indigenous majority and a dominant non-indige-
nous minority in a post-colonial setting, but not necessarily correlated
with an ethnic federation. Admittedly, in the early pre-federated phase of
Pakistan's history, the underlying roots of group conflict that both
Horowitz and Chua point to – namely, the historical dominance of the

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259. Hamza Alavi, *Nationhood and Nationalities in Pakistan*, 24 ECON. & POL. WKLY. 1527,
1527 (Jul. 1989). Another prominent South Asian scholar has defined "official na-
tionalism" as the "perception of belonging to one politically defined collectivity, the
idea of which is imposed by dominant elites with the help of the state's apparatus."
Rahman, *Sindhi Language Movement*, *supra* note 83, at 1006. Schuck employs the term
"hyper-nationalism" to describe the same tendency of a nation-state to "reinforce
ideologies and institutions that support or symbolize its unity in hopes of consoli-
dating power." Schuck, *supra* note 20, at 199.

minority group vis-à-vis the backward majority group, and the latter's moral claim to an indigenous identity – were of pivotal importance in shaping the Sindhi-Muhajir conflict.

But the main theoretical insights of the present study begin where the theoretical frameworks of Horowitz and Chua conclude. It adds to these frameworks on ethnic conflict in the context of a federal structure based on ethnically articulated identities. In particular, the study contends that when the sub-national backward-indigenous majority and local dominant-immigrant minority are put in direct political competition through a federal structure that reverses the dominance of the minority group by granting the majority group a privileged *de jure* status, there is a tendency toward the ethnicization of the minority group's identity and deepening of inter-ethnic conflict.

The following section reflects on the broader relevance and significance of the federal design framework, beyond the Sindhi-Muhajir context, to ethnically heterogeneous societies in general.

2. Federal Design and Ethnic Conflict in Ethnically Heterogeneous Societies

The federal-structural conditions underlying the Sindhi-Muhajir conflict add to the growing epistemic debate on the role of democratization in creating discontinuities in historical power relations, and particularly in transferring power from numerically weak dominant minority groups to majority groups.[260] The use of ethnicity-based federations as political interventions for creating more favorable conditions for democratization in ethnically heterogeneous societies constitutes a sub-theme within this larger debate. The Sindhi-Muhajir case study points to a situation where this intervention is highly counter-productive because of its potential for exacerbating inter-group cleavages and ethnic conflict.

Far from being an inconsequential, isolated case, it provides an analytical frame for studying group relations in many areas across the globe which are either not yet federated or are partially federated but are witnessing political demands for ethnicity-based federalization. A prominent example is the multi-ethnic Kirkuk region in northern Iraq where the local majority of ethnic Kurds is pushing for an ethno-sectarian federal structure that will reverse Sunni-Arab dominance in the region.[261] Similarly, the Assamese (themselves multi-religious), who constitute the indigenous population of the north-eastern Indian state of Assam, have

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260. *See, e.g.*, Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L. J. 33-62 (1998) (outlining several model hypotheses for marketization, democratization, and ethnonationalism); Eric P. Kaufmann, *Dominant Ethnicity: From Background to Foreground, in* RETHINKING ETHNICITY: MAJORITY GROUPS AND DOMINANT MINORITIES 3-4 (Eric P. Kaufmann ed., 2004). *See also* James D. Fearon & David D. Laitin, Sons of the Soil, Migrants, and Civil War (unpublished manuscript), *available at* http://www.stanford.edu/class/polisci313/papers/LaitinOct29.pdf (analyzing ethnic civil wars from the perspective of confrontations between spatially contiguous minority-migrant groups and indigenous "sons of the soil" ethnic groups).

261. *See generally* Harith Al-Qarawee, *Redefining a Nation: The Conflict of Identity and Federalism in Iraq*, 2 Perspectives on Federalism (2010); LIAM ANDERSON & GARETH STANSFIELD, CRISIS IN KIRKUK: THE ETHNOPOLITICS OF CONFLICT AND COMPROMISE (2009).

been clamoring for a 'nation-province' to lessen the influence of the domi-
nant-migrant Bengalis, particularly Bengali Muslims, in the state.[262] In Ne-
pal, also, the possibility of an ethnic federation that empowers the
backward and oppressed regional majority group of the Tamang is likely
to heavily marginalize the minority political elite based in Kathmandu
that has been historically dominant.[263]

In all these instances, the groups in conflict, like the Sindhis and
Muhajirs, are defined by cleavages that magnify the relative backward-
ness of a regional indigenous majority in relation to a dominant minority
typically perceived as non-indigenous. These cleavages almost always
rest on language differences as well as the regional concentration of
groups in such a way that geography determines preferential access to
resources and becomes the focal point of political demands. Moreover, in
all these cases, there has been a recent surge in inter-group conflict, esca-
lation of violence, and majority-group demands for ethnicity-based feder-
alization. At the same time, just as pressures mount for integrating the
federal solution into the political dialogue for conflict management, there
is a growing recognition of the conflict-worsening effects of an ethnic fed-
eration that reverses the minority-majority power dynamic. The Sindhi-
Muhajir case study provides powerful support for the proposition that an
ethnic federation will only perpetuate ethnicity-based exclusionary polit-
ics in the circumstances.

PART V: ETHNICITY-BASED POLITICS & INSTITUTIONAL PROTECTIONS OF
MINORITIES IN PAKISTAN

With Bhutto's death in 1979 and the military takeover of government,
the original consensus-based 1973 Constitution was forced into cold stor-
age and with it the idea of a multinational federation. After innumerable
unilateral changes to its democratic, parliamentary and federal ethos –
first by General Zia-ul-Haq in the 1980s and subsequently by General
Pervez Musharraf in the 2000s – the 1973 Constitution was finally resusci-
tated in 2010 in a form much closer to its original vision by the Eighteenth
Constitutional Amendment ("Eighteenth Amendment"),[264] albeit with
some significant changes and greater ethnicization.[265] The Eighteenth
Amendment was passed by a democratically elected government that re-

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262. *See generally* Gurudas Das, *Migration, Ethnicity and Competition for State Resources: An
    Explanation of the Social Tension in North East India, in* NORTH EAST INDIA: THE HUMAN
    INTERFACE 307, 307-25 (Manis Kumar Raha & Aloke Kumar Ghosh eds., 1998). *See
    also* the classic text on the subject, MYRON WEINER, SONS OF THE SOIL: MIGRATION
    AND ETHNIC CONFLICT IN INDIA (1978).

263. Adam Bergman, Ethnic Federalism in Nepal: A Remedy for a Stagnating Peace Pro-
    cess or an Obstacle to Peace and Stability? 18-19 (2011) (unpublished manuscript),
    available at http://www.pcr.uu.se/digitalAssets/118/118045_ethnic-federalism-in-
    nepal—-a-remedy-for-a-stagnating-peace-process-or-an-obstacle-to-peace-and-sta-
    bility-final-version.pdf.

264. Constitution (Eighteenth Amendment) Act, 2010, *available at* http://www.pakistani
    .org/pakistan/constitution/amendments/18amendment.html.

265. Katharine Adeney, *A Step Towards Inclusive Federalism in Pakistan? The Politics of the
    18th Amendment*, 42 Publius: The Journal of Federalism 539, 550-51 (2012) [hereinaf-
    ter Adeney, *A Step Towards Inclusive Federalism in Pakistan?*].

placed Musharraf's military regime in 2008.[266] Reflecting a broad multi-party and treasury-opposition consensus to roll back the extra-constitutional military-engineered provisions in the 1973 Constitution and to strengthen its parliamentary-federal character, the Eighteenth Amendment introduced more than a hundred constitutional amendments.[267] One of the consequences of the Eighteenth Amendment is that, unlike the original 1973 Constitution, all four provinces now have formidable autonomy in terms of both legislative and financial powers.[268] In the context of the Sindhi-Muhajir conflict, this raises some important questions. What effect, if any, has the Eighteenth Amendment had on Sindhi-Muhajir relations? Has there been a resurgence of minority group demands for ethno-linguistic recognition or creation of new provinces on ethnic lines since the implementation of the Eighteenth Amendment? Is the post-Eighteenth Amendment ethnicity-based federal structure likely to reproduce the prototypical Sindhi-Muhajir minorities-within-minorities problem in other regions of Pakistan? Does the amended 1973 Constitution ("Amended 1973 Constitution")[269] offer any safeguards for the interests of local minority groups in the provinces?

While a thorough discussion of these issues is outside the scope of the present study, one can offer a few preliminary observations on the basis of emerging trends. In the post-Eighteenth Amendment period, Sindhi-Muhajir relations have continued to be violent and intractable, suggesting that greater provincial autonomy for Sindh as a whole is likely to reinforce the minorities-within-minorities problem in the province. The abiding conflict between these two groups now also encompasses various other domestic migrant ethnic groups and their political organizations. For instance, in the immediate aftermath of the Eighteenth Amendment, Karachi came under the horrific grip of "killing sprees" in which political adversaries, who were split across ethnic lines, engaged in mafia-like activities for control over the city's resources.[270]

Also, in the post-Eighteenth Amendment period, various minority groups put forward or renewed past demands for new provinces on the basis of a distinct ethno-linguistic identity. For instance, the Seraiki-speaking population is clamoring for a separate "Seraiki" province (situated in the south of the largest province of Punjab).[271] Similarly, the Hindko-speaking people are pressing for a separate "Hazara" province

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266. *Id.* at 539, 546-47.

267. *See* Rabbani, Pakistani Federalism, *supra* note 74, at 137, 141-276.

268. Adeney, *A Step Towards Inclusive Federalism in Pakistan?*, *supra* note 265, at 547-50. *See also* Shahid Hamid, Impact of the 18th Constitutional Amendment on Federal-Provinces Relations, Pildat 9-12 (Jul. 2010).

269. The Constitution of the Islamic Republic of Pakistan, 1973 (amended 2010) [hereinafter Amended 1973 Constitution], *reprinted in* The Constitution of the Islamic Republic of Pakistan, 1973: as amended by Constitution (Nineteenth Amendment) Act 1 of 2011 (2011).

270. *See generally* Watan Party v. Federation of Pakistan, SMU 16-2011 18-20 (2011) (Pak.).

271. *See, e.g.,* Muhammad Feyyaz, Demand for Saraiki Province, Background Paper, Pildat 9-12 (Mar. 2011); Ayesha Siddiqa, *Dividing Up Punjab*, The Express Tribune (Apr. 2, 2011), *available at* http://tribune.com.pk/story/141777/dividing-up-punjab/.

(situated in the east of the NWFP, renamed "Khyber Pakhtunkhwa" by the Eighteenth Amendment).[272] These instances of ethnicization of politics, however, are not likely to create the kind of intransigent ethnic conflict that defines Sindhi-Muhajir relations. Though both the Seraiki people in southern Punjab and the Hazaras in Khyber Paktunkhwa have regional bases and speak distinct languages (or dialects), they are subdued minorities and are set against dominant majorities – Punjabis and Pakhtuns, respectively. For them, the Eighteenth Amendment does not signify or threaten a reversal of historical power relations, leading to the deeply entrenched political stalemates and violent struggles for dominance witnessed in the Sindhi-Muhajir conflict. However, with enhanced political autonomy granted to the *de jure* groups in the provinces, the Eighteenth Amendment threatens further suppression of these minorities by their counterpart dominant majorities. Thus, from a human rights perspective, an important concern in the current federal framework of Pakistan after the implementation of the Eighteenth Amendment is the protection of the rights of minority groups in the federation.

Insofar as representation of minorities in the federal bureaucracy is concerned, the Amended 1973 Constitution enables the federal government to redress the "under-representation of *any class or area* in the service of Pakistan. . .in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament)."[273] Ostensibly, this allows the federal government to recognize hitherto marginalized minorities on the basis, broadly, of any "class" or "area," thus reserving to itself the power to compensate for or counteract the dominant influence of *de jure* groups' constitutional privileges. Under the Federal Legislative List, the federal government may additionally alter electoral laws in the provinces.[274] Once again, this enables the federal government to make electoral processes more fair and just for minority groups and thereby to enhance their political representation through any number of devices, such as delimitation of electoral districts, separate electorates, reservations, and proportional representation. The Amended 1973 Constitution also protects the right of "any section of citizens having a distinct language, script or culture" to "preserve and promote the same and subject to law, establish institutions for that purpose."[275] But this right is subject to the power available to provincial assemblies (and hence *de jure* groups) to "prescribe measures for the teaching, promotion and use of a Provincial language in addition to the National language."[276] The provincial assemblies, thus, have the authority effectively to compel provincial minority groups to adopt a provincial language (in addition to Urdu and their native language) in order to gain access to employment opportunities at the provincial level. Moreover, local government is a provincial subject under the

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272. *See, e.g.*, Moonis Ahmar, *Conflict Prevention and the New Provincial Map of Pakistan: A Case Study of Hazara Province*, 20 J. OF POL. STUD. 1, 11-15 (2013).

273. AMENDED 1973 CONSTITUTION, *supra* note 269, at Art. 27(1) (emphasis added).

274. AMENDED 1973 CONSTITUTION, *supra* note 269, at Art. 70(4) read with Federal Legislative List I, ¶ 41.

275. *Id.* at Art. 28.

276. *Id.* at Art. 251(3).

Eighteenth Amendment, once again granting complete authority to provincial governments to design and implement this sub-provincial tier of government.[277] Thus, it appears that except for the discretionary choice available to the federal government to come to the aid of ethno-linguistic minorities in relation to representation in the federal bureaucracy, and the benevolence of *de jure* groups in the provinces to create political space for such minorities to promote their ethno-linguistic cultures and demands, the Amended 1973 Constitution essentially remains mute and ineffective on the issue of sub-national inter-ethnic conflict and the status of minority rights.

In these circumstances, the institution most likely to intervene on behalf of minority groups is the Supreme Court of Pakistan, as the Eighteenth Amendment preserves its centralized authority within the federation, both in its appellate and original jurisdictions. Though it still remains to be seen how the centralized apex Court will balance constitutional rights with provincial autonomy, one way in which the Supreme Court could indirectly elevate the status of minority groups is through the enforcement of the new "right to education" by interpreting and applying it purposively in conjunction with other Fundamental Rights.[278]

But indirect reliance on the Supreme Court to achieve meaningful progress on minority rights cannot be a viable solution to what is a significant and widespread political issue in the Pakistani federation. Quite apart from the possibility of a general accommodation by the provincial governments of the interests of minority groups, one important "political solution" to intra-provincial inter-ethnic conflict lies in the constitutional amendment mechanism of the 1973 Constitution. This mandates that any proposed constitutional amendment that "would have the effect of altering the limits of a Province" must be "passed by the Provincial Assembly of that Province by the votes of not less than two-thirds of its total membership."[279] In other words, the Amended 1973 Constitution provides an opening for a consensus-based creation of further provinces. A peaceful constitutional consensus on such a highly charged issue may seem like a remote prospect. Nevertheless, there are already encouraging signs of the federation's political maturation in this respect.

Ethnicity-based political contestations in Pakistan have not only increased in recent months but have also captured the imagination of a broad spectrum of political parties. For instance, in May 2012, the rival parties of the PPP and the Pakistan Muslim League (N) (PML-N) unanimously passed resolutions in the Punjab Assembly in favor of carving out two southern provinces in the Punjab in order to undercut each other's

277. *See, e.g.*, Abid Hussain, *Not so local*, Herald (Sep. 13, 2013), *available at* http://herald .dawn.com/tag/18th-amendment.

278. The "right to education" under article 25A of the 1973 Constitution states that the "State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law." Amended 1973 Constitution, *supra* note 269, at Art. 25A. For a recent discussion paper on the subject, *see* Right to Free and Compulsory Education in Pakistan: Enforcement of Article 25-A of the Constitution of Pakistan, Background Paper, Pildat 8-11 (Jun. 2011).

279. Amended 1973 Constitution, *supra* note 269, at Art. 239(4).

vote banks in the province – a Janoobi ("south") Punjab Province (based
on the Seraiki Movement) and a Bahawalpur Province (based on the res-
toration of the original Bahawalpur province as it existed prior to the One
Unit).[280] Clearly, this is an indication of an emergent political will to de-
velop a discourse on minority rights and the resolution of inter-group
conflict as an electoral issue. But so far, the political will to safeguard the
interests of historically subjugated sub-national ethnic minority groups
evidently rests on narrow and self-interested agendas. For meaningful
progress on the issue, what is required is engagement with political
processes based on a broader cross-party consensus (similar to that of the
Eighteenth Amendment), and the willingness to transcend the narrow
and unimaginative equation of minority rights with creation of new prov-
inces by advocating cross-cutting cleavages and intra-provincial
diversity.[281]

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280. *See* Amjad Mahmood, *Assembly Backs South Punjab, Bahawalpur Provinces*, Dawn
     (May 10, 2012), http://www.dawn.com/news/717071/assembly-backs-south-pun
     jab-bahawalpur-provinces.
281. *See, e.g.*, Samad, *Managing Diversity in Pakistan*, *supra* note 11, at 9-12.