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Legitimizing State-sponsored Militants: The Role of Civil Institutions in Pakistan

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

In Political Science

by

Sahar Khan

Dissertation Committee:
Associate Professor Kamal Sadiq, Chair
Professor Cecelia Lynch
Professor Richard Matthew

2017

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LIST OF ABBREVIATIONS

ANP	Awami National Party	KP	Khyber Pakhtunkhwa
APS	Army Public School	LeJ	Lashkar-e-Jhangvi
ATA	Anti-Terrorism Act	LeT	Lashkar-e-Taiba
ATCs	Anti-Terrorism Courts	LoC	Line of Control
CID	Criminal Investigation Department	MI	Military Intelligence
COAS	Chief Of Army Staff	MNA	Member of National Assembly
CPLC	Citizen Police Liaison Committees	MQM	Muttahida Qaumi Movement
CRSS	Center for Research and Security Studies	NACTA	National Counter Terrorism Authority
CTD	Counter Terrorism Department	NAP	National Action Plan
CTF	Counter Terrorism Force	NISP	National Internal Security Policy
CVE	Countering Violent Extremism	NPB	National Police Bureau
DG	Director General	NPMB	National Police Management Board
DIG	Deputy Inspector General	NPSC	National Public Safety Commission
DM	District Magistrate	PAFO	Pakistan Armed Forces (Acting in Aid of Civil Power)
DSP	District Superintendent of Police		Ordinance
FATA	Federally Administered Tribal Areas	PATA	Provincially Administered Tribal Areas
FIR	First Information Report	PILDAT	Pakistan Institute of Legislative Development and Transparency
FPSC	Federal Public Service Commission (FPSC)	PML-Q	Pakistan Muslim League– Quaid-e-Azam
FSF	Federal Security Force	PML-N	Pakistan Muslim League– Nawaz
GHQ	General Headquarters (Pakistan Army)	POPA	Protection of Pakistan Act
GWOT	Global War on Terror	PPO	Protection of Pakistan Ordinance
HRCF	Human Rights Commission of Pakistan	PPP	Pakistan People’s Party
HuM	Harkat-ul-Mujahedeen	PSP	Police Service of Pakistan
IB	Intelligence Bureau	PTI	Pakistan Tehrik-i-Insaaf
ICJ	International Commission of Jurists’	SCBA	Supreme Court Bar Association
IGP	Inspector General of Police	TNFJ	Tehreek Nafaz-e-Fiqh-e- Jafariya
ISI	Inter Services Intelligence	TNSM	Tehreek Nifaz-i-Shariah Mohammadi
ISPR	Inter Services Public Relations	TTP	Tehrik-i-Taliban
JI	Jamaat-i-Islami		
JuD	Jamaat ud Dawa		
JUI-F	Jamiat-e-Ulemai Islam		
JeM	Jaish-e-Mohammad		
JIT	Joint Investigative Team		
JPP	Justice Project Pakistan		

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Urdu: Native
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Pashto: Basic proficiency
Hindi: Verbal proficiency
Arabic: Basic proficiency

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ABSTRACT OF THE DISSERTATION

Legitimizing State-sponsored Militants: The Role of Civil Institutions in Pakistan

By

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Doctor of Philosophy in Political Science

University of California, Irvine, 2017

Associate Professor Kamal Sadiq, Chair

Using and sponsoring militant groups as proxies to meet geostrategic interests is an old political phenomenon. IR research indicates that state's sponsor militant groups to increase their regional influence, destabilize regional rivals, export political ideology, maintain economic stability, preserve plausible deniability, and deter a more powerful rival. Yet, none of these motivations adequately explain the institutional foundations and the role of a state's national identity in sponsorship. In this dissertation I present a theory for continued state-sponsorship, arguing that sponsorship of militant groups is linked to its ontological security, which refers to the security acquired by having a stable, consistent identity. I argue that sponsorship of militancy satisfies the state's need of having a stable and consistent identity, and ultimately increases ontological security. How a state obtains and maintains its ontological security is deeply tied to its ability to achieve its geostrategic interests. To better understand how sponsorship of militant groups functions as a means to increase the state's ontological security, I specify the institutional foundations and requirements for maintaining a state's ontological security, and ask: Does a state's sponsorship of militancy have the same or different effects on its *territorial* security versus its *ontological* security? What are the processes of ontological security? What is the role of civil institutions in the processes of ontological security? And how do civil institutions facilitate state-sponsorship of militant groups? I use Pakistan to illustrate the value of this approach and investigate how its civil institutions help legitimize the state's policy of sponsorship as a means to enhance the state's ontological security.

Employing a reflexive approach and an ontological security framework to the study of state-sponsorship yields several important findings for IR theory, mainstream and critical security studies, and interdisciplinary approaches to studying militancy. First, my research emphasizes that while its external environment influences a state's identity, it is nonetheless created internally by the interaction of its civil and military institutions. Second, disaggregating the state allows us to better understand how "security" is created and how closely "security" is intertwined with "identity" and "national interests." Unpacking the state, therefore, adds more theoretical and empirical value to IR theory. Finally, by revealing the contributions of the Pakistani state's civil institutions in the state's policy of sponsoring militant groups, this dissertation disrupts the conventional understanding of Pakistan's institutions, which has mainly considered the military as the primary institution involved in the sponsorship of militant groups. My dissertation highlights how this conventional view is incomplete and needs to be reexamined.

CHAPTER ONE

Introduction: Persistence of Militancy and State Institutions

On November 26, 2008, ten well-armed militants stormed Mumbai, killing 166 people, renewing tensions between India and Pakistan. All the militants were from Pakistan, and belonged to Lashkar-e-Taiba (LeT), believed to be one of Pakistan's strongest militant proxies against India. The leader of LeT, Zakiur Rehman Lakhvi was arrested by Pakistani authorities in a raid in December 2008, and in November 2009, a Pakistani Anti-Terrorism Court (ATC) found him and seven more suspects guilty of planning and executing the Mumbai attacks. Yet, he was released on bail on April 10, 2015 (Qarar 2014; Hashim 2015; Asad 2015). Hafiz Saeed, the leader of the charitable wing of the LeT, Jamaat ud Dawa (JuD), had also been placed under house arrest due to potential involvement in the Mumbai attacks but was released in June 2009 (BBC 2009) due to lack of evidence—a claim made by the Pakistani authorities. Saeed continues to head JuD and its various welfare projects, such as providing ambulance services in Karachi (Dawn 2015). Fazlur Rehman Khalil, founder of Harkat-ul-Mujahideen (HuM) and current leader of Ansar-ul-Ummah (militant groups based in Pakistan that conduct operations in Indian-administered Kashmir), was arrested in 2004 for transporting militants to Afghanistan but was released due to lack of evidence in 2014. In 2011, Carlotta Gall of the *New York Times* reported that Khalil lives freely in Islamabad and maintains close ties with the Pakistani military (Gall 2011; Gall 2004). Maulana Masood Azhar, the leader of Jaish-e-Mohammad (JeM), another militant group based in Pakistan that conducts operations in Kashmir, resurfaced in Pakistan after a long hibernation. In January 2014, he addressed a large political rally in Multan, and currently lives in the small city of Muzaffarabad (Hussain 2014). JeM is also thriving: it has a four-story

compound with a seminary in the center of Lahore, and a larger one being built just off a major highway (Shah 2016).

Lakhvi, Saeed, Khalil, and Azhar are all leaders of prominent militant groups, each of which are based in Pakistan. But they are all banned by the Pakistani state: LeT and JeM were banned in 2002 while HuM was banned in 2003. Yet, all of them operate freely and openly in Pakistan. Their freedom of movement and operation gives rise to a puzzle: Why don't leaders of prominent violent militant groups get arrested? Or alternatively, why are these leaders allowed to operate freely? Some attribute this freedom of movement to weak state capacity, while others hold the government responsible, accusing authorities of not protecting its citizens, and deliberately avoiding action against these groups. Each of these groups—and others—has links to Pakistan's military establishment and intelligence agencies, specifically the Inter-Services Intelligence (ISI). The state has sponsored these groups to assist in a variety of activities, such as curbing domestic separatist movements in Balochistan (Fair 2011, 12–13; Tankel 2013), conducting *jihad* in Kashmir (Kapur and Ganguly 2012; Shapiro and Fair 2009; Byman 2005, 155–186), and even during elections (Staniland 2015), highlighting the multidimensional relationship these militant groups enjoy with the Pakistani state.

Using and sponsoring militant groups as proxies to meet geostrategic interests is not a new phenomenon, and Pakistan is not the only state to be engaged in sponsoring militancy. For example, Iran is currently being accused of using its embassies in Latin America to recruit from the region for Hezbollah, a militant group based in Lebanon and sponsored by Iran (O'Grady 2016). Hamas, a well-known militant group, enjoys support from Iran, Syria, and Russia (Blank 2015). Russia is also notorious for sponsoring militant groups in the Ukraine (Motyl 2014). Afghanistan has long been a site for proxy warfare, and according to Ariane Tabatabai (2016), is

currently the battleground for both Iran and Saudi Arabia. Eritrea has been known to provide refuge and arms to the Islamic Courts Union (ICU), a union of *sharia* courts in Somalia that was formed in opposition to the Transitional Federal Government of Somalia. More hardline members of the ICU joined *Al Shabaab* and *Hizbul Islam*, militant groups that continue to operate within North Africa, the Horn of Africa, and the Middle East, and that are occasionally sponsored by Eritrea (Gettleman 2007). In addition, China, India, Iraq, Syria, Sudan, Venezuela, and the United States have all used militant groups as proxies to meet a variety of geostrategic interests.

Similar to other sponsoring states, Pakistan has also become a victim of attacks from militant groups. Some of the most recent attacks include: bombs in Abbas town in Karachi that killed over 45 people in March 2013 by Lashkar-e-Jhangvi (LeJ), another militant group that predominantly conducts attacks in Kashmir (Sahoutra 2013); a suicide attack in Lahore on March 27, 2016 (Easter Sunday) by Tehrik-e-Taliban (TTP), an umbrella organization that routinely targets the Pakistani state, which killed 75 people and injured over 350 (Shah and Nauman 2016); the attack on a police academy in Quetta by LeJ (the Islamic State has made claims that it “outsourced” the attack to LeJ) (Masood 2016); and the August 2016 attack by TTP that specifically targeted lawyers based in Balochistan, killing 70 of them (Bearak 2016). These and similar attacks on Pakistani soil point to a greater problem stemming from continued use and sponsorship of militant groups. I argue that Pakistan is experiencing fallout from continued sponsorship of violent militant groups. And I contend that conventional security approaches do not help us understand all the puzzles that result from the consistent state-sponsorship of such groups.

To improve our understanding, I demonstrate that Pakistan's national identity has become entangled in its sponsorship of militant groups, such that Pakistan's "ontological security" depends upon its sponsorship of such groups. Ontological security emphasizes the role of identity in security, and the agency it provides to states in world politics. In addition to physical security, states exercise power and agency via their identities. Routines create social relationships that lead states to use their identities to achieve ontological security. For instance, a self-defeating policy might provide a state with ontological security but physical insecurity (Mitzen 2006, 342–43). The continued use and sponsorship of violent militant groups is a prime example of such a scenario. In this dissertation I present a theory for continued state-sponsorship of militancy, arguing that sponsorship of militant groups is linked to its ontological security: sponsorship of militancy satisfies the state's need of having a stable and consistent identity, and ultimately increases ontological security. How a state obtains and maintains its ontological security is deeply tied to its ability to achieve its geostrategic interests. But how the use and sponsorship of militant groups function as a means to achieve those interests remains unclear. Therefore, I seek to specify more clearly the institutional foundations and requirements for maintaining a state's ontological security, and ask: *Does a state's sponsorship of militancy have the same or different effects on its territorial security versus its ontological security?* In this dissertation I focus sponsorship's effect on the state's ontological security more than territorial security, and hence, also ask: *What are the processes of ontological security?* As I disaggregate the state to better understand the effect of continued sponsorship of militant groups on the state's ontological security, I further ask: *What is the role of civil institutions in the processes of ontological security? And how do civil institutions facilitate state-sponsorship of militant groups?*

As a postcolonial state, Pakistan is still in the process of creating a stable identity. But after 70 years of independence from British colonial rule, two ideational pillars have emerged. First, Pakistan considers itself as a defender of Islam, and second, it considers itself at perpetual war with India. With an identity in flux and being pulled in different directions, a conventional understanding on Pakistan has emerged that is centered on the relationship between its military establishment and right-wing extremist elements operating within the state (Cohen 2004; Haqqani 2005; Jalal 2014; Paul 2014; Jaffrelot 2015). This conventional understanding dictates that while the military establishment and intelligence agencies (particularly the ISI), along with the *ulema* (religious scholars) community and network of orthodox *madrassas* (seminaries), are heavily engaged in sponsoring militancy, promoting anti-Western (i.e., anti-American) sentiments, and fueling religious extremism, the civilian institutions and overall government are countering militancy, promoting pro-Western values like secularism¹ and human rights, and counteracting violent religious extremism. This understanding of Pakistan's institutions has served as a foundation for the international community's relations with the state, especially the U.S.–Pakistan relationship. My research highlights the flaws of this kind of understanding, which creates an institutional dichotomy. ***Civil institutions, especially in post-colonial states like Pakistan, are complex and multilayered, and to view them as relatively simple agents of the state is a mistake that has far-reaching implications. Instead, I call for a more deeper understanding of the Pakistani state's relationship with militant groups, and provide a more nuanced and insider perspective on the state, which fundamentally disrupts the conventional understanding of its institutions.*** As a case study, Pakistan also illustrates the value of an ontological security framework as a means to investigate whether and to what degree key civil

¹ It is important to note that what is considered “secular” and “religious” remains questionable, and is even contentious. Further discussion lies outside the scope of this dissertation.

institutions help legitimize the state's ability to support violent militant groups, and consequently enhance the state's ontological security.

In order to study and analyze the effect of continued sponsorship of militant groups on Pakistan's ontological security, I draw on ethnographic research focused on three civil institutions: the legislature, judiciary, and police.² I employ narrative analysis, a critical reflexive approach that focuses on the researcher's relationship with the research topic and unique accessibility to data, to investigate how these three civil institutions interact and contribute to the state's ontological security by analyzing their practices, examining how they assign meaning to their policies, and investigating their strategies and goals. My dissertation, therefore, contributes to IR and the interdisciplinary scholarship on militancy in three ways. First, it shows that while the state's external environment influences its identity, it is nonetheless created internally by the interaction of its civil and military institutions. Second, my dissertation highlights the importance of unpacking the state to understand how "security" is created and how closely "security" is intertwined with "identity" and "national interests." Some traditional approaches to IR have black-boxed the state in order to understand how an independent, sovereign state acts in an anarchic world. Following in the footsteps of scholars like Nicholas Onuf (2013), Alexander Wendt (1992), and Maja Zehfuss (2002), my research shows how making the state transparent not only adds theoretical and empirical value to IR theory but also opens the door for thinking about the "state" differently. I also contend that sponsorship of non-state actors, such as militant groups, eventually empowers the group to influence the international system. State-sponsorship of a militant group ultimately bolsters the group, and can lead to its autonomy. For example, after the war against Israel in the summer of 2006, Hezbollah emerged as an independent actor

² Pakistan's military is one of the strongest institutions in the country, and has a contentious relationship with civilian institutions. My analysis of the legislature deals directly with tensions within the executive branch while the whole dissertation critically examines Pakistan's civil-military tensions, which I discuss in my research design.

that could operate beyond Lebanon on its own. In other words, it had become more than simply an Iranian and Syrian pawn. According to Emile El-Hokayem (2007), Syria is more pro-Hezbollah than Hezbollah is pro-Syria for strategic and ideological reasons (36). Similarly, after the 2008 Mumbai attacks, LeT emerged as a relatively autonomous group after decades of sponsorship from Pakistan (Tankel 2011). My theory, therefore, adds complexity to IR assumptions and the conventional understanding of state security, and contributes directly to the field of security studies. The third contribution of this dissertation is to the scholarship on Pakistan specifically. By challenging the conventional understanding of Pakistan that is based on a military–right wing Muslim alliance, my research highlights the complex and multifaceted nature of civil institutions and calls for a more in-depth analysis of the state’s bureaucracy. The dissertation, therefore, has two goals. First, by understanding and theorizing militancy from the state’s perspective (i.e., state-sponsorship of violent militant groups) and using primary data, I aim to bring the state into the literature as an agent of militancy, and consequently terrorism, rather than simply a victim. The second aim of this dissertation is to argue for the utility of ontological security as a concept and framework for studying state practices—and in this case for studying state-sponsorship of militancy.

This chapter is further organized in three sections. The first section explores states’ motivations for using and sponsoring militant groups in both mainstream and critical approaches within IR and Comparative Politics. In the second section, I present the concept of ontological security and: 1) distinguish it from nationalism to make a case for a new vocabulary when it comes to better understanding the social construction of national identity, and 2) explain the theoretical benefits of ontological security, especially with respect to studying state-sponsorship

of militant groups. I describe my research design in the third section along with a summary of chapters.

Section I. Literatures Examining State-sponsorship of Militant Groups

The study of militancy has been an interdisciplinary practice, and has been studied widely in both IR and Comparative Politics. Often “militancy” and “terrorism” are used interchangeably. Throughout the dissertation, however, I use “militancy” instead of “terrorism.” “Terrorism,” “terrorists,” and “terrorist groups” are all controversial terms that are politicized in today’s post–September 11, 2001 world, augmented by the fact that there is no real consensus on the definition of “terrorism.” Joseph E. Easson and Alex P. Schmid (2011) identified more than 250 definitions of terrorism (99–148)—an indication of the difficulty of defining terrorism and a reflection of how its meaning has shifted within the scholarship. Terrorism is commonly labeled as a non-state form of asymmetric warfare (Hoffman 2006, 250, 312–317; Cronin 2009, 7; Jürgensmeyer 2003, 269–271) conducted by the weak (Hoffman 2006, 463). Terrorism is also a legal concept, and labeling an act as terrorism can have wide political and legal implications (Zakaria 2016; Schmid 2004; Peed 2005). Using the label of “anti-terrorism” to describe their laws and “counterterrorism” to explain the actions of their law enforcement agencies and militaries helps states (and state agents) place themselves outside the scope of terrorism. The practice of state-sponsorship, however, challenges this placement, along with conventional conceptualization of terrorism. “Militancy” on the other hand is less politically charged and has a broader meaning. In the Merriam-Webster dictionary, “militant” is described as “having or showing a desire or willingness to use strong, extreme, and sometimes forceful methods to achieve something” and to be “engaged in warfare or combat.” Militancy, therefore, does not

rule out the role of the state as an agent of political violence: “warfare” and “combat” in fact imply involvement by the state.

This review is neither an overview of the fields of IR and Comparative Politics, and neither does it favor one field over the other. Instead, the goal of this literature review is twofold: to showcase the scholarship on state-sponsored militancy within both fields, and highlight the interconnectivity of the practice of state-sponsorship and its salience in today’s world. While there is no fixed definition of state-sponsorship of militant groups, it is generally understood as the state providing material resources (i.e., arms, ammunition, direct and/or indirect financial support, fake legal documents, etc.) and ideological backing as means of aiding and abetting the militant group. “Support” is understood as a more indirect relationship between the state and militant group (see chapter two).

I.I. Mainstream IR Explanations of State-sponsored Militancy

Within IR, militancy is studied under the umbrella of security studies, and its subset of terrorism studies. Empirical evidence indicates that states use militant groups as proxies to achieve both geostrategic and domestic goals centered on preserving security, projecting power, securing aid, and maintaining prestige. Within the IR literature, there are six core motivations for states to use and sponsor militant groups (Byman 2005, 36–40; Clarke 2011, 3, 535; Hughes 2012; Mumford 2013): 1) Increasing regional influence, 2) destabilizing regional rivals, 3) exporting political ideology, 4) maintaining economic stability, 5) plausible deniability, and 6) deterring a more powerful rival.

Sponsoring militant groups and using them as proxies allows a state to achieve multiple goals at once, such as projecting power regionally by weakening and destabilizing a neighbor and creating avenues for maintaining influence in the domestic affairs of a rival under the guise

of plausible deniability. For example, since the 2003 U.S.-led invasion of Iraq, Iran has been at forefront of the Sunni–Shia sectarian divide within Iraq, challenging both Iraqi and U.S. interests within Iraq. Iran openly supports numerous Shia political groups and militias under the moniker the Popular Mobilisation Forces, an umbrella organization of predominantly Shia militant groups who now number more than 100,000 men and have had a series of battlefield successes that have left many analysts questioning the relevance of the U.S.-trained Iraqi security forces (Alaaldin 2016; McInnis 2016; Tamiz and Johnson 2015; Sly 2013; Eisenstadt et al., 2011). Similarly, before the current conflict waging in the country, Syria assisted Iran in its support for Hezbollah, and used militants in Lebanon to counter anti-Syrian developments. Syria also helped the Palestinian Liberation Organization launch attacks against Israel to limit Israeli influence in the region (Byman 2005, 80–84 and 134). Eritrea and Ethiopia have both used militant proxies in Somalia in attempts to limit the other’s regional power in the Horn of Africa at the expense of Somalia’s political stability. Eritrea has been known to back the Ogaden National Liberation Front, a known militant secessionist group that routinely attacks Somali forces while Ethiopia’s invasion of Somalia to bolster the Transitional Federal Government was preceded by years of financial support (Byman 2008, 15).

Supporting and using militant groups, especially those tied to insurgencies, makes the enemy “bleed” by tying down the target state’s troops and security forces in a way that weakens the state’s control over key areas. For example, Pakistan’s support of various Kashmiri insurgent and terrorist groups has not only kept India from fully incorporating Kashmir into the country but has more importantly kept Indian forces preoccupied in Kashmir diverting them from focusing on Maoist-hit central and eastern Indian provinces (Kapur and Ganguly 2012; Clarke 2011, 3–4; Ziring 2010; 3820–3849; Jamal 2009, 46; Bose 2007, 229–255; Byman 2005, 155–

185, 194–198). Throughout the 1980s and 1990s, Syria openly supported the Kurdish Workers' Party (PKK), a separatist group labeled as terrorist that demanded a separate state for Turkey's Kurdish population. The general consensus on Syria's support for the PKK is that Syria aimed to intimidate Turkey and keep its focus on the PKK rather than improving its geostrategic relations with Israel. Syria's support of the PKK eventually ended after a military standoff between Syria and Turkey in 1998. The PKK movement itself fizzled out after the arrest of its leader (Byman 2005, 150–153). In June 2015, Israel admitted to aiding and abetting Syrian rebels on the condition that the rebels would not come close to the border or plot to retake the Golan Heights (Ahren 2015). This is not the first time that militant groups have been used to gain leverage over contested territory—Syria's continued support of Hezbollah has also served as a means to inflict harm on Israel as it continues its occupation of the Golan Heights (Byman 2005, 135).

States are also motivated to sponsor militant groups to use them as the means to export a political ideology that could assist in the overthrow of a foreign government (Byman 2005, 36–40; Conrad 2011, 535). After the Islamic Revolution, Iran's leadership had adopted the cause of Shia Muslims as its own, seeking their emancipation from the predominantly Sunni leadership in various Muslim countries. For example, Iran's support of the Shi'a group, Islamic Front for the Liberation of Bahrain (IFLB), has long been a source of tension between Iran and Bahrain. The ruling family of Bahrain, Al Khalifa, accused the IFLB for attempting a coup d'état in 1981 with Iran's help (Mabon 2012; Alhasan 2011; Black and Dehghan 2016).

The most significant motivation for sponsoring militant groups is deterrence. Militant proxy warfare allows states, especially weak ones, to deter a stronger power from wielding too much influence; and it is more economical than conventional, militarized interstate warfare (Conrad 2011, 531). Pakistan sponsors violent militant groups in Kashmir and Afghanistan

mainly to deter India. Similarly, Iran and Syria use violent militant groups such as Hezbollah and Hamas as proxies to deter Israel and even the United States. Former Venezuelan president Hugo Chavez supported the Colombian insurgent group Revolutionary Armed Forces of Colombia (FARC) for decades to deter against a U.S. invasion and other plots (International Institute for Strategic Studies 2011; Hughes 2012, 13). The major problem with militant proxy warfare, however, is that it creates a parallel infrastructure of violence and terrorism that ultimately challenges the state's authority over violence (Paul 2014, 462). Deterrence and proxy warfare are both products of the Cold War (Laqueur 2001, 176 –213; Nacos 2006, 21; Mumford 2013). With nuclear weapons making war even more dangerous and deadly, the United States and the Soviet Union created a culture of “guns for hire” in which a state could hire a mercenary to perform a service for a price—a strategy that provided a high yield for a low risk (Hoffman 2006, 3611–3612; O'Brien 1996, 332). In the post–Cold War security climate, proxy warfare has become unreliable and unpredictable. Yet, states continue to sponsor proxies. I argue that it is not because proxies are more cost-effective than outright war but because using militant groups as proxies has become embedded in the state's structure as a form of identity—a means by which a state can achieve and maintain its ontological security.

While scholars cast a wide net on the why, how, and when states use and sponsor violent militant groups, there are three important fissures within mainstream security studies that need to be addressed. First, there is no consensus on why states choose certain militant groups over others. The discussion is ongoing as new and improved typologies of militant proxies are presented (some examples are: Pillar 2001; Byman 2005; Mohanty 2006; Ahram 2011; Hughes 2012; Mumford 2013; Sozer 2016; Biberman 2016), and will be discussed in more detail in chapter two. The focus on creating a standard typology, however, has created a second fissure:

an over-emphasis on the militant groups—their goals, motivations, ideology, organizational structure, recruitment techniques, and mobility (Abrahms, 2008; Cronin 2009; Tankel 2011; Cohen 2016). While it is extremely important to understand the inner workings of prominent militant groups, the analyses largely sideline or even ignore the role of the state and how state- sponsorship has strengthened the militant group. While sponsorship helps states achieve their own goals, it also benefits the militant groups that are being used as proxies. Access to a state’s material resources, such as money, diplomatic access, munitions, intelligence and military apparatus, and technical expertise, and “soft” resources, such as ideological backing and moral support, all help militant groups achieve their own goals (Jenkins 1986, 589; Hoffman 2006, 3628–3633; Conrad 2011).

If the state is investigated in the context of the militant group, it is labeled as a “state- sponsor” and considered an outlier, which gives rise to a third fissure within mainstream security studies: despite the continuous and consistent state- sponsorship of militant groups the state is not considered an agent of militancy and terrorism. Comparative politics and critical security studies both, however, address the state as an agent of militancy. Comparative politics focuses more on causal factors within the relationship between the state and militant groups, such as how sponsorship may influence the stability of various types of post-conflict political orders. Critical security studies, on the other hand, focuses on the political and ideological biases that dictate the generation of “expert” knowledge on terrorism—and militancy—that tends to exclude the state as an agent of militancy. Many terrorism/militancy experts like scholars, analysts, and journalists, tend to have close relationships with governments, creating a revolving door riddled with conflicts of interests that has facilitated the mainstream definition of terrorism as non-state

activity (Ranstorp 2009, 18–33; Raphael 2009, 49–50; Zulaika and Douglass 1996), ultimately influencing the scholarship on state-sponsorship of militant groups.

I.II. Approaches to Studying Militancy within Comparative Politics

The study of militancy within comparative politics comes from two sets of literatures: 1) civil war literature, specifically literature that focuses on the frequency and duration of civil wars, or variations of violence employed by non-state actors (i.e., militants, guerillas, insurgents, etc.) during civil war, both of which emphasize territorial control and physical security, and 2) post-conflict resolution literature that focuses on the durability of different kinds of political orders, in which each order addresses the mechanisms for retaining and maintaining territorial control. State-sponsorship, therefore, is not considered as a standalone category of political violence. Rather, it is viewed as part of a continuum of conflict and resolution. While these literatures highlight comparative politics' ability to disaggregate the state and conduct micro-level analyses to explain macro-level outcomes, their treatment of state-sponsorship of militant groups has created a void that is unable to provide satisfactory explanations for continued militancy.

Similar to IR literature, the end of the Cold War is a critical point for comparative political scientists. The Cold War led to a spike in “proxy wars” in which both the United States and Soviet Union used weaker, predominantly Third World states, to counter each other (Gaddis 1997; Laqueur 2001; Byman 2005)—a practice that remained well after the Cold War was over. Conventional wisdom holds that the end of the Cold War led to an increase in civil conflicts worldwide. James D. Fearon and David Laitin (2003), however, challenge this conventional wisdom. Creating an original database, the authors show that a spike in civil wars in the post-Cold War environment was not due to sectarian or ethnic divisions but the result of a steady

accumulation of prolonged conflicts since the 1950s and 1960s. They argue for analyzing the conditions that lead to insurgencies for better understanding how and why civil wars begin. Conditions that favor insurgencies include large populations, poverty, and political instability, not economic inequality, discrimination against minorities, lack of civil liberties, or ethnic and religious diversity (Fearon and Laitin 2003, 82–86). Notably absent are any variables related to a state's identity, nationalism, or non-territorial-based security. Furthermore, they argue that today's civil wars have structural roots: decolonization and military technology have created an international community that consists of smaller, weaker states that have little administrative control over their territories (Fearon and Laitin 2003, 88), again, emphasizing the physical security of a state while simultaneously sidelining effects on the state's identity and national interests.

While Fearon and Laitin have focused on the frequency of civil wars worldwide, Hironaka (2005) focuses on the duration of civil wars, and makes a similar argument: the historical increase in the length of civil wars is due to changes in the international system that has transformed the type of states that exist, which are weak and susceptible to conditions that led to a continuation of civil wars. Consistent with realist IR theorists who argue that the bipolar structure of the Cold War encouraged intervention in Third World countries (Waltz 1979; Gilpin 1981; Mearsheimer 1994), Hironaka (2005) shows how the labeling of an internal conflict influenced superpower strategy. Once a conflict in a peripheral state was labeled as a Cold War conflict, the superpowers intervened, which resulted in prolonging the civil conflict. The end of the Cold War, however, also resulted in the end of some civil wars. For example, the lengthy civil wars in El Salvador, Nicaragua, and Guatemala all came to an end soon after the Cold War ended (Hironaka 2005, 1282–1601). Yet, again, the emphasis of the analysis lies with territorial

control and physical security, where a state's identity and national interests are stated in relation to its territory.

Territory, of course, plays a central role in civil wars, and territorial control is a major resource for violent non-state actors involved in conflict, such as militant groups. Along with structural incentives, political gains, and psychological motivations (Tilly 2003; Kalyvas 2006), the variation in violence employed by rebel/insurgent/militant groups during civil wars can be attributed to the resources available to them (Fearon and Laitin 2003, 85–87; Ross 2004, 35–37; Hironaka 2005, 105–113), which includes control of territory (Sambanis 2004; Kalyvas 2006; Kalyvas 2008; Staniland 2012; De la Calle and Sánchez–Cuenca 2012). Yet, an insurgent/militant group can also be powerful without having control over territory. For example, JeM in Pakistan and the Movement for Unity and Jihad in West Africa in Mali do not directly control territory but have a strong following. The material resource of popular support for militancy—a human resource that provides an advantage to militant groups—is missing from such accounts of civil wars. Also missing is the contribution of third-party support to the rebels or the government, which effect the variation of violence, even though it is difficult to observe and quantify (Fearon and Laitin 2003, 86). For example, on analyzing social movements and revolutions in China, France, and Russia, Theda Skocpol (1979) argues that domestic unrest was bolstered significantly by international support—which can also be labeled as sponsorship of militancy depending on who is doing the analysis. Similarly, John Booth and Thomas Walker (1999) argue that the resolution of the long civil conflicts in El Salvador, Nicaragua, and Guatemala soon after the end of the Cold War can be attributed to the United States' reluctance to provide support once the Soviet Union had ended—where U.S. support was seen as sponsorship of militancy by the Soviet Union.

Jeremy M. Weinstein (2007) states that civil war theories emphasizing territorial control by insurgents—and how that control constrains their violence—overlook the importance of the insurgent group’s organizational structure, and the effect that material resources have on the group’s strength or weakness. Weinstein (2007) argues that initial endowments provide organizational strength to a group, which in turn allows the group to use violence in a way that is beneficial to the group (11–15). Weinstein’s focus on the insurgent group’s structure is similar to security studies within IR that also favors focusing on the organizational structures of militant groups. But emphasizing the organizational structure of the non-state actor raises two concerns. First, it fundamentally overlooks the role of state-sponsorship: the motivations behind any resources provided by the state, and the agency that emerges from sponsorship. And second, it allows scholars to get away with not operationalizing the concept of sponsorship, which I conceptualize as the state’s use of a violent non-state actor to simultaneously achieve a strategic political goal and bolster its ontological security (discussed in more detail in chapter two). The concept of state-sponsorship of militant groups in civil war literature, therefore, is hidden within arguments on resources, explanations of strategy, and typologies of violence used by non-state actors.

Establishing and maintaining order, once it has been challenged or transformed or even destroyed, is at the heart of the literature on conflict resolution. And civil wars are often viewed as crucial component of competitive state building (Staniland 2012a, 246). This tacit understanding has shaped post-conflict resolution in three ways. First, insurgency and counterinsurgency is analyzed as a military conflict that is won, lost, or drawn, such as in the Correlates of War project that is widely used by scholars to map out trends and discover causal links (Fearon and Laitin 2003; Sambanis 2004; Merom 2003; Staniland 2012a). Yet, evaluating

victory or loss is far from a binary project. Paul Staniland (2012a) argues that insurgency and counterinsurgency should instead be viewed as a contest over how a political order will take shape and presents a typology of political orders that emerge during civil wars. But these political orders do not evaluate the role of state-sponsorship or support from third parties (aka foreign states). Second, post-conflict resolution literature also tends to view powerful states as homogenous units that have a monopoly on violence. Empirical evidence, however, indicates otherwise. There is no single path of state formation and nation building. For example, Ayesha Jalal (1995) traces the impact of colonization on South Asia to explain the various democratic and authoritarian patterns that have shaped the region. Bertrand Badie (2000) shows how non-Western countries adopted the Western model of the state, and altered it to fit their particular political needs, which in turn has shaped their domestic social relations and legitimacy. Arguing that conditions for weak statehood existed in Africa prior to colonization, Jeffrey Herbst (2000) conducts a historical analysis of the continent to showcase how different African states have faced similar political challenges. Sudipta Kaviraj (2010) discusses the fluidity and interconnectedness of Indian politics, and how its distinct postcolonial nature has shaped the country's identity and its political, social, and economic needs. Comparing Latin America and Spain in the nineteenth century, Miguel Centeno and Agustin E. Ferraro (2013) present the problem of high normative expectations against low institutional development when it comes to state building, highlighting various challenges to maintaining political order. State building, therefore, is a complicated process, that involves both securing territory and creating a coherent national identity—both of which influence a state's motivation for sponsoring militant groups (explored in chapter two).

The third way the importance of establishing and maintain order influences post-conflict resolution literature is that some political orders are preferred over others, and are prized for creating and maintaining peace between the conflicting parties. Yet, there is no convincing literature to indicate that any one kind of political resolution or system guarantees peace and order. For example, Aidan Hehir (2007), James A. Piazza (2008), and Rita Brooks (2009) all caution scholars against making causal links between the spread of democracy and a reduction in terrorist activity, arguing that democracy does not naturally lead to a reduction in political violence. Also, a democratic system does not guarantee an absence or reduction of the use and sponsorship of militant groups. The ongoing Syrian civil war is a good example of how multiple states—democratic and non-democratic—are involved in sponsorship of militancy. The underlying assumption, therefore, is that it is in the state’s interest to promote institutional stability and a decrease in violence. Yet, this very assumption has resulted in the absorption of state-sponsorship of militant groups within post-conflict analysis, creating a conceptual gap that emphasizes resolution via state institutions while ignoring—or at best, weakly explaining—state motives for sponsoring violent non-state actors like militant groups.

I.III. Critical Approaches to State-sponsored Militancy

Critical security studies is primarily concerned with questioning prevailing social orders and power relationships, and investigating their origins and capacity for change. Institutional frameworks and the knowledge that is created by them are examined and often separated. The overarching goal therefore is not problem solving but rather reexamining the problem and assessing its existence (Krause and Williams 2002). Furthermore, emphasis is placed on how cause and effect relationships are not fixed or ahistorical. Instead they are fluid and change over time and circumstances (Lynch 2013, 43). With respect to state-sponsored militancy, critical

security studies has developed “state terrorism” as a separate category of analysis. Using theoretical arguments and empirical evidence, critical security studies scholarship has addressed the challenges of agency related to terrorism and has successfully shown that when it comes to employing political violence to achieve goals, states are no different from non-state actors: states engage in terrorism as well (Jackson et al. 2011; Sluka 2000; Ranstorp 2009; Zuliaka and Douglass 1996). And one of the most common types of state terrorism is state-sponsorship of violent groups that are labeled as militants, insurgents, and terrorists (McAllister and Schmid 2011, 204–205; Jackson et al. 2011, 4423–4469).

State terrorism³ can be described as the use or threat of violence by the state, and its varied agents, against individuals and civilian populations, as means of control and intimidation (McAllister and Schmid 2011, 204; Blakeley 2009, 588–593; Sluka 2000, 2; Stohl 1979, 5–6). Therefore, repression, torture, illegal detention, assassinations, and extrajudicial killings by police and death squads are all types of state terrorism (Blakely 2009, 696–697) that have steadily increased in the twentieth century (Sluka 2000, 3–6; Rummel 1994, 422–425). Two general theoretical trends have emerged to explain why state terrorism has increased. One is functional, arguing that states use terrorism because of structural weaknesses, specially their inability to maintain order and exert control (Walter 1969, 8–19). As a subset of state terrorism, state-sponsorship of militancy is an example of how states agents use militant groups both directly and indirectly as a means to sustain control. The second theory is related to power and argues that as a state becomes more powerful, it is more likely to use terrorism a means to

³ I am deliberately using “state terrorism” rather than “state terror.” According to Jeffrey A. Sluka (2000), political scientists have distinguished between state violence and anti-state violence by labeling the former as “terror” and the latter as “terrorism.” While scholars have focused on terrorism, they have widely neglected studying terror. Though I agree with him that state terror has been neglected, I believe that using two separate words to describe similar acts of violence continues the logic of ignoring one and overemphasizing the other. Therefore, I use “terrorism” in an attempt to rid the literature of this limiting binary.

maintain its political order and elite power (Sluka 2000, 29–34; Rummel 1994), and create institutional mechanisms to allow the use of terrorism. As Sluka (2000, 32–33) asserts that the increase in state terror is primarily linked to the concentration of power in elite hands and growing economic instability worldwide—as the gap between the rich and poor has increased globally, elites are heavily invested in maintaining their own power, which has created a correlation between power and state terror, social integration, and economic stability.

State terrorism, therefore, is a powerful tool. The state's material capability gives it an edge over terrorism conducted by non-state actors, such as militant groups (Claridge 1996, 48; Bushnell et al. 1991; Perdue 1989), and has greater impact on international politics (Stohl 1984). The state's monopoly on legitimate violence also provides a rationale for why it would sponsor terrorist and militant groups. As a type of state terrorism, sponsorship is widely unhindered by borders. Domestically, sponsorship can involve support for pro-government militant groups and covert paramilitary forces. For example, in 1983, the socialist government in Spain created the Antiterrorist Liberation Groups (GAL), a paramilitary organization that targeted and assassinated Basque radical nationalists for at least ten years (Aretxaga 2000, 48–49). In Argentina, the military created special task forces that were in charge of kidnapping and torturing guerillas from various revolutionary organizations throughout the 1980s (Robben 2000, 94–95). Similarly in Colombia in 1995, right-wing paramilitary forces united to form the Self-Defense Units of Colombia (AUC). Funded by the Colombian government and wealthy Colombians, the AUC openly kidnapped and tortured dissidents (Gareau 2004, 214–215). Externally, sponsorship includes a range of activities: ideological and financial support, provisions of safe havens, legal protections, collaboration and cooperation, and even intelligence-backing (Blakely 2009, 707–

714; Martin 2003, 81–111; Stohl 2006, 7). One of the most vivid examples of such sponsorship is the United States’ sponsorship of Nicaraguan contras.

The puzzle, however, remains: why would states need to sponsor militant groups and other violent non-state actors when it uses terrorism itself? My reading of the literature on state terrorism indicates three motivations for why states would sponsor militant groups: 1) to protect the status of the ruling elite, 2) to prevent resistance, and 3) to maintain control by preventing changes to the political system. I contend that there are two more key motivations for states to sponsor militant groups. First, sponsorship gives states a legal cover and a means to maintain plausible deniability. Ruth Blakeley (2010) explains how state terrorism itself has not been codified in international law as illegal though it involves illegal acts of intimidation that have been tried as war crimes (602–605). Under both the international human rights law and international humanitarian law regimes, illegal acts include targeting civilians, torture, and degrading prisoners of war (Blakeley 2009, 605–661)—all of which are done primarily by the state but not considered terrorism. Eric Heinze (2011) explains how international law is evolving as the Global War on Terror continues. In an attempt to hold non-state militant actors, such as those labeled militant/insurgent/terrorist, accountable for their actions, laws on the right of the state for self-defense against non-state actors are actually conferring a legal personality on actors like al Qaeda. By holding non-state terrorist and militant groups accountable to international humanitarian law, the legal regime is recreating militant groups as a legal entity, thus increasing their legitimacy. An increase in legitimacy ultimately undermines international law and is proving to be problematic for states conducting counterterrorism (Heinze 2011; Lang 2010). States have created labels like “appropriate force,” “self-defense,” “coercive diplomacy,” and “necessary measures” to add legitimacy to their actions. Since state terrorism—and consequently

sponsorship—is not a legal category, it ultimately provides states the opportunity to use terrorism to their advantage under these constructed labels of legitimacy.

The second motivation for sponsorship is the ability to deter a rival. When terrorism is labeled as a non-state activity, the acts of terror committed by the group are largely considered to be the group's sole responsibility. The state's involvement therefore remains hidden—or is viewed as an open secret (i.e. Iran's sponsorship of Hezbollah, Pakistan's sponsorship of Kashmiri militant groups, U.S. sponsorship of Nicaraguan contras, etc.) Analyzing state sponsorship under the label of state terrorism, however, is problematic for deterrence because state terrorism as a category of analysis uncovers the state's involvement in terrorist activities. This transparency has the means to hold the state legally, politically, and economically accountable for its use and sponsorship of militant groups. Sponsorship as a form of deterrence therefore may lose its utility under the state terrorism lens. In this dissertation I will show how that is not possible, because sponsorship is tied with the state's identity and ontological security.

Ultimately, studying sponsorship of militancy with state terrorism as a category of analysis has three benefits. First, by accepting that certain acts of state violence are indeed terrorism will allow us to understand state power—how states exercise power and construct their national interests, and use sponsorship to frame and further those interests. Second, the categorization and recognition of state terrorism as a form of political violence will inevitably lead to changes in international law, which will ultimately effect how states sponsor militancy. As a label, terrorism delegitimizes the agent who is conducting terrorism. If a state can be legally labeled as an agent of terrorism, it may (or may not) influence the state's priority of sponsoring militancy.⁴ And third, bringing state terrorism into mainstream scholarship will enable new

⁴ Exploring this more lies outside the scope of this dissertation.

perspectives on repression, torture, sponsorship, and other forms of state terrorism to come forth, potentially uncovering currently hidden power processes.

Section II. Understanding Ontological Security and State-sponsored Militancy

Ontological security refers to the security acquired by a continuous identity, and the agency that is created by maintaining this self-identity. Jennifer Mitzen (2006) and Brent Steele (2008) are two major proponents of ontological security but conceptualize it differently.

For Mitzen (2006), a state's foreign relations and external environment play a pivotal role in forming the state's self-identity needs. Drawing from the individual level of analysis, she explains how the external environment influence's the individual's ability to function. Uncertainty at both the individual and state level is viewed as a threat. On the individual level, when an individual is uncertain of his/her actions and lacks confidence in their abilities to confront a problem, ontological *insecurity* is generated, which is a deep feeling of inferiority accompanied by a lack of agency (Mitzen 2006, 345). To combat ontological insecurity, the individual focuses on immediate, short-term needs, rather than on planning for future, long-term goals. Yet, the process of achieving long-term goals involves establishing social relationships that create routines that reduce uncertainty, increase agency, and lead to stability—ultimately converting ontological insecurity into ontological security. Ontological security, therefore, is the condition in which an individual acquires confidence in his/her social relationships; the agency obtained by feeling ontologically secure allows the individual to hold on to their identity (Mitzen 2006, 345–48). Applied at the state level, a state acquires ontological security by creating routines via policies and relationships with other states via its foreign policy. By establishing and maintaining relationships (i.e. alliances, collective security arrangements, arms deals, trade deals,

etc.) with other states, a state reduces uncertainty, and hence creates its own agency. In Mitzen's (2006) conceptualization, the fundamental goal is to reduce uncertainty in the external environment.

According to Steele (2008), ontological security is generated internally and is linked to how a state perceives itself and wants to be perceived by other states in the international community. The state's perception of itself is based on its response to the crises it endures, which is based on its material resources and internal narrative (Steele 2008, 150–700). The state's response to crises indicates the creation of routines, which, similar to Mitzen's (2006) conceptualization, reduces uncertainty, increases stability, generates agency, and sets the state's self-identity needs. But for Steele (2008), the fundamental goal is state survival, which is closely linked to the state's physical security. Furthermore, while Mitzen (2006) prioritizes external processes of ontological security, Steele (2008) emphasizes internal processes. My conceptualization of state-sponsorship and its relationship with the state's ontological security (see chapter two) is more closely linked with Steele's understanding of ontological security because of his focus on the internal workings and dynamics of the state. One of the core assumptions of realist IR theory is that states prioritize their security and power—both of which are captured by a state's physical territory. The state's need for physical security—and its priority in protecting its physical territory—gives rise to the security dilemma (Roe 2000; Jervis 2001) and the practice of deterrence. More significantly for this dissertation, realists do not deny the need for ontological security but instead contend that physical security and territorial integrity will lead to internal autonomy (or in other words, security of the Self) automatically. I argue that internal autonomy is not automatic and is not guaranteed by physical security. While influenced by its external environment and its ability to secure its territory, the state's need for

stability dictate's that it looks inward toward its institutions as the source of security, not outward like realist theorists contend. This kind of security is called ontological security and is created internally by the interaction of the state's civil and military institutions, which I explain in detail in chapter two.

An ontological security framework is a constructivist approach that is reflexive, and hence, can be interpretive in nature. Ontological security scholars do not use causal analysis to explain state behavior. Instead, we interpret state action by evaluating the political contexts that create social reality, recognizing that actions are not objective and devoid of context. As realists assume that leaders use political rhetoric to convince the public of “unsavory ‘security’ policies” (Steele 2008, 260), ontological security scholars assume that state agents use politics to secure the state's self-identity, use narratives to develop routinized foreign and domestic policies, promote a certain image of the state, and control the strategic environment in a way that reduces uncertainty (Steele 2008, 246–278). I conceptualize the processes of ontological security creation and maintenance as an interconnected system in which state agents: 1) create a “biographical narrative” that employs a variety of narratives to create meanings and develop a state's self-identity needs; 2) determine “critical interruptions” that are political events that result in state action; and 3) legitimize continuous state policies, which I label as “institutionalized routines” (see chapter two). By reconstructing state motivations, therefore, ontological security scholars are not only theorizing about state self-identity, but are also uncovering other avenues for understanding state rationality (Mitzen 2006; Steele 2008, 286–288).

II.I. Nationalism vs. Ontological Security: Creating a New Vocabulary

Ontological security is a new way for addressing an ancient problem: the battle between the physical “state” and the idea of a “nation.” Throughout history, states have emerged without

a uniform culture and coherent national identity (i.e., numerous post-colonial states fit this description, such as Rwanda, Central African Republic, Pakistan, etc.) while nations have existed without having a state (i.e., Kurdish population of Iraq, Palestinians, Quebecois in Canada, etc.). As discussed in the literature review in the previous section, state building and nation building are common practices that continue to occur in the twenty-first century. While the focus is on recreating sovereign states, nation building remains problematic. Weak post-colonial institutions and unstable political orders, combined with changes in the international structure, have complicated notions of nationhood and nationalism. A politically charged vocabulary consisting of labels like “weak states” and “failed states” and policies like “countering violent extremism (CVE)” and “winning hearts and minds,” created by policymakers and scholars alike is proving to be counterproductive in relation to understanding political violence, and developing means to reduce it. There is, therefore, an urgent need to develop a better vocabulary, and the concept of ontological security can serve as an important starting point.

The distinction between state and nation is rooted in power and control. Nation is described as a form of community, which shares values, beliefs, and institutions and is based on a sense of kinship and shared piety (Matthew 2002, 12; Wedeen 2008, 5–6). The state, on the other hand, is an explicit rule-based bureaucracy that is fundamentally ahistorical (Matthew 2002, 6, 105). The history of the Westphalian system is based on the assumption that the state trumps the nation, in which the state is meant to control nationhood. Yet, nationhood and the politics of self-determination cannot be severed from the state, and its sovereignty. Sovereignty in Europe was seen as a divine right till the Treaty of Westphalia when the Holy Roman Empire conceded to the formation of independent, sovereign states that could conduct their own foreign

policy (Philpott 2001, 75–149). Today, sovereignty continues to be linked to the state’s physical existence, and is highly valued.

Ontological security does not dismiss the tension between nationalism and sovereignty, and neither does it devalue the exercises of state building and nation building. The nation vs. state debate is ongoing, and while it has covered important theoretical and conceptual grounds, it has also ignited confusion. The concept of ontological security—and a theoretical framework based on ontological security—not only stems from these debates but serves as a new lens by which to evaluate the meaning of security. A state’s ontology is dependent on its identity and the needs that its identity fulfills. Securing that identity, therefore, is a constant need and essential for state survival. By equalizing the state’s territory and national identity, therefore, it is attempting to understand a state’s “personhood” (Wendt 2004), which is conceptually compatible and “theoretically productive” (Mitzen 2006, 352) with IR theory and comparative politics.

II.II. Ontological Security’s Contribution to Theorizing within IR

Ontological security presents three main benefits to IR theorizing. First, it brings the state’s social nature at the forefront, and ties in state rationality with its social identity. IR scholars have long emphasized the state’s prioritizing of physical security, and how the practice of seeking physical security influences how states deal with an anarchic and uncertain international system. Ontological security does not dispute the state’s desire to protect its territory. Instead, ontological security should be considered a critique of mainstream IR for having such a narrow conception of what “secure” means for a state. As mentioned earlier in this chapter, ontological security is the security achieved by a *continuous identity*, in which the identity serves as means by which a state functions in the international system. State personification (and how that is understood), therefore, is a key issue for ontological security

scholars, and highlights that physical existence is not the only avenue for achieving security. Acknowledging that states seek physical and ontological security together, and that ontological security can result in physical *insecurity*, has the potential to help us understand complicated concepts, such as sovereignty, uncertainty, and even rationality. More significantly, it will help us understand motivations for state actions, such as humanitarian interventions (Steele 2008), the process of accepting historical crimes (Zarakol 2010), and state-sponsorship of militancy.

Second, ontological security investigates a state's self-identity: how identity is constructed and how emotion influences the formation of a state's self-identity. Rationality has almost always trumped the use of emotion as an ontological basis for state behavior, despite being widely acknowledged. For example, James Fearon (1995) recognizes Geoffrey Blainey's (1973, 246) suggestion that emotional commitments might create biases within military leadership, potentially overestimating military capabilities. Yet, Fearon (1995) leaves emotion aside and instead focuses on how "rational, unitary" states could go to war. Fearon's bypassing of "emotional commitments" is in line with IR theory giants like Kenneth Waltz (1986, 330), Hans Morgenthau (1985, 7), Joseph S. Nye, Jr. (1987, 728), and Robert Keohane (1990, 227)—each has discussed irrationality but has adopted the assumption that states are rational, driven by reason rather than passion and emotion. Scholarship linking rationality to emotion, however, has begun to emerge. Andrew G. Ross (2006) reflects upon studying emotions within constructivism, and the challenges constructivist approaches face when justifying emotion to realists. Jonathan Mercer (2005) discusses how emotion is indispensable for rationality and for understanding IR concepts like trust, justice, and identity. In a seminal essay on emotions and international politics, Neta Crawford (2000) explains how emotions are already a part of international politics, and how both neorealism and neoliberalism accept two emotions as the drivers of state behavior:

fear and hate. The systematic study of emotion, however, has been challenging. Valid measures are not obvious and scholarship has focused more on cognitive biases and bounded rationality (Crawford 2000). But emotions are central to identity. State agents are especially invested in creating emotional links as such links between the state and public magnifies state authority and prioritizes policies in the name of “national interest” (Steele 2008, 501–515). Ontological security provides a conceptual basis for analyzing these emotional linkages and provides a framework for studying the relationship between a state’s self-identity and national interests.

The third benefit that ontological security offers to IR theorizing is its ability to disaggregate the state at both the state and international levels of analyses. By disaggregation I mean that ontological security allows for a deeper understanding of state practices or *routines*. An ontological security approach asserts that states reduce uncertainty and increase stability by establishing routines, which are fundamental to a state’s self-identity and agency. At an individual level, rational action implies using information to make a decision, while routines are habits: actions that do not use updated information, are taken for granted, and often suppress reflection (Mitzen 2006, 347). For Mitzen (2006), this suppression gives routines their security-generating power: they are able to provide automatic responses to stimuli, which reduces uncertainty, creates basic trust and allows the individual to function in the world, and also enables the individual to sustain his/her identity (347–348). At the state level, Mitzen (2006) argues that groups within the state maintain their identity by routinizing their relationship with other groups, resulting in a distinct national group identity, which ultimately influences the state’s self-identity. Therefore, the ontological security of the state satisfies the ontological security of its public, and so state institutions are not simply a collection of leaders’ decisions but serve as a way to develop, promote, and project the state’s self-images (352). Mitzen’s

conceptualization of routines is persuasive. But when explaining the role of routines within the state, Mitzen (2006) homogenizes the public and assumes that a state has a coherent national identity, which is rarely the case. For example, Iraq, Pakistan, and Turkey are just some prominent examples of states where it can be argued that they suffer from an inconsistent and incoherent national identity. Mitzen's (2006) homogenization of the public, therefore, black-boxes the state in the same tradition as neorealism and neoliberalism rather than disaggregating it. Conceptualizing routines in this way also raises questions about path dependency. Is a routine that maintains ontological security another mechanism for path dependency? That remains unclear in Mitzen's (2006) conceptualization. In my analysis, routines do touch on path dependency but the logic of path dependency, found within historical and sociological institutionalism,⁵ primarily focuses on the institutions themselves, and how ideas and cultural commitments affect change within those institutions. While path dependency does address the external affects of these institutional cultural dynamics, it does not address how those dynamics affect evolution of the state's self-identity. Routines as understood in an ontological security framework, therefore, are more than path dependent mechanisms. Steele (2008), on the other hand, uses reflexivity to monitor state actions, and focuses on narrative-based disagreements within national debates on self-identity and policy. He emphasizes, "state interests and identity are always up for grabs; each is formed and reformed by the individuals who constitute those states" (Steele 2008, 537–538). In my conceptualization of ontological security, a routine is a "performative act" that has a dual nature, which I will elaborate on in chapter two.

Disaggregation, therefore, highlights two problems within ontological security scholarship. The first problem has to do with agent–structure tensions within the scholarship. For

⁵ Scholarship I am referring to is: Thelen 1999; Mahoney 2000; Pierson 2000; Mahoney and Rueschemeyer 2006; Capoccia and Kelemen 2007; and Hall 2009. A relatively new branch called Discursive Institutionalism has developed. See Schmidt 2008.

example, Mitzen (2006) argues that state identity is “constituted and sustained by social relationships rather than being intrinsic properties of the state themselves” (354). By focusing on how the international environment influences state identity, Mitzen is sharing an assumption with realists and liberal institutionalists—that the international environment creates opportunities and constraints, which influence state actions (Lebow 2003, 336). This outside-in approach is challenged by both Catarina Kinnvall (2004), who argues that ontological security is fundamentally about seeking a stable narrative, and Steele (2008), who argues that state identity is shaped more by the state’s own sense of “Self” rather than social interactions with other states (475–601). This approach allows scholars to address why states in similar structural contexts pursue different policy choices (Steele 2008, 227–262). Ayse Zarakol (2010) (and Kinnvall as well) searches for a middle-ground approach for dealing with agent–structure issues facing ontological security scholarship. Analyzing Turkey and Japan’s reluctance to apologize for historical crimes, Zarakol (2010) argues that the self-identities of both states are shaped by when and how they entered international society—their self-identities are “defined by historical threats to their ontological security located in past intersubjective pressures” (9). Zarakol’s analysis, therefore, highlights the interconnectedness of internal and external self-identities and their influence on state behavior when a state feels inferior to other states in international society. Stuart Croft (2012) goes further: criticizing Steele, Mitzen, and Zarakol for recreating mainstream IR theory as the “other” has resulted in scholarship that reifies the state rather than understanding intersubjective framings of insecurities of individuals, where a dominant power decides who should be protected and who should be controlled, feared, and objectified (220, 223–227).

The second problem highlighted by disaggregation has to do with methodology. Where can a researcher find evidence of ontological security? Discourse and narrative analysis can address some of the methodological issues facing the study of ontological security because 1) narratives are essential for self-identity and 2) theorists can employ already existing scholarship on narratives and discourse within IR theory.⁶ Discourse analysis is primarily concerned with how meanings are constructed, how meaningful objects or practices acquire space, and how those meanings constitute the identities of social actors (Milliken 1999, 229; Jackson 2007, 395–397; Epstein 2008, 6; Steele 2008, 365–409). For example, when explaining why states continued to engage in whaling despite its decreasing economic value, Charlotte Epstein (2008) uses discourse analysis to show how whales themselves became meaningful and how their images helped create an anti-whaling discourse that ultimately led to ending the practice of whaling. Similarly, Steele (2008) uses discourse analysis to demonstrate how Abraham Lincoln’s Emancipation Proclamation influenced Britain’s understanding of the American Civil War (1857–2239). I employ narrative analysis to argue that Pakistan’s ontological security is dependent on its ability to continue sponsorship of violent militant groups.

Narrative analysis is similar to discourse analysis: they are both concerned with reflexivity (the researcher’s relationship with what is being studied and access to primary sources), the construction of meanings, and the agency of social actors like state agents. The main difference—and the primary reason why I use narrative analysis instead of discourse analysis—is because narrative analysis requires a narrator’s perspective in the study (Patterson and Monroe 1998, 315–317). Using Anthony Lang (2002, 16–17) and Steele’s (2008, 537–538) argument that state agents constitute the state and the state’s self-identity needs, I posit that state

⁶ Examples of scholarship on discourse analysis are: Doty 1993; Weldes 1996; Milliken 1999; Hansen 2006; Jackson 2007; Epstein 2008. Examples of scholarship on narrative analysis are: Patterson and Monroe 1998; Wedeen 2008. My dissertation will add directly to this scholarship.

agents use institutions as drivers to bolster the state's self-identity and consequently, the state's ontological security. Narrative analysis is useful because it allows me to focus specifically on state agents: individuals working within Pakistan's counterterrorism complex. Also, narrative analysis takes the story as the object of investigation (Riessman 1993, 1), and so allows me to trace out Pakistan's various narratives, especially those related to counterterrorism, which are almost always presented in a story form, which makes my understanding and interpretation of Pakistan's self-identity crucial to my analysis. Most of my primary data is in the form of personal interviews.⁷ Though I have also collected texts that add thickness to my analysis, transcribing interviews is an interpretative practice. The transformation of spoken language to a transcription is complex because language is not transparent and meaningless (Riessman 1993, 10–22).

Another key element of narrative analysis is that while it investigates the story, it is not overly concerned with chronology. This is useful for me because the narratives I have extracted are not always chronological. Though chronology is important for establishing the significance and meaning of an event, sometimes the way the story is told is more important than the actual chronology of the event because the narrative influences the context.⁸ Finally, narrative analysis is a more effective way to study the interaction of nationalism and identity within a state, and how that interaction influences a state's self-identity and ontological security. Narratives allow

⁷ See Appendix A for details on fieldwork.

⁸ The role of chronology in narrative analysis allows me to distinguish between an ontological security framework and other contesting frameworks, like security imaginaries. Very briefly, security imaginary refers to a framework that organizes the meanings of social relationships by articulation and interpellation, where articulation is a process in which meaning is produced, and interpellation creates the context by linking meanings to specific events, objects, and people (Muppidi 1999, 124–126; Buzan et al. 1998; Weldes 1996). Security imaginaries are very concerned with organizing meanings in a distinct way (Muppidi 1999, 124). An ontological security framework, on the other hand, is not as concerned with the organization of meanings but rather focuses on how those meanings acquire agency, gain power, and eventually become routinized. Of course, the organization of meanings may influence self-identity (Kinnvall 2004), which in turn may influence agency. Therefore, I do not consider security imaginaries as clashing with ontological security. Rather, it can even be seen as buttressing a state's ontological security.

both individuals (i.e., state agents) and collectives (i.e., state institutions) to place themselves within a broader cultural context (Patterson and Monroe 1998, 321–324). Common narratives are politically important, and I use narrative analysis to show how Pakistan’s narratives allow civil institutions to justify and legitimize the practice of sponsoring violent religious militant groups.

Therefore, using an ontological security framework to analyze the use and sponsorship of militant groups by states serves four important purposes. First, it forces scholars to rethink rationality and state rationale, which is often taken for granted in IR. A state is considered a rational actor. But a state also consists of groups that prioritize their identity and understand rationality differently from each other. The interaction and relationship between these groups, and the routines they develop collectively shape the state’s self-identity needs—and eventually influence state institutions and its conduct in the international system. Focusing on these internal dynamics will help deepen our understanding of why militancy persists. Second, understanding how states seek ontological security helps to analyze agency and discover new mechanisms by which a state practices and utilizes the agency it achieves by meeting its social and identity needs. For example, state institutions continuously project images of the state—images that citizens become attached to and have complicated relationships with (Mitzen 2006, 352). Steele (2008) argues that states pursue moral, humanitarian, and honor-driven social actions to meet their self-identity needs even in instances where meeting such needs might compromise their physical security. Similarly, in this dissertation I argue that states sponsor militant groups to meet their self-identity needs at the risk of their physical safety. Third, it unpacks the state, rather than black-boxing it, as is the traditional IR approach. Disaggregating the state and investigating how it maintains its ontological security is important for understanding state policies and actions, particularly with regards to continued support for militancy. And finally, analyzing how

sponsoring a militant group as a proxy contributes to a state's ontological security provides the intellectual basis for problematizing deterrence: what it means and what utility it continues to offer in the presence of new threats.

Deterrence has long been considered one of the primary motivations for why states sponsor and use militant groups as proxies. As stated earlier, states use militant groups as proxies to deter a more powerful and stronger state. Sponsorship is also more economical than conventional, militarized interstate warfare (Conrad 2011, 531). The history of deterrence stems from the Cold War and the development of American and Soviet nuclear arsenals. Deterrence is psychological and based on conveying a specific level of knowledge to the adversary; in other words, it cannot be done in secret. It resembles the classic model of balance-of-power, in which states engage in various defensive and offensive actions to balance power to prevent large-scale war (Dougherty and Pflatzgraff, Jr. 2001, 354). Despite its longevity, the concept of deterrence is riddled with problems. Rationality is considered a requirement for effective deterrence but how rational is it for a state to sponsor a militant group when it cannot guarantee that the group will remain in its control? In other words, does using and sponsoring militant groups help a state deter a stronger, larger state? I assert that sponsoring violent militant groups increases the state's agency and deters a stronger state in the short-run, but at the cost of the sponsoring state's physical security, indicating that states prioritize their ontological security over physical security.

Notwithstanding its weaknesses, such as agent–structure tensions within the scholarship and methodological challenges associated with finding evidence, ontological security allows for the use of rational choice and structuralist theories within constructivist approaches. It also encourages openings of new areas of research while also developing new explanatory avenues by challenging deep-rooted assumptions within dominant theories.

Section III. Research Design and Chapter Summaries

In order to determine how a state creates and maintains its ontological security—and the relationship such processes have with the use and sponsorship of militant groups—I am particularly interested in the meaning of “counterterrorism” and “anti-terrorism.” Scholarship and state practices both have constructed states to be the victims of militancy. The labels of “anti-terrorism” and “counterterrorism” reinforce this positionality. These labels, therefore, are political, ideological, and strategic, embedded in the notion that the state does not engage in terrorism and militancy. Yet, empirical evidence indicates otherwise. Labels therefore play an important role in how both physical and ontological security is created, perceived, and maintained.

Ontological security is not obvious in the same way physical security is. But it is visible in the form of state practices and policies. Courts decisions, legislation, police statistics, all play a key role in forming the state’s ontological security. Bureaucracies after all are not simply institutions staffed with individuals. They incorporate ideologies, cultures, and discourses. More significantly, they are organizations of power that collectively define social, economic, and security interests and specify their meanings (Nagengast 1994, 116; Poggi 1978, 13–14). State institutions, however, serve as mechanisms for state legitimacy (Gilley 2006, 501–503; Gilley 2008, 262), and often there is a tug-of-war between civilian and military institutions in the realm of national security. I contend that the language within anti-terrorism legislation and state narratives has elevated the role of the military while simultaneously empowering and disenfranchising civil institutions. Civil institutions are hailed as the checkers and balancers of power, and the providers of legitimacy, but their relationship with the state’s policy of sponsoring militant groups is overlooked. In this dissertation, I explore the consequences of

sponsorship within Pakistan, and the role of three key civil institutions—the legislative branch, judiciary, and police—in facilitating the use of militant groups as proxies.

I choose Pakistan as a case study for my dissertation for three reasons. First, Pakistan has used and sponsored various militant groups in Kashmir since its creation in 1947. Though I will critically examine the historical context of Pakistan's use and sponsorship of militant groups in chapter three, Pakistan is considered as one of the oldest sponsors of militancy within international politics. I argue that Pakistan's use and sponsorship of militant groups is not simply because of a hostile external environment but because of internal turmoil associated with its continuously evolving—and continuously unstable—identity. As a self-proclaimed defender of Islam and counter of India, Pakistan's use and sponsorship of militant groups provides an opportunity to better understand state motivations for sponsorship and the role of its institutions in the continuation of sponsorship. The second reason is because Pakistan is central to the ongoing Global War on Terror (GWOT). As a U.S. ally, GWOT has placed Pakistan in a unique position. Since 2001, Pakistan has been a beneficiary of approximately \$33 billion in U.S. military and developmental aid since the war began (Fair 2016). Pakistan is also accused of evacuating Taliban's leadership and top commanders from Kunduz, Afghanistan to Pakistan's territory right before the U.S. attack in November 2001 (Filkins and Gall 2001; Hersh 2002). The U.S.–Pakistan relationship is troubled at best, and has greatly influenced Pakistan's domestic anti-terrorism framework and state narratives. As Pakistan remains one of the key battlegrounds for this war on non-state terrorism, it is essential to study how the context of GWOT has affected Pakistan's ontological security and its relationship with militant/terrorist groups operating within its borders. And the third reason why I choose to study Pakistan is because I am from there. I am fluent in Urdu, the national language, and very familiar with the local culture. Having grown up

there, I have a wide network of contacts that include family, friends, and acquaintances. My positionality, therefore, offered me unique access to primary sources of data. Combined with my pursuit of a doctorate degree, my positionality also offered me a chance to be critically reflexive while studying Pakistan's ontological security by examining its civil institutions and counterterrorism policies.

Using an ontological security framework to study state-sponsorship of militant groups is an interpretivist enterprise. Interpretivist research in IR is primarily concerned with how knowledge is created and interpreted, and calls into question the need of conventional social science to find "necessary and sufficient" causes, and create fixed independent and dependent variables. Instead, interpretivism emphasizes language, especially in regards to how political phenomenon are contextualized, how dominant explanations are formed and reinforced, and how intersubjective meanings are created. Interpretivists, therefore, view the relationship between variables as fluid rather than concrete, and causality between political phenomenon is assigned through abduction (Lynch 2014, 13–16). Abductive reasoning begins with a puzzle or a surprise that arises from a misfit between field experience and expectations that have formed by available evidence, established concepts, and theoretical developments. It is an iterative process in which the researcher goes back and forth between the evidence collected and literatures, seeking to identify the conditions under which the puzzle no longer remains a surprise, and can be explained. Unlike inductive and deductive reasoning that explain causality as a linear relationship, abductive reasoning follows a non-linear pattern. It allows for multiple pathways to explain both observable and unobservable political phenomenon. Abductive reasoning, therefore, is driven more by concepts rather than theory, and focuses on creating new processes for theorizing and interpreting puzzles that facilitate the development of new concepts, relationships,

and explanations (Lynch 2014, 20–21; Schwartz-Shea and Yanow 2012, 796–841; Jackson 2016, 2590–2618; Friedrichs and Kratochwill 2009, 709–711).

In the quest to explain—and sometimes solve—the puzzle, interpretivism insists on following reflexivity in the research process (Lynch 2014, 95). As I mentioned earlier, studying Pakistan allowed me to be critically reflexive. Critical reflexivity involves considering the researcher’s own position, accessibility to subjects and data, and how both positionality and accessibility affects the knowledge created through that particular research (Schwartz-Shea and Yanow 2012, 2537–2543 and 2578–2593; Jackson 2016, 4658–4677). For me, this meant that I had to constantly evaluate my position during fieldwork in Karachi, Lahore, and Islamabad. I grew up in Karachi and am fluent in Urdu with a strong grasp of Punjabi language and a basic competency in Sindhi language. But I am also a U.S. citizen who currently studies and lives in the United States. During my interviews, I constantly found myself going back and forth between my Pakistani and American identities. My main goal was for my interviewees to view me as one of them, and not as an outsider trying to understand Pakistan’s counterterrorism practices and institutions. When conducting fieldwork in Karachi, however, the interviewees who were ethnically Sindhi did not view me as one of their own. I was clearly a *mohajir*—an Urdu-speaking immigrant from India.⁹ My interviewees in Lahore, on the other hand, were shocked to learn that I was from Karachi. One even went so far to say that I did not “look” like I was from Karachi because I am light-skinned. My interviewees were constantly positioning me, and I in turn found myself reassuring them of my authenticity by either speaking in Urdu, dressing plainly and conservatively, and accepting the patriarchal social norms that involved answering personal questions like: Are you married? Where do you live? Is your husband ok with you being away? My ease in this kind of navigation, combined with my ability to reach out to my social

⁹ Language is a big divider in Pakistan—and South Asia in general.

network for contacts, constantly reaffirmed my unique position for conducting this kind of fieldwork. Critical reflexivity also involves a critical evaluation of one's own research community, and how the knowledge that shapes that community influences the researcher's own project (Schwartz-Shea and Yanow 2012, 2594–2596). For my dissertation, this involves two aspects: 1) understanding how terrorism and militancy is constructed and studied within mainstream and critical IR, and 2) what counterterrorism/state-sponsored militancy looks like in practice. Therefore, I am dedicated to increasing the scope of IR literature by better understanding *why* and *how* state's sponsor militant groups by using reflexivity as understood and developed by interpretivist IR approaches.

As mentioned earlier, I use narrative analysis to trace out the institutional routines and processes of Pakistan's civil institutions in the context of counterterrorism because I am especially interested in the processes of ontological security. Interpretive research methods treat human beings as agents rather than objects—agents that construct or deconstruct cultures, policies, institutions, organizations, language, etc. (Schwartz-Shea and Yanow 2012, 1235–1238). As such, my primary data consists of in-person interviews with politicians, judges of ATCs, lawyers operating in ATCs, police officers, special forces officers, journalists, analysts, academics, and others working on counterterrorism-related issues within Pakistan. Though each group had its own interpretation of Pakistan's anti-terrorism legislation, counterterrorism operations, and state narratives, the interviews highlighted how interconnected—and fluid—each institution is. Narrative analysis promotes human agency (Klotz and Lynch 2007, 44; Riessman 1993, 5) and therefore is a well-suited method to trace a state's ontological security. Furthermore, the meta-narratives created help us to understand the broader influence of theoretical assumptions (Klotz and Lynch 2007, 51). Narrative analysis also uses language to

express the meaning of what is said (ideational), the relationship between the speakers (interpersonal), and how texts are connected syntactically and semantically (textual), essentially unpacking evidence that uncovers intersubjective meanings. Within narratives, the context is always multifaceted and the text is not independent (Riessman 1993, 21; Chase 2003, 273). Therefore, along with interviews, I collected parliamentary debates, local think tank reports, newspaper articles and longer investigative articles, commission reports (specifically Hamoodur Rahman Commission Report,¹⁰ Abbottabad Commission Report;¹¹ Quetta Commission Report¹²), and terrorism-related case law. Anonymous interviewees provided unclassified official reports and presentations, and ATC judgments and conviction rates.¹³ Combined with interviews, these texts have played a crucial role in determining Pakistan's security needs and ontological security.

Narrative analysis, however, is a flexible method, with no standard set of procedures (Riessman 1993, 54), and has prompted critics to say that it lacks "rigor" (Lynch 2005). Yet, its concern with logic, consistency, use of appropriate evidence, awareness of bias, difficulty in distinguishing between "good" and "bad" narratives,¹⁴ and challenge with separating from moral judgments, all imply "rigor." Narratives, therefore, are essential for understanding political and theoretical meta-narratives, and how these meta-narratives shape scholarship by informing theory and empirics. As Cecelia Lynch (2005) describes, IR's failure to predict the end of the

¹⁰ The Hamoodur Rahman Commission report was led by then-Chief Justice Hamoodur Rahman to investigate the circumstances that led to the 1971 civil war. It is not publically available now but a scholar in Washington, D.C. had a copy of the whole report from the 1980s, and she was kind enough to let me read it.

¹¹ The Abbottabad Commission Report was led by Supreme Court Justice Javaid Iqbal to investigate the circumstances of Osama bin Laden's death by a U.S. raid in Abbottabad in 2011. It is not available in its entirety but was leaked by Al Jazeera and is available here: <http://www.aljazeera.com/news/asia/2013/07/20137813412615531.html>.

¹² Quetta Commission Inquiry was led by Supreme Court Justice Qazi Faez Isa to investigate the August 8, 2016 attack on Quetta's Civil Hospital, which targeted Balochi lawyers. It is available online at <http://www.supremecourt.gov.pk/web/page.asp?id=2339>.

¹³ Details of fieldwork are in Appendix A.

¹⁴ Though Lynch (2005) argues that some narratives are better than others.

Cold War can be related to a methodological meta-narrative that had elevated the explanatory power of structuralism, and to an ideological meta-narrative that favored realpolitik as a means to understanding international politics (162). In 1994, a special edition of the journal *International Organization* focused on various narratives that explained the demise of the Soviet Union. When taken together, it was clear that the narratives constructed had successfully reinforced nationalist claims and ideologues in a way that recreated—and reinterpreted—history, race, religion, ethnicity, nationalism, and conflict (Lynch 2005, 162–163). My use of narrative analysis is in the same vein. I seek to challenge two meta-narratives. The first is on terrorist agency, in which my use of narrative analysis highlights the importance of narratives in state practices, policies, and overall processes of ontological security, and aims to showcase how states are not just victims of terrorist and militant violence but also use these kinds of political violence to meet their geostrategic needs. The second meta-narrative is on the conventional understanding of Pakistan’s institutions, which highlights the military’s relationship with right-wing elements in the context of the state’s sponsorship of militant groups. By using narrative analysis, I uncover the role of Pakistan’s civil institutions in the state’s policy of sponsoring militant groups, highlighting the need for a more nuanced and deeper understanding of the state’s institutions, identity, and concept of security.

I posit that the process of a state’s ontological security is created due to the continuous interaction of its civil and military institutions and the subsequent development of its identity. To better understand the processes of Pakistan’s ontological security, and the role of civil institutions in legitimizing sponsorship of militant groups, I review the legislature, judiciary, and police. The legislative branch is the main arena for a democratic system of governance and plays a prominent role in the formation of the state’s ontological security. While Pakistan has spent

substantial time under military rule, the current anti-terrorism legal regime is the product of both military and civilian governments. In chapter four, I outline the political context and salient features of Pakistan's anti-terrorism legal regime and highlight the legislative branch's contribution to the state's ontological security. The judiciary is the second institution under analysis, and is a natural choice. Its relationship with the legislative and executive branches of government serves as the backbone of the state's legal system while its independence is meant to balance political powers. Judiciaries have been known to serve as important sites of political resistance, such as in Egypt, Uganda, and Zimbabwe—and Pakistan. Courts leave a paper trail even under authoritarian regimes, which not only provides the opportunity to study internal societal conflicts, but also make the otherwise opaque state transparent. Courts are also the primary means for studying the expansion and contraction of judicial power (Ginsburg and Moustafa 2008). The judicial branch, therefore, has a unique ability to legitimize or delegitimize state practices and policies. In chapter five, I analyze the judiciary's structure and relationship with counterterrorism to analyze its effect on the state's ontological security.

The third and final civil institution under investigation is the police. While the military establishment has mainly led counterterrorism efforts, the police are at the forefront of maintaining domestic law and order. They are the first to arrive at the scene of a crime and theoretically serve as the lead investigators. The Pakistani police, however, are one of the most corrupt and politicized institutions in the world, and are widely considered as the weakest link in the state's counterterrorism arsenal. In my initial research design, I had not included the police for two reasons: 1) I was unsure of my access to police officers for interviews and 2) growing up in Karachi, I knew that the police were extremely corrupt and weak and I incorrectly assumed that analyzing the institution would be of little value. During my first research trip, however, I

realized how mistaken I was. Not only was I able to gain access to high-ranked police officers, I found them eager to share their views and troubles regarding Pakistan's anti-terrorism legislation and counterterrorism operations. As I explain in chapter six, the police play an important role in the state's counterterrorism efforts: while military-police and judicial-police tensions have greatly influenced the police's role in Pakistan's ontological security, politics within the police has created a unique mechanism for justification and legitimization of state-sponsored militancy.

Though my findings are Pakistan-specific, my theoretical framework and bottom-up, reflexive approach can be applied to other states that have been accused of sponsoring militant groups (i.e., China, Iran, Saudi Arabia, etc.) and that have specialized institutions and anti-terrorism frameworks (i.e., anti-terrorism courts, military courts, anti-terrorism legislation, special police forces, etc.) in place. Therefore, I offer two scope conditions for comparable cases: 1) an accusation of sponsorship of militant groups by the international community, and 2) anti-terrorism legislation. I focus on anti-terrorism legislation because it is the foundation on which states create specialized institutions (i.e. Pakistan's anti-terrorism courts), legitimize long detentions without charges, (i.e., India's 2002 Prevention of Terrorism Act allows for a 180-days detention), launch special operations, such as anti-money laundering techniques in the Middle East and anti-narcotics operations in Latin America (Zarate 2013), and support for anti-terror investigations, such as China's anti-terror law that requires companies to support anti-terror investigations by assisting in the decryption of data (Tiezzi 2015).

Often underlying anti-terrorism frameworks and international accusations of sponsorship are civil-military imbalances within the state. Throughout this dissertation I will critically examine Pakistan's civil-military imbalance by analyzing Pakistan's civil institutions and how they legitimize and justify Pakistan's continued sponsorship of violent militant groups. I am

especially interested in expanding the ontological security framework and parsing out how narratives can be utilized to study the ontological security of states suffering from severe civil–military imbalances. This project therefore will serve as a foundation for hypothesizing other motivations for continued sponsorship of militancy by states, which I will discuss in chapter seven, the conclusion.

CHAPTER TWO

Theorizing State-sponsored Militancy:

Achieving and Maintaining Ontological Security

Pakistan often finds itself in the center of debates regarding terrorism, militant groups, sectarian violence, and state-sponsorship of terrorism/militancy, and is routinely cited as the battleground for the ongoing GWOT. As a postcolonial state, Pakistan has oscillated between various forms of authoritarian rule and democratic governments. Popular perception about Pakistan note how “most countries have an army, but Pakistan’s army has a country.” The Pakistan Army therefore is notorious and is openly accused of sponsoring violent militant groups in India and Afghanistan. Scholars and policymakers have spent decades trying to explain why states sponsor violent non-state actors like militant groups. Focusing on state motivation for using violent non-state actors I argue that states continue to sponsor violent militant groups because sponsorship satisfies their self-identity needs i.e. sponsorship increases their ontological security. Conversely, ending sponsorship would disturb their sense of self-identity, where that disruption is just as significant to states as threats to their physical existence (aka territory).

Developed by sociologist Anthony Giddens (1991), the concept of ontological security refers to security acquired by developing a self-identity, which pertains to having stability and a sense of certainty with regard to one’s environment. In the context of the international system, this means that states are not only rational actors but are also *social* actors: states seek certainty by establishing a stable and continuous identity. A stable and continuous identity is achieved by balancing external and internal needs simultaneously, and primarily in two ways. First, and diverging from Mitzen’s (2006) reasoning that a state’s social identity is constructed in relation to other states, I argue states fundamentally aim to fulfill their domestic self-identity needs first.

In other words, when states interact with each other, they are not just thinking of their territorial survival, they are also thinking of how other states perceive them, and how their identity (or self-identity) influences those relationships. Second, states convert their interaction with other states into routines with desired ends by which they reduce uncertainty and achieve stability. These routines are based on narratives that state institutions have developed over time to meet the state's self-identity needs. When these narratives are inconsistent with the state's selected self-identity needs, state institutions work to reestablish new narratives that create new routines that allow the state to maintain its self-identity. The state's ability to act rationally therefore is dependent on its ability to maintain a stable and continuous self-identity. In other words, a state's rationality lies in its ability to achieve ontological security.

In this chapter, I present my theoretical framework for better understanding the state's use and sponsorship of militancy, and how sponsorship affects a state's self-identity such that sponsorship increases a state's ontological security. This chapter is divided into three sections. In the first section, I develop generalizable processes for studying ontological security at the state-level. I define and explain the interplay of the state's biographical narrative, critical interruptions, and institutionalized routines, and their importance for determining a state's ontological security and self-identity needs. Critical interruptions are events that do not necessarily threaten a state's self-identity needs, yet they force states to respond, and generate and regenerate narratives that legitimize and justify the state's policy choices, which result in institutionalized routines. Some examples of critical interruptions are military coups, terrorist attacks, faulty elections, hurricanes, etc. While critical interruptions can be both predictable and unpredictable, they are always political. As the logic of ontological security dictates, the state's self-identity needs are constant—a state needs a stable identity to function in the world, just like a state needs to protect

its territory to function in the international system. A critical interruption, therefore, disrupts state policies, forcing state agents to utilize the biographical narrative to respond through institutional changes, such as writing new legislation, creating specialized institutions and forces, eliminating an institution, reorganizing bureaucracy, etc. Therefore, mapping the evolution of a biographical narrative, along with examining the impact of a critical interruption on the state's self-identity needs is essential for studying ontological security. I posit that a biographical narrative is overarching, consisting of a collection of narrative components that state agents' use to not only create an image of the state but also outline the state's self-identity needs. The biographical narrative and critical interruptions work together to dictate the formation of various policies, some of which develop into "institutionalized routines" after undergoing a three-step process that consists of legalization, legitimization, and routinization. Within the course of becoming an institutionalized routine, legalization refers to the creation of laws; legitimization refers to the judiciary and leading domestic law enforcement agency's use of narrative components to respond to legalization; and routinization refers to the state's use of its civilian bureaucracy and system of governance to create a consistent and systematic response to a critical interruption by employing the state's biographical narrative in a way that reinforces parts of the state's identity, outlines the state's preferred self-identity needs, and ultimately, increases the state's ontological security.

In the second section, I discuss my conceptualization of state-sponsorship of militant groups. I define state-sponsorship of militant groups as *a government's deliberate routinization of assistance to a violent non-state actor to meet its geostrategic goals*. I posit that in Pakistan, state-sponsorship of violent militant groups has become an institutionalized routine via civil institutions in three steps. First, the legislative branch has responded to critical interruptions by

using narrative components to justify anti-terrorism legislation that has created special courts and disrupted the civil–military balance in a variety of ways (see chapter four). Second, anti-terrorism laws have been legitimized by both the judiciary (see chapter five) and the police (see chapter six), which is the leading domestic law enforcement agency with respect to countering militancy within Pakistan. And third, the state’s anti-terrorism policies and practices meant to secure the state have become routinized in a way that sponsorship of militant groups has become a normalized institutional routine that nurtures Pakistani state’s self-identity needs. Though this dissertation focuses specifically on Pakistan’s sponsorship of violent militant groups, the course of routinization I have developed is generalizable to any state that is involved in sponsoring militant groups.

In the third section of this chapter, I focus on the Pakistani state’s self-identity, which is dictated by its relationship with Islam and its rivalry with India. I briefly explain Pakistan’s relationship with Islam and also present the six main sources for Pakistan’s rivalry with India, showcasing how both have shaped Pakistan’s self-identity and its needs. The goal of this section is to highlight the utility of Pakistan as a case study for the ontological security framework presented in this chapter. I conclude by reemphasizing the importance of the processes of the ontological security, and how a policy like state-sponsorship of militant groups can result in meeting a state’s self-identity needs and increasing its ontological security.

Section I. Processes of Ontological Security: Establishing a Self-Identity and Needs

Steele (2008) presents four interrelated components that affect the state’s ability to pursue ontological security: 1) material capabilities and how these capabilities influence the state’s conception of its own self-identity; 2) ability to deal with crises that threaten the state’s self-

identity; 3) the existence of a biographical narrative, which creates the context through which an action can take place; and 4) perception and speech of other states (in other words, how other states talk about a particular state's actions) (1681–1846). While I agree with their interconnectedness, my conceptualization of crises differs from Steele's: he views each as an unpredictable event that is a threat to a state's self-identity, while I consider them as interruptions to a state's routines in which state agents are forced to either utilize old narratives or generate new ones that impact institutionalized routines. I further deconstruct biographical narratives and create a general classification that can be used to study ontological security of other states.

I.I. Material Resources and Critical Interruptions: Creating Ontological Security

Material strength, such as military capability, weapons arsenals, and economic wealth, and its effect on state behavior has always been a critical element in world politics according to IR theory. Neorealists tend to ignore cultural differences and regime types because they assume that the international system creates the same incentives for all states, especially great power states (Posen 1986; Van Evera 1999, Mearsheimer 2001). Neoliberalism has focused on using interdependence to create strategic incentives for cooperation amongst states, where norms and institutional designs can help control and constrain all states, strong and weak alike (Koremenons, Lipson, Snidal 2001; Finnemore 2003; Simmons and Hopkins 2005). Debates between “balancing” and “buck-passing” further highlight the role of material capability on the state's ability to project power (Snyder 2002; Levy and Thompson 2010).

Constructivist approaches to IR, however, concentrate on how material capabilities are perceived by the state itself and others in the international system, and the impact of that perception on a state's material power (Wendt 1999; Hansen 2006). In the context of ontological security, tying material capabilities with a state's identity and self-identity needs creates specific

assumptions about “strong” and “weak” states and their respective motivations. Steele (2008) argues that stronger states are somewhat “imprisoned” by their power: while their power gives them the aptitude for influencing international politics, it also simultaneously takes away their freedom of action because their power compels them to act a certain way (1695–1697). The Cuban missile crisis provides a good example of how strong states are compelled by their power to react in a specific way. Jutta Weldes (1999) argues that the desire to appear strong, tough, and uncompromising ironically converted the Cuban missile crisis into a crisis of credibility as well, where the U.S. leadership felt it had to address Soviet actions or else lose credibility as a strong state (Weldes 1999, 40– 55). Similarly, Lene Hansen (2006) analyses how U.S. and UK perceptions of themselves influenced their respective interventions in the Bosnian war (115–146). Linking material resources to identity therefore is necessary for better understanding how states respond to events and changes within the international system.

The state’s ability to pursue ontological security is also dependent on how it deals with crises. Steele (2008) uses Weldes’ (1999) conceptualization of crises in which crises are not “objective facts” but rather are:

social constructions that are forged by state officials in the course of producing and reproducing state identity. If crises are constructed in relation to particular state identities, events that are ostensibly the same will in fact be constituted as different crises, or not as a crisis at all, by and for states with different identities (Weldes 1999, 37; Steele 2008, 1731–1733).

Steele (2008) labels crises as “critical situations” and considers them as threats to a state’s self-identity because they tend to be unpredictable events that affect vast numbers of people and ultimately threaten or destroy institutionalized routines (1284–1286). My conceptualization of crises differs from Steele’s in two ways. First, not all crises are unpredictable (except rare environmental ones like tsunamis and earthquakes). Since crises are social constructions, the

time frames of when an event gets labeled “crisis” varies and depends on the actor. For example, the events that led up to the Cuban missile crisis, and the crisis itself, actually spanned a much longer period for both the Soviets and Cubans than it did for the Americans (Weldes 1999, 37–40). Second, not all crises threaten a state’s self-identity or its routines. I argue that instead, crises “interrupt” routines, forcing state agents to manipulate state narratives to either create, alter, or end institutionalized routines via state institutions. Therefore, I use the label “critical interruptions.” It is important to note that “critical interruptions” are not “critical junctures.” Within historical and sociological institutionalism, “critical junctures” are defined as periods of significant change followed by a period of “path dependence” in which an institution follows a specific trajectory that is either maintained or reinforced over time (Pierson 2004, 54–78; George and Bennett 2005, 167; Gerring 2007, 2559–2560). The concept of critical junctures is employed in institutional analysis to uncover causality and examine structural (such as economic, cultural, ideological, organizational) influences on political action (Capoccia and Kelemen 2007). A critical interruption, however, is not concerned with causality in a strict, nomological sense, and cannot be studied as isolated incidents that affect institutions.

Critical interruptions, like crises conceptualized by Weldes (1999), are social constructions, and are intimately linked with the construction, reconstruction, and deconstruction of state identity. In this way, critical interruptions are more about the politics of practices and language of representation (Edelman 1988, 31). State agents are authorized to act on behalf of the state, and hence are responsible for acts that represent state actions. How state agents respond to crises and how crises affect state agents is co-constitutive: state identity can enable a critical interruption or conversely a critical interruption can enable state identity. Critical interruptions are not objective facts but rather political acts whose representation can be contested (Weldes

1999, 61).¹⁵ For Weldes (1996) and David Campbell (1998), state identity enabling a crisis is more logical because the subject is obvious: the anthropomorphized state subject produced in the foreign policy discourses of institutionalized states. This applies to critical interruptions as well. But how critical interruptions enable state identity varies from how Steele's (2008) "critical situations" enable state identity. In Steele's (2008) conceptualization, crises present a threat to a state's self-identity because they force state agents to take action and alter or end institutionalized routines (1284–1286). I argue that not all crises are threats and so any changes made in institutionalized routines is not because of any danger associated with a threat. Rather, changes in institutionalized routines point to self-identity crises within the state over how the state constructs its self-identity needs, and consequently how the state views itself and wants to be viewed by others. Identities are constructed in relation to difference, where difference and identity are both fluid (Campbell 1998, 175–179). Identities are not necessarily constructed to counter threats or a different threatening Other (Campbell 1998, 232–235; Hansen 2006, 6-7).

Critical interruptions therefore are not just threats. Instead they are significant events that enable and benefit state identity in three ways. First, they allow the state to claim sovereignty over their territory, and a monopoly of violence and the type of violence in the name of protecting that territory. By claiming to be the sole representative and/or sole protector of its population, the state reinforces its Self within the international system. Second, critical interruptions allow the state agents to create institutions or structures of power that allow them—and by extension the state—to consolidate power internally (Tilly 1985, 171; Barnett 1992;

¹⁵ I have used "environmental disaster" as an illustration of a critical interruption. While natural disasters do not start off as political acts, their politicization is dependent on the states' response and representation of the disaster. For example, Bangladesh's response to Cyclone Marion in 1991; the effect of the 2004 tsunami on conflicts in Sri Lanka and Indonesia; Pakistan's response to the 2005 earthquake in Azad Kashmir; U.S. response to the *Deepwater Horizon* oil spill in the Gulf of Mexico in April 2010, etc. are all examples of natural disasters that became political as aid efforts and disaster management challenged various aspects of state sovereignty. In an ontological security framework, therefore, they have the potential to serve as critical interruptions.

Weldes 1999, 58). To do so, state agents use the state's narratives to legitimize and justify the state's consolidation of power over other actors within the state vying for power. Critical interruptions, therefore, are intrinsically related to the creation of a state's biographical narrative about self-identity, where the interaction of critical interruptions and narratives connects observable activities to policy responses. And third, critical interruptions allow for the articulation and rearticulation of the relationship between identity and difference as means to constitute and secure the state's self-identity (Weldes 1999, 58). I share David Campbell's (1998), William Connolly's (1991), and Weldes' (1996, 1999) understanding of identity as always discursively constructed and produced in relationship with difference, where difference and identity are mutually constitutive. Hence, my conceptualization of critical interruptions takes into account the genealogy of identity within security studies, in which I am influenced by Michal Williams' (1998) argument. He asserts that debates within IR theory should not be between objectivist and positivist theoretical foundations. Instead, they should be more focused on the history of security studies and the politics surrounding theorizing security, which will highlight how identity—and difference—has been constructed to emphasize material power and create an objective foundation of analysis (Williams 1998).

I.II Biographical Narrative and Institutionalized Routines: Preserving Ontological Security

Biographical narrative is a constitutive tool pointing to the reflexive capability by which states create meanings and justify their actions. In other words, a biographical narrative is a collection of narrative components found within the state that link the state's actions to its self-identity. Biographical narratives allow us to observe change: as narratives evolve, state agents adjust their actions, which in turn affects narratives in such a way that they are employed by state

agents to justify changes in institutionalized routines. Biographical narratives, therefore, are not only observable but also create the context in which policies become routinized, and like routines, they are performative (Steele 2008, 1767; Onuf 1989: 78-95). Steele (2008) argues that states feel “shame” when their biographical narrative conflicts with how they see themselves. In this framework, shame is a discursive representation of regret that chips away at the ontological security state agents achieve by their attachment to routines. Shame, therefore, is a radical disruption of Self. Crises¹⁶ make states change their routines and so logically they are considered threats to the state’s self-identity (Steele 2008, 1355–1360). With respect to critical interruptions, a state’s biographical narrative can help us better understand how states use collective memory to 1) form national interests, 2) define self-identity needs, and 3) institutionalize policies.

The label of “biographical” is useful because it indicates the uniqueness of a state’s narrative: every state has its own story that influences its identity and dictates its self-identity needs. So while a biographical narrative is similar to both concepts of dominant discourses and meta-narratives, there are two main differences: 1) a biographical narrative is particular to a state, and hence, does not cross borders like dominant discourses or meta-narratives, and 2) while each is concerned with norms and power, a biographical narrative is essentially created by state agents and is a product of the interaction of the state’s civil and military institutions. It is continuously evolving, being reproduced to lay the foundation for legitimizing and justifying state practices (including failed counterterrorism practices) that enhance a state’s ontological security, unlike both meta-narratives and dominant discourses that are not easily changed. Narrative construction, therefore, is a political act, and allows state agents to organize “the state” around a new self-biography and what is meant by such statehood.

¹⁶ Steele refers to crises as “critical situations.”

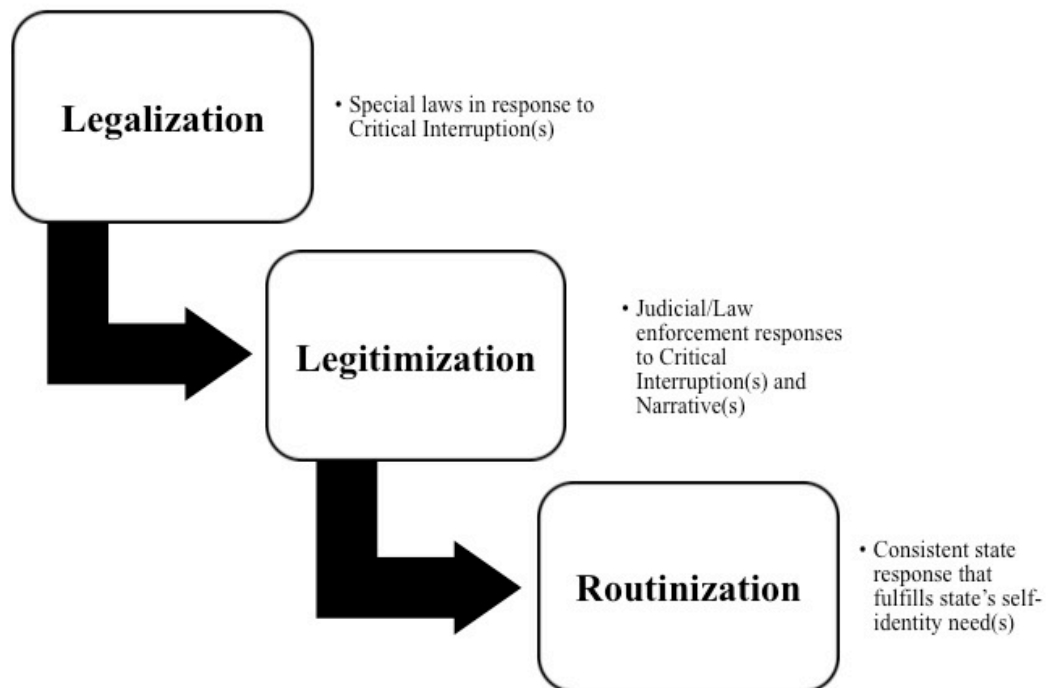
What role does a biographical narrative have in the conversion of a state policy into an institutionalized routine? I posit that the biographical narrative assists in the formation of institutionalized routines when civil and military institutions interact. These state institutions are simultaneously independent and co-dependent: they both use narrative components to legitimize their actions but their interactions influence the state's overarching biographical self-narrative, which ultimately guides policy formation. Thus, similar to a biographical narrative, an institutionalized routine is a collection of regularized civil and military practices, procedures, and codes of conduct. At the individual level, routines provide automatic responses to stimuli, which allows the individual to reduce the uncertainty within their chaotic environment (Mitzen 2006, 347–348). At the state level, a routine is a consistent state practice, such that it is always employed in the wake of a critical interruption, and has been influenced by time, rules, and norms. Therefore, I conceptualize routines as being “performative” and am influenced by Lisa Wedeen's (2008) treatment of nationalism as a collection of performative acts. Wedeen argues that the importance of everyday practices of nationalism within Yemen do not just signify meanings for their practitioners but are also important because of how those practices constitute the self through performing as a “national person” in the absence of democratic institutions (14–17). Similarly, in Pakistan, the daily “counterterrorism” and “anti-terrorism” practices of state institutions related to countering militant groups reinforce the state's identity as a defender of Islam and victim of Indian aggression while being accused of sponsoring militant groups by the international community.

A collection of regular practices, procedures, and codes of conduct consequently results in a state policy becoming an institutionalized routine that stabilizes the state's identity and increases its ontological security. I hypothesize that each independent institution develops its

own set of routines to respond to a critical interruption. When these institutional practices work together to implement a state policy, that policy has the potential to become routinized if it is consistently applied in a way that reinforces the state's identity and meets the state's self-identity needs. In my framework, therefore, the making of an institutionalized routine involves three steps. The first step is legalization, in which the legislative branch responds to a critical interruption by passing specialized laws, directing legal practices which state agents use to legitimize state actions and policies. While the legislative branch is civilian in nature, it is also the keeper of the state's civil–military relationship, and hence, is closely linked to the executive branch of the state. Hence, legalization captures the relationship between the legislative and executive branches of government. The second step is legitimization, which involves determining the constitutionality and implementation of these specialized laws. In Pakistan, two civil institutions play a key role in legitimization: the judiciary that has the power to declare a law as unconstitutional, and the police, which is the leading law enforcement organization responsible for maintaining domestic law and order by implementing relevant laws. Legitimization is a slow process, and involves continuous interaction between civil and military institutions. In the process of legitimization, each institution develops its own unique set of practices, using various narrative components that make up the biographical narrative as a means for legitimizing the state's policies, and its own role in those policies. More importantly, legitimization serves as a way for each institution to contribute to a state's identity and its self-identity needs. When a policy has been legitimized by the state's institutions—and in the case of Pakistan, legitimized by its judiciary and police—it becomes an institutionalized routine: a consistent state practice, procedure and code of conduct that meets the state's self-identity needs

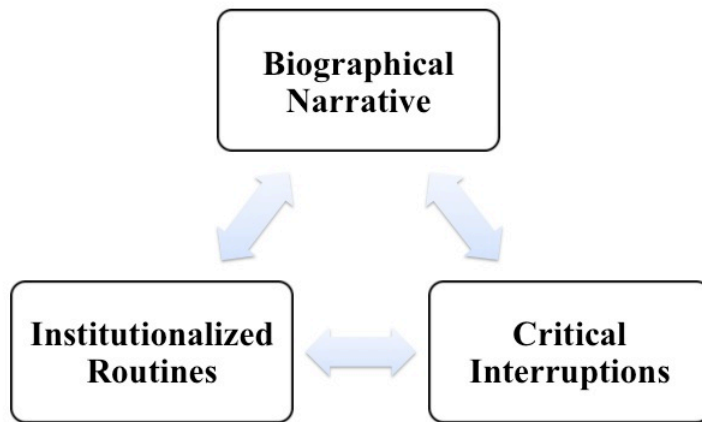
and consequently increases the state's ontological security. This three-step process is depicted in Figure 1.

Figure 1: Course of Routinization: Becoming an Institutionalized Routine



Achieving ontological security, therefore, requires multiple elements. Figure 2 provides a graphical representation of the processes of ontological security described above: how it is generated and maintained.

Figure 2. Processes of Ontological Security



To summarize, state agents use justificatory logic and alternative interpretations in an effort to convey preferred meanings of institutional actions thus constructing the state's biographical narrative. When a policy is repeatedly employed as a response to every critical interruption, it becomes an institutionalized routine that increases the state's ontological security. Critical interruptions, the biographical narrative, and institutionalized routines therefore are interconnected—they all play a pivotal role in how a state acquires and maintains its ontological security. In the next section, I explain the effect of militant sponsorship on a state's ontological security.

Section II. Reconceptualizing State-sponsorship of Militancy

Scholars and policymakers both see state-sponsorship of militant groups through the prism of proxy warfare. Proxy warfare refers to the *indirect involvement* in a conflict by a third party (either a state or non-state actor) that seeks to influence the conflict's strategic outcome (Mumford 2013, 11). Since the development of nuclear weapons, the end of the Cold War, and the need of superpowers to avoid outright war, proxy warfare has developed into a separate category of war (Mumford 2013, 12; Loveman 2002; Bar-Simon-Tov 1984; Towle 1981). But indirect involvement in a conflict as a third party is not the only reason why state's sponsor militant groups and other non-state violent actors, as highlighted in chapter one.

While state-sponsorship of violent non-state actors like militant groups is central to proxy warfare, defining state-sponsorship of militancy—or state-sponsorship of terrorism is challenging. Bruce Hoffman (2006), defines state-sponsored terrorism as “the active and often clandestine support, encouragement, and assistance provided by a foreign government to a terrorist group (290–291). Daniel Byman (2005), defines it as “a government’s *intentional assistance* to a terrorism group to help it use violence, bolster its political activities, or sustain the organization” (15). While Hoffman’s definition casts a wide net on what can be considered state-sponsorship, Byman’s definition focuses on the intentionality of terrorism support. It is important to note that both definitions use terrorism—not militancy—deliberately, and are based on the dominant assumption that terrorism is primarily conducted by non-state actors. Certainly, non-state actors like violent religious militant groups use terrorism and other techniques to meet their goals. States, however, engage in terrorism as well. My conceptualization of state-sponsorship of militancy uses state terrorism as a category of analysis, in which sponsorship is one type of state terrorism. Therefore, I define state-sponsorship of militancy as: *a government’s deliberate*

routinization of assistance to a violent non-state actor to meet its geostrategic goals. Before I explain my definition, it is important to understand the typologies of state-sponsorship that scholars have developed.

II.I. Typologies of State-sponsorship of Militancy

In one of the first attempts, Edward Mickolus (1989) constructed several degrees of government support for terrorist groups that included intimidated governments, ideologically supportive governments, facilitative supporters, direct support by regimes, and official participation (288). Paul Pillar (2001) identified three broad categories of analysis: sponsors, enablers, and cooperators. He uses the U.S. Department of State's category for designating sponsors, states engage in "terrorism involving citizens or the territory of more than one country" or more simply "international terrorism." Enablers are defined as those states that do not fully support U.S. counterterrorism strategies and sometimes enable terrorist practices, while cooperators are those that willingly support U.S. counterterrorism efforts (157–188). Pillar's typology is too U.S.-centric, and not very useful for understanding sponsorship elsewhere, especially in least developing countries and postcolonial weak states. His typology also places the United States at the center of global counterterrorism practices, where it is considered a leader. While U.S. counterterrorism capability may be one of the best in the world, U.S. interests are not global, and what is the best for the U.S. is not necessarily best for other countries. Pillar's typology therefore fails to address broader challenges regarding state-sponsorship of militancy.

Daniel Byman (2005) draws from Pillar's typology and explains sponsorship along a spectrum of support, in which state capacity ranges from high to low and state policy ranges from opposition to support of a terrorist group. Sponsors are classified into five categories: strong (e.g., Iran's support of Hezbollah, Pakistan's support of the Haqqani Network), weak

(e.g., Taliban's support of al Qaeda), lukewarm (e.g., includes maintaining limited ties, such as Iran's connections with various Shi'a groups in the Persian Gulf), antagonistic (e.g., Syria's support of Palestinian groups, such as Fatah), passive (e.g., Canada's tolerance of fundraising by the Liberation Tigers of Tamil Eelam, Saudi Arabia's tolerance of recruiting and fundraising for al Qaeda), and unwilling (e.g., includes countries with low capacity, such as Uzbekistan and Philippines, and failed states like Somalia) (Byman 2005, 11–15). While Byman's conceptualization is more nuanced than Pillar's, there are some weaknesses and ambiguities. For example, while he describes each category, there are no set requirements that enable clear classification, which makes each category open-ended, even fluid. Yet, he does not address this fluidity, making the classifications difficult to analyze. Similar to Pillar, Byman's research is centered on sponsorship of terrorist groups as defined by the U.S. Department of State, which provides a limited definition that primarily black boxes the state and elevates U.S. national interests, which is not useful for a more general understanding of state-sponsorship of militancy.¹⁷ Finally, there are no clear recommendations on how to end sponsorship or even deter states from sponsoring a terrorist group for its own strategic purposes. Therefore, it may be useful to try to understand the context in which states believe sponsorship is a feasible strategy—and an ontological security framework would serve as a useful tool.

On a more general level, Mohanty (2006) makes a distinction between state-supported groups and state directed groups. While the former operate independently despite receiving support from one or more governments, the latter operates as an agent of a government—or as a militant proxy (49). Therefore, state directed groups are provided with intelligence while state-

¹⁷ According to the State Department, states that engage in international terrorism are designated as sponsors. Terrorism is defined as premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents. International terrorism refers to terrorism involving citizens or the territory of more than one country.

supported groups are not (Mohanty 2006, 49). Ariel Ahram (2011) adopts “parainstitutional violence.” He describes the relationship between state, anti-state, and state-sponsored elements as a trilateral relationship in which state elements (e.g., armed forces, police, defense ministers, and clandestine security services) are the sole sovereign and legitimate purveyors of violence while anti-state actors (e.g., coup plotters, guerrillas, insurgents, and criminals) are illegitimate and illegal. Parainstitutional agents—or militias as he refers to them—lie in between: while the state uses them to intimidate and/or eliminate the state’s enemies, they remain outside the state’s legal framework and are not recognized by international norms or domestic law (Ahram 2011, 8–10).

Sometimes, states willingly co-opt militias into their security apparatus in order to “organize institutions of coercion” (Ahram 2011, 2) instead of reverting to traditional bureaucracies of violence. Ahram (2011) has focused on how states organize institutions of coercion. He ties the persistence of state-sponsored militias to the type of armed forces that a postcolonial state inherited and the external environment it faced when it became a sovereign state. If a state gained independence via a violent revolution in which guerrillas and insurgents were active, then the new state was more inclined to absorb those networks and convert them into pro-state militias, resulting in a decentralized monopoly of force. In other words, such a state is more likely to use militias or militant groups as proxies. If decolonization occurred via negotiation, the new state inherited the bureaucratic military structure from the colonial power, resulting in a centralized monopoly on force and military, in which militias were absorbed, resulting in a state less likely to use militant proxies to protect itself and further its geostrategic interests. Ahram correctly indicates that external environments also influence military development. In the instance of a neutral external environment, in which regional powers were

non-threatening, states were incentivized to use the militia networks they inherited and rely on the decentralized militia network, such as the case of Indonesia. Strong external competitors and the threat of war, however, forced some states to adopt or retain a centralized military format, as is the case with Iraq and Iran (1–23). Ahram uses Indonesia, Iran, and Iraq to explain his theory, resulting in a strategic analysis of the rise and fall of state-sponsored militias. Yet, where do post-colonial states like Pakistan and India fall? These states gained independence via negotiations and inherited a bureaucratic military structure but still engage in proxy warfare. What about Bangladesh, which gained independence via a violent revolution but does not engage in militant proxy warfare? Ahram has emphasized the relationship between military development, and the effects that military decentralization and centralization have had on the relationship between the state and its militant proxies, which is an important contribution. But this has resulted in sidelining—even ignoring—any role that civilian institutions have had in facilitating the use and sponsorship of violent militant groups as proxies.

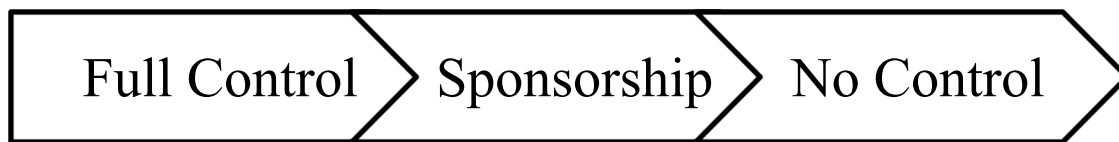
The logic underlying a state’s selection of a violent militant group is also important for understanding why states continue to sponsor militancy. Yelena Biberman (2016) compares India’s (1988–2003) and Turkey’s (1984–2002) counterinsurgency campaigns and argues that states select different type of militant proxies (i.e., “rookie-manned self-defense militias” and “veteran-manned death squads”) based on how much control they can have over the proxies, the supply of willing collaborators, and the comparative advantage offered by soldiers. On the other hand, Stephen Tankel (2016) argues that a militant group moves back and forth between support and collaboration, benign neglect or passive support, and belligerence. He calls this movement “coopetition” to highlight how militant groups within Pakistan often occupy more than one of these categories (Tankel 2016, 15–25).

Each typology and framework presented here has added value to the conceptualization of state-sponsorship of militant groups. Yet, none are able to adequately explain the effect of sponsorship on the state’s self-identity or its self-identity needs. Below, I explain my conceptualization of state-sponsorship of militancy.

II.II. State-sponsorship of Militant Groups and Civil Institutions

I am primarily interested in the state’s motivation for continuing sponsorship and the benefits it receives from this sponsorship. In order to show how sponsorship increases a state’s ontological security, and the role civil institutions play in the state’s calculus, I reconceptualize sponsorship as existing along a spectrum, as shown in Figure 3.

Figure 3: Spectrum of State Interaction with Militant Proxies



When a state begins to use non-state entities as militant proxies, it can either create its own group or begin to assist an already active but weak militant group in order to maintain the upper hand—or Full Control. By full control, I mean that the state has command over key elements of the militant groups, where in some instances, the group may seem like an extension of the state itself. For example, Philippines, Guatemala, Indonesia, India, and several Latin American countries have used death squads to target specific communities (Sluka, ed. 2000) while Pakistan, India, the United States, Britain, France, and others have used local nationalist and secessionist movements as militant proxies. When a militant group has become autonomous, the state has no control over any aspect of the group. Within this spectrum of activity, therefore, “No Control” refers to a state having a link to a non-state actor—a militant group—but having no control over its activities. For example: Hezbollah, Hamas, al Qaeda, and ISIS are considered

independent actors—no one country is the sole sponsor. “Sponsorship” can include a myriad of activities, such as training by the state military; weapons training; provision of fake legal documents, arms, and ammunition; maintenance of safe houses and havens; ideological direction; and diplomatic backing to name a few (Jenkins 1986, 589; Byman 2005, 59–66; Hoffman 2006, 3628–3633). Sponsorship encompasses “soft support” or tolerance,¹⁸ which is when a state chooses not to deter a non-state actor but does not lend it any material or “soft” resources, which can include ideological backing and moral support (Jenkins 1986, 589; Hoffman 2006, 3628–3633; Conrad 2011). Some examples of Sponsorship are: LeJ in Pakistan (ongoing), Haqqani Network in Afghanistan (ongoing), Janjaweed in Sudan (ongoing), Autodefensas in Columbia (2013), and Interahamwe in Rwanda (1994).

Byman (2005) refers to *state-sponsorship* as the state creating, using, and controlling a militant group as a proxy via its intelligence agencies to achieve political aims (10). I define state-sponsorship as *a government’s deliberate routinization of assistance to a violent non-state actor to meet its geostrategic goals*. By *routinization* I mean the states use of its civilian institutions and bureaucracy of governance to generate regular practices, procedures and codes of conduct that justify, legitimize and shape the sponsorship of militant groups. Within political science, routinization can be understood as being synonymous with institutionalization, which has been studied under historical, sociological, and discursive intuitionism. Each seeks to explain change and causality in practices: historical institutionalism focuses on historical contexts (Peters 2005, 74; Thelen 1999), sociological institutionalism emphasizes the creation of

¹⁸ I relabel Byman’s “passive sponsorship” as “tolerance”. Byman (2005) describes passive support as when a state knowingly allows a terrorist group to raise money, recruit, seek shelter, and enjoy other assistance. Also, the state may have the capacity to stop a terrorist group but does not. Non-governmental organizations, wealthy businessman, and other actors in society that have no association with the government can also provide passive support to militant groups (222).

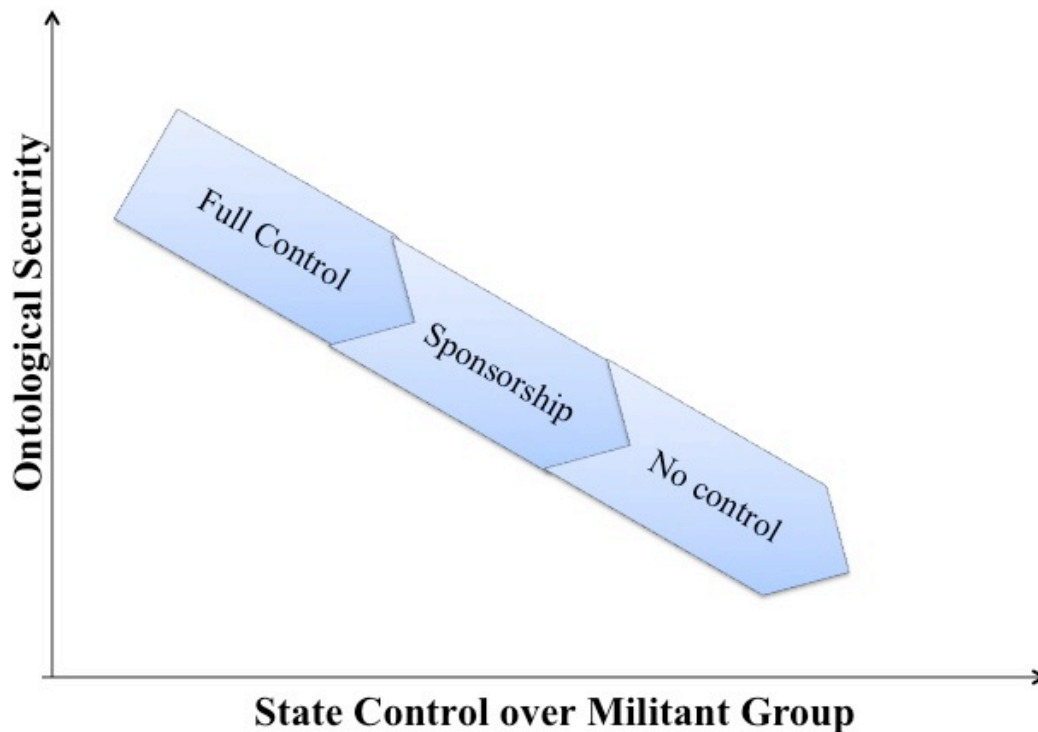
meanings and significance of values when studying institutions (Thelen 1999, 386), while discursive institutionalism highlights the subjective nature of institutional interests and norms (Schmidt 2008). As mentioned in the previous section, I am concerned with change but not necessarily with causality. My understanding and use of “routinization” therefore is based on the inner workings of the state: how internal dynamics within political systems influence the state’s self-identity and ontological security—and ultimately dictate the terms of militant state-sponsorship.

The spectrum presented in Figure 3 features two important characteristics that differentiate it from previous typological models. First, it is unidirectional, showing that state-sponsorship of a militant group is irreversible: once a state loses control of a militant group, it is impossible to regain control over the group regardless of when sponsorship began during the militant group’s life. This is because when the militant group becomes autonomous, it no longer needs the state’s sponsorship, and the state effectively loses power over the group. When a state begins to use a militant group as a proxy, it may have full control of a newly formed group or it may begin to sponsor an already functioning militant group. This is in direct opposition to Tankel’s (2016) typology, which argues that militant groups have enough agency to move back and forth between support, benign neglect, and belligerence. I do not contest that these militant groups have agency but I disagree that their agency allows them to dictate the terms of sponsorship. In my conceptualization of state-sponsorship of militancy, state agents (and by extension, state institutions) are the principals. Second, even though states interact with militant groups along a spectrum of activity, the conversion of state-sponsorship of militant groups into an institutionalized routine occurs via civil institutions, and in three distinct stages: legalization, legitimization, and then routinization.

In the event of a critical interruption, the legislative branch is the first civil institution to respond. The legislative branch responds by passing specialized, specific laws that are meant to showcase the narrative components state agents produce to explain the critical interruption. Legislative responses, combined with narratives, inform the context for state action. In the case of Pakistan, the legislative branch has responded to critical interruptions by expanding executive powers, creating parallel judicial systems, and facilitating the emergence of clientelistic political parties (see chapter four). The power of laws—and legalization—is tied to their implementation, which is closely linked to the second step, the legitimization of laws. Legitimizing legislation involves two key civil institutions and their responses to critical interruptions: 1) judiciary, which declares the legislation to be either constitutional or unconstitutional, and 2) police, which has the means to implement the law. As a result of critical interruptions, the judiciary and police form their own routines, which create meanings and lend significance to values that endorse militancy. Within Pakistan, legislative, judicial, and police routines have collectively resulted in the state using and sponsoring militant groups to reinforce the pillars of the state's need to defend Islam and protect itself from India. Sponsorship, therefore, has become an institutionalized routine that increases Pakistan's ontological security.

The conversion of sponsorship into an institutionalized routine is iterative, multi-dimensional, fluid, and complex: while the counterterrorism side of state action is visible, sponsorship remains hidden. Yet, it plays a vital role in reducing a state's uncertainty and increasing its security—in particular, its ontological security. Figure 4 shows the relationship between a state's ontological security and sponsorship of militant groups as proxies.

Figure 4: Relationship between State's Ontological Security & Sponsorship of Militancy



As a state maintains Full Control of a militant group, it experiences a high level of ontological security. As control decreases, so does the ontological security since militancy is directed towards its self-identity needs less and less. Maintaining Sponsorship provides a stable level of ontological security: the state is able to maintain plausible deniability while exerting some level of influence on the militant groups activities and/or ideology. In other words, the state can meet its geostrategic interests via sponsorship while also experiencing stability and certainty of Self. The security achieved by this certainty provides agency to state agents, who in turn maintain sponsorship via state institutions (civilian and military both). The focus on Pakistan serves as empirical example of the relationship. In the concluding chapter (chapter seven) I will elaborate on which other states can be studied to provide empirical examples of this relationship.

Section III. Pakistan's Self-Identity: Seeking Stability

The relationship between the state's actions and its identity is fluid: actions are dependent on identity while identity is reinforced by actions (Wendt 1992, 402–403).¹⁹ For example, foreign policies need to assign meaning to a situation to be able to formulate a response, which utilizes specific identities of other states, regions, communities, and institutions (Hansen 2006, 6). Within an ontological security framework, identity-related needs are established through continuous actions, which fulfill the state's need for stability and certainty. An interruption in these actions causes instability and uncertainty, and hence leads to ontological *insecurity*. Identity therefore is not a standalone fact about a state. Instead, it needs to be interpreted in reference to state actions and inaction. This does not mean that I do not consider the history of the modern nation-state, as laid out by Richard Matthew (2002) or that I am not cognizant of the relationship between identity and nationalism. I use Wedeen's (2008) conception of nationalism. She argues that state institutions are critical to the development of nationalism because state institutions not only have the power to record, educate, and police the population, but are instrumental for tying together state sovereignty and the state's territory (7–8). In other words, state institutions reinforce the state's territory and borders while projecting and facilitating nationalist images and discourses. This is consistent with Lang's (2002) and Steele's (2008) argument that state agents constitute the state and the state's self-identity needs. I further their argument by positing that state agents use state institutions to form and drive the state's self-identity needs.

Neta Crawford (2002) puts forth three components of political identity: 1) a social identity, which refers to a sense of self in relation to and/or distinct from others, 2) a historical narrative about the self; and 3) an ideology (114). Pakistan's social identity is dominated by its

¹⁹ For an analysis and genealogy of "identity" within security studies, see Williams 1998.

security dilemma with India—a dilemma that has roots in the history of Muslim–Hindu tensions in the sub-continent (Gupta 1988, 112–118; Bose and Jalal 1997; Karim 2010; Wolpert 2010, 7–17). Indo–Pak tensions stem from six sources. First is Kashmir, the disputed territory that lies in the northeast of Pakistan, and over which the two states have fought two conventional wars and have had countless minor military exchanges (Wirsing 1993; Cohen 2002; Kapur 2010). The second is support of separatist movements across the border by each. India’s support of the *Mukti Bahini*, Bengali freedom fighters, was crucial in the 1971 civil war that resulted in the breakup of Pakistan and formation of Bangladesh as a sovereign state (Dash 2008, 2139–2230; Ghosh 1989, 57–103). Pakistan’s military strategy of supporting Kashmiri insurgent groups has provided Pakistan with a way to stealthily counter Indian rule in Kashmir while appeasing its own religious political parties, who often exploit the Kashmir dispute to mobilize public sentiment and increase their own legitimacy (Kapur and Ganguly 2012; Zahab and Roy 2004, 27; Byman 2005, 155–185). India claims that Pakistani-supported terrorist attacks within India have increased since 2002 (Byman 2005, 184)²⁰ while Pakistan denies the allegations. India also accuses Pakistan of lending support to the Sikh uprising in East Punjab (Hussain 1993, 153) that eventually resulted in the assassination of Prime Minister Indira Gandhi on October 31, 1984.

The third source of the Indo–Pak animosity is a military rivalry, which has resulted in both states developing nuclear weapons and missile capabilities (Ahmed 1999; Ganguly and Kapur 2010; Watt 2012; Chengappa 2016)—which almost led to a military conflict in Kargil in 1999 (Sagan and Waltz 2002; Rao 2016). The fourth source of tension has been the United States relationship with Pakistan. India views the U.S.–Pakistan partnership as a hindrance and one that

²⁰ Some examples of attacks where India has accused Pakistan are: 1) American cultural center in Kolkata on January 22, 2002, 2) in Kaluchak on May 14, 2002, and 3) on the Ram temple in Ayodhya on July 5, 2005 (attackers are believed to belong to Lashkar-e-Taiba); on military camp in Uri, near the Line of Control that divides Kashmir between India and Pakistan on September 19, 2016.

encourages Pakistan to challenge India regionally—this was especially the case during the Cold War (Ayoob 2000, 30; Muppidi 1999; Thornton 1993). Fifth is the religious and ethnic communal tensions aggravated by the Hindu nationalist Bharatiya Janata Party (BJP) of India (Buzan and Waeber 2003, 108; Varshney 2002). The BJP does not seek separatism but instead seeks a strong national defense that includes nuclear deterrence. It also has a no-compromise policy on Kashmir, and supports its integration into India via a special status granted to Kashmir in the Indian constitution. And the sixth source of Indo–Pak tension is water. The Indus Basin Irrigation System was originally conceived as a unified system but it was split up after partition. In April 1948, India cut off the water supply to Pakistan, resulting in an international water dispute between the two. A treaty was eventually signed in 1960 to resolve any future water disputes but tensions often flare up, providing just another reason for both states to have a standoff (Kugelman 2016).

Pakistan’s historical narrative is also intrinsically linked with Islam. The lack of consensus amongst South Asian Muslims on the meaning of Islam has created complicated and often competing conceptions of religion, identity, nationalism, and Muslim power in South Asia (Mullick and Yusuf 2009, 12). Pakistan not only inherited this puzzle but also unwittingly become a victim of its founder, Mohammad Ali Jinnah’s unfinished political philosophy, the Two-Nation Theory. The Two-Nation Theory was a result of a combination of writings and speeches of Indian Muslim activists. It does not define “nation” on the basis of culture, language, history, territory, or customs but on religion. In the pre–partition political environment, Jinnah and the Muslim League supported this Theory that argued that Hindus and Muslims were two separate nations with distinct social orders, and hence, could never exist under a single, united nationality (Karim 2010). It remains unclear whether Jinnah wanted Pakistan to be a secular or a

theocratic state (Jalal 1994; Karim 2010). Secularists, modernists, liberals, religious groups, etc. have all used Jinnah's philosophy to justify their own view of Pakistan, creating an ideological struggle within the country. As such, Pakistan's ideology is difficult to decipher. It is fraught with cultural contradictions and existential crises, and Pakistan still struggles with establishing a coherent identity (Cohen 2004; Shaikh 2009; Haider 2010; Wolpert 2010; Constable 2011; Jalal 2014; Shah 2014; Jaffrelot 2015; Rumi 2016).

What, then, is Pakistan's self-identity? It remains a puzzle as Pakistan is still developing a political identity. Two pillars, however, have emerged. The first is that Pakistan views itself as an "Islamic" country and a defender of Islam and protector of Muslims. The second pillar is that it must counter India, its hostile neighbor, and protect itself from Indian aggression and perceived anti-Islam stance. These meanings have fed into Pakistan's institutionalized routines, one of which is the state-sponsorship of militant groups, and discussed in detail in the next chapter.

Conclusion

In this chapter, I presented the processes of ontological security, my conceptualization of state-sponsorship of militancy, and a framework for studying the effect of sponsorship on a state's self-identity needs and ontological security. In the processes of ontological security, critical interruptions, the biographical narrative, and institutionalized routines are interconnected. While the biographical narrative serves as the state's explanatory tool for justifying and legitimizing state practices and policies—and eventually routines—it also creates the foundation for a state's self-identity needs by determining which crisis or disruption becomes a "critical interruption" in the state's quest to acquire ontological security. Since states are constantly seeking stability and certainty, critical interruptions become key political events in a state's

biographical narrative. The formation of institutionalized routines is dependent on how the legislative and judicial branches, and domestic law enforcement organizations have used the state's biographical narrative to legalize, legitimize, and routinize consistent state policies. I further argue that states continue to sponsor violent militant groups because sponsorship satisfies their self-identity needs and increases their ontological security—and hence is an institutionalized routine. Within Pakistan, militant sponsorship has become an institutionalized routine in the operations by the legislative and judicial branches of government, and the police. I critically examine the formation of sponsorship as Pakistan's institutionalized routine in the next chapter where I detail the state's critical interruptions and the collection of meaning making accounts that form the state's biographical narrative.

CHAPTER THREE

Militancy and the Processes of Ontological Security in Pakistan

Involved in one of the deepest rivalries and security dilemma of our time, Pakistan is notorious for sponsoring violent militant groups in both India and Afghanistan. In the previous chapter, I explained my theoretical framework and how the interaction of the state's biographical narrative, the labeling of critical interruptions, and formation of institutionalized routines form the processes of a state's ontological security. I also emphasized that while Pakistan's national identity is evolving, it has two pillars. The first is to serve as a defender of Islam while the second is to protect itself from Indian aggression. In this chapter, I explain how both of these pillars have resulted in state-sponsorship of militant groups becoming an institutionalized routine in two sections.

In the first section, I present Pakistan's biographical narrative, an overarching narrative that defines a state's self-identity needs, and allows us to understand how the state simultaneously explains and exercises its power domestically and internationally. Pakistan's overarching biographical narrative is constructed along the two pillars of its identity, and consists of three component parts: debates that focus on the state's relationship with its official religion, which is Islam, and serving as its protector, labeled as *religious component*; discussions that concentrate on the state's political system, largely inherited from the British, and the consequent civil–military imbalances, labeled as *democratic component*; and dominant perspectives on counterterrorism that are centered on counterterrorism/counterinsurgency operations and other activities aimed at securing the state, especially from India, labeled as *counterterrorism component*. In this section, I describe each narrative component and its role in upholding the pillars of Pakistan's identity and consequently creating the state's self-identity needs.

In the second section, I describe how each component of Pakistan's biographical narrative has helped shape an event into a critical interruption. Critical interruptions are political events whose representation is simultaneously produced and reproduced by the state's biographical narrative. They are not always a threat to the state's identity but often serve as the means for the state to reinforce its sovereignty and set the parameters for its bureaucracy. I propose that Pakistan has endured five critical interruptions: 1) the first Kashmir war after the exclusion of Kashmir from Pakistan's original territory; 2) the general elections of 1970 that resulted in a civil war and the creation of Bangladesh in 1971; 3) Soviet invasion of Afghanistan and the consequent funding of the *mujahedeen* during the Cold War that made Pakistan one of the key battlegrounds of superpower-initiated proxy warfare; 4) the September 11, 2001 attacks and the subsequent launch of the GWOT; and 5) TTP's attack on the Army Public School (APS) in Peshawar in 2014. Amongst these interruptions, some are specific to Pakistan (e.g., claims on Kashmir, civil war, and APS attack) while others are international events that have impacted Pakistan (e.g., Cold War and GWOT). I will explain how the religious, democratic, and counterterrorism components of Pakistan's biographical narrative have facilitated converting these political events into critical interruptions.

The interaction of a state's critical interruptions and the biographical narrative is essential for ontological security: while one does not cause the other, state agents use both to make meanings that justify and legitimize routines. Similarly, the state's civil and military institutions use narratives to develop responses to critical interruptions. Like many states that have endured internal political turmoil and face a hostile external environment, Pakistan's main concern is survival, and securing itself physically and ontologically. As such, the state has created an anti-terrorism legal regime and counterterrorism bureaucracy to serve as the means by which it

practices “counterterrorism.” But these daily counterterrorism and anti-terrorism practices use narratives and critical interruptions to reinforce Pakistan’s identity as a defender of Islam and victim of Indian aggression. By analyzing civil institutions and their routines in the context of Pakistan’s counterterrorism practices, this chapter highlights how: 1) counterterrorism is a contingent category that enhances a range of state practices in the name of security, 2) sometimes these very practices are not only counterproductive but also counterintuitive, in that they do not increase the state’s physical security or control over its territory, and 3) the responses of these civil institutions have facilitated sponsorship of militancy and allowed it to function in a way that increases the Pakistani state’s ontological security.

Section I. Pakistan’s Biographical Narrative: The Pathway to Ontological Security

The Pakistani state’s self-identity needs are created in the interaction between civil and military institutions. In the process of maintaining its ontological security, the state generates an overarching biographical narrative that state agents use to explain political events. In this section, I present the narrative components that make up Pakistan’s biographical narrative, which I mapped out from my fieldwork on civil institutions in 2015. My primary data consists mainly of in-person interviews.²¹ Any discussion related to militancy, sponsorship of militant groups, and counterterrorism is dangerous. I deliberately chose broad, open-ended topics to allow my interviewees to feel comfortable not just speaking about these sensitive issues but also speaking to *me* about these issues and their views. I must stress that these narrative components outlined

²¹ See Appendix A for fieldwork report. Interviews were open-ended and discussion-oriented, and constructed around 7 topics: 1) constitutionality, strengths, and weaknesses of anti-terrorism laws; 2) strengths and weaknesses of ATCs; 3) differences between ATCs and military courts, and the effectiveness of each; 4) challenges facing domestic law enforcement agencies, especially in regards to the police, and their training and investigative capabilities; 5) politicization of the police; 6) Pakistan’s operational counterterrorism measures; and 7) the state’s counterterrorism narrative(s). Two things to note: 1) italicized quotes are direct quotes while non-italicized quotes are from my hand-written notes, and 2) all bold sentences are my own emphases, not the interviewees.

below are not just from the interviewees' responses and the texts I used to extract these narratives. They may have been influenced by my questions, my tone of voice and expressions when I asked certain questions, and the language (Urdu or English) I used during the interview.

I.I. Religious Component of Biographical Narrative

Pakistan's political creation is intrinsically linked to Islam. The All India Muslim League, the political party that was at the forefront of the call for Pakistan, promoted a nationalist movement in India under the slogan "Islam is in danger" (Ahmad 1988, 92). The link between nationalism and Islam is evident in Pakistan today, and has created problematic religious dichotomies, such as Muslim vs. non-Muslim, and within-religion dichotomies where the "correct" version of Islam is constantly contested, such as Sunni vs. Shi'a, Muslims vs. Ahmadis,²² and others. Dichotomies have also been created along ethnic lines, which test the idea of Islam being a unifying force. Some ethnic dichotomies are: Punjabis vs. Sindhis and Balochis, Punjabis vs. Pashtuns, and *Mohajir* vs. non-*Mohajir*.²³ Grappling with this idea of serving as a defender of Islam has not only solidified these dichotomies, but also has led to the state having a troublesome relationship with extremist ideologies, discourses, and practices. For example, according to Amir Zia, a journalist with Bol Media:

*[T]he Shia narrative has also become quite aggressive since the Iranian revolution. ... [I]n the past when we used to hear the marsia and the kalaam, they were very soft, and painted the gloomy picture. **Now there is a sort of militancy in the tone of those lately. So there is a transformation. So it is not just one-sided. So now many of the hardline Sunnis or extremist Sunnis they see it [as] quite provocative. I'm not saying that it justifies killing of anyone. But ... The Shiite hatred is feeding them and their hatred is feeding the Shiite.***²⁴ (emphasis is mine)

²² A minority sect that contests the finality of the Prophet Muhammad (P.B.U.H.) and is considered non-Muslim—and for some the Ahmaddiyya community are heretics.

²³ Mohajir means "migrant" but is used for Urdu-speaking migrants from territory now in India.

²⁴ Amir Zia, in-person interview, Karachi, March 2, 2015.

Pakistan, therefore, struggles with Islam, meanings of Islam, and the amount of influence these accounts should have on the state's identity.

Though I did not ask about the role of Islam in Pakistan's identity, I did ask my interviewees their views on the causes of extremism, militancy, and terrorism within the country. In response to these queries, my interviewees commonly pointed to the country's poor education system: the unavailability of quality primary education, prevalence of poorly regulated religious seminaries called *madrassas*, and religiously biased textbooks. Though empirical evidence indicates that less than 3 percent of Pakistani students are enrolled in *madrassas*, they remain the focus of counter extremism programs within the country (Fair 2012, International Center for Religion and Diplomacy 2016). Reforms to the education system are underway (Naviwala 2016) but changing textbooks is proving to be a challenge (Butt 2016; Afzal 2015). Many interviewees discussed religious extremism in education in queries about Pakistan's counterterrorism narratives and law enforcement challenges as well. According to Mazhar Abbas, Secretary-General of Pakistan Federal Union of Journalists:

***Madrassas normally don't train people** but people can take inspiration from *madrassas*. And the different religious groups ... or terror groups, they take people from *madrassas*. **They go and watch these students that how far is he inclined toward religion and then they use these people for these kind of activities.** But now it's such a dangerous situation that even if you go to the campuses and even if you go to the private institution you'll find these kind of tendencies and that is because of online. The online phenomenon is far more dangerous and its... attracting the educated youth.²⁵ (emphasis is mine)*

There are numerous programs in place that are dealing with various "roots" of extremism within Pakistan, such as de-radicalization programs in prisons and countering violent extremism (CVE) programs focused on promoting human rights (especially women's rights) and improving

²⁵ Mazhar Abbas, in-person interview, Karachi, February 23, 2015.

democratic processes. Arafat Mazhar, Director of Engage Pakistan,²⁶ however, believes that such programs will be ineffective if the frame of reference is not Islam:

*I think the counter narrative to terrorism cannot be based on civilization thesis and human rights. It has to be based in the same framework that informs the terrorism network, terrorism narrative. And that framework is religion.*²⁷

Similarly, Rashad Bokhari, Executive Director, Peace and Education Foundation,²⁸ discussed CVE programs focused on *madrassa* reform and explained that majority of the *madrassas* wanted to focus on conflict resolution, de-escalation, and tolerance:

*Har rooz humain madrassoon sey request milraheen hain. Kyon keh hum ne kiya keeya, un ka interest jo extremism mein tha, us interest ko uthake peacebuilding mein laga diya. Yanee us ko redirect kardiya, un keh interests ko. Yeh saara hai interest ka kail.*²⁹ **Translation: We get requests from madrassas every day because we have redirected their interest from extremism to peacebuilding.** This is after all, a game of interests. (emphasis is mine)

The discussion on *madrassas* as one of the root causes of extremism in Pakistan stemmed from discussions on the Cold War and the U.S. and Saudi funding of the *mujahedeen*. Pakistan's role in the Cold War is analyzed later in this chapter but for the purposes of the religious component of the biographical narrative operating within the state, it is important to understand that this component is not just centered on Pakistan serving as a defender of Islam, but also focuses on countering India, whom Pakistan considers to be an enemy of Islam. The use of *mujahedeen* and the role of *madrassas* as

²⁶ Engage Pakistan has become Engage, a collective that focuses on increasing communication between religious scholars, civil society, and the government. One of its main projects is to reform Pakistan's blasphemy laws using Islamic jurisprudence. For more information, see <http://engagepakistan.com/engage/about-us/>.

²⁷ Arafat Mazhar, phone interview, Karachi, March 12, 2105.

²⁸ Peace and Education Foundation is a non-profit organization based in Islamabad that focuses on reforming *madrassa* education and training teachers. More information is available here: <http://www.peaceandeducationfoundation.org/index.php/background/>.

²⁹ Rashad Bokhari, in-person interview, Islamabad, October 28, 2015.

sites of *mujahedeen*/militant recruitment, therefore, play a prominent role in the religious component of the state's biographical narrative.

I.II. Democratic Component of Biographical Narrative

As Pakistan's identity is evolving, so is its bureaucracy, despite being a by-product of colonial rule. Since 1947, Pakistan has experienced four coups.³⁰ The current administration is democratic and the result of the first democratic transition of power, which took place in 2013. Pakistan's democracy, therefore, is weak at best but remains a prominent feature in discussions around Pakistan's identity and strategic goals. One of the features of a democratic political system is to separate the branches of government, specifically the legislative, judicial, and executive branches. Having spent most of its existence under military dictatorship, Pakistan struggles with maintaining a separation of powers. The civil service in particular has suffered (Niaz 2010, 89–137). The democratic component of the biographical narrative address issues like independence of the judiciary, overreaching executive powers, interference of the military in civilian government, the role of the civilian government in generating various narratives and counter-narratives, and politicization of the police. As Shuja Nawaz, former director of the Atlantic Council's South Asia Center states:

I think you have to really understand the politics of Pakistan as a whole in order to understand the strengths and weaknesses of the various institutions. And many of them have strengths and many of them have weaknesses and it's the balance between the institutions and within institutions that really determines their efficacy and their ability to do things. But the direction has to come from policy. That emerges from the political system. **Pakistan still has a very undeveloped political system.**³¹ (emphasis mine)

Democracy is generally considered to be a “western” notion and is linked with secularism. As a country where religion plays a central role in its identity, democracy and its

³⁰ Coup years are: 1958, 1965, 1977, 1999.

³¹ Shuja Nawaz, in-person interview, Washington, D.C., July 6, 2015.

secular links have proven to be problematic for Pakistan. In the quest to be more “Islamic”—and serve as a defender of Islam—Pakistan has attempted to reconcile democracy’s secular tendencies with its conception of Islam by passing “Islamic” laws (e.g., “repugnancy clause” in the constitution, blasphemy laws, Hudood ordinance, etc.), creating religion-based state institutions (e.g., Federal Shariat court, etc.), and promoting censorship (e.g., banning Facebook and YouTube, controlling entrance and exit of foreign journalists, shutting down media channels, etc.) Yet, the manifestation and expression of religion through laws has been problematic for Pakistan, as Sarmad Ali, Managing Director of Jang Media Group states:

*Mr. Bhutto, in his last days, announced, what he called some “Islamic reforms” or his vision of Nizam-e-Mustafa. He banned liquor and wine stores and bars, he banned gambling and dresses, and also night clubs. So with that Zia ul Haq came into power and Zia ul Haq obviously had right-wing leanings and Zia ul Haq changed the entire face of this country. **He totally messed up our laws, the blasphemy laws is a creation of Zia ul Haq. There was no such thing as blasphemy law prior to Zia ul Haq. The Hudood Ordinance was Zia ul Haq's doing. ... These were all his ways of saying that keh jee mein Islam, Islamic nizam le kar ara hoon or whatever and messed it up totally. The social fabric of the country got totally messed up.**³² Translation of last sentence: **These were all his way of saying that he is bringing Islam and Islamic governance into the state.** (emphasis mine)*

When discussing Pakistan’s counterterrorism narrative, and the role of religion in Pakistani politics, one anonymous bureaucrat lamented the fact that the public seems to favor laws designed around Islam rather than secular (and perhaps democratic) laws. He stated:

*Army’s motto is about *jihad*. Army has been creating a narrative that Zia ul Haq deeply penetrated in the system. **Now people think that religious laws are more important than non-religious laws. ... There is an idea that state institutions are secular, and hence not credible.**³³ (emphasis mine)*

The army remains the strongest institution in the country, and is seen as more efficient and less corrupt than their civilian counterparts—and also as the only institution that can

³² Sarmad Ali, in-person interview, Karachi, February 26, 2015.

³³ Anonymous, in-person interview, Islamabad, October 25, 2015.

effectively counter Pakistan's biggest enemy, India. Despite being frustrated with the army, civilian governments have also often looked toward the army to solve various problems.

According to an anonymous source at the Bureau of International Narcotics and Law Enforcement Affairs (INL), U.S. State Department:

Military dictatorship actually helps. It gives the country a lifeline. For example: Chief of Army Staff [General Raheel Sharif] is making politicians do what they are supposed to do. [Prime Minister] Nawaz Sharif feels threatened. They [civilian government] have to deliver.³⁴ (emphasis is mine)

The tug-of-war between the civilian government and armed forces, therefore, is a central element within the democratic component. According to journalist Sher Ali Khan, this tug-of-war exists because of Pakistan's insincerity toward establishing a democratic system combined with the idea that the army is the state's protector against India. Since India is viewed as an enemy of Islam, the army is seen as the protector of Islam as well. Khan said:

*The state has never been sincere to the idea of democracy... . I think it's also the fact that politics is moving forward but within those politics there is also a conservative reactionary backlash, and I think ideologically there is a lot of support for the Army as well.*³⁵ (emphasis mine)

According to defense analyst, Lt. Gen. Talat Masood:

*There is a need on the part of both the civilian and military leadership to understand that it is in the foremost interest of the country to have a normal civil-military relationship and have a correct balance. A correct balance means that the civilians should be in power or in authority, and the military should not take over those areas which do not fall under its purview, because that weakens the state, and gives a poor impression and distorts the whole system.*³⁶ (emphasis is mine)

Discussing why the army had not staged a coup after the APS attack in December 2014 (a critical interruption analyzed in the next section), military analyst Ayesha Siddiqi said:

³⁴ Anonymous, in-person interview, Islamabad, October 21, 2015.

³⁵ Sher Ali Khan, in-person interview, Lahore, November 2, 2015.

³⁶ Lt. Gen. (R) Talat Masood, in-person interview, Islamabad, October 29, 2015.

*Pakistan's military is probably the smartest political military in the world. It has evolved to a degree that it needn't come and take control itself.*³⁷

Siddiqā's analysis highlights just how important of an institution the army is within Pakistan—and hence, any discussion of civil institutions must involve the army and the legislative–executive relationship underlying the democratic component of Pakistan's biographical narrative. Also, while experiencing civil–military imbalances as a postcolonial state is not unique, the evolution of Pakistan's armed forces is, and this plays a vital role in how the state bureaucracy is organized and how state agents define Pakistan's identity and its self-identity needs.

I.III. Counterterrorism Component of Biographical Narrative

Since I am specifically interested in Pakistan's daily counterterrorism activities, it seemed natural to ask my interviewees about Pakistan's counterterrorism narratives. Responses focused on the military's operational superiority over other law enforcement agencies, and how that superiority was essential to counter the numerous threats Pakistan faced, with India being the primary threat. My interviewees, therefore, largely view Pakistan as a victim of terrorism, Indian aggression, and U.S. duplicity. Pakistan's use and sponsorship of militant groups, therefore, is seen as a defensive response, rather than an offensive strategy. According to an anonymous ATC judge, "Pakistan is a victim of terrorism but is seen as promoting terrorism"³⁸ while another stated, "we are the most effected. [We are] fighting terrorism the most and not for our wrongs but of others. [United States] has used our children to fight wars."³⁹ When discussing political parties and their militant wings, former Prosecutor-General of Sindh Shahadat Awan denied any

³⁷ Ayesha Siddiqā, in-person interview, Islamabad, October 19, 2015.

³⁸ Anonymous, in-person interview, Rawalpindi, October 28, 2015.

³⁹ Anonymous, in-person interview, Rawalpindi, October 28, 2015.

wrongdoing on the part of political parties, indirectly implying that militant wings are a necessity for political parties operating within Pakistan:

*[S]aari kee saari political parties terrorism ka shekar huee hain.*⁴⁰ Translation:
Every single political party has been a victim of terrorism.

The military establishment's operational dominance, however, has created tensions amongst the executive branch: between the armed forces and law enforcement agencies, and amongst several federal and provincial law enforcement agencies (see chapter six). According to Wajahat Ali, a journalist, the army has become "the vanguard" of Pakistan's domestic counterterrorism operations and this "is not how it should be. It should be the law enforcement agencies."⁴¹ Emphasizing the police's strength and its ability to secure local intelligence, an anonymous police source stated:

Army has technical intelligence but police has edge over them in human intelligence because police has more presence on the ground. Police can't be replaced.⁴² (emphasis is mine)

The police, however, are aware, and very wary, of their operational inferiority to the military establishment. When discussing police capacity in countering militant groups, Umer Farooq, a journalist, stated:

Mera police ke saat jitna bhi interaction raha hai, khud kehte hain keh hum ko zero preparation hai, zero training hai to deal with terrorism. Weapons nahin hai, training nahin hai, gaarain nahin hain. Kuch bhi nahin hai. Aap Khyber Pakhtunkhwaa challain jain, who enfield rifle lehar karare hoote hai, jo Second World war vintage ke hai. Terrorists keh paas to AK-47s bhi hain, MI-16 bhi hain, American guns bhi hain. Tau aap Enfield say khi mooqabla karain gaye?
Translation: ***In my interactions with the police, they themselves say that they have zero preparation and training in how to deal with terrorism. They have no weapons, training, cars. They have nothing. If you go to Khyber Pakhtunkhwa, [the police] are holding Enfield rifles, the ones from World War II. Terrorists, on***

⁴⁰ Shahadat Awan, in-person interview, Karachi, March 6, 2015.

⁴¹ Wajahat Ali, in-person interview, Islamabad, October 25, 2015.

⁴² Anonymous, in-person interview, Karachi, March 10, 2015.

*the other hand, have AK-47s, MI-16s, and even American guns. How can they [police] compete with an Enfield?*⁴³ (emphasis is mine)

My interviewees also openly criticized Pakistan’s counterterrorism narrative—or lack of such a coherent and consistent narrative that could be considered the “official” counterterrorism narrative. The criticism that struck me the most was the open discussion about how the state (mainly military) distinguishes between various militant groups. Since the APS attack (discussed in detail later in this chapter), the government has created the “jet black terrorist” (Gishkori 2015) category, which has been widely criticized domestically and internationally. Even though the Pakistani state has been distinguishing between militant groups since its involvement in the GWOT by being open to reconciliation and conducting peace talks with various militant groups, including factions involved in the TTP, this policy has created the problematic “bad” vs. “good” Taliban distinction. According to an anonymous police source, “‘good’ and ‘bad’ Taliban have ruined Pakistan.”⁴⁴ Similarly, an anonymous ATC judge stated:

This is not about measures and actions. **Our state establishment makes a distinction between “good terrorists” and “bad terrorists.”** For example, Hafiz Saeed openly collects funds, does everything openly. He is a declared terrorist and his organization is declared as terrorist by the UN, and we are obligated to follow the declaration of the UNO but we [the state establishment] say he’s a good terrorist. **He supports the military establishment. Same with the Haqqani Network, SSP, LeJ. They hide under the nose of the Rangers⁴⁵ and police. So terrorists who fight against the Army are “bad,” and those who are fighting for the military are “good.”**⁴⁶ (emphasis mine)

The “good” vs. “bad” militant distinction is critical as it simultaneously challenges the role of civil institutions in the state’s daily anti-terrorism and counterterrorism practices while reinforcing the pillars of Pakistan’s identity. For example, this distinction challenges how the

⁴³ Umer Farooq, in-person interview, Islamabad, October 19, 2015.

⁴⁴ Anonymous, in-person interview, Lahore, November 4, 2015.

⁴⁵ Rangers are a federal paramilitary organization that is primarily responsible for securing Pakistan’s internationally recognized borders. It comes under the control of the federal government, which is important to note for chapter six, where the law enforcement bureaucracy is outlined.

⁴⁶ Anonymous, in-person interview, Lahore, October 2, 2015.

police's ability in capturing militants and the judiciary's ability to try captured militants, which I will elaborate on in the following chapters. According to an anonymous police officer at NACTA:

Pakistan has cultivated its own militants: Pakistan has created a monster that it can't handle anymore. Saying that Pakistan can't handle it is a lot more realistic than saying that Pakistan is coordinating everything.⁴⁷ (emphasis is mine)

Also, the good vs. bad distinction is rooted in Pakistan's use of religion as a tool to justify sponsorship along with the geostrategic benefits it offers by facilitating the continuation of sponsorship. For example, the Pakistani state has actively targeted LeJ but not the Haqqani Network because while the former was involved in attacks against the state, the latter allows Pakistan to practice its policy of "strategic depth" in Pakistan, which I explain more in the next section of this chapter. The counterterrorism component of Pakistan's biographical narrative, therefore, consists of the state's sense of victimhood, military superiority in terms of counterterrorism operations, and the state's strategy of distinguishing between various militant groups.

In summary, these three narrative components—religious, democratic, and counterterrorism—are all centered on the two pillars of Pakistan's identity: serving as a defender of Islam and countering India. Collectively, these components have created Pakistan's overarching biographical narrative in which Pakistan continues to struggle with how to organize itself in a way that increases both its territorial and ontological security. Pakistan is struggling with finding a balance in which it simultaneously functions as a protector of Islam and defender against India while effectively conducting

⁴⁷ Anonymous, in-person interview, Islamabad, October 20, 2015.

its daily “anti-terrorism” and “counterterrorism” practices. In the rest of the chapter I focus on critical interruptions, and the role civil institutions have played in reinforcing the pillars of Pakistan’s identity and facilitating sponsorship of militant groups, such that state-sponsorship has become an institutionalized routine within Pakistan that increases its ontological security.

Section II. Critical Interruptions: How Militancy became a Self-Identity Need

As stated earlier, Pakistan has undergone five critical interruptions that have shaped its identity, self-identity needs, and ontological security. Critical interruptions are significant domestic and/or international events that force state agents to manipulate the state’s narratives to legitimize policies and convert some into institutionalized routines that meet the state’s self-identity needs. The aim of this section is to highlight the interaction of the state’s biographical narrative components that have converted these political events into critical interruptions and provided the context for civil institutions to develop their own routines related to the state’s anti-terrorism legal regime and daily counterterrorism practices.

II.I. The First Kashmir War

When Pakistan came into being on August 14, 1947, it did so amidst chaos. The partition marks the largest and bloodiest movement in modern history and its effects were unprecedented (Khan 2007). As Pakistan struggled to accommodate the massive influx of people from newly born India, it also tried to create its political institutions and national and foreign policy. Under the British Raj, India was home to approximately 500 princely states that were asked to choose to whom they wanted to belong after partition. Kashmir was an undecided princely state, where a Hindu Maharajah (Hari Singh) ruled the majority Muslim population. Both India and Pakistan

were interested in absorbing Kashmir because of its strategic location in the mountains and massive water sources. Pakistan, however, was much weaker than India and knew that it could not counter India via conventional military means. The Pakistani military first assisted local rebels in Kashmir in the hopes of starting a revolt that would force Kashmir to side with Pakistan. Pakistan then assisted militants outside Kashmir to launch an external attack. These events led to the first Kashmir war that began in October 1947 and ended with a UN ceasefire on January 1, 1948. The war resulted in one-third of the territory under Pakistan and the rest under India, divided by the UN-sponsored Line of Control (LoC) (Nawaz 2008, 42–75; Kapur and Ganguly 2012, 116–120).

The first Kashmir war is a critical interruption because it reinforces the pre-partition calls for independence that eventually became the pillars of Pakistan's identity: 1) Pakistan is country for Muslims, and hence, Islam is a unifying force that must be defended, and 2) India is a hostile neighbor that seeks Pakistan's annihilation. The first Kashmir war, therefore, marks the launch of Pakistan's religious, democratic, and counterterrorism narratives. For example, with respect to the religious component of the state's biographical narrative, Kashmir has evolved into a representation of the idea of Pakistan as a homeland for the Muslims of South Asia, in which India was increasingly seen as repressing Indian Muslims (Cohen 2004, 51–54; Sheikh 2009, 9). Similarly, within democratic and counterterrorism components, the battle over Kashmir represented a hostile external environment, which increased the need for having an overly powerful military establishment so that Pakistan could meet its geostrategic interests. As a newly independent state, territorial integrity and survival, was the main goal. And after two-thirds of Kashmir came under Indian control in 1948, countering India became central to Pakistan's survival. Even though Pakistan has suffered from political instability with numerous coups, it has

resulted in the emergence of the military as one of the only stable political institution in the country (Siddiqi 2007; Jalal 2014; Fair 2014). In its formative years, the expansion of executive—and military—power was closely linked to Kashmir and the threat India posed.

After another war in 1965, the almost-nuclear Kargil conflict in 1999, and various skirmishes over the LoC, the Kashmir issue remains unresolved today. Whether or not it remains a driver of Pakistan’s foreign policy is an ongoing debate. When I met with Amir Zia, Senior Vice President of Bol Media, in March 2015 in Karachi, and asked him if Kashmir would continue to remain a focal point, he said, “Yes, because we say that Muslim-majority parts of India should be parts of Pakistan and that’s our reason to be and of course Indians doesn’t [sic] want that.”⁴⁸ When I asked Asad Hashim, Al Jazeera’s political correspondent, the same question, he said it wasn’t Kashmir, but Afghanistan.⁴⁹ Regardless of Kashmir’s current status as a focal point and/or driver of foreign policy, I conclude that the first Kashmir war served as a starting point for Pakistan sponsorship of violent militants. During our interview in July 2015, Shuja Nawaz, of the Atlantic Council, said:

*Pakistan didn’t have actually established proxies in Kashmir. They infiltrated people and people were on the run from the moment they landed there because the locals were so scared that the Indians would seek retribution if they helped these Pakistani guerillas. **It was only after the Afghan war against the Soviets that I think the formalization of this as a strategic doctrine emerged.***⁵⁰
(emphasis is mine)

In my conceptualization of state-sponsorship, however, the active use of militant forces for recruitment is sponsorship because the state is directly—and actively—involved in using violent non-state actors. Furthermore, losing two-thirds of Kashmir in 1948 was not just a territorial blow to the new country, but an ideological one as well. The state felt entitled to Kashmir

⁴⁸ Amir Zia, in-person interview, Karachi, March 2, 2015.

⁴⁹ Asad Hashim, phone interview, Karachi, March 9, 2015.

⁵⁰ Shuja Nawaz, in-person interview, Washington, D.C., July 6, 2015.

because the population was majority Muslim, and hence practiced Islam. By losing Kashmir, the Pakistani state, especially the military, was faced with losing credibility as a state for Muslims and defender of Islam. The biographical narrative's components generated by the first Kashmir war, combined with Pakistan's internal political turmoil, laid the foundation for using and sponsoring militants in the name of nationalism, inevitably tying Pakistan's ontological security with Kashmir.

II.II. The 1970 Elections and Independence of Bangladesh

By 1971, Pakistan had been independent for 24 years. Like most postcolonial states, it was struggling with establishing a creating a political system and bureaucracy, stabilizing the economy, and safeguarding the population. Most significantly, Pakistan was still in the process of defining itself and establishing its self-identity. So when the country broke up in 1971, it created physical and ontological insecurity.

The civil war was a result of the December 7, 1970 elections. When Pakistan became independent, it had two wings: West Pakistan is today's Pakistan while East Pakistan became Bangladesh in 1971. Between 1956 and 1970, Pakistan had already experienced its first military coup and was operating under its second constitution (of 1962). Since independence, West Pakistan had sidelined East Pakistan: despite quotas in the civil service, Bengalis remained a minority in the central administration of the state and in the armed services. In 1966, the National Awami Party—the main political party of East Pakistan—presented a six-point plan to reorganize the central government and increase Bengali representation and participation. Military dictator General Ayub Khan responded by repression, arresting the leader of the Awami Party Mujibur Rahman and others, and putting Rahman on trial for allegedly buying arms from India (the Agartala trial of 1968). Rahman's case was not only dismissed for lack of evidence but

increased his popularity amongst the Bengali population exponentially (Jaffrelot 2015, 2754–2804; Shah 2014, 102). This case set the tone for the judicial routine of expanding executive powers under emergency rule (see chapter five).

General Yahya Khan replaced General Ayub Khan in 1969. General Yayha Khan repealed the Constitution and declared that the government elected after the general elections of 1970 would write a new constitution. In the meantime, he reorganized the National Assembly (NA), basing representation on population rather than parity. This gave East Pakistan 162 seats out of 313.⁵¹ The Awami League won 160 seats in East Pakistan, gaining a majority in the NA. But the PPP had won the majority in West Pakistan, and considered that a national victory. A refusal by both parties to reach a compromise made General Yahya Khan dissolve the civilian cabinet and postpone the NA indefinitely. This sparked widespread riots in East Pakistan that worsened when General Tikka Khan, commander of the Pakistani forces in East Pakistan, launched Operation Searchlight whose goal was to kill the rioters. People fled to India to avoid the violence, resulting in Indian involvement that eventually led to East Pakistan's secession. General Yahya Khan resigned on December 20, 1971 and PPP's Bhutto took over as prime minister (Nawaz 2008, 249–319; Jaffrelot 2015, 2804–2881).

Events leading up to the creation of Bangladesh and the post-civil war environment play a pivotal role in the evolution of Pakistan's biographical narrative and its religious, democratic, and counterterrorism components. Islam had served as a rallying cry during partition and was considering a unifying force. But the civil war and Bangladesh's independence showed how Islam was not enough to overcome cultural, ethnic, and linguistic differences (Jaffrelot 2015, 2875–2877). In the post-civil war period, religious nationalism clashed with ethnic nationalism: as Sindhis, Balochis, and Pashtuns all made territorial and representational demands on the state,

⁵¹ 6 seats were reserved for women in West Pakistan while 7 were reserved in East Pakistan.

the notion that Islam was a unifying force and that Pakistan served as its defender was being challenged. Territorial claims and representational demands began to be seen as anti-state and anti-national—and anti-Islam, which became evident when Bhutto accused his political rival Wali Khan of treason in 1973 (see chapter five). As Pakistan struggled with maintaining its pre-partition link with Islam, it began to focus on the meaning of being Muslim, where the definition of a Muslim remained a contested issue⁵² while Islam was declared the official state religion.⁵³ Soon after partition, as both West and East Pakistan had filled with migrants and refugees, differences emerged on how Islam was practiced—or perceived to be practiced. Bengalis were viewed as secular, and their culture to be overly influenced by Hinduism rather than Islam (Sheikh 2009, 53). In the post-war postmortem, West Pakistanis concluded that Bengalis had not just betrayed Pakistan but Islam, and the evidence for that lay in how other fellow Muslim countries had not defended East Pakistan (Cohen 2004, 169). The notion that East Pakistan betrayed West Pakistan—and by extension Islam—implies that East Pakistani/Bengali identity was not Islamic enough. And since Bengalis were more open to liberal, secular ideologies, West Pakistan labeled them as secular, meaning anti-Islam, and thus violating West Pakistan's self-identity need of serving as Islam's defender.

In the context of the Pakistani biographical narrative's democratic component and its struggle with balancing civil–military relations, Bhutto played a pivotal role. Newly elected as prime minister in the post–civil war political climate, Bhutto had a tendency to ignore democratic norms, and declared himself as a martial law administrator, simultaneously holding civil and military power (Newberg 1995, 146). Bhutto became more and more authoritarian with

⁵²Article 260(3)(a) of the 1973 Constitution defines “Muslim” as one who believes in the unity and oneness of Allah and in the absolute and unqualified finality of the Prophethood and those “communities” that do not are considered non-Muslim.

⁵³ Article 2 of constitution.

time (Haqqani 2005, 102). A judicial commission that was set up to investigate the 1971 war, called the Hamoodur Rahman Commission Report (1971), concluded that continued military rule had weakened civilian institutions, which ultimately led to the country breaking apart. Though the report was highly critical of the military, it was careful in addressing civil–military imbalances and the judiciary’s power in defining the legislative and executive’s powers under emergency rule (see chapter five). The army continued to remain operationally superior than the civilian law enforcement agencies, especially the police, which is not uncommon in postcolonial states. But Bhutto did not trust the army and created a paramilitary organization called the Federal Security Force (FSF) who would be responsible for the prime minister’s security, which was not just a snub to the army (Nawaz 2008, 338–339) but also the beginning of the turf war between the army and the police that continues today. Even though the FSF was disbanded by General Zia ul Haq in 1977 (Arain, Arain, and Manzoor 2014, 69) and was never recreated, it weakened the institution of the police, making it vulnerable to politicization and resistant to reforms (see chapter six). Bangladesh’s independence reinforced Pakistan’s sense of victimhood at the hands of India, reinforcing fears of Indian aggression and the counterterrorism component of the state’s biographical narrative. By November 1971, India was providing direct cover to Bengali *Mukti Bahini* (Liberation Army) along with arms and ammunition, which enabled it to launch a full-scale attack. On December 16, 1971, the Pakistani Army surrendered (Jalal 2014, 174; Nawaz 2008, 306–307). The army’s failure was a blow to the institution but reinforced rhetoric that favored having a strong military that could counter future threats of Indian aggression.

Bangladesh’s secession made Bhutto paranoid about secessionist movements, ethnic tensions, and anything considered “anti-national.” On February 1, 1975, the parliament passed

the Suppression of Terrorist Activities (Special Courts) Act, 1975.⁵⁴ This is the first bill that dealt with terrorism directly. Section 4 states that the accused could be tried while absent. Section 6 gave these special courts the same power as high courts, which was a clear constitutional violation. And Section 8 put the burden of proof of innocence on the accused. The parliamentary debates varied from administrative concerns to concerns regarding human rights violations to objections on the scope of the judiciary, to what “anti-nationalist” means for an Islamic country. But the consensus was that such a law was needed to curb anti-state activities that threatened the very existence of Pakistan. For example, Senator Abdul Qaiyum Khan of the Pakistan Muslim League, who supported the bill, said:

Before the year 1947, it was openly stated that the Pathans and Hindus constitute one nation and now when Pakistan has come into being it is said that the Pathans, the Punjabis, the Baluchis and Sindhis constitute four nations—four nations. People who believe in one God, in one Prophet (peace be upon him), in one way of life, they constitute four nations? Sir, who can deny that there are elements in this country who are out to disintegrate this country? Who can deny that are elements in this country who are moving hand in glove with our enemies outside this country, who are always ready to hand over part of our country to some other country? Now, if the Opposition were the Government in power, and if we were in Opposition, I ask them that if we had indulged in diabolical speeches and outrageous speeches and if we had attacked the integrity of Pakistan in this way, would they not have taken action against the people who rebel against Pakistan?⁵⁵

Within parliament, there were concerns related to how this law could be abused, and how a ruling party could charge its opponents under this law for being “anti-national.” Yet, it passed, creating a parallel judicial system for anti-national—or terrorist—activities. I consider the creation of parallel court systems in response to critical interruptions as a legislative routine, and

⁵⁴ Suppression of Terrorist Activities (Special Courts) Act, 1975. Promulgated on February 1, 1975 and available at <https://www.ma-law.org.pk/pdf/law/SUPPRESSION%20OF%20TERRORIST%20ACTIVITIES.pdf>.

⁵⁵ The Senate Debates of Pakistan. Official Report, vol. 1, no. 1. January 16, 1974, p. 28.

the legitimization of these parallel systems by the judiciary as a judicial routine, which I discuss in detail in chapters four and five respectively.

II.III Soviet Invasion of Afghanistan and the *Mujahedeen*

The Cold War is a critical interruption that altered the structure of the international system, deeply affecting Pakistan. As Afghanistan's neighbor, Pakistan found itself at the center of the U.S.–Soviet rivalry once the Soviet Union invaded Afghanistan. It is well known that in 1980, U.S. funding and Pakistani logistical support created the *mujahedeen*, a group of anti-Soviet tribal warlords funded by the United States and Saudi Arabia, and directed by Pakistan's intelligence service, the ISI, to fight Soviet forces in Afghanistan. *Mujahedeen* is the plural of *mujahid*, a person who is conducting *jihad*, which is loosely defined as struggle in the name of Islam. These tribal groups claimed that they were conducting *jihad* against the godless, communist Soviets, and hence, were dubbed the *mujahedeen*.⁵⁶ After almost a decade of unlimited funding and arms, the *mujahedeen* were able to drive Soviet forces out of Afghanistan. As the Soviet Union collapsed and the Cold War ended, so did support for the *mujahedeen*. Pakistan now had well-armed, religiously motivated, Sunni-dominated militants—that were essentially unemployed after the Cold War.

Scholars disagree on how Pakistan used the *mujahedeen* in the post–Cold War world. Some argue that the Pakistani state used them to bolster the anti-Indian insurgency in Kashmir and then to gain favor with the United States. In 1996, as the Taliban (the incarnation of the *mujahedeen* that stayed) rose to power in Afghanistan, Pakistan's recognition and support for them grew as a way to dispel the tensions with Afghanistan on the Durand Line—the disputed border between the two countries (Cohen 2002; Jones 2002; Nasr 2004; Roy 2004; Ganguly 2004; Abbas 2004; Haqqani 2005; Rashid 2008; Hussain 2008). Others argue that the creation

⁵⁶ It remains unclear who used the word *mujahedeen* to describe these rebel groups.

and use of the *mujahedeen* is not a byproduct of the Cold War or a half-baked strategy to support insurgencies in Kashmir or the Taliban. Instead it is the focal point of the Pakistani state's grand strategy of using *jihad* to meet its geostrategic goals and increase its security (Fair 2011; Fair 2014; Kapur and Ganguly 2012; Tankel 2016). Paul Kapur and Sumit Ganguly call this the "jihad paradox" because the circumstances that made the use of *jihad* beneficial no longer exist. Instead, this policy has become dangerous, and Pakistan will have to abandon it to avoid more internal turmoil (Kapur and Ganguly 2012, 113–114).

Both assessments are correct: Pakistan did use Pashtun rebels in the first Kashmir war, and did utilize the *mujahedeen* in its proxy war against India. Also, the military establishment has played a central role in Pakistan's use of militant groups as proxies. Yet, it is too simplistic to blame the Pakistani military's constant overreach and hunger for political power as reasons for continued sponsorship of the *mujahedeen*. Though it may be satisfactory to blame the United States and the Soviet Union for converting Pakistan into a theatre for geopolitical power plays, it is an inadequate explanation, as it does not address Pakistan's internal dynamics or the role of civil institutions in the sponsorship of the *mujahedeen*. Like some postcolonial states, Pakistan suffers from a civil–military imbalance in favor of the military. Studying state-sponsorship of militant groups, however, involves more than studying this imbalance. Instead, our focus should be on how various imbalances become embedded in the state's institutions, inevitably informing the state's political identity. The state's biographical narrative and institutionalized routines drive a state's sense of Self and security—more specifically self-identity needs that increases ontological security. The Cold War and the creation of the *mujahedeen*, therefore, is a critical interruption that facilitated the formation of state-sponsorship of militant groups into an institutionalized routine.

Pakistan's Cold War interactions and relationships highlight the evolution of the state's biographical narrative around the pillars of its identity—defender of Islam and counter of Indian aggression. Religious narratives are the most prominent. Zia had a vision of converting Pakistan into a truly “Islamic” state, which translated into an extremist version of Sunni Islam (Ahmed 2006, 126)—and Cold War geopolitics gave him the capacity to do so. His alliance with radical Deobandi political parties and funding of Sunni militant groups allowed him to effectively suppress any progressive discourses. With his promise of *roti, kapara aur makan* (food, clothing, and shelter), Bhutto and the PPP had invigorated the working class, the youth, and the progressive Left in the 1970s. Bhutto even called his ideology “Islamic Socialism.” Zia feared an alliance between the Soviets and the Pakistani Left, and consequently used his political mandate to curb all rhetoric and activities that he considered were in opposition to Islam (Toor 2011, 131–138). Furthermore, the Soviet invasion was criticized by most of the Muslim countries. Seeing an opportunity to boost Pakistan's image as an Islamic country, Zia insisted that the United States fund the *mujahedeen* through the Pakistani Army and the ISI (Coll 2004, 238; Nawaz 2008, 369–379; Shah 2014, 2752–2757), providing Zia an opportunity to use Islam for political gain. Pakistan was also developing its nuclear program and was hoping to launch the first “Islamic bomb” (Yasmeen 2001)—a fitting name for a state that considers itself a defender of Islam. The nuclear program also served as a deterrent against India, who was also in the midst of developing its nuclear program.

Zia's use of Islam as a tool for domestic reform and geopolitical gain also negatively effected Pakistan's democraticization. While Bhutto had begun the process of Islamization by declaring Islam as the official religion, defining a “Muslim” in the constitution, and creating a variety of “Islamic” laws, Zia ran with it. Mumtaz Ahmad (1988) refers to policies created by

Zia as “shariatization,” the process by which the state interpreted Islam in opposition to the opposition PPP (236–239). Zia’s Islamization process began on December 2, 1978 and he called it Nizam-i-Mustafa.⁵⁷ Some of his Islamic provisions include the Hudood Ordinances,⁵⁸ blasphemy laws,⁵⁹ and the Federal Shariat Court.⁶⁰

As is common amongst military rulers, Zia detested the political system and constantly postponed elections. Though he did not ban any political party, when elections were held in February 1985, no party was allowed to nominate candidates (Khan 2009, 509).⁶¹ He saw himself as the only legitimate leader, and as the *Amir ul Momineen* (leader of the faithful) that did not need a parliament to help him govern (Nawaz 2008, 380). After being elected president in a referendum, he introduced the Eighth Amendment to the constitution that transferred the prime minister’s power to the president, allowed the president to make key appointments across branches of government, and gave the president the right to dissolve the NA at his discretion (Khan 2009, 509–518).⁶² Such expansion of executive power was seen again under General Pervez Musharraf from 1999–2007, and expanding executive powers has become a legislative routine in response to critical interruptions (see chapter four).

⁵⁷ See “General Mohammad Zia ul Haq: Address to the Nation. Measure to Enforce Nizam-e-Islam.” Pakistan Directorate of Films and Publications. Ministry of Information and Broadcasting. Islamabad, December 1, 1978.

⁵⁸ Enacted in 1977, the Hudood Ordinances refers to punishments added to the Penal Code regarding adultery and fornication. Punishments included whipping, stoning to death, and amputations. Parts of the Ordinances have been revised under the Women’s Protection Bill, 2006.

⁵⁹ The “blasphemy laws” refer to Chapter XV of the Penal Code of Pakistan. In 1984, Zia made it illegal to defile the Quran, use derogatory language toward the Prophet (P.B.U.H.), and trespass on burial places. More significantly, he made it illegal for the Ahmadiyya Community to practice their faith in public. The laws are highly politicized and misused. They remain in effect today.

⁶⁰ In May 1980, he established the Federal Shariat Court (FSC). The FSC has been given original and appellate jurisdiction and the authority to examine any existing law and ensure that it is not repugnant to Islam on its own motion or through a petition by a citizen or the government. If the FSC rules that a law is indeed repugnant, the government is required to amend the law and bring it in conformity with Islamic injunctions. The Shariat Appellate Branch of the Supreme Court handles appeals of FSC decisions. The FSC also has jurisdiction over criminal courts and its decisions are binding on High Courts and lower courts (Talpur 2010, 83–85).

⁶¹ General Zia actively targeted the PPP and tried to reduce its popularity. But he was not very successful (Shah 2014, 2769–2785).

⁶² Constitution (Eighth Amendment) Act, 1985. Promulgated on November 9, 1985. Available here <http://www.pakistani.org/pakistan/constitution/amendments/8amendment.html>.

The army and ISI's capacity for domestic surveillance and political repression grew exponentially due to U.S. sponsorship of the *mujahedeen*. This increased capacity allowed Zia to threaten, undermine, and even shut down opposition, labor and trade unions, and any other activities that could be labeled "anti-national" (Shah 2014, 2761–2769). The police, on the other hand, was effectively ignored. Interference and politicization continued, converting the police into an almost-administrative service (Arain, Arain, and Manzoor 2014, 69–74). Neglecting the police as an institution facilitated its politicization, converting its reliance on politicization into a consistent institutional response to critical interruptions that contributed to the legitimization and routinization of state-sponsorship of militant groups (see chapter six).

Analyzing the funding of the *mujahedeen* reveals that before the Soviet invasion and Zia's rule, *madrassas* were not central to Pakistan's geopolitics. The use of *jihad*, however, converted them into a political tool by which the United States and Pakistan both could meet their geostrategic needs. Zia detested the *ulema* (religious scholars/clerics) that comprised the Sunni-majority religious establishment of the state, and initially saw little value in their activities. Instead, he favored the Jamaat-i-Islami (JI), Pakistan's premier religious party because they were both ideologically aligned—they both wanted to begin an Islamization process. JI became Zia's biggest supporter and closet partner in U.S.-sponsored militancy in Afghanistan (International Crisis Group 2003, 8). His alliance with Jamiat Ulema-e-Islam (JUI), a revivalist Deobandi political party, however, allowed for *madrassas* to be used as recruitment centers for the *jihad* in Afghanistan. JUI used its established network of *madrassas* to expand into NWFP (now Khyber Pakhtunkhwa) and Balochistan (Sheikh 2009, 112; Shah 2014, 2745–2752). From Mazhar Abbas, the *madrassas* highlight the complexity of the U.S.–Pakistan relationship, and how it shaped Pakistan's identity and self-identity needs. He said:

*If you ask any religious party leader and if you ask any madrassa leader it [sic] said that we have not given a call for jihad in Afghanistan. **We were asked to send your students for jihad.** [We were] approached by the Pakistani establishment through Americans.⁶³ (emphasis mine)*

U.S. and Saudi funding of the *mujahedeen* also solidified Pakistan's civil–military imbalance, strongly influencing democratic component of the state's biographical narrative. Corruption was—and is—rampant in the country. Though the funds were primarily for operationally supporting the *mujahedeen*, they were channeled through the military. Flushed with cash, the military began to expand in the economy, enriching its senior officers, and itself as an institution (Siddiqi 2007, 139–151; Constable 2011, 1673–2316). The military establishment's material power and political alliances ensured that the military would maintain its place as the strongest institution in the country. Finally, Zia's alliance—and partiality—for Sunni-dominated political parties like JI and JUI, and Deobandi *madrassas* caused a natural preference for creating and aiding Sunni militants as tools to counter archrival India.

After Zia's death in 1988, Benazir Bhutto, the leader of PPP and Bhutto's eldest daughter, won the elections and became prime minister. The Soviet withdrawal from Afghanistan resulted in the end of the Cold War. Amidst the changed international order, Pakistan found itself abandoned by its key ally, the United States. As the main coordinator and trainer of the *mujahedeen*, the Pakistani state felt that it had “won the right to a regime of its choice in Kabul” (Weinbaum 1991, 499). There is debate on when exactly Pakistan's strategy toward Afghanistan, called *strategic depth*, began (Fair 2014, 103–135). The core of the strategy is maintaining influence over the Afghani government to deter it from sponsoring Pakistan's insurgent movements, such as those brewing in Balochistan and the tribal areas in the North, and

⁶³ Mazhar Abbas, in-person interview, Karachi, February 23, 2015.

to counter India's plans for regional domination. Democratically elected Benazir's support of the Taliban during her second term (1993–1996) stemmed from this logic. Internally, Pakistani institutions were weak, and the state flooded with Afghani refugees⁶⁴—now former *mujahedeen*. Ethnic tensions grew exponentially in the 1990s, partly driven by the influx of refugees and the shadow economy of heroin and arms that developed in Afghanistan and was protected by Pakistan's ISI (Jalal 1990, 326). Karachi was the epicenter of ethnic violence between the Pashtuns and the *mohajirs* (Urdu-speaking migrants from India) (Khan, N 2010; Samad 2004) and started the clientelistic evolution of political parties, another legislative routine to critical interruptions (see chapter four). Unable to control the violence in Karachi and other parts of Sindh, Benazir's government was dismissed by the president on August 6, 1990 (Khan, H. 2009, 554). Nawaz Sharif of Pakistan Muslim League (PML) was elected for his first term.

The Karachi violence put into the play all three narrative components—religious, democratic, and counterterrorism—and hence, buttressed the state's identity as a defender of Islam and guard against Indian aggression by being the cause of martial law within Sindh that began various legislative, judicial, and police practices that ultimately assisted in the routinization of sponsorship (described in chapters four, five, and six respectively). For example, the Sharif government responded to Karachi's violence by ordering the Rangers, a paramilitary organization, to enforce law and order with the help of the police. The government also attempted to buttress the Suppression of Terrorist Activities (Special Courts) Act of 1975 by amending the Special Courts for Speedy Trial Ordinance, 1987 and Terrorist-Affected Areas (Special Courts) Ordinance of 1990, and introducing the Terrorist-Affected Areas (Special Courts) Act, 1992—which highlights the legislative propensity to expand executive powers in

⁶⁴ Approximately 3 million Afghani refugees entered Pakistan. The state did not attempt to control them or resettle them (Jalal 2014, 234).

times of emergency (see chapter four). Throughout the mid-1990s, conviction rates of these special courts remained low. In order to increase law enforcement's capacity during his second term, Sharif and his government dismissed these older laws and introduced the Anti-Terrorism Act of 1997 (ATA), which forms the basis for Pakistan's current anti-terrorism legal regime (Research Society of International Law 2013, 16–20).⁶⁵ The ATA established special courts—the ATCS—for those charged with terrorism, essentially creating a parallel judicial system to Pakistan's criminal justice courts. Creating parallel court structures is also a legislative routine to critical interruptions (see chapter four). The ATA will be analyzed in more detail in the next chapter but it is important to note for now that it was a problematic piece of legislation that was contested several times in the courts and has undergone numerous amendments.

II.IV “9/11” and GWOT

Similar to the Cold War, the GWOT is a major event (and a critical interruption) that continues to influence the current international system. After the September 11, 2001 attacks and the subsequent GWOT, Pakistan found itself at the center of the conflict that involved the United States. Pakistan was under military rule for a fourth time under Musharraf, who came to power via a coup in 1999, ousting Prime Minister Sharif. Pakistan's relationship with India was especially tense after the Kargil conflict on the LoC, in which the new nuclear countries had a standoff from May–July 1999. The ISI had maintained ties with various former *mujahedeen*, who at this point had developed networks of their own to conduct their *jihad*. Pakistan also maintained good relations with the Taliban regime in Afghanistan (Fair 2014, 127–129). After the attacks, the United States famously asked Pakistan to choose between itself and the Taliban. Musharraf chose the former (Musharraf 2006, 3175–3185).

⁶⁵ Benazir Bhutto was prime minister twice: 1988–1990 and then 1993–1996. Nawaz Sharif is currently serving his third term as prime minister. Previous terms were: 1990–1993 and 1997–1999 (he was ousted from power by his COAS General Pervez Musharraf in 1999).

The United States demanded that Pakistan: 1) stop al Qaeda operatives at its borders and end all logistical support for Osama bin Laden; 2) grant all landing and flight rights to the United States for all necessary intelligence and military operations; 3) give territorial access to U.S. and other allied forces to militarily counter al Qaeda; 4) share intelligence with the United States; 5) publically condemn the attacks; 6) discontinue all fuel shipments and restrict recruits from crossing into Afghanistan; and 7) break relations with the Taliban if evidence finds that the Taliban and bin Laden were involved in the attacks (*The 9/11 Report 2004*: 473–474). Pakistan agreed to all of these demands (*The 9/11 Report 2004*: 474), though in his memoir Musharraf (2005) states that he did not (3202–3233). Regardless, U.S. launched its Operation Enduring Freedom (OEF) on October 7, 2001. Before the operation, Pakistan unsuccessfully tried to convince the Taliban to hand over bin Laden to the Americans. After the operation launched, Musharraf became a target for the Afghan Taliban and al Qaeda as he was seen as assisting an attack on a fellow Muslim state (Nawaz 2008, 544). OEF officially ended on December 28, 2014.⁶⁶

Over the years, evidence has emerged on how Pakistan assisted the Taliban despite its agreement with the United States. For example: the Pakistan Army evacuated the Taliban leadership and its allies from Kunduz between November and December 2001 (Filkins and Gall 2001). After nine years of searching, bin Laden was found living in a compound with his family just outside Abbottabad in Pakistan. Bin Laden was killed by a clandestine U.S. raid on May 2, 2011 (Al Jazeera 2011)—a raid that Pakistan claimed to be ignorant of (Haqqani 2015). In June 2011, the Asif Ali Zardari’s (PPP) administration (elected in 2008 after General Musharraf’s downfall) requested the Supreme Court to investigate the events that led up to the raid. After two

⁶⁶ Discussing the impact of U.S. nation-building initiatives and military operations on Afghanistan and the region lie outside the scope of this dissertation.

years, the Abbottabad Commission submitted its report that was leaked by Al Jazeera in July 2013. The report was 700 pages long, included 200 recommendations and testimonies from over 300 witnesses—and held both the Pakistani government and military responsible for incompetence and complicity (Hashim 2013).

Pakistan's role in GWOT continues to influence its identity as a defender of Islam and protector against Indian aggression by having mixed effects on its democratic processes, its perception of the role of Islam within the state, and geostrategic interests. For example, to remain in power, Musharraf held a referendum on April 30, 2002. The ballot asked if the public wanted Musharraf to be president for the next five years in order to maintain democracy, eliminate extremism, and stability achieved via his reforms. After winning in what is called the country's most fraudulent referendum, Musharraf then went on to amend the constitution. Parliament passed the Seventeenth Amendment Act that changed numerous articles in the Constitution—changes that were upheld by the Supreme Court (Khan, H. 2009, 665–683), highlighting the judicial complicity in legitimizing the expansion of executive power (see chapter five). In the constitution, Musharraf had extended the tenure of judges in both the High Courts and the Supreme Court to curry favor. The seemingly close relationship between the military and the judiciary alarmed Pakistan's legal community, who raised concerns regarding the judiciary's independence. Musharraf was successful in maintaining close ties with the Supreme Court, which refused to make any controversial decisions till Iftikhar Muhammad Chaudhry became chief justice in 2005. When Musharraf suspended Chaudhry on allegations of misusing power, lawyers all over the country launched what became known as the Lawyer's Movement. After massive protests, Musharraf was forced to reinstate Chaudhry, repeal emergency rule, and hold elections (Phelps 2009; Shafqat 2017). In 2008, Asif Ali Zardari of the PPP came to power.

Though Musharraf is dubbed as the “liberal autocrat,” civilian institutions, especially the judiciary, eroded under his leadership. Under the subsequent Zardari and Sharif administrations, Pakistan’s legislative branch has steadily expanded executive powers via anti-terrorism laws while the criminal justice system and the ATCs remain weak.

The religious component of Pakistan’s biographical narrative was at the forefront as GWOT began. Musharraf was seen as being complicit in attacking another Muslim country. According to journalist Mehmood Shaam,⁶⁷ *fatwas*⁶⁸ were issued against him, declaring him as *murtid* (apostate), a crime punishable by death.⁶⁹ Pakistani soldiers also had their doubts, and felt that they were attacking their own brethren, especially those soldiers who hailed from the tribal areas. Jane Perlez (2009) of the *New York Times* reported:

Even before the insurgency has been fully engaged, however, **many Pakistanis have concluded that reaching an accommodation with the militants is preferable to fighting them.** Some, including mid-ranking soldiers, **choose to see the militants not as the enemy, but as fellow Muslims who are deserving of greater sympathy than are the American aims.** (emphasis mine)

Pakistani soldiers’ struggle with countering and fighting militants who they considered as their Muslim brothers also had an impact on their ability to conduct effective counterinsurgency operations. Conversely, the police actually improved. Musharraf passed the Police Order of 2002, which aimed to reduce political interference and increase police autonomy, promoting institutional stability, and highlighting how the state used the democratic component of the biographical narrative to justify legal changes in the face of a critical interruption—in this case, GWOT. This was the first time that the police was a focus rather than the army, paramilitary forces, and the ISI. Though the Order was eventually repealed, it created the incentive to

⁶⁷ Mehmood Shaam, in-person interview, Karachi, March 12, 2015.

⁶⁸ *Fatwa* is a legal ruling in Islamic jurisprudence, and made by a recognized and trained Islamic scholar.

⁶⁹ Musharraf survived two assassination attempts.

militarize the police (see chapter six). By the time GWOT began, however, the *madrassas* that had been funded during the Cold War had mushroomed. Jessica Stern (2000) was one of the first scholars to argue that *madrassas* were jihadi recruitment centers. International calls for controlling these *madrassas* and addressing roots of extremism emerged in the mid-2000s that continues today with various international and domestic non-governmental organizations involved in CVE programs. Examples of such programs are Center for Social Education and Development, run by Mubashir Akram, and the Peace and Education Foundation, run by Rashad Bokhari, both of whom I interviewed in Islamabad.

While Musharraf's constitutional amendments increased the powers of the military, he personally tried to legitimize his position as both COAS and president by having a close relationship with the Supreme Court. Musharraf's relationship with the judiciary weakened the institution, increasing the likelihood of it legitimizing state actions such as the state's sponsorship of militant groups. This repeats what occurred during the Cold War under Zia's regime. Sunni-dominated Deobandi militant groups and Kashmiri militant *jihadi* groups continued to be preferred under Musharraf (Fair 2014, 243–252). The state, however, draws a line against those groups that threaten to attack it. For example: in 2007, the military launched Operation Sunrise against the students of the *Jamia Hafsa madrassah* that were housed in Islamabad's Lal Masjid (Red Mosque), who had staged violent protests, attacked Army Rangers, and openly called for *sharia* law to be imposed on the state. The siege lasted from July 3–11 and resulted in the capture of over 50 militants and 154 deaths. This siege is often used as an example of the internal threat Pakistan faces.

The effects of GWOT are ongoing, and state agents are constantly using the religious, democratic, and counterterrorism components of the biographical narrative to legitimize various

practices, procedures, and codes of conduct in the name of countering terrorist and militant groups. Throughout this war, Pakistan has had tense relations with India and Afghanistan both. In 2011, LeT and JeM militants—militant groups based in Pakistan—attacked the Indian parliament. India demanded that Pakistan take actions against these groups. Again in 2008, LeT launched a series of terrorist attacks in Mumbai, reigniting tension between India and Pakistan. In the meantime, Afghanistan accused Pakistan of continuously interfering in its domestic affairs. Relations between the United States and Pakistan have also deteriorated.⁷⁰ In this international climate, Pakistan continues to struggle with balancing its policy of sponsoring violent militant groups while countering them to reduce domestic attacks, which has affected both pillars of its identity: while sponsorship of militant groups allows the Pakistani state to defend its version of Islam (and Muslims practicing that version) and counter Indian aggression toward itself and Indian plans to dominate the region, countering militant groups that attack it is forcing the state to realize that it may be a weak defender of Islam, and weak deterrent against Indian aggression and regional domination.

II.V APS Attack and National Action Plan

On December 16, 2014, seven militants dressed in Pakistan Army uniforms, entered the APS in Peshawar and killed 130 children and injured many more (Boone and MacAskill 2014). TTP claimed responsibility, stating that the attack was in retaliation for the military's *Zarb-e-Azb* counterinsurgency operation in North Waziristan, which began in June 2014 (Khan, T 2014). The sheer brutality by which the TTP had killed students and teachers, combined with warnings of future attacks (Hasan, S.S. 2014), stunned the public and the government alike. Though this was not the first attack on a school—approximately 1000 schools have been attacked since 2010

⁷⁰ The Raymond Davis case played a central role in the demise of the U.S.–Pakistan relationship in 2009. See: <https://mobile.nytimes.com/2013/04/14/magazine/raymond-davis-pakistan.html>.

(Frenkel 2014)—the targeting of an Army-run school was a blatant attack on the Army itself. And Gen. Raheel Sharif vowed revenge.

Institutionally, the response was instant. The military establishment already enjoyed a great deal of operational power due to legislation passed between 2011 and 2014 (see chapter four). But the National Action Plan (NAP), unveiled by Prime Minister Sharif on December 24, 2014, expanded executive powers even more. The most important aspect of the Plan was the establishment of “special trial courts” that would be run by the military (Manan 2014). The judiciary has struck down past military courts (see chapter five) but this time the Parliament changed the Constitution, granting legitimacy to these military tribunals. Article 175 of the Constitution states that the judiciary will be separate from the executive. The 21st Amendment, passed on January 6, 2015, discarded this separation of powers for those charged with terrorism, granting jurisdiction to the military and applying court martial rules to those charged with terrorism (Hashim 2015; Nauman 2015). In other words, civilians charged with terrorism would be subjected to the military’s court martial procedure in military courts that are not open to the public. In April 2015, the Supreme Court ruled that the changes to the constitution were constitutional (Omer 2015). These special military courts were due to expire in January 2017 but have been expanded to another two years (Hashim 2017). The police expanded as well: special Counter Terrorism Forces (CTFs) of 5000 officers would be established and deployed nationwide (Manan 2014). National Counter Terrorism Authority) NACTA was also activated to oversee and coordinate counterterrorism efforts across all provinces.

The army conducted *Zarb-e-Azb*, a counterinsurgency operation in North Waziristan from June 2014 till April 2016. Hilal, the armed forces’ magazine, documented the operation’s successes in a variety of articles emphasizing its success and the army’s superior ability in

countering militant groups threatening the state, sidelining any role the police may have played in dealing with those captured. In February 2017, the army launched *Radd-ul-Fasaad* with local law enforcement agencies, in order to weed out sleeper cells and disarm militant groups (Dawn 2017). Though police capacity has increased over time but it remains unmatched to that of the army's. As such, one of the police responses to critical interruptions has been to use both democratic and counterterrorism narrative components and accept parallel investigation structures (see chapter six). For example, when discussing the growing presence of the Rangers in Karachi, Shahadat Awan stated:

Karachi mein, Ranger, Ranger nahin hai. Balqey jo us ko police keh iqtiraat deeye gaye hain, matlab as a police Ranger kaam karahi hai. Lekin hum ney apni police ko reinforce nahin kiya. Aur Ranger ko hum palte rahey and wohee kartey rahay hain. Translation: In Karachi, Rangers do not function as Rangers but more like police. They are doing the work of the police. **And we [the government] have not reinforced our police but we continue to nurture the Rangers, and will continue to do so.**⁷¹ (emphasis is mine)

His criticism of the state preferring another a federal law enforcement agency to the police was similarly expressed by journalist Saba Imtiaz. When discussing the growing presence of Rangers in Sindh and more recently in Punjab, journalist Saba Imtiaz pointed to the capacity wars between the army and the police:

*I think in an ideal world, the military would love, or like the Rangers would love, nothing more than to see the police obsolete. And it's like the law squeezing them out of the picture. Obviously the police does exert itself. At the end of the day, the police does have an established structure. There is a police station in every neighborhood. The police are not foreigners who have been brought in here. They exist as part of the city's structure. You can't eradicate them. Even if you ignore them, even if nobody goes to them, the police still has to do some work... [t]he perception is that they [Rangers] are better and the perception is that the police is useless and can't do anything.*⁷² (emphasis is mine)

⁷¹ Shahadat Awan, in-person interview, Karachi, March 6, 2015.

⁷² Saba Imtiaz, Skype interview, April 17, 2015, Washington, D.C.

According to Sarah Eleazar, a reporter with the *Express Tribune*, the NAP is targeting Balochi insurgents “and anyone else who disagrees with the government’s line, which is quite similar to Zia’s ... policies.”⁷³ For the Pakistani state, secessionist movements, or any protests that resemble secessionist movements, continue to be seen not only as a territorial threat but also as an ideological one, in which the idea of Islam as a unifying force is threatened—and its identity as a defender of Islam is weakened. In other words, ethnic and religious tensions go hand-in-hand within Pakistan. The threat posed by secessionist movements also reinforces Pakistan’s victimhood complex, in which it sees itself as a victim of militancy, Indian aggression, and U.S. pressure, especially because of the drone program (Shah 2015, 194–230). And victimhood is reinforced every time there is an attack (Shah, B. 2015; Dhume 2011), which in turn emphasizes counterterrorism narratives within Pakistan’s biographical narrative.

Considered as one of the primary sources of extremism, *madrassas* came under attack again, highlighting their troublesome relationship with the state. The NAP calls for registering all *madrassas*, and extensive monitoring, regulation, and reform (Manan 2014). A narrow focus on extremism within Pakistan takes attention away from a more pressing issue: reforming the education system. It also encourages continuing militarization of the police (see chapter six). And strengthens rhetoric that views the army as Pakistan’s savior. For example, the establishment of the military courts via the 21st Amendment to the constitution has expanded the army’s power to a new realm: civilian jurisprudence. The continuation of the military courts encourages the judicial legitimization of sponsorship and reinforces the idea that army is more capable than the civilian government. The state also continues to distinguish between militants. For example, in January 2015, the federal government instructed the provinces to compile a list of “jet black terrorists”—a term that had been originally used by the army and later permitted as

⁷³ Sarah Eleazar, in-person interview, Lahore, November 2, 2015.

a valid classification by the Supreme Court. Journalist Taha Siddiqui describes this as the “restructuring” of the state’s militant assets rather than a “dismantling.” When discussing why LeJ is being targeted, he said:

[Gen] Raheel Sharif, ever since he has come into power, he got the Peshawar attack as an opportunity... where he was like this is the time to move in and go to all our assets, current and former, and tell them that listen if we are doubtful of your loyalty, we’re going to kill you. There is no second chance now. We’re not going to ask you, you need to prove your loyalty. Malik Ishaq got killed, the guy who leads Lashkar-e-Jhangvi. ... from what I’ve gathered he went far beyond his utility to the state where he started saying I will dictate my terms of reference rather than you [Army] telling me what I should be doing.⁷⁴
(emphasis is mine)

The NAP stated that all cases of these “jet black” terrorists would be transferred to the military courts. But there are no criteria for determining what makes an individual a “jet black terrorist” (Gishkori 2015). Apex committees, special provincial committees consisting of both civil and military leaders, have been tasked with deciding which cases get transferred from the ATCs in a show of civil–military cooperation. These committees, however, are not open to the public. In other words, Pakistan is continuing with its dichotomous policy of “good” vs. “bad.” Only now, the military also has judicial power. According to journalist Zia Rehman, people are now fearful that military courts will be used to pursue political opponents or those people who speak against the Army, like Baloch insurgents.⁷⁵

Pakistan’s critical interruptions, therefore, provide a starting point for analyzing the state’s evolving “counterterrorism”-related policies, activities, and practices and the pillars of its identity. Pakistan’s biographical narrative is centered on its desire to defend Islam and protect itself from Indian aggression and regional domination. But as highlighted in this chapter, these

⁷⁴ Taha Siddiqui, in-person interview, Islamabad, October 19, 2015.

⁷⁵ Zia Rehman, in-person interview, Karachi, March 10, 2015.

pillars have often resulted in the state engaging in conflicting policies. For example, the state wants to protect militant groups claiming to conduct *jihad*, because of *jihad*'s importance in Islam. Yet, these very same groups also attack the Pakistani state, harming its citizens and infrastructure. Similarly, numerous *jihadi* outfits claim to be united with Pakistan in fighting India, the non-Muslim regional aggressor. Yet, critical interruptions have showcased how fragile Islam can be as a unifying force in the face of geostrategic politics. In addition to showcasing the interaction of narrative components and their contribution to the state's biographical narrative, these interruptions also help us better understand how the policy of sponsoring militant groups became an institutionalized routine that meets Pakistan's self-identity needs and increases its ontological security. I will showcase the role of the legislature, judiciary, and police in chapters four, five, and six respectively, and how each of their own routines, formed by using narratives in response to critical interruptions, has resulted in the state-sponsorship of militant groups evolving into an institutionalized routine that increases Pakistan's ontological security.

Conclusion

This chapter shows how Pakistan's religious, democratic, and counterterrorism narrative components work together to label a political event a "critical interruption" and how that label initiates the process of converting the policy of state-sponsorship of militant groups into an institutionalized routine. Pakistan's religious component is centered on the state's relationship with Islam, its official religion as stated in the constitution, and how the state should organize itself in relation to its interpretation of Islamic values and ways of governance. The religious component is connected—and often guides—the state's democratic narrative component that focus on the relationship between the state's institutions and the effect of daily bureaucratic life

on the state's geostrategic strategies. Similarly, both religious and democratic components influence and are influenced by the state's counterterrorism narrative component that emphasizes Pakistan's need for security in its hostile external environment, especially in relation to countering threats of Indian aggression. These three narrative components therefore strengthen the two pillars of Pakistan's identity—serving as a defender of Islam and protector against Indian threats—and showcase the evolution of the state's biographical narrative and formation of five critical interruptions, which are: 1) the first Kashmir war; 2) the general elections of 1970 and consequent creation of Bangladesh in 1971; 3) Soviet invasion of Afghanistan and funding of the *mujahedeen*; 4) the September 11, 2001 attacks and GWOT; and 5) the APS attack in Peshawar in 2014.

This chapter also provides the political context of civil institutions' routines to critical interruptions. This political context is essential for understanding how civil institutions have legitimized the state's identity and daily counterterrorism practices in a way that has resulted in an endorsement of militant groups and its development into an institutionalized routine that increases the state's ontological security. The next three chapters, therefore, are not just about the state's relationship with its sponsored militant groups but are also about how each institution—the legislature, judiciary, and police—has evolved to create practices, policies, and codes of conduct that have facilitated the routinization of militancy. In the next chapter, I focus on Pakistan's legislative branch, describing the state's anti-terrorism legal regime and the legislature's responses to critical interruptions.

CHAPTER FOUR:

Anti-Terrorism Legislation and the Routinization of Militancy

On October 6, 2016, Cyril Almeida from *Dawn*, Pakistan's leading English newspaper, reported that the current civilian government had asked the military-led intelligence agencies not to interfere with law enforcement's actions against militant groups. According to Almeida (2016), during a closed-door meeting between civilian and military leaders, Foreign Secretary Aizaz Chaudhry cautioned the government on becoming internationally isolated if no action was taken against the Haqqani Network,⁷⁶ Hafiz Saeed and LeT, and Masood Azhar and JeM⁷⁷—all leading militants and their militant groups. When the ISI Director General (DG) Gen. Rizwan Akhtar inquired about the kind of actions needed to avoid international isolation, Aizaz stressed the need for empowering law enforcement. The stunning moment of the meeting, however, came when the Chief Minister of Punjab Shahbaz Sharif complained that every time militants from certain groups were arrested, the military establishment worked behind the scenes to free those militants. After a heated exchange, it was decided that ISI DG Gen. Akhtar would tour all four provinces with national security advisor and head of NACTA Lt. Gen (Retd.) Nasser Janjua to urge military non-interference and encourage civilian action against militant groups previously considered off-limits along with reviving attempts to conclude the Pathankot investigation and restart Mumbai-attack related trials in Rawalpindi's ATCs (Almeida 2016).

Later, all officials quoted in the story denied it and called it “a fabrication” while Almeida was put on the Exit Control List—a list that has been historically used against journalists and others that prohibits them from leaving the country (Dawn 2016, “PM Office Rejects Dawn Story Again”; NPR 2016). There was speculation on who was benefitting from the

⁷⁶ Haqqani Network primarily operates in Afghanistan.

⁷⁷ JeM has been involved in a series of attacks on Indian soil. The latest one was an attack on India's Pathankot Air Force Station in January 2016.

story. Was it the government, who wanted to put international pressure on the powerful Pakistani Army and show the world that the current tensions with India were not the civilians' fault? Or was it the army, who wanted to show that the civilian government could not be trusted with national secrets and interests, and hence were incompetent?⁷⁸ Almeida was removed from the list a week later due to pressure from the press (Tanoli 2016) and Information Minister Pervaiz Rasheed was asked to resign after an investigation revealed that he had leaked the information (Dawn 2016, "Information Minister... story probe"). On November 7, 2016, the government set up a commission to further investigate the leaks, consisting of a representative from the ISI, Pakistan's leading intelligence agency, as well as a representative from the army's intelligence branch, Military Intelligence (MI), and one of its civilian counterpart, the Intelligence Bureau (IB). The commission released its report in April 2017 but its findings were disputed by the military's media wing, Inter Services Public Relations (ISPR), on Twitter. Dubbed as the "Dawn Leaks," the tussle between ISPR and the government continued for about two weeks and resulted in the government giving assurances to the military of their commitment to countering terrorism (Dawn, "Army Withdraws Tweet," 2017; Farooq 2017).

The Dawn Leaks incident highlights continued civil–military tensions—and the democratic narrative component—within Pakistan, especially due to the contentious relationship between the military and ruling party, the PML–N. But more significantly, it directly contradicts the biographical narrative's counterterrorism component that emphasizes how Pakistan is a victim of Indian- and Afghani-sponsored militancy. At the center of this national political storm is Pakistan's continued sponsorship of violent militant groups in Kashmir and Afghanistan.

⁷⁸ Added to this political storm was the fact that the popular COAS Gen. Raheel Sharif was due to retire in November 2016, and there was speculation that he would extend his tenure like his predecessor Gen. Ashfaq Parvez Kayani. There was speculation on whether or not Gen. Sharif getting ready to stage a coup by declaring a "law and order" crisis (Amir 2016; Sethi 2016). Gen. Raheel Sharif, however, did not extend his term. The new COAS is Lt. Gen. Qamar Javed Bajwa, who started his position in December 2016.

Throughout Pakistan's history, political leaders have made changes in the state's anti-terrorism laws to legitimize their power. Anti-terrorism legislation therefore is an important—and powerful—discursive site for three reasons. First, it dictates the state's daily counterterrorism-related functions and practices. Second, changes within legislation reflect the ideological contradictions plaguing Pakistan's unstable political identity. And finally, anti-terrorism laws involve the interaction of religious, democratic, and counterterrorism narrative components and critical interruptions, helping us understand how state agents create meanings and routines, and what “counterterrorism” means for Pakistani civil institutions.

In this chapter, I show how Pakistan's anti-terrorism laws serves as the legal foundation for the routinization of state-sponsorship of militant groups. This chapter is divided into three sections. The first section describes the laws and procedures that make up Pakistan's comprehensive anti-terrorism legal regime, and is an analysis of the critical interruptions that led to the creation of these laws, which are: 1) 1970 general elections and creation of Bangladesh; 2) Soviet invasion of Afghanistan and mujahedeen funding during the Cold War; 3) the onset of GWOT, and 4) the APS attack in 2014. In the second section, I focus on the actors operating within the legislature and their use of Pakistan's biographical narrative components to legitimize the state's and the legislature's responses to critical interruptions. The legislative branch consists of three actors: 1) political parties, which debate the laws in parliament, 2) lawyers and legal experts, employed by parliamentarians to write the actual laws, and 3) civil society (nongovernmental organizations, academic institutions, private citizens, etc.) that are allowed to write to the parliament, advocating their position on specific pieces of legislation. These actors within the legislative branch have used Pakistan's biographical narrative to legitimize anti-terrorism laws and the state's strategies, policies, and operations created under the umbrella of

“counterterrorism” along with reinforcing the pillars of Pakistan’s identity, which is to defend Islam and defend itself against India. In the third section, I present Pakistan’s legislative routines, which have been created in the process of the legislature’s legitimization of the state’s anti-terrorism laws and counterterrorism policies and strategies. These routines are: expanding executive (specifically military) powers, creating parallel judicial systems, and facilitating the emergence of clientelistic political parties. Together these routines have simultaneously legalized, legitimized, and routinized the Pakistani state’s policy of responding to critical interruptions by sponsoring militant groups as a way to increase its ontological security.

Section I. The Making of Pakistan’s Anti-Terrorism Legal Regime

Pakistan’s anti-terrorism legal regime is made up of 16 laws,⁷⁹ five of which are relevant for this chapter: 1) Anti-Terrorism Act of 1997 (ATA); 2) Actions (in Aid of Civil Power) Regulation 2011; 3) Protection for Pakistan Act 2014 (POPA); 4) Constitution (Twenty-first Amendment) Act (Act 1 of 2015) (21st Amendment); and 5) The Pakistan Army (Amendment) Act (Act II of 2015). After the 1970 general elections and the subsequent civil war that led to the independence of Bangladesh (described as a critical interruption in chapter three), the Bhutto administration passed the Suppression of Terrorist Activities (Special Courts) Act of 1975 to curb any secessionist movements and ethnic groups claiming autonomy. The ATA replaced this law in 1997 and is the basis for Pakistan’s anti-terrorism legal framework. Since its enactment,

⁷⁹ All 16 laws are listed in chronological order: 1) The Pakistan Penal Code 1860; 2) Explosive Act 1884; 3) *The Code of Criminal Procedure 1898*; 4) Explosive Substance Act 1908; 5) The Punjab Arms Ordinance 1965; 6) *The Qanun-e-Shahadat Order 1984* (also known as the Evidence Act or Evidence Order); 7) Anti-Terrorism Act of 1997; 8) Anti-Money Laundering Act 2010; 9) Actions (in Aid of Civil Power) Regulation 2011; 10) The Investigation for Fair Trial Act 2013; 11) National Counter Terrorism Authority Act 2013; 12) Protection for Pakistan Act 2014; 13) Constitution (Twenty-first Amendment) Act (Act 1 of 2015); 14) The Pakistan Army (Amendment) Act (Act II of 2015); 15) Constitution (Twenty-third Amendment) Act, 2017; and 16) The Pakistan Army (Amendment) Act, 2017. The statutes in italics are procedural in nature while the others are substantive laws that define crimes and list punishments for offenses not covered under the ATA.

more than 15 amendments have been made to the ATA, with some broadening the definition of terrorism, activities that can be considered terrorism, and expanding executive powers while others have been more procedural, such as fixing the tenure of judges, giving power to judges to transfer cases from one special court to another across provinces, establishing rules for investigation and obtaining warrants, and prohibiting trials in absentia.⁸⁰ The ATA, therefore, is an extensive specialized law.⁸¹ In this section, I explain the evolution of Pakistan's anti-terrorism legal regime by explaining the political context for legislative routines in which the legislature has used religious, democratic, and counterterrorism narrative components to bolster the state's identity as a defender of Islam and victim of Indian aggression when responding to Pakistan's critical interruptions.

I.I. Police and Judiciary's Interaction with the ATA

The rationale of the ATA is similar to its predecessor's and is designed to prevent "terrorism," "sectarian violence," and expedite trials of heinous offenses. According to the ATA, there is only one fundamental criterion for an act to be labeled terrorism: instilling a sense of fear and insecurity. A joint report by the Justice Project Pakistan (JPP) and Reprieve (2014) argues that non-terrorism related offenses could also instill this same sense of fear (6–8). The ATA covers a wide range of offenses that are considered terrorism, such as brutal murders, rape, arson, aerial firing, breaking windows of a vehicle during a protest, kidnapping for ransom, and forced sexual intercourse with a minor. According to an anonymous source, "everything under the sun is considered terrorism."⁸² When discussing the scope of the ATA, Faisal Siddiqui, an

⁸⁰ See Appendix B for details.

⁸¹ The ATA is only used when a section of it is applied to a crime. In all other circumstances, the Pakistan Penal Code serves as the main law in the realm of criminal law.

⁸² Anonymous Supreme Court judge, in-person interview, Lahore, October 3, 2015.

advocate of the Sindh High Court, said, “it doesn’t simply encompass traditional terrorism.”⁸³

The definition of terrorism within the ATA remains problematic, and is openly criticized for its ambiguity and broad nature (Zaidi 2016, 7–8; Parvez and Rani 2015, 3; JPP and Reprieve 2014, 6–8; Bokhari 2013, 30). Furthermore, the ATA has established special courts, called the ATCs for the purpose of providing “speedy” trials for crimes labeled as terrorism.⁸⁴ The ATCs are functional in all four provinces, and in 2015, there were 59 ATCs.⁸⁵

Despite numerous amendments, the all-encompassing nature and inherent contradictions within the ATA put excessive burdens on both the ATCs and police. For example: Article 25 gives the accused the right to appeal an ATC judgment in a High Court but Article 31 states that all ATC judgments are final and can not be appealed or repealed in a court. The rights of the victim’s family to compensation (called *diyat*) or equal retaliation (called *qisas*) are also suspended according to Section 21-F (JPP and Reprieve 2014, 12), potentially creating tension between anti-terrorism laws and Islam, the official state religion that Pakistan claims to defend.⁸⁶ Collectively, these contradictions have made the ATA into a political tool of coercion, where people accuse others of terrorism in order to coerce them or seek personal revenge. According to numerous police sources, since the ATA covers a wide variety of crimes,⁸⁷ it is relatively easy to book an individual under the ATA, which has become a challenge when it comes to establishing witnesses in ATC cases (see chapter six).

⁸³ Faisal Siddiqui, in-person interview, Karachi, March 10, 2015.

⁸⁴ See Section 13 of the ATA.

⁸⁵ During fieldwork, I was told by numerous sources that the total number of ATCs were 59, with 19 in Sindh, 14 in Punjab, and 4 in KP. The number in Balochistan remained unclear as did whether or not there were special courts in the FATA and PATA.

⁸⁶ I did not speak about this with my interviewees, and neither did any of them directly mention any relationship between the ATA and Islam. I do believe though that there is potential for tension if say, a religious political party comes to power and amends the ATA.

⁸⁷ See Section 6 of ATA.

With respect to the judiciary, the ATA came under judicial scrutiny almost immediately after it was passed. A member of the Shia militant organization, Tehreek Nafaz-e-Fiqh-e-Jafariya (TNFJ) detonated a remote control bomb near the Lahore High Court in January 1997. The trial went slowly and was eventually transferred to the newly created ATC after the ATA was passed. The ATC sentenced the bomber to death but the defense appealed the decision, stating that the ATCs were unconstitutional. Though the Supreme Court upheld the punishment, it made recommendations for amending the ATA.⁸⁸ The Sharif administration passed the Anti-Terrorism (Amendment) Ordinance on October 24, 1998, incorporating all of the changes recommended by the Supreme Court (Bokhari 2013, 2–3; Fayyaz 2008, 12–13). But the newly amended ATA had little to no effect on militant violence in Sindh that continued unabated. Sharif was now faced with a similar situation as his predecessor Benazir Bhutto, whose first government had been dismissed due to continued ethnic conflict in Sindh in 1990. After a former governor of Sindh, Hakim Muhammad Said, was killed on October 17, 1998, Sharif imposed Article 232 of the Constitution, declaring a state of emergency in Sindh. To empower the military to restore law and order in the province, the government passed the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (PAFO) on November 20, 1998. The Ordinance formed special military courts to try civilians charged with terrorism (see chapter five).

The PAFO serves as evidence of how civilian governments rely on the military to restore domestic law and order, continuously creating a civil–military imbalance that results in the clash of religious, democratic and counterterrorism narratives. While the religious narrative component has served to justify sponsoring anti-Shia militant groups, where any Shia groups are considered a threat to Pakistan’s upholding of Sunni Islam, both democratic and counterterrorism components highlight problems associated with a warped balance between the military

⁸⁸ *Mehram Ali vs. Federation of Pakistan* [PLD 1998 SC 1445]. This case is discussed in detail in chapter five.

establishment and government. For example, the democratic component highlights the challenges associated with having a military that is overly involved and active in maintaining the domestic law and order rather than the police, which should have a more prominent role in maintaining the state's domestic security. In other words, a domestically active military promotes a weak police force, which has the potential to weaken the state's political system (see chapter six). The counterterrorism narrative component, on the other hand, promotes the civilian government's overreliance on the military, reinforcing the idea that the military is the only institution that can effectively and efficiently defend Islam, and hence Pakistan, from its various threats. As will be highlighted in the rest of this chapter, the continuous clash of these narrative components has led to the legislative routine of expanding executive power as a means to meet the state's self-identity needs and increase its ontological security. Though I will elaborate more on these special courts and the anti-terrorism regime in chapter five, it is important to note that the Supreme Court deemed these military-run courts as unconstitutional (Kennedy 2004, 392–394; Khan, H. 2009, 642–643), temporarily discrediting the legislative routine of expanding executive powers under emergency laws.

I.II. Use of ATA in post–Cold War Political Environment

Throughout the 1990s, Pakistan experienced backlash from its involvement with aiding, abetting, and sponsoring the *mujahedeen* as militant violence continued to rise. According to Syed Waqar Mehdi, two things got imported from Afghanistan to Pakistan, especially in Karachi: a Kalashnikov culture and heroin culture.⁸⁹ Both were associated with militants imported from across the border—and both did nothing to help Pakistan's internal political

⁸⁹ Direct quote is: *Afghan war keh baad, Pakistan mein, khaas toor peh Karachi mein, kalashnikov culture aya aur heroin culture aya. Yeh do cheezain import huain Afghanistan sey Pakistan.* Translation: After the Afghan war, in Pakistan, especially in Karachi, a Kalashnikov culture, then heroin culture came. These two things got imported from Afghanistan to Pakistan. Syed Waqar Mehdi, in-person interview, Karachi, February 27, 2015.

turmoil, which reached its peak after Sharif was ousted by his COAS General Pervez Musharraf in a coup in October 1999.

To legitimize his takeover, Musharraf used the ATA to discredit Sharif, and was the first leader to do so, setting a dangerous precedent.⁹⁰ Musharraf opted for ATCs rather than the regular criminal courts because the ATC framework called for “speedy” trials that were legally required to be conducted within seven days. By establishing another ATC in Karachi, Musharraf forced Sharif to leave his hometown of Lahore and be tried in Karachi, which had been experiencing militant violence for most of the 1990s and where he was unpopular. Musharraf’s precedent of amending and then using the ATA also incentivized the militarization of political parties, where politicians, especially those in opposition, were (and continue to be) concerned with being tried under the ATA even though they may not have committed such acts. The incentive to militarize political parties—mainly via their militant wings—was also facilitated by the ATA’s broad scope of crimes, which include non-terrorism offenses like rape, kidnapping, and arson to name a few (I discuss this further in the last section of this chapter).

The Musharraf regime was almost immediately criticized internationally for continuing the state’s relationship with the Taliban in neighboring Afghanistan, who had taken over the

⁹⁰ First, he introduced two amendments on December 2, 1999. The Anti-Terrorism (Second Amendment) Ordinance, 1999 increased the ATCs’ jurisdiction—and enhanced executive powers—in the following ways: 1) Section 109—assisting an offense; 2) Section 120—concealing a design to commit an offence; 3) Section 120B—criminal conspiracy to commit a crime punishable by imprisonment of a minimum of two years or by death; 4) Section 121—waging or an attempt to wage war against Pakistan; 5) Section 121A—conspiracy to commit certain offenses against the state; 6) Section 122—collecting arms with the intent to wage war against Pakistan; 7) Section 123—concealing the attempt to wage war against Pakistan; 8) Section 365—kidnapping; 9) Section 402—being one of a group of five or more attempting to commit theft; and 10) Section 402B—conspiracy to commit hijacking (Kennedy 2004, 398–399). The Anti-Terrorism (Third Amendment) Ordinance, 1999 established two more ATCs, one at the Lahore High Court and the other at the Sindh High Court. Both courts would be presided over by a High Court judge, who also had the power to transfer cases to any other ATCs within the province. These courts would also serve as Appellate Tribunals for ATCs. With these amendments in place, Musharraf built a case of conspiracy against Sharif to be tried specifically under the new sections 109, 120B, 121, 121A, 122, 123, 365, and 402 B in the Karachi ATC (Kennedy 2004, 400).

country in 1996 and instilled societal oppression through *sharia*.⁹¹ On August 14, 2001, during his Independence Day address, Musharraf unveiled his new strategy for restructuring Pakistan's civilian institutions (Shah 2014, 3370–3374). Part of the Devolution Plan 2001 involved amending the ATA. The definition of terrorism was expanded to include: activities that cause injuries, harm, and death; kidnapping for ransom, hijacking, and hostage-taking; inciting hate along religious and ethnic lines; creating panic; stoning; arson; burning vehicles; extortion; and violence of any kind against the police, public servants, and armed forces-the state. The federal government was also empowered to ban any organization that it suspected was involved in terrorism.

After the changes were made public on August 14, 2001, the government immediately banned militant groups such as LeJ, an anti-Shia Deobandi militant group, and Sipah-e-Mohammad Pakistan (SMP), an anti-Sunni militant group (Jaffrelot 2015, 12612–12618). To comply with the most recent amendments to the ATA, the government also increased the number of ATCs. By the end of 2001, there were 41 ATCs functioning throughout Pakistan (Rana 2006). But instead of being fast and efficient, the ATCs had begun to resemble regular courts: they were slow and overburdened, and continue to be so. For example, in 2015, 3300 cases were pending across the 19 ATCs in Sindh alone (Tanoli, I. 2015). Khawaja Naveed Ahmed, a criminal lawyer, discussed the backlog in detail, stating that ATCs are becoming “overbooked” because too many cases are being transferred from the regular court system to the ATCs.⁹²

The use of the ATA and increase in the number of ATCs highlight how the legislative branch used religious, democratic, and counterterrorism narrative components interchangeably to legitimize the extension of the state's anti-terrorism legal regime in the post–Cold War

⁹¹ This relationship had begun under Benazir Bhutto.

⁹² Khawaja Naveed Ahmed, in-person interview, Karachi, March 4, 2015.

environment. For example, while the banning of religiously motivated militant groups highlights how the state navigated through its self-proclaimed role as defender of Islam, the use of civilian criminal justice system by Musharraf indicates the army's view of civilian institutions as "easier," with fewer obstacles, than its military counterparts. The army's perception has influenced how the legislative branch views and responds to the civil–military imbalance while trying to uphold the pillar's of Pakistan's identity, which are to defend Islam while also protecting itself from external threats, such as perceived Indian aggression and involvement.

I.III. Expansion of Anti-Terrorism Legal Regime during GWOT

While changes to Pakistan's anti-terrorism framework were already underway before the onset of the GWOT, it served to accelerate the expansion of Pakistan's anti-terrorism legal regime—especially the expansion of executive (and military) powers. The U.S.–Pakistan partnership not only increased the international community's attention on Pakistan with respect to counterterrorism but also provided the Musharraf regime a geostrategic cover for further amending the state's anti-terrorism laws. International pressure on Musharraf to more effectively counter militant groups mounted after members of LeT and JeM, Kashmiri *jihadi* groups based in Pakistan, attacked the Indian parliament on December 13, 2001. India demanded that Pakistan take action against militant groups hiding within its boundaries. One of Musharraf's responses was to focus on making the ATCs more efficient and converting them into speedy courts, as originally envisioned. The first ordinance to pass was called the Anti-Terrorism (Amendment) Ordinance, 2002 that established a 10-month mandate and changed the single bench to a three-judge bench, in which one of the judges would be an army officer, not below the rank of a Lieutenant Colonel. Being a military man, Musharraf reasoned that an army officer would be able to speed up judgments and unburden the courts (Dawn "Army officers to be part of new

ATCs” 2002). The ordinance also expanded powers of law enforcement, stating that militant “networks” must be targeted, which involves any individual suspected of aiding and abetting a member of a proscribed organization. The accused, however, were given a right to appeal a conviction (Bokhari 2013, 8; Noor 2008, 10; Fayyaz 2008, 15–16).

Musharraf was criticized for installing an army officer as a judge in a civilian court (Research Society of International Law 2013, 23), which was a bold use of executive power. In response, Musharraf amended the ordinance in November 2002, and increased the powers of the police instead. Law enforcement was now allowed to detain a suspect for up to a year without filing any charges. If charges were made, the police was obligated to present the case to court within 24 hours to ensure a fast trial. The police also maintained a list of activists and individuals interacting with militant groups as a form of monitoring their “good behavior.” Any suspicion would result in immediate arrest and detainment (Fayyaz 2008, 16; Research Society of International Law 2013, 23–24). By the end of 2002, Pakistan had banned six more militant groups: JeM, LeT, SSP, Tehrik-e-Jafria Pakistan (TJP), Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM), and Tehreek-e-Islami, and placed Sunni Tehrik on the Watch List (Fayyaz 2008, 16). To further target militant networks, the ordinance was amended again on November 30, 2004. Punishment was increased from 14 years to life imprisonment for those found guilty of committing an act of terrorism, or aiding and abetting such an act. Family members of victims could appeal an acquittal before a High Court (Research Society of International Law 2013, 24). The Anti-Terrorism (Second Amendment) Act, 2005 was passed in January 2005 and put a limit on court adjournments: if the defense was absent twice in a row, then the ATC judge would appoint a new counsel. Also, law enforcement authorities were allowed to confiscate the passport

of anyone charged under the ATA to limit their movement if acquitted (Fayyaz 2008, 17; Research Society of International Law 2013, 25).

The collective effect of these amendments was twofold. First, detention rates increased exponentially. Within Pakistan, civilian and military intelligence agencies are not allowed to arrest suspects—only the police have that power (Pervez and Rani 2015, 7). But under the ATA, intelligence agencies could legally detain a suspect for up to a year. Terms such as “missing persons” and “enforced disappearances” began to emerge. Amnesty International was at the forefront of demanding that the Pakistani government reveal details of missing and disappeared persons (Amnesty 2008). It became clear that the Musharraf regime was using the cover of GWOT to detain troublesome nationalists (such as the Baloch), religious activists (such as those working for *madrassas*), and human rights organizations. The Human Rights Commission of Pakistan (HRCP), the leading human rights non-profit, identified 200 cases of “missing” people in 2007 (Khan, I. 2007). This problem is ongoing. I believe the government—and legislature—utilized the counterterrorism narrative component to legalize practices like preventive detention, extensive surveillance, warrantless searches, and torture to target specific “threatening” militant groups, arguing that these practices were needed so that Pakistan could defend itself, especially in the case of Indian aggression.

The second effect of Musharraf’s amendments was on the relationship between the Pakistani state and militant networks. Even though the government had empowered both law enforcement agencies and intelligence agencies within the Federally Administered- and Provincially Administered Tribal Areas (FATA and PATA respectively) to blindly arrest any form of activity that resembled militant behavior, numerous militant groups continued to operate freely in the country, especially in the tribal areas. Some used their old names while others had

renamed and rebranded themselves. *Madrassas* were especially targeted, even though none of the banned groups directly operated any *madrassas* (Kennedy 2004, 406). The Musharraf regime's attempt to restrict and regulate the largely autonomous *madrassa* system further compromised the relationship between the Pakistani state and militant networks. Though the military establishment—especially the ISI and army—had traditionally enjoyed close relations with former *mujahedeen* and the networks that emerged in the post-Cold War era, Musharraf eventually became despised, seen as pandering to the Americans, and killing fellow Muslim brethren. In other words, Musharraf was seen as opposing Pakistan's claim to be a defender of Islam and protector of Muslims. Furthermore, many *madrassas* refused to implement any government reforms, as only Deobandi *madrassas* were targeted, increasing tensions between the military and its Deobandi allies, who had been sponsored by the state during the Cold War.

Tensions reached a boiling point in July 2007 when the military clashed with the students of the *Jamia Hafsa madrassah*, attached to Islamabad's Lal Masjid (Red Mosque). The *Jamia Hafsa* in particular had been very vocal against the military and Musharraf's reforms. To curb their activities, Musharraf declared the Red Mosque as a safe haven for al Qaeda and launched an attack. Though Musharraf claimed the siege was a success, the bloodbath had far reaching consequences. One of them was the development of the TTP, which constantly launches suicide attacks on Pakistani soil. Musharraf's targeting of the Red Mosque serves as a good example for highlighting religious narratives reinforcing Pakistan's identity as a defender and protector of Islam. Religious narratives focus on the state's relationship with Islam. By targeting the Red Mosque, Musharraf essentially targeted the "pious" religious community, which contradicts Pakistan's claim that one of its primary goals is to defend Islam and Muslims. Though the Red Mosque attack won Musharraf some credibility with the international community (especially

with the United States) and promoted the counterterrorism narrative component that aims to project an image of Pakistan as countering militancy rather than sponsoring it, the attack damaged his reputation and status as a “good” Muslim leader.

By 2008, Pakistan was under democratic rule. General elections had been held on February 18, 2008, and the PPP leader Asif Ali Zardari was sworn in as president. Two months after Zardari became president, in November 2008, members of LeT conducted a series of attacks in Mumbai, killing 164 people and injuring more than 300. The Zardari administration found itself in a similar spot as its predecessor. After the Indian parliament attack in 2001, Musharraf had declined allegations that the state had supported the LeT and JeM. By 2008, Pakistan’s domestic law and order situation, especially in the tribal areas, was unstable. Zardari (2008) utilized the counterterrorism narrative component and wrote in an op-ed to the *New York Times*, in which he wrote that: “The Mumbai attacks were directed not only at India but also at Pakistan’s new democratic government and the peace process with India that we have initiated.”

And:

Pakistan is committed to the pursuit, arrest, trial and punishment of anyone involved in these heinous attacks. But we caution against hasty judgments and inflammatory statements. As was demonstrated in Sunday’s raids, which resulted in the arrest of militants, Pakistan will take action against the non-state actors found within our territory, treating them as criminals, terrorists and murderers. Not only are the terrorists not linked to the government of Pakistan in any way, we are their targets and we continue to be their victims. (Zardari 2008) (emphasis is my own).

Zardari’s op-ed therefore highlights how Pakistan views itself and wants to be viewed by other states. It views itself as a counterterrorism unit, in which it pursues militant groups, especially those that threaten the state’s territorial security. But as described throughout this dissertation, Pakistan also views itself as a victim of constant Indian aggression. Also, for

Pakistan, protecting the state amounts to protecting Islam, where countering a non-Muslim enemy like India plays a central role in how it wants the international community to view itself.

According to Ahmer Bilal Soofi, advocate of Supreme Court, Pakistan's response to the Mumbai attacks was a "course correction" because "This was the first time ever the state went for a prosecution approach."⁹³ It is important to note that though the Mumbai attack is significant for Pakistan, I do not consider it as a critical interruption but rather a consequence of GWOT because Pakistan's response was largely dictated by its relationship with the United States, and not its own policy of sponsoring militant groups. For example, instead of targeting LeT directly, Pakistan's counterterrorism strategy was to launch counterinsurgency operations in the tribal areas, beginning the troublesome dichotomy of "good" vs. "bad" militants (see chapter three). The first counterinsurgency operation took place in Swat in May 2009 while the second took place in North Waziristan in October 2009 (Nawaz 2011), and hundreds of militants were captured. The state now faced the dilemma of how to deal with the captured. There were two choices: either give the military, who had captured these individuals, the power to try them in special military courts by declaring Article 245 of the Constitution, which states that the military can come "in aid of civil power," or try them in the ATCs after the counterinsurgency operations were over (Soofi 2009, Yusuf 2010). The Zardari administration opted to use the ATCs. Drawing from Huma Yusuf's (2010) analysis, ATCs defined known militants as "proclaimed offenders" or fugitives from the law. By August 2009, local courts began operating in Swat, where an ATC declared the TTP's chief Maulana Fazlullah and his six aides as proclaimed offenders that needed to appear in front of the court. To ensure just and expedient trials, the Supreme Court announced the creation of special committees to monitor the ATCs. The Zardari administration also passed the Anti-Terrorism (Amendment) Ordinance, 2009, which extended to the PATA.

⁹³ Ahmer Bilal Soofi, in-person interview, Islamabad, October 21, 2015.

The period of detainment was extended from 30 to 90 days, and the burden of proof of innocence lay with the detained. But most significantly, the ordinance stated that “extrajudicial confessions”— confessions made under duress and by torture—during detention would be permissible in the ATCs (Yusuf 2010, 23).

The weaknesses and inefficiencies of legislation contending with terrorism described by Yusuf (2010) are still present today: the ATCs are slow, expensive, understaffed, corrupt, inadequate and unable to deal with hundreds of suspected militants.⁹⁴ In September 2009, Jane Perlez and Pir Zubair Shah (2009) reported that 250 bodies of suspected militants had been “dumped on the streets” of Swat because authorities feared that these detainees would be acquitted in the ATCs. Though the army denied any involvement (BBC 2010), human rights organizations and Swat residents blamed the military for these indiscriminate killings (Perlez and Shah 2009). U.S. Ambassador to Pakistan, Anne Patterson wrote that the Swat killings were motivated by a “culture of revenge” and there was nothing the United States could have done to prevent the regular army, paramilitary forces, and police from such actions (Walsh 2010). In order to legalize the army’s actions in Swat, the Zardari administration passed the Actions (in Aid of Civil Power) Regulation on June 23, 2011. “Aid of Civil Power” was defined as a series of written measures that involved the mobilization of armed forces as requested by the federal government. While some elements of the regulation had already been included in the Anti-Terrorism (Amendment) Ordinance of 2009, this regulation declared to be in effect retroactively from February 1, 2008. In other words, all detentions made in the FATA and PATA from February 1, 2008 were legal. Furthermore, the law contradicted the Qanun-e-Shahadat (Evidence Act) that states that confessions must be made in front of a police magistrate to be permissible in

⁹⁴ During fieldwork, I was given ATC conviction rates by anonymous sources, along with various confidential reports on crime statistics. The reports, however, lack key information. For example, they do not discuss how data was collected and do not mention the time frames. And so I have decided not to cite this data.

any court. This law overrode the Qanun-e-Shahadat, making all evidence, information, materials, etc. received by security officials as permissible in courts (Dawn “New Regulations,” 2011). With respect to narrative components, the law used both the democratic and counterterrorism components to simultaneously weaken the police, the leading domestic civilian law enforcement organization, and bolster the army, the institution that views itself as the only legitimate protector of the state’s identity and interests.

One of the reasons for low conviction rates in the ATCs is lack of evidence. The Qanun-e-Shahadat serves as the main guideline for acceptable and permissible evidence in all courts of law, and defined evidence as written communication. In February 2013, the government passed the Investigation for Fair Trial Act 2013 that aimed to include any evidence gathered from electronic devices, such as mobile phones and email communications. It also outlined the procedure for acquiring a search warrant, where suspicion of terrorist activity was sufficient to begin a search warrant application (Hameed 2015, 3–4). The Fair Trials Act renewed discussion on the potential of a Prevention of Electric Crimes Act—a discussion that had been underway since 2007. As a response to the GWOT, Pakistan also became a member of the United Nations Security Council’s Counter-Terrorism Committee, and was obligated to implement UN Resolutions 1373 (passed in 2001) and 1624 (passed in 2005) and submit regular reports of its anti-terrorism efforts to the Committee. To comply, the Musharraf regime had issued the Prevention of Electric Crimes Ordinance 2007 on December 31, 2007. It was designed to counter cyber terrorism, punish cyber offenders who threatened to expose sensitive information, and protect e-commerce. The Federal Investigation Agency (FIA) was tasked with investigating and prosecuting cyber terrorism cases. The ordinance, however, has never passed. Several drafts have been presented to the National Assembly, and each draft has been struck down by the opposition

for fear that the law will be used to monitor their electronic communications in the name of counterterrorism (Bokhari 2010, 11–12; Khan, S. 2015).

Similarly, Pakistan drafted an anti-money laundering bill in 2005, which was enacted in 2010. The Anti-Money Laundering Act of 2010 is designed to combat the financing of militant organizations and groups operating within Pakistan. The law clearly states the procedures for investigation and the process for applying for a search warrant, ranks of investigating officers, retention of property of the accused, right of appeal to the High Court, and mechanisms for cooperation with foreign countries. Yet, the law and its accompanying institutional mechanisms have not been very successful because 1) militant organizations do not rely on the formal financial sector but instead receive the bulk of their funding from informal channels like private donations, religious donations (i.e, *zakat*, *ushr*, *fitrana*, etc.), *hawala* system, and regular crime (Rana 2014; Zarate 2013), and 2) it primarily focuses on banned militant groups even though there are more militant groups operating freely within the state. Anti-Terrorism (Amendment) Bill 2013, however, specifically addressed terrorism financing in Pakistan. It extended the definition to include intimidating the business community, gave the government the right to confiscate property on suspicion of terrorist activity, and prohibited the issuance of passports, credit cards, and arms licenses to activists of banned militant groups. Similar to the Actions (in Aid of Civil Power) Regulation, the legislature used democratic and counterterrorism narrative components to frame these evidentiary laws, which erode democratic processes while promoting questionable counterterrorism procedures and codes of conduct.

In order to justify another counterinsurgency operation, led by the army, in North Waziristan, the government decided to pass a new law in lieu of further amending the ATA. POPA was passed in the summer of 2014, and was written to be a wartime law that was more

extensive and severe than the heavily amended ATA, but that would expire after two years. The law established special federal courts that would take precedence over the ATCs. The POPA courts would be public unless the prosecution submitted an application that the public be excluded for its own safety. Similar to the ATA, it put the burden of proof on the suspect and allowed preventative detention for up to 90 days. Similar to the Actions (in Aid of Civil Power) Regulation 2011, POPA allowed the military to aid the government by assisting in investigations and legally detaining suspects. Contrary to the Criminal Procedure Code, suspects will not receive bail (Hameed 2015, 4; Omer 2016). When POPA was being debated in parliament, opposition parties were assured it would not be used against them (Omer 2016; National Assembly Debates 2014, 13th Session). As a law, POPA is overly repressive (Imtiaz, S. 2014)—and redundant. During my fieldwork in October 2015, POPA courts were still inactive in Lahore, even though there was a floor designated for them in the building that housed the Lahore ATCs. Section 11 of POPA stated that the government would establish an independent prosecuting agency headed by the Prosecutor General. Yet, in 2015, there was no evidence of a prosecuting agency—or of even a single case being tried (Randhawa 2016). In an extensive report, Malik Asad (2016) concludes that POPA is futile. Yet, it was extended for two more years, and is due to expire in 2018 (The Nation 2016). POPA's continued existence showcases the legislative's response to create parallel judicial structures to respond to both critical interruptions and regular political events, as a means to increase its counterterrorism arsenal, resulting in an eventual increase in ontological security.

This rapid—and extensive—expansion of the anti-terrorism legal regime in the wake of GWOT not only reinforced the pillars of Pakistan's identity, which is to serve as a defender of Islam and protector against Indian aggression but also emphasizes the idea that the military

establishment is the only state institution that can protect Pakistan and its identity. The military's continued dominance fueled by civilian support is problematic and has resulted in the legislative routine of expanding executive powers in response to critical interruptions (discussed later in this chapter) and the judicial routine of legitimizing expansive executive and military powers (see chapter five).

I.IV. Ongoing Changes in Anti-Terrorism Laws after APS Attack

The APS attack on December 14, 2014 forced the government and the military to coordinate an effective counterterrorism plan. The NAP is a 20-point initiative that is currently being implemented. Some provisions are: continuation of the death penalty; registering and monitoring *madrassas* nationwide; cracking down on sectarian and religious extremist groups by specifically countering hate speech; and dismantling financial and communication networks of various terrorist groups operating within the state. NACTA was also activated to serve as the main coordinator between civilian and military intelligence agencies. According to former Inspector General of Punjab Police (IGP) Shaukat Javed⁹⁵ and the first head of NACTA Tariq Pervez,⁹⁶ Pakistan wanted to create NACTA along the lines of the U.S. Department of Homeland Security. NACTA had been created in 2013 under the Zardari administration but had failed to take off due to differences on leadership.⁹⁷

The NAP also created military tribunals designed to implement “speedy” trials for terror suspects. Though similar to the ATCs in design, they are not open to the public. The establishment of these military courts raised some old concerns within political parties. As

⁹⁵ Shaukat Javed, in-person interview, Lahore, October 6, 2015.

⁹⁶ Tariq Pervez, in-person interview, Lahore, October 8, 2015.

⁹⁷ During the interview with an anonymous source, the source revealed that there was some disagreement on who should head NACTA: the prime minister or the Ministry of Interior. The then-Interior Minister Rehman Malik had convinced Zardari to make him the head but eventually Zardari changed course. This created tensions within the administration, stalling the creation of NACTA.

opposition parties, the MQM and PPP were especially concerned about being the target of these special courts. Both COAS and ISI chiefs, however, assured both parties that the courts would not be used against them (Manan 2014). With assurances given, the government passed the 21st Amendment to the Constitution, that granted judicial jurisdiction to the military for trying alleged militants, who are civilians, under court martial rules (Hashim 2015; Nauman 2015). The amendment—and military courts—was set to expire in 2017 but was renewed under the 23rd Amendment to the Constitution.

Underlying most of the changes in Pakistan's anti-terrorism legal regime is the battle between the military and law enforcement agencies—which highlights the battle between democratic and counterterrorism narrative components. The police are at the forefront of domestic counterterrorism operations and implementing the laws falls mainly on their shoulders. However, it is important to note that while the laws increase executive powers overall they often hinder the police. For example, Articles 38–40 of the Qanun-e-Shahadat Order of 1984 and Article 164 of the code of criminal procedure explicitly state that a confession made by a suspect in front of a police officer is inadmissible in any court. For a confession to be admissible, it must be made in front of a Magistrate. This is largely in place because of the continued use of torture by the Pakistani police (Justice Peace Project 2014). Yet, Section 21 H of the ATA allows a confession in front of a police officer to be used as evidence in an ATC (Justice Peace Project and Reprieve 2014, 17). This creates incentives for the police to book a criminal under the ATA regardless of the crime so that the confession can be admissible in court. Conflicting laws therefore have led to inefficient—and questionable—practices that undermine any counterterrorism efforts by the state. Amendments to the ATA have also tended to favor increasing the military's power over the police, which reinforces the military establishment's

superiority in the realm of counterterrorism because it draws attention to the turf wars between federal and provincial law enforcement rather than drawing attention to how all agencies can work together to counter militant activity.

Pakistan's anti-terrorism legal regime, therefore, not only represents an institutional tug-of-war but also indicates a larger struggle with respect to security. A temporary increase of executive powers has almost always resulted in permanent changes within the anti-terrorism legal regime, from increasing the number of activities that can be labeled as acts of terrorism to justifying surveillance based on suspicion and no evidence to increasing unwarranted detentions to 90 days in undisclosed locations. While I explain the role of narrative components in legitimizing the state's anti-terrorism legal regime in the next section, it is important to note that expansion of powers is not limited to the executive. The anti-terrorism legal regime has also expanded the judiciary's scope (see chapter five) and law enforcement's capacity by legalizing various practices (see chapter six) in the name of counterterrorism. The collective expansion of these civilian powers has intrinsically linked the course of routinization of state-sponsorship of militant groups with the state's ontological security, resulting in sponsorship evolving into an institutionalized routine.

Section II. Biographical Narrative & the Legislature: Foundation for Legalization

Pakistan's legislative branch has three key stakeholders: 1) political parties that are part of the government and opposition, and have the authority to debate within the parliament; 2) lawyers and legal experts, who work with parliamentarians to write legislation, and 3) civil society organizations, such as nongovernmental organizations [e.g., HRCP], academic institutions (e.g., Quaid-e-Azam University, National Defense University, etc.), and think tanks [e.g., Center for Research and Security Studies (CRSS) in Islamabad, Pakistan Institute of Legislative Development and Transparency (PILDAT) in Lahore, etc.], along with private citizens that lobby their representative in parliament. Pakistan's political landscape, therefore, is rich. Pakistan's anti-terrorism legal regime is extensive and riddled with problems, often involving an expansion of various executive powers via overlapping laws. Most laws have been debated in parliament. Parliamentary debates, however, are long-winded and often avoid the point or belabor it. One of the main questions I asked my interviewees was on the constitutionality, strengths, and weaknesses of the anti-terrorism laws. One anonymous interviewee laughed out loud, and said in Urdu that the parliamentary debates are a sham: "those are not debates, just empty rhetoric to show that Pakistan is democratic."⁹⁸ Regardless, in this section, I have used parliamentary debates along with personal interviews, local think tank reports, and news articles to uncover how the legislative branch has used religious, democratic, and counterterrorism narrative components to legalize and legitimize practices, procedures, and codes of conduct that can be categorized as "counterterrorism." The legislative branch has not only used these narrative components to create its own routines but has also employed them in a way that has strengthened Pakistan's identity as a defender of Islam and victim of Indian aggression.

⁹⁸ Anonymous, in-person interview, Lahore, October 8, 2015.

II.I. Defending Islam and Pakistan: Use of Religious Component

The religious narrative component focuses on the role of Islam and its influence on Pakistan's self-identity needs and ontological security. Since independence, Pakistan has seen itself as a defender of Islam—and desperately wants to be seen that way by other states. In the context of anti-terrorism legislation, the Pakistani state has struggled with defining terrorism in a way that protects Pakistan's territory without harming the notion that Islam is a unifying force, and hence must be protected. For example, the Suppression of Terrorist Activities (Special Courts) Act of 1975 labeled anti-national behavior as terrorist, mainly because of the anti-West Pakistan political activism within East Pakistan prior to its secession and the independence of Bangladesh (which is a critical interruption). But under the current version of the ATA, crimes such as arson, hate speech, rape, and kidnapping are also labeled as terrorism.

Within the legislative branch, religious political parties have not only been against adding religion in any form into the definition of terrorism but have also spoken openly about excluding religion from the ATA altogether because they feel that they will become the target of these laws. For example: Maulana Muhammad Khan Sherani of JUI opposed the ATA, saying that it violated the constitution, which guaranteed the right for all Pakistani citizens to practice their religion. He argued that by banning organizations that may be religious, the ATA was violating religious freedom, and going against the state's official religion—Islam.⁹⁹ Pakistan's need to serve as a defender of Islam, therefore, has allowed Islam to: 1) serve as a cover for disconnecting militants from their violent militant acts in the 1990s and 2) continue to function as a unifying force, stemming from Pakistan's sponsorship of the *mujahedeen* in the name of protecting Islam from the threat of the godless Soviets and their communism. After all, how can an Islamic country punish someone who is committing *jihad*? It is no secret that the military

⁹⁹ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 81–84.

establishment and religious political parties have been aligned. During the Cold War, JI was Zia's closest ally. This alliance has continued since the Cold War but since Musharraf's rule and participation in the GWOT, it has been in jeopardy. Musharraf was seen as pandering to the Americans and killing fellow Muslims. In 2013, JI's chief Syed Munawar Hassan went so far as to say that if an American soldier was not a *shaheed* (martyr) than neither was his "backer," the Pakistani soldier (martyrs) (Express Tribune 2013), putting Pakistan's claim to be a defender of Islam in flux and delegitimizing the army as the sole institution working toward protecting Islam.

Madrassas have played a central role not only in how Pakistan perceives itself, but also how the state wants to organize itself in the name of defending and promoting Islam. As described in chapter three, *madrassas* are considered sites for militant recruitment within Pakistan. A primary anti-terrorism policy recommendation has been to register, monitor, and regulate the thousands of *madrassas* being run in Pakistan, especially those located in the tribal areas. But there is little empirical evidence indicating that *madrassas* are the primary reasons for continued extremism and militancy. And there is little empirical evidence indicating that if all *madrassas* become "mainstream" it will reduce militant ideology or militant attacks within Pakistan. According to Rashad Bokhari, the executive director of a non-profit that focuses on *madrassa* reform, there is a huge disconnect between the government's anti-terrorism laws and those that work on *madrassa* reform for three reasons. First, political parties are at odds. Secular parties want to do away with the *madrassa* system because they view them as breeding grounds of militancy and terrorism while religious parties argue that Pakistan was formed in the name of Islam and should represent Islamic ideology—and *madrassas* are a vehicle for promoting an Islamic way of life. Second, the laws are disconnected from ground realities because they fail to address the unavailability of primary education due to lack of schools, resulting in *madrassas*

serving as the only source of formal education. Implementation, therefore, is not only difficult but improbably. And third, the laws address the symptoms, not the causes of extremism.¹⁰⁰ ATC prosecutors that I interviewed in Lahore in October 2015 expressed similar views, and went further: instead of focusing on *madrassas*, the government should focus on rehabilitation. One prosecutor stated that the government should create de-radicalization programs and rehabilitation centers, where the role of Islam as a religion of peace and tolerance is promoted. They argued that the government and the laws created have an obligation to improve *madrassas* because: “radicalization did not happen in a single moment.”¹⁰¹

The legislature’s use of the religious component of the state’s biographical narrative has strengthened the link between Pakistan’s identity and Islam, where defending Islam is seen as central to Pakistan’s identity. The religious narrative component helps legitimize state-sponsorship of militant groups, including religiously motivated militant groups, like the *mujahedeen* and their offshoots. Using *jihad* and sponsoring *jihad*-inspired militant groups, therefore, has systematically contributed to sponsorship increasing Pakistan’s ontological security.

II.II. Balancing Branches: Use of Democratic Component

The democratic narrative component focuses on the organization of the political system and the separation of powers,¹⁰² which can be contentious in postcolonial states that have usually inherited bureaucratic structures. As states grapple with stabilizing their identity, the evolution of their inherited institutions is also affected. In the context of investigating the institutionalized routine of state-sponsorship of militant groups, the democratic component also focuses on Pakistan’s daily “counterterrorism” and “anti-terrorism” practices, which are outlined in the

¹⁰⁰ Rashad Bokhari, in-person interview, Islamabad, October 28, 2015.

¹⁰¹ Anonymous, ATC prosecutors, Lahore, October 15, 2015.

¹⁰² This is also called the “Basic Structure Doctrine” and is discussed in chapter four.

state's anti-terrorism legal regime. The legislative branch has designed the anti-terrorism legal regime to protect Pakistan from what it considers as threatening acts of violence. While studying the laws, I found three themes that I considered as part of Pakistan's democratic narrative component. The first was about the necessity of having specialized laws. According to retired Lt. Gen Talat Masood, a defense columnist for Express Tribune:

*Without legislation, you would not be able to punish those people who commit these acts. So **I think legislation is an important aspect of prosecution, and it is also an important aspect for punishing criminals, and also widening the net towards them because they have been escaping prosecution because Pakistan did not have the proper legislation for it. Now that it has, it has made a lot of difference.***¹⁰³ (emphasis is mine)

Others agreed with Masood's point of view. For example, out of the seven ATC judges I interviewed, five said that the ATA was a beneficial law in spite of its problems while my police sources said that the broad definition makes investigation difficult (see chapter six). Journalists were the most skeptical of the necessity of anti-terrorism laws because of their capacity for human rights violations. For example, Asad Hashim, a journalist with Al Jazeera based in Islamabad told me that after POPA came out, he spoke with labor, Baloch, and other political activists, and they were all scared because they knew that POPA could be applied to them.

Furthermore:

When you make it legal to torture people, make it legal to disappear people, which is what the Protection of Pakistan Act does by suspending habeas corpus, then what are we meant to do? ...If Person A is a human rights activist who is trying to follow up cases of disappeared Baloch people, what law are they supposed to appeal to? Because the Protection of Pakistan Ordinance makes it ok for you to disappear people, and makes it perfectly legal. Then what are you meant to do?¹⁰⁴ (emphasis is mine)

¹⁰³ Lt. Gen (Retd.) Talat Masood, interview, Islamabad, October 29, 2015.

¹⁰⁴ Asad Hashim, phone interview, Karachi, March 9, 2015.

In other words, anti-terrorism laws do not seem to be protecting what they are claiming to be protecting. Rana Maqbool Sananullah, a former Inspector-General of Sindh Police, however, dismissed such concerns. He states that that POPA has been compared to India's temporary laws, Protection of Terrorism Act of 2002 and Terrorist and Disruptive Activities (Prevention) Act of 1985, but this comparison is inaccurate because POPA is "different" and "close to realistic requirements."¹⁰⁵

The second theme within the democratic component is the application of anti-terrorism laws. During a debate in parliament, the majority always raises concerns regarding the applicability of the laws. They are constantly worried that these laws will be used on them once they become the opposition. According to Faisal Siddiqui, Advocate, Sindh High Court:

*[W]hen it comes to terror laws, Pakistan has a long history of that, dating back from the 50s because we've had a number of insurgencies. We've dealt with political violence through terror laws. We've dealt with political parties through terror laws.*¹⁰⁶

An anonymous source from Bureau of International Narcotics and Law Enforcement Affairs (INL), U.S. State Department¹⁰⁷ stipulated that the National Accountability Bureau—an anti-corruption outfit—will most likely target PML-N and Nawaz Sharif once he is no longer in power. During our interview, Sananullah was quick to point out that not a single politician has been arrested or charged or been prosecuted under POPA, even though the public thought that politicians would be one of its targets. This concern—of being targeted when no longer in power—is closely tied to the broad definition of terrorism within the ATA, which has allowed ordinary crimes to be labeled as acts of terrorism. It also highlights a distrust of the political system, which is viewed as serving the interests of those parties in power rather than upholding

¹⁰⁵ Rana Maqbool Sananullah, in-person interview, Lahore, November 2, 2015.

¹⁰⁶ Faisal Siddiqui, in-person interview, Karachi, March 10, 2015.

¹⁰⁷ Anonymous bureaucrat, in-person interview, Islamabad, October 21, 2015.

the integrity of the state and its institutions. As Lt. Gen.(R) Masood said, “If these [laws] are misused, they undermine the spirit for which these laws were legislated.” The impact of the implementation of these laws on Pakistan’s ontological security, however, is tied to how civil institutions will respond to these laws. While I present judicial responses in chapter five and police responses in chapter six, the legislative response of expanding executive powers indicates that what will be considered a “misuse” of these laws is debatable.

The third, and most prominent theme I found within the democratic component was the justification for expanding executive power and what it means for the state’s daily counterterrorism practices. The army continues to remain at the forefront of the state’s political system, despite democratic rule. Many of my interviewees referred to the army and ISI collectively as “the establishment,” and did not have a high opinion of: 1) the relationship between right-wing political parties and the establishment, and 2) the establishment’s continued interference in the civilian political system. Yet, except for journalists, none of my other interviewees wanted to go on record with their criticisms. For example, an anonymous bureaucratic source stated:

Politicians compromise with the Army because they are exploiters themselves. PML and its various factions [PML– N, PML– Q] has always been the “establishment’s baby.” ... The establishment has corrupted political parties.¹⁰⁸

An anonymous source from the U.S. Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) said:

PML-N was against military courts because their links to the LeJ would be exposed. Deal with LeJ was: don’t kill in Punjab but you can stay here.¹⁰⁹
(emphasis is mine)

¹⁰⁸ Anonymous bureaucrat, in-person interview, Islamabad, October 25, 2015.

¹⁰⁹ Anonymous bureaucrat, in-person interview, Islamabad, October 21, 2015.

While an anonymous source from the IB stated:

The main stakeholder of NACTA is the Army. Without making the Army the head, NACTA won't work because Army is the only one that has authority.¹¹⁰

According to journalist Mazhar Abbas, Zardari's COAS, General Pervez Kayani "neutralized" the army, and worked to ensure that the army would not interfere in the state's political affairs.¹¹¹ Yet, according to Imtiaz Gul, the executive director of a think tank based in Islamabad:

***Special laws are needed for special, unusual situations.** The ATA was a response to a special situation. Then we've seen a number of changes, like amendments to that. But a number of those amendments were essentially pushed by the military, particularly after 9/11.*¹¹² (emphasis is mine)

Umer Farooq, a journalist for Herald, also discussed the army's prominent role in the formation of anti-terrorism legislation:

*[T]he gist [of the laws] comes mostly from the military [and] military intelligence services Iss kee waja yeh hai keh jo situation on the ground jo deal karrahi hai woh military karrahi hai yeh intelligence agencies karrahi hai. Civil government keh pass koi aisay idarai nahin hain jo counterterrorism mein directly koi major role play karrehoon. Tau law ko frame wohee car sakhta hai jo on the ground situation say deal karraha ho, woh hee explain karsakhta hai ka law kee requirement kiya hain, hummain kiya zaroorat hai. Translation: **The gist of anti-terrorism laws comes from the military and its intelligence agencies. This is because the civilian government does not have any institutions that deal with counterterrorism directly.** So the only one who can frame the laws and determine the requirements of the laws is the one who is the most familiar with realities on the ground.*¹¹³ (emphasis is mine)

Sher Ali Khan of Herald said, "When the announcement of the National Action Plan was made, I don't think [Prime Minister] Nawaz Sharif even knew about it,"¹¹⁴ while Sarah Eleazar of the Express Tribune said, "It's called the 'Prime Minister's National Action Plan, but..."¹¹⁵

¹¹⁰ Anonymous police officer from Intelligence Bureau, in-person interview, Lahore, November 3, 2015.

¹¹¹ Mazhar Abbas, in-person interview, Karachi, February 23, 2015.

¹¹² Imtiaz Gul, in-person interview, Islamabad, October 19, 2015.

¹¹³ Umer Farooq, in-person interview, Islamabad, October 19, 2015.

¹¹⁴ Sher Ali Khan, in-person interview, Lahore, November 2, 2015.

¹¹⁵ Sarah Eleazar, in-person interview, Lahore, November 2, 2015.

An anonymous source from NACTA called the NAP “a lousy document”¹¹⁶ because the establishment wrote it in one day. Parliamentarians have also expressed dissatisfaction with “hasty” legislation, often criticizing the lack of civilian input. For example: MNAs were not presented with a draft of the ATA till just a few hours before it was due to be debated on the National Assembly floor.¹¹⁷

There was, however, a consensus that the APS attack (the most recent critical interruption) forced the civilian leadership and the establishment to cooperate and communicate to reduce violent militant attacks within the country. Some examples are:

For the first time in Pakistan, there is clarity because of the [Chief of Army Staff] General Raheel Sharif. Before, state was confused. – Anonymous judge, Islamabad High Court¹¹⁸

For the first time, [the state] is taking terrorism seriously and battling it. – Anonymous, police officer, CTD¹¹⁹

Using legislation to expand executive powers, however, has some serious negative consequences as well. Faiza Haswary, a lawyer and lecturer at Hamdard Law School, Karachi, states:

*It won't be easy to make them go away. It's not like one fine day you'll have a parliament sitting there and saying that now we're going to do away with these laws. They have come to stay. And bad laws get implemented very easily.*¹²⁰

She went on to say that these particular “bad” laws are brought in “for a particular purpose,” and those who advocated for such extreme measures, such as 90-day detention without a charge, want to make sure that these laws get implemented at any cost.

¹¹⁶ Anonymous, in-person interview, Islamabad, October 22, 2015.

¹¹⁷ See remarks of Syed Naveed Qamar in Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 44.

¹¹⁸ Anonymous, in-person interview, Islamabad, October 21, 2015.

¹¹⁹ Anonymous, in-person interview, Lahore, November 4, 2015.

¹²⁰ Faiza Haswary, in-person interview, Karachi, March 9, 2015.

Similarly, an anonymous source explained how laws create narratives, and expanding executive powers without any checks and balances create a counterterrorism narrative that is “reactive” and “not logical, coherent, genuine or authentic.”¹²¹ Arif Alvi of the Pakistan Tehreek-i-Insaaf (PTI) and a Member of the National Assembly (MNA) is also critical of expanding executive powers every time the state is faced with a crisis-like situation. He called the army “secure-o-crats” who are “present everywhere. And what they do is, they look at every situation and give advice by handling it by force.”¹²² Even though he praises the army for its counterinsurgency operations and their impact on allegedly reducing terrorist attacks within the state, he asks, “But what happens when a *Fauji* (soldier) walks away?”¹²³ He argues that ultimately the civilian government has to deal with the repercussions of expanded executive power. Concerns regarding laws expanding executive power were also voiced in 1997 when the ATA’s predecessor, the Suppression of the Terrorist Activities (Special Courts) (Amendment) Bill of 1997 was being debated. For example, Senator Dr. Abdul Hai Baloch¹²⁴ called the Suppression of the Terrorist Activities (Special Courts) Bill of 1975, “a black law” that is criticized by parties when they are not in power but then is deemed necessary when these same parties are in power.¹²⁵ When the ATA was debated in the National Assembly, MNA Syed Naveed Qamar¹²⁶ said:

*Every time we bring in draconian law and we give extraordinary powers to the police authorities and to the administrative authorities. We [sic] are creating terror for the innocent people of this country.*¹²⁷

¹²¹ Anonymous bureaucrat, in-person interview, Islamabad, October 25, 2015.

¹²² Arif Alvi, in-person interview, Karachi, March 2, 2015. Fun fact: He’s my dentist.

¹²³ Ibid.

¹²⁴ Dr. Abdul Hai Baloch is a Balochi politician and the president of the National Party.

¹²⁵ Official Report, The Senate of Pakistan Debates, 79th Session, vol. VII, no. 6 (July 3, 1997): 117.

¹²⁶ MNA Syed Naveed Qamar is a member of PPP.

¹²⁷ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 44.

The legislature's use of Pakistan's democratic narrative component, therefore, highlights the state's struggle with maintaining a manageable civil–military balance while also serving as a protector of Islam and defender of its territory from foreign enemies, primarily India.

II.III. Countering India and Other Enemies: Use of Counterterrorism Component

Pakistan's counterterrorism narrative component reveals the tug-of-war between the army and the police with respect to counterterrorism operations. One of the main problems with Pakistan's anti-terrorism legal framework is the broad definition of terrorism. According to journalist Wajahat Ali, analyst Imtiaz Gul, ATC judges and prosecutors, and many more, the broad definition of terrorism has made it difficult for the police to conduct counterterrorism-related investigations. Furthermore, the police have legislative power via the code of criminal procedure but lacks capacity. The army, however, is comparatively very rich in resources, and has also enjoyed legislative cover in the form of expanding executive power. Yet, it was not until the 21st Amendment to the Constitution that the army also received some judicial power that has also facilitated its operational capacity.

Rana Maqbool Sanaullah called the 21st Amendment “a huge advancement” while Sarmad Ali called it a “watershed moment.” Along with the NAP, the 21st Amendment promoted two things: 1) the civilian and the military establishment were on the same page, and 2) reinstating the death penalty for terrorism-related offenses would decrease attacks within Pakistan. An anonymous source from the Judge Advocate General's office stated:

After the launch of *Zarb-e-Azb*, the formulation of NAP and military courts, and **the execution of individuals that was pending have had very serious deterrent effects which has resulted in reducing the terrorist attacks** on the sensitive and law enforcement agencies installations.¹²⁸ (emphasis is mine)

¹²⁸ Anonymous, in-person interview, Rawalpindi, October 22, 2015.

There is, however, little empirical evidence to support this claim (Justice Peace Project and Reprieve 2014). And it also remains unclear if reinstating the death penalty has had any impact on the state's ontological security.

The counterterrorism component also highlights how Pakistan views itself as a victim of militant violence in which it has lost thousands of innocent civilians. As such, it promotes the “we are at war” narrative—and encourages an expansion of executive, specifically military, powers. This was especially evident during the debate on POPA on the floor of the National Assembly. POPA passed unanimously and is considered a landmark piece of anti-terrorism legislation. After the law passed, MNA Shah Mehmood Qureishi¹²⁹ praised the army for valiantly fighting the enemies of the state, and said:

Today, the country has passed a very important piece of legislation. I realize that during this tumultuous time, the Pakistani Army is not only working to protect the state but is also giving up their life to protect fellow Pakistanis, Pakistan's ideology, and its wealth. These sons of Pakistan are putting their lives on the line. ... Inshallah the Pakistani Army will be successful, and inshallah these people who are working to destroy peace and create chaos within Pakistan will be unsuccessful. Inshallah we will be able to get a handle on these people and **the Pakistani Army will be successful. They have the whole nation's prayers with them.**¹³⁰ (emphasis is mine)

Similarly, MNA Dr. Farooq Sattar¹³¹ also said:

In order to maintain Pakistan's statehood, the government decided that it needed to **take legal and operational action against those who are waging war against Pakistan and its people.**¹³² (emphasis is mine)

Pakistan's policy of distinguishing between various militant groups operating within its boundaries, however, challenges its narrative of victimhood. The general consensus is that if a

¹²⁹ Shah Mehmood Qureishi is a member of PTI.

¹³⁰ Shah Mehmood Qureishi's remarks were in Urdu, and I have translated them. See National Assembly of Pakistan, Assembly Debates, 13th Session, July 2, 2014, p. 17, available online.

¹³¹ Dr. Farooq Sattar is a member of the MQM.

¹³² Dr. Farooq Sattar's remarks were in Urdu, and I have translated them. See National Assembly of Pakistan, Assembly Debates, 13th Session, July 2, 2014, p. 26, available online.

militant group attacks the Pakistani state, the state will consider it an enemy and counter it. For example, that is why the TTP is attacked and LeT is not: while the TTP routinely launches attacks targeting Pakistani civilians and military posts, the LeT has never conducted an attack within the Pakistani state. Even though the military establishment and the civilian government seemed to have reached a consensus after the APS attack, the army has continued to selectively target extremist groups (Ghumman 2015; Katju 2016, 172). According to Ahmer Bilal Soofi, anti-terrorism laws can provide a stable and sound foundation for countering militant groups:

*There hasn't been a coherent narrative. My take on that is **I have been advising the government to use law as the basis of narrative**, 'To argue that those who do not accept our constitution, we will treat them in a different category.'¹³³
(emphasis is mine)*

The problem with equating “anti-state” with “militancy” is that it not only ignores the historical context of militancy within the state, but also poses a threat to the democratic process, which involves political discussion and dissent. Furthermore, the policy fails to address the larger issue of state sponsorship of militancy within Pakistan and across its borders. While discussing Pakistan’s use of militant groups as proxies, journalist Amir Zia stated:

*[O]nce you unleash a social process and that social process spans over three, four decades, and you want to turn it back or put a cap on it, it will take equally that amount of years and time because... **I mean it's not a question of arming a few people, it is changing the mindset of those people.**¹³⁴ (emphasis is mine)*

According to Lisa Curtis, Senior Director for South and Central Asia at the White House National Security Council:

*Operationally we have not seen a great deal of change in terms of Pakistan's reliance on terrorist proxies on fighting India and Afghanistan. **My view is that until Pakistan cracks down writ large on all terrorist groups and the ideology***

¹³³ Ahmer Bilal Soofi, in-person interview, Islamabad, October 21, 2015.

¹³⁴ Amir Zia, in-person interview, March 2, 2015, Karachi.

*that fuels them, Pakistan will continue to suffer from the blowback of these terrorist groups.*¹³⁵ (emphasis is mine)

Pakistan's distinction between militant groups is also connected to its relationship with the state's official religion, Islam, and its self-perception as the defender of Islam. According to Ahsan Butt, an expert on nationalism and secessionist movements:

*There are a variety of narratives. The narratives are confused. On the one hand the state has decided to fight a war against the elements threatening it. That's one half of the equation. The second half of the equation are the elements fighting are often inspired by very similar ideals that the state itself is inspired by, which is religious nationalism. The idea that any sort of modern political authority—whether you want to call it a state or not—should be covered on the basis of religious identity. Certainly the founders of Pakistan probably called for a 'soft' Muslim identity. These guys probably call for a hardened Muslim identity. At the end of the day though these are differences of degrees not of kinds. **So the paradox is that while the state has certainly picked up arms against these groups, these groups are very much inspired by the same things the state is. That's where the confusion of the narrative comes in. On what basis is the state taking these groups on?***¹³⁶ (emphasis is mine)

My goal for showcasing these narrative components is twofold: 1) to highlight the Pakistan's internal struggle with securing itself while upholding the pillars of its identity, and 2) to explain the foundation for the state's anti-terrorism legal regime, which serves as the basis for legalization in the course of a policy's routinization (specified in chapter two). The legislature's use of the components of Pakistan's biographical narrative therefore emphasize the complexity of legitimizing counterterrorism practices while simultaneously responding to critical interruptions in a state like Pakistan that has an evolving—and often unstable—political identity and weak state institutions.

¹³⁵ Lisa Curtis, in-person interview, Washington, D.C., June 23, 2015.

¹³⁶ Ahsan I. Butt, phone interview, Washington, D.C., June 10, 2015.

Section III. Legislative Routines: Providing a Legal Cover for State-sponsorship

Pakistan's critical interruptions and biographical narrative has created three consistent practices—or routines—within the legislative branch: 1) consistent expansion of executive powers that favors the military establishment, 2) creation of parallel judicial systems, and 3) clientelistic political parties. Collectively they are the foundation for sponsorship of militancy becoming an institutionalized routine that increases Pakistan's ontological security.

Expanding executive powers that increase military powers is a hallmark of a state's response to a critical interruption or any security-related crises. In this regard, Pakistan is similar to other states. For example, in recent history, after the September 11, 2001 attacks in the United States, there was an increase in laws designed to combat terrorism and militant violence globally. Germany expanded the jurisdiction of its law enforcement agencies, allowed the ban of religious groups if they encouraged violence, gave permission to border control agents to search suspicious people and their belongings, and installed closed-circuit surveillance camera systems in public train stations. In the United Kingdom, law enforcement and intelligence agencies can actually monitor communications data in order to ensure that political acts of violence are not monitored in the media. Furthermore, British authorities can detain a suspect for 28 days without being charged for any crime, and the suspect and their counsel can be excluded from certain hearings pertaining to the case (Nacos 2008, 173–75). In Australia, a preventative detention order authorizes the executive to detain an individual without charges or a trial, and in a way usurps the power of the judiciary to punish and detain according to the criminal process, which is not constitutionally sound. A court order allows the Australian authorities to detain an individual for a longer period of time (Nesbitt 2008, 73–93). In the United States, the PATRIOT Act greatly expanded the power of the executive to track and gather information, and detain a suspect

without a time limit (Nacos 2008, 176). Under the status of an “enemy combatant,” U.S. authorities can capture and detain a suspect anywhere in the world (Nesbitt 2008, 64–73). India passed the Prevention of Terrorism Act (POTA) in 2002, which was designed along the lines of the U.S. PATRIOT Act. Though it was repealed in 2004, POTA allowed law enforcement officers to detain suspects without a time limit, conduct electronic surveillance without warrants, and extract confessions under duress. Pakistan’s systematic expansion of executive powers, therefore, is consistent with this global pattern in counterterrorism.

Similarly, the creation of parallel judicial systems to counter various forms of political violence has also occurred within other states. From 1964 to 1985, Brazil used military courts rather than its civilian justice system to try anti-nationalists and terrorists. Torture was rampant but disappearances were rare. Appeals could be made to the civilian Supreme Court but the process was time-consuming and expensive. While a civilian judge sat on the bench with three military officers, the civilian judiciary enjoyed very little independence (Pereira 2008, 353–361). The Chilean military courts from 1973 to 1990 were completely insulated from the civilian system while the courts in Argentina from 1976 to 1983 served “as a cover for state terror” (Pereira 2008, 373). Pakistan’s legislative branch too has created multiple judicial systems with the aim of countering terrorism and reducing militancy. For example: criminal justice system vs. ATCs, ATCs vs. POPA courts, and ATCs vs. Military Courts. According to Reema Omer, International Commission of Jurists’ (ICJ) International Legal Advisor for Pakistan, there is politics behind the establishment of a parallel judicial system in Pakistan. When discussing POPA, she said:

*In my opinion, the Protection of Pakistan Act, **the timing of it shows that it was enacted to give the military certain immunities, certain indemnities, for enforced disappearances, because that practice has been going on for many many years now, especially since the war on terrorism [GWOT] started and***

*Pakistan participated in it, in response to Baloch insurgencies or nationalist movements—whatever you want to call them. And all these people were being picked up by the intelligence agencies and the military under no law as such. So the Protection of Pakistan Act, in response to a particular judgment by the Supreme Court, which took a very strong stance on disappearances and actually ordered cases to be registered against those responsible, this [POPA] ordinance was passed right after, giving the military retrospective powers to detain people in some category of cases for indefinite periods.*¹³⁷ (emphasis is mine)

Establishing parallel judicial structures in response to unfavorable judicial decisions, therefore, is part of Pakistan's second legislative response.

The effects of Pakistan's counterterrorism efforts and the evolution of its political parties into clientelistic parties, however, are unique. There are currently 15 national political parties, and even more regional parties, which are operating within the state. According to Zia Rehman,¹³⁸ a journalist with The News, "Almost every single political party has militant wings." Other journalists such as Riaz Sohail from BBC Urdu,¹³⁹ Mehmood Shaam of *Aitraaf*,¹⁴⁰ Badar Alam of the Herald,¹⁴¹ Saba Imtiaz of the Express Tribune,¹⁴² and a journalist from Dawn who wished to remain anonymous,¹⁴³ etc. all discussed militant wings of political parties. These militant wings, however, are different from militant groups operating within the state. The wings are smaller, with clear political affiliations, and relatively manageable political agendas. More significantly, they operate at the local level, unlike militant groups. These militant wings point to the larger problem of patronage that dates back to colonial India. Political parties also rely heavily on clientelistic networks to secure votes (Mohmand 2015). For example, Saba Imtiaz, who reports extensively on Pakistan's anti-terrorism legislation, ATCs, and militant wings of

¹³⁷ Reema Omer, Skype interview, Washington, D.C., November 26, 2015. The cases she is referring to are discussed in chapter four.

¹³⁸ Zia ur Rehman, in-person interview, Karachi, March 10, 2015.

¹³⁹ Riaz Sohail, in-person interview, Karachi, March 13, 2015.

¹⁴⁰ Mehmood Shaam, in-person interview, Karachi, March 12, 2015.

¹⁴¹ Badar Alam, in-person interview, Karachi, March 9, 2015.

¹⁴² Saba Imtiaz, Skype interview, Washington, D.C., April 17, 2015.

¹⁴³ Anonymous, in-person interview, Karachi, March 7, 2015.

political parties, describes the role of extortion in Karachi, which is notorious for its corruption. She says, “Extortion is technically supposed to be protection money” and “Militant wings enforces the extortion structure. And what happen when you enforce the extortion structure is that then that neighborhood becomes your constituency.”¹⁴⁴

While conducting fieldwork in Karachi, along with asking about the relationship between political parties and their militant wings, I also asked if members of militant wings were convicted in ATCs.¹⁴⁵ Khawaja Naveed Ahmed, a criminal lawyer, explained that many militants use the name of a political party “to get an umbrella of protection” within the jail system, which has created a network based on political affiliation and ethnicity that the convicted can use:

All these accused persons, who are the criminals, in order to take protection and facilities they just have affiliation with certain political parties and their terrorist wings—or militant wings you can say—and in part-time they commit the crime and make their living, but they take protection from the political party. And there are certain others, who actually are not the members of the party but once they are caught and they enter into the jail, so they, on ethnic bases just join the groups inside the jail: somebody says I am from MQM, somebody says I am from JSM,¹⁴⁶ somebody says I am from Peoples Party. So everybody has their own barracks there. The jail authorities, in order to have safe administration, have allocated barracks to different people. So when the new man goes, and if I am an Urdu-speaking man, I will give money to the jail superintendent to put me in MQM barrack... and so they will accommodate you.¹⁴⁷ (emphasis is mine)

One anonymous police source stated, “Deep down political parties may have a connection with banned groups but overall they do not support terrorist networks.”¹⁴⁸ Another

¹⁴⁴ Saba Imtiaz, Skype interview, Washington, D.C., April 17, 2015.

¹⁴⁵ I was told by many of my interviewees that no data existed on the political affiliations of those convicted in ATCs. While in Lahore, I was put in touch with the Punjab Prosecution Department, which supposedly had this data for all ATCs based in Punjab. When I interviewed Sarah Belal, a human rights lawyer and head of the Justice Project Pakistan, on November 5, 2015 in Lahore, she told me that the only way to get that kind of data would be to get ahold of the First Information Report (FIR) of the convicted, which might contain information like political affiliation. Unfortunately, I did not have the time or funds to conduct that kind of research. Instead, I have relied on the information provided by my interviewees, many of who have first-hand experience dealing with the ATCs.

¹⁴⁶ JSM stands for Jeay Sindh Muttahida Mahaz, which is one of the largest separatist parties in Sindh.

¹⁴⁷ Khawaja Naveed Ahmed, in-person interview, Kaachi, March 4, 2015.

¹⁴⁸ Anonymous, in-person interview, Karachi, March 13, 2015.

source said, “To some extent, militant wings and terrorist groups are operationally aligned,”¹⁴⁹ while one discussed the MQM in detail, explaining how the MQM and PPP both paid the Taliban to kill people, called “target killings,” but now “the military is going after them.”¹⁵⁰ Badar Alam, the editor-in-chief of Herald, explains the connection between political parties and continued militant violence:

*Over the last two and half decades, what we have seen in Karachi especially is a criminalization of politics. Whether you have a separate, specialized “death squad”—or you call it militant wing—or not, there are elements within almost every party who are used in order to perpetuate political violence, and who then use their political support to commit other crimes, non-political crimes like street robberies, extortion, kidnapping for ransom, you know those kinds of things. **So even if it is very difficult to say with 100 percent authenticity that this party has a militant wing and this party does not, every party has criminal elements.** Sometimes those criminal elements are right there, very very visible. Sometimes they are in the background. But political parties have used those criminals on gang-type elements to perpetuate political violence. And we have seen this happen again and again.¹⁵¹ (emphasis is mine)*

This reliance on militant wings is problematic because it simultaneously weakens democratic progress and creates incentives to facilitate militancy by distinguishing between militant non-state actors.

In chapter two, I defined sponsorship of militant groups as the “deliberate routinization of assistance to a violent non-state actor to meet its geostrategic goals.” Routinization is a gradual process and occurs in steps dictated by the state’s narrative components and the development of institutional routines in response to critical interruptions. Pakistan’s anti-terrorism legal regime and the routines of its legislative branch have facilitated the conversion of state-sponsorship of militant groups from a policy to an institutionalized routine in four ways. First, continuous empowerment of the military establishment via expansion of executive powers

¹⁴⁹ Anonymous, in-person interview, Karachi, March 10, 2015.

¹⁵⁰ Anonymous, in-person interview, Islamabad, October 21, 2015.

¹⁵¹ Badar Alam, in-person interview, Karachi, March 9, 2015.

ensures that civil–military imbalance remains in the favor of the military, especially within the context of counterterrorism. Second, the ongoing “state of war” rhetoric as captured by the counterterrorism narratives operating within the state legitimizes any legal cover provided by the anti-terrorism legal regime. Third, creation of parallel judicial systems undermines judicial independence, threatening the judiciary’s ability to act as a counter to executive and legislative routines that strengthen state-sponsorship of militancy. And fourth, reliance on militant groups at the national level legitimizes the use of such actors on the local level, and within local politics, justifying the existence of militant wings associated with political parties. The legislative branch, therefore, has put Pakistan in a perpetual state of war that feeds into the state’s need of using militant groups as a source of ontological security.

Conclusion

This is the first chapter out of the three chapters that analyze Pakistan’s civil institutions and their: part in upholding the pillars of the state’s identity, role in the state’s daily counterterrorism practices, and their contribution to institutionalized routine of state-sponsorship of militant groups. In this chapter, I have analyzed Pakistan’s legislature in the context of the state’s anti-terrorism legal regime. I have argued that anti-terrorism legislation is a powerful discursive site for analyzing state-sponsored militancy—and its evolution into a self-identity need and a means for increasing ontological security. While anti-terrorism laws dictate the terms for a state’s counterterrorism practices, they also play a crucial play in empowering the state’s civil institutions in the realm of counterterrorism. In the case of Pakistan, where the civil–military balance often oscillates in favor of the military, the anti-terrorism legal regime has put

three civil institutions—the legislature, judiciary, and police—in a unique position to legitimize sponsorship.

The civilian government often finds itself reassuring the military establishment of its support for curbing militancy. For example, in the Dawn Leaks incident described in the chapter's introduction, experienced bureaucrats like Pervaiz Rasheed and Rao Tehsin, and seasoned diplomats like Tariq Fatemi have been barred from holding office because they were openly critical of the military establishment. Going beyond the civil–military imbalance, I have highlighted how Pakistan's anti-terrorism legal regime has been used to simultaneously counter some militant groups while also legitimizing the state's support for others. The legislative branch has used religious, democratic, and counterterrorism narrative components—that make up the state's biographical narrative—to respond to three critical interruptions—the 1971 civil war, funding of *mujahedeen* during the Cold War, the continuation of GWOT, and APS attack—that have all played a role in the formation of Pakistan's anti-terrorism legal regime, legalization of counterterrorism practices, and eventual routinization of sponsorship of militant groups. Finally, the interplay of the narrative components used by the legislative branch and the effect of critical interruptions on state action have created three legislative responses in Pakistan: 1) expansion of executive powers, 2) creation of parallel judicial systems, and 3) facilitation of clientelistic political parties. Collectively, they serve as the legal foundation that has facilitated state-sponsored militancy evolving into an institutionalized routine that increases ontological security.

CHAPTER FIVE:

Judicial Independence and the Routinization of Militancy

Months before the APS attack in Peshawar, Pakistan revealed its first National Internal Security Policy (NISP) in February 2014,¹⁵² which outlined five policy objectives: 1) establish the writ of the State and protect the people from all internal threats; 2) protect the life, property and fundamental rights of the citizens of Pakistan; 3) promote pluralism, freedom, democracy and a culture of tolerance; 4) prevent, deter and contain threats to internal security in a transparent, accountable and just manner; and 5) peacefully resolve and manage disputes with hostile elements without compromising the rule of law (NISP 2014, 6). To meet these policy objectives, NISP had three overarching goals. The first goal was to isolate militant networks, especially those associated with the TTP, who conducts the most terrorist attacks within Pakistan (Rumi 2015, 2). The second goal focused on dialogue and coordination between all stakeholders—though “stakeholders” remained undefined. The third, and final goal was facilitating coordination between the federal and provincial governments, intelligence agencies, and law enforcement bureaucracies.

Soon after the NISP was released, the Pakistan Army launched *Zarb-e-Azb* (“Sharp Strike”) in June 2014. Designed as a counterinsurgency operation, *Zarb-e-Azb* primarily targeted the TTP and affiliated militant groups in FATA, North Waziristan, Karachi, Balochistan, and southern Punjab.¹⁵³ Within six months of the operation, the TTP had retaliated by attacking the APS in Peshawar in December 2014, killing over 130 children and teachers, and injuring scores

¹⁵² The Institute for Policy Reforms in Lahore proposed another strategy called the National Counter Terrorism and Extremism Strategy (NACTES) that focused on religiously motivated militancy. The report argued that while NISP was an important approach, a more nuanced and customized approach was needed since religiously motivated terrorist attacks are the biggest threat to Pakistan. See Tariq Parvez, “National Counter Terrorism and Extremism Strategy,” IPR Report, Institute for Policy Reforms (February 2015), <http://ipr.org.pk/wp-content/uploads/2015/03/National-Counter-Terrorism-and-Extremism-Strategy.pdf>.

¹⁵³ The operation ended in April 2016. The Army stated that it was a success—though it had claimed the lives of 490 soldiers, 3500 militants had been killed¹⁵³ (Express Tribune 2016).

more. The APS attack forced the civilian government and military establishment to work together. The result was the NAP, launched in January 2015, and still in effect today.¹⁵⁴ While the NAP shares the NISP's goals and objectives, it added two new elements to Pakistan's efforts toward revamping security measures: 1) reinstating the death penalty for those convicted of terrorism, and 2) establishing special military tribunals to fast-track terrorism-related crimes via the 21st Amendment to the constitution (Rumi 2015, 8).

The special military courts commenced proceedings almost immediately. Punjab identified more than 450 cases while KP referred 423 cases, 116 of which came from Peshawar. Sindh identified more than 341 cases and Balochistan referred 53 cases of “jet black terrorists” to the federal government for trial via military courts (Gishkori 2015). Amongst the KP list was TTP chief Mullah Fazlullah and TNSM chief Sufi Mohammad and Mualvi Faqeer (Sherazi 2015). On April 2, 2015, ISPR released a press release, stating that the military courts had convicted seven individuals: six were sentenced to death while one was given a life sentence (Inter Services Press Relations 2015). The Supreme Court Bar Association (SCBA) challenged the death sentences, stating that the military trial procedures were unconstitutional and violated standards of fair trials. On August 7, 2015, in a decision¹⁵⁵ called a “blow to human rights” and “judicial independence” (International Commission of Jurists 2015), the Supreme Court upheld the 21st Amendment—and by extension, the military courts. The decision surprised many legal experts and analysts. But was it a surprise? Pakistan's judiciary has often functioned as a means of validating both civilian and military political power. It has also tried to determine what militant and terrorist acts constitute as anti-national activities in its quest to define Pakistan's

¹⁵⁴ As described in chapters three and four, the NAP is a 20-point document that aims to reduce militant attacks and activity by activating and strengthening NACTA, targeting financial networks of militant groups, banning terrorism through social media, registering *madrassas*, etc.

¹⁵⁵ *District Bar Association, Rawalpindi v Federation of Pakistan* [PLD 2015 SC 401].

political ideology and uphold the pillars of its identity, which is to defend Islam and guard itself from Indian aggression. The judiciary's relationship with the state's daily counterterrorism and anti-terrorism practices, therefore, is at the center of the routinization of state-sponsorship of militant groups.

In order to explain the role of the judiciary in counterterrorism, this chapter is divided into three sections. The first section discusses the judiciary's relationship with Pakistan's anti-terrorism legal regime that dictates the state's daily counterterrorism and anti-terrorism practices, outlining the political context for judicial routines. I analyze the judiciary's response to legislation creating parallel court structures and tensions between the legislative, judicial, and executive branches of government in the context of military courts being cited as effective counterterrorism tools, along with judicial attempts to define anti-nationalist activities. In the second section, I focus on judges, defense and prosecution lawyers, and police that operate within the judiciary and their use of the religious, democratic, and counterterrorism components of Pakistan's biographical narrative to legitimize the state's and the judiciary's responses to critical interruptions, which are: 1) the first Kashmir war in 1948; 2) the 1970 general elections that led to the civil war and creation of Bangladesh in 1971; 3) the Soviet invasion of Afghanistan and subsequent funding of the mujahedeen during the Cold War; 4) the onset of GWOT; and 5) the attack on Peshawar's APS in 2014. The changes in the state's anti-terrorism legal regime due to the interplay of the state's biographical narrative and critical interruptions has shaped the judiciary's practices, procedures, and code of conduct, which I present in the third section. Judicial routines are: 1) accepting parallel court structures, 2) legitimizing executive (especially military) power under emergency laws, and 3) favoring writ of the state over fundamental human rights. These judicial routines, combined with legislative (see chapter four)

and police routines (see chapter six) have legitimized and routinized the state-sponsorship of militant groups as a way to increase the state's ontological security.

Section I. Judiciary and Counterterrorism: Clash of the Branches of Government

Article 175¹⁵⁶ of the 1973 Constitution calls for an independent judiciary that would be “progressively” separate from the executive branch of government, while Article 203¹⁵⁷ states that each High Court will control and supervise subordinate courts. Throughout Pakistan's history, however, the judiciary has struggled to maintain its autonomy while upholding the constitution. In the domain of counterterrorism, the judiciary has: 1) legitimized political power, 2) determined the boundaries of anti-nationalist activities, and 3) interpreted “emergency” powers justified by the state's biographical narrative. In the section below I highlight how the judiciary has handled its responsibilities in the presence of sometimes-conflicting narrative components in the aftermath of a critical interruption.

I.I. Interpreting Anti-National Activities in Post-Civil War period

In 1975, Pakistan was still recovering from its civil war that had resulted in its east wing becoming an independent sovereign state (Bangladesh). Bhutto, leader of the PPP, was prime minister, and wanted to win the 1977 elections at any cost. The National Awami Party¹⁵⁸ was the PPP's biggest opposition and was gaining momentum nationwide. Though the coalition was not effective at curbing violence and secessionist movements in those provinces, the Awami Party remained popular. By 1974, the leader of the Awami Party, Wali Khan, had begun campaigning in Punjab and Sindh, and Bhutto feared that PPP would lose its stronghold in those provinces.

¹⁵⁶ Article 175(A) of the Constitution, <http://www.pakistani.org/pakistan/constitution/part7.ch1.html>.

¹⁵⁷ Article 203 of the Constitution, <http://www.pakistani.org/pakistan/constitution/part7.ch3.html>.

¹⁵⁸ I have not abbreviated the National Awami Party to avoid confusion with the National Action Plan of 2015. Instead, I refer to it as simply the Awami Party.

When Governor of NWFP Hayat Sherpao, founding member of the PPP and close ally of Bhutto, was killed at Peshawar University on February 8, 1975, Bhutto immediately declared the Awami Party as not only as unfit to govern¹⁵⁹ but also for colluding with the Afghani government, coordinating Sherpao's assassination. Wali Khan and other members of the Awami Party were consequently arrested on charges of treason, and the Supreme Court was asked to validate the government's actions (Nawaz 2008, 332–333; Khan, H. 2009, 402).¹⁶⁰

The Bhutto administration's case against the Awami Party was based on three assertions. First, the Awami Party had supported the Awami League in East Pakistan, which was now Bangladesh, and as such, according to Bhutto, the Party did not have the same interests as the Pakistani state, which is to defend Islam and guard against Indian aggression. As described in chapter three, Islam played a central role in the sub-continent's Muslim population's calls for political autonomy, and eventually, independence. While Islam had served as a rallying call in the pre-partition era, the breaking of Pakistan contradicted Islam's alleged unifying force. Therefore, by accusing Wali Khan and the Awami Party of not supporting the idea of Pakistan, Bhutto was essentially accusing Khan of considering the Two-Nation Theory as defunct, contesting the unifying force of Islam, and hence harboring anti-nationalist/treason-like sentiments. The second assertion was closely linked to the first in which Bhutto accused Wali Khan in particular as identifying more closely with Pakhtoon nationalism rather than the ideology of Pakistan (Newburg 1995,152), which reinforced Pakistan's view of itself as a victim of foreign aggression; and in particular, Indian sponsorship of Bangladeshi separatism. The third,

¹⁵⁹ It had governed Balochistan and NWFP with JI since 1972.

¹⁶⁰ *Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs, Islamabad v. Mr. Abdul Wali Khan MNA* (Reference No. 1 of 1975). Before the arrests, the Bhutto government had passed the Constitution's first amendment that allowed the government to restrict anti-nationalist activities with judicial approval. The arrests, therefore, were not considered a criminal case but instead were presented to the Supreme Court as part of the constitutional amendment. That is why this "case" does not have a PLD number.

and final assertion was that supporters of the Awami Party in Balochistan were actively targeting the Pakistan Army, further raising concerns over foreign involvement.¹⁶¹

Bhutto's assertions highlight how the government used religious, democratic, and counterterrorism narrative components to uphold Pakistan's status as the defender of Islam and guard against foreign threats. For example, in the context of the religious component, in the post-civil war time period, contesting Islam in any way meant that Pakistan's identity and role as Islam's defender was fundamentally being challenged. Similarly, secessionist movements, and the ethnic tensions and militant violence that resulted from these movements and their call for autonomy, challenged the state's territorial integrity, reinforcing the counterterrorism component in which Pakistan considered itself a victim of militancy—and Indian sponsorship of militancy and separatism. These narrative components also buttressed the army's position as the only efficient and reliable institution that could protect the state's territory and Islam, which is related to the democratic component that focuses on the relationship between institutions and the state's geostrategic strategies.

The Supreme Court concluded that the Awami Party was indeed against the fundamentals of Islam for having a multi-national agenda and ideology, and ruled to dissolve the Party on the grounds that it was acting against the sovereignty of Pakistan (Newberg 1995, 151–154; Khan, H. 2009, 405–406). According to the judiciary then, treason was any activity that supported ethnic groups. To support ethnic groups was a threat to Pakistan's sovereignty because it questioned the validity of the Two-Nation Theory—and by extension questioned the basics of nationalism within Islam that considers all Muslims as part of one nation. The court's decision in favor of the government is important because it encouraged the legislature to respond to anti-

¹⁶¹ According to Paula Newberg (1995), the government's case was "shaky" and evidence was "Radio Kabul interceptions, foreign newspaper clippings and non-contextual excerpts from NAP speeches" (153).

nationalist/anti-state/militant tendencies by passing the Suppression of Terrorist Activities (Special Courts) Act of 1975. As described in chapter four, this law was repealed and became the ATA.

I.II. Balancing Executive Expansion in the Post–Cold War Environment

By the time the ATA was passed in 1997, the judiciary had dealt with numerous cases that sought to protect Pakistan’s sovereignty, define its political ideology, and set the contours of national security under both civilian rule and military dictatorships. The development of the ATA, therefore, was not a sudden response to political violence plaguing the state, but rather, a continuation of the Pakistani state’s counterterrorism practices and ontological security evolution.

As described earlier (see chapters three and four), the 1990s had been Pakistan’s bloodiest decade to date. The Sharif administration’s response was to increase executive powers by replacing the Suppression of Terrorist Activities (Special Courts) Act of 1975 with the ATA, which went into effect immediately after it passed on August 20, 1997. Supreme Court Chief Justice Syed Shah was critical of the newly formed ATCs, arguing that the funds used for creating such courts should be used to improve the criminal justice system instead (Mian 2004, 289–290; Khan, H. 2008, 623). Furthermore, the ATA had sidelined the judiciary by creating special appellate tribunals, and designating them as the only forums for appeals of decisions made in these new courts.¹⁶² Though the appellate tribunals would consist of High Court judges, they were not technically part of the High Court structure as designed by the constitution. Therefore, appeals in these tribunals would never face the High Courts or the Supreme Court—not only were they separate; they were also unconnected (Kennedy 2004, 391; Khan, H. 2009, 623).

¹⁶² Section 24, ATA.

The ATA was not the first occasion the legislative branch had created a parallel judicial structure. When past structures had come under judicial scrutiny, the courts had almost always emphasized the importance of the independence of the judiciary from the executive, and argued that *all* judicial procedures constitutionally fell under the judiciary's purview. For example, when the government of Balochistan had contested the High Court of Balochistan's decision to uphold the Criminal Law (Special Provisions) Ordinance of 1968,¹⁶³ the Supreme Court sided with the provincial government.¹⁶⁴ The ordinance had created special tribunals in specific areas within Balochistan to try those suspected of secessionist and anti-state activities, which the state considered as militant in nature. The Supreme Court ruled that the tribunals were unconstitutional because they did not respect the separation between the judiciary and the executive. Similarly, in *Imran v. Presiding Officer, Punjab Special Court No. VI, Multan and 2 others*,¹⁶⁵ the Lahore High Court declared Sections 3, 4, and 4(A) of the Suppression of Terrorist Activities (Special Courts) Act of 1975 as unconstitutional because the "presiding officer" is part of the executive, which ultimately erodes the independence of the judiciary. In *Sharaf Faridi v. the Province of Sindh*¹⁶⁶ the Sindh High Court also argued in favor of judicial independence, arguing that the President's Order No. 14 of 1985¹⁶⁷ violated the basis of the constitution and the judiciary (Mian 2004, 114–115). In a separate concurring note, Justice Saleem Akhtar of Sindh High Court wrote:

*In a set-up where the Constitution is based on trichotomy of powers, **the Judiciary enjoys a unique and supreme position within the framework of the Constitution as it creates balance amongst the various organs of the State and***

¹⁶³ Criminal Law (Special Provisions) Ordinance of 1968, promulgated on January 16, 1968, <http://punjablaws.gov.pk/laws/221.html>.

¹⁶⁴ *Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others* [PLD 1993 SC 341].

¹⁶⁵ PLD 1996 Lahore 542.

¹⁶⁶ PLD 1989 Karachi 404.

¹⁶⁷ President's Order No. 14 of 1985 is also known as the Revival of the Constitution of 1973, 1985. For full text, see http://www.pakistani.org/pakistan/constitution/orders/po14_1985.html.

also checks the excessive and arbitration exercise of power by the Executive and the Legislature.... The jurisdiction and the perimeters for exercise of powers by all three organs have been mentioned in definite terms in the Constitution. No organ is permitted to encroach upon the authority of the other and the Judiciary by its power to interpret the Constitution keeps the Legislature and the Executive within the spheres and bounds of the Constitution.....Therefore justice can only be done if there is an independent Judiciary which should be separate from the Executive and not at its mercy or dependent on it.¹⁶⁸ (emphasis is mine)

The Supreme Court upheld the Sindh Court's decision.¹⁶⁹ The formation of special appellate tribunals in the ATA on terrorism, therefore, was a deliberate move by the democratic Sharif administration to limit judiciary's powers and jurisdiction, weakening democratic processes.

The Supreme Court got an opportunity to examine the ATA later that year. On January 18, 1997, Mehram Ali, allegedly a member of Shia militant group TNFJ was involved in organizing a bomb explosion just outside the Lahore High Court. The alleged targets of the bomb were two leaders of the Sipah-Sahaba Pakistan, an anti-Shia militant group. He was arrested immediately but the trial went slowly. In August 1997, the ATCs were established and his was the first case to be transferred from the regular courts to an ATC, which found him guilty of terrorism and sentenced him to death (see chapter four).¹⁷⁰ He appealed the decision in the special appellate tribunal, which upheld the verdict. He then appealed to the Lahore High Court and the Supreme Court, both of which upheld the sentence but wrote judgments discussing the constitutionality of the ATCs.¹⁷¹ The Lahore High Court upheld the ATA¹⁷² while the Supreme Court struck down twelve provisions as invalid.

¹⁶⁸ PLD 1989 Karachi 404.

¹⁶⁹ *Government of Sindh through Chief Secretary to the Government of Sindh, Karachi and others v. Sharaf Faridi and others* [PLD 1994 SC 105].

¹⁷⁰ ATC proceedings are open to the public but the judgments are not available publically. Therefore, I do not have a case number for this case.

¹⁷¹ Mehram Ali was eventually executed on August 11, 1998. Though several others have been awarded the death sentence, he was the first to be executed. The police did not find any credible links to TNFJ but claimed that to have found sufficient evidence of his involvement in the bomb blast outside the Lahore High Court. See BBC News, "Pakistan hangs sectarian bomber," August 11, 1998, http://news.bbc.co.uk/2/hi/south_asia/149215.stm.

In *Mehram Ali vs. Federation of Pakistan*, the core of the Supreme Court's decision was that while the formation of special courts is well within the government's rights, these special courts could not exist outside the judiciary, emphasizing the ideology of separation of powers along with judicial independence and jurisdiction. In a joint statement, then-Chief Justice Ajmal Mian, and Justices Saiduzzama Siddiqui, Irshad Hasan Khan, Raja Afrasiab Khan, and Muhammad Bashir Jehangiri, wrote:

Indeed different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standing and persons accused of heinous crimes. However, this does not mean that a parallel judicial system can be created in violation of Articles 175, 202 and 203 of the Constitution. **There can be Special Courts trying heinous crimes expeditiously, but the same should be within the framework of the Constitution.**¹⁷³ (emphasis is mine)

Furthermore, below is a summary of relevant sections that were ruled to be invalid (Khan, H. 2009, 637–639):

1. Section 5(1) because it allowed law enforcement agents to open fire on a suspect without being fired upon first;
2. Section 10 because it allowed searches to take place without warrants;
3. Section 19(10)(b) because it allowed in absentia trials, which violates Article 10 of the Constitution;
4. Sections 24, 25, 27, 28, 30, and 37 violate Articles 175 and 203 of the Constitution, which ensure the independence of the judiciary;
5. Section 26 because it allowed a confession made to a police officer at a level lower than the Magistrate to be admissible in court, which violates the Qanun-e-Shahadat and Articles 13(b) and 21 of the constitution.

¹⁷² PLD 1998 Lahore 347.

¹⁷³ PLD 1998 SC 1445.

By limiting the power to shoot at will and conduct unwarranted searches, and controlling the admissibility of confessions, the court simultaneously promoted democratic processes and structures and eroded the institutional basis for the military's superiority over domestic law enforcement in counterterrorism operations. This simultaneous promotion and erosion showcases the judiciary's role in maintaining the pillars of Pakistan's identity. From the judiciary's standpoint, Pakistan could serve as a defender of Islam and protector of its territory and public even if it controlled—and limited—the military's operational powers, the institution viewed as the only means by which Pakistan could maintain its political identity.

The government passed the Anti-Terrorism (Amendment) Ordinance on October 24, 1998 to incorporate all the changes. But the newly minted ATA had little to no effect on militant violence in Sindh. As illustrated in chapter four, the Sharif administration declared a state of emergency in Sindh, and passed the PAFO on November 20, 1998. The PAFO was sweeping, especially when compared to the ATA (Ramakrishnan 2013, 190), and serves as an example of the legislative response to expand executive power in the aftermath of a critical interruption, which in the late 1990s was the looming end of the Cold War and Pakistan's relationship with the *mujahedeen*. PAFO sections that expand executive powers are as follows:

- Section 3 of the PAFO gave the military permission to establish as many courts as it deemed necessary,
- Section 4 applied the Army's court martial procedures to civilians charged with crimes listed in the PAFO's schedule,
- Section 6 and 7 expanded the schedule of crimes to include homicide by bombs, incidence of violence where there were multiple victims, and attacks that included the killing of any armed forces personnel,

- Section 7 created a new crime, called “civil commotion,”
- Section 8 allowed for appeals but only in military appellate bodies, and
- Section 11 transferred pending cases in ordinary criminal courts and ATCs to the newly established military courts.

Similar to the ATA, the PAFO also came under judicial scrutiny soon after it passed.

I.III. Venturing into Judicial Waters: First Attempt at Establishing Military Courts

The establishment of the PAFO and the events that followed after it was extended to all the provinces and administered territories,¹⁷⁴ is crucial for understanding the development of judicial routines that have legitimized and routinized the state-sponsorship of militant groups within Pakistan. Tensions between the judiciary and the Pakistan Army following the implementation of the PAFO highlight how the judiciary has interpreted executive powers under a state of emergency, and how military courts have come to be viewed as an effective counterterrorism tool by the government. Initially, the judiciary resisted legitimizing military courts, as I explain in this sub-section. But after the attack on Peshawar’s APS in December 2014, the judiciary complied, resulting in the judicial routine of accepting parallel court structures.

By 1997, militant violence in Karachi had peaked and the Sharif administration decided to declare a state of emergency in Sindh when the former governor, Hakim Muhammad Said, was killed on October 17, 1998.¹⁷⁵ Twenty-seven warrants were issued in connection to Said’s assassination—majority of those arrested belonged to the MQM. They were immediately tried in

¹⁷⁴ The PAFO was extended within two months of its promulgation. The new ordinance was called the Pakistan Armed Forces (Acting in Aid of Civil Power) (Amendment) Ordinance, 1999 and came into effective on January 30, 1999.

¹⁷⁵ I believe that Sharif’s move was also a way for him—and by extension PML–N—to undermine the MQM’s credibility. By the late 1990s, the MQM had become a large political party and its growing popularity had begun to transcend Sindh, which may have threatened PML–N.

a military court in Karachi, and sentenced to death on being found guilty (BBC 1999; Mian 2004, 315–316; Khan, H. 2009, 642).¹⁷⁶ MNA Sheikh Liaquat Ali of MQM, Senator Aftab Sheikh of MQM, PPP leader Nisar Ahmad Khoro, Syed Iqbal Haider of Majlis Wahdat Muslimeen,¹⁷⁷ and journalist Shahid Orakzai filed a constitutional petition to the Supreme Court, arguing that the military courts formed under the PAFO were unconstitutional (Mian 2004, 315–317). In what became a seminal case in Pakistan’s terrorism-related legal history, the Supreme Court agreed.

The Supreme Court decided *Liaquat Hussain v. Federation of Pakistan*¹⁷⁸ on February 22, 1999 and ruled that the military courts established by the PAFO were unconstitutional. The court stated that all terrorism-related cases should be heard by the already-established ATCs, under the procedures outlined in *Mehram Ali vs. Federation of Pakistan*.¹⁷⁹ The most important aspect of the ruling, however, was the negation of the “doctrine of necessity.” The judiciary had used the doctrine in the past to either legitimize the military administration of justice under civilian rule or military rule altogether. But the use of the doctrine of necessity to legitimize the expansion of executive—and military power—highlights the troubled relationship between the judiciary and the military establishment—and consequently points to the complexity of both the democratic and counterterrorism components of the state’s biographical narrative. For example, in 1973, Pakistan was under martial law, administered by Bhutto, an elected civilian ruler. When the Ministry of Defense announced the arrest and conviction via military courts of a small group of officers accused of organizing a coup, two of the accused appealed the decision, claiming that

¹⁷⁶ According to Ajmal Mian, who served as Chief Justice at the time, writes that many arrested were immediately convicted in military courts in Karachi, and some were executed even before the time period for appeals had expired. The military’s speed was unprecedented. See Mian 2004, 316.

¹⁷⁷ The Majlis Wahdat Muslimeen is a Shia political party. For more information, see <http://english.mwmpak.org/#>.

¹⁷⁸ PLD 1999 SC 504.

¹⁷⁹ PLD 1998 SC 1445.

they were retired, and hence civilians. The military courts, therefore, did not apply to them. The Lahore High Court ruled against the appeal and decided that under emergency law, civilians could be charged under the Pakistan Army Act, which dictates court martial procedures. The Supreme Court, however, disagreed. Then-Chief Justice Hamoodur Rehman wrote the majority opinion in *F.B. Ali vs. The State*,¹⁸⁰ which emphasized that civilians could not be charged under the Pakistan Army Act when a civilian leader imposed martial law. In other words, civilian laws would remain superior to military proceedings even in a state of emergency. But when the Supreme Court decided to dissolve the National Awami Party in 1977, it essentially paved the way for military courts to try Awami Party members accused of high treason.¹⁸¹ But the *Liaquat Hussain* decision created an obstacle for military courts to be used as counterterrorism tools. Recognizing the negative effects of executive overreach in judicial matters, Chief Justice Ajmal Mian (2004, 321) wrote:

In my humble view, if the establishment of the Military Courts under the impugned Ordinance is violative of the Constitution, we cannot sustain the same on the above grounds or on the ground of expediency. Acceptance of Doctrine of Necessity by this Court *inter alia* in the case of *The State v Dosso and Another* (PLD 1958 SC Pak.) 533), turned out to be detrimental to the evolution and establishment of a democratic system in this Country. It may be observed that some critics feel that the same had encouraged and caused the imposition of the Martial Law in this country more than once, which adversely affected the attainment of maturity by the Pakistani nation in the democratic norms. As a fall out, our country had been experiencing instability in the polity. **The Doctrine of Necessity cannot be invoked if its effect is to violate any provision of the Constitution,**¹⁸² (emphasis is mine)

The doctrine of necessity, however, was used again, just two years after the *Liaquat Hussain* verdict in *Syed Zafar Ali Shah and others v. General Musharraf, Chief Executive of Pakistan and*

¹⁸⁰ PLD 1975 SC 506.

¹⁸¹ This analysis is my own and is based on my readings of Newburg 1995; Mian 2004, 289–292, 315–322; Nawaz 2008, 320–358; Khan, H. 2009, 399–411, 415–416, 432; Ramakrishnan 2013, 165–210, and related case law.

¹⁸² PLD 1999 SC 504.

Others,¹⁸³ when the Supreme Court legitimized Musharraf's coup (Mian 2004, 321–322; Jalal 2014, 314).

I.IV. “Missing Persons” and Parallel Court Structures: Judicial Decisions during GWOT

In order to understand the evolution of judicial routines that have legitimized and routinized state-sponsorship of militant groups in Pakistan, it is important to understand Musharraf's cordial, and hence unique, relationship with the judiciary till the appointment of Justice Iftikhar Chaudhry as Chief Justice of the Supreme Court in 2005 after the onset of GWOT. Musharraf used the judiciary to legitimize his political power and expand the executive—specifically military—power in the domain of counterterrorism operations for two reasons. First, legalizing counterinsurgency operations allowed Musharraf to reinforce the image of Pakistan as defending itself from militant threats. And second, specialized counterinsurgency operations ensured a stable relationship with the United States that not only came with U.S. blessings to attack militant groups despite human rights violations but also came with U.S. funding and other material resources that furthered the army's operational superiority over both federal and provincial law enforcement agencies within Pakistan. The anti-terrorism legal regime, however, grew exponentially under the President Asif Ali Zardari of the PPP, who was democratically elected in 2008 after Musharraf was forced out of office.¹⁸⁴

Before becoming chief justice, Chaudhry was a Musharraf supporter. Throughout his tenure on the Supreme Court, he had: 1) legitimized Musharraf's coup in December 1999;¹⁸⁵ 2)

¹⁸³ PLD 2000 SC 869.

¹⁸⁴ Musharraf was forced out of office in 2007. No longer certain of a judicial guarantee of his powers, Musharraf decided to replace Chief Justice Chaudhry, claiming that the judiciary was operating outside of its jurisdiction, and hence, misusing its powers (Shah 2014, 3749–3753). Justice Chaudhry's dismissal sparked a nationwide protest on March 9, 2007 called the Lawyer's Movement that lasted two years (Cheema 2015, 184–191). Due to the movement, Musharraf eventually had to step down, and general elections were held, which were won by the PPP.

¹⁸⁵ *Syed Zafar Ali Shah and others v. General Musharraf, Chief Executive of Pakistan and Others* PLD 2000 SC 869.

validated the 2002 presidential referendum in which Musharraf declared himself as president;¹⁸⁶ 3) backed various constitutional amendments, including the Seventeenth Amendment, which increased the president's power and incorporated Musharraf's Legal Framework Order, and 4) supported Musharraf retaining his post of COAS¹⁸⁷ (Khan, H. 2009, 652–709; Ghias 2010, 990–991; Shah 2014 3740–3749; Zaidi 2015, 5). The rift between Justice Chaudhry and Musharraf began when the Supreme Court ruled against the privatization of the Pakistan Steel Mills Corporation on April 24, 2006, effectively blocking the sale of a national asset for a below-market price to a seller with connections to Prime Minister Shaukat Aziz (also a conflict of interest for the government) (Khan, H. 2009, 681–682; Zaidi 2015, 9–10; Jaffrelot 2015, 8284–8291).¹⁸⁸

The rift deepened when Justice Chaudhry also took up cases of “missing persons” in Balochistan. Having served on the Balochistan High Court, he was especially sensitive to human rights abuses against the Baloch people by paramilitary forces and intelligence agencies (Jaffrelot 2014, 8291–8298). Therefore, under Justice Chaudhry's leadership, the Supreme Court had taken *suo moto*¹⁸⁹ notice of an HRCP report that listed the names of persons labeled “missing” by the authorities and their families. The HRCP had campaigned nationwide to force the government, intelligence agencies, the military establishment, and law enforcement agencies to trace those individuals, and by January 2010, 159 persons were traceable while 72 remain missing (Ramakrishnan 2015, 191–192). Musharraf, on the other hand, had stated that these individuals were not “missing persons” but had joined militant groups (Outlook India 2007). The confrontation between Musharraf and the judiciary highlights the clash of democratic and

¹⁸⁶ *Hussain Ahmad v Pervez Musharraf* PLD 2002 SC 853.

¹⁸⁷ *Pakistan Lawyers Forum v. Federation of Pakistan*, PLD 2005 SC 719.

¹⁸⁸ *Watan Party v the Chief Executive*, PLD 2003 SC 74.

¹⁸⁹ *Suo moto* means “on its own motion,” which means that a case was not filed in the court. Rather, the court took up an issue itself. The Supreme Court is constitutionally allowed to do so in Pakistan.

counterterrorism narrative components operating within the state, where the democratic component advocates judicial independence while the counterterrorism component calls for increasing military powers during times of war. Though Pakistan is not engaged in an official war, the counterterrorism component highlights Pakistan's perception of being at war with militant groups that threaten its sovereignty.

Under the Zardari administration, the legislative branch passed a number of new anti-terrorism laws designed to improve the state's daily counterterrorism and anti-terrorism practices, and legalize counterinsurgency operations in the tribal areas (see chapter four). The missing persons issue became prominent again in 2013 after the government passed the Protection of Pakistan Ordinance (PPO)¹⁹⁰—which later became the Protection of Pakistan Act (POPA). The PPO granted extensive arrest and detention powers to the military (Abbasi 2014), and was challenged in both the High Court of Islamabad and the Supreme Court after it passed (Express Tribune 2014; Omer 2014). On December 10, 2013, the Supreme Court ordered the government to reproduce 35 “missing persons” in one week (Dawn 2013). The army sought an appeal, stating that holding the Pakistan Army accountable for alleged “missing persons” during the recent counterinsurgency operations in Swat and Malakand would demoralize the troops (Iqbal 2014). To the army, such missing persons were militants deserving of counterterrorism measures but for the judiciary the recovery of missing persons is a human rights issue—indicating a clash between the democratic and counterterrorism components of the state's biographical narrative.

The expansion of the anti-terrorism legal regime in the wake of GWOT, especially under the Zardari administration, has resulted in case law that is more focused on proceduralism rather

¹⁹⁰ Protection of Pakistan Ordinance, October 31, 2013, http://www.na.gov.pk/uploads/documents/1383819468_951.pdf.

than substantive issues.¹⁹¹ For example, according to the ATA, an act of terrorism is not just committed against individuals but also against society, and is noncompoundable. Courts can dismiss compoundable offences if the complainant forgives the accused or reaches a compromise while noncompoundable offenses cannot be dismissed even if a compromise has been reached.¹⁹² In the first report of its kind, Manzar Zaidi (2016) analyzed 235 ATC judgments from across Pakistan and found that numerous ATC cases are in fact dismissed by the judges after both parties reach a compromise and decide not to pursue the case. The compromise is usually done off-the-record. The case is then recorded as an acquittal based on lack of evidence rather than a dismissal. Interestingly, a compromise over terrorism indicates that terrorism can be forgiven by the judiciary. All the ATC judges I interviewed in 2015, before this report was released, told me the same thing. One said that even if the victim has died, his/her heirs could forgive the accused—and often do, resulting in an acquittal. When I asked if heirs were pressured to do so, 5 out of 7 judges told me that they were, and usually by intelligence agencies. Two judges spoke against the noncompoundable nature of a terrorist offense in the law, saying that it is one of the reasons why the ATCs are so overburdened. Another judge discussed how recording such cases as acquittals rather than dismissals negatively impacts the ATCs conviction rates, giving it a lower number, and making them seem ineffective. For example, from 2013–2015, ATC–I Islamabad was able to convict only 4 cases out over 150 it heard. Similarly, ATC–I Quetta

¹⁹¹ The POPA courts were not functioning in 2015 during my fieldwork so there is no case law on them. One of the reasons is problems associated with appointing judges to the POPA courts. ATC judgments are not available to the public.

¹⁹² *Naseem Akhtar v The State* [PLD 2010 SC 938]; *Zahid ur Rehman v The State* [PLD 2015 SC 77]; *Abdul Ghaffar and others v The State* [2015 SCMR 1064]; *Azmat v The State* [PLD 2009 SC 768]; *Abdul Jabbar v The State* [2007 SCMR 1496]; *Ghulam Farid and Fareeda v The State* [PLD 2006 SC 53]; *Muhammad Rawab v The State* [2004 SCMR 1170].

convicted 14 out of the 163 cases.¹⁹³ If terrorists or militants can be forgiven and then acquitted, institutional routines develop that justify militant acts.

Like regular criminal courts, ATCs rely on the police and prosecution for evidence (see chapter six), it is important to note that acquiring credible evidence is a major obstacle within the ATC system in particular. Witnesses sometimes fail to appear or retract their statements. In lieu of no evidence, the police are known to make up evidence (according to interviews with journalists, ATC judges, ATC prosecutors, and police officers). The police are also not trained on how to deal with physical evidence and acquire forensic evidence. The Supreme Court has mandated “identification parades,” in which suspects are lined up in a police station to be identified by witnesses.¹⁹⁴ Stating that these parades are a crucial part of the investigation, the Supreme Court has largely ignored the realities on the ground, which consist of large time lapses between the incident and the parade, lack of protection for witnesses, and lack of other credible evidence. This ignores the fear that militants can produce among local civilians. In order to conduct speedy trials, the ATA has allowed only 7 days for the investigation and trial both to be completed. The Supreme Court ruled that this process was essential in order to avoid “foul play.”¹⁹⁵ This has created pressure on the police, resulting in spotty investigations that result in acquittals (see chapter six).

The ATCs, therefore, have become a part of the criminal justice system, and are controlled by the judiciary. ATC judges have similar rights as regular criminal court judges.

¹⁹³ Every ATC has information about its own conviction rates. Information is supposed to be collected by each province’s Home Department and publically available but there are no guidelines in place to ensure that this happens. While in Lahore, I was put in touch with the Punjab Prosecution Department and asked about conviction rates. Though they claimed to have the information, I was unsuccessful at getting it. I would also ask every ATC judge interviewed if they have data on their caseload. One of the judges said yes, then asked his assistance to dig it up for me while I waited. Details are in Appendix A. It is important to note that the data sheets are peppered with mathematical errors. There is also no way to verify the numbers.

¹⁹⁴ *Javed Iqbal, Raja Fayyaz Ahmed and Sayed Zahid Hussain, JJ Muhammad Akram Rahi and others v The State* [2011 SCMR 877].

¹⁹⁵ *Hakim Mumtaz Ahmed v. The State* [PLD 2002 SC 590].

They have the power to: 1) take or transfer a case; 2) decide where to hear the case (though most are heard in an actual ATC); 3) seize material, money, property, etc. that may be used to incite sectarian violence and hate speech; 4) try other offenses in addition to the terrorism offense; 5) grant bail; 6) conduct joint trials, and 7) hold people in contempt of court (Research Society for International Law 2013, 216–219). In interviews with seven ATC judges (from Karachi, Lahore, Rawalpindi, and Islamabad, and two former ATC administrative judges from Lahore and Quetta), they all stressed the independence of the ATCs and how they were not bribed. They also discussed how they feel unprotected by the government. One judge said that prosecutors are routinely targeted with verbal and physical assault while another said that judges are wary of the harassment that comes with serving in an ATC. Many interviewees discussed how this fear and lack of security has negatively influenced the judiciary. If militants are routinely released by the ATCs, there is no one to protect institutional and civilian actors defying militancy. Similarly, there is no witness protection program. Sindh passed a law in 2013,¹⁹⁶ but it has not been implemented.¹⁹⁷ Punjab is set to introduce a law later this year (Tanveer 2017). Laws, however, are never enough: without proper capacity, it is impossible to provide protection to judges, lawyers, witnesses, and other parties—an argument continuously made by the police (see chapter six).

I.V. The Return of Military Courts in the post–APS climate

As described earlier in this section, before 2015, the government had established military courts in the 1970s and 1990s but the judiciary had struck both down. After the attack on APS in Peshawar in December 2014, the government unveiled its counterterrorism plan, the NAP, which

¹⁹⁶ The Sindh Witness Protection Act, 2013, promulgated on November 1, 2013, <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LI%20of%202013.pdf>.

¹⁹⁷ I discussed this in detail with Syed Waqar Mehdi, Special Assistant to the Chief Minister of Sindh for Press and Media, who I interviewed in Karachi on February 27, 2015. He stated that generally, people are reluctant to become witnesses because cases can drag on for years, sometimes decades, and they feel vulnerable.

established military courts. Military courts were deemed necessary by the government because of the general ineffectiveness of the ATCs in countering terrorism. Also illustrated in this section is how ATCs have been overburdened since they were formed in 1997 despite their scope being expanded and their numbers increasing. In 2014, the government attempted to relieve the pressure off of ATCs by establishing another set of special courts under the POPA, which would supersede ATCs. Yet, POPA courts have not been established. After the APS attack, the government justified the 21st Amendment and the use of military courts by stating that the civilian justice system had failed to convict militants.

The SCBA challenged the first set of death sentences handed down by the military courts in April 2015. In August 2015, after months of deliberation—and a 902-page judgment—the Supreme Court ruled to uphold the 21st Amendment and the military courts.¹⁹⁸ While some celebrated the decision as a victory for sovereignty and separation of powers, others criticized it for its failure to protect the judiciary’s independence. I argue that the court’s decision also put the democratic narrative component in flux because it has compromised the civilian counterterrorism bureaucracy specifically and civil institutions more generally. For example, in this case, the Supreme Court was faced with two questions: 1) Can it strike down constitutional amendments? And if so, under what grounds? And 2) Do the newly established military courts meet the standards of a fair trial? In an 11–6 decision, the majority used the “basic structure doctrine”¹⁹⁹ and ruled that even though there are restrictions on the Parliament’s powers to amend the constitution, it is not feasible to debate these powers in the current political climate. Furthermore, the consensus that led to the 1973 Constitution settled any political disputes regarding Pakistan’s political structure:

¹⁹⁸ *District Bar Association, Rawalpindi v Federation of Pakistan*, PLD 2015 SC 401.

¹⁹⁹ The “basic structure doctrine” refers to the structure laid out in the constitution. Judges have also referred to it as “salient features.”

In the Pakistani context by way of the 1973 Constitution, unresolved Political Issues, which had resulted in discord, disputes and even the dismemberment of the country were dealt with and resolved through consensus. **The reopening of such basic settled issues would result in the opening of a Pandora’s Box, unleashing political tempests of unparallel [sic] fury which may be difficult to control.**²⁰⁰ (emphasis is mine)

Justice Jawwad Khawaja and Justice Qazi Faez Issa were in the majority but argued that the parliament’s power to amend the constitution did not lie in its structure but in the preamble that describes nine principles—including democracy, freedom, equality, and independence of the judiciary—that cannot be violated. The dissent, represented by four justices, focused on the will of the people, and how the parliament and judiciary had failed the public in the past. Judge Nasir-ul-Mulk wrote:

Constitutions in free societies are made by the people, for themselves and through their chosen representatives. **Of course, in an Islamic polity and for a Muslim community, this is subject forever to the undisputed fact that sovereignty over the entire Universe belongs to Allah alone. But, within the parameters of that eternal principle, it is for the chosen representatives and no one else to act in such matters. And, the same necessarily applies to constitutional amendments.** Why should that power not be exercisable by such representatives in their collective wisdom, and why should its exercise be at the mercy of the collective wisdom of unelected Judges? The decisions of elected representatives have been wrong and have occasionally brought us close to disaster. Is the record of the judiciary that much better? **The elected representatives at least need to have their mandate renewed periodically. What of Judges, who in any polity are the least accountable branch and in Pakistan in particular are, in a quite literal sense, a closed brotherhood?**²⁰¹ (emphasis is mine)

Regarding military courts, the majority used the doctrine of necessity and stated that the courts did meet principles and requirements of the criminal justice system. And under emergency laws or exceptional circumstances—such as that of militancy—the constitution has allowed deviation from the regular political system. Finally, the “terrorist classification” was valid to warrant special courts, including military tribunals. Within the dissenting opinions, the main

²⁰⁰ PLD 2015 SC 401, p. 265.

²⁰¹ PLD 2015 SC 401, p. 537–538.

point was that military courts are not a necessary measure to counter terrorist. Justice Qazi Isa dissented by pointing out flaws in the ATCs and the government's unwillingness to ban known militant groups. He argued that if weaknesses within the ATCs were properly dealt with, and the government banned known groups, military tribunals would be unnecessary to try terrorists. The decision, therefore, was that 1) the Supreme Court could not determine if it was allowed to strike down constitutional amendments at this time, and 2) the establishment of military courts by the parliament as a tool to combat terrorism were not sufficient grounds for striking down constitutional amendments.

The decision, however, has compromised judicial independence indefinitely, especially in instances of emergency powers and any future administration of martial law—and subsequently has weakened the democratic component of the state's biographical narrative. The judgment has set a dangerous precedent, where constitutional amendments, especially those made under emergency laws, lie outside the judiciary's jurisdiction.²⁰² I have argued elsewhere that the judgment has further provided the military establishment with a new tool by which to maintain political power: rather than change laws, amend the constitution (Khan 2016). The military courts remain active: the Parliament passed the 23rd Amendment in January 2017, which renewed military courts till 2019.

The judiciary's responses to critical interruptions highlight how it has legitimized political power of civilian and military leaders, attempted to set the boundaries of what is considered as anti-nationalist and militant activity, and has interpreted the powers of each

²⁰² Op-eds by Faisal Siddiqui, an advocate of the Sindh High Court who I interviewed in Karachi on March 10, 2015 are especially prescient See "Constitution's Crooked Timber," *Dawn*, January 26, 2015, <https://www.dawn.com/news/1159408> and "Legalising Terror," *Dawn*, February 8, 2014, <https://www.dawn.com/news/1085595>.

political branch—including itself—under emergency laws and time of war. In the next section, I explain how the judiciary has used the state’s religious, democratic, and counterterrorism narratives to legitimize its responses to critical interruptions, which has resulted in the development of judicial routines that have facilitated the routinization of state-sponsorship of militant groups.

Section II. Pakistan’s Biographical Narrative and the Judiciary: Legitimizing Sponsorship

Within the judicial system, there are three key players: 1) judges, 2) defense and prosecution lawyers, and 3) police. While each has a specific role, the players’ performance is interconnected. For example: ATC judges are accused of acquitting low-key suspects charged under the ATA—and indirectly labeled as militant—by the police. The judges argue that they cannot convict a suspect without evidence, and blame poor prosecution. Prosecutors in turn blame the police for having poor investigation skills. The police points fingers at both the prosecution for not presenting the case in a convincing way, and the judges for dismissing cases on administrative technicalities, which ignores the realities on the ground. In this section, I illustrate how these key players within the judiciary have used religious, democratic, and counterterrorism narrative components that make up Pakistan’s biographical narrative to legitimize the state’s anti-terrorism legal regime and daily counterterrorism and anti-terrorism practices by fortifying the pillars of Pakistan’s identity, which is to defend Islam and defend itself against India.

II.I. Determining Boundaries of Anti-Nationalist Activities: Use of Religious Component

The religious narrative component focuses on Pakistan’s relationship with Islam and how the state should organize itself around its Islamic values. As the institution designed to check and

balance both the legislative and executive branches of government, the judiciary has played a central role in legitimizing Islam's role in the state's daily counterterrorism and anti-terrorism practices, especially in its quest to set boundaries of what is considered as anti-nationalist and threatening militant activity. For example, the Supreme Court's dissolution of the National Awami Party in 1975 promoted the Two-Nation Theory as a basis for Pakistan's political identity. The decision also reinforced the idea that an attack on Islam would be considered an attack on Pakistan, the self-proclaimed defender of Islam.

Islam is the official state religion, and Article 227 states that "all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah." In *Jamat-i-Islami v. Federation of Pakistan*²⁰³ one of JJ's arguments was that the ATA was repugnant to Islam because it did not value human life according to Islamic tradition, which maintains that killing one person is equivalent to killing all of humanity.²⁰⁴ In his opinion, Justice Irshad Khan, agreed that Section 5(2) of the ATA, which allowed law enforcement agencies to open fire on suspicion of terrorist activity, was contrary to Islam. He argued that by giving law enforcement agencies such powers would not only increase the likelihood of extrajudicial killings but would effectively prohibit Pakistani citizens from living their life according to the teachings and requirements of Islam—one of which is to value human life unconditionally. In other words, as an extension of the state, law enforcement agencies must also value human life in accordance to Islam. But if militant groups are acting in service of Islam, the judiciary is torn between its Islamic duty and its duty to uphold human rights.

Islam has also been made to play a role in the selection of ATC judges. Article 14(1) of the ATA states:

²⁰³ PLD 2000 SC 111.

²⁰⁴ This is a rough translation of Surah al Maida, verse 32.

An Anti Terrorism Court shall consist of a judge, being a person who: (i) “is a judge of a high court, or is” or has been a Sessions judge or an Additional Sessions judge; or (ii) has exercised the powers of a District Magistrate or an Additional District Magistrate and **has successfully completed an advance course in Shariah (Islamic Law) conducted by the International Islamic University Islamabad**; or (iii) has for a period of not less than ten years been an advocate of a High Court. (emphasis is my own).

While debating the ATA in the National Assembly, MNA Mian Muhammad Yasin Wattoo²⁰⁵ praised this clause, saying that it would ensure that the government would not select a judge based on personal preferences or political gains but instead of his credentials—a reference to the critical nature of Islamic qualifications.²⁰⁶ This clause, and several others, passed unanimously.²⁰⁷

It is no surprise then that judges have often used verses from the Quran, sunnah and hadith,²⁰⁸ and examples of the caliphs²⁰⁹ in their judgments. For example, in *Government of Sindh through Chief Secretary to the Government of Sindh, Karachi and others v. Sharaf Faridi and others*,²¹⁰ the Supreme Court gave the example of Hazrat Umer Farooq, the second caliph in Islamic history, as establishing a judicial system and respecting its power and independence. References to Islamic history and religious texts, therefore, put into question the judiciary’s ability to be critical and/or independent with regards to the policy of sponsoring militant groups, including religiously motivated groups like *jihadi* Kashmiri groups operating within Pakistan.

II.II. Outlining Emergency Powers: Use of Democratic Component

Pakistan’s democratic narrative component focuses on the relationship between the state’s institutions, the balance and separation of powers between the executive, judicial, and

²⁰⁵ Mian Muhammad Yasin Wattoo was a member of PML–N and served as the federal minister for parliamentary affairs in 1997.

²⁰⁶ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 68.

²⁰⁷ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 109.

²⁰⁸ “Sunnah” are verbally transmitted teachings from the Prophet while “hadith” are generally written down.

²⁰⁹ Caliphs are political leaders. In Islamic history, there have been four Caliphs: Hazrat Abu Bakr, Hazrat Umer Farooq, Hazrat Usman, and Hazrat Ali.

²¹⁰ PLD 1994 SC 105.

legislative branches of government, and the effect of daily bureaucratic life on the state's geostrategic strategies. The judiciary has relied on the state's democratic component to outline emergency powers and powers of the branches of government during times of war, specifically when Article 245 of the constitution is enforced. Central to outlining emergency powers is the judiciary's goal of upholding its own independence.

As discussed earlier in this chapter and in chapters three and four, the Suppression of Terrorist Activities (Special Courts) Act of 1975 preceded the ATA and was promulgated in response to the civil war and the independence of Bangladesh in 1971. Though twenty years had passed by the time the ATA was promulgated, the legislative branch was determined to use anti-terrorism laws to decrease militant violence plaguing the country (especially Sindh) and legally define anti-state/anti-national activities under the label of counterterrorism so that the state could use its counterterrorism bureaucracy to target threatening elements operating within the state. This is reflected in the parliamentary debates on the ATA. At first, parliament decided to amend this act and debated how the Suppression of the Terrorist Activities (Special Courts) (Amendment) Bill of 1997 would affect judicial independence. On the Senate floor, Senator Aftab Ahmed Sheikh²¹¹ criticized the procedure for appointing judges to the special courts, which stated that the judge would be appointed by the federal, not provincial, government. In his view, the judge would be "as good as executive...and controlled by the executive," essentially undermining the independence of the judiciary.²¹² Senator Qaim Ali Shah²¹³ agreed. He argued that even though the appointment of a judge would be made in consultation with the chief justice of a provincial High Court, the special courts judge would not be truly independent:

²¹¹ During this debate, he was a member of the MQM. He is now a member of PPP.

²¹² Official Report, The Senate of Pakistan Debates, 79th Session, vo. VII, no. 4 (July 1, 1997): 108.

²¹³ Qaim Ali Shah is a member of the PPP and has served as Chief Minister of Sindh three times under Benazir Bhutto (1988–1990); Zardari (2008–2013, and Sharif (2013–2016).

*[T]he judge will not be independently doing justice to any case because his fees, his emoluments, his service records, his salaries are to be decided by the government. ... [H]e will be subordinate to the government and he will be acting at the whims and sympathies of the government.*²¹⁴ (emphasis is mine)

Though in favor of the amendment, Senator Qaim Ali Shah urged the government to consider the meaning of speedy trials:

*[G]overnment should reconsider that these cases can effectively be dealt with by the regular courts and they can on the contrary, comparatively, speedily do justice. Otherwise the concept of speedy justice, I don't think we should agree to this because justice hurried is justice buried.*²¹⁵ (emphasis is mine)

Ultimately, the Sharif administration decided to write a new law altogether and call it the ATA. Parliamentary debates on the ATA in August 1997 were similar in scope to the debates on its predecessor a month before. Debates centered on: 1) the need for special courts, 2) the procedure for appointing judges, and 3) the concept of “speedy trials.” MNA Syed Naveed Qamar²¹⁶ was not in favor of ATCs, arguing that these parallel court structures undermine the state’s civil institutions, especially the judiciary:

*Special Courts are a thing of the past. Special Court is an institution which has been tried and abused and discarded in this country. For God's sake, let's not go back. For God's sake let's not go back to the time when we start maligning and totally mutilating the judicial process in this country. Let us use the regular Courts of Law. There are alternatives available. There are alternatives available. Why don't we use our regular Courts of law? Strengthen the Courts, strengthen the number of Courts, strengthen the number of Judges, strengthen your own investigative procedure.*²¹⁷ (emphasis is mine)

MNA Syed Khurshid Ahmed Shah²¹⁸ shared this sentiment while opposing the ATA in the National Assembly. He said:

²¹⁴ Official Report, The Senate of Pakistan Debates, 79th Session, vo. VII, no. 6 (July 3, 1997): 117.

²¹⁵ Official Report, The Senate of Pakistan Debates, 79th Session, vo. VII, no. 6 (July 3, 1997): 116.

²¹⁶ Syed Naveed Qamar is a member of the PPP.

²¹⁷ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 46.

²¹⁸ Syed Khurshid Ahmed Shah is a member of PPP.

In courtoun sey inn ka speedy trial kee bajayea hasty courts naam raka jaye tau behtar hoga. Translation: **Instead of “speedy trials,” it would be better to rename these courts as “hasty courts.”**²¹⁹

The judiciary’s response to the ATA focused more on who would control the ATCs: the executive or the judiciary. In *Mehram Ali vs. Federation of Pakistan*²²⁰— the first case that addressed the creation of the ATCs—the Supreme Court maintained:

The right of “access to justice to all” is a fundamental right, which right cannot be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. **The Courts/Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution, can hardly meet the mandatory requirement of the Constitution.** That the independence of judiciary is inextricably linked and connected with the process of appointment of Judges and the security of their tenure and other terms and conditions. (emphasis is my own)

In his opinion in *Mehram Ali vs. Federation of Pakistan*, Justice Irshad Hassan Khan wrote:

‘Efficiency in the Courts’ is a serious national problem, an expression of greater public concern than even the threat of war. Article 37(d) of the Constitution of Islamic Republic of Pakistan, 1973, enjoins upon the State to ensure ‘inexpensive’ and ‘expeditious justice.’ Thus visualized, speedy resolution of civil and criminal cases, is an important Constitutional goal, as envisaged by the principles of police enshrined in the Constitution. **It is, therefore, not undesirable to create Special Courts for operation with speed but expeditious disposition of cases of terrorist activities/heinous offenses have to be subject to Constitution and law.** Viewed in this perspective, no objection can be taken to the establishment of Special Courts for speedy trials and prevention of terrorist acts/heinous offenses under the Anti-Terrorism Act, 1997. The Special Courts are, therefore, validly constituted Courts but they have to perform judicial functions under the Constitution and the provisions contained in the Act except those that have been declared ultra vires. A Special Court is a Court subordinate to the High Court. It has to act under its supervision and control.²²¹ (emphasis is my own)

For the judiciary, therefore, the creation of a parallel court structure was not problematic in of itself. Rather, the concern during the creating of the ATA was the control of the ATCs.

²¹⁹ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 104.

²²⁰ PLD 1998 Supreme Court 1445.

²²¹ PLD 1998 Supreme Court 1445.

The judiciary argued that all special courts should fall under its purview according to the constitution to ensure judicial independence in the context of counterterrorism. In other words, in the judiciary's view, it could uphold the pillars of Pakistan's identity to serve as a defender of Islam and guard against Indian aggression as long as it was able to maintain its independence, which it could in the presence of parallel court structures if it controlled all courts.

The judiciary's struggle with maintaining its independence and upholding the constitution, however, goes beyond its relationship with counterterrorism. According to journalist Zia Rehman,²²² political parties recruit their own people as judges, prosecutors, prosecutor-generals, etc., which ultimately influences their decisions. Rehman further elaborated that this was precisely why people fear military courts—they believe that these new courts will be used to pursue political opponents or any who speak against the army, like Baloch insurgents and militants. An anonymous lawyer and lecturer at a local law school in Karachi stated:

Our judiciary unfortunately is not as independent as it should be. That has clearly been the case. And this trend follows through the fact that constant military takeovers have resulted in this very unfortunate situation. Our judges are very easily bought in, and this is a trend that has followed through because of all these years you've had these military takeovers, and obviously you cannot expect complete independence of the judiciary.²²³ (emphasis is mine)

The formation of military courts has also posed similar problems to other special courts: they all challenge the independence of the judiciary under the label of counterterrorism. Military courts, however, also highlight tensions between the judicial and executive branches of the government under a state of emergency. As illustrated in chapters four (and earlier in this chapter), military courts have usually been established when the army has been called in to restore domestic law and order. The Supreme Court has struck down military courts twice—in

²²² Zia ur Rehman, in-person interview, Karachi, March 10, 2015.

²²³ Anonymous, in-person interview, Karachi, March 9, 2015.

1977 and then in 1999—but upheld them in 2015 after military courts had been established in response to the APS attack in Peshawar in 2014. The government and military establishment both claimed the Supreme Court’s upholding to the newly created military courts as a victory—and a source of legitimizing the recent developments in the state’s anti-terrorism legal and wartime rhetoric. For example, according to Ahmer Bilal Soofi, advocate of Supreme Court, the passage of POPA in 2014—before the APS attack and establishment of current military courts—was turning point for Pakistan’s continuous battle with militant groups. About POPA, he said that it was the “first time that a legislative instrument was moving from a law enforcement paradigm to a war paradigm,” and:

*Significance of POPA to me is that it sends a very powerful legislative message that we are facing the situation of war, something which eventually the Supreme Court also came to in the 21st Amendment judgment.*²²⁴

Hina Jilani, a prominent lawyer, points out that the rhetoric of war is present but war has not been officially declared by the state:

Aap kehtain ke war hai. You are in combat with certain people jo under humanitarian law, identifiable hain, under a command hain. Therefore this constitutes an armed conflict. Aap armed conflict maante hee nahin hain is ko. Tau hummain kiya pata chaley keh what is the appropriate legal regime to be applied? Agar tau aap “at war” hain tau humanitarian law apply hoga. Agar yeh law enforcement operations hain, tau counterterrorism keh laws hoongay. Kissi cheez ko to maano! Black hole na bunao.

Summary Translation: *The government says that it is at war, and is fighting a certain group of people that are identifiable by international humanitarian law. This means that the state is involved in an armed conflict but the government disagrees. **So how can we determine which legal regime to use? If the state has declared war, than international humanitarian law will apply. If this is a law enforcement issue, than counterterrorism laws will apply. At least say which one it is. Don’t create a black hole.***²²⁵ (emphasis is mine)

She further went on to say that every time there are protests against internment camps, detention centers, and extrajudicial killings, the state retorts that it is at war with terrorists, and deviations

²²⁴ Ahmer Bilal Soofi, in-person interview, Islamabad, October 21, 2015.

²²⁵ Hina Jilani, in-person interview, Lahore, November 6, 2015.

from the law are acceptable. But “every killing done by the state is an extrajudicial killing when not at war.”²²⁶ As discussed earlier in this chapter, the judiciary has attempted to hold the state accountable for the “missing persons” issue. While structures like internment camps and preventative detention centers, and activities like extrajudicial killings have been legalized by the state’s anti-terrorism legal regime (see chapter four), the judiciary has legitimized these by de-emphasizing human rights in favor of enhancing the state’s counterterrorism practices, creating tensions between the democratic and counterterrorism components of the state’s biographical narrative.

Regarding the Supreme Court’s decision on the 21st amendment,²²⁷ Salman Akram Raja, a Supreme Court advocate, explained why the judgment was puzzling and troublesome. It is puzzling because the Supreme Court ruled that it can challenge a constitutional amendment, which is “a very contentious” decision and unusual because in most jurisdictions, courts cannot challenge constitutional amendments. It is troublesome because the Supreme Court ruled that temporary military courts are not inconsistent with the salient features or if you like the essence, the core values of the constitution.²²⁸ By “salient features,” he is referring to the term as the Supreme Court justices have used it within the judgment to describe their rationale for striking down a constitutional amendment. It is also referred to as the “basic structure doctrine.”

The judiciary, therefore, has outlined emergency powers in a way that has sanctioned the civil–military imbalance in favor of the military, effectively weakening itself and other civil institutions. As Lt. Gen Talat Masood, a defense analyst said:

Well, the balance has gone in favor of the military, and continues to do so in fact. And it’s also a reflection that it’s not only the civilian bureaucracy and civilian political leadership but it’s also a reflection on the civilian judicial system. So

²²⁶ Hina Jilani, in-person interview, Lahore, November 6, 2015.

²²⁷ *District Bar Association, Rawalpindi v Federation of Pakistan*, PLD 2015 SC 401.

²²⁸ Salman Akram Raja, in-person interview, Lahore, October 31, 2015.

*it's a reflection on judiciary as well. So all these state institutions, which are civil institutions, when they do not perform well, they give an opportunity for the military to keep expanding its role.*²²⁹ (emphasis is mine)

II.III. Validating Anti-Terrorism Activities: Use of Counterterrorism Component

The counterterrorism narrative component is centered on the military's superiority with respect to counterterrorism operations, Pakistan's claim of victimhood, and the state's policy of distinguishing between "good" and "bad" militant groups.

As described earlier in this chapter, it is no secret the civilian judicial system is corrupt, inefficient, and largely ineffective. According to Reema Omer of the ICJ:

*The criminal justice system is in shambles. It really is weak. Judges are not trained, prosecutors are not trained. **There are many issues ...with our regular criminal courts but they are never addressed because instead of improving them you create a new system of courts and a new law in which they have to function. And it has a direct bearing on your anti-terrorism response.***²³⁰ (emphasis is mine)

Not surprisingly, military courts have always been established under military rule. But Pakistan has also brought in military courts while under civilian leadership: under Bhutto in 1977, Sharif in 1999, and in 2015. Each time, the civilian government cited the criminal justice system's weaknesses as the main reason for establishing military courts to counter terrorism. For example, low conviction rates are considered as valid indicators of a weak criminal justice system. The consensus amongst the ATC judges and prosecutors I interviewed was that the low conviction rate of terrorists is due to four reasons: 1) no witnesses because of lack of protection, 2) weak prosecution, 3) unavailability of senior and experienced counsel, and 4) poor investigation.²³¹ The onus of increasing the conviction rate, therefore, unfairly falls on the judiciary.

²²⁹ Lt. Gen (R) Talat Masood, in-person interview, Islamabad, October 29, 2015.

²³⁰ Reema Omer, Skype interview, Washington, D.C., November 26, 2015.

²³¹ Anonymous, ATC Judge, Islamabad, October 29, 2015.

Active measures have been taken to improve the capacity of the ATCs. For example, three out of the seven ATC judges I interviewed had undergone the training program conducted by the United Nations Office on Drugs and Crime (UNODC)'s Terrorism Prevention Program. Three trainings had been conducted by October 2015. Fatima Raza,²³² the program coordinator of the trainings, described the trainings as weeklong sessions, focused on technical assistance to judges, investigators, and prosecutors within the ATCs. One of the goals of the trainings was to align Pakistan's anti-terrorism legal framework with the universal legal framework against terrorism, which consists of international laws and treaties. All three ATC judges I interviewed who had undergone this training stated that while it was useful, it largely ignored the realities on the ground in Pakistan, which has more to do with weak investigation in general. The weaknesses of the ATCs, however, are just judiciary's fault. According to journalist Zia Rehman:

*You can say that ATCs have failed ... sub ke fault hai, equally. Police ke investigation sey le kar court taak aur court sey le kar witnesses ko aur judges aur lawyers ko protection na dena tak, sub ke zimmedari hai. Translation: You can say that ATCs have failed... but this is everyone's fault equally: **from police investigation to the court, from the court to the lack of protection of witnesses, judges, and lawyers; this is everyone's responsibility.***²³³ (emphasis is mine)

One pillar of Pakistan's identity is to defend itself against Indian aggression, which has promoted Pakistan's claim to victimhood, in which the state and the population continually few themselves as victims of militant violence facilitated by Indian aggression. Since I am especially interested in the daily counterterrorism and anti-terrorism practices of the state, during fieldwork one of my interview topics was Pakistan's counterterrorism narrative: whether Pakistan had a counterterrorism narrative, and if so, what was it. The general consensus was, Pakistan does not

²³² Fatima Raza, Skype interview, Washington, D.C., December 9, 2015.

²³³ Zia Rehman, in-person interview, Karachi, March 10, 2015.

have a counterterrorism narrative. For example, one ATC judge stated that a counterterrorism narrative exists but Pakistan has limited resources and steps are being taken to improve narrative.²³⁴ Another ATC judge said that there is no narrative on the state level because the state has “never given a counterterrorism narrative” and has just given “silly statements.”²³⁵ Yet another ATC judge said that since the APS attack, the narrative has completely changed because “Pakistan Army has taken a tip from the United States.”²³⁶

With respect to Pakistan being a victim of proxy warfare and foreign involvement, however, majority of judicial sources²³⁷ were critical of Pakistan. One judge said, “Pakistan Army does support Haqqani Network—this is an open fact” while another criticized the government’s policy of distinguishing between “good” and “bad” Taliban.²³⁸ Some were defensive of the Pakistani state. When asked about Pakistan sponsoring the Haqqani Network, one judge’s response was:

This is an argument that is propagated by the enemies of Islam. Military is NOT supporting terrorists like Hafiz Saeed or anything from Lal Masjid. **All this news is coming from foreign press. India is active!**²³⁹ (emphasis is mine)

All seven ATC judges I interviewed were also openly critical of the United States. One said, “TTP attacks Pakistan because of the United States,”²⁴⁰ while another blamed the United States for militant groups operating within the country.²⁴¹ On Pakistan’s relationship with the United States, one judge remarked, “Pakistan has used the *maulvis* to get aid from the United States. For many years, as America was using us, we were using America.”²⁴² Pakistan’s sense of

²³⁴ Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

²³⁵ Anonymous, ATC Judge, Islamabad, October 29, 2015.

²³⁶ Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

²³⁷ See Appendix A.

²³⁸ Anonymous, ATC Judge, Lahore, October 2, 2015.

²³⁹ Anonymous, ATC Judge, Lahore, October 2, 2015.

²⁴⁰ Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

²⁴¹ Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

²⁴² Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

victimhood and its sources—Indian aggression, Pakistan’s incompetency in countering militant groups that threaten it, and U.S. exploitation of a weaker state during GWOT—all buttress the connection between Pakistan’s identity and its urgency associated with countering India.

Also related to the counterterrorism narrative component is Pakistan’s official (i.e., NISP and NAP) and unofficial (i.e. “good” vs. “bad” militants) counterterrorism policies. According to Pakistan’s political structure, which is based on the principles of separation of power and “basic structure doctrine,”²⁴³ the judiciary cannot make actual policy, but only provide recommendations. Some judges, however, stated that the judiciary should be consulted in matters related to the execution of counterterrorism. For example, one ATC judge criticized the government for not consulting the judiciary in setting criteria for case transfers from ATCs to POPA courts.²⁴⁴ Another one criticized the lack of transparency in transferring cases from ATCs to military courts,²⁴⁵ while another judge called the criteria for transferring cases as “artificial distinctions.”²⁴⁶ Almost all my interviewees agreed that there were no set criteria for transfers—the decision is simply made by the military establishment and the Home Departments. Reema Omer, ICJ’s International Legal Advisor for Pakistan, said that there are no published criteria for transfers.²⁴⁷ An anonymous source from the Judge Advocate General’s office said that the Ministry of Interior and Ministry of Defense work very closely together to ensure that only very high profile terrorism cases get transferred to military courts, to avoid them becoming overburdened like ATCs.²⁴⁸

The only way that the judiciary can be legitimately involved in distinguishing between

²⁴³ As described in *District Bar Association, Rawalpindi v Federation of Pakistan*, PLD 2015 SC 401 (the 21st Amendment judgment).

²⁴⁴ Anonymous, ATC Judge, Rawalpindi, October 28, 2015.

²⁴⁵ Anonymous, ATC Judge, Lahore, October 2, 2015.

²⁴⁶ Anonymous, Supreme Court Justice, Islamabad, October 28, 2015.

²⁴⁷ Reema Omer, Skype interview, Washington, D.C., November 26, 2015.

²⁴⁸ Anonymous, in-person interview, Rawalpindi, October 22, 2015.

militant groups is by having the power to hear appeals. The judiciary, however, has not always been given this power. For example, when the ATA was passed in 1997, special appellate tribunals were established—and the law specified that they lay outside the judiciary’s jurisdiction. The judiciary, however, addressed this in the *Mehram Ali* case, and the appellate tribunals were discontinued. This has also remained an issue with respect to military courts, where the military establishment has preferred to keep the appeals within the military’s process of jurisprudence. In the most recent judgment regarding military courts, the Supreme Court ruled that these courts were valid because 1) they were temporary, 2) “terrorist” is a legitimate classification that needs to be tried under special courts,²⁴⁹ and 3) the Supreme Court has appellate jurisdiction.²⁵⁰ In Hina Jilani’s view though, this appellate jurisdiction is meaningless because the Supreme Court has no way of verifying the closed-door procedures of the military court:

Yahan peh appeal ke power tau nahin hai lekin Supreme Court ney kaha key humare pass supevision ke power hai, hum review karain gaye. Theek hai. Lekin aap review karain gaye kiya? Jo woh aap ko dain gaye, wohee aap review karain gaye na? Aap key pass koonsay aisay methods hain jo aap ja kar investigate karaigain keh inhoonain andar chup kar darwazoo kee peechey kiya keeya hai?
Translation: *There is no power of appeal but the Supreme Court says that it has supervisory powers, powers to review appeals. Ok. But what will they review? They can only review what is given to them [by the military establishment]. They don’t have any special methods to determine and investigate what has been happening behind closed doors.*²⁵¹ (emphasis is mine)

Institutional tensions associated with judicial jurisdiction and power over treating militants as if in a state of emergency highlights a larger issue associated with Pakistan’s identity: how can the state defend Islam and itself from India if it is unable to develop an effective and efficient justice system? As one anonymous Supreme Court Justice said: “In the

²⁴⁹ To date, there has been no separate category for religion-based terrorism, though most of my judicial sources stated that sectarian violence and religious extremism is Pakistan’s biggest threat.

²⁵⁰ *District Bar Association, Rawalpindi v Federation of Pakistan*, PLD 2015 SC 401.

²⁵¹ Hina Jilani, in-person interview, Lahore, November 6, 2015.

name of terrorism, we can't terrorize justice, brutalize justice in the name of terrorism."²⁵² Also, Sarah Belal of the Justice Peace Project said:

*So the people who are stakeholders who are supposed to make the system run had serious structural problems anyway. **Now whatever new system you're going to impose or come up with, if it involves the same stakeholders with the same problems, that new system is going to fail as well. And that's exactly what you're seeing.***²⁵³ (emphasis is mine)

The judiciary's use of the state's religious, democratic, and counterterrorism narrative components in response to the critical interruptions endured by the state highlight the judiciary's own goal of maintaining its independence while also staying true to the pillars of Pakistan's identity, which are to defend Islam and protect itself from India. Throughout Pakistan's history, the judiciary has legitimized political power of both civilian leaders and military rulers, supported the definition of anti-nationalist/anti-state put forth by various governments, and outlined emergency powers. The judiciary's activities, however, have resulted in the judiciary creating its own institutional routines in response to the state's growing anti-terrorism legal regime and evolving identity, which are discussed below.

Section III. Judicial Routines: Legitimizing Sponsorship of Militancy

In response to the state's biographical narrative and the formation of critical interruptions, the judiciary has developed three institutional routines, which are consistent responses to a critical interruption. These routines are: 1) acceptance of parallel court structures, 2) legitimizing executive power under emergency laws, and 3) favoring writ of the state over fundamental human rights.

²⁵² Anonymous, in-person interview of Supreme Court justice, Lahore, October 2015.

²⁵³ Sarah Belal, in-person interview, Lahore, November 5, 2015.

The first judicial routine emerges when the judiciary accepts the formation of special courts on the sole condition that they lie under the purview of the judiciary, and not the executive. Wanting to maintain all control of parallel court structures and judicial systems is consistent with the original text of Article 175 of the constitution that gives the judiciary jurisdiction over all courts. A second judicial routine forms when the judiciary has struggled with how to balance executive overreach while maintaining its own jurisdictional power during an emergency (i.e., during periods of martial law or official declaration of war). Despite noting that the constitution guarantees judicial independence, the High Courts and Supreme Court have consistently legitimized executive overreach on all matters related counterterrorism, stating that such overreach is acceptable during a temporary time frame. For example, in the spring of 1977, riot broke out in Karachi. The government declared an emergency and brought in the army that shoot at demonstrators, killing some. A case was filed in the Sindh High Court (then called Karachi High Court) calling the shooting of civilians unlawful. But in *Niaz Ahmed Khan v Province of Sind and others*,²⁵⁴ the Sindh High Court ruled that it could not question the army's conduct during emergency powers (Newburg 1995, 159). The judiciary, therefore, is not able to moderate the army in countering terrorism. A third judicial routine forms when the judiciary has almost exclusively valued the "writ of the state" over fundamental human rights in the context of counterterrorism. Even in cases related to missing persons, the judiciary has been cautious, routinely avoiding holding intelligence agencies responsible for misconduct, inhuman treatment or arbitrary killings. This is specially the case when the army deems ethnic or regional violence as terrorism or bad militancy. The superior courts have also avoided striking down laws that permit preventative detentions at undisclosed locations. Hina Jilani has routinely argued that the establishment (aka the Pakistan Army) has psychologically impacted the population and civil

²⁵⁴ PLD 1977 Karachi 604.

institutions, and convinced them both that terrorists must be caught at any cost, even if it means deviating from the law and ignoring human rights.²⁵⁵

These judicial routines have not only legitimized the state's anti-terrorism legal regime and legislative routines in response to critical interruptions, but have also participated in the routinization of state-sponsorship of militant groups in three ways. First, parallel court structures create judicial confusion. Not only do they fail to address deficiencies in the current ATC system, they create avenues for more inefficiencies and abuse of power. Recall how political parties try to appoint judges that are more inclined with their political agenda (see chapter three). They usually do so by changing the appointment process. The judiciary's lack of immunity from political interference therefore increases in the presence of parallel court structures. The impact of the judiciary's susceptibility to politicization on the ATCs remains unknown due to a lack of credible data. Second, the judiciary's constant legitimization of the military's practices under the guise of temporary emergency powers has helped erode the democratic system, and the judiciary's own independence. Judicial sanction has allowed the military to dominate national security issues, and continue sponsoring various militant groups in Afghanistan and India. And third, judicial sanction has also assisted in making Pakistan a paranoid state, in which it sees itself and wants to be seen by other states as a victim of militancy, Indian aggression, and U.S. exploitation.

The judicial branch, therefore, has played a central role in strengthening the pillars of Pakistan's identity (defending Islam and countering threats of Indian aggression) and in creating the institutionalized routine of state-sponsorship of militant groups. Judicial independence is a powerful tool of justification and legitimization, and the routines created within the judiciary

²⁵⁵ She also expressed this during our interview. Hina Jilani, in-person interview, Lahore, November 6, 2015.

determine how the institution sees itself and wants to be seen by other state institutions. By sanctioning executive overreaches, accepting parallel court structures, and prioritizing the state's needs over the fundamental rights of its citizens, the judiciary has assisted in state-sponsorship of militant groups becoming an institutionalized routine that stabilizes the state's identity and increases ontological security. The judiciary's legitimization, however, is closely linked to the police, which is discussed in the next chapter.

Conclusion

This is the second chapter out of the three chapters that analyze Pakistan's civil institutions and their role in upholding the pillars of the state's identity and the state's daily counterterrorism practices, and their contribution to the routinization of state-sponsorship of militant groups.

Nitya Ramakrishnan (2013), a prominent lawyer, writes, "For years, the justice system was made to keep its hands off the army and it then became a habit" (192). In this chapter, I have tried to explain how and why this "habit" came about, and how it has increased Pakistan's ontological security. After explaining key judgments within Pakistan's terrorism-related case law, I described how the judiciary has used religious, democratic, and counterterrorism narrative components of the state's biographical narrative to respond to critical interruptions in a way that has reinforced the two pillars of Pakistan's identity: serving as a defender of Islam and countering India. The judiciary's use of the overarching biographical narrative and its consistent responses—or judicial routines—to critical interruptions have legitimized Pakistan's anti-terrorism legal regime, which serves as the basis for its sponsorship of militant groups. The judicial routines of declaring parallel court structures as constitutional, authenticating expansive

executive (military) powers under emergency laws, and favoring the writ of the state over fundamental human rights have collectively contributed to state-sponsorship of militant groups becoming an institutionalized routine. In the next chapter, I explain the role of the police in legitimizing the deliberate routinization of assistance to militant groups.

CHAPTER SIX:

Politicization of the Police and Militancy

The Wali Khan Babar case was on my mind in March 2015 in Karachi, on my way to interview a Counter Terrorism Department (CTD) police investigator with the Sindh Police. Babar had been a journalist for Geo TV and primarily covered the ethnic violence in Karachi, fueled by continuous clashes between the Pashtun-nationalist ANP and *mohajir* MQM, in the 2000s. Being Pashtun, his coverage of land grabbing, extrajudicial killings, and drug trafficking in Karachi did not sit well with MQM as the dominant political party in the city. And on the evening of January 13, 2011, he was killed by an MQM operative. Within a month, the police had arrested the killer and three other suspects. Over the course of the year, a police informant, key witness, junior police constable, a head constable, and the brother of a police chief were all killed while two prosecutors sought refuge in the United States (Rubin 2013, 9–15). The suspects were eventually convicted in an ATC in Kandhkot, Sindh in March 2014 (Tanoli, I. 2015). But the killings continued: in April 2014, the special public prosecutor's brother was killed in retaliation (Pakistan Press Foundation 2014).

I planned on asking the investigator about the Babar case because it served as a good example of the police's inability to protect witnesses, judicial officials, and even its own officers. But I was nervous. Though this was my fourth police-related interview, it was my first at the CTD—and one rarely goes there on a whim. As I discussed earlier (see chapter one), interviewing the police was not in my original research design because I was unsure of the kind of access I would be able to get, and unconvinced that analyzing an institution notorious for being corrupt and weak would be of much value for this dissertation. But when at the end of our

interview, Syed Waqar Mehdi gave me DIG Abdul Khaliq Sheikh's phone number, I decided to see where it would take me. And eventually, it led to the Karachi Police's CTD.

The building was in the center of the city and heavily guarded. The guard looked at my Pushtun driver and me with suspicion. My driver shared my uneasiness and had repeatedly asked me if I had the correct destination. On our arrival, after numerous assurances to my driver, I then had to convince the guard in front of the CTD gates that I had an appointment. After a brief discussion, a phone call to the interviewee, and security check of the car, we were allowed to go in. The CTD building was new and relatively simple but the color of dust gave it a rundown look. My interviewee was waiting for me outside his office. He was the quintessential police officer: tall, with an intimidating bushy moustache and jet-black hair (clearly dyed), and smoking a cigarette with tobacco-stained fingers. His office was large but dark. The walls were a dark grey, and had a picture of Jinnah, which seemed to be a common décor in official buildings. The drawn curtains and the perpetual cloud of smoke, however, made it seem particularly mysterious. He let me record our conversation for a few minutes and then said that if I didn't record, he would tell me "the real story." While discussing the Babar case in detail, he emphasized three characteristics of the police: 1) the institution is highly politicized and the victim of constant interference from political parties and the military establishment, 2) police have capacity in countering terrorism, and 3) police have low credibility in the public's eyes and in the eyes of the civilian government. In this chapter, I explain why a weak police force persists in a state like Pakistan, which is plagued with militant attacks, and argue that while a weak police force is a poor bolsterer of the pillars of Pakistan's identity, which are to defend Islam and protect itself from India, it legitimizes the state-sponsorship of militancy via the routines it has developed in response to Pakistan's critical interruptions. Underlining all police routines is its tug-of-war with

the Pakistan Army, which maintains its operational superiority and position as the main institution that can stabilize the state's identity. A weak police force and its institutional routines, therefore, have led to the routinization of state-sponsorship of militant groups.

This chapter is divided into three sections. In the first section, I describe the law enforcement structure and police powers as outlined in Pakistan's anti-terrorism legal regime, which has been heavily influenced by three critical interruptions, which are: 1) the Soviet invasion of Afghanistan and subsequent funding of the *mujahedeen* during the Cold War; 2) the onset of GWOT; and 3) the attack on Peshawar's APS in 2014. The goal of this section is to use narrative components and critical interruptions to highlight the political context of the police's turf wars with prosecution and the military establishment respectively, both of which significantly impact the police's credibility and capacity in countering militant groups while legitimizing the routinization of state-sponsorship of militant groups. In the second section, I focus on the police investigators, ATC judges and prosecutors, and lawyers, and their use of the democratic and counterterrorism components of the state's biographical narrative to legitimize police routines created in response to the state's critical interruptions. Finally, in the third section, I present police's consistent responses—routines—to the state's anti-terrorism laws and legalization of counterterrorism practices, which are relying on politicization, accepting parallel investigative structures, and favoring militarization. Coupled with the judicial responses, police responses not only justify the state's anti-terrorism legal regime and counterterrorism operations but have also played a pivotal role in enabling the state's self-identity and biographical narrative to rely on sponsorship of militancy in a way that increases its ontological security.

Section I. Police and Counterterrorism: The Turf Wars

Pakistan's state agents have employed the biographical narrative and created laws to legalize actions against militant and other groups that pose a threat to the state as it faces critical interruptions. As the first line of defense, the police have a special role in the state's daily counterterrorism and anti-terrorism practices, and as a result, are routinely targeted. Most recently, the TTP targeted the police in Lahore on July 24, 2017, killing nine officers and 17 others, along with injuring over 50 citizens (Gabol 2017). In addition to being relatively easy targets due to their visibility, the police also suffer from chronic institutional weaknesses, which stem from 1) political interference from political parties and the military establishment due to its inferior position in the law enforcement bureaucracy, and 2) contradictory legal powers laid out in the state's anti-terrorism legal regime.

I.I. The Police and Pakistan's Law Enforcement Structure

The police are part of a large law enforcement bureaucracy that consists of organizations that are operated under both the federal and provincial governments. According to Suhail Habib Tajik (2014), "The law enforcement apparatus of Pakistan is a jigsaw puzzle that mirrors the complexities of the Federation of Pakistan" (2115). In order to comprehend how provincial law enforcement organizations work, therefore, it is essential to understand how the whole law enforcement bureaucracy functions. The bureaucracy described below serves as the means by which the Pakistani state can respond to critical interruptions; agents within these organizations employ the state's narratives to justify and legitimize their actions, enabling the state to maintain a stable identity, meet its self-identity needs, and all the while increasing its ontological security.

Currently, there are 18 federal agencies and 6 provincial ones (Jamal 2010, 9; Abbas 2011, 4). There are two broad categories of federal law enforcement agencies: those that come

under the jurisdiction of the Ministry of the Interior, and those that do not. Both paramilitary forces and non-paramilitary organizations fall under the Ministry of Interior. Paramilitary forces include the Pakistan Rangers (in Sindh and Punjab), Frontier Corps (in KP and Balochistan), Frontier Constabulary, Pakistan Coast Guards, and Northern Area Scouts (Gilgit-Balistan) while non-paramilitary organizations include the Federal Investigation Agency (FIA), Islamabad Capital Territory Police, and the National Counter Terrorism Authority (NACTA). Federal law enforcement agencies that are independent of the Ministry of Interior include National Highways and Motorway Police, Pakistan Railways Police, Anti-Narcotics Force, Airport Security Force, National Accountability Bureau, Levies, and Khasadars (Abbas 2011, 4; Tajik 2014, 2124–2131). Furthermore, intelligence agencies are federal and independent of the Ministry of Interior. The two leading intelligence agencies with respect to counterterrorism are the ISI, which is led by a serving army lieutenant general, and the Intelligence Bureau (IB), which is a civilian counterpart of the ISI (Jamal 2010, 54; Abbas 2011, 5). Provincial law enforcement organizations consist of the provincial police forces (Sindh, Balochistan, KP, and Punjab) and two regional forces (Gilgit-Balistan Police and Azad Kashmir Police).

All provincial law enforcement agencies are organized along similar lines that are in accordance to the Police Act of 1861 and Police Rules 1934, colonial laws that remained in effect till 2002. Though several efforts have been made to reform the police, Musharraf's Police Order of 2002 is considered as the most serious effort to improve policing nationwide (Patil 2008, 56–65; Jamal 2010, 18–19). The Police Order 2002 was part of the Seventeenth Amendment to the Constitution that passed in December 2003, a little over a year after Pakistan became involved in the GWOT (see chapter three). As a key player in the GWOT, the demand for a more efficient and effective police force had grown exponentially. As a military ruler with a

reformist agenda, Musharraf moved to meet these demands (Khosa 2012, 31). The Order 2002 was based on recommendations by senior police officers that were part of the Focal Group on Police Reforms in 2000. The group pushed for the development of a more professional police force free from political interference, which was considered as the main reason for the police's inefficiency (Jamal 2010, 19; Khosa 2012, 29–35).

In response to critical interruptions, the legislative routine of facilitating clientelistic political parties has developed, which rely on a system of patronage and extortion to remain in power (see chapter three). Their ability to do so is a direct result of their political control over the police. Throughout Pakistan's history, civilian leaders and military dictators have manipulated the police to repress political opposition and suppress rebellion (Abbas 2011, 9; Shigri 2012, 24; Asad 2012, 21; Suddle 2012, 36), which has allowed militancy to persist in various ways. For example, police manipulation has resulted in a system of extortion being established in large urban centers like Karachi, providing an addition revenue stream for militant groups. Similarly, it has allowed militant wings of political parties to flourish, effectively increasing crime and the state's vulnerability to militant attacks. Police manipulation, therefore, has resulted in the police becoming a weak agent of daily counterterrorism and anti-terrorism practices. Former Inspector General of Punjab Police (IGP) Shaukat Javed,²⁵⁶ DIG Abdul Khaliq Sheikh,²⁵⁷ DIG Administration of Sindh Police Javed Odho,²⁵⁸ and former IGP and first head of NACTA Tariq Pervez,²⁵⁹ along with other anonymous sources, all discussed how political parties routinely interfere in investigations, recruitment, transfers, and purchases of resources that would be used to counter militant groups. Political leaders have also used the police to balance against the

²⁵⁶ Shaukat Javed, in-person interview, Lahore, October 6, 2015.

²⁵⁷ Abdul Khaliq Sheikh, in-person interview, Karachi, March 13, 2015.

²⁵⁸ Javed Odho, in-person interview, Karachi, March 12, 2015.

²⁵⁹ Tariq Pervez, in-person interview, Lahore, October 8, 2015.

military establishment. For example, in 1972, while in the process of recovering from the civil war and Bangladesh's independence, Bhutto created a paramilitary organization called the FSF to serve as the prime minister's security (Nawaz 2008, 338–339), with the aim of limiting the military's power (see chapter three). Zia, however, disbanded the FSF in 1977. Though the FSF did not directly impact the police's ability to counter militant groups, it created institutional tensions between the army and the police, which continue to persist.

Political leaders continue to use the police as their own personal bodyguards or the means to seek revenge against political opponents (International Crisis Group 2005). One anonymous source discussed how in some rural areas, one or two police cars are always available to the local politician, who also happens to be a feudal lord.²⁶⁰ The police car is used mainly for transporting the politician's family, and almost never for any police work. Habib Ahmed, Assistant Advocate General of Sindh ATCs from 1997–2008, urged me to do a survey of *zamindaar khandaans* (landowning families) in Sindh and Punjab. He held up his hand and said that if a family has five sons, one becomes a feudal, another becomes a bureaucrat, another joins the army, and one becomes a lawyer. Furthermore, all of them become members of the large political parties, such as the PPP, PML–N, and PTI. That way the family remains protected regardless of which civilian leader or military dictator is in power. To emphasize his point, he said, “*Din ko aik doosre keh kilaaf jalsa karain gaye, taqirain karain gaye. Raat ko dinner aik table par karain gaye.*” Translation: “During the day, they will rally and do speeches against each other but at night, they will have dinner together at the same dining table.”²⁶¹ In other words, political differences often serve as a façade for feudalism. And this façade is maintained by a weak police force and the democratic component of the state's biographical narrative.

²⁶⁰ Anonymous, in-person interview, Islamabad, October 2015.

²⁶¹ Habib Ahmed, in-person interview, Karachi, February 28, 2015.

The original Police Order 2002, however, was designed to eliminate pathways of political interference. It outlined mechanisms for restructuring parts of the police according to their function in order to improve operations and increase their neutrality. It also created accountability by establishing oversight of the police by public representatives at key levels.²⁶² With respect to the police's responsibilities in the state's daily counterterrorism and anti-terrorism activities, three features of the Order 2002 are important to note. First, separate investigating wings directed towards militancy were established at each police station. These new wings would be supervised by high-ranking police officers, selected by the provincial home departments rather than the federal government. Before the Order, there was no separation between police teams that conducted investigations regarding militancy and those that were tasked with maintaining public law and order. To streamline the process of establishing these new wings, the Order stated that they would follow the Code of Criminal Procedure 1898 that outlines the processes of investigation (Jamal 2010, 22–23; Arain, Arain, and Manzoor 2014, 193–194). The second important feature was separating prosecution services permanently from the home departments to the law departments.²⁶³ Though attempts had been made to separate prosecution from the police in the 1980s, they had all failed. Till the Order, the police administered and regulated prosecution services as well as being in charge of investigations. This double responsibility was cited as one of the main reasons for poor prosecution (Jamal 2010, 13; Ramakrishnan 2013, 207; Hamid 2015). The third feature related to counterterrorism practices

²⁶² For example: The Order allowed for a criminal case to be registered against a police officer involved in deviant activities. Sections 155–157 imposed penalties on police officers for neglecting their duties and/or misusing power. The Order also prohibited the use of torture, imposing a penalty of five years' imprisonment on an officer found guilty of continuing its use.

²⁶³ The laws providing for independent prosecution services are: 1) The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009; 2) The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006; 3) The North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005; and 4) The Balochistan Prosecution Service (Constitution, Functions And Powers) Act, 2003.

was enhancing community policing as a means to increase trust between the police and the public via Citizen Police Liaison Committees (CPLC). The CPLCs are “voluntary, self-financing and autonomous bodies” that would assist in increasing the capacities of both federal and provincial law enforcement agencies to reduce crimes and militancy (Nekokara 2015; Patil 2008, 65). The Order, however, was never fully implemented (Khosha 2012; Suddle 2012).²⁶⁴ Currently, Punjab and KP use an amended version of the Order while Sindh and Balochistan (and Islamabad Capital Territory) have reverted back to the Police Act of 1861 (Center for Research and Security Studies 2015, 10).

While the Police Order 2002 was a notable attempt at improving the police, it did little to address the overall structural deficiencies in Pakistan’s law enforcement bureaucracy targeting militancy. There are three main structural deficiencies. First, the federal agencies are largely uncoordinated. Each has its own chain of command, which further complicates coordination and policy implementation (Abbas 2011, 4; Tajik 2014). Second, while all the police organizations follow the same criminal law procedures as outlined by the Pakistan Penal Code 1860, the Code of Criminal Procedure 1898, and the Qanun-e-Shahadat Order 1984 (Evidence Act), federal agencies have been designed to be task-specific and follow laws made specially for them. Unless these special laws mention the criminal law procedures, they do not apply to federal agencies, which complicates matters related to jurisdiction over militant crimes. For example, besides the ATA and the Code of Criminal Procedures 1898, there is no comprehensive federal law that defines the use of force by the army or federal law enforcement agencies during prolonged counterterrorism campaigns (Soofi 2014, 2611–2614). As such, the legislative branch has passed

²⁶⁴ Amendments were made to the Order in 2004 but were unsatisfactory to Musharraf’s allies, who were mainly feudal legislators (Abbas 2011, 9).

retroactive laws like the Aid (to Civil Powers) Act 2011 that legalize military actions like prolonged detentions of terrorists (see chapter four).

The third structural deficiency is that while the constitution has designated the police as the main agent for maintaining law and order within the provinces, senior police leadership is recruited, trained, and selected by the federal government. The Federal Public Service Commission (FPSC) selects members of the Police Service of Pakistan (PSP) by conducting an annual comprehensive exam. The rationale for selecting police leadership solely from the members of the PSP is to ensure that all officers have undergone the same training (Jamal 2010, 42; Abbas 2011, 5; Arain, Arain, and Manzoor 2014, 62). Though members of the PSP are recruited from all over the country, ten percent of the PSP come from the armed forces (Jamal 2010, 42). This provides the military establishment direct avenues of influence within police organizations, which have been reinforced in realm of counterterrorism by both the state's anti-terrorism legal regime, which has been legitimized by both the legislative and judicial branches (see chapters four and five respectively). Furthermore, the National Police Bureau (NPB), the National Police Management Board (NPMB), and the National Public Safety Commission (NPSC) are all federal agencies that are involved in police planning and management, and are under the jurisdiction of the Ministry of Interior. The NPMB advises both federal and provincial law enforcement agencies on criminal justice reform, public safety, and modern investigative technologies, while the NPSC supervises all federal law enforcement agencies. The NPB is headed by a police officer and serves as the main coordinator between the NPMB and NPSC (Jamal 2010, 55–57; Abbas 2011, 16). Though of each of these have been designed to reduce political interference in the police, they have been largely inactive, and hence, have been unable to reduce police politicization, indirectly impacting the police's ability to counter militant

groups.²⁶⁵ Police management and planning, therefore, is a source of tension between federal agencies and provincial organizations in the context of counterterrorism—and has repeatedly served as an added justification for relying on the military establishment for leadership in counterterrorism operations.

I.II. Police Powers in the Anti-Terrorism Legal Regime

Earlier, I have explained how the legislative branch has routinely expanded the executive's—including the police's—power in the realm of counterterrorism in order to uphold the state's identity as a guard against Indian aggression. The fundamental goal of the anti-terrorism legal regime has been to legalize practices used to counter militant groups to set the stage for legitimization, that allows for sponsorship to continue as an institutionalized routine. The ATA is the foundation of the current anti-terrorism legal regime and allows law enforcement agencies to: shoot at will; detain suspects for up to 90 days (POPA allows this as well); target militant “networks,” which involves detaining individuals suspected of being involved in aiding and abetting militant groups directly or indirectly via *madrassas*; and confiscate the passport of suspects charged under the ATA, resulting in clashes between the religious, democratic, and counterterrorism components of the biographical narrative. The NISP of 2014 also reinforced the police's position as the leading law enforcement agency for implementing the NISP by establishing CTDs,²⁶⁶ Rapid Response Forces, and high-security prisons (NISP, 2014; Safi 2014, 11). Yet, the reality on the ground does not match the police's designated powers in anti-terrorism laws in three areas: 1) permissible evidence, 2) witness protection programs, and 3)

²⁶⁵ The NPSC has been reactivated since February 2017. According to the Police Order 2002, the NPSC would have the authority to nominate police officers to the prime minister for the appointment of Inspector General of Police (IGP) at both federal and provincial levels as a way to ensure police independence and increase accountability (Syed 2017).

²⁶⁶ Crime Investigation Departments (CIDs) were actually converted into CTDs. The head of the CTD is equivalent to the IB's head.

community policing—limiting the police’s ability to counter militant groups operating within the state, and hence, not only allowing the police to remain a weak institution but also weakening the democratic component of the state’s biographical narrative.

1. *Permissible Evidence:*

Within the anti-terrorism legal regime, the Code of Criminal Procedure 1898 and the Qanun-e-Shahadat Act 1984 (Evidence Act) outline the procedure for gathering evidence. According to Article 38–40 of the Qanun-e-Shahadat Act 1984 and Article 164 of the Code of Criminal Procedure 1898, any confessions made in front of a police officer are inadmissible in courts judging militants. Only confessions made in front of a District Magistrate (DM) are permitted. Yet, Article 21 H of the ATA allows for confessions made in front of a police officer at the rank of District Superintendent of Police (DSP) or higher. A DSP is a senior police rank and is appointed by the provincial government while a DM is not a police officer but an administrator with both executive and judicial functions (Jamal 2010, 19–20). Colonial laws deliberately created a parallel system of control where the DM would also oversee the criminal administration of districts (Jamal 2010, 20; Human Rights Watch 2016, 10). Pakistan has not changed this system—and the anti-terrorism legal regime has reinforced it. But having different laws adjudicate confessions in front of different ranks of investigating officers as admissible has not only created inefficiency but also contributes to the backlog currently being experienced by the ATCs (also discussed in the next section). On the other hand, the police are more likely to book a suspect under the ATA because confessions made to a police officer are admissible in court, which increases the chances of conviction. As a result, there are numerous suspects and criminals tried in the ATCs, when they should actually be tried in regular criminal courts (JPP and Reprieve 2014).

Admissibility of forensics and electronic evidence are also challenging. Forensics analysis is a relatively new technology for the police. The Punjab Forensic Science Agency²⁶⁷ was established in 2012 and is based in Lahore, Punjab—and is the only lab of its kind in the whole country. For example, the Balochistan Police has to send case evidence to Lahore for forensic analysis because Balochistan does not have a forensics lab (Human Rights Watch 2016, 62). Furthermore, police training centers do not train officers to collect and analyze forensics evidence because they are not equipped with a functioning forensics lab (Jamal 2010, 40). In fact, only one police training school in Lahore, the Sihala Academy, has a functioning forensic training laboratory (Human Rights Watch 2016, 69). In addition to a low number of police officers trained in forensic methodologies (e.g., forensic toxicology, pathology, forensic photography, etc.) and analyses (e.g., genetic analysis, polygraph testing, etc.), there is a sheer shortage of basic forensic equipment, such as LED flashlights, fingerprinting kits, cameras, and even tape and envelopes to secure and transport evidence for laboratory analysis (Human Rights Watch 2016, 99). In such conditions the forensic evidence against militants is weak at best.

In addition to capacity/resource challenges, there is also a huge push to keep forensics and electronic evidence as inadmissible in all criminal courts, including ATCs. In a letter to Raza Rabbani (PPP) on March 10, 2010, the senior vice president of PML–Q Syed Kabir Wasti tried to convince the majority that allowing taped conversations to be used as evidence would negatively affect the right of privacy of Pakistani citizens. He said that electronic communications could be easily manipulated:

The right of honor of sons/daughters is being tarnished through such fabricated/recorded conversations, despite the constitutional rights relating to the right of privacy, which provides that the honor of any person/citizen should not be injured (Wasti 2010)

²⁶⁷ Punjab Forensic Science Agency, homepage, <http://pfsa.gop.pk/>.

He also used religion to make his argument, bringing in the religious component of Pakistan's biographical narrative to emphasize his argument against the inclusion of electronic and forensics evidence in criminal proceedings:

The admissibility of tape-recorded conversations in evidence under the Qanun-e-Shahadat Ordinance 1984 is against Quran and Sunnah, dignity of a person, as the right of privacy has been guaranteed to every citizen under the Constitution of the Islamic Republic of Pakistan (Wasti (Wasti 2010) 2010) (emphasis is mine)

The police's ability to collect substantive and credible evidence directly effects prosecution of militants. In terrorism-related cases, the prosecution is required to prove the case "beyond any shadow of doubt" rather than on "balance of probability" (Zaidi 2016, 9–10). I reviewed 11 ATC judgments, and one of them provided the following explanation:

Being primary duty of the prosecution, the prosecution *has to prove its case beyond any shadow of doubt* depending upon reliable, truthful and confidence inspiring evidence. If the above pointed notes are missed, then ultimately its benefit is the right of the accused.²⁶⁸ (emphasis is mine)

According to Zaidi (2016), the "evidentiary standards" are high in terrorism-related cases because offenses listed in the ATA carry severe punishments, such as life imprisonment and the death penalty. And these standards are applied even when the accused is not present in the ATC.²⁶⁹ Yet, putting the burden of proof on the accused rather than the investigators is against international legal norms, and threatens the credibility of Pakistan's legal system. While supporting the passage of POPA in the National Assembly in July 2014, MNA Shah Mehmood Qureishi criticized the clauses that put the "onus of innocence" on the suspect rather than the prosecution. Using the democratic component of the biographical narrative that focuses on discussions regarding Pakistan's political system and democratic processes, he said:

²⁶⁸ Anonymous, in-person interview, Karachi, October 2, 2015.

²⁶⁹ ATA allows trials to take place in absentia.

*I want the canons of history to be remembered what I represent and the Pakistan Tehrik-e-Insaf said, **this paradigm shift is against the practices of the legal norms that are practiced all over the world.** And this can give this Bill a draconian form, this can become a draconian law and that draconian law must be opposed on principle.*²⁷⁰ (emphasis is mine)

This high evidentiary threshold, combined with restrictions on the kind of evidence that is admissible, encourages parallel investigatory systems and agents. For example, two anonymous sources—one related to the police²⁷¹ and the other to the Rangers²⁷²—criticized the CPLC for conducting its own investigations rather than prioritizing informing and assisting the police in investigations. The CPLC is able to conduct its own investigations due to availability of resources that have dramatically increased its capacity over time. Habib Ahmed drew on his experience as a former prosecutor of the Sindh ATCs and explained that companies do not give information to the police and are more comfortable sharing vital evidence with the CPLC, ISI, and even the Rangers.²⁷³ To the investigating police officer, they say, “who are you? Go [away].” The police can certainly get search warrants (the procedure is outlined in the Fair Trials Act of 2013) but rarely do. And even if they do, Habib Ahmed explained that the warrants mean nothing because politically well-connected businessmen own these companies. They have a variety of resources available to them that allows them to threaten the police investigator, who ends up abandoning that particular line of investigation. What can and cannot be used as evidence, therefore, plays a major role in hindering the police’s efforts to fight militancy.

2. Witness Protection Programs:

Due to restrictions on forensics and electronic evidence, the police rely heavily on evidence provided by witnesses. But witnesses against militants and terrorists face an uphill task.

²⁷⁰ National Assembly of Pakistan, Assembly Debates, 13th Session, July 2, 2014, p. 25, available online.

²⁷¹ Anonymous, in-person interview, Islamabad, October 21, 2015.

²⁷² Anonymous, in-person interview, Karachi, March 3, 2015.

²⁷³ Habib Ahmed, in-person interview, Karachi, February 28, 2015.

Owing to the lack of witness protection programs, witnesses often retract or change their statements, resulting in either flawed or no evidence. Eventually these cases get dismissed, indirectly decreasing the conviction rate of militants. According to Waqar Mehdi, people do not want to become witnesses because “the courts are corrupt” and “drag” cases for years, sometimes decades. During this time, witnesses fear harassment from the police.²⁷⁴ Many witnesses fear that the convicted could flee jail or that they could become the victims of retaliation by the convict’s family or village, etc. Their fears are augmented by increasingly poor jail administration (which is entirely the police’s responsibility) and increasing news on escaped convicts and jailbreaks. For example, in July 2013, the TTP managed to free 175 inmates from the central jail in Dera Ismail Khan, Sindh, which included 35 “high-profile militants” (Sherazi 2013). In February 2016, the military stated that it had successfully foiled a jailbreak plan that involved freeing almost 100 convicts, including the terrorist who killed Wall Street Journal’s reporter, Daniel Pearl (Nauman and Shah 2016). Witness protection, therefore, is a necessity for a criminal justice system like Pakistan’s that relies heavily on confessional and witness-based evidence.

According to Hassan Abbas, former Assistant Superintendent of Police in Khyber Pakhtunkhwa, “Witness protection system is a critical element of the criminal justice system, except in Pakistan, where it has not been attempted.”²⁷⁵ Furthermore:

Witness protection system ka na tau koi culture hai na us ko koi support karna chata hai. And these are not very expensive propositions. You don’t need a lot of money to establish those. Aap ko apne police institutions mein—training institutions mein—iss ko enforce karna hai, iss cheez ko baar baar emphasize karna hai, which is the job of the politicians. And the bureaucracy as well.
Translation: *There is no culture or support of a witness protection system. And these are not very expensive propositions. You don’t need a lot of money to establish those. You need to enforce this [witness protection] in your police, and*

²⁷⁴ Waqar Mehdi, in-person interview, Karachi, February 27, 2015.

²⁷⁵ Hassan Abbas, in-person interview, Washington, D.C., July 23, 2015.

*its training institutions, and keep emphasizing it, which is the job of the politicians.*²⁷⁶ (emphasis is mine)

The ATC prosecutors I interviewed in Lahore shared Abbas' sentiments regarding the lack of culture and emphasis on witness protection. One prosecutor discussed how they as prosecutors have nothing: no government-subsided homes or vehicles, and no guards for protection despite constantly being threatened in court. Another said:

*[P]oore Lahore division mein only four courts hain, aur government itni responsibility nahin ley sakhti. Ab witnesses becharey tau phir... Yahan par itne saare cases hain jahan witnesses resign kardetey hain. Humare saamne aakar kehtey hain, sorry hum evidence nahin dey saakhtey, hum ko threats hain. Government koi measure nahin ley sakhti. Tau witness protection ka tau yahan pay Punjab mein koi system hee nain hai. Translation: **In all of Lahore, there are only four ATCS, and the government won't take the responsibility [to protect] so the poor witnesses...** We get so many cases where the witnesses resign. They come to us and say, sorry we can't give evidence because we are facing threats. Government can't take any measures [for protection]. So in Punjab, there is no system for witness protection.*²⁷⁷ (emphasis is mine)

Similarly, when discussing the witness protection legislation in Sindh, Habib Ahmed stated:

*Humari Sindh govenment ney aik baara aik mazaq kiya. Innoney aik Witness Protection Act aik pass kiya. Kabhi aap Sindh government sey poonche, key aap ney yeh Act tau pass kardiya, towards that koi aik single step pitchle teen chaar saal mein liya hai? Kissi aik witness ko aap ney protection dee hai aap ney? Law tau pass kar diya. Kissi aik witness ko Sindh government ney protection nahin dee. Sirflaw pass kardiya hai taake hum media mein akar kehdain keh hum ney law tau pass kiya hua hai Witness Protection Program ka. Translation: **Our Sindh government did a big joke. They passed a Witness Protection Act. Just ask the Sindh government, you passed an act but have you taken any steps to implement it in the last three four years? Have you given protection to a single witness? The law passed but no witness have been protected by the Sindh government. The law was passed so they [politicians] can come in front of the media and say we passed a Witness Protection Program law.***²⁷⁸ (emphasis is mine)

²⁷⁶ Hassan Abbas, in-person interview, Washington, D.C., July 23, 2015.

²⁷⁷ Anonymous prosecutors, in-person interviews, Lahore, October 15, 2015.

²⁷⁸ Habib Ahmed, in-person interview, Karachi, February 28, 2015.

Democratic policing of militancy cannot occur if law enforcement is unable to protect witnesses to militant or terrorist acts. The resistance to witness protection programs is multifaceted, and is rooted in: 1) the legislative routine of facilitating the clientelistic nature of political parties (see chapter four), which relies on a weak and politicized police force that is unable—or unwilling—to administer a witness protection program, and 2) on the judicial routine of de-emphasizing human rights within daily counterterrorism and anti-terrorism practices (see chapter five). Lack of witness protection programs, combined with decaying jail administration, therefore, further encumbers the police and decreases the utility of laws that expand police powers.

3. Politicization of Community Policing:

Community policing was developed to serve as the means to increase trust between the police and the public, especially as outlined in Police Order 2002, as a means to counter militant groups. Community policing has been active in Karachi since the establishment of the CPLC in 1992. Within Karachi, CPLC has focused on assisting the police in the following crimes: 1) kidnapping for ransom, 2) extortion, and 3) vehicle and mobile phone theft (Patil 2008, 65; Center for Research and Security Studies 2015, 36–37). While community policing does not involve Levies²⁷⁹ or the Frontier Corps,²⁸⁰ it is based on enhancing communication and promoting transparency in matters related to law enforcement, especially the police. CPLC, however, is now accused of becoming politicized, where politically connected business provide funds and other resources to the CPLC, creating pathways of conflicts of interests and political

²⁷⁹ The Balochistan Levies Forces are a federal paramilitary organization and is not under the umbrella of the Ministry of Interior. Levies are appointed by the police. For more information, see Express Tribune, “What is the Levies Force?” December 31, 2012, <https://tribune.com.pk/story/486847/what-is-the-levies-force/>. from

²⁸⁰ The Frontier Corps is a paramilitary organization that falls under the Ministry of Interior. It operates in Balochistan and KP and is the direct counterpart of the Rangers that operate in Sindh and Punjab. Each sub-division of both the Rangers and Frontier Corp is headed by an army officer though overall control lies with the civilian-run Ministry of Interior.

influence. Also, as the Rangers have become more prominent in Karachi, the CPLC and the Rangers Special Task Force, a mostly civilian-run group similar to the CPLC, have clashed. According to Tricia Bacon, a former intelligence officer at U.S. Dept. of State's Bureau of Intelligence and Research, Office of Counterterrorism, Narcotics and Crime:

Rangers are a bandaid to a gaping wound. They're a way to try and provide a law enforcement function without actually reforming the Police, which is obviously what needs to happen.²⁸¹ (emphasis is mine)

While elaborating more on this tension remains outside the scope of this dissertation, it is important to note that community policing has evolved into a separate structure for investigations, rather than a facilitator of the police. The police in turn has come to accept CPLC as fellow investigating organization, compromising its own political will with respect to implementing reforms.

Continued political interference, combined with laws that expand powers without increasing resources, and a political climate that places the military establishment over police organizations when it comes to counterterrorism have all contributed to an incompetent and inefficient police force. The police are aware of their weaknesses, but are largely oblivious or unconcerned about the wider implications of their weakness. I argue that a weak police force facilitates sponsorship of militancy by being a weak enforcer and barrier between state laws and resources and militant groups. More significantly, a weak police force legitimizes anti-terrorism laws and counterterrorism practices that have institutionalized assistance to militant groups—resulting in sponsorship evolving into a self-identity need that helps to increase the state's ontological security.

²⁸¹ Tricia Bacon, in-person interview, Washington, D.C., May 26, 2015.

Section II. Pakistan's Biographical Narrative and the Police: Legitimizing Sponsorship

Pakistan police is not a modern law enforcement institution the way we have modern law enforcement institutions in the West, or even I would say, in the developing world. – Hassan Abbas, former Assistant Superintendent of Police in Khyber Pakhtunkhwa²⁸²

The police has used democratic and counterterrorism narrative components to create its own consistent responses to the state's critical interruptions. Within these narratives, the police's lack of capacity, Pakistan's continuous sense of victimhood, and the state's policy of distinguishing between militant groups all play a prominent role in how police routines have evolved and legitimized the state-sponsorship of militant groups. The religious narrative component, however, is absent from police responses to critical interruptions. For example, the police have targeted *madrassas* as part of the state's NISP and now NAP but I found no evidence indicating the police have a view on the rationales for targeting *madrassas*. Similarly, the police remain silent on issues related to secularism. When I asked police-related sources about Pakistan's counterterrorism narratives, I did expect to hear views on the role of the police and Islam within Pakistan, and how the police can help the state serve as a defender of Islam, but discussion mostly centered on the need of the police to be apolitical and areligious in the context of counterterrorism. For instance, when I asked DIG Abdul Khaliq Sheikh²⁸³ if Pakistan had a counterterrorism narrative, he said:

I don't think it has developed. The only development is that the state has stopped propagating any kind of religion. It is maintaining a safe distance now but they should come up with a counter narrative.

When I asked if he envisioned the police playing a role in such a narrative, he said, "police doesn't have roles in these things." I discuss how this influences the police's

²⁸² Hassan Abbas, in-person interview, Washington, D.C., July 23, 2015.

²⁸³ DIG Abdul Khaliq Sheikh, in-person interview, Karachi, March 3, 2015.

ability to uphold Pakistan’s identity as a protector of Islam and defender against India by focusing on how police, ATC judges and prosecutors, and lawyers use the state’s biographical narrative to legitimize police routines that have contributed to the routinization of state-sponsored militancy in Pakistan.

II.I. To Reform or Not to Reform: Use of Democratic Component

In the context of the police’s relationship with the state’s daily counterterrorism and anti-terrorism practices, the democratic narrative component highlights Pakistan’s colonial legacy and corruption within the police. As most postcolonial states, Pakistan inherited a collection of administrative laws that have not been changed or modernized. For example, the Police Act of 1861 is still in use today. The Act has created two tiers of officers: lower rank constables that do not have administrative authority or professional training, and a higher, “elite” rank that is trained and has decision-making authority. According to Zia Rehman,²⁸⁴ these two kinds of officers belong to different “classes.” The “lower rank” constables get a bad name because they are considered “badtameez” (ill-mannered) but they have great networks and know the cities well whereas “high rankers” are commissioned officers who do not know the city well and are not involved in operations or extrajudicial killings. In other words, there is a disconnection within the police, which facilitates its politicization.

The current bureaucratic system has also incentivized corruption. According to two ATC judges, corruption and bribes are the two main weaknesses of the law enforcement agencies.²⁸⁵ Mehmood Shaam, the editor-in-chief of *Aitraaf* magazine, described corruption within the police as widespread, existing from top to bottom:

²⁸⁴ Zia Rehman, in-person interview, Karachi, March 10, 2015.

²⁸⁵ Anonymous, ATC judges, in-person interviews, Karachi, March 2, 2015.

Corruption jo hai woh right from top IG sey lekar neechey taak aik poora network hai. Woh sub ko pata hai.” Translation: The [police] corruption network starts from the top IG level to the lowest rank. Everyone knows that.

Similarly, DIG Javed Odho said, “Unfortunately, police has a motivation that is corruption extortion. The bigger the name, the bigger sometimes the amounts involved of extortion.”²⁸⁶

Imtiaz Gul explains how police corruption hinders the implementation of anti-terrorism laws.

But corruption within the police is also closely connected to the police’s politicization, which facilitates the legislative routine of maintaining clientelistic political parties (see chapter four).

For example:

*The enforcement of these laws, the Anti Terrorism Act, is the actual issue. But the police is not free. It is still very much subject too--except KP now in the past two years-- **the rest of the police just works at the whims of the chief minister.** So that is a big deficit here in Pakistan.*²⁸⁷ (emphasis is mine)

Police corruption has also remained a concern during parliamentary debates on various laws. In 1997, MNA Mir Hazar Khan Bijrani (PPP) opposed the passing of the ATA. One of the reasons he cited was that these kinds of laws would accomplish little if the police were not reformed. He argued that the current law would result in police harassment of law-abiding citizens, legitimize extrajudicial killings, and encourage warrantless searches. According to him, the police have the capacity to go after terrorists but not the will.²⁸⁸ MNA Daniyal Aziz (PML–Q) agreed: “Everybody knows here that the corruption in the police department, in the FIA, in the IB is rampant. Does this law provide anything to change that?”²⁸⁹

According to Hassan Abbas, the police suffers from three kinds of problems: 1) legal issues, stemming from old colonial laws that remain active; 2) lack of organizational skills and

²⁸⁶ DIG Javed Odho, in-person interview, Karachi, March 12, 2015.

²⁸⁷ Imtiaz Gul, in-person interview, Islamabad, October 19, 2015.

²⁸⁸ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 88–92.

²⁸⁹ Official Report, The National Assembly of Pakistan Debates, 7th Session, vol. VII (August 13, 1997): 98.

resistance to new administrative techniques, such as a simple software that can track the progress of various cases; and 3) culture of patronage that dictates promotions, postings and pay scales.

For example, positions such as Chief of Police and District Police Officer are:

*[D]ependent on the whim of the politician who has influence to get them appointed. **So there is no security of tenure.** And if you know that I can be, irrespective of my competence and merit, if I can be Chief of Police of Lahore or Karachi or of an important place only if I've have good relations with the Chief Minister or the Prime Minister, what will it do to the ethos of the whole institution?*²⁹⁰ (emphasis is mine)

Jameel Yusuf, the founder and first director of the CPLC, also expressed concerns regarding the effects of politicization on the quality of policing:

*The quality of policing...[has] been compromised over the years because of a lot of political appointees, of which Sindh is the worse of all the provinces. Punjab is still better. ... Because of political recruitments, **a lot of these terrorists that are apprehended get away with it because the police officers themselves are politically inclined with somebody or the other, on this side and that side, right?** So in a way, they have got the protection as it is, which is a very sad thing. Law enforcement has to be completely neutral and apolitical so that across the board, justice can be done.*²⁹¹ (emphasis is mine)

Police corruption in Pakistan is a result of a democratic political system that is complicit in a system of patronage and nepotism, which directly impacts the police's institutional ability to counter militancy though it facilitates the state-sponsorship of militant groups. Such a democratic system, therefore, legitimizes the sponsorship of militant groups as a way to increase the state's ontological security. Furthermore, Pakistan's legislative branch tends to favor the military establishment when it comes to framing anti-terrorism laws. In chapter four, I explained how the army puts pressure on the legislature to legalize certain practices, such as extended detentions and refusing bails. But the biggest challenge the police face are laws restricting the kind of evidence that can be presented in court—laws that do not apply to the military establishment's

²⁹⁰ Hassan Abbas, in-person interview, Washington, D.C., July 23, 2015.

²⁹¹ Jameel Yusuf, in-person interview, Karachi, March 9, 2015.

agents of investigation. If confessions made in front of the police are largely inadmissible in all courts, this affects how the police assemble evidence to make a case. Khawaja Naveed Ahmed, a criminal lawyer, said:

*The difference between our system and their system is that in abroad, in foreign countries, they collect the evidence, and we create the evidence. We just get information, and confession from the man that he has done it, then we create evidence, just to get him convicted. And most of the time, created evidence fails in the court so the actual culprit is released.*²⁹² (emphasis is mine)

An anonymous police officer stated that manipulating evidence is the norm but “is done in good faith”²⁹³ while another stated that doctoring evidence is more troublesome; it’s easier to just kill the culprits.²⁹⁴ According to Reema Omer:

*How we collect evidence is a failure of the investigation agencies. ... Sometimes a lot of them say that they have evidence but under Pakistan’s rather outdated Evidence Law [Qanun-e-Shahadat] that evidence does not stand in court.*²⁹⁵

In an attempt to avoid evidence collected by the police being thrown out, lawmakers have opted to put the burden of proof on the accused. The judiciary—and ATCs—has largely supported this move to place the burden of proof on the suspect (who may or may not be an actual militant) by requiring the prosecution to prove its case with certainty, rather than on balancing the probability between guilt and innocence. The military establishment, however, remains somewhat immune to these evidentiary thresholds. Reema Omer elaborated:

*Sometimes they [investigators and prosecutors] have no evidence. They rely fundamentally on confessions so witnesses are intimidated, they retract their statements. And of course, confessions is the weakest form of evidence one can have in a criminal case. **Otherwise, our investigation is a spectacular failure.** Even in the military courts cases, you’ll see that in all cases so far judicial confessions are the, sort of...people have been convicted on that basis. So again,*

²⁹² Khawaja Naveed Ahmed, in-person interview, Karachi, March 4, 2015.

²⁹³ Anonymous, in-person interview, Karachi, March 10, 2015.

²⁹⁴ Anonymous, in-person interview, Islamabad, October 20, 2015.

²⁹⁵ Reema Omer, Skype interview, Washington, D.C., November 26, 2015.

*even in the military system, you don't see that the investigation is better or they're relying on something other than confessions, which is a huge problem because given how widespread torture is in Pakistan, if you are convicting people based on confessions, there is a huge problem.*²⁹⁶

More significantly, the Pakistan Army Act of 1952 and the Pakistan Army (Amendment) Act of 2015 do not specify the procedure for investigations or the criteria for evidence. Trials under these laws are essentially court-martial procedures that are not open to the public, adding another layer to an already opaque system of justice. As Shahadat Awan states: “*Humari military tau iss mulq mein immune hai har qism kee cheez sey.*” Translation: “*Our military in this country seems to be immune to every kind of thing.*”²⁹⁷ The newly formed CTDs were briefly a site of tension between the police and the military establishment. An anonymous source described the CTDs as “desperate attempts to focus on terrorism.”²⁹⁸ According to Sarah Eleazar, a journalist at Express Tribune:

The issue initially was that the police felt that their authority was being taken away once the Army was in place, once you put other civil servants in place. Because that was kind of the idea that you mix up the judiciary, police, and the Army here, and you kind of integrate the three systems. And there was a lot of tussle on who is going to be more powerful. They eventually decided that the guy at the top top will be a police person, then the army and then police. That's how they renegotiated the positions.²⁹⁹ (emphasis is mine)

The CTDs, however, are still in the early stages of organization and operations, and will most likely continue to be a venue of military–police tensions. The CTDs illustrate the bureaucratic problems plaguing law enforcement. The laws passed by the legislative branch legalize numerous counterterrorism practices. Yet, they do very little to address the weaknesses in the police due to politicization. Even though a weak police force is unable to adequately bolster the pillars of the state's identity, which are to serve as a defender of Islam and counter to

²⁹⁶ Reema Omer, Skype interview, Washington, D.C., November 26, 2015.

²⁹⁷ Shahadat Awan, in-person interview, Karachi, March 6, 2015.

²⁹⁸ Anonymous, in-person interview, Islamabad, October 25, 2015.

²⁹⁹ Sarah Eleazar, in-person interview, Lahore, November 2, 2015.

Indian aggression, it legitimizes the state's anti-terrorism legal regime via its practices, procedures, and codes of conduct, which include allowing the army to serve as the main institution to counter militants that threaten the state.

II.II. Advocating for Militarization: Use of Counterterrorism Component

With respect to the police, the counterterrorism narrative component evolves around one key concern: is it the police's responsibility or the army's to counter militant groups? DIG Javed Odho argues that the police should not be responsible because it is too visible, and hence too vulnerable:

*Up till now, the police force has been the main stay of the government in fighting this war on terrorism. **Personally I believe that should not have been there in the first place.** The police is supposed to be a uniform force, very visible. They have to deal with public, common citizens, who carry on with their minor misdemeanors and heinous crimes. ... **The traditional police officer can't fight it [terrorism].**³⁰⁰ (emphasis is mine).*

DIG Abdul Khaliq Sheikh and other police-related sources, however, argue that the police should be at the forefront of countering militants because of the depth of their knowledge of urban centers and rural areas. The police's lack of capacity, however, is used as a justification for continued military dominance in counterterrorism operations. Three issue areas highlight military-police tensions in regard to capacity: 1) police's training for countering militant groups, 2) the role of the police in regards to the "missing persons" issue, and 3) the role of the ATCs in decreasing police's credibility.

According to Umer Farooq, the police are trained in dealing with minor crimes, and their capability is to record daily crimes, not investigate them.³⁰¹ Similarly, Zia Rehman said that the police is not properly trained in gathering forensics evidence or even protecting themselves

³⁰⁰ DIG Javed Odho, in-person interview, Karachi, March 12, 2015.

³⁰¹ Umer Farooq, in-person interview, Islamabad, October 19, 2015.

properly: “[our] police is not trained for these large-scale counterterrorism—like al Qaeda and TTP—they don’t have experience for this.”³⁰² Training programs like the one run by the UNODC (see chapter five) are helpful but Habib Ahmed argues that the problem with such programs is that only “elite” officers are sent like administrators and bureaucrats, but these are not the officers who gather evidence on the crime scene and conduct investigations targeting militants. Instead these programs reinforce the class divide between police officers, which has resulted in the police relying on its internal politicization, buttressing the already daunting external politicization from political parties and federal law enforcement agencies. Securing jails to prevent jailbreaks also lies within police training. But as police resources have dwindled, their ability to properly manage jails has suffered. For example, two LeJ associated militants successfully escaped from Karachi’s central jail in the spring of 2017. As such of June 2017, the Sindh Police CTD has requested the provincial government to transfer high profile cases to military courts so that the army can be in charge of their detention in the event of another jailbreak (Rehman 2017). Unlike the legislative branch, turning toward the army is not a typical police response because the police and armed forces are usually engaged in turf wars. As coordination between the army and police increases, however, there is potential for police relying less on its politicization and implementing reforms to improve itself—and strengthen the democratic narrative component of the biographical narrative.

The “missing persons” issue is ongoing. While it is mostly considered a military-led human rights violation, the police’s role highlights yet another reason for military–police tensions. When it comes to countering militant groups, the military establishment has the capacity to detain suspects for months at a time—and POPA provides all law enforcement agencies legal cover to do so. But while the military has the capacity to actually detain suspects

³⁰² Zia Rehman, in-person interview, Karachi, March 10, 2015.

in detention centers, “internment camps,” safe houses, etc.,³⁰³ the police does not (Siddiqui and Walsh 2015). Instead, they prefer to kill so-called militants in “encounters.” A police officer that wished to remain anonymous said, “Now instead of prosecuting, we kill them.”³⁰⁴ In 2015, the police and Rangers together killed 925 suspects in Karachi alone in these “encounters” (Ali 2015). While I was in Karachi the Sindh police was in the midst of a campaign to gather support for extrajudicial killings, claiming that such extreme measures were necessary to eradicate militancy, which is viewed as a special crime like terrorism (Dawn 2015). An anonymous ATC judge I interviewed in Islamabad also agreed that extrajudicial killings was the only solution, since arrests usually led to acquittals and wasted resources.³⁰⁵ Faisal Siddiqui describes the state’s policy toward militants as having four parts. The first is always to kill in encounters. The second part involves enforced disappearances: if the authorities consider the suspect somewhat useful, he becomes a “missing person.”³⁰⁶ The third part consists of implicating the suspect in 3–4 criminal cases by either fabricating evidence or exaggerating evidence to ensure conviction. The fourth part involves using the anti-terrorism legal regime to charge the suspect with a terrorism-related crime.³⁰⁷ Though it is important to note that the military is not averse to engaging in extrajudicial killings either—though those encounters are not labeled as such. An

³⁰³ The existence—or non-existence—of safe houses and internment camps is contentious issue, and one that I encountered frequently during my fieldwork. Taha Siddiqui, a journalist (in-person interview, Islamabad, October 19, 2015) and Ayesha Siddiqa, a defense analyst (in-person interview, Islamabad, October 19, 2015) both discussed these kinds of camps in detail in our separate interviews. While an anonymous source from the Military Intelligence confirmed the existence of internment camps, and even showed me a list of prominent ones during our interview (in-person interview, Rawalpindi, October 29, 2015), another anonymous source from the JAG denied their existence, and asked me to be wary of propaganda (in-person interview, Rawalpindi, October 22, 2015). Shaukat Javed also denied knowing about them, but I don’t consider his view as an outright denial. Also important to note is that one of the reasons why these camps exist rather than jails is because the police does not have jurisdiction in FATA or PATA.

³⁰⁴ Anonymous, in-person interview, Islamabad, October 20, 2015.

³⁰⁵ Anonymous, in-person interview, Islamabad, October 29, 2015.

³⁰⁶ The “missing person” issue, therefore, is not a secret. The state is constantly criticized for disappearing suspects. Saba Imtiaz, a journalist said, “I don’t like the idea of ‘missing persons’ because in the case of ‘missing persons’ you don’t know who has taken them. I think it’s common knowledge that it’s the police and Rangers who have taken them away.” Saba Imtiaz, Skype interview, Washington, D.C., April 17, 2015.

³⁰⁷ Faisal Siddiqui, in-person interview, Karachi, March 10, 2015.

anonymous source stated that the military has a clear-cut policy regarding missing persons: don't keep them, kill them.³⁰⁸ This has given rise to the police favoring its militarization as a way to strengthen its ability to counter militant groups.

The police also have a contentious relationship with the ATCs. Earlier, I described how the judiciary views the inefficiencies of the ATCs, mainly blaming poor police investigations as the reason for low conviction rates (see chapter five). From the perspective of the police, both the prosecution and the judges are to blame for the backlog and high acquittal rates nationwide. One of the main problems in the ATC–police relationship has to do with credible evidence.

According to two anonymous ATC judges, about 40 percent of cases in ATCs are about “fake encounters,” not “false” encounters. An anonymous source explained that while both involve lying by the police, an example of a “fake” encounter is when the police shoot someone and to justify it, they claim that it was an “encounter” while a “false” encounter includes shooting someone by mistake.³⁰⁹ Also, sometimes the Rangers catch someone and hand them over to the police, but there is no evidence proving the person's guilt. So then the police will fabricate evidence, creating a fake encounter.³¹⁰ The police's frustration with the ATCs also has to do with the role of the First Information Report (FIR). The FIR is the first document following an offense and forms the basis for all police investigations (Jamal 2010 11; Hameed 2015, 1). Though the FIR is not a political document—and can't be according to Abdul Sheikh because it is based on observable facts³¹¹—it has become the basis for dismissing a case. According to Shaukat Javed, ATC judges dismiss a case or acquit the accused by claiming the investigation to be “faulty” but the real reason is that the FIR is incomplete:

³⁰⁸ Anonymous, in-person interview, Islamabad, October 21, 2015.

³⁰⁹ Anonymous, in-person interview, Lahore, October 31, 2015.

³¹⁰ Anonymous, in-person interviews, Karachi, March 2, 2015.

³¹¹ DIG Abdul Khaliq Sheikh, in-person interview, Karachi, March 3, 2015.

*During the year 2014, in the province of Punjab, in all the cases concerning terrorism the accused were set free by the courts. It was said that they have been released because of faulty investigation. And ---this is written in the judgment, what I'm saying now, in the judgment--- ... when we probed what was the fault in the investigation, let's look into those. The fault in the investigations was that in more than 50% of the judgments, it was written, that the name of the accused person was not written in the FIR. The FIR is the First Information Report on which the case was registered and investigation takes place. Now tell me how can you know the name of the culprit, who is a suicide bomber, in FIR?*³¹²

The military establishment, on the other hand, is able to bypass such procedural requirements, pointing to my argument that a weakened police force actually increases the state's ontological security. In the current system, the cases that get transferred to the military courts are ones that have or will be presented in front of an ATC, and hence have already gone through the investigation procedure and have a FIR.³¹³

The ATCs' credibility though is not completely reliant on the police and its skills. The military establishment's, especially the army's, use of the police weaknesses is largely a political move on part of the military, which is invested in maintaining a civil–military balance in its favor. According to journalist Wajahat Ali:

*They [police] have their weaknesses. But they can work, do their job. Saying that they are incapable and that's why we're here doesn't really make sense because in any case the Army shouldn't be where it shouldn't be.*³¹⁴

He also said that he did subscribe to this idea that the police aren't capable, and that the Army has to fill in that void: “This is a direct result of a turf war going on amongst different state institutions. Nothing more than that.”³¹⁵

³¹² Shaukat Javed, in-person interview, Lahore, October 6, 2015.

³¹³ FIRs include a *challan*/charge sheet.

³¹⁴ Wajahat Ali, in-person interview, Islamabad, October 25, 2015.

³¹⁵ *Ibid.*

As I have showcased throughout this dissertation, Pakistan consistently views itself as a victim of militant attacks. The state's sense of victimhood is seen from two perspectives in the context of the police and its relationship with counterterrorism. The first is based on the police's lack of capacity and inability to protect lawyers, judges, prosecutors, witnesses, and even themselves. Prosecutors of the Lahore ATCs told me that they had requested a guard for their own protection because of consistent harassment and threats in the ATCs and this was the superintendent of police's response:

Hum ney SP security sey kaha keh qum iz qum humjo aik gaurd dehdiya jaye. Tau SP sahab ney jo kaha baare mazakhair baat hai keh war of terrorism chal rahee hai, humarey saare baande uddar lage huey hain. Aap ko security nahin mil saktee. Translation: We asked the SP of security to at least give us one guard. So the SP said something really funny. He said jokingly that because of this ongoing war on terrorism, all of our men are busy over there [referring to FATA]. You can't get security.³¹⁶

One prosecutor said that the police don't know how to protect while another retorted, "doesn't know, why?" He then described how he was threatened in court in front of the judge, and then the judge and him laughed about it later because they both know that as prosecutors, they have no protection. On discussing witness protection programs, another prosecutor said:

Translated from Urdu: Forget about witnesses. **We are prosecutors and we have no house, no vehicle, no guards, we come and go on our motorcycles alone, fully exposed.** We are dealing with cases in the ATC of extreme terrorists. A threat in court is normal. And so is no protection.³¹⁷ (bolding is mine, emphasis via italics is from interviewee)

MNA Arif Alvi of PTI said that after the Wali Khan Babar case (see chapter's introduction), "Even the judges are afraid, the witnesses are afraid, the police is afraid."³¹⁸ This perspective has also created a sentiment of victimization of the police itself, in which the police describes itself

³¹⁶ Prosecutors of ATCs Lahore, anonymous, in-person interview, Lahore, October 15, 2015.

³¹⁷ Ibid.

³¹⁸ Arif Alvi, in-person interview, Karachi, March 2, 2015.

as a victim of politicization, corruption, and scarce resources. According to former Inspector General of Punjab Police Shaukat Javed, police corruption is a direct result of its politicization.³¹⁹ When discussing police capacity, several of my police-related sources asked rhetorically, “what can the police do?” For example, an anonymous bureaucrat source stated:

Whatever has to be done within the borders of the country should be done by the Police. But Pakistan does not have natural borders. For example, the Durand Line is porous and not recognized. The Punjab is split between India and Pakistan. At least 40,000–50,000 people cross the border between Afghanistan and Pakistan everyday. So what can the Police do in a state who has insecure borders?³²⁰

The second perspective of the Pakistani state’s victimhood in the context of the police’s role in counterterrorism is based on criticism of human rights organizations, foreign countries (especially the United States), and international NGOs. Jameel Yusuf was critical of the military not starting counterinsurgency operations like *Zarb-e-Azb* before June 2014 and the government for not making productive amendments to the anti-terrorism laws. But his biggest frustration was with human rights organizations, which according to him seem to take the side of the criminal militants over the victims of terrorism, and encourage a lack of accountability for those involved in militant activities:

*We allowed them to move to there. Had we taken action much earlier, this incident [APS attack] would not have happened. So many children would not have lost their lives. It was sad but we are to be blamed—all of us in society, that we overlooked all these things. **Human rights organizations, fighting for the terrorists not to be hanged! I mean, it was ridiculous.** They have killed over sixty thousand people, much much more than 9/11, any 9/11. Yet, the world was a silent spectator to this. ... According to me, and my entire career with CPLC for seventeen years, establishing it, [emphasizing] technical data, has always been to assist the victims. **It is never for the criminals. So I thought human rights should be for the victims, not for the criminals.** I’m not bothered [by] how they’re doing in jail, whether they’re getting the proper food or clothes or not. If they’ve chosen that life, that life of criminality, then they should know the price*

³¹⁹ Shaukat Javed, in-person interview, Lahore, October 6, 2015.

³²⁰ Anonymous, in-person interview, Islamabad, October 25, 2015.

*they have to pay for it. So unless they know that, we are only encouraging them.*³²¹
(emphasis is mine)

Amir Zia of Bol Media agreed:

*So in a country where more than 60,000 people have died in terrorism and crime is rampant and terrorism is rampant [so] we need to have effective laws. ...[B]etter we have “black laws” than the lawlessness. Right? ... So we need those black laws. ... [F]ormation of military courts, this is a step in the right direction. **Whatever our so-called our civilian leadership says and so-called human rights groups, which I call “Criminal” Rights Commission of Pakistan³²² and “Atrocity International”³²³ because they are more concerned about the rights of criminals rather than the rights of the victims and their families. So they are looking at Pakistan from the glasses of European Union, and Europe is not ready to shed its White Man's Burden, and they want to teach us civilization and what to do with our criminals and terrorists. I mean you [Europe] aligned them!**³²⁴ (emphasis is mine)*

Waqar Mehdi was also critical of NGOs and aid programs. Discussing jail reform in detail, he argued that the *lakhoon* dollars (hundreds of thousands of dollars) spent were in vain because criminals actually became more hardened in jails. And even though international organizations and NGOs keep pushing the agenda of CVE programs, no amount of aid money being spent on such programs seems to be working.³²⁵ Similarly, two ATC judges stated that POPA courts are unnecessary because of the functioning ATCs that were created to satisfy international donors like the UN and UNODC.³²⁶ While they believed it was useful, they argued that it was impractical because it did not focus on local concerns and problems of militancy. In their eyes, the training served only one purpose: to meet the demands of international aid organizations, not to fix Pakistan's criminal justice system.

³²¹ Jameel Yusuf, in-person interview, Karachi, March 5, 2015.

³²² He is referring to the Human Rights Commission of Pakistan.

³²³ He is referring to Amnesty International.

³²⁴ Amir Zia, in-person interview, Karachi, March 2, 2015.

³²⁵ Waqar Mehdi, in-person interview, Karachi, February 27, 2015.

³²⁶ Anonymous, in-person interviews, Rawalpindi, October 2015. Both of these judges had undergone the UNODC training described in chapter four and five.

The police also suffer from a lack of political will with respect to counterterrorism operations, fueled in part by a lack of resources and continued interference from both political parties and the military establishment. According to Imtiaz Gul:

*Because ... these so-called proxies—Kashmir focused organizations, those who were working with the Afghan Taliban—they were not being caught, they were not being penalized. The Police was not moving against them out of fear of the military establishment.*³²⁷

Similarly, when discussing his experience in the Punjab police force and as the first head of NACTA, IGP Tariq Pervez stated:

*Lack of political will is a major factor because political will decides resources to be given to you, the support to be given to you. Because when you take action against these militants—these militants are being supported by religious political parties also, like Jamiat Ulema Islam and Tabligh—so if we take action against them...but [if] the provincial government does not support us, why would I? So as far as Police is concerned, that is a very, very important factor because it determines the capability of the police to take on the terrorists and to take things to the logical conclusion.*³²⁸

The police's reluctance to distinguish between militant groups showcases how the police would like to be neutral as it counters militant groups. But as one anonymous source said, "The neutrality of the police is dependent upon political parties,"³²⁹ indicating politicization and lack of capacity that protects militancy.

The police have also been sidelined by the military establishment in de-radicalization and rehabilitation programs, which are primarily being conducted in detention centers run by the military rather than in jails that are administered by the police. Amir Rana (2012b) describes how current de-radicalization programs are a product of the Army's counterinsurgency operation in Swat in 2009, in which the police played a minimal role. The Punjab government has begun to

³²⁷ Imtiaz Gul, in-person interview, Islamabad, October 19, 2015.

³²⁸ Tariq Pervez, in-person interview, Lahore, October 8, 2015.

³²⁹ Anonymous, in-person interview, Karachi, March 9, 2015.

invest in de-radicalization programs, but is following the military's lead by assigning very little responsibility to the police. Rana (2012b) argues in favor of a prominent police role, providing examples of Malaysia, Indonesia, and Germany where police and security forces have worked together at various stages of such programs. If prison-based de-radicalization programs are combined with efforts to improve jail administration, there is potential for the police to be able to become more effective in countering militants.

Section III. Police Routines: Legitimizing Sponsorship of Militancy

The police have been the focus of several reports and policy recommendations. As the history of the police and the components of the biographical narrative highlight, the police's weaknesses are glaring, and need to be addressed immediately. Recommendations have mostly focused four elements: 1) the need for a comprehensive, democratic law that eliminates political interference within the police; 2) "capacity-building" of the police, which involves improving evidence-collecting skills; 3) improving the structure of the police, such as fixing tenures for police officers at the provincial, district, and police station levels (which will also facilitate the reduction of political interference); and 4) increasing resources and provisions, such as police cars, computers in police stations, number of police stations, etc. With respect to counterterrorism, recommendations focus on: 1) reducing the role of FIRs as documents sufficient for case dismissals; 2) reducing reliance on ocular evidence while increasing reliance on forensics and electronic evidence; 3) building forensics labs in each province, and preferably in each major city; and 4) developing databases that can facilitate tracking vehicles and mobile phones, fingerprint analyses, etc. (Jamal 2010; Abbas 2011; Abbas 2012; Center for Research and Security Studies 2015; Zaidi 2016; Human Rights Watch 2016).

None of these recommendations, however, address the underlying causes of militancy within Pakistan. They all fail to address the development and evolution of Pakistan's self-identity needs, which are intrinsically related to how secure Pakistan actually is and how secure it really feels. I believe these recommendations will be ineffective in the absence of a better understanding of the state's ontological security. In this section, I present and analyze police routines and their role in the legalization of the anti-terrorism legal regime, and in the legitimization and routinization of state-sponsorship of militant groups.

The first police response is the continued reliance on politicization, which refers to how continued interference from both political parties and the military establishment has weakened police organizations nationwide. While political parties try to control the police via laws or through corruption, the military establishment tries to dominate the police operationally. During fieldwork, the police officers I engaged were in favor of de-politicization but during our conversations, they all (along with other sources) discussed the pervasiveness of interference. The police should protect the whole public but politicization has resulted in a discriminatory police force, where who will be and will not be protected is largely determined by external actors. In short, controlling militancy is largely determined by outside forces. Political interference dominates not only the daily routine of the police (i.e., availability of police cars, using police officers as personal guards, ordering officers to "pick" up an opponent, etc.) but also the institution as a whole (i.e., tenure of officers, postings, promotions, etc.). Colonial laws form the basis of politicization: the police continue to follow the Police Act of 1861. Even though Police Order of 2002 provided a legal and structural opportunity for the police to reform, all provincial forces reverted back to the colonial law. I argue that relying on such laws that facilitate patronage and political influence has become the police's response to the anti-terrorism

legislation—the tool used to legalize various counterterrorism practices and facilitate state-sponsored militant groups.

The second police response is the acceptance of parallel investigative structures, especially those related to investigations and detentions. For example, the CPLC routinely investigates criminal cases, as do the Rangers (mainly in Karachi). According to the law enforcement bureaucracy, police is the only law enforcement organization that can start an FIR and complete a charge sheet/challan, and present materials in criminal courts and ATCs. But Rangers do not just investigate; they also hold their own interrogations and have the means to privately collect electronic evidence. The same goes for the CPLC. While the Rangers have been given powers of detention by the Aid (to Civil Powers) Act 2011 and PoPA, the CPLC is restricted to assisting the police, not operating independently or even parallel to the police. And both cannot legally conduct investigations into militancy.

Because of scarce resources, the police have been forced to rely on these parallel structures, and I believe that this is in the interest of both political parties and the military establishment, and their relationship with the state-sponsored militant groups. For the political parties, a resource-poor police force ensures limited investigation capabilities, allowing parties to maintain control of the police enforcement of militancy. For the military establishment, the power to investigate and detain militants ensures operational superiority over the police, along with influence. For example, in 2015, after the APS attack in Peshawar, the military was able to convince the civilian government to establish military courts to try more dangerous militants very quickly, because the Army has more resources to conduct investigations and detain suspects for long periods of time. In short, these parallel structures—and their acceptance by the police—

justifies their legalization, legitimizes sponsorship of militant groups, and increases the states ontological security, all at the cost of the police.

The third police response is an increased militarization in an effort to counter militancy within the state. Earlier, I briefly discussed the views of some of my interviewees on the role of the police in counterterrorism: should the police be a leader in that realm or not? While there are pros and cons of being the lead counterterrorism agent, police forces around the world are militarizing, and the Pakistani police are no exception. By militarization of the police, I am referring to the police using military-like tactics and equipment to counter militant groups. In the case of the police, the development of the CTDs and the Counter Terrorism Forces (CTFs), specialized counterinsurgency-like police units, indicate the desire to militarize. While militarization of a weakened, politicized police force may serve to strengthen sponsorship as a self-identity need, it also has the potential to fortify Pakistan's sense of victimhood.

The police continue to struggle with increasing its capacity and credibility in the eyes of both the public and branches of government. The police's institutional routines, developed due to the interaction between the state's biographical narrative and critical interruptions, has facilitated state-sponsorship of militant groups evolving into an institutionalized routine in three ways. First, avoiding serious reforms and perpetuating its politicization has kept the police weak toward militancy. For example, not implementing reforms like those outlined in the Police Order of 2002 despite its repeal, points to a weak political will on part of the police. Similarly, engaging in practices like torture directly indicate an unwillingness to change. As argued in chapter four, the legislative branch has responded to critical interruptions and subsequent grand narratives by creating legislation that expands executive power in a way that favors the military over the police. And the police have not resisted such legalization of counterterrorism practices.

A weak police force is a weak counter to militant groups. Second, just as parallel court structures create judicial confusion, acceptance and reliance on parallel investigative structures creates confusion regarding credible evidence. Also, conflicting powers of detention provide opportunities for abuse, which negatively impacts de-radicalization and rehabilitation programs targeting militants, especially if the police aim to be a key administrator of those programs. And third, the desire to militarize reinforces the military establishment's superiority in the realm of counterterrorism. In Pakistan's case, since the Cold War, the military has played a central role in sponsoring militant groups as a means to increase the state's physical and ontological security. For the police, militarization could potentially reinvent the organization as a counterinsurgency force, which would be difficult to control and harmful to the maintenance of law and order within the state.

Along with the judiciary, the police are a powerful tool of legitimization. By resisting reforms to reduce politicization, accepting parallel structures of investigation and detention, and moving toward militarization, the police play a central role in legitimizing state-sponsorship of militant groups. Furthermore, the continued weakness of the police serves to increase the state's ontological security via sponsorship of militant groups. Since independence, Pakistan has used militant groups as proxies to meet its geostrategic interests. Now, after 70 years of independence, Pakistan does not simply use and sponsor militant groups—the state needs militant sponsorship to feel secure. Significantly, the judiciary and the police are two civil institutions that have played a pivotal role in transforming the use of militant groups as proxies into an institutionalized routine that meets Pakistan's self-identity needs and consequently increases the state's ontological security.

Conclusion

This is the third, and final, chapter out of the three chapters that analyze Pakistan's civil institutions and their role in upholding the pillars of the state's identity and the state's daily counterterrorism practices, and their contribution to the routinization of state-sponsorship of militant groups.

In this chapter, I focused on the police, a key civil institution involved in the state's daily counterterrorism and anti-terrorism practices, and hence, at the center of the routinization of state-sponsorship of militant groups. I explained how a weak police force legitimizes the sponsorship of militant groups and increases the state's ontological security. Within the law enforcement structure, the police management is under the federal government, which creates tensions within the executive branch. Even though various anti-terrorism laws expand police powers, resources remain scarce, rendering those powers useless for the police. Finally, I highlighted the various turf wars the police is involved in, and which are reinforced by the religious, democratic, and counterterrorism narrative components, such as the military-police, police-Rangers, police-CPLC, police vs. prosecution, police vs. ATCs, etc., in the context of three critical interruptions that have influenced the evolution of the police within Pakistan: 1) the funding of the *mujahedeen* during the Cold War, 2) onset of GWOT; and APS attack in 2014. Resisting reforms, accepting parallel law enforcement practices by the Rangers and the CPLC, and seeking militarization are all police routines, developed due to the interaction of the state's biographical narrative and critical interruptions, which have weakened the police force and legitimized sponsorship of militancy within Pakistan. Legitimization is part of the gradual process of creating institutionalized routines favorable to militancy that increases the state's ontological security.

CHAPTER SEVEN:

Conclusion

The use and sponsorship of militant groups is an old state practice, and plays an important role in statecraft. In this dissertation, I have sought to better understand the institutional foundations of state-sponsored militancy in general, and in Pakistan in particular. IR theory employs deterrence and survival to explain and analyze the various geostrategic and domestic rationales for proxy warfare and state-sponsorship of militant groups. State-sponsorship of militant groups has also been absorbed in various conflict-related theories, such as those explaining the frequency of civil conflict, analyzing the duration of insurgencies, conditions that lead to guerilla warfare, etc. Though none of these rationales are inaccurate, they remain incomplete and are unable to explain the fallout from continued state-sponsorship of violent militant groups on the sponsoring state. In this dissertation, I have developed a new theoretical framework for analyzing state-sponsorship of violent militant groups that is based on the concept of ontological security to answer four key questions. First, does a state's sponsorship of militancy have the same or different effects on its territorial security versus its ontological security? Focusing more on ontological security while acknowledging its relative "newness," the second question I ask is, what are the processes of ontological security? Closely linked is a third question on what is the role of civil institutions in the processes of ontological security? Since my goal is to increase understanding of state-sponsorship, and what it means to reveal how states have created it, the last question I ask is how do civil institutions facilitate state-sponsorship of militant groups.

I conclude in three parts. In the first part, I present a summary of findings, describing the ontological security framework I have developed and applied to Pakistan to uncover: 1) how

state-sponsorship of militant groups has become entrenched within the state, 2) the role of civil institutions in the mechanisms that have facilitated this entrenchment, and 3) how state-sponsorship of militant groups increases the state's ontological security but decreases the state's physical security. My findings highlight three contributions. First, my research highlights the internal dynamics of a state's identity formation: while the external environment influences the state's identity, it is mainly driven by the internal interactions of its civil and military institutions. Second, I draw attention to how unpacking the state can also add theoretical and empirical value to IR theory by opening the door for understanding the "state" in a different way. And third, I challenge the conventional understanding on Pakistan that emphasizes the link between the military and right-wing elements within the state while overlooking the role of civil institutions in the state's routine of sponsoring militant groups.

In the second part, I describe the three themes of my research that address academics and policymakers alike. Ontological security is not necessarily a new way of analyzing international security and the state's conception of it, but it provides a more productive conceptual and analytical vocabulary by which to address these security concerns. The dissertation focuses on three areas: 1) methodology and gathering empirical evidence, 2) rethinking theories and concept development, and 3) encouraging a shift of focus from military to civil institutions when analyzing counterterrorism policies. Both academics and policymakers alike can benefit from an ontological security framework that emphasizes critical reflexivity, which focuses on the researcher's relationship with the research topic and accessibility to primary data due to this relationship. And in the third part, I discuss two avenues for future research that can employ an ontological security framework to better understand the processes by which a state's security is constructed. Every state's ontological security is unique and the processes determining critical

interruptions, uncovering the components of the biographical narrative, and tracing out institutionalized routines will serve to disaggregate the state while simultaneously informing IR theory and principles.

Section I: Summary of Findings

Using and sponsoring militant groups as proxies to meet geostrategic interests has been studied extensively within both IR and comparative politics. IR research indicates that state's sponsor militant groups to increase their regional influence, destabilize regional rivals, export political ideology, maintain economic stability, preserve plausible deniability, and deter a more powerful rival. But the lack of consensus on why states choose certain militant groups over others, the overemphasis on studying the militant group over the sponsoring state, and the meta-narrative that argues that militancy and terrorism are non-state activities, has created gaps within this literature. Similarly, within comparative politics, state-sponsorship of militant groups has been studied under the wider literature on civil war. National crisis; social cleavages and dehumanizing techniques; oppressive political systems; poverty and a diminishing middle class; religious and ethnic antagonisms; and changes to the international system have all been cited as causes of civil war. While civil war literature considers the state as an agent of militancy, the concept of state-sponsorship has disappeared within literature on post-conflict resolution, where sponsorship is seen as a component of state building and nation building rather than a separate category that contributes (or disrupts) political order. My dissertation fills these gaps within the literatures of IR and comparative politics by focusing on the relationship between the state's national identity and need for security, which is reflected in my first question: does a state's sponsorship of militancy have the same or different effects on its territorial security versus its

ontological security? Using Pakistan as a case, my research highlights the complexity of the concept of security by showing the contradictory effect state-sponsorship of militant groups has within Pakistan: while sponsorship decreases the state's physical security, it increases the state's ontological security.

I have developed a new theoretical framework based on the concept of ontological security to better understand why states in general, and Pakistan in particular, would continue to implement a policy of sponsoring militant groups when its long-term benefits and effect on physical security are unpredictable. Ontological security is based on the relationship between a state's identity and security, and hence stems from the state vs. nation debate that focuses on the clash between securing territory to create a "state"—a bureaucratic and ahistorical unit—and maintaining a "nation"—a community based on shared values. Ontological security neither challenges nor dismisses this ongoing debate but instead offers a more productive and analytical vocabulary by which to think about the relationship between territory and identity. As such, under an ontological security lens, actions undertaken by the state to secure its identity are also related to the actions it takes to secure itself. Furthermore, all state actions determine how a state views itself and wants to be viewed by other states. In other words, the state needs a stable identity to be able to achieve its geostrategic interests while reducing the inherent uncertainty of the world. As such, the second question I ask in my dissertation is: what are the processes of ontological security?

I argue that a state's ontological security is created by the interaction of its civil and military institutions. While the state's external environment affects its ontological security, its source lies within the state. In order to study the state's internal dynamics, therefore, I posit that the processes of ontological security consist of critical interruptions, a biographical narrative, and

institutionalized routines. Critical interruptions are political events whose representation by state agents have transformed them into defining moments that impact the formation of the state's identity, its self-identity needs, and means of maintaining and preserving its ontological security. A critical interruption, therefore, disrupts state policies, and forces state agents to use the biographical narrative to respond via institutional changes, such as writing new legislation, creating specialized institutions and forces, eliminating an institution, reorganizing bureaucracy, etc. A biographical narrative is an overarching narrative that consists of various components being used by state agents to explain political events, legitimize state policies, and most significantly, uphold the state's identity. Together, the biographical narrative and critical interruptions shape various practices, procedures, and codes of conduct, some of which develop into "institutionalized routines" after undergoing a three-step process that consists of legalization, legitimization, and routinization.

Within the course of becoming an institutionalized routine, all institutions create their own routines by using the biographical narrative to respond to critical interruptions. The path of becoming an institutionalized routine, therefore, not only involves the biographical narrative and critical interruptions but is also based on how the various institutional routines work together to maintain the state's identity and increase its ontological security. As such, legalization refers to the creation of laws and the development of legislative routines in the face of critical interruptions. Legitimization involves the evolution and interaction of judicial and law enforcement routines because both the judiciary and the domestic law enforcement agency are agents with unique powers: the judiciary can decide on the constitutionality of laws while the domestic law enforcement agency has local knowledge of how to implement laws. Routinization,

therefore, refers to the introduction of regular departmental practices and procedures that meet a state's self-identity needs and increase its ontological security.

I have applied my theoretical framework to Pakistan to investigate its policy of sponsoring militant groups. I argue that state-sponsorship of militant groups is one of Pakistan's institutionalized routines that increases its ontological security by stabilizing its identity. I contend that Pakistan's unstable identity is based on two pillars: to serve as a defender of Islam, which is the state's official religion, and to protect itself from external threats, in particular, threats of Indian aggression. During fieldwork, I uncovered three narrative components that work together to maintain these pillars and that shape Pakistan's biographical narrative: *religious component* that focuses on the state's relationship with Islam; *democratic component* that concentrates on the state's postcolonial political system and causes for civil–military imbalances; and *counterterrorism component* that is centered on the state's daily counterterrorism and anti-terrorism practices and official counterterrorism strategies and operations. I also posit that these narrative components have worked together to highlight the five critical interruptions endured by Pakistan, which are: 1) First Kashmir war; 2) 1970 general elections that led the separation of the west and east wings; 3) the Soviet invasion of Afghanistan during the Cold War and subsequent funding of the *mujahedeen*, 4) the 9/11 attacks and the onset of GWOT; and 5) the APS attack in Peshawar in 2014 that resulted in a renewed counterinsurgency operation (*Zarb-e-Azb*) and the establishment of military courts.

Each of these critical interruptions has affected the state's civilian counterterrorism bureaucracy. For example, each critical interruption has resulted in new anti-terrorism legislation that has expanding executive (mainly military) power, created parallel court structures, and facilitated the development of clientelistic political parties—which I call legislative routines. The

judiciary's response, and eventual routines, to the state's anti-terrorism legal regime has been to accept parallel court structures, legitimize the expansion of executive (mainly military) power under emergencies, and de-emphasizing fundamental human rights. These legislative and judicial routines have also influenced the police's responses, and subsequent routines, to anti-terrorism laws, which have been to avoid reforms to reduce politicization, accept parallel investigative structures, and advocate for the militarization of the police to increase its counterterrorism capacity. These police routines, along with judicial routines, have legitimized the anti-terrorism legal regime and counterterrorism practices by systematically eroding civil institutions' ability to hold military institutions accountable. This civil–military imbalance has resulted in the military, specifically the Pakistan Army, viewing itself as the only efficient and effective institution that can uphold Pakistan's identity as a defender of Islam and guard against Indian aggression. And since the army, along with the ISI, has been the leader in using and sponsoring militant groups in response to the state's critical interruptions, state-sponsorship has evolved into an institutionalized routine that stabilizes Pakistan's identity and increases its ontological security.

Developing an ontological security framework along with specifying the processes of ontological security has led me to develop a new definition of state-sponsorship, which is: *a government's deliberate routinization of assistance to a violent non-state actor to meet its geostrategic goals*. This definition closes the gaps I outlined in IR and comparative politics literature by focusing on the state as the principal actor in sponsorship and its civil institutions as critical tools in militant sponsorship.

Section II: Academic and Policy Implications

This dissertation speaks to academics and policymakers in three areas: 1) methodology, 2) rethinking theoretical concepts, 3) shifting the focus of study in terrorism.

One of the major critiques of ontological security is that it is difficult to “see.” Unlike territory that is central to the concept of physical security, it is hard to see a state’s identity—or decipher its self-identity needs—that happens to be central to the concept of ontological security. The framework I have developed in this dissertation, however, provides a method by which to gather empirical evidence of ontological security. As described above, a state’s ontological security is formed due to the interaction of the state’s military and civil institutions. Agents within each state element use a variety of narratives to describe political events. When a political event evolves into a critical interruption, it stands out, along with the kind of narratives used by state agents. Every state has different kinds of narratives that collectively form the state’s overarching biographical narrative, which functions both as an explanatory and legitimizing tool for departmental actions. These narrative components can be found in the speeches of political leaders, parliamentary debates, prominent case judgments and judicial opinions, and local think tank reports, and in state policies. All of these items—and others—serve as empirical evidence of narratives and the subsequent policies that emerge as institutional routines. In other words, these items are a way to “see” and analyze how ontological security is created.

None of these primary forms of data are unique in of themselves. Anthropologists and sociologists collect these kinds of data frequently. But the ontological security framework’s need for critical reflexivity allows for the renewal of these forms of data. An ontological security framework also provides an opening for interpretivist IR scholars to engage positivist IR scholars. In this way, my research urges academic and policymakers both to rethink the theories

they frequently use to view the world, which encourages creativity with respect to concept development, and ultimately expands and deepens our understanding of international security.

Finally, my research promotes a shift in focus within international security. Majority of the mainstream literature focuses on the military establishment or the foreign policy bureaucracy when studying topics related to national security. An ontological security framework does not devalue or discredit these institutions. Instead, it adds civil institutions into the study of international security because military and foreign policy state agents are not the only institutions involved or concerned with securing the state. By revealing the contributions of the civil institutions in the state's policy of sponsoring militant groups, this dissertation disrupts the conventional understanding that considers the military as the primary institution involved in the sponsorship of militant groups. My dissertation highlights how this conventional view is incomplete and needs to be reexamined.

Section III. Future Research

This dissertation lays the foundation for several research trajectories within mainstream and critical IR and comparative politics. Below I highlight two interdisciplinary research areas where my ontological security framework and definition of state-sponsorship of militancy can be applied: post-conflict political orders and civil–military imbalances.

Political orders involve a series of negotiations, bargains, and games between the contesting parties, highlighting the varied pathways that exist to resolution. One of the direct consequences of conflict resolution has been the creation of private security companies (PSCs)—a new kind of non-state actor. Post-conflict environments worldwide have created a demand for order and stability. Traditionally, state militaries provided security but as the role of international

non-governmental organizations and multinational corporations have increased, a market for security forces has emerged, allowing states to use PSCs to do the job that their militaries would traditionally do. For example, in 2003 in post-conflict Iraq, PSCs were hired by the United States to do the work U.S. soldiers would have ordinarily done (Avant 2006). The presence of PSCs has huge implications for security studies, civil war literature, and post-conflict resolution scholarship. Deborah Avant (2000, 2006) argues that PSCs decrease transparency in democracies, encourage weakness in state institutions, decrease the costs associated with military intervention, and may increase the likelihood of civil wars because of weak state institutions at the very least. But what effect, if any, will PSCs have on the state's ability to sponsor militant groups? Can PSCs serve as another tool for governments to sponsor militancy? These and similar questions currently remain unexplored in the post-conflict resolution literature because of an overemphasis on promoting institutional stability as a core state interest and the primary means to decrease violence. An ontological security framework has the potential to answer these and other related questions, along with exposing currently unexplored causal mechanisms and concepts.

Studying civil–military imbalances inform both IR theory and comparative politics. The evolution of Pakistan's military as one of the strongest political institutions in the country may be unique, but it is not the only state to suffer from a civil–military imbalance. An ontological security framework as used in this dissertation provides a new lens by which to study, analyze, and investigate the link between state institutions, and the effect of civil–military imbalances on democratic institutions. In today's world, more and more states are democratizing, defining and redefining democracy and what that means for security. Yet, technological advances are connecting the world in an unprecedented way, putting even more pressure on these newly

formed democratic institutions—and on the civil–military balance. As democratic processes continue, what is meant by security and how security can be increased, will require an understanding and use of an ontological security framework. Therefore, further research is required on civil–military imbalances and the conditions in which democratic institutions invent new forms of security that accommodate militancy and terrorism.

Conclusion

When I began this dissertation project, I sought to challenge the meta-narrative on terrorist agency, which argues that a state cannot be an agent of terrorism and militant violence, reinforcing the notion that a state is a victim of militancy. This seemed counterintuitive to me. If non-state actors benefit by using “terrorist” violence, why wouldn’t a state do the same? My curiosity and research methodology training led me to study counterterrorism bureaucracy and policies to better understand state-sponsorship of militant groups, a regular practice in international politics. In this dissertation I have highlighted: the importance of ontological security for our understanding of acquiring, maintaining, and preserving security; the role of civil and democratic institutions in facilitating state-sponsorship of militant groups; and the utility of using narrative analysis to make theoretical and empirical contributions to IR theory. While I only focused on Pakistan and its policy of sponsoring militant groups, my ontological security framework is generalizable to other states and can be used to: 1) study state-sponsorship of militant groups in other democratic states, and 2) to uncover other institutionalized routines central to a state’s desire for ontological security.

APPENDIX A: Fieldwork Report

Executive Summary:

- ❖ I conducted fieldwork in three cities: Karachi, Lahore and Islamabad.
- ❖ Primary data consists of: in-person interviews; parliamentary debates on anti-terrorism legislation; terrorism-related case law; local think tank reports; unclassified statistical information and presentations; local language newspapers articles.
- ❖ I conducted 92 interviews. Out of these, 36 interviews (39%) were anonymous while 56 interviews (60%) were not anonymous, though I was allowed by each interviewee to take hand-written notes.
- ❖ An interview averaged between 45 minutes to an hour. The location and time of the interview were determined by the interviewee to ensure the interviewee's comfort.
- ❖ Interviews were open-ended and discussion-oriented, and constructed along 7 topics:
 1. Constitutionality, strengths, and weaknesses of anti-terrorism laws
 2. Strengths and weaknesses of anti-terrorism courts
 3. Differences between anti-terrorism courts and military courts, and the effectiveness of each
 4. Challenges facing the police, especially regarding the police's training and investigative capabilities
 5. Politicization of the police
 6. Pakistan's operational counterterrorism measures
 7. Pakistan's counterterrorism narrative(s)
- ❖ All non-anonymous interviewees are listed.

Fieldwork Locations:

1. Karachi:
 - February 11–March 16, 2015
 - Total interviews: 29 (2 via Phone)
2. Lahore:
 - September 19–October 18
 - October 30–November 7, 2015
 - Total interviews: 26
3. Islamabad:
 - October 18–October 30, 2015
 - Total interviews: 23
4. Washington, D.C.:
 - July 2015–December 2015
 - Total interviews: 14 (8 in-person; 6 via Phone/Skype)

INTERVIEWS:

Interviews were open-ended. I had a questionnaire but only provided it when asked by the interviewee. During the first three interviews I had conducted in Karachi, I had provided a copy of the topics I wanted to discuss but the interviewees were visibly uncomfortable. My sense was that any sort of document provided by me made them feel like they could not be anonymous. So instead, I carried out the interviews more like conversations, and was able to cover all the topics during those discussions. All interviews conducted took place after I was referred to by one of my own contacts or an interviewee's contact. All methods of data collection met IRB approval.

TABLE 1: DESCRIPTION OF INTERVIEWS

Institution	No. of Interviews	Description
Judiciary	28	<ul style="list-style-type: none">• Judges of Anti-Terrorism Courts (Karachi, Lahore, Rawalpindi, Islamabad)• Supreme Court of Pakistan:• Lahore High Court• Islamabad High Court• Prosecutors (Prosecutor-General of Sindh, one current and one former, prosecutors of Anti-terrorism Courts-Lahore)• Criminal defense attorneys
Police	13	<ul style="list-style-type: none">• Sindh Police• Punjab Police• Counterterrorism Department (CTD)• National Counter Terrorism Authority (NACTA)• Intelligence Bureau
Legislative	3	<ul style="list-style-type: none">• Bureaucrats• Member of National Assembly
Media	16	<ul style="list-style-type: none">• Journalists• Editors
Civil Society	27	<ul style="list-style-type: none">• Academics• Activists• Analysts• Non-profits• International Organization
Military	5	<ul style="list-style-type: none">• Judge Advocate General (JAG)• Military intelligence• Civilians working for the Rangers (paramilitary force) in Karachi
<i>TOTAL</i>	92	

Graph 1: Percentage of Interviews by Institution

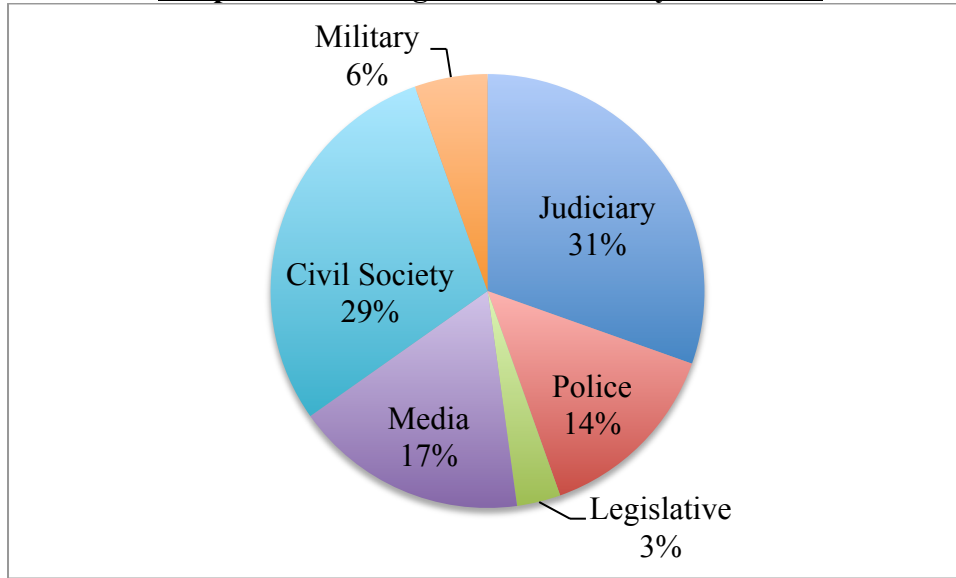


TABLE 2: HOW INTERVIEWS ARE RECORDED

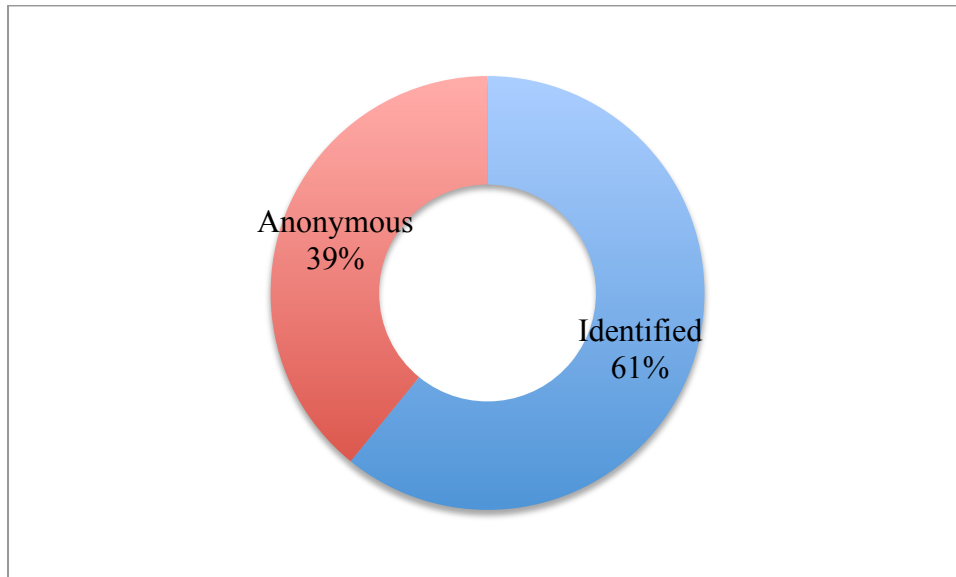
	Anonymous + Off-the-record	Anonymous + On-the-record	Identified + Off-the-record	Identified + On-the-record	Identified + Partially recorded*	TOTALS
Judiciary	21			6	1	28
Police	8			3	2	13
Legislative				1	2	3
Media	2			11	3	16
Civil Society				26	1	27
Military	5					5
TOTALS	36			47	9	92

** Majority of the interviewees were very clear on whether they wanted to be identified or remain anonymous and whether they wanted the interview to be recorded or not. During the interview, however, some interviewees asked that certain information not be attributed to them. I have labeled those kinds of interviews as “partial.”*

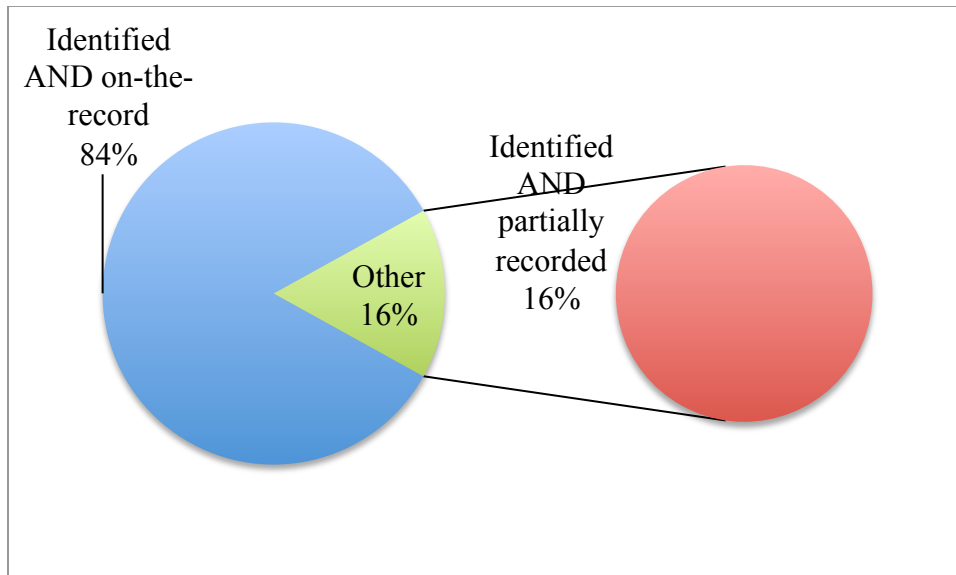
From Table 2:

- Out of 92 interviews, 36 interviews (39%) were anonymous while 56 interviews (60%) were not anonymous.
- Out of the interviews that were identified and recorded, 10 (17%) were partially on-the-record.

Graph 2: Percentage of Anonymous and Identified Interviews



Graph 3: Distribution of Identified Interviews



CIVIL INSTITUTIONS EXAMINED:

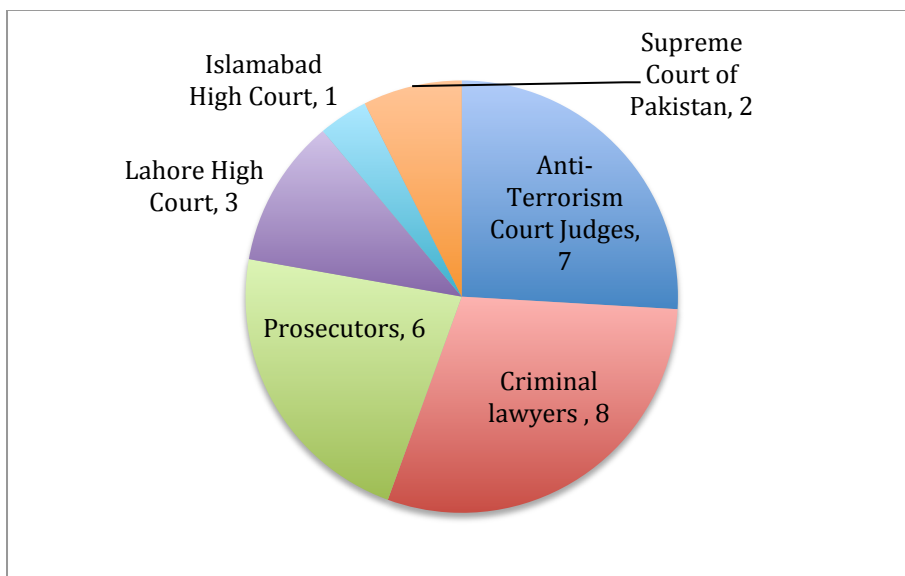
JUDICIARY:

- Pakistan’s judiciary consists of the Supreme Court, the Federal Shariat Court, and five High Courts (Sindh, Lahore, Peshawar, Baluchistan, and Islamabad).

- Identified and on-the record interviewees are:
 - 1) Advocate Habib Ahmed*
 - 1997–2008 Assistant Advocate General of Anti-Terrorism Courts (Appeals).
 - Legal adviser to the Pakistan Rangers.
 - 2) Advocate Khawaja Naveed Ahmed
 - Criminal lawyer with a private practice in Karachi.
 - 3) Advocate Shahadat Awan
 - Former Prosecutor General of Sindh
 - 4) Advocate Faisal Siddiqui
 - Criminal lawyer with a private practice in Karachi. Well-known.
 - Writes extensively in various English newspapers.
 - 5) Advocate Ahmer Bilal Soofi
 - Partner of a private law firm.
 - Director, Research Society of International Law in Pakistan (legal think tank)
 - Wrote the 2011 Actions (in Aid of Civil Power) Act and 2012 Investigation for Fair Trial Act
 - 6) Advocate Salman Akram Raja
 - Partner at a private firm in Lahore
 - Expert on constitutional law
 - 7) Advocate Hina Jilani
 - Prominent human rights lawyer based in Lahore.

**He is listed under “Partial in Table 2.*

Graph 2: Breakdown of Interviews categorized under “Judiciary”

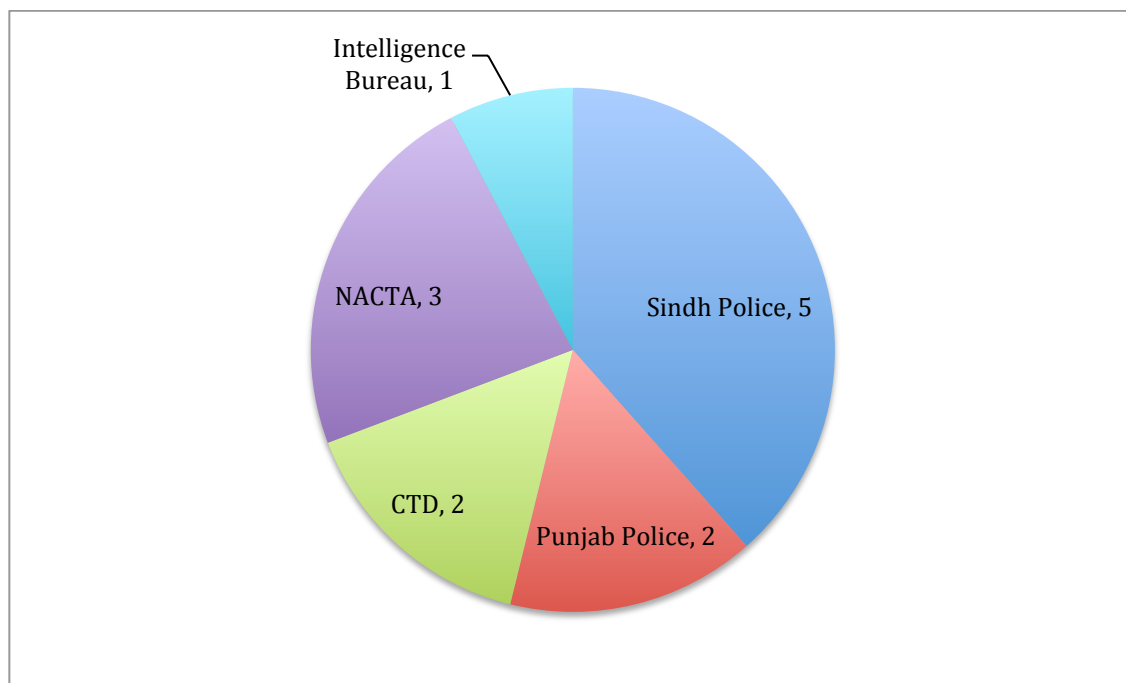


POLICE:

- The Intelligence Bureau is considered the civilian counterpart of military intelligence agencies, such as Inter-Services Intelligence (ISI), Military Intelligence (MI), etc.
- NACTA stands for the National Counter Terrorism Authority and was created in 2013. Under the directives in NISP, each province has a Counter Terrorism Department (CTD) with Special Forces, called the Counter Terrorism Force (CTF), that fall under the jurisdiction of NACTA.
- Within the Sindh Police and Punjab Police, I interviewed Deputy Inspector Generals (DIG). DIGs are civil servants who have passed the Police Service of Pakistan (PSP) exam. They are of officer rank.
- Identified and on-the record interviewees are:
 - 1) DIG Administration of Sindh Police Javed Odho*
 - 2) Former Inspector General of Sindh Police Rana Maqbool*
 - 3) DIG South Zone, Karachi Abdul Khaliq Sheikh
 - Co-wrote *Basic Investigation Handbook*, Police Training Series (Karachi: Paramount, 2014). He gave me the English copy.
 - 4) Former Inspector General of Punjab Police Shaukat Javed
 - 5) Former Inspector General of Punjab Police and first head of NACTA Tariq Parvez

* He is listed under “Partial in Table 2.

Graph 3: Breakdown of Interviews under “Police”



LEGISLATIVE BRANCH:

- I was only able to conduct 3 interviews in this category. Though numbers of all the members of the National Assembly and Senate are publically listed, unfortunately I was unable to get access to anyone. Two actually refused to be interviewed.

- The three interviewees were identified and on-the-record:
 - 1) Haseeb Athar*
 - Former Police Magistrate in Lahore
 - Currently at Federal Public Service Commission
 - 2) Syed Waqar Mehdi*
 - Special Assistant to the Chief Minister of Sindh for Press and Media
 - 3) Arif Alvi
 - Member of the National Assembly (Constituency NA-250 Karachi)

* *He is listed under "Partial in Table 2.*

MEDIA:

- Overall, the media is critical of the government. Journalists spoke on the record and candidly about anti-terrorism legislation and courts, military courts, the issue of extrajudicial killings and missing persons, corruption within the police and military, Strategic Depth, Pakistan’s sponsorship of militant groups, and other related topics.
- Through journalists, I was able to interview various lawyers and members of civil society, effectively employing the “snowball” method.
- Identified and on-the record interviewees are:
 - 1) Mazhar Abbas
 - Deputy Director of ARY News International.
 - Secretary-General of Pakistan Federal Union of Journalists
 - 2) Badar Alam
 - Editor of Herald magazine.
 - 3) Sarmad Ali*
 - Managing Director of Jang Media Group (one of the largest media groups in Pakistan).
 - Secretary-General of All Pakistan Newspapers Society.
 - 4) Wajahat Ali*
 - Freelance journalist. Writes extensively on anti-terrorism cases and issues.
 - 5) Sarah Eleazar
 - Investigative journalist for Express Tribune.
 - 6) Asad Hashim
 - Journalist for Al-Jazeera English, based in Islamabad.
 - 7) Saba Imtiaz*
 - Freelance journalist. Writes extensively on anti-terrorism cases and issues.
 - 8) Sher Ali Khan
 - Investigative journalist for Herald
 - 9) Umer Farooq
 - Investigative journalist for Herald magazine.
 - 10) Zia ur Rehman
 - Journalist with the News.
 - 11) Mahmood Shaam
 - Founder and editor of an Urdu bi-monthly magazine called Aitraaf
 - 12) Riaz Sohail
 - Correspondent for BBC Urdu.
 - Writes for Sachel, a Sindhi newspaper
 - 13) Taha S. Siddiqui
 - Journalist for France 24. Wrote a prominent piece about Pakistan’s internment camps with Declan Walsh in the NY Times (http://www.nytimes.com/2015/07/26/world/asia/detainees-vanish-in-secretive-facilities-as-pakistan-fights-taliban.html?_r=0)
 - 14) Amir Zia
 - Senior Vice President of Bol Media.

**S/He is listed under “Partial in Table 2.*

CIVIL SOCIETY:

- Interviews categorized under “Civil Society” include academics, activists, defense and security analysis, and non-profits/NGOs.
- Identified and on-the record interviewees are:

Academics:

- 1) Dr. Hassan Abbas
 - Professor and Head of the Regional and Analytical Studies Dept. at the College of International Security Affairs, National Defense University, Washington, D.C.
 - Served as a police officer in Pakistan for over 15 years
- 2) Dr. Tricia Bacon
 - Lecturer at American University’s School of Public Affairs. Specializes in terrorist groups.
 - Former intelligence officer at U.S. Dept. of State’s Bureau of Intelligence and Research, Office of Counterterrorism, Narcotics and Crime
- 3) Dr. Ahsan Butt
 - Assistant Professor of Government and Politics in the School of Policy at George Mason University.
 - Specializes in secessionist movements and national identity
- 4) Dr. Sunil Dasgupta
 - Director of the Political Science programs at Uni. of Maryland—Baltimore
 - Is a comparativist who specializes in civil institutions in India.
- 5) Brig.(R) Mohammad Feyyez
 - The Pakistan coordinator of the Terrorism Research Initiative at the University of Management and Technology, Lahore.
 - Does not have a doctorate but 15+ years of operational experience. Served as a commander of Pakistani forces in North Waziristan.
- 6) Faiza Haswary*
 - Lecturer at Hamdard School of Law, Karachi.
- 7) Dr. Pervez Hoodbhoy
 - Is a physicist at the Foreman Christian College in Lahore
 - Writes extensively on Pakistani politics.
- 8) Brig.(R) Ajab Khan
 - Head of the Dept. of Peacekeeping Training at CIPS in NUST, Islamabad
 - Is a retired army officer with 20+ years of operational experience. Does not have a doctorate.
- 9) Dr. Zahid Shahaab
 - Assistant Professor, Dept. of Peace and Conflict Studies, Center for International Peace (CIPS), National University of Science and Technology (NUST). Islamabad.
 - Specializes in regional politics of South Asia, with a special emphasis on militancy

**She is listed under “Partial in Table 2.*

Activists

- 1) Arafat Mazhar
 - Founder of Engage, a legal reform project working toward reforming Pakistan's blasphemy laws.
- 2) Jibran Nasir
 - Lawyer and civil rights activist.
 - Founder of Hum Qadam, a social relief programme.

Analysts

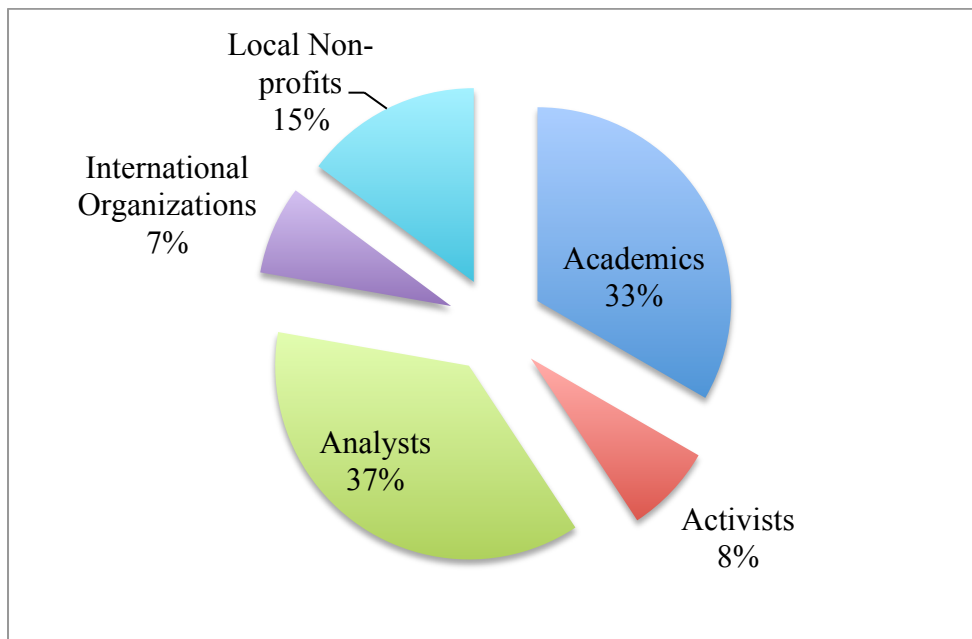
- 1) Stephen Cohen
 - Senior Fellow at Brookings, Washington, D.C.
 - Author of *Idea of Pakistan*, considered to be essential for those studying South Asia.
- 2) Lisa Curtis
 - Senior Research Fellow, Asian Studies Center, Heritage Foundation, Washington, D.C.
 - Former intelligence officer at CIA, specializing in Pakistan, India, and Bangladesh
- 3) Imtiaz Gul
 - Executive Director of the Center for Research and Security Studies (CRSS), Islamabad
- 4) Lt. Gen.(R) Talat Masood
 - Defense analyst and writer of a weekly column in Express Tribune
- 5) Ahmed Bilal Mehboob
 - Executive Director of the Pakistan Institute of Legislative Development and Transparency (PILDAT)
- 6) Lt. Gen.(R) Ghulam Mustafa
 - Defense analyst
 - Created and was the first commander of the Army Strategic Forces Command in Pakistan, which looks after Pakistan's nuclear arsenal
- 7) Shuja Nawaz
 - Former director of the South Asia Center, The Atlantic Council, Washington, D.C.
- 8) Dr. Ayesha Siddiqi
 - Defense analyst and author of *Military Inc.*
 - Very critical of the Pakistan Army
- 9) Marvin Weinbaum
 - Scholar-in-Residence at Middle East Institute and Director of Pakistan Center
- 10) Moeed Yusuf
 - Director of South Asia programs, U.S. Institute of Peace, Washington, D.C.

Non-profits/NGOs:

- 1) Mubashir Akram
 - Executive Director of the Shooar Foundation <http://sfea.pk/>
 - Co-founder of Center for Social Education and Development <http://www.csed.pk/>

- 2) Sarah Belal
 - Heads the legal team at the Justice Project Pakistan <http://www.jpp.org.pk/>
 - JPP represents the poorest prisoners in court
- 3) Rashad Bokhari
 - Peace and Education Foundation.
<http://www.peaceandeducationfoundation.org/index.php>
 - Works exclusively on reforming madrassa education.
- 4) Reema Omer
 - Legal Adviser on Pakistan for the International Commission of Jurists, based in the UK. <http://www.icj.org/>
- 5) Fatima Reza
 - Program Coordination Officer--Pakistan, Terrorism Prevention Program (Asia), United Nations Office on Drugs and Crime
- 6) Jameel Yusuf
 - Founder and first head of the Citizen-Police Liaison Committee <http://www.cplc.org.pk/>, an organization that assists police in investigations

Graph 4: Percentage of Interviewees within “Civil Society”



ARCHIVAL RESEARCH (DOCUMENTS):

1. Parliamentary debates from libraries of the National Assembly and Senate of Pakistan on the following anti-terrorism laws and constitutional amendments:
 - i) 1975 Suppression of Terrorist Activities
 - ii) 1985 Eighth Amendment
 - iii) 1997 Anti-Terrorism Act
 - iv) 2010 Eighteenth Amendment
 - v) 2011 Actions (in Aid of Civil Power) Regulation
 - vi) 2012 Investigation for Fair Trial Act
 - vii) 2013 Anti-Terrorism (Amendment) Act
 - viii) 2013 Anti-Terrorism (Second Amendment) Act
 - ix) 2014 Protection for Pakistan Act
 - x) 2015 The National Counter Terrorism Authority Act
 - xi) 2015 Pakistan Army Act (21st Amendment)
2. Herald magazine archives in Islamabad³³⁰
3. Think tank reports:
 - i) Hamid, Ayesha. October 2015. "Prosecution Services in Punjab and Sindh." Position Paper by PILDAT (Islamabad: Pakistan Institute of Legislative Development and Transparency).
 - ii) Parvez, Tariq. February 2015. "National Counter Terrorism and Extremism Strategy." IPR Report (Lahore: Institute for Policy Reforms).
 - iii) Bokhari, Sitwat. October 2013. "Pakistan's Challenges in Anti-Terror Legislation." Center for Research & Security Studies (CRSS). Islamabad.
 - iv) "Counter-Terrorism and Pakistan Police: Capacity and Challenges." 2015. CRSS. Islamabad.
 - v) "Comprehensive Review of National Action Plan." *Conflict & Peace Studies* 7, no. 2 (Autumn 2015). A journal by the Pakistan Institute of Peace Studies.
 - vi) Abbas, Hasan ed. "Stabilizing Pakistan Through Police Reform." Asia Society Independent Commission on Pakistan Police Reform (New York: Asia Society, July 2012).
 - vii) Justice Project Pakistan. 2012. "Torture in Pakistan: A Lawyer's Handbook." Lahore.
 - viii) Justice Project Pakistan. December 2014. "Terror on Death Row: The Abuse and Overuse of Pakistan's Anti-Terrorism Legislation." Lahore³³¹
4. Presentations on police reforms by the Police Commission at the National Police Academy, given to me by an anonymous interviewee.

³³⁰ Herald is a monthly magazine from the Dawn group, Pakistan's most popular English news source. Herald's main archive is in Karachi but the Islamabad library has issues from 2007, which I was able to go through. Herald is renowned for investigative pieces that are critical of various government policies and practices. The main website is: <http://herald.dawn.com/in-depth>

³³¹ This report is by the far the one with the best data on Anti-Terrorism Courts. I spoke to the researchers of the report in person while in Lahore.

5. Complete published case law of anti-terrorism cases heard before the Supreme Court and the High Courts of Pakistan³³²
6. Anti-Terrorism Court Judgments:
 - Unlike Supreme Court and High Court judgments, judgments of special courts like the Anti-Terrorism Courts are not publically available. I interviewed 7 judges, and asked each for judgments and collected 11 in total.
 - Judgments are from the following ATCs:
 - Lahore ATC–I: 3
 - Lahore ATC–II: 2
 - Lahore ATC–III: 1
 - Rawalpindi ATC–I: 1
 - Rawalpindi ATC–II: 4
7. Following conviction Rates of Anti-Terrorism Courts:
 - ATC–I Islamabad, 2013–2015
 - Balochistan ATCs, 2014–2015
 - KP ATCs, January–September 2015
 - Punjab ATCs, January 2014–October 2015
 - Sindh ATCs, 2010–September 2015
8. United Nations Office on Drugs and Crime (UNODC)’s Terrorism Prevention Program draft agendas of national training workshop.³³³
9. Documents provided to the Supreme Court when it was deciding the legality of the 21st Amendment to the Constitution.
10. Shaikh, Abdul Khaliq and Muhammad Akbar. 2014. *Basic Investigation Handbook*. Police Training Series. Karachi: Paramount.
11. Two reports from Voice for Baloch Missing Persons (an NGO):
 - i) “A brief report on enforced disappearances, extra judicial killings and grave human rights violations in Balochistan” (August 15, 2015) and,
 - ii) “A Brief Overview: Enforced Disappearance and Speedy recovery of Bullet-ridden bodies in Balochistan” (February 4, 2015.)

³³² All significant judgments are published in the Annual Law Digest (ALD). The significance of the judgment is determined by the court itself.

³³³ By October 2015, three National Training of Trainers Workshops for Judicial Officers had been held at the Federal Judicial Academy in Islamabad. Dates are: January 19–24, 2015; May 25–29, 2015; and October 12–17, 2015.

APPENDIX B: Expansion of Powers under Anti-Terrorism Legislation³³⁴

LEGISLATION	MILITARY POWERS*	LAW ENFORCEMENT POWERS*	JUDICIAL POWER
Anti-Terrorism Act, 1997 <i>[August 20, 1997]</i>		Agencies can open fire on suspicion of terrorism Section 21-H: Confessions made in front of DSP or security forces is admissible in ATCs	Section 19: Accused can be tried in absentia Section 39A: All terrorism related cases (even those under the military) will be transferred to ATCs
Pakistan Anti-Terrorism (Amendment) Ordinance, 1999 <i>[April 29, 1999]</i>			ATCs are allowed to be established in all provinces
Anti-Terrorism (Second Amendment) Ordinance, 1999		“Civil commotion” is added to activities	
Anti-Terrorism (Third Amendment) Ordinance, 1999 <i>[both passed on December 2, 1999]</i>			Two new ATCs are established in Karachi and Lahore, which will also serve as appellate tribunals
Anti-Terrorism (Amendment) Ordinance, 2001 <i>[August 15, 2001]</i>		Section 11-A: Any organization or group can be banned and/or have assets frozen if there is suspicion of terrorist activity	
Anti-Terrorism (Amendment) Ordinance, 2002 <i>[January 30, 2002]</i>	Single-bench was transformed to a three-member bench in the ATC	Section 11-EE: Agencies can target the entire “network” of militant groups, which	

³³⁴ The following are excluded from the table: Anti-Terrorism (Amendment) Act, 1998 (basic improvements were done to the ATA after the *Mehram Ali* case, which will be discussed in Chapter Four); Anti-Terrorism (Amendment) Ordinance, 2000 (changes primarily focused on administrative changes); Anti-Terrorism (Amendment) Act, 2004 (sub-section 4A and 4B were added to Section 25, and victim(s) or legal heir of victim(s) are allowed to appeal an acquittal in High Court); Anti-Terrorism (Amendment) Ordinance, 2010 (it stayed on the Senate floor for two years and was eventually withdrawn in 2012. The amendment of 2013 contains text of the 2010 amendment).

LEGISLATION	MILITARY POWERS*	LAW ENFORCEMENT POWERS*	JUDICIAL POWER
	where one judge would be a military officer	involves any individual aiding and abetting any member of a proscribed organization	
Anti-Terrorism (Amendment) Ordinance, 2002 <i>[November 16, 2002]</i>		Section 3 added text to Article 11EE: Under the Fourth Schedule, the police has power to detain a suspect for 12 months without filing specific criminal charges.	
Anti-Terrorism (Amendment) Ordinance, 2004 <i>[November 30, 2004]</i>		Amendments increased jail time for all offenses, ranging from 14 years to life imprisonment	
Anti-Terrorism (Second Amendment) Act, 2005 <i>[January 10, 2005]</i>		Third schedule was expanded: Offenses that can be tried under ATCs include kidnapping for ransom; use of firearms and explosives; and firing or using any explosive device	ATCs can not give more than two successive adjournments Cases can be transferred across provinces
Anti-Terrorism (Amendment) Ordinance, 2009 <i>[November 2009]</i>	Section 6 was expanded to include resisting armed troops as an act of terrorism “Extrajudicial confessions” recorded by army personnel are admissible as evidence in ATCs. Section 19: though	Passport of the accused can be seized Section 6 was expanded to include any individual or group not recognized by the law acting as officials as an act of terrorism A new section (Section 11EEEE) extended preventive detention from 30 to 90 days Burden of innocence is on the accused.	

LEGISLATION	MILITARY POWERS*	LAW ENFORCEMENT POWERS*	JUDICIAL POWER
	<p>the primary investigating officer would be from the police, the government could constitute a JIT that could consist of officers from all intelligence agencies, including the military, to assist the investigation</p>		
<p>Actions (in Aid of Civil Power) Regulation, 2011 [June 23, 2011]</p> <p><i>Law is applied to tribal areas: Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA)</i></p>	<p>Section 6: military authorities are allowed to detain suspect(s) in internments, and can conduct searches without a warrant</p> <p>Section 11: duration of the internment will continue till the military operation continues</p> <p>Section 19: all evidence collected by an officer during the suspect(s) internment will be considered credible evidence in any court</p>		
<p>Investigation for Fair Trial Act, 2013 [February 22, 2013]</p>		<p>Section 5: suspicion of involvement in a potential criminal offense is sufficient for a search warrant application</p>	
<p>Anti-Terrorism</p>		<p>Section 6: definition of</p>	

LEGISLATION	MILITARY POWERS*	LAW ENFORCEMENT POWERS*	JUDICIAL POWER
(Amendment) Act, 2013 <i>[March 5, 2013]</i>		terrorism was expanded to include “intimidating and terrorizing the public, social sectors, business community and preparing or attacking the civilians, media persons, government officials, installations, security forces or law enforcement agencies.”	
National Counter Terrorism Authority Act, 2013 <i>[March 13, 2013]</i>		Section 9: The head/coordinator of NACTA will be from the police	
Anti-Terrorism (Second Amendment) Act, 2013 <i>[March 14, 2013]</i>		New Section 11EEEE increased the rank of investigating officer from Inspector to Superintendent of Police	
Protection of Pakistan Act, 2014 <i>[July 2, 2014]</i>	Section 5(2): investigations will be done by a JIT comprised of one police officer and two officers from armed forces/civil armed forces Section 15: burden of proof lies with the accused	Section 5(2): JIT will be headed by a police officer Section 6: allows all agencies to detain an individual for a maximum of 90 days without a formal charge Section 15: burden of proof lies with the accused	Section 8: special courts are established that take precedence over ATCs Section 10: proceedings of special courts are not open to the public
Constitution (21st Amendment) Act (Act 1 of 2015)	Army’s judicial jurisdiction is expanded to include those charged under the ATA. Those civilians can now legally be subjected		
The Pakistan Army (Amendment) Act (Act II of 2015)			

LEGISLATION	MILITARY POWERS*	LAW ENFORCEMENT POWERS*	JUDICIAL POWER
<i>[Both passed on January 7, 2015]</i>	to the army's procedures for court martial in special military courts		
Constitution (Twenty-third Amendment) Act, 2017	Military courts of 2015 are continued. They are due to expire on January 6, 2019.		
Pakistan Army (Amendment) Act, 2017			
<i>[Both passed on January 7, 2015]</i>			

*The military and law enforcement agencies are both part of the executive branch in Pakistan.

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