RECONCILING RHETORIC AND REALITY: PUTTING “DEVELOPMENT” AT THE CENTRE OF THE GAME

by

Irfan Reayat

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF LAWS

in

THE FACULTY OF GRADUATE STUDIES

(Law)

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

April 2013

Abstract

The thesis looks into factors that have resulted in the failure of Washington Consensus policies prescribed by International Financial Institutions (IFIs). The IFIs consider free trade, investment, privatization, and deregulation as key to removing impediments to the development of host countries. From a Law and Development perspective, the thesis argues for review of these policies, and suggests reforms in the institutional design, governance, and redefined role of IFIs and national governments.

At host countries' current stage of development the adoption of free trade policies based on comparative advantage will lock them in dead end professions or industries with low rates of return, and they will no longer be competitive in industrial production and international trade. After providing historical analysis of the economic policies of the developed countries the thesis argues that developed countries selectively adopted free trade to achieve their economic goals. The developing countries should also selectively structure creative protectionist and free trade policies.

The thesis presents Pakistan as a case study and argues that in Pakistan's specific non-economic circumstances IFIs need to acknowledge the redefined role of the state and facilitate a rule based, institutionalized, public-private partnership model. If privatization and deregulation are considered a panacea to address Pakistan's governance and development problems, then it needs to be done in the right way. The thesis conducts comparative analysis of privatization and deregulation in the telecommunication and banking sectors of Pakistan, Poland, Hungary, and the Czech Republic, and highlights the importance of legal and institutional design in the pre- and post-privatization eras to achieve the desired goals. In the light of the comparative studies the thesis argues for reforms in the Privatization Act and incorporation of an Appellate Court/Tribunal to review privatization transactions in Pakistan.

The thesis argues that instead of ranking host countries on the pace of their privatization, the IFIs rank them on how they privatize by incorporating good governance principles in conditions associated with their development mandate. The IFIs need to follow good

governance in their own governance structure as well through proper representation of developing countries.

Table of Contents

Acknowledgements

I would like to acknowledge the guidance, comments, support, and patience of my supervisor, Professor Ljiljana Biukovic. Professor Biukovic's detailed comments have been of immense help in the completion of this thesis. I would also like to specially acknowledge the support and contribution of Professor Doug Harris, Associate Dean of the Faculty of Law, University of British Columbia. This thesis was not possible without their support and patience.

I would also like to thank my parents, Reayat Khan and Bibi Hafiza, my wife Nighat Afsar, and my children Usman Reayat and Arsalan Reayat for their unwavering support, patience, love and tolerance for four long years. I am very thankful to my wife Nighat Afsar who has always been present for me and for my children when I was locked in the cycle of working and writing my dissertation. It has been a long and arduous journey, which I could not have completed without their formidable support, unfaltering patience, and tolerance.

I started this journey with my landing in Canada in 2007. When I look back at these four years, I can proudly say that my stay at UBC and my research in the UBC Faculty of Law has been a significant phase of my life. It has broadened my mental horizon and given me a different perspective on life, my academic endeavours, relationships, goals, and ambitions in life and, more importantly, it has humbled me.

I also dedicate this thesis to all international students hailing from diverse academic cultures studying at UBC. They are making a significant contribution to the research culture of UBC and to Canadian society.

Dedication

I dedicate this thesis to my parents, Reayat Khan and Bibi Hafiza, to my wife Nighat Afsar, and to my children Usman Reayat and Arsalan Reayat.

Chapter 1 Introduction

Since its independence from India in 1947 on the basis of religious ideology (Islam), Pakistan has been immersed in problems originating in internal weaknesses, the intervention of powerful industrialized countries, and the policies of International Financial Institutions (IFIs) and trade organizations including the International Monetary Fund (IMF), the World Bank (WB), and the World Trade Organization (WTO). Internally, Pakistan suffers from military takeovers; political instability; social, ethnic and cultural discord; weak institutional structure; incompetent leadership; lack of respect for democratic values; bad governance; absence of rule of law; and rampant corruption in the whole state machinery. The country does not have reliable infrastructure, and the existing one has been obliterated by natural disasters and man-made disasters in the form of suicide bombs and terrorist attacks.

Externally, the country has been in a number of shaky alliances with the West (the United States, the United Kingdom, and their allies), first to fight a proxy war in Afghanistan during the Cold War, and more recently as part of the alliance led by the United States in the "War on Terror". This has produced mixed results for the country and the people. Although Western countries injected huge amounts of capital into Pakistan for its cooperation in the two wars and service to the strategic interests of the United States, the environment inside the country was not propitious for long-term sustainable development.

Moreover, Pakistan is surrounded by India, China, Afghanistan, and Iran. India and Pakistan have been archrivals and have fought three major wars over the disputed Kashmir region. Recently, the two countries were on the verge of war due to the Mumbai terrorist attacks in India and the interference of India in Afghanistan and Pakistan. Pakistan is currently at the crossroads of the international war on terrorism and, in spite of making substantial contributions to it, remains under constant international pressure to do more.[1]

---

[1] U.S. Chairman Joint Chief of Staff Admiral Mike Mullen categorized Pakistan as an epicentre of Global Terrorism. For details see *Daily Dawn Pakistan* (13 January 2011), online: <http://www.dawn.com/2011/01/13/pakistan-%E2%80%98epicentre%E2%80%99-for-global-terrorism-mike-mullen.html>.

These factors have reduced Pakistan's capacity to deal with internal and international politics and hostile elements effectively. The interplay of these factors has impeded the country's ability to take independent decisions and Pakistan is trapped in a vicious circle of economic and political instability, dependency on foreign capital, poverty, and underdevelopment. To make matters worse, the country's revenue is mostly dependent on foreign capital from developed countries and international financial organizations like the IMF and the WB.

The objectives of the IMF, WB, and WTO have been in a constant flux since the organizations' creation, resulting in a deeper role and engagement in developmental efforts and governance of borrowing countries. The incorporation of development as one of their core objectives has also given these institutions immense power and control over borrowing countries, making their role more problematic and complex. The expansive role of the IMF and the WB is due to a number of factors, but mainly to the conditions attached to the loans and the inability of the borrowing countries to pay them back. These conditions are usually focused on neoliberal policy reforms in the borrowing countries, commonly known as the "Washington Consensus", that secure repayment: implanting neoliberal ideas like free trade, privatization, competition, protection of property rights, enforcement of contract, deregulation, and liberalization.

These institutions' objectives and policy conditions are influenced by the ideas of free trade as propagated by Adam Smith, the theory of Comparative Advantage as propagated by David Ricardo, and the Washington Consensus. These theories have been the linchpins of international financial architecture, international trade, and the globalization phenomenon, promising prosperity for some countries and development for others.[2] Unfortunately, the

---

[2] For different views on globalization, see William Greider, *One World Ready or Not: The Manic Logic of Global Capitalism* (New York, NY: Touchstone, 1997); Thomas L. Friedman, *The Lexus and The Olive; The World is Flat* (New York: Farrar, Strauss & Giroux, 1999); Ha Joon Chang, *The Real History of Free Trade* in Anwar Shaikh, ed. *Globalization and the Myths of Free Trade: History, theory, and empirical evidence* (London: Routledge Taylor and Francis, 2007) 23; Antony Angie, "Time Present and Time Past: Globalization, International Financial Institutions, and The Third World" (1999) 32 N.Y.U.J. Int'l L. & Pol. 243; Nancy Birdsall, "Life is Unfair: Inequality in the World" (1998) 111 Foreign Policy 76. For important critical examinations of globalization, see Anne Orford, "Locating the International: Military and the Monetary Interventions After the Cold War" (1997) 38 Harv. Int'l L.J. 443; B.S. Chimni, "Marxism and International Law: A Contemporary Analysis" Econ. & Policy Weekly (6 February 1999) 337; David Kennedy, "Background Noise?: The Underlying Politics of Global Governance" (Summer 1999) Harv. Int'l Rev. at 52; Richard Falk, "State of Siege: Will Globalization Win Out?" (1997) International Affairs 123; Philip Alston, "The Myopia of

results of these policies are not promising and the policies have not fulfilled the much-trumpeted goal of development for poor countries. It is, therefore, imperative to shed light on the ideological basis of these policies.

1.1 Free Trade

Adam Smith advanced the theory of free trade in 1776. The theoretical explanation of free trade rests on the concept of free exchange of goods amongst national markets across the globe without any artificial hindrance. The rationale of free trade is that it prevents the rent-seeking tendencies of domestic producers and encourages efficient production and fair competition.[3] After Adam Smith, the case for free trade was further strengthened by thinkers like James Stuart Mill (1824), Robert Torrens (1808) and David Ricardo, who solidified the case for free trade through the theory of Comparative Advantage.

1.2 Comparative Advantage

The Theory of Comparative Advantage postulates that international trade can be mutually beneficial for both countries even if one of the countries has absolute advantage in all tradable commodities.[4] This theory is the vital intellectual pillar of international trade

---

the Handmaidens: International Lawyers and Globalization" (1997) 8 E.J.I.L. 435; Benedict Kingsbury, "Sovereignty and Inequality" (1998) 9 E.J.I.L. 599; For an important historical perspective on some of these issues, see Nathaniel Berman, "In the Wake of Empire" (1999) 14 Am. U. Int'l Law Rev. 1521; Paul Krugman & Anthony J. Venables, "Globalization and the Inequality of Nations" (1995) 110:4 Quarterly Journal of Economics 857; Kevin H. O'Rourke & Jeffery G. Williamson, eds., *Globalization and History* (Cambridge, MA: MIT Press, 2001).

[3] Adam Smith, *An Inquiry into the Nature and Causes of The Wealth of Nations*, ed. by Edwin Cannan (Chicago: University of Chicago Press, 1967) vol. 1 at 478 [first published 1776]. For detailed analysis of Adam Smith's Free Trade read Douglas A. Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton, NJ: Princeton University Press, 1996) at 75-86, 87-98; Hla Myint, "Adam Smith's Theory of International Trade in the Perspective of Economic Development" (1977) 44 Economica at 231-248; Nathan Rosenberg, "Some Institutional Aspects of the Wealth of Nations" (1960) 1968 Journal of Political Economy at 557-570; Andrew S. Skinner, "The Shaping of Political Economy in the Enlightenment" (1990) 37 Scottish Journal of Political Economy at 145-65; George J. Stigler, "The Successes and Failures of Professor Smith" (1976) 84 Journal of Political Economy at 1199-1213; Jacob Viner, "Adam Smith and Laissez Faire" (1927) 35 Journal of Political Economy at 198-232; Arthur I. Bloomfield, "Adam Smith and the Theory of International Trade" in A.S. Skinner & T. Wilson, eds., *Essays on Adam Smith* (Oxford: Clarendon Press, 1975) 472; Adam Smith, *The Theory of Moral Sentiments*, ed. by A.L. Macfie & D.D. Raphael (Oxford: Clarendon Press: 1976); John H. Jackson, *The World Trading System. Law and Policy of International Economic Relations* (Cambridge, Massachusetts: MIT Press, 1989) at 111.

[4] Elaborated in David Ricardo, *Principles of Political Economy and Taxation* (London, U.K.: J. M'Creery, 1817). Also read David Ricardo, *The Works and Correspondence of David Ricardo*, ed. by Piero Sraffa (Cambridge: Cambridge University Press, 1951).

architecture. The theory in its simplest form is based on a two-country model of international trade, trading two products coupled with one type of inputs for both products. The model defines international trade in terms of productivity and variance in the comparative costs of production between the two countries. Further, the rate of exchange for traded goods or the price of goods in terms of the other is determined by the comparative costs of their production in the countries under examination. The existence of such terms of trade results in the efficient production and export of goods by a country in which that country has comparative advantage, and importation of goods that cannot be produced efficiently within the country. Ricardo concluded that international trade is the result of the existence of comparative advantage rather than absolute advantage.[5]

After the demise of the Soviet Union and the fall of the Berlin Wall, in order to exterminate the remains of Communism in developing and underdeveloped countries, the industrialized countries—dominating the IFIs—decided to implement a new set of policies in borrowing countries that were unable to pay back their debt during the debt crisis. To enable the defaulting countries to pay back their loans, Washington-based institutions/IFIs (the IMF and WB) introduced a set of policies commonly referred to as the "Washington Consensus". These institutions subsequently incorporated these policies into their conditions for borrowing countries as they transitioned from planned to market economies.

1.3 The Washington Consensus

The Washington Consensus is a term coined by John Williamson in 1989 that refers to a set of policy prescriptions suggested by the IMF and WB for use in Latin American countries. The minimal role of the state, deregulation, and economic and trade liberalization; privatization of dysfunctional state enterprises; protection of private property; and assigning the goals of development, public welfare and prosperity to the market have been the defining features of the Washington Consensus. The set of policy reforms that IFIs prescribed for development in Latin America consisted of the following:

---

[5] For further elaboration of the Theory of Comparative Advantage, see "The Case for Open Trade", accessed 14/03/2010 online: World Trade Organization <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm>.

i. Fiscal Discipline

ii. Investing public expenditure priorities in areas that have the potential of producing high economic returns

iii. Reforms in taxation sector i.e. lower the rates and broaden the base

iv. Liberalization of interest rates

v. Competitive exchange rates

vi. Liberalization of trade

vii. Liberalizing inflows of foreign direct investment

viii. Privatization

ix. Deregulation (to abolish barriers to entry and exit)

x. Protection of Property Rights.[6]

Notwithstanding the pros and cons of the above tenets, the straightjacket/one-size-fits-all approach by IFIs for implementation of the Washington Consensus policies in all borrowing countries substantially aggravated the financial crisis in Latin America, Russia, East Asia, and Pakistan.

Similarly, the various trade agreements forced on poor member countries by the WTO made it obligatory to follow the principles of liberalization, privatization, deregulation, open competition, and free transfer of goods and services across borders. The principles of free trade, national treatment, and non-discriminatory clauses enshrined in the WTO have been the obligation of poor countries and the right of developed countries. Comparatively speaking, the infant industrial and manufacturing sector of the poor/developing countries is at a huge disadvantage to developed countries due to the latter's scientific knowledge and technological superiority. The non-adherence to the cardinal principles of the WTO, discriminatory attitudes, and the exploitation by industrialized countries of cheap labour in poor countries resulted in mass protests against free trade and globalization in Seattle (1999), as well as in Quebec and Genoa.

---

[6] John Williamson, "What Should the World Bank Think about the Washington Consensus?" (2000) 15:2 World Bank Research Observer at 251-264.

The IFIs’ conditionalities and the WTO agreements have precipitated development crises in the poor/developing member countries and have secured the interests of international corporations and individuals based in industrialized countries with huge financial and capital investments in poor countries. The crises in poor countries have mainly been attributed to the archaic and obsolete legal and institutional structure in the borrowing countries, rather than to IFI policies that further extended their mandate to include good governance through policy, institutional and legal reforms.

Pakistan, due to its commitment under WTO agreements and IFI conditionalities, had to privatize state-run enterprises. To comply with the performance requirements of the condition, the government of the time had to take quick and substantial steps showing progress towards implementing privatization, deregulation, and trade liberalization policies. For instance, there was fast-paced privatization of the telecommunications and banking sectors in Pakistan.

Privatization was pushed on the basis that it would improve the efficiency and performance of the privatized units and increase economic efficiency. Instead, it has only worsened the situation. The Government of Pakistan, in a rush to get capital from IFIs, blindly and hastily complied with these conditionalities without giving any regard to due process, laws, development, poverty alleviation, and the stakeholders’ participation in the privatization process. The post-privatization performance of these enterprises shows that privatization has little impact on either the overall development of the country or relief for the public. Government officials with vested interests made the situation worse. They were able to buy assets cheaply and receive kickbacks from interested parties, restricting stakeholder access and participation in the privatization process. The IMF, in setting conditions for the loan or aid and giving time limits to the borrowing government, which forces the government to rush privatization and ignore due process, promotes corruption and bad governance practices, negating its own goals of development and good governance.

The failure of Washington Consensus policies brings into the limelight the lack of coordination between the national/local and international/global elements (IFIs, the WTO and industrialized countries) interacting at the deepest level, and raises some genuine concerns. It is, therefore, pertinent to know whether the ideological framework based on the Washington Consensus, free trade, and comparative advantage, and the implantation of institutions to facilitate development through free trade, privatization, liberalization, deregulation, and foreign investment by the IFIs, is in consonance with the realities of the poor countries. What are the limits to IFI interference through conditions in the governance of the borrowing countries? What is the role of the state in this framework to promote development? What should be the structural and institutional framework in the state for the regulation and enforcement of such policies? How can we measure development in the poor countries? Should there be any state regulation of the economy? Or should it be left to independent regulatory authorities (the market regulating itself)? What is the relevance and effectiveness of an independent regulatory authority in the light of the political and social conditions specific to the borrowing countries? This research intends to answer the above questions from the law and development perspective focusing on law, New Institutional Economics, and Development Economics.

Development Economics, as compared to neo-classical and free market economics, is the branch of economics that deals primarily with the economic aspects of development processes in low-income countries. It does not confine itself to one approach, such as economic growth, or trade, or structural change in promoting development, but rather relies on multiple approaches. For example, it may incorporate social, political, cultural, or legal and other factors to devise a specific plan. It aims to provide education, health, and infrastructure to the population as well as to improve governance for delivery of civil services. Unlike neo-classical and free market theories, Development Economics relies on both public and private resources for the successful implementation of any development program. In this context, I intend to analyze the role of IFIs and the national governments of borrowing countries in working for the frequently acclaimed goals of promoting development and alleviating poverty, and to propose a collaborative and cooperative approach between IFIs, national governments, and the public. This approach places the national government at the centre for structuring and initiating reform in the countries, with the support and assistance of the IFIs.

While emphasizing a collaborative approach, the research also aims to analyze the policies of IFIs and their impact on the legal edifices of borrowing countries. I will argue that if law/legal reforms can be used as a tool by developed countries in international trade agreements under the WTO, and the conditions attached to the IFI loans to borrowing countries are to implement a neoliberal agenda, they can also be used as a tool to give legal sanctity and protection to the development of the population in the debt-ridden countries. An example of such a law would be a National Sustainable Development Act in Pakistan, and the insertion of conditions in the Act ensuring that the proceeds from any privatization, foreign, or national investment projects in any part of Pakistan should address the needs of the people in the area. All the legal, institutional, and policy reforms and decisions of the government would then be subservient to this law.

Notwithstanding the passage of various United Nations resolutions[7] on promoting development, demonstrations against globalization at the WTO and G8 summit have highlighted the disconnect between the reality and the policies of the IFIs and WTO. The incorporation of development as an IFI and WTO objective and the signs of gains from increased volume of trade validate the argument for increased trade (in terms of volume) across the globe but invalidate the claim of progress towards the development goals intended through trade, privatization, liberalization, and deregulation. As a result, there is an urgent need to bring about essential changes in the policy, legal, and institutional structure of IFIs and the WTO, as well as the governance structure of borrowing countries, to take development objectives out from the domain of "soft law" and put them at the heart of any policies, laws, and institutional reforms in a country. These development objectives should

---

[7] *UN Declaration on the Right to Development*, UN GAOR, 41st Sess. Annex, Agenda Item 101, 97th Plenary, UN Doc. A/RES/41/128 (4 December 1986), online: http://www.un.org/documents/ga/res/41/a41r128.htm; UN World Conference on Human Rights, *Vienna Declaration on Human Rights*, UNGAOR AT 23-24 UN Doc. A/CONF. 157/24 Part One, 12th July, 1993; *Rio Declaration on Environment and Development*, adopted at the conference held in Rio De Janeiro from 3 to 14 June 1992. The declaration places human beings at the centre of all efforts directed towards the promotion of sustainable development and recognizes the sovereign right of the states to exploit their own resources in pursuance of their own environmental policies and development. The declaration specifically declared the importance of the right to development to equitably meet the needs of present and future generations. A conference held from 2-4 September 2002, in Johannesburg, South Africa under the auspices of the UN Department of Economic and Social Affairs, Division of Sustainable Development adopted another declaration, which recognized the importance of all the previous declarations and the UN Millennium Development Goals (eight goals) to achieve by 2015. For details please visit <http://www.un.org/millenniumgoals/>.

also be the determining factors in all agreements entered into between these organizations, regional financial agencies, and national governments.

1.4 Aims of the Study

The primary aims of this dissertation are as follows:

(a) To critically analyze the ideological foundations of economic globalization, the international economic institutions (responsible for global economic integration), and their prescribed policies and impact on the legal and governance structure of the borrowing countries from a Law and Development perspective.

(b) To evaluate the impact of the IFI policies and elaborate the failure of their policies in the borrowing countries. To contend that the IFIs' prescribed Washington Consensus policies—i.e. privatization, deregulation, and liberalization—will be a failure unless the policies pushing legal, institutional, and economic reforms are compatible and context-specific to the country, with development of the people at the heart of all such reforms. The compatibility of such reforms is dependent on the understanding of the laws and rules in force; the working of the existing institutional structure enforcing these laws; and the political, social, economic, and cultural structure of the host country. In this context, this refers to the appropriate legal, institutional and policy reforms for privatization in Pakistan.

(c) To provide a brief historical, political, and economic analysis of Pakistan and its nation building efforts and to identify the interest groups, institutions and organizations contributing to the underdevelopment of Pakistan. Such analysis is important in order to understand the institutional context and cultural patterns impacting policy formulation, legislation and the institutional structure.[8]

---

[8] Pitman B. Potter, "Selective Adaptation, Institutional Capacity, and the Reception of International Law Under the Conditions of Globalization" in Pitman. B. Potter & Ljljana Biukovic, eds. *Globalization and Local Adaptation In International Trade Law* (Vancouver: UBC Press, 2011) 3, accessed 18/11/2011 online: <http://www.ubcpress.ca/books/pdf/chapters/2011/GlobalizationAndLocalAdaptationInInternationalTradeLaw.pdf>.

1.5 Outline of the Thesis

Chapter 2: Globalization, Free Trade and Development: Connecting the Dots…

Chapter 2 will focus primarily on the critique of neoliberal approaches to development through the lens of law, development economics, and Professor Douglas C. North's conceptual analysis of institutions, institutional change, and economic development. I argue that development policies are context specific, and I briefly analyze the protectionist laws enacted by leading developed countries like the United Kingdom and the United States. Further elaborating on protectionism, I identify India and China as countries initially following protectionist policies then gradually transitioning towards more free market policies. After analyzing the economic laws and policies adopted by developed and newly developed countries and their historical and economic context, I argue for a selective protectionism by the developing countries like Pakistan; substantial opening of markets by developed countries; transfer of knowledge; and equitable distribution of profits in any project involving foreign direct investment.

Due to the local political, social, and institutional realities of countries like Pakistan, I argue for a substantive government role and regulation in structuring and implementing any development policy in the country. While doing so I do not exclude the vital role of the market and the private sector, but suggest legalized, institutionalized public-private partnership structure ensuring transparency, openness, and accountability through checks and balance systems; and impact analysis on development of the stakeholders, their direct and substantive participation, and that of the public. The creation of such institutional structure should be the product of law rather than the good will of the government or the private sector. It is in this context that the IFIs have an important role to play.

Chapter 3: International Financial Institutions and Development: Reconciling the Rhetoric and the Reality

Chapter 3 gives a brief analysis of the origin of the IFIs and the transformation of their objectives since their creation. This chapter explains that with every international crisis, the IFIs have managed to increase their power and engagement with the developing countries. Recently, with the development crisis in the poor countries, the IFIs have incorporated development, promoting good governance and best practices in their objectives. The incorporation of development as one of their objectives has further expanded their involvement in the policymaking and legal structures of borrowing countries. Unfortunately, their deeper involvement in policy formulation and implementation has proved fruitless due to multiple factors but primarily to their straightjacket approach: implementation of neoliberal policies in an unfavourable social, political, and economic environment without adequate legal and institutional structures in place. It also points to the problematic expansion in their objectives, i.e. in the incorporation of development. These institutions claim to work for the development of the poor countries, but the conditions attached to their aid demonstrate that these institutions are in fact instruments of the industrialized countries to control underdeveloped countries. Chapter 3 then illustrates the regressive impact of neoliberal policies in a hostile environment through a critical analysis of the impacts of such policies on the East Asian countries during financial crisis.

Chapter 4: Organizations and Institutions in Pakistan: Understanding the Genesis to Model Institutional Change

Chapter 4 explains the evolution of the social, political, and economic structure of Pakistan and the development strategies adopted by the country since its creation. It also traces the development of relationships between the IFIs (the IMF and the WB), the nature of the programs suggested by them, and their impacts on Pakistan. The chapter culminates in the identification of internal factors impeding the economic progress of the country.

Chapter 5: Privatization: Conceptual Basis and Techniques

Chapter 5 explains the defining components, objectives, and alternatives to privatization. It explains various techniques/methods of privatization, and their respective pros and cons. It illustrates that a “one-size-fits-all approach” is inappropriate for privatization of state-owned enterprises in different sectors of the economy. Proper assessment of the productivity of the enterprise and other factors helps in selecting proper privatization technique. The proper privatization technique helps achieve the real objectives of the privatization process.

Chapter 6: Privatization in Pakistan and Central Eastern Europe: A Comparison of Telecommunications and Banking Sector Reforms

Chapter 6 focuses on the implantation of privatization and deregulation policies (conditions attached to the aid given by the WB and IMF) and shows that the privatization and deregulation policy prescribed by the IMF and WB was inconsistent with the local conditions. The chapter offers a comparative analysis of privatization in the telecommunication and banking sectors in Pakistan and privatization of the same sectors in Poland, Hungary, and the Czech Republic, through the lens of North's theoretical framework of Institutions, Institutional Change, and Economic Development. The comparative analysis underlines the points of distinction between these countries and suggests regulation of privatization through legal, institutional, and policy reforms in Pakistan. The mismatch and inconsistency of these policies in Pakistan can be attributed to internal problems such as the lack of a legal and institutional framework, and to the IFIs' disregard for the impact of such policies on overall development, good governance, and institutional structure in Pakistan.

Conclusion

The thesis culminates in the proposition of selective protectionism for the development of industrial and research sectors in developing countries and substantial openness from developed countries under the special and differential treatment agreements and development provisions of the WTO. The institutional and legal environments of host countries like Pakistan are not favourable for liberalization. The social, cultural, political, and economic structure of Pakistan demands the presence of strong government to erect a strong institutional and legal edifice for the sustainable development of markets. All the reforms initiated should be research based and context specific.

For example, from a Pakistani perspective, the policies of privatization and deregulation will not promote liberalization. The failure of the efforts stems from the fact that the privatization law does not provide any standard for the identification of sectors to be privatized; does not provide any mechanism for the participation of stakeholders or members of the civil society in any public entity to be privatized; and fails to create any forum for review to analyze the whole process and conclusively determine the appropriate model of privatization for the country.

My argument for the legal and institutional reforms stems not from the desire to promote the neoliberal agenda, but from the concern that Pakistan has corrupt leadership, is rife with political and economic instability, experiences poverty and inequality, suffers from bad governance, and has no rule of law, as well as a lack of accountability and transparency. Only strong institutional and creative legal reforms can stimulate the economic development of a country like Pakistan. The legal reforms should focus on ensuring participation of the stakeholders, the members of civil society, and the local public in institution building. The legal reforms should enact such provisions of law that make development goals/objectives justiciable, i.e. the cause of development would be enforceable in the court of law. The research argues for selective protectionism and rule-based state-market structure complemented by appropriate legal and institutional reforms in Pakistan, after thorough research in its proper context.

The legal reforms should target specific problems (address the root causes instead of the symptoms) and structure the accountability mechanisms based on checks and balances to make the development and decision-making process more transparent, open, and deliberative. However, the research also emphasizes the need for such reforms in the laws, rules, policy making, and institutional structures of the IFIs and the industrialized countries, as they are directly involved in the development efforts of countries like Pakistan.

Chapter 2 Globalization, Free Trade and Development: Connecting the Dots

2.1 Introduction

Globalization is mainly associated with the economic integration of countries and has its ideological genesis in free trade (based on Comparative Advantage), free markets, free investment, and the ideology of free market capitalism. The logical matrix of market capitalism rests on the assumption that the creation, integration, and promotion of free trade and free markets between nations will encourage competition. The competition will lead to efficient utilization of available resources, which will consequently promote economic development and prosperity. The proponents of globalization termed it the newfound recipe for global development and prosperity.[1] Developing countries around the world were persuaded/forced (the forceful implementation of neoliberal ideas on poor countries with the purpose of integration is another feature of globalization) by international financial/trade institutions (IFIs), such as the International Monetary Fund (IMF) and the World Bank (WB), and international trade organizations, such as the World Trade Organization (WTO).

In the last two decades, these institutions and the brand of globalization promoted by them have come under increased scrutiny.[2] At the heart of the globalization debate is the role of

---

[1] Jagdesh Bhagwati, Thomas L. Friedman, David Dollar, and institutions like the IMF, the World Bank and the World Trade Organization are the key proponents of globalization based on free trade and free flow of capital.

[2] These institutions facilitated the creation of the free market by implementing policies of mass deregulation of market, investment, minimum government interference, mass privatization of the national enterprises, and reduction of trade barriers in the borrowing countries. Strict adherence to these principles was termed essential for the creation of a favourable environment to deeply integrate the markets of the borrowing countries with the rest of the world, and to promote competition and attract foreign investment in the borrowing countries, which will qualitatively change their livelihoods. These policies were considered a panacea to the development quandary of the poor countries. However, these policies have actually worsened the development dilemma of the borrowing countries. For a detailed critique of globalization and the IFIs, see Chakravarthi Raghavan, *Recolonization: GATT, The Uruguay Round & The Third World* (Penang, Malaysia: Third World Network, 1991); Jeremy Brecher & Tim Costello, *Global Village or Global Pillage: Economic Reconstruction from the Bottom Up*, 2ed. (Boston, MA: Southend Press, 1998); John Gray, *False Dawn: The Delusions of Global Capitalism* (London: Granta Books, 1998); George Soros, *The Crisis of Global Capitalism* (New York: Public Affairs, 1998); Graham Dunkley, *The Free Trade Adventure: The Uruguay Round and Globalism: A Critique* (Victoria, Australia: Melbourne University Press, 1997); William Reider, *One World Ready or Not: The Manic Logic of Global Capitalism* (New York: Simon & Shuster, 1997); Jo Marie Griesgraber & Bernhard G. Gunte, eds., *World Trade: Toward Fair Trade and Free Trade in the Twenty-First Century* (London, Chicago, IL: Pluto Press, 1997); Hans-Peter Martin & Harald Schumann, *The Global Trap: Globalization and The Assault on Prosperity and Democracy*, trans. by Patrick Camillar (Montreal: Black Rose, 1998); Arthur MacEwan, *Neo-*

these IFIs; their policies and their impact on the role of the state governance and the institutional structure of the borrowing countries; issues of development, international trade, and foreign investments; and impact on their industrial, financial, and business structure.

2.2 Theoretical Framework

Through the interdisciplinary framework of institutional economics, law, and development, the research in hand will analyze the complexity of globalization as framed by IFIs, the institutional and legal response (adaptation) of the local countries to such policies, and globalization's impact on the poor countries. The defining components of the law and development framework are legal theory, economic development theory, and international development practice, because this approach refers to theories and practices adopted for the promotion of economic and social progress through legal and institutional reforms and capacity building.[3]

Within the theoretical framework of law and development, through the lens of Development Economics, I will critically analyze the theory of Comparative Advantage and elaborate the detachment of its theoretical assumptions from the realities of the poor countries and its inappropriateness for the poor countries at their current stage of development. Therefore, there is a need to review the fundamental principles of non-discrimination and national treatment in the WTO trade agreements.

I contend that there is no single recipe for the remedy of the economic and development ills of all the developing/poor countries across the globe. The failure of experiments with Washington Consensus (neoliberal) ideas of free trade, privatization, deregulation, development etc., as pushed by IFIs in the borrowing countries and recent global economic crises in the economic core of the world, have prompted the policy makers, academics,

---

Liberalism or Democracy? (London, New York: Zed Books, 1999); Dani Rodrik, *Has Globalization Gone Too Far?* (Washington, DC: Institute of International Economics, 1997); Lori Wallach & Michelle Sfroza, *The WTO: Five Years of Reasons to Resist Corporate Globalization* (Canada: Seven Stories Press/Open Media, 1999); Joseph E. Stiglitz, *Globalization and Its Discontents* (New York & London: W.W. Norton, 2002); and Raj Bhala, *Trade, Development, and Social Justice* (Durham, NC: Carolina Academic Press, 2003).

[3] David M. Trubek, "Developmental States and the Legal Order: Towards a New Political Economy of Development and Law", University of Wisconsin Legal Research Paper No. 1075 (February 2009) accessed 13/08/2011 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1349163>.

scholars, and regulators etc. to review and redefine the relationship between the state and the market with reference to the goals of development.

The new orthodoxy of the New Developmental State or New Developmentalism in the law and development attempts to redefine the market-state relationship by providing a hybrid legal model. The hybrid legal model incorporates provisions specific to the requirements of the market economy and also includes provisions accommodating state concerns to regulate economy when needed, i.e. a mix of state-led economic law and market-led economic law. However, so far there is no clearly defined theoretical model of the New Developmental State with hybrid laws, regulations, and institutions that can be implanted practically. As a result, law has an important and challenging part to play in defining the role of the state and establishing an institutional network regulating the state-market relationship. The dual role of law in the New Developmental State—incorporating the state as a facilitator (through state intervention) and empowering markets—appears to involve two conflicting objectives. This results in the most challenging task for academics, policy makers, reformers, and legislators to structure new relationships in the public and private spheres between actors and institutions, for the successful execution of development strategies. So far there is no consensus on the structure of the New Developmental State and the role of law in such a state. The present research gives a specific legal and institutional model for structuring public-private partnership through critical analysis of privatization in Pakistan.

This chapter contends that as the ideological foundation of the IFIs is faulty, the policies formulated, and the laws and institutions put in place based on such ideological basis, will not address the development conundrum of the poor countries. The chapter therefore stresses the need to form an institutional nexus or network at the national and international levels to create development fusion in the development countries and sincerely work for its achievement.

The motivation to analyze neoliberal policies and development crises of poor countries from a law and development—Development Economics (economic theory)—and New Institutional Economics perspective originates in my desire to formulate a deep and effective legal critique of the market fundamentalism embedded in the policy prescriptions of the IMF, WB, and WTO agreements. Critical analysis from an economic theory perspective will help create a more effective legal design to promote law as an instrument of social justice and development. It will also help unravel the intricacies of the interface between law, economics, and development. This perspective offers diversity in its approach to deal with the development of poor countries: it incorporates social, political, cultural, institutional, and legal factors in its approach to structure any development strategy or plan.

Various phases of law reforms in developing and poor countries were structured by the dominant economic models of development. Development Economics, unlike those mathematical/economic models, does not overlook the economic realities. In this context, it is pertinent to briefly explain the specific views of prominent development economists on the development strategies and the development dilemma of the poor countries.

2.3 Literature Review

Friedrich List (1789-1846), a German economist of the nineteenth century, recommended infant industry protection (IIP) as an important strategy for countries in the early stages of development.[4] He theorized that the employment of such a strategy would help the country immensely to improve its manufactured exports. However, List did not recommend this strategy for a prolonged period. He underlined four stages in the development of international trade and industrialization:

a) expansion of imports of manufactured goods;

b) beginning of domestic production through protection;

c) satisfaction of domestic market; and

d) expansion of exports.

After attainment of certain stage of development, the country will join the international association for the purpose of trade and resultantly protection will cease.

[4] Friedrich List, *The National System of Political Economy*, trans. by Sampson S. Lloyd (London: Longman Green, 1885).

Similarly, Raul Prebish, Latin Political economist and one of the strong proponents of Import Substitution Theory (IST), contended in the 1950s that notwithstanding the expensive nature of the policy it is still the most desirable one for developing countries. Most developing countries at that time were exporters in primary products, lacked industrial infrastructure, and had to confront hostile external market conditions. Prebish constructed his arguments on the Prebish-Singer thesis. Prebish introduced his theory of declining terms of trade in his book *The Economic Development of Latin America* in 1950.[5] Both Prebish and Singer, after examining economic data over a long period of time, came to the conclusion that the terms of trade for primary commodities have the tendency to decline. The obvious outcome of this tendency was the income elasticity of demand: if income increases, the demand for manufactured goods increases as compared to primary products. It is, therefore, essential for developing countries to diversify their economic structure and engage in economic manufacturing activity (producing goods which can attract more demand) through protectionism. However, Prebish favoured protectionism for a reasonable duration to develop specific sectors. He opposed protectionism as a permanent feature in the economic tools used by the country to develop and industrialize.

Ha-Joon Chang,[6] a heterodox economist specializing in Development Economics, employs a broader approach that places the economic history of the developed countries and social-political factors at the centre of the economic practices focusing on development. In his book *Kicking Away the Ladder* he argues that all developed countries in the past practised protectionist policies when they were at the same stage of development as developing countries are today. Chang argues for the industrial development of developing countries through asymmetric protectionism. While employing a historical approach and arguing for the pursuit of protectionist policies for development countries, Chang also identified the fact that today's developed countries did not develop due to good institutions but rather the institutions evolved with the passage of time. Chang contends that the institutions in

---

[5] For details also read Joseph L. Love, "Raul Prebisch and the Origins of the Doctrine of Unequal Exchange" (2003) 15:3 Latin American Research Review 45, online: <http://www.jstor.org/stable/2502991>.

[6] Ha Joon Chang, *Kicking Away The Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2005); Ha Joon Chang, *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (New York: Bloomsbury Press, 2008); Ha Joon Chang, *23 Things They Don't Tell You about Capitalism* (New York: Bloomsbury Press, 2010).

industrialized countries were not necessarily good in the sense described by the Washington Consensus, but were good enough to protect industry and achieve development goals. As a result, it is important for developing countries to ensure good governance, but it is also equally important to understand the nature, structure, need, and what kind of institutional structure would be good for poor countries.

Similarly Erik S. Reinert, in his work *How Rich Countries Got Rich and Why Poor Countries stay Poor*[7], has criticized capitalist neoliberal ideas on various grounds, the most important of which is the protectionist policies and state intervention of developed countries in the past when they themselves were in the early stages of development. He highlights the inherent flaws of neoliberal ideas based on assumptions that can be applicable in an ideal world but will be utopian in the real world. In his work he basically stresses the importance of economic practices promoting industrialization and a manufacturing sector, resulting in technological innovation and increasing returns for the poor countries. Reinert suggests protectionism for developing countries, but he differentiates between bad and good protectionism. He illustrates the difference between bad and good protectionism through East Asian and Latin American protectionist policies. He contends that good protectionism should be temporary for the purpose of protecting new industry. Reinert's good protectionism has the following features:

i. Encouragement of new learning.

ii. A basis on a Schumpeterian view of the world—market-driven "creative destruction".

iii. Encouragement and maintenance of domestic competition, maintaining local control of the core technology.

iv. Massive investment in education/industrial policy, matching the demand for educated people with industry needs.

---

[7] Erik S. Reinert, *How Rich Countries Got Rich...And Why Poor Countries Stay Poor* (New York: BBS Public Affairs, 2007).

v. Strict pursuance of meritocracy—capital, jobs, and privileges distributed according to qualifications.

vi. Equality of land distribution.

vii. Even income distribution.

viii. Profits created through Schumpeterian rent seeking.

ix. Intense cooperation between producers and local suppliers.

x. Regulation of technology transfer—oriented towards maximizing knowledge transferred.

In his description of his theory of his "Other Canon", Reinert identifies twenty-six points differentiating the standard canon from his Other Canon. For the purpose of this thesis I will reproduce three important points:

1) Both theory and policy recommendations are highly context dependent.
2) Knowledge produced has costs and is protected. This production is based on incentives of the system, including law, institutions, and policies.
3) Economics is an inherently unstable and conflict-rich discipline. Achieving stability is based on man's policy measures.

However, Reinert vehemently stresses the importance of the structure and nature of activities and contends that with change in the nature of activities, mentalities and institutions will change. I strongly support the qualitative change in the nature of activities but recommend that in poor countries like Pakistan, with bad governance and broken institutions, it is important that establishment of strong institutional structure and good laws should precede or at least be in tandem with efforts to change the nature of economic activities. Laws and institutions can become the fountain of good protectionism in these countries.

Joseph E. Stiglitz, in his books *Globalization and Its Discontents* and *Making Globalization Work*, has criticized the role of the IFIs and their policies of free trade based on privatization, deregulation, and unjust agreements signed by member countries under the WTO.[8] In *Roaring Nineties*, he analyzes the flaws of market fundamentalism by highlighting the negative impact of unbridled markets in the United States and other countries. Ultimately, he makes recommendations for an important role for the state in promoting responsible markets and free trade by making it more fair and responsive to the development needs of poor and developing countries.

Jeffery Sachs, in his 2005 book *The End of Poverty: Economic Possibilities of Our Time*,[9] while criticizing the role of the IFIs in the development of poor countries, emphasized the importance of financial aid for poor countries to eradicate poverty as measured, i.e. $1 per day. Sachs overemphasizes the role of financial and capital aid but also contends that right policies and key interventions have vital roles in the reduction of extreme poverty. For instance, if good seed, irrigation, and fertilizers are provided to farmers in Africa it would qualitatively increase their crop yield and as a result increase their income and reduce poverty levels. Similarly, if free insecticide-treated bed nets were provided it would effectively reduce the number of deaths from malaria.

American economist William Easterly specializes in neoliberal economic growth and foreign aid. In *The Elusive Quest for Growth*,[10] he analyzed the causes of underdevelopment in poor countries and criticized financial aid as a tool to promote development. He elaborates on the fact that since World War II, many development models and large amounts of foreign aid have been employed in poor countries with negligible progress to show for it. The supply of foreign capital is followed by the inability of poor countries to pay back their loans, which results in further supply of foreign capital in the form of debt relief, but still there has been no substantial progress. Consequently, Easterly demands state intervention and granting of incentives to poor countries to address the situation.

---

[8] Joseph E. Stiglitz, *Globalization and its Discontents* (New York: W.W. Norton, 2002); Joseph Stiglitz, *Making Globalization Work* (New York: W.W. Norton, 2006); Joseph Stiglitz, *Roaring Nineties: A New History of the World's Most Prosperous Decade* (New York: W.W. Norton, 2003).

[9] Jeffery D. Sachs, *The End of Poverty: The Economic Possibilities of Our Time* (New York: Penguin, 2005).

[10] William Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics* (Cambridge, Massachusetts & London: MIT Press, 2002).

Dambissa Moyo, in her book *Dead Aid*,[11] also criticizes the role of foreign aid in promoting development. She contends that continuous and unaccountable foreign aid has resulted in a dependency relationship between poor African countries and donor agencies. She contends that for real and long-term development to take place, the development initiatives need to be taken on by the governments of these countries, and that cutting off foreign aid will force these governments to look for alternative financial resources and make them more accountable.

Similarly, Paul Collier, in *Bottom Billion*,[12] identified four traps: wars (73 percent of the poor countries have been involved in a war in one way or another); exploitation of natural resources (such as oil reserves in Nigeria), which accounts for about thirty percent; countries landlocked with bad neighbours like Chad; and bad governance in a small country, which happens too often in the African Continent. Collier illustrates statistically that a huge portion of the bottom billion live in 58 countries: 70% in Africa and the rest in Central Asia. He further contends that since the 1990s, more than four billion people in poor countries have moved out of the poverty trap, but most of them are still struggling. The countries where the poorest reside have experienced negligible growth since the 1970s. Collier has also criticized the role of foreign aid in initiating development in the poor countries. In his view, unlimited foreign aid has resulted in diminishing returns for borrowing countries, and Collier advocates for the enactment of laws or charters in those countries to devise a framework for development, democracy, investment, and post-conflict situation.

Amartya Sen, a Nobel Prize-winning economist, was prominent among his contemporaries for focusing on issues economists usually see as marginal. His most influential work includes *Collective Choice and Social Freedom*, which was published in 1970 and addressed problems related to individual rights, justice, equity, rule of majority, availability of information about individual conditions, inspired researchers, famine, better health treatment of women and children, and public welfare. All of these concepts, which are alien to

---

[11] Dambisa Moyo, *Dead Aid: Why Aid is not working and How There is a Better way for Africa* (New York: Farrar, Strauss and Giroux, 2009).

[12] Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (New York: Oxford University Press, 2007).

neoliberal thinkers, appeared prominently in Sen's work. His latest works include *Freedom as Development* and *The Idea of Justice*,[13] which is a brilliant effort to highlight the issues that remain in the blind spot of standard neoliberal economic thought. He gives compelling analysis of the modern economics problem from the perspective of human freedom and offers a sound moral framework for analyzing market economics and free trade.

In order to enable neoliberal ideas to work effectively for public welfare another development economist, Dani Rodrik, highlighted the importance of contextualizing the development strategy and stressed the vital role of institutions. Rodrik, an economist from Harvard University, focuses primarily on policy design in the realm of economic development.[14] His research examines the determinants of good economic policy and he suggests that policy must be structured in the proper context to be successful. Rodrik initiates his reforms process by running a diagnostic test to identify the problem, prioritizing the problem, and then suggesting a solution responsive to the needs of the people and sensitive to local institutions. In his analysis of the structure of international institutions like the World Trade Organization (WTO), Rodrik strongly recommends a multi-pronged strategy for developing and poor countries, emphasizing that poor countries should not just restrict their demands to market access in lucrative markets of the developed countries but also should look into tax credits, subsidies, and import taxes. He stresses the need to give poor countries the power to experiment with their own institutional restructuring and the space to devise their own solutions to their development problems, and the importance of institutional structures being tailored and sensitive to local demands.

---

[13] Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999); Firoze Manji, Book Review of *Development as Freedom* by Amartya Sen (2010) Oxford University, Department of Continuing Education, online: <http://socialtheoryblog.files.wordpress.com/2010/04/developementasfreedom-by-manji.pdf>; Amitrajeet A. Batabyal, Book Review of *Development as Freedom* by Amartya Sen (2000) 12:2 Journal of Agriculture & Environmental Ethics at 227-229, online: <http://springerlink.com/content/r5m6328t6878lw21/fulltext.pdf>; Sabina Alkire, "Structural Injustice and Democratic Practice: The Trajectory in Sen's Writings" (2006) 19:1 Library of Ethics and Applied Philosophy at 47-61, online: <http:www.springerlink.com/content/r712246564q32153/>; Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009); Steven Poole, Book Review of *The Idea of Justice* by Amartya Sen *The Guardian* (7 November 2009) Page 8, online: <http://guardian.co.uk/books/2009/nov/07/amartya-sen-justice-book-review>.

[14] Dani Rodrik, *One Economics. Many Recipes: Globalization, Institutions, and Economic Growth* (Princeton, NJ: Princeton University Press, 2007).

These views of prominent economists reflect the diversity in Development Economics. Various approaches present analysis of elements often overlooked in the discussion on standard economics and law, and alternative strategies are available to facilitate the development of poor countries. A brief overview of the leading economic scholars' views on development reveals that there are numerous aspects of the development predicament for poor countries. There is consensus among the leading scholars, policy makers, and regulators that there is no magic wand for developing countries which would help them transition from underdeveloped to developed or middle-class countries. All the elements mentioned above—aid, the role of the state, institutions (international and national), industrial and technological development, manufacturing sector, protectionism, free trade, and free markets—are important, but how do we make them work for the poor countries? This still remains a myth for many of us.

It is pertinent to note that poor and developing countries are scattered around the globe and have diverse cultures, social, political, and economic structures, geography, institutions, and outlooks on the ways and means to achieve prosperity, progress, and development. There can be no precise or simple answers to such complex problems. However, it is not difficult to identify that keeping in view their legal, institutional, and governance structure, it is the country's government/state itself which should be the fountain of all efforts to address the problem of underdevelopment. The situations in Haiti, Somalia, Sudan, Afghanistan, Pakistan, and Iraq amply illustrate the need for a strong state structure. Irrespective of the kind of economic system a country has—i.e. whether planned or market economic—it needs strong institutions, good laws, good governance, rule of law, equality before the law, due process of law, and protection of property rights, liberty, and individual freedom to develop properly.

It is imperative to mention here that due to the weak state structure in poor and developing countries, the state is mostly dependent on the capital/monetary-technical support from the IFIs, regional development banks, the international development agencies (U.S. AID, CIDA, AusAid, etc.) and governments from industrialized countries. Most of these organizations are providing capital aid in the form of loans, grants, and technical and policy assistance to initiate reforms to alleviate poverty, build infrastructure (roads, highways, buildings, schools, universities, hospitals, basic health units), strengthen institutions, promote good governance, enhance human capacity, promote trade, attract foreign investment, and increase exports. As a result, these non-state entities have an important role in the nation building process and are vital players in the execution of the development agenda in the borrowing and donor countries. We have long experimented with various development models, from state-led development models to today's poverty labs to eradicate poverty, but without substantial gains against poverty.

The failure of the efforts on poverty reduction and development can be attributed to multiple factors, but the most important are the lack of sincerity on behalf of the political leadership in poor and industrialized countries; IFI reliance on inappropriate policies based on assumptions, inadequate ideologies and theories that are detached from reality; legal and institutional structures in the poor and industrialized countries; and the lack of coordination between the poor countries, the industrialized countries and the IFIs. The failure stems from the transplantation of ideologically structured economic models, which are most of the time divorced from the prevailing conditions of the poor countries. The policy reforms prescribed by the IFIs and the WTO have perpetuated the control of industrialized countries over poor countries and the control of the local elite over poor people in the developing countries. The policy recommendations of the IFIs, instead of resolving the problem, further aggravate it and become part of the problem.

2.4 Chapter Overview

This chapter will discuss the following issues:

i. Who should be the agents of development: markets or government, and why?
ii. Why can't the market be the generating force of economic development in developing countries?
iii. How can law and institutions prove instrumental in providing a strong framework for the development of poor countries? The importance of law and institutions for poor countries will be analyzed in the theoretical framework of Professor Douglas C. North's views on Institutions, Institutional Change, and Economic Development.
iv. Can law facilitate market development? If so, how?

v. What are the flaws with the theory of Comparative Advantage in the context of Development Economics, how are the WTO rules based on comparative advantage insulated from the development needs of the poor countries, and how do those rules perpetuate poverty?

vi. In the context of Pakistan, what can be the appropriate strategy?

The IFIs and the WTO have been advocating policies known as the Washington Consensus, mainly postulating liberalization, privatization, deregulation, free trade, and investment as a new mantra for development in poor countries. However, the recent experience with these policies has dented their claim to address the development needs of poor countries, and rather perpetuates the poverty of these countries. The most famous of the policies is the reduction of state intervention in the country's economy, resulting in free trade based on comparative advantage. It is, therefore, important to analyze the role of the state in the Washington Consensus policies and to identify the inherent flaws of free trade based on comparative advantage.

The law and development movement has been under constant shift since its origination after the World War II. It is imperative to shed some light on the origination and traits of the classic law and development movement, which is significant in order to understand the impact of economic policies in shaping the structure of law and its role in development. The classic law and development movement originated in the 1960s after World War II; it was based on Development Economics theories emphasizing the active role of the state in driving the economy of a country. The state was responsible for the formulation and implementation of all economic, industrial, and development policies. Major industrial enterprises were owned by the state and the private sector was considered inadequate for promoting economic development. The policy of import substitution industrialization (ISI) was pursued by most of the developing countries around the globe with the aim of protecting their infant industrial and manufacturing base by insulating their economies from world markets.[15] The law and

---

[15] David Trubek, "The Rule of Law in Development Assistance: Past, Present and Future" in David Trubek & Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press, 2006) at 74.

development movement of the 1960s-70s was the logical offshoot of the modernization theory.[16]

The modernization theory attributed the underdevelopment of the developing countries to their adherence to local culture, traditions, and social and institutional structure.[17] One of the proponents of Modern Theory, Walt Rostow, contended that development would be achieved in developing countries if they emulated the practices, experience, and development strategies of the developed countries. Consequently, the developing countries of Africa, Asia, and Latin America adopted the state-led ISI development model that gave state an active role in engineering and managing the economy of a country.[18] The enhanced role of the state required laws, regulations, and legal institutions empowering the state to steer and transform economic behaviour. Legislation in the state-centred model served as a tool for national economic planning, and law created the essential framework for the management of the industrial and manufacturing sector. Hence, scholars, academics, policy makers, and development agencies adopted the functionalist/instrumentalist conception of law, using law as a tool to facilitate state-led development efforts.[19]

---

[16] The key works advocating this movement include Walt Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960); Theodore W. Schultz, *Transforming Traditional Agriculture* (New Haven, CT: Yale University Press 1964); and Neil Smelser, "Towards a theory of Modernization" in Neil Smelser, *Essays in Sociological Explanation* (Englewood Cliffs, NJ: Prentice Hall, 1968) 125. To track the latest debate on the issue see Waltraud Schelkle et al., *Paradigms of Social Change: Modernization, Development, Transformation, Evolution* (Frankfurt & New York: Campus Verlag & St. Martin's Press, 2000). For earlier views see Emile Durkheim, *The Division of Labour in Society* [1893] trans. by W.D. Halls (London: MacMillan, 1984) and Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. by Talcott Parsons (London & Boston: Allen and Unwin, 1930).

[17] John Isbister, *Promises Not Kept: Poverty and The Betrayal of Third World Development* (Bloomfield, CT: Kumarian Press, 2003) at 32-41.

[18] Kevin Davis & Michael Trebilcock, "The Relationship between Law and Development: Optimists versus Skeptics (2008) 56:4 Am. J. Comp. L. at 899.

[19] The functionalist approach refers to law as an instrument for the achievement of economic goals. See Roscoe Pound, "Law in Books and Law in Action" (1910) 44:12 Am. L. Rev. 12, accessed 16/08/2011 online: <http://heinonline.org/HOL/LuceneSearch?searchtype=advanced&submit=Go&search_within=&prev_q=&prev_origterms=&cited_by=&maxresults=25&terms=creator:%22%20Pound,%20Roscoe%20%22&origterms=creator:%22%20Pound,%20Roscoe%20%22&termtype=word&termtypea=&termtypeb=&termtypec=&sortby=relevance&collection=journals&specialcollection=&operator=&operatorb=&termsa=&termsb=&termsc=&typea=&other_cols=&typeb=&typec=&yearlo=&yearhi=&all=&solr=true&dontsave=1&current_historical=&latest=&journal=ALL&subject=ANY&authority_type=&country_code=&collections=&jump=true&firstdoc=100&initcounter=124&base=>; Peer Zumbansen, "Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflexive Law" (2008) 56:3 Am. J. Comp. L. at 769-808, accessed 16/08/2011 online:

The instrumental use of law prompted legal transplantation in developing countries. The early law and development movement was focused on state-led development and according to leading practitioners and scholars of that time most of the developing countries had virtually non-existent laws and legal institutions. The developing countries, therefore, transplanted the modern legal institutions of the developed world, focusing on economic laws to stimulate economic development, resulting in the creation of a liberal democratic setup. However, the state-centric model lost its spark in the early 1970s due to ideological shifts in the global political economy. Due to the international economic order given by the Bretton Woods institutions, many developed and developing countries adopted the state-centric model based on Keynesian economics. International development regimes based on Keynesian economics encouraged protectionism, however the global trend towards development underwent a paradigm shift in 1980s towards market-led development through promotion of policies of privatization, deregulation, liberalization, and competition.[20] The vigorous adoption of these policies by the developed countries and implementation of them by IFIs in the developing and poor countries substantially undermined the utility of the previous state-centric model.[21]

Under the neoliberal economic order, the market-centric development model was adopted, which marked the beginning of new orthodoxy: market-centred rule of law in the law and development movement.[22] Under the neoliberal order of law and development, the main function of law was the dismantling of state-run institutions to minimize state interference in economic policy/decision making and hand it over to the market. The new restructuring demanded new legal perimeters to facilitate the efficient working of the markets: new corporate/commercial laws, finance, banking, insurance, privatization, trade, competition,

---

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1128144>; and <http://heinonline.org/HOL/Page?handle=hein.journals/amcomp56&id=775&collection=journals&index=journals/amcomp>.

[20] David Trubek, *supra* note 15 at 80-82.

[21] *Ibid.* at 82-83; F. Charles Sherman, "Law and Development Today" (2009) 10:9 German Law Journal at 1263.

[22] John Ohnesorge, "Developing Development Theory: Law and Development Orthodoxy and the Northeast Asian Experience" (Spring 2007) 28:1 U. Pa. J. Int'l Econ. L. 219, accessed 17/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/upjiel28&id=223&collection=journals&index=journals/upjiel>.

foreign investment, consumer protection laws, and regulations that substituted private law for the public law as a tool to regulate the economy.[23] There was again another phase of transplantation in the developing and poor countries based on an unflinching belief that the implantations of Western style, market-based laws, and institutions would be sufficient for economic development of developing countries.

The contemporary trend in law and development tries to synthesize the earlier law and development models of the 1950s and 1960s[24] and the neoliberal approach based on the Washington Consensus to create a more balanced, innovative and collaborative approach towards the relationship between state and market, called "New Developmentalism" or "New Development State".[25] Economist Justin Yifu Lin of the World Bank has made this recent attempt. In his recent work on structural economics, Lin argued for state support in those sectors of the economy where the country has a comparative advantage instead of investing money in underdeveloped sectors of the economy.[26] Lin has attempted to combine the elements of neoliberal regime and traditional structural economics. He supports market determination of the comparative advantage of the country and argues for a supportive state role to promote the comparative advantage. Lin's New Structural Economics (NSE) approach highlights the imperfections of the market and the government and by extending on those imperfections constructs a hybrid model: state-market partnership.

---

[23] David Kennedy, "The 'Rule of Law', Political Choices, and Development Common Sense" in David Trubek & Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press) 95, accessed 17/08/2011 online: <http://www.law.yale.edu/documents/pdf/Intellectual_Life/LTW-Kennedy.pdf>.

[24] David Trubek & Marc Galanter, "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States" (1974) 4 Wis. L. Rev. 1062, accessed 13/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/wlr1974&id=1074&collection=journals&index=journals/wlr>.

[25] David Trubek, "The Owl and the Pussy-cat: Is there a future for 'Law and Development'?" (2007) 25:2 Wis. Int'l L.J. at 235-242, accessed 20/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/wisint25&id=215&collection=journals&index=journals/wisint>; F. Charles Sherman, *supra* note 21; Kevin Davis & Michael Trebilcock, *supra* note 18 at 895-946.

[26] Justin Yifu Lin, "New Structural Economics: A Framework for Rethinking Development" (August, 2011) 26:2 World Bank Research Observer 194, accessed 28/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf+html>.

Generally speaking, NSE considers the factors of endowment; industrial structure; the distinctions in the industrial structures at multivariate levels of development; the forms of government interventions formulated by the policy makers; and the inability of the Washington Consensus to understand the structural differences in the developing countries.[27] Based on these historical lessons, Lin proposes an analytical framework that specifically considers these factors and infrastructure endowments. The framework considers the various stages of development, the relevant social, political, and economic structures of developing countries, the role of the state and the market at different stages of development, and the intricacies of the shift from one level to another. It identifies the economic distortions, their causes, and the government mechanisms to deal with such distortions.[28]

Based on the aforementioned considerations, Lin proposes a facilitative state role in developing markets and promoting the comparative advantage of the country. The proposal has reignited the old debate about defining the state's role and setting the limits for its intervention in the market. Lin argues in favour of the state resuming its leadership role in transforming and upgrading "hard (tangible)" and "soft (intangible)"[29] infrastructure that will reduce transaction costs for businesses and investors. He then gives some fiscal, monetary, financial development, foreign capital, and trade policy insights for structuring development efforts in the developing and poor countries.[30]

Lin contends that if a developing country supports industries according to its comparative advantage it will have strong and stable financial base to confront internal and global crises. Industrial development based on comparative advantage will make the economy more competitive and more efficient due to the likelihood of good trade performance. Lin's policy recommendations urge substantive government involvement through upgrading of industrial, infrastructure, technological innovation, investment in education, and human development.[31]

---

[27] *Ibid*.

[28] *Ibid*.

[29] *Ibid*. at 201. Examples of hard infrastructure given by Lin are highways, port facilities, airports, telecommunication systems, and electricity grids. Examples of soft infrastructure are institutions, regulations, social capital, value system, and the social and economic system.

[30] *Ibid.* at 207-212.

[31] *Ibid.* at 207-213.

Lin concludes his policy recommendations with the contention that his work is not an attempt to replace an ideology, but rather an approach focusing on the endowment structure of a country and the structural differences between the developed and developing countries in the context of relevant institutional structure, policies, and limitations and opportunities for the private sector. His approach encourages intensive, innovative country-based research that is in consonance with the development realities of the country.[32]

Lin's work has come under criticism from some leading scholars for a lack of novelty and for self-conflicting arguments. It is said that there is nothing new in his work and he is reproducing what has already been done. Critics suggest that the argument of industrial upgrading is in consonance with import substitution policies, and the argument that the state should facilitate industries promoting comparative advantages negates both the theory of comparative advantage and the import substitutions. Furthermore, the promotion of the industrial sector at the cost of other sectors is not feasible. Finally, the state interference would result in the resumption of rent-seeking behaviour of the state.[33]

There are various dynamics to the arguments Lin advances, but I will focus on the two key components: the new role the state can assume and the theory of comparative advantage. First, I will demonstrate the importance of the state in creating a market-friendly environment in the developing countries and how the appropriate institutional edifice—an open, transparent, accountable mechanism supplemented by development oriented appropriate laws, regulations and policy initiatives—can promote development without nurturing the rent-seeking behaviour of the state. However, the state should not just focus on promoting industries supporting comparative advantage but also should help develop industries defying the comparative advantage of the country.

---

[32] *Ibid.* at 214.

[33] Anne Krueger, "Comments on 'New Structural Economics' by Justin Yifu Lin" August, 2011) 26:2 World Bank Research Observer 222, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>; Dani Rodrik, "Comments on 'New Structural Economics' by Justin Lin (August, 2011) 26:2 World Bank Research Observer 227, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>.

2.5 What is the Role of the State?

The importance of the state in creating a market-friendly environment and facilitating its development cannot be overemphasized. An example is the efforts of the international community, led by the United States, in Iraq, Afghanistan, and Haiti, putting in place strong and stable governments that could take those countries' security and governance into their own hands.

Afghanistan has been the battlefield for a proxy war between the Soviet Union and the U.S. and now between Al-Qaeda, the Taliban, and the U.S.[34] The suicide bombs on a daily basis, attacks on United Nations offices, and daily attacks on foreign military bases are enough to paint a picture of law and order problems. In such a scenario, a free trade and market model is not appropriate for development. The basic requirements for a free trade and market are non-existent as the basic requirements of statehood, such as government, administration, legislature, and executive, are absent.

In such circumstances, it is unrealistic to suggest a minimal state role and assume that the adoption of liberalization, deregulation, and free trade will ipso facto lead to Afghanistan's long-term development. The free trade and market posture might encourage the multinational corporations to invest in Afghanistan's natural resource exploration but might not help her to explore the natural resource herself. The fundamental reason for the failure of free trade and market policies for people in Afghanistan is the absence of a basic governance structure in the country. The people of Afghanistan do not have the basic rules of engagement and institutions to regulate their interaction.

The appropriate strategy would be to give a dominant role to the state in structuring a strong legal, regulatory framework to run the affairs of the country, including the economy and the markets, by involving all the stakeholders. The existence of a strong government is a prerequisite for development. The creation of strong legal and regulatory framework will

---

[34] The efforts to establish an effective and sustainable government and democracy have borne minimum success. The efforts are focused on establishing a strong government structure in the country to establish rule of law, government institutions, governance mechanism, police to enforce law, courts to administer justice, and military to defend the country against the Taliban, ensuring the existence of the government to deliver basic public services like schools, colleges, universities education, clean drinking water, hospitals, and housing. The country does not have any industrial, manufacturing base to integrate itself into an international economy.

facilitate the establishment of stable and sustainable government. The existence of stable government would provide the basic minimum framework to erect infrastructure, identify the areas where it has comparative advantage, further develop advantage, and promote export.[35]

In countries like Afghanistan, the reason that free trade is not taking place to benefit the people is not *interference by* the state but rather the *non-existence of* the state. If a country like Afghanistan follows protectionism, she would be justified in doing so to create an environment for developing the country's natural resource, agriculture, industrial and manufacturing base. In addition, international financial institutions like the IMF, WB, WTO and regional development banks, recognizing the development needs of the country, should exempt Afghanistan from strict requirements of their conditionalities and provide technical assistance for the development of trade. The industrialized countries would have to go beyond expectations and share the benefits of free trade with poor countries like Afghanistan by giving open access to products from Afghanistan. The same strategy might work for Pakistan but with different conditions tailored to its circumstances.

2.5.1 Pakistan

Compared to Afghanistan, Pakistan has a strong infrastructure, government, and legal and institutional structure. It is much stronger economically, with a sound agricultural, industrial, and manufacturing base. Geographically it is connected to the sea and has borders with India, Iran, Afghanistan, and China. However, compared to other countries in the region like India, Bangladesh, and China, its pace of development is slow. Pakistan so far has good relations with the international financial and trade organizations.

The Government of Pakistan has complied with most of the conditionalities of the IMF, WB, and WTO. The conditionalities have mostly been aimed at promoting neoliberal free market policies in the country. Most of the public-owned enterprises have been privatized and

---

[35] *Supra* note 26 at 193-221, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>. For critique see Joseph E. Stiglitz, "Rethinking Development Economics" (August, 2011) 26:2 World Bank Research Observer 230, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>.

independent regulatory authorities have been established.[36] The role of the government has been minimized to a great extent, but still the development strategy based on a free market model has not worked well for the poor people of Pakistan. The failure of free trade neoliberal policies can primarily be attributed to the double standards of the developed countries. The developed countries, even after reaching their development standards, are still observing protectionist policies and still have protectionist laws in force. Failure can also be attributed to the laws and institutions at the national and international level, which do not address the development complexities of the poor people and the country as a whole. The control of the governance, policymaking and development structure by industrialized countries and the IFIs and the WTO has complicated and inhibited development in Pakistan.

In addition, there are some internal national factors[37] specific to Pakistan. Any critical analysis of Pakistan's trade policy and development strategy should incorporate these externalities. For the purpose of this research I will elaborate how these externalities (with a focus on legal and institutional structure) interact with imperfections in the international trade regime to inhibit the development of Pakistan.

Given the aforementioned constraints, Pakistan has limited room to make independent decisions in opting for either protectionism or free trade. However, while remaining within its limitations the country has to balance out the role of the state and the market. The circumstances of the country demand a strong, sustainable, and trust-based partnership between the government and the market, with a dominant and flexible state. Such a development model demands a strong and stable institutional structure equipped with the legal authority and will to implement the law in letter and spirit, which would go a long way towards creating a market-friendly environment.

---

[36] Pakistan Electronic Media Regulatory Authority; Oil and Gas Regulatory Authority; Pakistan Telecommunication Authority; Pakistan Nuclear Regulatory Authority; Privatization Commission of Pakistan; State Bank of Pakistan; National Power Regulatory Authority; Public Procurement Regulatory Authority; Security and Exchange Commission of Pakistan; Small and Medium Enterprises Development Authority (SMEDA).

[37] Obsolete legal and institutional edifice, absence of rule of law, bad governance, lack of accountability, lack of transparency, absence of checks and balances within organization and different branches of the government (i.e. legislature, judiciary, and executive), the political, economic, social and cultural framework of the country, and the incompetency of the political and military leadership.

Unfortunately, in Pakistan the public institutional structure is weak and the laws are either obsolete or ineffective, which means that deregulation or privatization will leave the public at the mercy of the unregulated markets. Pakistan does not have the capacity to bear the risks attached with unregulated markets under the existing conditions. Unregulated markets can lead to financial crisis under the best conditions; the current global financial crisis in developed countries reinforces this point.

In the absence of strong, open, transparent, and accountable regulatory institutions, the unregulated markets in Pakistan would cater to the greedy, corrupt, and wealthy politicians, industrialists, and bureaucrats at the cost of public good. Therefore, the state has an important role to play to create stable and strong markets able to deliver public goods.

I believe that internally Pakistan needs rules based, institutionalized public-private partnership structure with dominant state role. Any such structure should primarily focus on development, delivering public good and services, and encourage stakeholder participation based on a checks and balance system. The IMF and WB should attach such conditionalities with their loans to promote transparent and accountable public-private partnership. In the next section, I am going to explain the role of law and institutions for creating trade and an investment-friendly atmosphere.

2.6 Role of Law and Institutions

Just a glimpse of the trade policies pursued by the developed countries in the past proves that the policy objectives were achieved through legal tools, Acts and statutes passed by the parliament and legislature. Historical analysis of the policies adopted by the U.K. and the U.S., the two leading countries, reinforces the fact that today's developed countries have achieved their current status not only by involving themselves in economic activities producing increasing returns and technological innovation, but also through vigorous pursuit of the path of protectionism rather than free trade.

For instance, the *Corn Laws*, the *Navigation Act*, and the *Wool Act* increased protectionism in the U.K. England enacted protectionist laws to protect its manufacturing sector, especially the textile sector. The *Corn Laws*[38] protected grain farmers and the *Navigation Acts*[39] protected England's shipping industry. The repeal of the Corn Laws is often held up as an example set by England, but what is often overlooked is that at the time the repeal was announced England still had high duties put in place against products from France.[40] The

---

[38] For details of statutes enacted with the purpose of increasing government revenues and ultimately creating protective impact read Ralph Davis, "The Rise of Protection in England 1689-1786" (1966) 19:2 Economic History Review New Series at 306-317. The extent and duration of British protectionism can be gauged from the fact that Edward III's statute of 1337, which prohibited the import of woollen clothes in England, remained in force until the seventeenth century, as quoted by the customs manuals of the eighteenth century. These protectionist measures remained in force for well over three centuries. Then, in order to protect the English textile industry from the cheap textiles coming from China and India, a 20 percent special duty was imposed and in 1701 an Act called *An Act for the more effective employing the poor by encouraging the Manufactures of this Kingdom* was enacted which completely prohibited textile imports from India and China. For details also read William J. Bernstein *A Splendid Exchange: How Trade Shaped the World* (New York: Atlantic Monthly Press, 2008) at 280-300; Ralph Davis, "English Foreign Trade 1660-1700" (1954) 7:2 Economic History Review, New Series at 150-166. For detailed analysis of political conditions of the time and debates going on in the country read John Maloney, "Gladstone, Peel and the Corn Laws" in Andrew Marrison, Geriant Parry & Hillel Steiner, eds., *Free Trade and its Reception 1815-1960: Freedom and Trade*, vol. 1 (London & New York: Routledge, 1998) at 28-45; Betty Kemp, "Reflections on the Repeal of the Corn Laws" (March, 1962) 5:3 Victorian Studies at 189-204; G. Kitson Clark, "The Repeal of the Corn Laws and Politics of the Forties" (1951) 4:1 Economic History Review, New Series at 1-13; T. J. McKeown, "The Politics of Corn Law Repeal and Theories of Commercial Policy" (July, 1989) 19:3 British Journal of Political Science at 353-380; Alon Kadish, "Free Trade and High Wages: The economics of the Anti-Corn Law League" in Andrew Marrison, Geriant Parry & Hillel Steiner, eds., *Free Trade and its Reception 1815-1960: Freedom and Trade,* vol. 1 (London & New York: Routledge, 1998) at 14-27; Douglas A. Irwin, "Political Economy and Peel's Repeal of the Corn Laws" (Spring 1989) 1:1 Economics and Politics at 41-56; John Gallagher & Ronald Robinson, "The Imperialism of Free Trade" (1953) 6:1 Economic History Review, New Series at 1-15; C.P. Kindleberger, "The Rise of Free Trade in Western Europe 1820-1875" (1975) 35:1 Journal of Economic History at 30-31; and Mehdi Shafaeddin, "How did Developed Countries Industrialize? The History of Trade and Industrial Policy: The Cases of Great Britain and the USA" UNCTAD/OSG/Discussion Paper 139 (December 1998) at 2-10.

[39] David J. Loschky, "Studies of the Navigation Acts: New Economic Non-History?" (1973) 26:4 Economic History Review New Series at 689-691; J.E. Farnell, "The Navigation Act of 1651, the First Dutch War, and the London Merchant Community" (1964) 16:3 Economic History Review New Series at 440; J.H. Clapham, "The Last Years of the Navigation Acts" (1910) 25:99 English Historical Review at 480-501; Larry Sawers, "The Navigation Acts Revisited" (May 1992) 45:2 Economic History Review New Series at 262-284; Bruce Bartlett, "The Truth About Trade in History", accessed online 10/06/2010: <http://www.cato.org/pub_display.php?pub_id=10983>; J.H. Clapham, "The Last Years of Navigation Acts" (July 1910) 25:99 English Historical Review at 480-501; Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2002). The colonial merchants had the firm belief that the abolition of the Navigation Laws would abolish their dominance and they would be taken over by American merchants. The Scottish and English control over the Atlantic tobacco trade created resentment amongst the planters and made them believe that British merchants intend to make them bankrupt and take control of their possessions. This view had gained such widespread acceptance in the colonies that Thomas Jefferson also bought this argument. The planters complained of low prices and falling profits in the tobacco business, which forced most of them (for example George Washington) to become wheat farmers. These actions created resentment amongst the public and were among the causes of the American Revolution.

[40] John Vincent Nye, "The Myth of Free-Trade Britain and Fortress France: Tariffs and Trade in the Nineteenth Century" (March, 1991) 51:1 Journal of Economic History at 23-46; For counter-arguments read Douglas A. Irwin, "Free Trade and Protection in Nineteenth Century Britain and France Revisited: A Comment on Nye"

hypocrisy of the industrial class proposing repeal of the Corn Laws can be illustrated by the fact that their movement argued for repeal but favoured government measures protecting the industrial and manufacturing sector of the country.[41]

In the U.S., the *Morrill Act* 1861, the *McKinley Act* 1891, the *Dingley Act* 1897, the *Fordney-McCumber Act* 1922, and the *Smooth Hawley Act* 1930 increased American tariffs and promoted protectionism.[42] A comparative analysis of protectionism in England and the U.S. reveals that the U.S. was more protective during its free trade period (1913-1929) than England (1860-1932).[43] The U.S. shifted towards free trade after the Second World War, only after it had achieved industrial, technological and manufacturing supremacy.

The U.S. technological edge (which is dwindling) in industries such as computers, aerospace, and the Internet would have been impossible to achieve without significant government contributions in defense-related research and development work.[44] It is not that this trend has changed in the 21st century; rather the protectionist measures have assumed different forms and shades. For instance, recently U.S. President Barak Obama signed into law the *American Recovery and Reinvestment Act*, *2009,* which is worth $787 billion in government spending. The Act has clauses that intend to help the steel, iron, and manufacturing industries by

(March, 1993) 53:1 Journal of Economic History at 146-152. For arguments against Irwin see John Vincent Nye, "Reply to Irwin on Free Trade" (March, 1993) 53:1 Journal of Economic History at 153-158.

[41] In 1699 England prohibited the export of woollen products from the Colonies under the *Wool Act*. The Act stopped the export of woollen clothes from England's colonies to other countries, which badly damaged the Irish and American Wool Industry. In 1700 a ban was imposed on the imports of superior Indian Cotton Products. In 1732 England introduced another law to stop the progress of the beaver-skin industry in America by prohibiting the export of such hats to other colonies and countries. England also stopped the authorities from using tariffs to muster their revenue sources even though there was a genuine need. In 1859 the British Colonial Government in India imposed import duty ranging from three to ten percent to meet fiscal needs; to achieve the financial objectives they taxed local producers to the same extent to establish a level playing field. Even then the British Cotton manufacturers were not satisfied and kept the government under constant pressure to repeal the duties, which they ultimately managed to achieve in 1882. In the 1890s the colonial government of the time imposed tariffs on cotton products (in order to protect the Indian Cotton Industry) but the British Cotton Textile group managed to stop the government. For details read *supra* note 5 at 22, 23, 52 and 53; Paul Bairoch, *Economics and World History: Myths and Paradoxes* (Brighton, U.K.: Wheatsheaf, 1993) at 89. For more details on the protectionism granted to the manufacturing sector while the agriculture sector was protected through the Corn Laws, read Mehdi Shafaeddin "How did Developed Countries Industrialize? The History of Trade and Industrial Policy: The Cases of Great Britain and the USA" UNCTAD/OSG Discussion Paper 139 (December 1998) at 2-10, online: <http://unctad.org/en/Docs/dp_139.en.pdf>.

motivating consumers to help the nation by buying U.S.-made goods.[45] The Act has been put in place in clear violation of the country's commitments under the agreements of the WTO.

The United States, notwithstanding its support for free trade, has opted for a protectionist path to facilitate their recovery from the current financial crisis.[46] British Prime Minister Gordon Brown stated in his speech to the U.K. Department for International Development DFID Annual Conference in 2009:

---

[42] Michael Bailey, Judith Godstein & Barry R. Weingast, "The Institutional Roots of American Trade Policy: Politics, Coalitions and International Trade" (April 1997) World Politics 49:3 at 311.

[43] *Supra* note 6 at 30.

[44] H. Shapiro & L. Taylor, "The State and Industrial Strategy" (1990) 18:6 World Development at 866. Shapiro and Taylor sum it up in most appropriate manner: "Boeing would not be Boeing, nor would IBM be IBM, in either military or commercial endeavours without Pentagon contracts and civilian research support" 866.

[45] *American Recovery and Reinvestment Act 2009*, §. 1605 Use of American Iron, Steel, and Manufactured Goods.
(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--
(1) applying subsection (a) would be inconsistent with the public interest;
(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
or
(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Online: <http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/ARRA.aspx?lang=eng#1605>. See also "The Peril of 'Buy American'", Editorial (3 June 2009) *New York Times* A 26, online: N.Y.Times.com <http://www.nytimes.com/2009/06/03/opinion/03weds1.html?_r=1 &pagewanted=print>; Daniel R. DiMicco, Chief Executive Officer and Chairman of the Board of Nucor Corporation and Independent Director, Duke Energy Corporation (who lobbied hard for the insertion of a Buy American Clause in a recent government economic stimulus package) in an interview with Lesley Stahl on *CBS News 60 Minutes* commented on free trade: "Yes, Buy America Clause benefits steel industry in United States absolutely! But what we are saying also is that my that concept also benefits [the] US economic engine [to] get started again". In reply to a question about whether it might result in a retaliatory action against the United States DiMicco replied: "it's all garbage. People can say whatever they want. I am the person who says there is no such thing as 'Free Trade'; Free Trade is an academic luxury that real world does not enjoy; if you want to study it at Harvard, study it at Harvard. It doesn't work in a real world, it has no application", accessed 7/04/2011, online video: <http://www.cbsnews.com/video/watch/?id=5037292n&tag=related;photovideo>.

> Now there are those who say that to talk of common interests and how we can work together weakens the moral case. But I don't share that view. I am passionate about development because I cannot countenance a world in which a child dies because they are too poor to live, because they don't have enough access to clean water or because they don't have a mosquito net.
>
> But I am passionate about development also because I believe in its transformative effects—its potential to help us create the global society that will benefit us all. So in the run-up to this London Summit we will work with the World Bank and our G20 partners to build support for a new fund specifically to help the world's poorest through the downturn. Too often our responses to past crises have been inadequate or misdirected, promoting economic orthodoxies that we ourselves have not followed and that have condemned the world's poorest to a deepening crisis of poverty.[47]

Former President George W. Bush commented in his book about his decision to handle the financial crisis by involving the government:

> The Strategy was a breath taking intervention in the free market. It flew against all my instincts. But it was necessary to pull the country out of the panic. I decided that the only way to preserve the free market in the long run was to intervene in the short run.[48]

Similarly, President Obama, while addressing the graduation ceremony of the Columbus Police Division 114th class, stated:

> Four point four million jobs. I don't need to tell the people of this state what statistics like this mean, because so many of you have been watching jobs disappear long before this recession hit. And I don't need to tell this graduating class what it's like to know that your job might be next, because up until a few weeks ago, that is precisely

---

[46] Rob Gregory et al., "Trade and the Crisis: Protect or Recover" IMF Staff Position Note SPN/10/07 (16 April 16 2010), accessed 08/02/2011 online: International Monetary Fund <http://www.imf.org/external/pubs/ft/spn/2010/spn1007.pdf>.

[47] Gordon Brown, "Seizing the Opportunity to help the Poor" (Address given at the United Kingdom Department of International Development Annual Conference, 9 March 2009). National Archives, Government of the United Kingdom, accessed 11/02/2011 online: <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/news/files/Speeches/pm-conf-speech.asp>.

[48] George W. Bush, *Decision Points* (New York: Crown, 2010) at 458. In his interview with anchor Matt Lauer on *Dateline NBC* on the question of the American financial meltdown, President George W. Bush stated: "So the decision point here is that you either adhere to your policy and say let him all fail its free market; or you take taxpayers' money and inject it into the system and hope that you prevent a depression and I chose the latter. I abandoned the free market to save the free market system. And I also say that my friends in Midland are going to say what happened to Bush? But when you are the President and somebody say hey if you don't do something strong there may be a depression it gets your attention at least it got mine. The idea of taxpayer money to Wall Street and the banks to save them lot of people think that created a crisis in the first place. So I can understand the ant but in my case I am not going to worry about my personal ant or contradictions as worried about the economy going down and I believe that TARP saved the economy. Wall Street got drunk and we got hung over", accessed 05/04/2011 online: <http://www.youtube.com/watch?v=bx2rxF67L_E&feature=related>.

> the future that this class faced—a future that millions of Americans still face right now.
>
> Well, that is not a future I accept for the United States of America. (Applause.) That is why I signed the American Recovery and Reinvestment Act into law. (Applause.)
>
> Now there were those—there were those who argued that our recovery plan was unwise and unnecessary. They opposed the very notion that government has a role in ending the cycle of job loss at the heart of this recession. There are those who believe that all we can do is repeat the very same policies that led us here in the first place.
>
> But I also know that this country has never responded to a crisis by sitting on the sidelines and hoping for the best. I know that throughout our history, we have met every great challenge with bold action and big ideas. That's what's fueled a shared and lasting prosperity. And I know that at this defining moment for America we have a responsibility to ourselves and to our children to do it once again. We have a responsibility to act, and that's what I intend to do as President of the United States of America. (Applause.)[49]

Similarly, France has adopted the same posture in light of the recent financial crisis. France, a key Canadian ally in persuading the European Union to launch negotiations in 2008 aimed at reaching a Canada-EU deal, initiated a controversial measure to promote French industry. French Industrial Minister Christian Estrosi, in order to secure the interest of many French companies, reduced the high unemployment in the country and established a monitoring agency that will ensure that a percentage of locally manufactured products are made up of components made in France.[50] He stated:

> What is important is the number of components, to ensure that the large majority comes from French suppliers. All this will lead me to think a law on inter-industrial to better protect our suppliers.[51]

EU officials contend that Canada's various provincial Acts such as the *Ontario Green Energy Act, 2009*, give preferential treatment to local suppliers.[52] Similarly, the U.S.

---

[49] President Barak Hussain Obama, Remarks at Graduation of Columbus Police Division's 114th class Alaadin Shrine Center (Columbus Ohio, 6 March 6 2009), accessed 11/02/2011 online: <http://www.whitehouse.gov/the-press-office/remarks-president-graduation-columbus-police-divisions-114th-class>. For a contrary view of internal USA policies on deregulation and unbridled liberalization please watch Michael Kirk, *Frontline: The Warning* (20 October 2009) (Documentary) online: pbs.org <http://www.pbs.org/wgbh/pages/frontline/warning/view/?autoplay&utm_campaign=searchpage&utm_medium=videosearch&utm_source=videosearch>.

[50] Peter O'Neil, "France backtracks on Trade EU Deal: Canada's ally in negotiating trade with Europe pushes protectionist measure" *The Province* (18 August 2010) at A26.

[51] *Ibid*.

[52] *Ibid*.

Government has taken over various banks and other financial institutions and pumped in huge amounts of money to prevent the banking and financial system from total collapse,[53] which illustrates the fact that the best policy is the one which addresses the needs of the country in light of the prevailing local circumstances. It also reinforces three important facts. Firstly, the shift in developed countries towards free trade was not due to it being the perfect development strategy; it was adopted to sustain the development they have achieved under protectionism. Secondly, benefits flowing from free trade in its original form are achievable only in an ideal world, as in the real world even the most ardent proponents of free trade prefer protectionism over free trade. Lastly, the developing countries would have no reluctance to adopt the free trade posture if the developed countries reciprocated. After the Uruguay round it is abundantly clear that international trade rules are more favourable to developed countries than developing countries, and the current deadlock in the development round has its genesis in these types of double standards.

Hence, protectionism has been the most effective tool in the catch-up strategy of most of the modern industrialized countries and law has been an important tool for such protectionism. The strategic policy of protecting infant industry has been employed not only by the U.K. and the U.S., but also by many other industrialized countries, such as Germany, France, Sweden, Belgium, the Netherlands, Switzerland, Ireland, and Japan, and more recently by East Asian countries.[54] Proponents of free trade usually dismiss the protectionist regime of developed countries as history, but most overlook the protectionist laws recently enacted by governments of nearly all industrialized countries in order to handle the global financial crisis.

The proponents of free trade quote India and China as the countries prospering through their free trade policies, but they forget that these countries emulated the policies of developed countries i.e. they initially followed protectionism before their gradual shift towards free trade. The prosperity of Korea is the result of protectionism and development of both the

---

[53] "The size and power of the state is growing and discontent is on rise" *The Economist* 394: 8666 (23 January 2010) at 11; "Leviathan stirs again" *The Economist* 394: 8666 (23 January 2010) at 23-26; "Are we there yet? America's recovery will be much slower than that from most recessions; but the government can help a bit" *The Economist* 396: 8700 (18 September 2010) at 13.

[54] *Supra* note 6 at 32-51; *supra* note 7 at 70-100; 165-201.

agricultural and the industrial sectors. If Korea had followed the free trade policy based on comparative advantage it would have been an efficient producer of rice but would not have been able to get out of poverty.[55] These developed and newly developed countries were initially following the protectionist path (defying free trade/comparative advantage), and only subsequently followed the path of gradual openness.[56] Their underlying strategy was to use protectionism to protect their infant industries, and only after significantly developing industrial and manufacturing sector capacity would they argue for free trade.

Legal instruments clothed the protectionist policies into legal obligations and effectively implemented them. Hence both national and international law (international trade law under the WTO) can be agents to promote comprehensive national development in a country if it is structured to achieve development. However, the laws should be supplemented by strong institutional structure and a policy mechanism for enforcement.

The above analysis of protectionist policies and laws demonstrates their role in promoting protectionism in developed and newly developed countries. In the next section, I will illustrate how the absence of qualitative laws, policies, and institutions can negatively impact development. In this context, I will critically analyze the institutions and laws of Khyber Pakhtunkhwa, one of the provinces of Pakistan, specifically focusing on economic and industrial development. The critical view will identify the structural defects of the institutions, the inadequacy of the laws, and the incoherency of the law, policy, and development goals.

---

[55] Joseph Stiglitz, "Rethinking Development Economics" (August 2011) 26:2 World Bank Research Observer, accessed 10/09/2011 online: <http://wbro.oxfordjournals.org/content/26/2/230.full.pdf+html>.

[56] *Supra* note 21 10:9 German Law Journal, accessed 07/09/2011 online: <http://www.germanlawjournal.com/pdfs/Vol10No09/PDF_Vol_10_No_09_1257-1273_Articles_Sherman.pdf>; Ross P. Buckley, "The Economic Policies of China and India and of the Washington Consensus: An Enlightening Comparison" (1 January 2010) 27:4 Wisconsin Internat'l L.J. at 707-724; Jayati Ghosh, "China and India: The Big Differences" (2005), accessed 07/09/2011 online: IDEAs <http://www.networkideas.org/news/aug2005/news25_China_India.htm>; Hei Li, "The Chinese Path of Economic Reform and its Implications" (Winter, 2005) 31:4 Asian Affairs at 195-211, accessed 07/09/2011 online: <http://www.jstor.org/stable/pdfplus/30172860.pdf>; Susan L. Shirt*, How China Opened Its Doors: The Political Success of PRC's Foreign Trade and Investment Reforms* (Washington, DC: Brookings Institution, 1994); Nancy Birdsall, Dani Rodrik, & Arvind Subramanian, "How to Help Poor

2.6.1 Department of Planning and Development, Khyber Pakhtunkhwa

The province of Khyber Pakhtunkhwa has some thirty departments in total. The department specifically focusing on development is the Department of Planning and Development.[57] It supervises the overall development activities and projects in the province. The development strategy focuses on the infrastructure; the social sector (i.e. education, health, social protection and poverty alleviation); achieving economic growth through agriculture, livestock, minerals and technical education; urban development through traffic and road engineering, housing, waste disposal, water, and sanitation; and improving good governance by maintaining law and order and initiating institutional reforms.

2.6.2 Department of Industries, Khyber Pakhtunkhwa

The Department of Industries is mainly responsible for the promotion of the industrial sector and trade in the province, focusing on promotion of industrial research; industrial training, including the enforcement of *Merchandise Marks Act*; and the administration of railway freight, import and export, trade control, capital issue, the *Insurance Act*, the *Registration of Accountants, Auditors' Certificate Rules*, the *Partnership Act*, 1932 trade condition reports, and trade enquiries and agreements. The department deals with all cases relating to the *Boilers Act*, the *Patent and Designs Act*, 1911, the *Explosive Act*, 1884, the *Companies Act*, 1984, and the *Registration of Joint Stock Companies, Firms, and Societies 1860*.[58] The Government of Khyber Pakhtunkhwa has made no significant changes in these laws to bring them in consonance with the policy objectives of industrial and economic development of the country and the province.

Recently in 2005, the governments of Pakistan and Khyber Pakhtunkhwa launched a new Industrial Policy in order to encourage private sector/market participation in the revival of

---

Countries" (July/August 2005) 84:4 Foreign Affairs 136, accessed 07/09/2011 online: <http://www.cgdev.org/doc/commentary/FAhelp.pdf>.

[57] Government of Pakhtunkhwa, Pakistan, *Objectives and Functions of the Department of Planning and Development*, accessed 3/3/11 online: <http://www.khyberpakhtunkhwa.gov.pk/Departments/PnD/Development-Strategy.php>.

[58] Government of Khyber Pakhtunkhwa, Pakistan, *Functions of the Department of Industry*, accessed 3/3/11 online: <http://www.khyberpakhtunkhwa.gov.pk/Departments/Industries/Functions.php>; <http://www.khyberpakhtunkhwa.gov.pk/Gov/Details.php?id=4>.

the industrial sector in the Province.[59] The federal government gave various attractive sales tax, tariff, and duty incentives to local and foreign investors.[60] Similarly, the Government of Khyber Pakhtunkhwa (NWFP) initiated some policy changes in 2005 and gave incentives like a 25% rebate on electricity consumption; exemption from property taxes in the Industrial Estates; education cess; introduction of tiered system for the collection of employee social insurance; establishment of an investment facilitation committee and council under the chairmanship of industrialists from the private sector; and establishment of industrial estate management committees under the chairmanship of leading industrialists to identify the problems of public sector. Special industrial units were constituted and the Directorate of Labour also exempted these units from inspection for three years.[61] The new policy changes initiated by the government present an attractive outlook but are at odds with the existing laws and institutional and organization framework of the Department.

Apparently the policy is intended to attract private sector investment, but a comparison of these incentives with the West Pakistan Industries (Control on Establishment and Enlargement) Ordinance IV of 1963[62] reveals the incoherency of the policy enumerated by the federal government, the existing provincial legislation, and the industrialization and investment policy of the Government of Khyber Pakhtunkhwa. The policy document

---

[59] Five years exemption from property tax in the Industrial Estates and for new industries; exemption from labour inspections after compliance with labour laws; exemption from Education Cess for Industrial Units; a new tiered-policy for ESSI contributions; formation of Industrial Facilitation Council and Committee; 25% rebate in electricity consumption for a period of three years to new selected industries; provision of 10MW cheap electricity from Malakand Hydel Power Project-III to be provided to selected industrial units to be set up in the Malakand Industrial Estate; Government of NWFP, Investment Facilitation Centre, *Investment Policies and Opportunities in NWFP-Pakistan: Another Milestone towards prosperity* (2005) at 2, accessed 8/03/2011 online: <http://www.khyberpakhtunkhwa.gov.pk/cms/downloads/nwfp.gov.pk-downlaods-%20fb46932ea948c3dda0596b9705bd3e70.pdf>.

[60] Government of Pakistan, Ministry of Finance and Economic Affairs, Statistics and Revenue (Revenue Division) Islamabad, (18 June 2001) SRO # 439(1)/2001, accessed 11/11/2011 online: <http://www.findpk.com/engineeringindustry/html/sro_439.html>; Government of Pakistan, Ministry of Finance and Economic Affairs, Statistics and Revenue (Revenue Division) Islamabad, (12 June 2004) SRO # 455(1)/2004, accessed 11/11/2011 online: <http://www.paksearch.com/Government/ LAWS/BUDGET/ Budget%202004-05/sros/Customs/2004sro455cu.htm>.

[61] Government of NWFP, Investment Facilitation Centre, Industrial Policy NWFP (2005) *Investment Policies and Opportunities in NWFP-Pakistan* (Another Milestone Towards Prosperity) at 5-6, accessed 8/03/2011 online: <http://www.khyberpakhtunkhwa.gov.pk/cms/downloads/nwfp.gov.pk-downlaods-%20fb46932ea948c3dda0596b9705bd3e70.pdf>.

[62] West Pakistan, Ordinance IV, *The West Pakistan Industries (Control on Establishment and Enlargement) Ordinance* (1963), 23/03/2011, online: <http://www.khyberpakhtunkhwa.gov.pk/Gov/Details.php?id=155>.

specifies the exemption for foreign investors from seeking government permission to establish any industry anywhere, with a few exceptions in sectors such as arms and ammunition, high explosives, radioactive substances, security printing, currency and mint, and alcoholic beverages and liquor. This contradicts the West Pakistan Industries (Control on Establishment and Enlargement) Ordinance IV of 1963 of Khyber Pakhtunkhwa, which requires the issuance of permit by the Government of Pakhtunkhwa for the establishment of any industry in the province.

In order to promote a well-planned industrial growth, the Ordinance empowers the Government of Khyber Pakhtunkhwa to issue a permit before the establishment of any industrial undertaking.[63] The Ordinance also empowers the government to investigate and punish any person violating any provisions of the Ordinance. It also expressly bars the jurisdiction of the courts. The Ordinance gives excessive power to the Government, to the extent that their actions cannot be challenged in any Court of law (Section 9 of the said ordinance), and the appellate forum against the Department of Industry is the Government itself. So the government is the prosecutor and the judge; the concentration of powers in a single individual (the Secretary or the Director of the Department) without any judicial review is prone to being misused.

The result of such incoherency is that it increases the transaction costs for a business, creates uncertainty among foreign investors, and discourages them from investing in profitable sole or joint ventures with the local industrialists/investors. Pakistan needs foreign investment for the efficient exploration of its natural resources, human capital, and potential joint ventures in the industrial, manufacturing and technological sectors, which is not possible in the presence of such incoherency between laws, policies, and institutional structures.

In addition, both the federal and provincial governments were supposed to enact and introduce appropriate legal reforms in the *Patents and Designs Act*, 1911, the *Partnership Act*, 1932, and the *Companies Ordinance*, 1984, and there is no concept of legislation protecting Intellectual Property Rights in either the country or the province. There are no rules available to regulate joint public-private ventures. All these loopholes demonstrate the

[63] *Ibid.*

importance of law and institutions in the development of a country. The World Bank under its legal reform and rule of law project should focus on such incoherencies and push initiatives to promote respect for due process, rules, and more transparency and accountability.

There is an urgent need to reconcile the policies, laws, institutional structure, and organization of Pakistan to prevent industrial and technological decline. The decline is evident from the statement by Mir Hazar Khan Bijarani, Pakistan's Federal Minister for Industries and Production, who said in response to a question in the National Assembly that in Khyber Pakhtunkhwa a total of 307 industrial units have been closed down. He attributed the closure of these units to financial, management, and marketing problems; the lack of entrepreneurial skill, trend adoption, and security (law & order); and the power crisis in the country.[64] These causes of failure underline not only the gap between law and policy but also the incoherent and ill-coordinated approach towards industrialization and development in the province.

Another cause for the decline of the industrial sector has been the absence of research-based policies and legal reforms encouraging cooperation and coordination among the provincial and federal governments, and consistency in the pursuit of policies. This approach needs to be supplemented by government support in the form of infrastructure, capital, institutions, laws, standardization, transparency, accountability, stake holder participation, training for the development of technical skills and knowledge, adaptation to the constantly changing trends, and specifically setting up development targets. In addition, the interference of IFIs through their conditionalities of fast track privatization, liberalization, and deregulation has further complicated the progress of the country.

The critical analysis of the policy incentives given by the Government of Khyber Pakhtunkhwa highlights the need to align the legal and policy reforms with the development objectives. The Government of Pakhtunkhwa should have consulted the local stakeholders

---

[64] Pakistan Lower Chamber of the Legislature *National Assembly* 28th session (31 January 2011) at 8 (Hon. Federal Minister for Industries and Production, Mir Hazar Khan Bijarani), accessed 5/03/2011 online: <http://www.na.gov.pk/questions/session28/monday310111.pdf>.

and the World Bank in identifying the development objectives, policy formulation, and legal and institutional reforms before giving policy incentives to local and foreign investors. Analyzing such incentives from a country perspective underlines the fact that incentives to the private sector or the foreign investor without target oriented development goals are more prone to misuse at the cost of taxpayers. Conditions such as transfer of knowledge and technology for the promotion of industrialization, manufacturing, and the production sector will lay the foundation for sustained development, as will obligations on investors to provide education, training, and employment for the local population, the development of infrastructure, and the requirement of feasibility studies. The whole scenario underlines the divergence of the policy and the law, and reinforces the need to reconcile policy, law and development goals, to establish of standardization, and to observance transparency in the grants of incentives.

From a development perspective, it is obvious that a poor person from the public does not have the means to make any investment in huge industrial projects and benefit from the incentives given by the Government of Khyber Pakhtunkhwa, which keeps the resources in the hands of the few local industrialists and landed elite class. In Pakistan, the individuals working in both the government and the market are of the same origin, i.e. belonging to the same families and political affiliation. The same individuals dominate the state and the local market. The beneficiaries of these incentives are the politicians, their relatives, party members, and the members of the opposition in the parliament, who are granted political favours. This scenario again reinforces the need to break two vicious cycles: one in which the wealth circulates among a few classes of people and the rich get richer; and the other the vicious cycle of poverty in which poor people constantly struggle to get out of poverty but end up poorer. As mentioned above, in some cases the laws are obsolete and in conflict with the policies, but in some cases even the newly enacted laws/statutes creating new institutions perpetuate the monopoly of the elite-dominated government. The provisions of newly enacted *Competition Act of Pakistan, 2010* exemplify this point.

2.6.3 The *Competition Act, 2010*

The recent *Competition Act, 2010* [65] replaced the *Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance*, 1970.[66] The new Act established the Competition Commission of Pakistan, which replaced the old Monopoly Control Authority. It is an improvement but there are still some areas that have been overlooked. For instance, an undertaking accused of acting in a way to achieve dominance in the market is given the opportunity to comply with the law at every level, from the initiation of the complaint to appeal to the Supreme Court of Pakistan. The Act does not contain any provision making direct and positive benefit for the general public mandatory for the grant of exemption or as a condition reducing the amount of a penalty.

The *Competition Act 2010* authorizes the Commission to grant exemption under certain circumstances, under section 10 sub-section (a-d).[67] If a condition such as benefit to the public or public betterment and development is also inserted the prospective undertaking seeking dominance in the market would be forced to address the condition before planning and structuring any merger, acquisition or undertaking. The Commission can monitor the public betterment and development under Section 28-31 of the Act.[68] Similarly under Section 54[69] the Government of Pakistan has the power to grant exemption to any undertaking from the provision of this Act on three grounds:

i. Exemption in the interest of security of state or public interest.

ii. Practice or agreement due to Pakistan's commitment under international treaty, agreement, or convention.

[65] *Competition Act of Pakistan, 2010*, Act No. XIX, Pakistan Gazette, No. M-302/L.-7646 [*Competition Act, 2010*], accessed 25/03/2011 online: <http://www.cc.gov.pk/images/Downloads/competitionn_act_2010.pdf>.

[66] *Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance*, Ord. No. V 1970 (26 February 1970), accessed 25/03/2011 online: <http://www.globalcompetitionforum.org/ regions/asia/ pakistan/ATT01665.pdf>.

[67] *Competition Act, 2010*, Sub-Section (a)-(d) at 653.

[68] *Ibid.,* Section 28-31.

[69] *Ibid.,* Section 54.

iii. Any undertaking which performs on behalf of the provincial government or federal government.

Terms like "security of state", "public interest", "international commitment and sovereign function" are very broad and abstract. Keeping in mind the political and economic culture of Pakistan, such terms can be misinterpreted in a way to favour the leading elites of the country (most of them local politicians) which control both the government and the market structure of the country. Also, the Act does not say anything about any undertaking involving foreign companies and the government and its impact on the public good, betterment, and interest.

The latest sugar crisis in Pakistan is an appropriate example of this problem. Pakistan ranks among the top ten producers of sugar cane and relies on it for most of its sugar production. Unfortunately, most of the sugar mill owners are leading politicians in the country therefore the Pakistan Sugar Mills Association (PSMA)[70]is the most powerful lobby. The PSMA structured the demand and supply for sugar in a way that helped the PSMA owners earn billions of dollars in a month by taking advantage of the new market system in the country, loopholes in the law, the institutional deficit, and increases in sugar prices in the international market. Smuggling to Afghanistan and the delay in production for the new season raised the demand but the supply was deficient. Resultantly, the price of sugar doubled and it became difficult for a common man to buy sugar for daily usage. The PSMA stopped the supply of sugar to the government-run utility shops (the government provides the sugar and other utilities to the public at a subsidized rate). The short supply of sugar forced the general public to buy sugar from the private market at prices determined by the All Pakistan Sugar Mills Association (APSMA—in other words the local politicians) and forced the government (through the Ministry of Industries and Production) to enter into an agreement with APSMA for fixing the price of the sugar per pound to APSMA's liking and for APSMA to get a tax break from the Government as well. The Competition Commission of Pakistan (CCP) was

[70] Pakistan Sugar Mills Association, online: <http://www.psmaonline.com/acquia-drupal/node/8>.

unable to take substantial steps in this regard, but in its policy opinion it condemned the agreement between the Government of Pakistan and APSMA. [71]

The institutional reforms in the country should be selective to make institutions like the CCP, other regulatory authorities, and laws like the *Competition Act, 2010* more effective in addressing the concerns of national development, and meeting global obligations.[72] For instance, in the local context reforms could involve the granting of more powers such as arrest, maximum imprisonment, and fine; the participation of parties affected by the actions of the undertaking; and provisions making it obligatory that any undertaking have a definite positive impact on the public welfare.

The goals of public welfare can be achieved only if provisions like tax or penalty exemptions under the *CCP Act* 2010 are granted not only with the aim to seek compliance with the Act (to declare the tactics of market dominance), but also on the grounds of their contribution towards the public benefit and development of the country. Public welfare goals can include delivering qualitative and cheap supply of foods to the poor people, education, and investment in shelters for the homeless.

Likewise, the CCP has an office located in the federal capital Islamabad but does not have any branches in the provincial capitals. The establishment of branch offices in the provincial capitals would help curb the tendencies of the undertakings involved in unfair business practices at national and provincial levels.

---

[71] Competition Commission of Pakistan. "Price Fixing Agreement between All Pakistan Sugar Mills Association and Ministry of Industries and Production" (Policy Note, 2009), accessed 3/04/2011 online: <http://www.cc.gov.pk/images/ActionsPolicy_Notes_Policy_Note_on_Sugar-Price_Fixing.pdf>. One of the reasons why the free market system puts the general public in a developing country like Pakistan in a very disadvantaged position that both the markets and the government are controlled by the elite rich politicians, landlords and industrialists. The institutions are already there but they are weak due to the fact that they are run by this elite. In a government-run economy, the government can be held accountable due to the fact that they are elected by the general public. In the market economy, making profit is the underlying aim. After the introduction of the market system, the politicians, industrialists, and landlords all stand together under the umbrella of the free market without any relief for the general public. In the past, there used to be a district magistrate who would perform the same function as CCP and would regulate the prices of the local utilities to keep them more stable.

[72] Ljiljana Biukovic, "Global Competition Governance: A Step Towards Constitutionalization of the WTO" in Pitman. B. Potter and Ljiljana Biukovic, eds., *Globalization and Local Adaptation in International Trade Law* (Vancouver: UBC Press, 2011) at 27-31, accessed 21/09/2011 online: <http://www.ubcpress.ca/books/pdf/chapters/2011/GlobalizationAndLocalAdaptationInInternationalTradeLaw.pdf>.

2.7 The State, Comparative Advantage, and the WTO

In this sub-section, I will discuss (i) the flaws in the theoretical matrix of the theory of comparative advantage and (ii) how the golden principles of national treatment and non-discrimination should not be binding on countries like Pakistan, which are still at an embryonic stage of their development after their independence. I stress the need for insertion of legal rules to introduce a mechanism in all WTO agreements to determine its impact on the development of the poor member countries and the modes to address them.

2.7.1 Deciphering the comparative advantage

The criticism of free trade and comparative advantage is as old as the concepts themselves—the pros and cons of free trade and comparative advantage have been debated for the last two centuries—but lately free trade and comparative advantage have been trumpeted as important tools for development and poverty alleviation around the world, especially in poor countries. The incorporation of development has made the debate surrounding development goals more contentious.

The proponents of globalization based on free trade and comparative advantage, including prominent economists Paul Krugman and Pascal Lamy of the WTO, contend that free trade, in spite of its pitfalls, is a better alternative than protectionism and has the potential to promote development.[73] Krugman goes so far as to claim that intellectuals who criticize it simply do not understand Ricardo's idea of comparative advantage, which is "utterly true, immensely sophisticated—and extremely relevant to the modern world."[74] Any argument against free trade and comparative advantage is considered as heresy. In order to determine the credibility of the above argument it is pertinent to analyze the theory from Development Economics, historical and legal perspectives. From a legal perspective, the WTO agreements and the IFIs' conditionalities had a significant impact on the fundamental legal framework of

---

[73] Pascal Lamy, "Comparative Advantage is Dead? Not at All" (Speech, Paris School of Economics Conference on Trade and Inclusive Globalization: Facts and Fiction in International Trade Economics, 12 April 2010), accessed 13/04/2010 online: <http://www.wto.org/english/news_e/sppl_e/sppl152_e.htm>.

[74] Paul Krugman, "Ricardo's Difficult Idea: Why Intellectuals Don't Understand Comparative Advantage" in Gary Cook, ed., *The Economics and Politics of International Trade* (London: Routledge, 1998) at 22-36; supra note 14.

the developing countries, i.e. the authority of the state to regulate the trade, markets, and economic sector of the countries.

From a Development Economics perspective, Krugman and Lamy's contentions are rooted in the abstract theoretical logic and assumptions from Smith and Ricardo's trade theories, which suggest that specialization of a nation in activity in which it is more efficient as compared to other nations will result in a total welfare gain for that nation. Such assumptions can hold true in an ideal/perfect world of free trade, but in an imperfect world such assumptions seem to be misplaced and detached from reality. They ignore the non-economic realities: the social and political elements, international politics, technological development, investment in research, and engagement of a country in an activity producing increasing returns. Ironically, the theory of comparative advantage has discarded the qualitative element of economic change/development and, as a result, when it is applied in a real world situation it forces poor countries to engage in activities which do not produce increasing returns for them, and in fact actually inhibit the development of their industrial, technological, production, and manufacturing sectors.[75]

2.7.1.1 Engagement in activities producing increasing returns

Under asymmetric globalization—where countries are categorized on the basis of the nature of activities, such as those with increasing or decreasing returns—countries specializing in decreasing-return activities can easily end up specializing in being poor.[76] The nature and speed of globalization enforced in the last two decades has resulted in the de-industrialization of numerous countries; countries are being forced to engage in production that results in diminishing returns.[77] Today most of the developing countries' production activities are not only stripped of increasing returns but also inhibit any kind of technological innovation, knowledge, or research which could catalyze development and increasing-return activities in these countries. According to the *World Development Report 1998*, the disparity in

---

[75] Erik S. Reinert, *How Rich Countries Got Rich…And Why Poor Countries stay Poor* (London: Constable & Robinson, 2007) at 102-118.

[76] *Ibid.* at 110.

[77] *Ibid.* at 109-10. For details on Mongolia and the policies of the IMF and WB see Erik. S. Reinert *Globalization, Economic Development and Inequality: An Alternative Perspective* (Massachusetts, USA: Edward Elgar Publishing, 2004) at 157-214.

knowledge between the developed and poor countries is not only due to the lack of capital, but also primarily to the scarcity of knowledge.[78] The report defines knowledge broadly as knowledge about technology, software, food, industrial products, accountancy, manufacturing etc.[79]

2.7.1.2 The knowledge gap

Technology has been one of the defining elements of the current phase of globalization. In fact, it is the technological component (its presence or absence) that distinguishes an activity producing diminishing and/or increasing returns. Injection of technological innovations qualitatively improves the nature of activity in the production/industrial/manufacturing sector and dramatically changes the mode and manner of production, which enhances productivity in all industries including the agriculture sector. In agriculture, it is also possible to distinguish between mechanizable and non-mechanizable products, for instance the outsourcing of non-mechanizable products by the U.S. to Mexico and other neighbouring countries.[80] The growth of the maquila industry near the U.S.-Mexico border has come at the expense of traditional industry.[81] Another example would be the takeover of mechanizable production of wheat and maize by the United States while outsourcing non-mechanizable

---

[78] World Bank, *World Development Report: Knowledge for Development* (September 1998) at 1, accessed 21/08/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/ WDSP/IB/1998/ 11/17/000178830_98111703550058/Rendered/PDF/multi0page.pdf>; Joseph Stiglitz, "Rethinking Development Economics" (August, 2011) 26:2 Oxford Journal at 2.

[79] Ibid World Development Report

[80] *Ibid.* at 112. See also Joseph E. Stiglitz, *Making Globalization Work* (New York: W.W. Norton, year) at 64-66; William C. Gruben, "Was NAFTA Behind Mexico's High Maquiladora Growth?" (2001) Economic and Financial Review (Third Quarter) 11; Sandra Polaski, *Mexican Employment, Productivity, and Income a Decade after NAFTA* (Carnegie Endowment for International Peace, brief submitted to the Canadian Standing Senate Committee on Foreign Affairs, 25 February 2004); World Bank Study conducted by Daniel Lederman, William F. Maloney, & Luis Servan, *Lessons from NAFTA for Latin America and the Caribbean Countries: A Summary of Research Findings* (Washington DC: World Bank, 2003). However, there are serious flaws with this study. For details see Mark Wiesbrot, David Rosnick, & Dean Baker, *Getting Mexico to Grow with NAFTA: The World Bank Analysis* (Center for Economic Policy Research, 20 September 2004) available online at <www.cepr.net/publications/nafta_2004_10.htm>; See Instituto Nacional Estadistica Geograffa e Informatica *Personal ocupado en la industria maquiladora de exportacion segun tipo de ocupacion* available at <www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=emp75&c=1811>.

[81] For details see M. Patricia Fernandez-Kelly, "Technology and Employment Along the US-Mexican Border" in Cathryn L. Thorup, ed., *The United States and Mexico: Face to Face with New Technology*, US Third World Policy Perspective Series No 8 (New Brunswick, NJ: Transaction Books, 1987); William C. Gruben, "Do Maquiladoras Take American Jobs? Some Tentative Econometric Results" (1990) 5:1 Journal of Borderland Studies Spring at 31-45; Lila J. Truett & Dale B. Truett, "Maquiladora Response to US and Asian Relative Wage Rate Changes" (January 1993) 11 Contemporary Policy Issues, at 18-28.

production, such as harvesting of strawberries, citrus fruit, cucumbers, and tomatoes, to Mexico. Such outsourcing traps a country into labour intensive activities and does not help the country engage in industrial or technologically innovative activities.[82]

2.8 Appropriate Strategies for Pakistan

It is not clear how the application of free trade based on comparative advantage would evoke development for countries like Afghanistan, Somalia, Haiti, and Sudan. These countries have been through wars (including ethnic wars), natural disasters, weak infrastructure, bad governance, and political instability. Free trade with such countries will not bear fruit unless they are internally strong enough to face foreign competition. The development disparities between developed and developing countries make it abundantly clear that the strict application or following of free trade based on comparative advantage will not help them develop substantially to follow their own independent strategies.

From a historical perspective, developed countries did not follow the same policies now prescribed by them and the IFIs for poor and developing countries. Developed countries have not only forced on developing countries the concept of free trade based on comparative advantage, bereft of activities involving increasing returns, technological innovation, synergy and cluster effects,[83] but have also ensured to prevent them from emulating the strategies adopted by the developed countries when they were at the same stage of development. To determine the appropriate strategy in the limited space, we assume two different scenarios for Pakistan: protectionist and free trade.

2.8.1 Options under protectionist regime

In case of the protectionist scenario, the country's protectionist policy will evoke the same policies from other trading partners, as a result hurting exports and economic benefits. Internally, the protectionist policy would encourage the rent-seeking behaviour of the government, discourage competition, and encourage monopoly, which will badly impact the

---

[82] Erik S. Reinert, *How Rich Countries Got Rich...And Why Poor Countries Stay Poor* (New York: BBS Public Affairs, 2007 at 112.

[83] The term used by Eric S. Reinert in his work *How Rich Countries Got Rich…And Why Poor Countries stay Poor* (London: Constable & Robinson, 2007).

efficiency of the country. Hence such policy would not only be economically detrimental but would also be a negation of free trade from a globalization perspective.

2.8.2 Options under free trade regime

In a free trade scenario, Pakistan under its WTO obligations is supposed to open up its markets and follow the policy of non-discrimination, national treatment, and minimum government interference to create perfect competition in the country. These conditions will result in the efficient allocation of resources and will thus lead to efficient production. In this scenario there are three major issues. Firstly, how will free trade contribute towards the development of Pakistan when Pakistan does not have a strong diverse industrial and productive base? Secondly, even if it is assumed that Pakistan has a strong diverse industrial base, it still remains doubtful if products from Pakistan would get market access to industrialized countries. Finally, if for any reason Pakistani products don't get access, does Pakistan have any legal and policy choices to address such a scenario?

In a free trade scenario between countries like Pakistan and industrialized countries it is not only an issue of demanding reduction in tariff rates on products but also the pattern of the tariffs imposed on the products from Pakistan or any other poor country. The developed countries impose high tariff rates on processed/manufactured products from developing countries.[84] These high tariff rates, which naturally discourage developing countries from specializing in manufacturing, clearly illustrate some of the trade barriers.[85] For instance, Pakistan has comparative advantage in textiles, clothing, and food. The imposition of high tariffs by industrialized countries like the United States and European Union countries would discourage Pakistan from developing such a manufacturing sector. Naturally, such a scenario is ominous for Pakistan's trade and development.

Due to the political, military, and economic dominance of industrialized countries there is asymmetry of strength between the developed and developing countries. This asymmetry is more evident in terms of adjustment cost, the nature of activities, and the changing nature of

---

[84] Paul Collier, *Bottom Billion* (Oxford: Oxford University Press, 2007) at 160; Joseph Stiglitz & Andrew Charlton, *The Development Round of Trade Negotiations in the Aftermath of Cancun: A Report for the Commonwealth Secretariat* (London, UK : Commonwealth Secretariat Marlborough House, 2004) at 21.

[85] Joseph Stiglitz & Andrew Charlton, *supra* note 84 at 21.

global trade patterns in the context of market liberalization. The adjustment impact of market liberalization is more stressful on the developing and poor countries. For instance, if the developing countries such as Pakistan liberalize tariffs the impact on the local market would be devastating compared to any such measure taken by the United States or European Union.[86] Unfortunately Pakistan, being a developing country, does not have the means and resources to rapidly adjust itself to high-speed market liberalization, which in addition to throwing the local businesses out of business will increase unemployment and inhibit development. Thus the adjustment cost is more to the poor countries than the developed countries. Similarly in addition to the market imperfection, factor endowment (the dependence of poor countries on natural resources and absence of innovative technologies) locks poor countries in activities that do not produce high returns. [87]

Pakistan, like many other poor countries, has comparative advantage in the labour intensive activities/production and lacks physical, monetary and knowledge capital to improve and diversify production capacity to improve exports. The poor countries unfortunately are disproportionately poor and lack resources. Most of them specialize in exportation of products depending on natural resources. In such circumstances, it therefore becomes vital to be selective in determining how, when, and at what pace to liberalize industry and services. These differences also differentiate the trade priorities of developed and developing countries.

The developed countries became developed by transitioning from agricultural to industrial/manufacturing economies and are now transitioning from manufacturing to service and knowledge industries, whereas the developing world has diverse specialization in the agriculture sector. Most of the African countries specialize in subsistence agriculture, Brazil and Argentina specialize in export agriculture, and some countries are trying to shift towards the manufacturing sector.[88] Besides dealing with their own internal bottlenecks, the poor developing countries are undermined in comparative advantage of the agriculture sector by

---

[86] *Ibid*.

[87] *Ibid.* at 22.

[88] Erik. S. Reinert, *How Rich Countries Got Rich...And Why Poor Countries Stay Poor* (New York, NY: Public Affairs, 2007 at 21.

the high subsidies given by the developed countries to rich farmers.[89] In addition, the health and safety standards further aggravate the comparative disadvantage of poor countries.[90] A report formulated by the International Food Policy Research Institute indicates that the Northern subsidies and import barriers result in losses of $24 billion to Southern countries per year in foregone agricultural and agro-industrial income.[91] In addition to undermining the comparative advantage of the poor countries (in which half of the population is employed in the agriculture sector) these barriers aggravate poverty.

There can be no right or wrong answers for such complex questions, however remaining within her constraints Pakistan has to prioritize her sectors for pursuing development goals and launch a multi-pronged strategy. In order to be more competitive every poor country needs to further develop those sectors in which it already has a comparative advantage but also needs to have a strong industrial and manufacturing base. Unfortunately Pakistan has a weak industrial and manufacturing base and relies mostly on exports from the agriculture sector: primary products like cotton, textiles, and clothing.[92] The adoption of free trade at this stage will result in Pakistan specializing in the export of primary products. Resultantly, there is urgent need for the transfer of technology/knowledge, investment in short-term and long-term research work, and development in all the major sectors (agriculture, industry, and manufacturing).

---

[89] Carmen G. Gonzalez, "Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage" (2006)17:65 Berkeley LA RAZA Law Journal at 68,77; Carmen G. Gonzalez, "Trade Liberalization, Food Security and the Environment: The Neoliberal Threat to Sustainable Rural Development" (2004-2005) 14:2 Transnat'l L. & Contemp. Probs. at 419, 457-60, 463-64; Carmen G. Gonzalez, "Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries" (2002) 27:2 Colum. J. Envtl. L. at 433, 446-49,459-68; UNFAOOR, FAO Symposium on Agriculture, Trade & Food Security Paper No. 3 (1999), 19/03/2011 online: <http://www.fao.org/DOCREP/meeting/x3065E.htm>.

[90] See Anita Regima et al., "Emerging Trade Issues for Developing Countries" (April 2000) Agriculture Outlook, Economic Research Service, Unites States Department of Agriculture (USDA) at 23, accessed 19/03/2011 online: <http://www.ers.usda.gov/publications/agoutlook/apr2000/ao270f.pdf>; Sophia Murphy et al., WTO Agreement on Agriculture: A Decade of Dumping, Institute for Agriculture and Trade Policy,1 (2005) at 2, accessed 19/03/2011 online: <http://www.tradeobservatory.org/library.cfm?RefID=48532>.

[91] International Food Policy Research Institute, How Much Does it Hurt? The Impact of Agricultural Trade Policies on Developing Countries 2 (2003), accessed 19/03/2011 online: <http://www.agtradepolicy.org/output/resource/IFPRI.pdf>.

[92] World Trade Organization, *Trade Policy Review: Pakistan, Trade Policies by Sector* WT/TPR/S 193 (2008) at 1, accessed 22/2/2011 online: <http://www.wto.org/english/tratop_e/tpr_e/tp293_e.htm>.

If there is no transfer of knowledge or technology, Pakistan will be unable to promote its industrial manufacturing base and will lose the markets in the sector in which it has comparative advantage. Pakistan has three apparent alternatives. It can acquire essential capital, technology, and knowledge through the protection and help of the state. It can open its market for free trade and expect that companies investing in the country and market will provide the essential capital and technological knowledge to improve and develop its technological, industrial and manufacturing base. The WTO agreement on Trade Related Intellectual Property Rights (TRIPS) and the rigid intellectual property laws in the developed countries prevent such transfer of technology to the developing countries. A third option is for the Government of Pakistan to protect its industrial and manufacturing sector against foreign competition by providing all kinds of domestic support for the sector to enter into joint ventures with foreign-based companies and by seeking capital, knowledge, technology, and development for the people of Pakistan. However, before pursuing this path the Government of Pakistan should conduct a thorough research into all the intricacies involved in joint ventures around the world, especially in China, India, and poor countries.

In the light of such research, the Government of Pakistan should create an institution that would attract foreign investment and transfer technology and knowledge with a focus on development, but should also give a dominant managing role to the Government of Pakistan, local stakeholders in the sector, and the public. The government role would be to facilitate research, infrastructure development, and the institutional and legal framework to prevent the misuse of incentives. There is a need for the enactment of a new national and provincial development law to standardize and regulate development research and goals, grants and incentives for the purposes of industrialization, stakeholder participation, transparency, and accountability. The new law should establish a national and provincial development authority and a development court.

2.9 Conclusion

If the theoretical framework of North's theory of institutions and institutional change[93] is accurate, then in the developing countries the internal structure favours local leading elites. In Pakistan, the power to reform or enact new laws, formulate new policies and introduce new institutions remains vested in the hands of the local elite. Hence, all the efforts by the IFIs or other development organizations to use or employ law as a development tool in the integrated economy primarily integrates the local wealthy elite with the global wealthy elite; the poor public remains irrelevant and does not benefit in any way.[94] The local public does not have any role or participation, and consequently the expectation that mere initiation of legal, policy, and institutional reforms in developing countries like Pakistan will bring the much-desired institutional change can at best be utopian. There is an imminent need for policy, legal and institutional reforms to bring people, civil society, academics, and researchers to par with the local elite in the legislative process, policy formulation, and decision making.

There is not a single and easy answer on "how" to address the development, institutional and legal quagmire of developing countries, but the better alternative in the case of Pakistan is to strengthen the state as an institution by making it more participative, accountable, responsible, and transparent. Subsequent to that the country needs to follow the path of gradual reforms at all levels to create a flexible institutional structure that can create a state-market partnership and within that partnership determine appropriate roles for the government and the market.

Applying North's theory of institutional change to the context of interaction between developing countries, IFIs and the developed countries, one can see that the international institutional architecture favours the rich countries. The power to bring any change to the international institutional structure lies in the hands of the developed countries and there is an

---

[93] Institutions are the rules of society regulating human interactions and organizations are groups of individuals with common social, economic, political and educational objectives. Douglas C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).

[94] Carol V. Rose, "The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study" (1998) 32:1 Law and Soc'y Rev. at 134, accessed 20/07/2011 online: http://www.jstor.org/stable/827750.

asymmetrical power equation between the developed and the developing countries. This underlines the weak link in all the development-oriented policies: how to bring about institutional change at local and international levels when change is not in the interest of the few players who are more powerful. In this context, the IFIs (who have assumed the status of an organization as defined by North) have an important role in pushing appropriate reforms in the donor countries because they are not only financial institutions but also have a development role as well. In Pakistan, the following reforms can play a vital role in bringing about improvement in governance and development.

2.9.1 Establishment of national, provincial, and local development authority

As discussed above, the state has an important role in development should focus on sectors in which it has comparative advantage but also develop industries defying comparative advantage. The facilitative role of the state in promoting industries is usually subject to the criticism that it encourages the rent-seeking behaviour of the state. The recent global financial crisis has forced us to choose between the imperfect state and the imperfect market. One cannot be chosen over another, as both have an important role in the development of a country, and the appropriate option seems to be to find a ground where both can interact and support each other. But the middle ground for cooperative interaction cannot be assumed to exist when both state and markets have the tendency to assert themselves. Resultantly, there is a need for a regulatory institutional model that could protect the economy from the excesses of the state and deviation of the market through an institutional structure ensuring open (publically accessible to a common citizen), reliable, transparent information distribution, and an enforcement mechanism.

For instance, the new national development law should establish national, provincial, and local development authorities with the development courts. The authority would be the research, policy formulation, decision-making, and implementing body, whereas the Development Court would be a body reviewing the development projects at national, provincial, and local levels. The Court would basically review the development projects from law, economics, and development perspectives. The review structure should be backed up by a strong enforcement mechanism. In addition to setting up the national development authorities, the new law should enact some policy and legal standards for the promotion of development in different sectors of the economy.

The authority should be the focal point for regulating all the development activities in the country. It should construct a publicly accessible information database based on intensive, independent, and impartial research. The database would enable the authority to take a holistic view of the development conundrum and identify the sectors where the country has a comparative advantage and where it has an absolute advantage. Based on appropriate identification, the state should support each respective sector either by itself or by facilitating public-private ventures encouraging foreign investment (in case the state and the private market lack the required capital and technical know-how). The database should give details of the kind, form and duration of support given by the state to such sectors and the prescribed period to review and evaluate the impact of state support on the industry. The development of such a database would help enormously in evaluating the country according to its development achievements.

Based on these findings, the authority should determine the need and form of state support required for a specific industry. If the industry has graduated from its initial/infant stage to an intermediate or advanced stage, the state should minimize its support and expose the industry to gradual open competition. However, if the industry is in its infant stage, the state should continue support in the form of subsidies, tax credits, and research. For instance, in Pakistan the textile sector is well established and does not need any state support except the hunt for markets abroad, so the Government of Pakistan should abandon support but should promote research work in this industry to maintain the efficiency and competitive nature of textile products.

The authority should coordinate all the development activities between the national, provincial and local governments, international financial and trade institutions, Aid Agencies, members of the civil society, non-governmental organizations (NGOs), stakeholders, and the respectable members of the public. It should develop a multi-pronged strategy in all the important sectors of the country and should be a central database of research in different sectors at all levels. The authority should identify the development priorities of the country and implement comprehensive, coherent policy and facilitative laws and institutions to achieve them.

The authority should consist of experts from various sectors giving policy suggestions to the government on development projects in the country. It should have a special section working on micro-financing to engage poor people / the public and empower them through economic independence. This can be done through allocation of special resources to the poorer classes based on their resources. To determine eligibility, the government should put in place a comprehensive applicant background check, and a legal requirement to demonstrate the prospective contribution of the proposed project to the industrial sector, exports, and national development. The use and impact of such grant incentives should be subject to judicial review from a law and economic perspective.

2.9.2 The national, provincial, and local development courts

On its face, the granting of favourable incentives to local and foreign investors seems to be the domain of public policy, but in an unstable and volatile country like Pakistan the public policy implementation needs to be guided by strong but flexible laws and rules. The law should put in place a review structure for such incentives whereby the Development Court reviews the grants after a specific period and the names of people availing such incentives are published. The new law should incorporate penalties and compensation for any misuse. In the case of foreign investment, the law should make it mandatory for the companies investing to transfer technical know-how, skills, and technology to local workers. There should be a hierarchy of development courts at the local, provincial, and national level. The existence of good laws and institutions is essential in a country like Pakistan because of its political instability; social, political, and economic structure dominated by strong feudal structure; diverse cultural norms and values; ethnic discord; religious fundamentalism; corruption; and nepotism.

The aforementioned reforms will facilitate the evolution of good practices, governance, and strong institutions. They provide the essential institutional structure and the standard norms of engagement between institutions, governments, vested interests, dominating classes of society, and the public. Good law ensures social and economic prosperity through protection of property rights, enforcement of contracts, and the essential mechanism of conflict resolution.[95] The enactment of good laws, and strong institutions for their administration, has assumed greater importance with the deeper integration of the developing countries as a result of globalization and their development problems due to bad governance. However, the development predicament cannot be solely attributed to internal legal and institutional inadequacy. It is also due to the international trade and financial regime, which does not address the development needs of the poor countries.

The underdevelopment of the poor and developing countries is a complex issue and the inability of the world in the age of material prosperity to effectively handle it is even more complex and startling. There can be no fixed or rigid solution to their underdevelopment, however we have experimented enough to trace the genesis of the problems and identify the possible solutions. The development puzzle has two components: internal and external. Internally developing countries are locked in their own structural constraints and externally they are locked in a dependent relationship with the IFIs. The complexity and interplay of these two components perpetuates underdevelopment. The internal constraints of the developing countries have created a complex mix of underdevelopment with a legal, institutional, and policy vacuum. This vacuum has come into sharp focus in the wake of global financial crisis and has renewed the old debate on the appropriate role of the state and the market.

2.9.3 Strong role for the state

The current financial crises (the crisis is a multifaceted phenomenon) has on the one hand underlined the limitations of the neoliberal economic development model and on the other identified the important role of the state and the need for regulation. It has also proved that blind pursuit of the free market, liberalization, and deregulation can be fatal even in the best environment. Most of the industrialized countries have stable political systems, strong institutions, and comparatively good laws compared to many developing and underdeveloped countries but still they experienced huge financial crisis. The post-financial crisis policies of

---

[95] Tom Ginsburg, "Does Law Matter for Economic Development? Evidence from East Asia'' Review Essay (2000) 34:3 Law and Soc'y Rev. at 833 para 4.

these countries reinforce the important and strong role the state/government and regulation (as a policy) play in the development of a country.

2.9.4 Rules and institutional model for a flexible state-market relationship

In the light of the current global financial crisis the world is confronted with choosing between the rent-seeking state and the unbridled market. If the factors triggering the financial crisis, and the response of the governments to the crisis, can be a good guide, the state is in need of a flexible legal and institutional structure that not only establishes the state and market partnership but also within that relationship determines and defines the role of the state and the market to weather the crisis and induce real and tangible development. This would give the flexibility to decide in circumstances like the global financial crisis the specific set of responsibilities for the state and for the market. The development crisis in the poor countries demands such strong and flexible legal/institutional structure.

The importance of the state for developing countries like Pakistan cannot be overemphasized. Among all the institutions, the state is an important institution. If the state itself is weak the probabilities are that it will be ineffective in creating a strong, stable, and effective institutional framework for the country. The strong state would go a long way towards creating strong and effective institutions.

Ironically Pakistan, being a developing country and debtor of the IMF and WB, cannot pursue independent policies. In order to comply with IFI conditionalities and strengthen its private market, Pakistan has to structure a model of public-private partnership in which the state and the private sector are in an interdependent relationship/partnership (Pakistan can study the Chinese or the Singaporean state model, replicate it, and harmonize it to local conditions). From a Development Economics and institutional perspective, Pakistan should achieve an innovative balance between the state and the market to create an institutional nexus guiding the economy towards well-regulated market structure and good protectionism.

The regulation of such a partnership demands a focus on comprehensive, integrated, incremental, and development oriented policy, legal, and institutional reforms. These reforms will enable the country to develop a comprehensive development framework—policy, laws, and regulatory provisions—and the institutional structure to enforce it.[96] In the peculiar circumstance of Pakistan, the country should have well-defined structure of accountability, a checks and balances system, and development standards protected by a hard law. While developing these standards, Pakistan can rely on various international instruments on sustainable development and emulate the standards and policies of the developed countries contextualized with the local culture, norms, values, and conditions. It is worthwhile here to elaborate on institutional and legal reforms generally, and especially in the context of Pakistan.

The creation and effective administration of any new institution takes considerable time, and the developing countries cannot afford to experiment for another five decades or a century. It is therefore pertinent to interpret the term institutional reforms in its proper context. It is not essential that the new institutions or institutional reforms replicate the international/Anglo-American pattern of laws. Pakistan can selectively adopt appropriate laws and institutional structures and modify them in accordance with local cultural needs, economic, social, and political realities, and international commitments. In some circumstances it would be essential to create new institutions and failure to do so would inhibit internal growth and discourage foreign investment. In some cases there is already an existing institution but it needs to be made more effective by institutional restructuring and/or essential amendments in law.

From a policy perspective, Pakistan should follow qualitatively good and selective protectionism, which should facilitate the country's transition towards free trade.[97] However the pursuit of such protectionism demands a strong state interference.[98] For instance, let's assume that the government delegates the delivery of social services to the private sector, i.e.

---

[96] For details on the importance of comprehensive legal reforms read Amartya Sen, "Role of Legal and Judicial Reforms in Development" (Paper delivered to the World Bank Legal Conference, Washington, DC, June 5, 2000), accessed 30/03/2011 online: <http://siteresources.worldbank.org/INTLAWJUSTINST/ Resources/ legalandjudicial.pdf>.

[97] Good protectionism as defined by Eric S. Reinert in *How Rich Countries Got Rich…And Why Poor Countries stay Poor* (London: Constable & Robinson, 2007) at 311.

[98] For a detailed and updated discussion on state role and the market see John Micklethwait, "Taming Leviathan" *The Economist* (*A Special Report on the future of the state*) 398:8725 (19 March 2011) from 3-20; John Micklethwait, "Bamboo Capitalism" *The Economist* (*Leaders Section*) 398:8724 (12 March 2011) at 13.

business firms or Non-Governmental Organizations (NGOs), funds such organizations, and evaluates them. Continuation of the funding should be based on performance, and enhancement of the funding should be on the basis of even better performance. This interaction between the market and the government should be regulated by law. The government should encourage the interaction but ensure that the model is properly implemented and continued for a considerable period of time. Performance-based standards should be defined by delivery of services, public satisfaction, and contribution towards development. In addition, protectionism should promote the country's industrial, manufacturing, and technological sectors. The government should regulate research and development in the sectors vital for development, i.e. technology, agriculture, education, health, improvements in quality and quantity of exports, and increase in foreign trade.

A flexible state-market relationship based on sound laws, regulations and effective institutional structure, supplemented by good protectionism and a gradual approach towards liberalization, would help foster a development-friendly atmosphere in most of the developing world. However, in developed and developing/poor countries, and in international organizations like the IMF, the WB and the WTO, there is a strong need for honesty, sincerity, political will to implement comprehensive policy, legal, and institutional reforms. The adoption of free trade around the world hinges on these reforms to make trade fair, equitable, and distributive amongst the people. Unfortunately the IFIs and their conditionalities implementing the Washington Consensus have further complicated matters for countries like Pakistan. Notwithstanding the bitter experience with the Washington Consensus, the IFIs are still pushing the same policies in the borrowing countries and have further extended their mandate to include promoting good governance and institutions as well. In the next chapter, I will elaborate on the circumstances leading to the deeper involvement of the IFIs in the developing countries and the impact of such policies on the borrowing countries in the context of their existing institutional framework.

Chapter 3 International Financial Institutions and Development: Reconciling the Rhetoric and the Reality

3.1 Introduction

In this chapter, I will briefly discuss the underlying values and the gradual shift in the policies prescribed by the major international financial institutions (IFIs): the International Monetary Fund (IMF) and the World Bank (WB). I will then discuss the impact of these policies on the development of borrowing countries and how they affect the incentives for the foreign investment those countries need. Subsequently, I will underline the importance of a gradual approach towards the implementation of such policies, which helps in creating an essential legal and institutional nexus sensitive to the social, political, economic structure, and development needs of the borrowing countries.

Undoubtedly, there can be no two opinions on the fact that the IFIs are deeply involved in the governance and economic policymaking processes of borrowing countries, or on the underlying reasons behind their involvement.[1] It is perplexing that the deeper involvement of the IFIs in borrowing countries becomes conspicuous only when there are layoffs; when a specific product cannot enter a country because of quotas or other restrictions; or when caps or quotas are introduced for immigrant visas.[2] For example, IMF and WB delegations often meet with borrowing countries to set new targets for the economy, resulting in price increases for basic commodities such as electricity, sugar, flour, and gas. The layoffs, or job losses, make it difficult for the average family of eight or ten to survive. With high inflation rates, low incomes, and the government's inability to ensure the availability of basic needs at reasonable prices, survival becomes an uphill task for a common man.

At the governance level, the deeper involvement at a micro level becomes more evident when the President of Pakistan is being asked to introduce new tax law through a Presidential Order/Ordinance in contravention with the established norms of parliamentary democracy

---

[1] Charles Gore, "The Rise and Fall of the Washington Consensus as Paradigm for Developing Countries" (2000) 28:5 World Development at 789.

and due process.[3] It might be argued that there is no correlation between the price hike in commodity prices and the IMF condition to enact new tax law through the Presidential Order, but both are directly relevant as they are due to the IMF conditions. The prices of commodities such as patrol, natural gas, sugar, and flour go higher when the government is being asked to remove subsidies on these products. This prompts questions about the factors leading to the gradual increase in the power of the IFIs, the evolution of the existing economic underpinnings of the policies prescribed by the IFIs, and their impact on the borrowing countries.

3.1.1 The International Monetary Fund

It was in July 1944, at Bretton Woods, New Hampshire, that the International Monetary Fund (IMF) and the World Bank (WB) were created at the UN financial and monetary fund conference. The IMF came into existence to address twin objectives: regulating exchange rates among the currencies of member countries, and giving loans to member countries during crisis to address balance of payment problems.[4] The first change in the IMF's mandate was in 1971 when due to inflation, financial burdens from the Vietnam War, and other international circumstances, the United States decided to depart from the fixed gold and American dollar correlation. Exchange rates were no longer fixed, which had been one of the IMF's goals at the time of its creation. Subsequently, there have been significant changes in the IMF's objectives at ideological and policy level affecting different groups of countries.

In an ideological shift contrary to the state-regulated economies, the IMF identified markets as the new recipe to address the underdevelopment of poor borrowing countries. Former World Bank Chief Economist Joseph Stiglitz notes that originally, "the IMF was founded on the belief that the markets did not work well—that they could result in massive

---

[2] Norman Long, "Contesting Policy ideas from Below" in Morten Boas & Desmond McNeill, eds., *Global Institutions and Development: Framing the World?* (London & New York: Routledge Taylor & Francis, 2004) at 24.

[3] Mubarak Zeb Khan, "New Taxes through ordinance may face tough opposition" *The Dawn* (March 05/2011), accessed 08/04/2011 online: <http://www.dawn.com/2011/03/05/new-taxes-through-ordinance-may-face-tough-opposition.html>.

[4] Richard Peet, *Unholy Trinity: IMF, World Bank and World Trade Organization* (London & New York: Zed Books, 2003) at 56. For details visit <http://www.imf.org/external/pubs/ft/exrp/what.htm>.

unemployment and might fail to make needed funds available to countries."[5] But in the 1970s and 1980s, "the Keynesian orientation of the IMF, which emphasized market failures and the role for government in job creation, was replaced by the free market mantra of the 1980s, part of a new 'Washington Consensus'—a consensus between the IMF, the World Bank and the U.S. Treasury about the right policies for developing countries—that signalled a radically different approach to economic development and stabilization." [6]

Since its creation, the IMF has been presiding over various financial crises and has emerged more powerful each time. This increase in power was accompanied by a gradual and significant shift in the mandate of the Fund during the 1970s and 1980s. The second significant change emerged in 1978, when the Fund ceased being a mechanism that allowed developed nations to cooperate in their payment processes and exchange rates, and in effect became a vehicle for developed nations to exert control over the economic policies of Third World countries.[7]

The 1980s saw the IMF shift its focus to providing loans to developing nations, a process which by now included efforts to change these nations' policies in order to enhance economic development. Since 1982, none of the OECD nations have drawn loans from the IMF.[8] Subsequently, the power of the IMF and the World Bank (WB) grew as the world faced a number of economic crises, including the 1970s oil crisis, the 1980s debt crisis, the late 1990s East Asian crisis, and the newest Latin American debt crises. A large number of developing and poor countries were involved in most of these crises and relied heavily on monetary support from the IMF to overcome them.[9] The reliance on the IMF and the inability to pay back the loans, coupled with internal governance and institutional distortions to address the crisis, enabled the IMF to assume greater influence in structuring the

---

[5] Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton, 2002) at 12.

[6] *Ibid.* at 15.

[7] *Ibid.* at 71.

[8] International Monetary Fund, accessed 10/08/ 2008 online: <http://www.sourcewatch.org/index.php?title =International_Monetary_Fund>.

[9] For details read James M.Boughton "The IMF and the Force of History: Ten Events and Ten Ideas That Have Shaped the Institution" IMF Working Paper WP/04/75, Policy Development and Review Department (May 2004).

policymaking mechanisms of these countries. This control ensured the deep involvement of the IMF in micromanaging the borrowing countries.[10] The IMF is now involved in not only macroeconomic policies but also the daily life of a common man in the developing and poor countries, dealing with issues like justice, good governance, legislation, and poverty reduction programs.[11]

The expansion of the IMF mandate demanded an amendment in the original articles of agreement to grant legal sanction to the IMF for its involvement to such an extent. Interestingly, there was no provision for the attachment of conditions in the original articles of agreement.[12] This occurred in 1949 when the United States, using its powerful position in the IMF, demanded that the granting of funds be put under close scrutiny.[13] This principle of conditionality was implicitly observed in the policy-based lending of the IMF.[14] On 20th September 1968, the IMF amended the articles of agreement and introduced explicit language regarding conditionality in the articles of agreement.[15]

The IMF's deeper involvement in developing and poor borrowing countries has been mandated through Art. IV, Section 3 of the Articles of Agreement,[16] which empowers the IMF to monitor the progress of various programs in borrowing countries. Art. IV mandates the IMF to attach conditions with loans, grants, or any monetary aid under any of its programs. The nature and number of the conditions attached with monetary assistance under any IMF program with respect to poor and developing borrowing countries has increased,

---

[10] Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003) at 96.

[11] *Ibid*.

[12] Aerial Buira, *An Analysis of IMF* Conditionality (Feb 13-14, 2003) accessed 26/12/2008 online: <http://www.g24.org/TGM/buiratgm.pdf >.

[13] R. Rajesh Babu, *IMF Conditionality: A Perspective*, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=885847>.

[14] Scott R. Sidell, "Brief History of Conditionality" in Lawrence J. McQuillan & Peter C. Montgomery, eds., *The International Monetary Fund: Financial Medic to the World?: A Primer on Mission, Operations and Public Policy Issues* (Stanford: Hoover Institution Press/Stanford University, 1999) at 66.

[15] *Ibid*.

[16] Article IV, Section 3 IMF Articles of Agreement, accessed 11/10/2010 online: <http://www.imf.org/external/pubs/ft/aa/aa.pdf>.

shifted, and varied over time.[17] The key factors in the changing nature of these conditions are the ideological shift of the IMF mandate, amendment of Art. IV of the original articles of agreement, and the IMF's response to the financial crises involving poor and developing countries, which resulted in the deeper involvement of the IMF in activities not falling within the original mandate.

The IMF initiated programs such as the Structural Adjustment Facility (SAF) and the Extended Structural Adjustment Facility (ESAF). The underlying aim of these programs was to reshape the structural distortions in a country to bring it in consonance with neoliberal ideas and link the provision of assistance to these structural reforms.[18] As a result, neoliberal ideas like privatization[19], deregulation, financial and trade liberalization[20], and free markets were attached as conditions with various IMF programs.[21]

Trade liberalization has been a consistent feature of IMF-supported programs over the last twenty years.[22] It both depends upon and contributes to a tested, reliable, and consistent macroeconomic policy framework.[23] Strong macroeconomic framework requires stability, an appropriate level of the real exchange rate, and a strong domestic tax system (for example,

---

[17] Lawrence J. McQuillan & Peter C. Montgomery, eds., *The International Monetary Fund: Financial Medic to the World?: A Primer on Mission, Operations and Public Policy Issues* (Stanford: Hoover Institution Press/Stanford University, 1999) at 63.

[18] *Ibid*.

[19] The term privatization may cover a number of different practices: a) transfers of public assets to private ownership, through sale or lease of public land, infrastructure and enterprises; b) public financing of private services, for example through contracting out governmental services; or c) the cessation of public programs and disengagement of government from specific kinds of responsibilities that may lead to a shift by consumers toward privately produced and purchased substitutes. See Benedicte Bull, Alf Morten Jerve, & Erlend Sigvaldsen, *The World Bank and the IMF's Use of Conditionality to Encourage Privatization and Liberalization: Current Issues and Practices* (Report prepared for the Norwegian Ministry of Foreign Affairs as a background for the Oslo Conditionality Conference, November 2006), online: <http://www.regjeringen.no/upload/kilde/ud/rap/2006/0164/ddd/pdfv/300495-7final_conditionality_report.pdf>.

[20] Liberalization is a broader concept than privatization. Liberalization in areas of economic policy may include: i) trade liberalization: the lifting of tariff and non-tariff barriers against foreign trade; (ii) price liberalization: the reduction/removal of regulations on prices and reduction/removal of subsidies; and (iii) the lifting of monopolies opening for private sector participation in production of goods and services. See Benedicte Bull, Alf Morten Jerve, & Erlend Sigvaldsen, *supra* note 19.

[21] *Ibid.*

[22] IMF, *Trade Policy Conditionality in Fund Supported Programs* (2001), accessed 12/28/2008 online: <http://www.imf.org/external/np/pdr/cond/2001/eng/trade/index.htm#I>.

[23] *Ibid*.

diversifying the tax base through domestic tax reform, including introducing broad-based domestic consumption taxes) for the successful implementation of free market measures.[24] In order to achieve these objectives, the IMF employed the Extended Fund Facility (EFF) and the Poverty Reduction Growth Facility (PRGF) as tools to implant structural reforms encompassing liberalization of trade, exchange regimes, and complementary structural measures that were aimed to eradicate all external and domestic constraints on growth for the achievement of a viable external position.[25] The undue focus of the IMF and the WB on liberalization and trade as an end has put the poverty and development of borrowing countries in the blind spot.

The conditionality today has become an instrument in the hands of the developed countries to perpetuate their economic dominance over the borrowing countries.[26] So, the real purpose is supplanted by the purpose of the developed countries. The IMF's unbridled zeal to ensure free market economies gradually expanded its involvement into structural issues, such as privatization, labour markets, pension reforms, and deregulation, and into broader, more complex and politicized areas of development strategies, which has tilted the balance of power in favour of the developed countries.[27]

3.1.2 The World Bank

The World Bank (WB) was originally called the International Bank for Reconstruction and Development (IBRD). Like the IMF, the WB has had radical changes in its mandate, focus, and policies. Its assistance and the nature of the conditions attached to it also evolved over time. Since its inception, it has expanded into a group of five closely associated development

---

[24] *Ibid*.

[25] *Ibid.* As regards the sequencing of the trade liberalization, replacing distortionary quantitative restrictions with price-based measures permits the transmission of changes in international prices and exchange rates to the domestic economy; this also strengthens revenue performance by shifting rents from producers and importers to the budget. The next stage, involving the simplification of the tariff structure, the elimination of the exemptions, and the reduction of highest tariffs, is also normally revenue enhancing. Early action to develop and strengthen the domestic tax system is required to support the final stage of moving to low, relatively uniform tariffs, which improves the overall efficiency and competitiveness of the economy and reduces the dependence of the budget on trade taxes. For details see the IMF paper on Trade Policy Conditionality in Fund Supported Programs, accessed online: <http://www.imf.org/external/np/pdr/cond/2001/eng/trade/index.htm#I>.

[26] Aerial Buira, *An Analysis of IMF Conditionality* (year), accessed 26/12/2008 online: <http://ksghome.harvard.edu/~drodrik/g24buira.pdf>.

[27] *Supra* note 5 at 42.

institutions: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID).

The WB was established to focus on the reconstruction of war-torn countries after World War II, and initially focused on the reconstruction of developed countries. It made its first loan of $250 million dollars to France in 1947 for post-war reconstruction, and then to other developed countries like Japan and Australia.[28] From January 1949 until April 1961, the WB lent France, Japan, and Australia $1.7 billion, or one-third of a total $5.1 billion.[29] The first major shift in the WB's lending took place when the United States' Marshall Plan took over responsibility for Europe's reconstruction, which resulted in a shift in the WB's lending focus to newly independent countries. The number of newly emerging countries increased during the 1960s and 1970s as they gained independence from the colonial powers, which were the same countries that created and laid down the foundations of the IFIs. The WB's

---

[28] World Bank History online, accessed 08/03/2008: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTARCHIVES/0,,contentMDK:20053333~menuPK:63762~pagePK:36726~piPK:36092~theSitePK:29506,00.html>. The purposes of the World Bank, as stated in Article 1 of the original (Bretton Woods) Articles of Agreement, are:

(i)To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and encouragement of the development of productive facilities and resources in less developed countries.

(ii)To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv)To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect to international investment on business conditions in the territories of members and in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

[29] Sandra Blanco, *The 1960s and 1970s: The World Bank attacks Poverty; Developing Countries Attack the IMF*, online: <http://www.uiowa.edu/ifdebook/ebook2/contents/part1-IV.shtml>.

engagement with the newly developing countries soon after their independence was important due to the Cold War.

The WB, conscious of growing frustration and rebellion of the poor in the newly independent countries, designed specific programs of development for these countries in order to earn their loyalty at the height of the Cold War. The security aspect of the development affected the WB lending policies at two levels: politically, the WB directed its lending from projects to program lending, which resulted in the establishment of the International Development Association (IDA) in 1961. Internally, the Cold War affected the WB's lending policy in its sectoral allocation, even though the broader focus was on the development of economic infrastructure in newly independent countries.

For instance, most of the newly independent countries were used as a source of raw materials and as markets for industrial and manufactured goods, and therefore lacked the basic economic structure and industrial base essential for effective economic development.[30] The economies of these countries had to be built from scratch. In order to build the basic edifice for economic development, the WB initially engaged in project lending, aimed at enhancing the nations' abilities to sustain economic development through generation of income from the projects.[31] As a result, the WB started to focus on building infrastructure, industry, and agriculture.

Infrastructure development was fundamental for the development of industrial and manufacturing sectors. Industry cannot run without electricity, and goods cannot be transported without roads. It was not possible for local and foreign investors to operate in such an environment. Therefore, the WB focused on creating environments that could facilitate economic growth. It loaned money for infrastructure projects that could earn interest and ensure repayment of principal amounts. In the 1960s and 1970s, when the Cold War was at its height and winning the hearts of the poor in the developing and newly independent countries was at the heart of the counter-strategy against communism, the WB shifted its focus from development to poverty reduction. This focus enabled the WB to

---

[30] *Ibid.*

[31] *Ibid*.

engage itself more deeply in the affairs of national governments in the newly independent countries, most of which were poor and struggling with their nation building efforts.

The engagement of the WB in the area of poverty reduction would have negated its articles of agreement. To avoid the conflicting objectives in its mandate the WB established a partner institute called the International Development Association (IDA), specifically focusing on development, which enabled the WB to expand its activities into areas not within its original mandate. The WB ultimately became an international institution, working to promote development through poverty reduction around the world.[32] Internally, under the leadership of Robert McNamara, the WB became a leading international organization working for development and poverty reduction.[33] McNamara drastically increased the WB's lending to the extent that in 1981, when he left the WB, its lending had increased tenfold from almost $900 million to $12 billion.[34] It was not only in terms of increased lending that McNamara's efforts made a vital institution in the fight against poverty, but also in terms of its ideological reorientation. McNamara highlighted the efficacy of free markets, but also insisted on the regulation of markets by the government.

The WB's increased lending to developing and poor countries did not bear the desired outcomes, which resulted in a growing dissatisfaction with its lending practices.[35] The failure of the loans to developing countries was mainly attributed to their structural problems. As a result, the WB developed its own "structural adjustment" program, and future lending was made conditional on specific policy reforms within borrowing countries. It was at this time that the mood in the WB inclined towards the markets as the appropriate prescription for the rampant poverty in borrowing countries.

The policy shift was a result of the WB's dissatisfaction with development lending, the change of leadership in the WB, and the change of leadership in two major countries: the

---

[32] Paul Ward, "Is the World Bank good for the poor? Does it fulfill its original mission?" online: <alises.mona.uwi.edu/sa64a/PaulWard_Final%20Assignment.pdf>.

[33] "IMF and World Bank", online: <http://www.utexas.edu/lbj/faculty/gavin/articles/imf_world_bank.pdf> at 38.

[34] *Ibid*.

[35] *Supra* note 32, online: <http://salises.uwimona.edu.jm:1104/sa64a/PaulWard_Final%20Assignment.pdf>.

United Kingdom (U.K.) and the United States (U.S.). These factors went hand-in-hand to direct an intellectual shift towards the market. In the 1980s, Margaret Thatcher and Ronald Reagan preached free market ideology in the U.K. and U.S., respectively. In addition, the change of leadership in the WB in 1981 set the stage for a drastic change in its development strategy. William Chenery became the new President and Ann Krueger the Chief Economist of the WB. Chenery was focused on the factors leading to the market failures in developing countries, and Krueger considered government the problem. In 1987, the WB published a report that reflected the future trends of the WB's policy: it criticized government intervention in promoting development and highlighted the vitality of the markets.[36]

The sudden shift towards the market was based on the argument that the major cause of underdevelopment in the borrowing countries was government interference in the country's economy. Government interference creates price distortions leading to market and growth failures. The alternative to state interference was to create and strengthen institutions supporting the free market. The WB intended to support such policy reforms through its Structural Adjustment Program (SAP), which would support market reforms in borrowing countries.[37] The SAP incorporated markets as the panacea for all economic ills. The implicit

---

[36] World Bank, *World Development Report* (1987), online: World Bank <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1987/06/01/000178830_98101911073518/Rendered/PDF/multi0page.pdf> at 72. The report said, "Analyses of government intervention in developing countries usually concentrate on resource allocation and efficiency in the production of individual products. But extensive intervention also adds to the cost of doing business. This argument starts from the observation that the costs of doing business in many developing countries are generally high—because of regulation and bureaucratic inefficiency. The pattern of intervention which creates these high costs of doing business has its origin in a policy-making capacity that is often weak and fragmented. Intervention sometimes allows two prices to coexist for the same product (because, for instance, one firm enjoys important duty concessions on an input that another does not). Alternatively intervention creates a barrier to entry (for example when an investment license allows one firm to invest where is competitors cannot). These interventions have in turn two consequences. First, they encourage economic dualism—a formal and informal sector. Second, they create incentives for arbitrage—the practice of buying low in one market and selling high in another". On the role of the government the report further says, "In the debate on the role of the government it has perhaps been too easy to assume that an ideal policymaking system prevails: namely, those laws are clear, enforcement is effective, and disputes are smoothly resolved. This ideal is never fully attained, any more than markets are ever perfectly competitive".

[37] Joel M. Ngugi, "The World Bank And The Ideology of Reform And Development In International Economic Development Discourse" (bepress legal series, Paper 1377, 2006), accessed 12/25/2008 online: <http://law.bepress.com/cgi/viewcontent.cgi?article=6317&context=expresso> at 24. Hayek's name in this mode of justification conveys the sense and logic popularized by Hayek that the regulation "needed to ensure the proper functioning of markets…. Should be agreed internationally and be enforceable through international law, since national legislation invariably leads to protection and trade barriers." It is argued that markets have the inherent capability to allocate the resources efficiently and promote growth. By use of the mathematically proven rules of general equilibrium, the Walrasian identity of the market, and the ability of open and

logic embedded in SAP was the exportation of the market as a socially neutral institution to borrowing or transitioning economies, strengthening it, and then asking the borrowing countries to pursue free exchange in goods and services that would induce the markets to perform wonders for them.[38] It was at this juncture that the mandate/mission and the methodology of the IMF and WB—strictly speaking distinct institutions—coincided and intertwined. Resultantly, the IMF stabilization agenda has been supplemented by a joint IMF-WB structural adjustment.[39]

With the convergence of ideological objectives came the division of power between the IMF and WB, which secured the dominant position for the IMF. The IMF was supposed to focus on macroeconomic issues: the government's budget deficit, monetary policy, inflation, and borrowing from abroad. The WB was expected to deal with issues at a micro level: government expenses, the country's financial institutions, labour markets, trade policies etc.[40] The IMF assumed the elder brother role and extended under the premise that any structural issue can impact economic development as a whole, therefore it is the ultimate authority on any economic or structural decision. This assumption put the IMF in the driving seat on global economic policymaking and subjected the WB's lending under SAP to the approval and conditions imposed by the IMF.[41] Consequently, most of the developing and poor countries were locked in a relationship with the IMF and WB because they were in financial and political crisis most of the time, which made them dependent on the IMF. The IMF has consequently become a permanent player in the economic strategy of poor developing countries. Notwithstanding the international protest against the conditions attached with the IMF and WB grants and aid, the number of conditions has increased.

---

competitive economy to operate at a Pareto optimum, it is often theoretically shown that these economies could automatically build stable markets which would then allocate resources efficiently and put the economy at the operational path on the utilities possibilities frontier.

[38] Joel M. Ngugi, *supra* note 37.

[39] *Supra* note 32 online: <http://salises.uwimona.edu.jm:1104/sa64a/PaulWard_Final%20Assignment.pdf>.

[40] *Supra* note 5 at 14.

[41] *Ibid*.; IMF, *Trade Policy Conditionality in Fund Supported Programs* (2001), accessed 12/28/2008 online: <http://www.imf.org/external/np/pdr/cond/2001/eng/trade/index.htm#I>.

Even though the IFIs have issued new guidelines for the conditions attached to their loans, grants, and aid to ensure ownership of those policies, the concept of ownership still remains controversial. Both the IMF and the WB have failed to ensure that their policy conditions are truly country-owned. As a symbol of ownership, both institutions look at whether policies are already contained within a national poverty reduction strategy. However, there are serious questions as to whether national poverty strategies are adequate proof of country ownership. While development of national poverty strategies has resulted in the opening of space for country policymaking, the participation of civil society and parliamentarians is still often extremely weak and sporadic. In addition, these strategies have been very broad in their framework, making it easy for the WB and the IMF to claim alignment.[42] In a de jure sense the countries are sovereign and have the power to frame their own policies, but de facto they are under the influence of the WB and the IMF. A World Bank conditionality survey showed that 50 percent of governments surveyed felt that "the Bank introduced elements that were not part of the country's program". In addition, "37 per cent of the respondents said that negotiations with the Bank significantly modified their original policy program".[43] Even in the absence of direct influence, the strategies impose a sophisticated and high degree of voluntary restraint and self-censorship on the weak borrowing countries. In actuality the loan/aid/grant packages are essentially business plans for donor funding, meaning governments have an incentive to tell donors what they are likely to want to hear.[44]

A recent survey by United Nations Conference on Trade and Development (UNCTAD), Oxfam, Action Aid, and Eurodad (European Network on Debt and Development) supports the fact that a number of the conditions attached to IMF and WB loans have increased.[45] The Eurodad research reveals that countries still face a high number of structural conditions. The data showed that countries face on average eleven structural conditions per PRGF review. Five out of twenty of the countries Eurodad assessed faced over eleven structural conditions

---

[42] Oxfam, *Kicking the Habit: How the WB and the IMF are still Addicted to Attaching Economic Policy Conditions to Aid* **(**Oxfam Briefing Paper No. 96, November 2006), accessed 31/12/2008 online: <http://www.oxfam.org/sites/www.oxfam.org/files/Kicking the Habit.pdf> at 13.

[43] *Ibid*.

[44] *Ibid.*

per PRGF review. Vietnam had some seventeen structural conditions attached to a 2002 IMF development finance loan.

IMF conditions similarly focus on privatization and liberalization. According to the Eurodad research, some 43 percent of all the IMF structural conditions focus on economic policy reform. Of the 20 poor countries Eurodad assessed, 12 faced privatization-related conditions as part of their recent development finance with the IMF. On average, one fifth of all structural conditions per PRGF review impose some form of privatization. Vietnam faced the highest number of privatization structural conditions of all twenty countries assessed. Over half of its structural conditions (9 out of 17) within its IMF development finance in 2002 imposed privatization.

The following facts from the Oxfam report explain the current state of the conditionalities:

> However, despite these reforms, seven years on from the announcement of a new poverty reduction approach, the WB and the IMF have failed sufficiently to change the way they do business. If 'policy benchmarks' are included World Bank conditions have increased not decreased since 2000. Both institutions still have an unacceptable number of economic policy conditions attached to their aid. Ownership of conditionalities is inadequate. And too often analysis of the social impact of policies is too thin or skipped altogether.[46]

The ownership of any conditionality demands its consonance with the national development plans developed by the country itself. Furthermore, the national ownership of any IFI conditionality should be subject to open public debate involving input from parliament and including civil society groups and other relevant actors in policymaking. The imposition of conditions without meeting these requirements would contradict the very meaning of the term ownership.[47]

---

[45] UN Commission on Trade and Development. *The Least Developed Countries 2000 Report,* UNCTAD/LDC/2000 101-164, online: <http://unctad.org/en/docs/ldc2000_en.pdf>.

[46] *Ibid.* at 12.

The Oxfam report further says:

> World Bank shows a dramatic decline in policy conditions from 32 per loan on average in 1999 to 11 per loan in 2006. However, this figure is deceptive, as it does not account for a massive rise in the number of policy benchmarks attached to World Bank aid since 2000. According to World Bank, policy benchmarks rose from eight per loan in 2001 to 27 per loan in 2006, an increase of over 300 percent. The World Bank does not categorize policy benchmarks as full conditions. This is because if recipient countries fail to implement policy benchmarks aid cannot be stopped or delayed. The World Bank only counts 'prior actions', 'tranche release', and 'triggers' as full conditions, as these have the potential to stop aid if recipient countries do not implement them. In a survey undertaken by World Bank in 2005, 75 percent thought that their country had to comply with prior action, trigger and policy benchmarks to access funding.[48]

If policy benchmarks are taken into account, then WB policy conditions have risen from 20 per loan in 2000 to 38 per loan in 2006. In the recent WB conditionality report, just under a third of loans (32 per cent or 6 out of the 19 loans surveyed) contained prior actions or trigger conditions on privatization, price liberalization or trade reform.[49] A review of 40 PRGF-supported programs was undertaken by the Norwegian Ministry of Foreign Affairs to determine if privatization and liberalization were still important features of the program.[50] The findings of the report show:

> That liberalization and privatization are indeed still an important element in the PRGFs. In 26 of 40 cases there were conditions that demanded either liberalization or privatization. Liberalization was divided into two categories: trade liberalization and price liberalization; the latter category including removal of subsidies. Trade liberalization figured as conditionality in only three cases, whereas there were 9 cases of conditionalities demanding price liberalization.[51]

---

[47] World Bank Operations Policy and Country Services, *Review of World Bank Conditionality* (September 2005), accessed 29/12/2008 online: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf> at 371.

[48] *Supra* note 41 at 12-13.

[49] World Bank Operations Policy and Country Services, *Good Practices Principles For the Application of Conditionality: A Progress Report* (November 6, 2006) at 5, accessed 1/05/2011 online: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/Conditionalitypaperfinal.pdf>.

[50] Benedicte Bull, Alf Morten Jerve, & Erlend Sigvaldsen, *supra* note 19.

[51] *Ibid.* at 22.

Most of the conditions focus on economic and trade sectors. According to the research conducted by Eurodad,

> 20 percent of all World Bank conditions for poor countries are economic policy conditions. And over half of these (11%) impose some sort of privatization and trade liberalization. 15 of the 20 poor countries Eurodad assessed have privatization-related conditions as part of their World Bank lending. Our research also found that the privatization-related conditions is rising not falling. Conditions contained within current and previous across the 20 countries Eurodad assessed have risen on average from 4 per loan to 5 per loan between 2002 and 2005.[52]

These data from the IMF, WB, and other organizations support the contention that conditions from any of these institutions focus only on their real long-term goals, i.e. promotion of neoliberal ideas. Notwithstanding the fact that poverty and development of poor countries and people are now the part of their mandate, nowhere do the conditions or policies of these institutions feature the vision and utilization of resources to reduce poverty and promote development. In reality, during the implementation phase poverty reduction becomes subservient to the neoliberal policies of the Washington Consensus, which prominently feature fiscal discipline, reordering public expenditure priorities, tax reform, liberalization of interest rate, competitive exchange rate, liberalization of inward foreign direct investment, privatization, deregulation, liberalization, and free trade.[53]

The Washington Consensus has shaped the international development agenda. The IMF and WB adopted a "one-size-fits-all" approach in their policy prescriptions for the borrowing countries. Apparently, these conditions were aimed at reducing government interference by facilitating an environment for the promotion of free trade and foreign investment in borrowing countries. However, critical analysis of the conditions attached to the loans shows

[52] Eurodad, *The IMF and World Bank Conditionality: A Development Injustice* (Report, June 2006), accessed 1/2/2009 online: <http://www.globalpolicy.org/socecon/bwi-wto/imf/2006/06eurodadimfwb.pdf> at 11-12.

[53] John Williamson, "A Short History of the Washington Consensus" (2009) 15 Law and Business Review of Americas at 10, accessed 12/04/2011 online: <http://heinonline.org>; Joseph J. Norton, "Introduction: The Washington Consensus Redefined" (2009) 15 Law and Business Review of Americas at 7-22, accessed 12/04/2011 online: <http://heinonline.org>; Robin Broad & John Cavanagh, "The Death of Washington Consensus?" (Fall 1999) 16:3 World Policy Journal at 79-88, accessed 12/04/2011 online:<http://www.jstor.org/stable/40209648>; Charles Gore, "The Rise and Fall of Washington Consensus as a Paradigm for Developing Countries (2000) 28:5 World Development Report at 789-804.

that the Washington Consensus also ensured the IFI's deeper involvement in the borrowing countries. The viability of the Washington Consensus policies came under immense scrutiny as a result of their impact in triggering and worsening the financial crisis in East Asia, Russia, and Latin America. The next section focuses on the East Asian financial crisis, as the region was showcased as a successful model of Washington Consensus.

3.2 The East Asian Financial Crisis

The 1997 East Asian financial crisis started in Thailand when the country slumped into a recession, followed by Indonesia, Korea, and Malaysia in 1998, despite their strong economic growth based on major capital inflows through short-term loans from banks or portfolio investments.[54] International political leaders and bankers hailed the economic growth resulting from such policies as a new economic world order.[55] Both the U.S. Treasury and the IMF contended that "full capital account liberalization would help the region grow even faster" and marketed the East Asian economic strides as the successful model of the Washington Consensus.[56] At the peak of the boom the inherent potential of these policies to trigger economic crises in these countries was ignored, even though apprehensions regarding their potential to trigger financial crisis were expressed as early as October 1997, when Jomo Kwame Sundaram pointed out that at the very beginning of the crisis the IMF was

---

[54] Jomo Kwame Sundaram, "Obstacles to Implementing Lessons from the 1997-98 East Asian Crises", DESA Working Paper No. 66 ST/ESA/2008/DWP/66 (August 2008), accessed 17/12/2012 online: <http://www.un.org/esa/desa/papers/2008/wp66_2008.pdf>.

[55] *Supra* note 4 at 99.

[56] *Ibid.* at 99. On the policies of the IMF and the U.S. Treasury, the views of the former World Bank economist Joseph Stiglitz are pertinent. He stated: "As an academic, I was shocked that the IMF and the US Treasury would push this agenda with such force, in the face of virtual absence of theory and evidence suggesting that it was in the economic interests of either the developing countries or global economic stability—and in the presence of evidence to the contrary. Surely, one might have argued, there must be some basis for their position, beyond serving the naked self-interest of financial markets, which saw capital market liberalization as just another form of market access—more markets in which to make more money. Recognizing that East Asia had little need for additional capital, the advocates of capital market liberalization came up with an argument that even at the time I thought were unconvincing, but in retrospect looks particularly strange—that it would enhance the countries' economic stability! This was to be achieved by allowing greater diversification of sources of funding. It is hard to believe that these advocates had not seen the data that showed that capital flows were pro-cyclical".

advocating the expansion of precisely those policies which underlay the increasing frequency of the crisis.[57]

The IMF's emphasis on rapid financial and capital liberalization expedited East Asian progress towards financial crisis. The inappropriate internal policies of these countries further aggravated the financial crises.[58] These policies exposed the countries to the animal spirits of the developed countries' foreign investors. The impact of the above policies can be assessed by the impact on Thai bonds. Prior to the crisis, the bonds were seen as very safe investments, paying "only 0.85 percent higher interest than the safest bonds in the world"[59]; these bonds' risk premium soon shot upward.[60]

According to Montes (1998), the crisis in Asia stemmed from "the twin 'liberalizations' of domestic financial systems and opening of the capital account".[61] The twin liberalization of financial systems demanded the system to work in non-traditional ways, including the following:

i. Domestic financial institutions had greater flexibility in offering interest rates to secure funds domestically and in bidding for foreign funds.

ii. They became less reliant on lending to the government.

iii. Regulations such as credit allocation rules and ceilings were reduced.

iv. Strong but unregulated domestic competition meant that ascendance depended on expanding lending portfolios, which often came at the expense of prudence.[62]

---

[57] Jomo Kwame Sundaram, "Growth After the Asian Crisis: What Remains of the East Asian Model?" G-24 Discussion Paper Series-Paper, UNCTAD & Centre for International Development Harvard University (10 March 2001), accessed 12/28/2008 online: <http://www.unctad.org/en/docs/pogdsmdpbg24d10.en.pdf>.

[58] *Supra* note 4 at 89.

[59] *Supra* note 4 at 100; International Monetary Fund, accessed 10/08/ 2008 online: <http://www.sourcewatch.org/index.php?title=International_Monetary_Fund>.

[60] Jomo Kwame Sundaram, *supra* note 54.

[61] Jomo Kwame Sundaram, *supra* note 57.

[62] *Ibid*.

This new behaviour or mode of working made the financial system vulnerable to market sentiments and speculations. The underlying logic was that the East Asian countries should not cry over the failure when they structured the whole system on the basis of flawed policies, i.e. to liberalize the capital account and then complain when short-term portfolio investors suddenly withdrew, following their whims and fancies.[63] The regulatory control over the capital account discourages the rapid withdrawal of capital from an economy.[64] However, in the case of East Asian countries, the IMF policies had immensely reduced the regulatory powers of the government to jump in and solve the problem. The inability of the government to regulate capital flows highlighted the importance of government regulation.[65]

Despite the impact of the IMF policies on the economic crises on East Asian countries, the proponents of liberalization of capital markets still contended[66] that countries' growth was stunted because of inefficiencies introduced by controlling capital markets. The IFIs came under severe criticism when, instead of reviewing their prescribed policies for borrowing countries and analyzing the devastating impact on the lives of the poor people, they attributed the crises to the unwise policies, bad governance, and weak institutions in those countries.

---

63 *Ibid.* at 15.

64 *Ibid*.

65 *Ibid.* The IMF programs have had eight main declared goals: (i) prevent outright default on foreign obligations; (ii) limit the extent of currency depreciation; (iii) preserve a fiscal balance; (iv) limit the rise in obligation; (v) rebuild foreign exchange reserves; (vi) restructure and reform the banking sector; (vii) remove the monopolies and otherwise reform the domestic non-financial economy; (viii) preserve confidence and credit worthiness; and (viii) limit the decline of output. To achieve these objectives the programs have been based on six key policy components: (a) fiscal policy considerations; (b) bank closure; (c) enforcement of capital adequacy standards; (d) tight domestic credit; (e) debt repayment; and (f) non-financial structure changes. The three original programs failed to meet their objectives, and none of the programs lasted in its original form for more than a few weeks. New letters of content were signed with Thailand, Korea and Indonesia on 25 November 1997, 24 December 1997, and 15 January 1998, respectively. Currency depreciation stock market collapse continued long after the programs were signed, and there was no sign of an immediate restoration of confidence. Bank closures in Thailand and Indonesia added to the sense of financial panic, rather than stemming the outflow. Credit ratings collapsed in each country after the agreements were in place. The IMF has attributed this continuing decline mainly to unexpected contagion effects, political uncertainty, and poor implementation of the programs by the governments in the region. There is clearly some truth in these observations. Korea's collapse made matters worse in Indonesia and Thailand, Suharto's health and the elections in Korea created market jitters, and each government has stopped short of full implementation of the agreed programs. But there are several reasons to believe that the underlying design of the programs added to, rather than ameliorated the panic. For details read Steven Radelet & Jeffrey Sachs, "The Onset of East Asian Financial Crisis" (Harvard Institute for International Development, 30 March 1998), accessed 12/26/2008 online: <http://www.earth.columbia.edu/sitefiles/File/about/director/pubs/paper27.pdf>.

66 *Supra* note 13 at 101.

The IFIs prescribed the same policies through their conditions in Latin American countries and Russia, which culminated in the same results for these countries. The devastating impact of the Washington Consensus policies provoked protests in these countries, not only against their own governments, but also against the IFIs and the World Trade Organization (WTO). Lately, the world financial crises have seriously questioned the ideological, logical, and economic basis of the Washington Consensus.

The crisis in these countries and the recent world financial crisis have brought many complex issues into the limelight, and all of them are relevant and important to address the development conundrum of the borrowing countries. The most important issues, however, are the IFIs' real objectives; the IFIs' internal governance and decision-making structure; the role of the industrialized countries in the IFIs in terms of governance and decision making; the purpose and role of conditions attached to lending; the appropriateness of the prescribed policies; the utility of the Washington Consensus; the governance structure, state of law, and institutions in the borrowing country; and the role of policy, law, and institutions in the development of any country, especially the borrowing countries (most of which are either poor or are in a transitional stage). The IFIs have been addressing the growing criticism of conditionality in a variety of ways. In 2002, in order to address the criticism against the Washington Consensus, the IFIs introduced new conditionality guidelines[67] and further expanded the original list of prescribed policies to include good governance, focusing on corporate governance, anti-corruption, flexible labour markets, WTO agreements, financial codes and standards, prudent capital account opening, non-intermediate exchange rate

---

[67] IMF, *Guidelines on Conditionality Prepared by Legal and Policy Development and Review Departments (in consultation with other departments)*. Approved by Timothy F. Geithener and Francois Gianviti, 25 September 2002, accessed 1/3/2009 online: <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.pdf>; World Bank Operations Policy and Country Services, *Good Practice Principles For the Application of Conditionality*: *A Progress Report* (November 2006), accessed 1/3/2009 online: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/Conditionalitypaperfinal.pdf> at ii; James Boughton, "Who's in charge?" in Gustav Ranis, James Raymond Veerland, & Stephen Kosack, eds., *Globalization and Nation State: The Impact of the IMF and the World Bank* (London & New York: Routledge Taylor & Francis, 2006) at 20; James M. Boughton & Alex Mourmouras, "Is Policy Ownership an Operational Concept?" (IMF Working Paper Policy, Development and Review Department, April 2002), accessed 5/1/2009 online: <http://www.imf.org/external/pubs/ft/wp/2002/wp0272.pdf>.

regimes, independent central banks/inflation targeting, social safety nets, and targeting poverty reduction.[68]

In the beginning of the new millennium it was felt that the Washington Consensus had failed to deliver in terms of economic output, and there was a need to review the causes of its failure. As a result, there is now an emerging consensus that the development failure is due to weak institutional structure, especially that of government institutions in the poor countries.[69] The shift in thinking is evident from the emphasis laid down by U.S. President Barack Obama in a speech in 2011, in which he mentioned the importance of strong institutions four times. He said:

> In the 21st century, capable, reliable, and transparent institutions are the key to success—strong parliaments; honest police forces; independent judges—(applause); an independent press; a vibrant private sector; a civil society. (Applause.) Those are the things that give life to democracy, because it is what matters in people's everyday lives. [70]

In the same address the President said: "Africa doesn't need strongmen, it needs strong institutions".[71]

The importance of institutions embedded in the President's words can be seen in the actions of U.S. development agencies like U.S. Aid and the Millennium Challenge Corporation (MCC). These institutions have linked their funding for development projects to institutional reforms in the recipient countries. The focus of the IFIs on good governance and institutional reforms also features prominently in the conditionalities of and research conducted by the

[68] Dani Rodrik, "Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform" (December 2006) 44:4 Journal of Economic Literature at 978, online: <http://www.jstor.org/stable/i30032386>.

[69] Thomas Kelly, "Beyond the Washington Consensus and New Institutionalism: What is the Future of Law and Development?" (2010) 35:2 N.C.J. Int'l L. & Com. Reg. at 542-543, accessed 1/5/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/ncjint35&id=1&size=2&collection=journals&index=journals/ncjint>.

[70] "Remarks by the President of the United States to the Ghanaian Parliament" (The White House Office of the Press Secretary, 11 July 2011), accessed 1/05/2011 online: <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-the-Ghanaian-Parliament>.

[71] *Ibid*.

IFIs. Hence, institutional reform is a new mantra in the Law and Development and Law and Economics discourse.

The inclusion of the good governance reforms in the mandate of the IFIs and the policy package of the Washington Consensus further deepened the involvement of the IFIs in borrowing countries. There were no precise standards to determine or evaluate good governance, but some of the aspects included political stability, accountability, reduction of corruption, and rule of law.[72] Lately, the focus on good governance conditionality has shifted towards efficient institutions. This emphasis emerged from the recent research placing emphasis on the enforcement of contracts and the protection of property rights, resulting in low transaction costs that will encourage foreign investors to invest in the developing countries.[73]

3.3 New Mantra: The New Institutionalism

The roots of New Institutionalism can be traced back to the economic theories of free trade and comparative advantage, as propagated by Adam Smith and David Ricardo. The underlying assumption of these theories is that there is no need of government regulation; the invisible hand of supply and demand and the competitive pricing mechanism in the market will by themselves regulate the market. Hence, there was inherent lassitude towards the institutions in these theories and the orthodox trade theorists and economists developed a view that institutions are not an important variable for the promotion of international/foreign trade among nations.[74] The scholars of New Institutional Economics (NIE) have made a departure from the above assumption and emphasized the importance of institutions for both international and national trade.

---

[72] Ved P. Nanda "The "Good Governance" Concept Revisited" (2006) 603 Annals of the American Academy of Political and Social Science at 269, accessed 09/05/2011 online: <http://ann.sagepub.com/content/603/1/269>.

[73] Ronald H. Coase, "The Institutional Structure of Production" in Claude Menard & Mary M. Shirely eds., *Handbook of New Institutional Economics* (Heidelberg: Springer-Verlag, 2008) at 31-32; Douglas C. North, "Economic Performance Through Time" (June 1994) 84:3 American Economic Review at 359-360.

[74] Johan Adams & Anthony Scaperlanda, "Introduction: The Institutional Economics of the International Economy" in John Adams & Anthony Scaperlanda, eds., *The Institutional Economics of the International Economy* (Boston: Kluwer, 1996) at 4.

The important role international institutions play in promoting international trade can be verified by the fact that there is comparatively less uncertainty involved in trade at a national level due to the existence of national institutions. National laws are more stable, and thus provide considerable certainty for economic decision makers to predict the impact of national institutions on their trading activities.[75] In addition, domestic businesses are aware of the consequences in case of non-compliance: they can be held liable for non-fulfilment of their contractual obligations. This is not to imply that transactions at a national level are absolutely costless, but they are comparatively low cost. NIE scholars dismiss assumptions based on any trade model that assumes low transaction cost without creating institutions. The NIE contends that the existence of institutions lowers the transaction cost by providing a consistent, definite, and predictable framework for the regulation of business relations and disputes between contractual parties.[76] The existence of institutions also helps decision makers direct business activities for the purpose of social benefits. For example, in cases of weak or nonexistent institutions the stronger party tries to take unfair advantage of the institutional setup to establish their monopoly or power at the cost of weaker parties. This results in the assumption that free markets take care of themselves without any institutional structure, which is seriously flawed and undermines the very purpose of having free markets.

Renowned economist Ronald H. Coase underlined the importance of institutions. In the 1960s, through his two articles "The Nature of the Firm"[77] and "The Problem of Social Cost",[78] Coase brought another perspective to the debate on economic efficiency. He contended that the ardent followers of Adam Smith and David Ricardo had assumed the pricing mechanism as an inbuilt tool for market regulation and in doing so overlooked the

---

[75] Kofi Oteng Kufour, *The Institutional Transformation Of The Economic Community Of West African States* (Wiltshire: Antony Rowe, 2006) at 3, online: <http://www.amazon.ca/Institutional-Transformation-Economic-Community-African/dp/075464488X/ref=sr_1_fkmr1_1?ie=UTF8&qid=1304503468&sr=8-1-fkmr1>.

[76] John Adams, "Institutional Coordination, Transaction Costs and International Trade" in John Adams & Anthony Scaperlanda, eds., *The Institutional Economics of the International Economy* (Boston: Kluwer, 1996) at 71 and 79-81.

[77] Ronald H.Coase, "The Nature of the Firm" (November 1937) 4:16 Economica New Series at 386-405, accessed 4/5/2011 online: <http://www.jstor.org/stable/pdfplus/2626876.pdf>.

[78] Ronald H. Coase, "The Problem of the Social Cost" (October 1960) 3 J.L. & Econ. at 1-44, accessed 4/05/2011 online: <http://www.jstor.org/stable/pdfplus/724810.pdf>.

importance of the firm in promoting economic efficiency. Coase contended that the firm does play an important role in economic efficiency through its determination of economic costs.[79]

In “The Nature of the Firm”, Coase highlighted the importance of firms in imperfect markets. He contended that issues like ascertainment of prices, contractual obligations arising from the agreements on exchange of goods for meeting supply and demand over a prolonged period of time, and risks associated with forecasting and complications involved in drafting a contract covering all details demands the existence of firms. The firm plays an important role in reducing transaction costs while relying on the price mechanism. The existence of the firm facilitates a businessman/entrepreneur in his project by encompassing all essential activities associated with the project under a single umbrella. According to Coase, firms are more a governance structure that to a great extent minimizes if not completely eliminates the transaction costs for a businessman.[80]

In his second article “The Problem of Social Cost”, Coase shifts his focus to the resolution of disputes between parties. Coase employed disputes over resources as his case studies and contended that in an ideal world of transaction without any costs, the parties would negotiate and bargain on the most optimal utilization of resources. The consensus-based outcome of such negotiations rules out third party interference.[81] But at the same time, he acknowledges that the real world is not without costs, therefore we need institutions for conflict resolution between parties to allocate resources to parties that have the capacity to efficiently and productively use them. The crux of the Coase argument is that the efficiency of the legal system of any particular society or country is determined by the qualitative variant of its laws (i.e. clarity, simplicity, and strength) relating to the negotiation and enforcement of contracts and the protection of property rights flowing from such contracts.[82]

Based on Coase’s insight on the importance of institutions and their role in determining the transacting, American economist Douglas North underlined the important role played by

---

[79] *Supra* note 72 at 2-3; Thomas Kelly, *supra* note 69 at 543.

[80] *Supra* note 74 at 390-391; Thomas Kelly, *supra* note 69 at 543-544.

[81] *Supra* note 75 at 15-19, accessed 3/05/2011 online: <http://www.jstor.org/stable/724810>.

[82] Ronald H. Coase, *supra* note 73 at 37.

institutions in the regulation of economies. North broadly defines institutions as the humanly defined constraints that structure human interactions including both the legal (statute law, common law, regulations) and the non-legal/informal non-governmental, social, and less formal networks and norms (conventions, norms of behaviour, and self-imposed codes of conduct), and the enforcement characteristics of both.[83] North contends that it is the combination of both formal and informal institutions that sets up the "rules of the game" for the economy as well as the way the "game" is supposed to be played.[84] He further distinguishes institutions from organizations, which he defines as players of the game comprising mainly of political bodies (political parties, parliament, executive, local council and other regulatory bodies in the state); economic bodies (firms, trade unions, family farms, industry, cooperatives); and social bodies (colleges, universities, and vocational training centres).[85] The distinctive elements of both institutions and organizations strongly support five propositions about the key determinants of institutional change:

i. The interaction between organization and institution in the economic framework of scarcity leads to competition, which further leads to institutional change by forcing organizations to acquire new skills and knowledge.

ii. The acquisition of new knowledge and skills by individuals and their organizations results in the reconfiguration of the evolving perceptions about opportunities and choices. These new perceptions will affect incremental institutional change.

iii. The type of institutional framework determines the forms of skills and knowledge having the maximum pay-off. For instance, if the institutional structure gives the option of producing more benefits for piracy than other

---

[83] Douglas C North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990) at 3; Douglas C. North, *The New Institutional Economics and Development* (St Louis: Washington University, 1993) at 6, accessed 11/05/2011 online: <http://qed.econ.queensu.ca/pub/faculty/lloyd-ellis/econ835/readings/north.pdf>.

[84] *Ibid*.

[85] *Ibid*.

fruitful production, then the learning and acquisition of new skills and knowledge will be focused on how to become a better pirate.

iv. The other determinant of institutional change is player perception. Perception is the by-product of the players' mental design. A change in perception can be exogenous, i.e. the player might notice change in the other economy and might try to emulate the same profitable model, or it might be the outcome of learning by the entrepreneurs of the organizations.

v. Finally, "the economies of scope, complementarities, and network externalities of an institutional matrix make institutional change overwhelmingly incremental and path dependent".[86]

North, while expressing his inability to give the precise factors causing the underdevelopment of developing and transitioning countries, strongly suggests the importance of institutions. He defines institutions as the collection of formal rules, informal norms, and the enforcement mechanisms of both, and it is this combination that determines economic performance. In order to improve economic performance, the formal rules can be changed expeditiously while informal norms cannot. As a result, the transplantation of institutional and legal models and extension of formal rules from the developed countries like the United States to Latin America and other developing regions cannot produce the same result as were produced in the country of origin, as the informal norms and values are different.[87] Policies like privatization and deregulation cannot be a magic wand for the development ills of Latin America, Eastern Europe, and the other developing and transitioning economies of the world.

Secondly, the polity has a vital role in the creation and enforcement of the economic rules of the game in developing and poor countries, therefore the strengthening of the polity should be the touchstone of every development policy. Strong polities will create and enforce property rights efficiently.

---

[86] *Ibid*.

Three, it is the adaptive rather than the allocative efficiency that should be the guiding principle of any policy formulation focusing on development. Adaptive efficiency creates the much-desired flexibility in institutions to adjust themselves to changing circumstances and absorb shocks to the system without changing the fundamental nature of the institution and the polity. Such characteristics cannot be engrained in the institutional structure in a short period but rather evolve gradually over time.[88] Any attempt to simulate such characteristics in a short run might not produce the desired results. Hence it is the policies producing adaptive efficiency rather than allocative efficiency that have the potential to produce effective, innovative, equitable, and long-term solutions to remedy the development ailments of poor countries.[89] In order to be effective policy should be equitable, as inequitable policy might result in the precipitation of opposition to the most efficient policies. The most efficient policy needs to be most equitable as well.

The importance of good institutions and their positive impact lies at the heart of North's argument regarding the establishment of good and stable institutions. North and Richard have been key figures in pushing the vitality of strong and efficient institutions in the economic development of poor countries and at the heart of good governance conditions attached to IFI lending to the borrowing countries.[90] Ironically, the IFIs and other donor agencies, while

---

[87]*Ibid.* at 7. Also read Douglas C. North, *Institutions*, *Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).

[88] Douglas C. North, *The New Institutional Economics and Development, supra* note 83 at 8.

[89] *Ibid.* at 8.

[90] Shahid Javed Burki & Guillermo Perry, *Beyond the Washington Consensus: Institution Matters* (Washington DC: The World Bank, 1998), accessed 08/05/2011 online: <http://books.google.ca/books?id=R29j4aeQz98C&pg=PA159&lpg=PA159&dq=Shahid+Javed+Burki+Washington+Consensus+Institution+Matters&source=bl&ots=G0mxpSjU6E&sig=4ZsGkmOgDVrCyvEuntyhk1pSsu4&hl=en&ei=dHXHTZuNG5TCsAPp9fCfAQ&sa=X&oi=book_result&ct=result&resnum=7&ved=0CD8Q6AEwBg#v=onepage&q&f=false>; Carlos Santiso, "Good Governance and Aid Effectiveness: The World Bank and Conditionality (Fall 2001) 7:1 Georgetown Public Policy Review at 1-22, accessed 08/05/2011 online: <http://www.swisstph.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf>; Davesh Kapoor & Richard Webb, "Governance-related Conditionalities of the International Financial Institutions" G-24 Discussion Paper Series UNCTAD/GDS/MDPB/G-24/6 (August 2000), accessed 08/05/2011 online: <http://info.worldbank.org/etools/docs/library/156006/pillars/pdfs/bib/kapur.pdf>; Harold James, "From Grandmotherliness to Governance: The Evolution of IMF Conditionality" (December 1998) 35:4 Finance and Development, accessed 08/05/2011 online: <http://www.imf.org/external/pubs/ft/fandd/1998/12/james.htm>; Carol C. Adelman, "Foreign Aid: What Works and What Doesn't" (October 2008) No. 3 Development Policy Outlook 1, accessed 08/05/2011 online: <http://www.aei.org/docLib/20081027_23618DPONo3g.pdf>; David Dollar & Lant Pritchett, "Assessing Aid: What Works, What Doesn't, and Why" (November, 1998) World Bank Policy Research Report No. 18295, accessed 08/05/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/02/23/000094946_

stressing the importance of the institution, incorporate an oversimplified version of North's theory of institutions in their conditions, action plans, and project reports and ignore his detailed analysis of factors creating institutional change and improving economic performance. The oversimplified version of North's work postulates that good institutions, accompanied by good laws and efficient enforcement mechanisms that ensure the legal enforcement of contracts and protection of private property rights, contribute to a stronger and vibrant economy. As a result, strong institutions should replace bad/weak ones.[91] However, the constricted version of North's work featured in the development agencies' project proposals[92] overlooks his distinction between institutions and organizations, his emphasis on the incremental nature of institutional development, and the underlying social system, beliefs, history, norms and values in the society acting as determinants of institutional change and economic performance. North contends that the institutional matrix of any given society consists of individuals and organizations, the logical pattern of which is structured by the particular history of the society, the evolution of its norms, and the experiences and belief patterns of the individuals who make up the society.[93]

The emphasis on strong, stable, and efficient institutions for development is not a novel suggestion. In my view the success of any system (e.g. communism, capitalism, or socialism) and the development strategy in any country is dependent on the successful and efficient

---

99030406212262/Rendered/PDF/multi_page.pdf>; Anton Op de Beke, "IMF Activities to Promote Good Governance and Combat Corruption: An Overview" (7 June 2002) IMF Policy Development and Review Department, accessed 08/05/2011 online: <http://info.worldbank.org/etools/docs/library/207469/assessing/pdf/op_de_becke.pdf>; World Bank, "Reforming Public Institutions and Strengthening Governance: A World Bank Strategy" (November 2000) World Bank Public Sector Group Poverty Reduction and Economic Management Group (PREM) Network, *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy* (November 2000), accessed 08/05/2011 online: <http://www1.worldbank.org/publicsector/Reforming.pdf>; World Bank, *Building Institutions for the Markets* (World Development Report, 2002), accessed 09/05/2011 online: <http://wdronline.worldbank.org/worldbank/a/c.html/world_development_report_2002/abstract/WB.0-1952-1606-7.abstract>.

91 Thomas Kelly, *supra* note 69 at 545.

92 For details read U.S. Agency for International Development, Land & Business. *Formalization for Legal Empowerment of the Poor: From Concepts to Assessment* (March 2007), online: <http://pdf.usaid.gov/pdf_docs/PNADM500.pdf> at 2; Doug Johnson & Tristan Zajonc, "Can Foreign Aid Create an Incentive for Good Governance? Evidence from the Millennium Challenge Corporation" (April 11, 2006) Center for International Development, Harvard University Graduate Student Working Paper and Postdoctoral Fellow Working Paper No.11, accessed 13/05/2011 online: <http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/student-fellows/wp/011.pdf>.

93 *Supra* note 83 at 23-24.

working of its institutions. What is new is the centrality of institution building as the prominent feature of law and development, and of international development.[94] The incorporation of institution building into the objectives of the IFIs and other development and donor agencies makes it pertinent to analyze the objectives and governance structure of the IFIs, and the appropriateness of the policy conditions for institutional and economic development in borrowing countries.

It is pertinent to mention here that in the terms of North's framework the IFIs themselves are some of the most powerful organizations (interest groups) in the institutional architecture of most developing countries, including Pakistan. Having the degree of power described by North, IFIs have the ability to enforce reforms in borrowing countries. However, being such ardent advocates of these reforms, the IFIs should lead by example and introduce institutional and legal reforms and good governance in the IFIs themselves. For instance, voting power in the IFIs is mostly based on the economic strength of the member countries, and most of the industrialized countries are major shareholders in these organizations.[95] This results in control and decision making in the IFIs coming under tremendous influence from industrialized countries.

This governance and decision-making structure of the IFIs is a negation of the principles and good practices guidelines introduced by the IMF and the WB.[96] At its best, the decision-making structure is undemocratic, non-representative, and against the principles of good

---

[94] *Supra* note 69 at 541, accessed 10/05/2011 online: <http://heinonline.org>.

[95] M. Fratianni and J. Pattison, "Who is Running the IMF: Critical Shareholders of the Staff?" (January, 2004) at 22-23, accessed 10/05/2011 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=959611>.

[96] Joseph E. Stiglitz, "Democratizing the International Monetary Fund and The World Bank: Governance and Accountability (January, 2003) 16:1 Governance: An International Journal of Policy, Administration & Institutions at 132-35, accessed 10/10/2011 online: <http://policydialogue.org/files/publications/Democratizing_International_Monetary_Fund_Stiglitz.pdf>; Ngaire Woods, "Challenge of Good Governance For the IMF and World Bank Themselves" (2000) 28:5 World Development 823-841; Allan H. Meltzer, "Report of the International Financial Institutional Advisory Commission" (March 2000), accessed 10/10/2011 online: <http://www.house.gov/jec/imf/meltzer.pdf>; Ngaire Woods, "The United States and The International Financial Institutions: Power and Influence Within The World Bank and The IMF" in Rosemary Foot, S. Neil MacFarlane and Michael Mastundno eds., *US Hegemony and International Organizations* (Oxford: Oxford University Press, 2003), 92.

governance to promote positive institutional change in borrowing countries. In order to have a minimum democratic, representative, and transparent appearance, the IFIs should engage in more open, transparent, inclusive, and representative negotiations with governments of member countries. During these negotiations, the leader of the opposition in the Parliament, academics, representatives of the local and foreign NGOs, and members of the civil society should be permitted to participate.

In the framework of institutional economics North has emphasized the need for strong state/polity, whereas the policies of the IMF and WB have drastically reduced the role of the state in the economic development of borrowing countries. Any effort to erect a strong and stable institutional edifice in borrowing countries is destined to fail if it is based on weak or minimal state role/interference. The strengthening of the state as an institution is one of the essential requirements for the establishment of strong institutional structure in borrowing countries, as it is the state that creates and enforces the protection of property rights that are important to attract foreign investment to the country. As a result, instead of blindly following the mantra of getting the institutions right, a "one-size-fits-all" approach for the implementation of the new institutionalism and Washington Consensus policies should be avoided. The failure of the Washington Consensus can be an excellent handbook for future strategies to promote development through institution building in borrowing countries. This new approach should be "cut according to your size and need" in structuring an appropriate institutional model compatible with the local environment. Blindly following the institutional reforms, which mainly aim to transplant Anglo-American institutional models, might not be appropriate to trigger short-term, long-term, and sustainable institutional change.

The IFIs introduced new guidelines in 2002 in order to promote good governance and ensure the ownership of the conditions attached with their loans, aid, and grants. However, the nature of the conditions, their mode, and the fast pace of enforcement compromise the very principles of democracy, good governance, institution building, and stability.

During negotiations with the IFIs Pakistan has had to rely on the personal connections of the person serving as Minister of Finance or leading Pakistan's delegation.[97] In Pakistan it is an established practice that the person with foreign educational credentials who has close ties with people heading the IMF, the WB, or banks such as Citi Bank is usually given the portfolio of the Ministry of Finance.[98] In addition, the Minister of Finance, before sitting down at the negotiating table with the representatives of the IMF or WB and knowing the expectations of those representatives, prepares a list of reforms they feel will be readily approved by the IMF or WB. As a result, the reforms proposal apparently reflects the measures being taken by the Government of Pakistan, but in reality there is an implied understanding between the IFIs and the Government on compliance with the expectations of the IFIs. In these circumstances the principles of good governance, transparency, accountability, institution building, and reforms are compromised. Even though the decisions taken in these meetings affect the lives of millions in Pakistan, the Pakistani people cannot hold the IFIs accountable. The counter-argument can be made that the government representatives are democratically elected, and the democratically elected government rather than the IFIs should be held accountable for their decision to go to the IMF or WB.

It is an equally well established fact that the IFIs are not just financial institutions but also development institutions, and as such have dual responsibility—especially when they are in a

---

[97] Khaleeq Kiani, "IMF Talks Extended after Commitments" *The Daily Dawn*, (9 March 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/03/09/imf-talks-extended-after-commitments.html>. The IMF imposed conditions for the introduction of RGST (Reformed General Sales Taxes) in the country to efficiently document the economy and increase the share of taxes in the economy. The attachment of such a condition was a wise decision of the IMF but according to latest reports the Government of Pakistan succeeded in convincing the IMF to remove the condition, which was a huge success for the elite class of the country. See Khaleeq Kiani, "Accord on economic, fiscal measures reached with the IMF" *The Daily Dawn* (18 May 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/05/18/accord-on-economic-fiscal-measures-reached-with-imf.html>.

[98] Former Minister Finance Shaukat Tareen remained an employee of Citibank for 22 years. See *The Daily Dawn* (8 October 8th, 2008), online: <http://archives.dawn.com/2008/10/08/top10.htm>. Shaukat Tareen later on resigned to head the Silk Bank. See Khaleeq Kiani, *The Daily Dawn* (24 February 2010), online: <http://archives.dawn.com/archives/36364>. The current Finance Minister, Dr. Abdul Hafeez Shaikh, was educated at Boston University and worked at Harvard University and for the World Bank. Online: <http://hafeezshaikh.com/>, <http://pakistanherald.com/Profile/Abdul-Hafeez-Shaikh-735>. Dr. Salman Shah, an Advisor to the Finance Minister/Prime Minister Shaukat Aziz, holds a PhD in Finance and Economics from the Kelley School of Business at Indiana University, and has taught at the University of Michigan, the University of Toronto, Indiana University, and the Lahore School of Management Sciences. He has been an economic consultant to different Pakistani governments and to Shaukat Aziz, former Prime Minister and Finance Minister of Pakistan and former employee of Citi Bank.

position of power and influence while negotiating with countries like Pakistan, which have reduced negotiating power with the IFIs. Pakistan's reduced negotiating power can be gauged from the fact that unless the country gets a letter of approval from the IMF, the other lending institutions—the World Bank, the Asian Development Bank, and the Islamic Development Bank and countries—would decline financial support to the country, which sends a wrong signal to both foreign and local investors interested in investing in Pakistan.[99] As a result, borrowing countries face an unavoidable situation, i.e. to comply with the conditions of the IFIs, which are at odds with the IFIs' own new conditionality guidelines promoting good governance and institutional stability.

Here I will refer back to North's explanation of institutional change, that is to say that the reforms in formal institutional structure, rules and enforcement will not prove sustainable unless and until informal rules/structure, norms, values, and behaviour are properly understood and changed. The nature of the relationship between borrowing countries and the IFIs is a complex and multidimensional matter. There can be no easy answers for underdevelopment and its underlying factors. However, we have enough knowledge and information to face the reality that the time has come to address the deep-rooted causes of underdevelopment in poor countries. Addressing only the symptoms would keep us in the vicious cycle of poverty. The IFIs and national governments will not be able to materialize either the development of borrowing countries or promotion of trade in a real and substantial sense by placing priority trade, investment, liberalization, privatization, and deregulation without addressing the root causes of underdevelopment.

The alternative strategy should identify the priority areas, the details of the projects, the structure of partnership between key players, and the institutional structure required for the implementation of development projects. Instead of diverse development projects there should be a National Development Council, which should be part of the National Development Authority, for the formulation of well thought out development strategy that is reflective of the will and needs of the people, based on national consensus. The National Development Council would comprise representatives of the IMF, WB, and regional

---

[99] Staff Reporter, "Government may seek new IMF programme", *The Daily Dawn* (8 March 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/03/08/govt-may-seek-new-imf-programme.html>.

development banks, such as the Asian Development Bank (ADB); national, provincial, and local governments; NGOs; members of academia; well educated expatriate citizens; religious scholars; industrialists; landlords; and members of civil society. The most important function of the National Development Council should be the coordination of development policies, projects, and strategies in the country to supplement, redirect, and reinforce development activities through efficient utilization of available resources.

The strategy should then be implemented gradually and should be supervised by the national government, the IFIs, the regional development banks, donor organizations, and NGOs. The IFIs' conditions focusing on such policy postures will play an effective role in challenging the old order of corruption, nepotism, and misgovernment that has evolved over a period of time in the poor countries. However there is a need for such reforms not only in the borrowing countries but also in the governance structures of the IFIs and industrialized countries.

In this context, it is important to acknowledge the fact that we live in an age of economic and financial globalization which has enabled most of the corrupt political and military leadership in the poor and transitioning world, including Pakistan, to have most of their wealth in the industrialized countries. As the leadership of Pakistan has personal interests—their money, property and investments—in Western countries, the welfare of the Western developed countries is also in the interest of the leadership of Pakistan. The transfer of money by corrupt leaders in the developing countries to foreign banks is no longer a secret. The money received from IFIs and other donor agencies actually goes back into the foreign banks, but on paper it remains a loan to be paid with interest by the people of Pakistan. During their negotiations with the IFIs, the personal interests of the leaders and the government debt burden seriously compromise the capacity of the leaders to negotiate on behalf of the people of Pakistan. During the negotiations, rules are already settled between the IFI management and national governments. The meetings and negotiations are just a formality where the agreements are signed and directions are issued to the Government of Pakistan for compliance. The national representatives resist those demands from IFIs that adversely affect the interests of the rich in the country and submit to demands that negatively impact the poor.

The elected representatives of the Government of Pakistan are, in reality, the representatives of the IFIs. The laws of developed countries have a very important role to play in breaking this vicious cycle through changes in their own laws, which will ensure the promotion of good governance in developing countries. For instance, the anti-money laundering laws of developed countries have a very important role to play. While capital liberalization is one of the key sectors emphasized to attract foreign investment and promote trade, it has also been the key element in the transfer of huge capital from the poor countries into banks based in industrialized countries. The liberalization of capital has enabled many corrupt leaders in poor and transitioning countries to transfer their money to foreign banks, which deprives the financial system in their own countries of much needed capital.

Industrialized countries should introduce law to rigorously track the money coming into their banking system from poor or transitioning countries. This new law should make it mandatory that if it is proved that money entering the country has been obtained through illegal and corrupt means, or belongs to a corrupt leader, their relatives, or a company or firm operated by them in any capacity, the money will be returned to the government of the country from which it was transferred when no reasonable explanation is given by the account holders.[100]

Apart from that, if the leaders of the poor countries don't trust their own banking system and don't want to keep or invest their own wealth at home, then what incentive is there for foreign investors to invest their money in these countries? In order to address this problem, I

---

[100] John F. Burns, "House of Graft: Tracing the Bhutto Millions—A Special Report; Bhutto Clan Leaves Trail of Corruption" *The New York Times* (9 January 1998), accessed 18/05/2011 online: <http://www.nytimes.com/1998/01/09/world/house-graft-tracing-bhutto-millions-special-report-bhutto-clan-leaves-trail.html>; "World News Briefs; Swiss Freeze Funds In Bhutto Accounts" *New York Times* (17 October 1997), accessed 18/05/2011 online: <http://www.nytimes.com/1997/10/16/world/world-news-briefs-swiss-freeze-funds-in-bhutto-accounts.html?src=pm>; "Bhutto expands Cabinet; Names Husband to a Post" *New York Times* (1 August 1996), accessed 18/05/2011 online: <http://www.nytimes.com/1996/08/01/world/bhutto-expands-cabinet-names-husband-to-a-post.html?src=pm>; "Bhutto's Husband Acquitted on Corruption Charge Again" *New York Times* (30 May 1991), accessed 18/05/2011 online: <http://www.nytimes.com/1991/05/30/world/bhutto-s-husband-acquitted-on-corruption-charge-again.html?src=pm>. For instance, in the light of the Libyan crisis the U.K. Privy Council in its emergency meeting froze £900 million of Libyan currency in Britain. Nicholas Watt, Chief Political Respondent guardian.co.uk (27 February 2011) accessed online: <http://www.guardian.co.uk/world/2011/feb/27/gaddafi-family-assets-frozen-queen>; James Boxell, "Osborne freezes Gaddafi's UK Assets" *Financial Times* (27/28 February 2011), accessed online: <http://www.ft.com/cms/s/0/efdf458a-42b4-11e0-8b34-00144feabdc0.html#axzz1MaFMHBNW>.

will borrow an analogy from the recent measures taken in the realm of international humanitarian law dealing with acts of terrorism and crimes against humanity.

Based on this analogy, I draw a parallel between international humanitarian law[101] and international legal instruments relating to development.[102] While it remains difficult to properly implement international humanitarian law, progress has been made in the enforcement of international humanitarian law as compared to international documents and protocols relating to development. What is needed is sincerity, determination, and action on the part of international community, most especially the IFIs, industrialized countries, corporations, and regional development organizations, to promote development and eradicate poverty by addressing the root causes and not just the symptoms.

---

[101] Briefly speaking international humanitarian law comprises the Geneva Conventions of 1949. The Geneva Convention is further supplemented by Additional Protocols of 1977 relating to protection of victims of armed conflicts. Other agreements include the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols; the 1972 Biological Weapons Convention; the 1980 Conventional Weapons Convention and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Convention on anti-personnel mines; and the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

[102] Unfortunately international law relating to development is scattered in the form of various declarations and protocols and is pursued by various international and regional organizations. See, for instance, the UN declaration 41/128 of 4 December 1986 on the right to development, accessed 17/05/2011 online at <http://www2.ohchr.org/english/law/pdf/rtd.pdf> and the *Rio Declaration on Environment and Development* passed at the UN Conference on Environment and Development held at Rio de Janeiro from 3 to 14 June 1992, accessed 17/05/2011 online: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163&l=en>. In September 2000 world leaders gathered together at UN Headquarters in New York and adopted the UN Millennium Declaration (based on major UN conferences and summits spanning over decades) committing themselves to a new partnership for the reduction of poverty around the world and setting themselves time-bound targets and a deadline of 2015. These goals are generally referred to as Millennium Development Goals, accessed 17/05/2011 online: <http://www.un.org/millenniumgoals/bkgd.shtml>. The UN has launched a UN Millennium Project to develop a concrete action plan. The project, under the leadership of Jeffrey Sachs, submitted its detailed report in a synthesis volume *Investing in Development: A Plan to achieve the Millennium Development Goals*, available online: <http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf>. The major work of the project was carried out by the ten thematic task forces. See <http://www.unmillenniumproject.org/reports/reports2.htm>. The task forces were comprised of more than 250 experts all around the world including researchers; scientists; policy makers; and representatives of NGOs, UN agencies, the World Bank, the IMF, and the private sector. The recent report of the Millennium Project 2010 shows that some progress has been made towards the achievement of the Millennium Goals but there are still some gaps in which accelerated progress is needed. Accessed 17/05/2011 online: <http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2010/MDG_Report_2010_En_low%20res.pdf>. See also Isabella D. Bunn, "The Right to Development: Implications for International Economic Law" (1999-2000) 15 Am. U. Int'l L. Rev. 1425-1467, accessed 16/01/2011 online: <http://heinonline.org>.

For instance, debt burden (the money borrowing countries owe the IMF and WB) is the major problem that poor countries face; a huge portion of their budget goes towards the payment of these debts and the related interest, and it ultimately comes at the cost of the social sector in these countries. To date, Pakistan has a total of $59,536 million U.S. dollars in debt, and a major portion of its earnings goes towards servicing this debt and paying interest on it.[103] So far, neither the Government of Pakistan nor the IFIs have any logical solution for the country's debt problem. The IFIs continue to give loans, grants, and aid to Pakistan even though its track record for compliance with the IFIs' conditions is less than encouraging in qualifying the country for any further funding. As a result, the debt of Pakistan continues to grow, negatively impacting economic growth and development.

In my view, if the IFIs and other multilateral donor agencies are in any way serious about ensuring the repayment of loans made to Pakistan without affecting its development, it will be through the re-transfer of money deposited into Western banks by the corrupt leadership of Pakistan in various accounts and under various names. If somehow this money is transferred back to the country, Pakistan will not only be able to repay its debt, but will have a surplus capital for development investment. The vital hurdle in the re-transfer of this money is the privacy, banking, and anti-money laundering laws of the developed nations and the absence of a codified and concrete framework of policy, law, and institutional structure, the enforcement mechanism for such laws, and the sincerity of will in the leadership of the developed countries. If this money is tracked with the same determination as the financial resources of international terrorist organizations like Al-Qaida and its affiliates, Pakistan will to a great extent minimize its reliance on the financial resources of the IFIs. The best instance to illustrate the above contention is the action taken by the U.S. and U.K. governments against Colonel Gaddafi and Hosni Mubarak. They froze the monetary assets of Gaddafi and Mubarak in the U.S. and the U.K., and other foreign countries followed suit after Gaddafi and Mubarak were implicated in crimes against humanity.

---

[103] "Pakistan's External Debt and Liabilities", accessed 18/05/2011 online: <http://www.sbp.org.pk/ecodata/pakdebt.pdf>; "Pakistan Slashes Development to Meet IMF Targets", *The Daily Dawn* (24 November 2010), accessed 19/05/2011 online: <http://www.dawn.com/2010/11/24/pakistan-slashes-development-to-meet-imf-targets.html>.

If the laws, protocols and declarations relating to social and economic development are implemented with the same determination as the killing of the most wanted man in the world—for example Osama Bin Laden, recently killed as a result of an unauthorized operation conducted by U.S. Navy Seals in the sovereign territory of Pakistan, or the NATO warplanes that made bombing runs inside Libya aimed at Colonel Gaddafi—undoubtedly the international community would make significant strides in poverty alleviation and economic development. There are a few other well-known instances that can be quoted to corroborate the involvement of the international community on behalf of the people of a specific country in the name of emancipating them from oppression and dictatorship, for example the wars in Iraq and Afghanistan.

There is a need for international development laws (on the pattern of international humanitarian laws) which make criminal the abetment, or actual commission, of acts committed by corporations, individuals and countries that affect the development of poor people, increase poverty, and deprive people anywhere in the world of their fundamental right to develop and live a prosperous and healthy life. In my view, there is no difference between killing a person instantly by bullet or bomb and killing him slowly by denying him food, health, and medicine. Rather, killing people by making them experience the torture of hunger, sickness, and lack of shelter, and by denying them the opportunity for self-empowerment is more inhumane than killing them using a bullet or a bomb.

It is evident that in our contemporary world, the regions with weak and ineffective governments, corrupt leadership, weak institutions, bad governance, and extreme poverty are more prone to internal conflicts and civil wars, and are breeding grounds for international terrorism. Hence, there is need for reforms in the policy, law, institutions, and governance structure of developing countries, IFIs, and developed countries. If such reforms were well coordinated, based on dialogue and the mutual consensus of member countries, and sensitive to the needs of poor people, it will produce the desired results for the promotion of trade, investment, and development.

3.4 Conclusion

In light of the above discussion and in the framework of North's theory of institutional change, it is not difficult to conclude that the IFIs have assumed the status of an important formal player in the development efforts of Pakistan, and as such have a vital role to play in the development of the country. However, so far all the conditions of the IFIs for Pakistan have focused on the prominent features of the Washington Consensus, which have not produced the desired goals. The manner and pace with which they have been enforced has had a devastating effect on good governance and institution building in Pakistan as the government, in a rush to meet the conditions of the IFIs, has never followed due process and most of the time has been non-transparent. The negative impacts of these policies highlight the complexity embedded in the declared goals of trade and development as one of the objectives of the IFIs.

In the zeal to promote trade and investment liberalization, the line between trade and development often gets blurred and most often trade dominates development in the priority list. In order to promote investment in Pakistan, it is important to first create an investment friendly climate: attractive development-oriented investment policy; strong and clear laws; administration and enforcement of contracts; protection of property rights of the investors and the public; and transparency and accountability. Ironically, the IFI conditions have been able to achieve deregulation and privatization, which has weakened the role of the polity/state in the development of the country and consequently had a negative impact on institutional building. To expedite the process of privatization, liberalization, and deregulation the IFIs link lending with these conditionalities, which forces the borrowing countries to speed up the process. This satisfies the conditionalities of the IFIs, but comes at the cost of promoting corruption, nepotism, and violation of the golden principles of good governance. Due to its reduced negotiation power, the country remains vulnerable. If it does not comply with the conditionalities it won't get a good standing certificate from the IFIs and consequently won't get the much needed foreign investment. If a country speeds up compliance with the IFIs conditionalities it often results in compromising the fundamental principles of good governance, which is also one of the objectives of the IFIs and the UN Millennium Development Goals.

It is in this context that the twin goals of promotion of financial stability and development need to be reviewed and reconciled. In addition, with the recent shift in focus of the IFI conditions on institutional reforms in borrowing countries, the one-size-fits-all approach needs to be reviewed, and careful consideration needs to be given to the informal rules, norms and values of the society before prescribing the package of institutional reforms for the recipient country.

I am inclined to conclude that to accelerate short-term and long-term growth and development targets in poor countries, there is a need for reforms in the international economic and development organizations, the poor borrowing countries, and the industrialized countries that control the major share in the IFIs and sometimes use them as a tool for the achievement of their economic goals. Identification of the potential areas of reforms must be followed by a well-coordinated and funded strategy backed up by consistent and strong enforcement mechanisms at the international, national, provincial, and local levels.

In this chapter, I have explained the changing role of the IFIs, the evolving nature of their conditions, their impact on development in borrowing countries, and how policy, law, and institutional reforms in the IFIs and developed countries will have a positive impact on the development of poor countries. It is also clear that due to their financial might the IFIs exercise significant influence over governance in the borrowing countries and as such have assumed the status of an organization in the terms defined by North. As explained above, it is essential to understand the emergence and role of various organizations, groups and interests in borrowing countries in order to structure tangible legal, policy and institutional reforms. Therefore, the next chapter will briefly elaborate on the historical evolution of various organizations and their role in the development of Pakistan, which will enable us to formulate appropriate reforms in Pakistan to create a market- and investment-friendly environment.

Chapter 4 Organizations and Institutions in Pakistan: Understanding the Genesis to Model Institutional Change

4.1 Introduction

In the last chapter, I explained the gradual expansion in the power and influence of the IFIs, the evolutionary nature of conditionality, and its impact on the borrowing countries. I suggested the need for policy, law, and institutional reforms in the borrowing countries, developed countries and the IFIs themselves. I also explained the importance of understanding the informal norms, values and conventions dealing with the institutional structure, laws, and enforcement, and I suggested that any reform model should be based on the understanding of the informal rules.

In this chapter, I will elaborate on this contention by employing Douglas C. North's theory of "institutions, institutional change and economic performance"[1] and "analysis of economic change" in the context of Pakistan. The choice to employ North's work as an analytical tool stems from the belief that the efforts to discover or invent a panacea for the development dilemma of the poor countries will not bear fruit unless efforts are made to understand the social, political, and cultural norms, and unless the logical underpinning of the existing laws, institutions, and policies of the recipient countries is also understood. The economic activities and achievements of a society, its laws, and its institutional structure cannot be analyzed from a purely economic or legal or institutional perspective; they have social, political, legal, historical, cultural, and anthropological aspects as well. North, who is an economist, incorporates non-economic factors such as culture, the way people think and do things in a specific society; their beliefs; how they react to the change in their environment; and how they shape their perceptions. Understanding of these questions is the key to deciphering the

[1] Douglas C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge, UK: Cambridge University Press) 1990 at 3. Also read Douglas C. North, *Understanding the Process of Economic Change* (Princeton, NJ: Princeton University Press, 2005) at 23.

bigger puzzle of economic change and development in any society, especially the developing and poor countries.[2]

North believes that in order to effectively design institutional models for the countries it is imperative for reformers to understand how a particular local economy works. What is its history, i.e. background? And what are the path-dependent limits to reform? North contends that any pattern of institutional reforms should be based on understanding the working of the existing institutional structure. He asks why, when we know the sources on how to become rich (through enhanced productivity) and we know that institutional structure (i.e. well-defined property rights) and enforcement of contract through a strong judiciary are the most commonly argued requirements for development, we still don't know how to achieve development.

North has tried to address the dilemma of underdevelopment in the developing and poor world from a synthesized social, political, economic, historical, cultural, and anthropological perspective. He considers how to structure institutions facilitating development. North contends that the underlying reasons for the failure of neo-classical economic theory and Washington Consensus are that they do not consider the factors stimulating economic change in society. They fail to consider time, belief, culture, and institutions as important elements in effective economic development models.[3]

---

[2] Douglas C. North, *Understanding the Process of Economic Change* (Princeton, NJ: Princeton University Press, 2005) at ix.

[3] *Ibid.* at i-ix: "Understanding the process of economic change would enable us to account for the diverse performance of economies, past and present…..And beyond understanding the past, such knowledge is the key to improving the performance of economies in the present and future. A real understanding of how economies grow unlocks the door to greater human well-being and to a reduction in misery and abject poverty. The economic paradigm—-neo-classical theory—was not created to explain the process of economic change. We live an uncertain and ever changing world that is continually evolving in new and evolving ways. Standard theories are of little help in this context. Attempting to understand economic, political, and social change (and one cannot grasp change in one only without the others) requires a fundamental recasting of the way we think. Can we develop a dynamic theory of change comparable in elegance to general equilibrium theory? The answer is probably not. But if we can achieve an understanding of the underlying process of change then we can develop somewhat more limited hypotheses about change that can enormously improve the usefulness of social science theory in confronting human problems". See also Douglas C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).

Using the analytical framework of North's work in *Institutions, Institutional Change and Economic Performance* and *Understanding the Process of Economic Change*, I will explain the structure, evolution and working of different organizations in Pakistan and how these organizations change the institutional structure in the country to set rules of the game, which perpetuates the hold of these organizations. What needs to be done in Pakistan to change the current institutional structure for her economic development? Such understanding will help in the design of effective reforms in formal laws, informal norms of behaviour, and enforcement mechanisms to ensure their effective functioning. I will identify the crucial movements of development in Pakistan's statehood, explain the origin of the key players in the political arena, and elaborate on how they have structured the economic system to their benefit, depriving the people of their due right to an independent and prosperous life.

I will also explain the models of development provided to the country by the IFIs. In the framework of North's work I further explain that any policy or law reform efforts detached from the realities of Pakistan will end up in failure and add to the miseries of the poor people. Later on, I compare the internal rule-making, enforcement, and interpretation mechanisms set by the internal organizations to the rule-making mechanism forced on Pakistan by the IFIs and their impact on institutional change and development. The chapter culminates in the explanation of factors hampering Pakistan's economic progress and valuable suggestions for policy, law, and institutional reforms.

4.2 Pakistan

Ironically, Pakistan has been the most hard and complex country for the international community to understand. Recently the country has been in the news for highly undesirable reasons and mere mention of the name "Pakistan" evokes a prejudiced, predetermined and negative image defined by the terms "military takeover", "political instability", "international terrorism", "Taliban", "Al-Qaida", "suicide bombings", "corruption", "Osama bin Laden", "Dr. Al-Zawahiri", "Mullah Omar", "Muslim Nuclear weapon state", and "Islamic Fundamentalism". These terms reverberate in the mind of the listener even though the listener might not have any firsthand knowledge of the country and its history. The recent killing of Osama bin Laden in Abbottabad, Khyber Pakhtunkhwa, Pakistan has further strengthened the image of Pakistan as a state complicit with and an epicentre of international terrorism (the opinion strongly propagated by the Western media), obfuscating the genesis of the real and complex issues confronting this country. As mentioned above, Pakistan is a country with a complicated, unstable, and fragile political system and governance structure. It is not an easy country to understand.

The complexity and confusion surrounding the key issues can be illustrated from the headlines of a daily newspaper, where one headline concerns the Parliament of Pakistan passing a unanimous resolution condemning the U.S. unilateral operation deep inside Pakistan and another headline on the same page is about negotiations between a Pakistani delegation and IMF representatives. The participants in discussions on talk shows in the electronic media in Pakistan quite justifiably demand answers from Pakistan's military, powerful intelligence services, and democratically elected political government about the U.S. operation in Abbottabad and harp about the violation of Pakistan's sovereignty. The opinion emerging within the country is split but there is strong consensus that the operation should not have been conducted unilaterally. There is also consensus that neither the top brass of the military establishment nor the political government has the teeth to send a strong message to the U.S., as most of the current leadership in the government and opposition have their wealth in U.S., U.K. and Swiss banks, and the kith and kin of these leaders go to hospitals and universities in these countries. As a consequence, the resolution passed unanimously by the two houses of Parliament reflects public anger but there is no commitment on behalf of the leadership to prevent the repetition of such violations.

What is perplexing is the fact that the U.S. operation to capture or kill Osama Bin Laden is considered a violation of Pakistan's sovereignty, but on the flip side when the government delegation in their negotiations with the IMF or WB compromises Pakistan's economic sovereignty, neither the military establishment nor the political leadership passes a resolution. Nor does the public or any section of it come on the street to protest and commit to the nation that the country will not compromise its economic sovereignty.[4] Hardly anyone

---

[4] Reuters, "IMF postpones Pakistan talks, delays disbursement deal", *The Daily Dawn* (4 May 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/05/04/imf-postpones-pakistan-talks-delays-disbursement-deal.html>; Reuters, "Pakistan, IMF Start key talks on targets, reforms in coming budget", *The Daily Dawn* (11 May 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/05/11/pakistan-imf-start-key-talks-on-targets-reforms-in-coming-budget.html>; Reuters, "Pakistan's July-March foreign investment falls 0.3 percent",

in the political leadership will raise his voice against the rising prices of basic commodities every time the country reaches an understanding with the IMF and WB. Instead the officials negotiating with the IMF are highly appreciated and well respected if they manage to get the approval of the IMF. In a nutshell, problems are huge and complex; there are no easy answers and there cannot be a single magic bullet for the problems confronted by Pakistan today. The multitude of problems faced by the country demand a coherent multidimensional approach for their solution. Pakistan is one of the most complex and hard countries to study for scholars, historians, economists, sociologists, and political scientists.[5] In order to understand the present and develop a balanced perspective it is essential to briefly revisit the past, as the present is nothing but a reflection of the past. The study of institutions and organizations inherited from the past will help us design an effective and realistic institutional model for the country to improve its economic performance.

4.3 Revisiting the Past

In order to put things in perspective and understand the crucial movements of Pakistan's statehood it is imperative to step back and revisit the circumstances soon after the creation of the country. Pakistan's 64-year history is the complex story of ups and downs of the polity; 64 years is not a long span but all these years have been a constant struggle of survival against internal and external threats. Pakistan is the second country in the world after Israel with an ideological origin. It came into being in the name of Islam but does not have one consensual interpretation and understanding of Islam and its guidelines for a peaceful life: freedom of speech; freedom of opinion; freedom of movement; economic justice; social

---

The Daily Dawn (14 April 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/04/14/pakistans-july-march-foreign-investment-falls-0-3-per-cent.html>; Reuters, "Pakistan slashes development to meet IMF targets", *The Daily Dawn* (24 November 2010), accessed 03/06/2011 online: <http://www.dawn.com/2010/11/24/pakistan-slashes-development-to-meet-imf-targets.html>; "IMF arm-lock leaves Pakistan in deep trouble" *Pakistan Tribune* (2 June 2011), accessed online: <http://www.paktribune.com/news/index.shtml?239958>.

[5] Anatol Lieven, *Pakistan: A Hard Country* (London & New York : Penguin, 2011); Maleeha Lodhi, ed., *Pakistan: Beyond the 'Crisis State'* (U.K.: C. Hurst, 2011); Mary Anne Weaver, *Pakistan: Deep Inside the World's Most Frightening State* (New York, NY: Farrar, Strauss & Giroux, 2010); Tariq Ali, *The Duel: Pakistan on the Flight Path of American Power* (New York: Scribner, 2008); Ahmed Rashid*, Descent into Chaos: The United States and the failure of Nation Building in Pakistan, Afghanistan, and Central Asia* (New York: Viking Penguin, 2008); Pamela Constable*, Playing with Fire: Pakistan at War with Itself* (New York: Random House, 2011).

justice; and distributive justice in an Islamic society.[6] The country has been in crisis since its independence. The crisis can be attributed to multiplicity of factors, but the problems the country had in the initial days of its existence had a deep impact on the fate of the country and impacted the thinking of its society for generations to come.

The most important stage in the history of Pakistan was the initial days after its independence when the existence of the country was considered uncertain. The prevalent view in India was that Pakistan would not survive and would within a span of six months or a year reintegrate with India.[7] The underlying reason for this view was the fact that today's Pakistan was at that time the most underdeveloped area of India and at partition the division of assets between the two countries was done in a way that the country's most valuable assets were given to India and nothing substantial was given to Pakistan in her share.[8]

Pakistan, unlike India, lacked the essential institutional structure and resources for the formation of a stable polity. Resultantly, from the very days of its origin the country was without physical infrastructure (buildings, offices, furniture, and stationery for the offices), effective administrative machinery, or trained government officials to run the country.[9] In these circumstances the country's administrative machinery and government were ill prepared to deal with the huge influx of refugees from India and their permanent settlement

---

[6] There is probably not even a single issue on which Islamic scholars, the political and military leadership, and the social, political and legal scholars in the country have consensus. To elaborate the example of non-consensus/split/confusion in Pakistani society I will quote the multiple education system, an Islamic education system where students from their early childhood are given Islamic education; a Western education system famously called "English Medium Schools", where the medium of instruction is English and the students are usually taught Western liberal studies, science, and Western political ideas and end up at Harvard, Yale, Chicago, Boston, Oxford, Cambridge, or the London School of Political Science and Economics. Then there are schools which can be categorized as in between Islamic and Western schools. For all practical purposes such schools are neither fully Islamic nor fully Western but produce students to have both Islamic and Western perspectives. The existence of three or more parallel education systems having multiple and different studies and teaching objectives will produce students with different orientations.

[7] "A rivalry that threatens the world" *The Economist*, 399:8734 (May 21st, 2011) at 47-50; K.K. Aziz, *The Making of Pakistan: A Study in Nationalism* (London: Chatto and Windus, 1967).

[8] Hafiz A. Pasha and Mahnaz Fatima, "Fifty Years of Public Finance in Pakistan: A Trend Analysis" in Shahrukh Rafi Khan, ed., *Fifty Years of Pakistan* (Karachi: Oxford University Press, 1999) at 204.

[9] Lawrence Ziring, *Pakistan in the Twentieth Century: A Political History* (Oxford: Oxford University Press, 2001) at 54-97.

but deal with it.[10] In addition, Pakistan's war with India over Kashmir in 1948 (in the very first year after its independence) and the death of its two founding leaders, Mohammad Ali Jinnah and Liaqat Ali Khan, pushed the country further towards instability and uncertainty, which it could ill afford in its embryonic stage. This pushed Pakistan to rely on foreign aid (mostly American). There was huge spending on the military establishment to secure Pakistan from its most dangerous enemy, India. The country was forced into an unbalanced partnership with the United States to fight a proxy war against the Soviet Union in Afghanistan and more recently the war against terrorism in the United States.[11] Hence, since its inception Pakistan has been deeply immersed in multiple internal and external crises and each crisis has raised significant questions regarding the existence and survival of the country. To simplify the complex history of Pakistan I would break down it into six phases, identifying the politically and economically important features of each phase.

4.3.1 Phase one: 1947-1956

In this initial phase Pakistan was economically very weak and politically unstable. In the very first year Pakistan fought its first war with India over the Kashmir region. The country relied on U.S. aid for its defense against India and its economic survival and growth. Politically, due to the personal interests of the political and religious leaders and the feudal landlords and their intention to hold power and control the future governmental structure, Pakistan did not agree on a constitution until 1956. The Constitution was enforced on 23 March 1956. It basically secured a parliamentary form of government for Pakistan with a powerful office of the Prime Minister and the President being a ceremonial head with substantial powers. The Constitution did not remain in force for long due to a lack of political wisdom, sincerity, quality leadership, and political training. The lack of respect for democratic values contributed to quibbling and intransigence, which was considered fatal for the existence, security, and development of Pakistan, and the military stepped in to fill the

---

[10] Noor Fatima, *Pakistan and International Economic Agencies* (Ph.D. Dissertation, Quaid-e-Azam University, 2007) at 30. Published online: <http://prr.hec.gov.pk/thesis/2314.pdf>.

[11] For historical analysis of Pakistan-United States relations and the specifics of Pakistan's foreign policy read S.M. Burke & Lawrence Ziring, *Pakistan's Foreign Policy: An Historical Analysis* (Karachi: Oxford University Press, 1990); S.M. Burke, *Mainsprings of Indian and Pakistani Foreign Policies* (Minneapolis: University of Minnesota Press, 1974); Mohammad Ayub Khan, *Friends Not Masters: A Political Autobiography* (New York: Oxford University Press 1967); Zulfiqar Ali Bhutto, *The Myth of Independence* (Karachi: Oxford University Press, 1969).

leadership vacuum. The Constitution remained in force for two years and was abrogated in 1958 by the Chief Martial Law Administrator, Muhmmad Ayub Khan, because of political deadlock between the political leadership of the country. With the military takeover began the next phase of the nation building in the country.

Economically, the country was dependent on the Reserve Bank of India for most of her finances. At the time of independence, the Reserve Bank of India had a cash balance of RS 4 billion, which was supposed to be divided proportionately between the two countries by a committee.[12] Under the committee's decision Pakistan was supposed to get RS 750 million (rupees); the Indian Government delayed the transfer of money on one pretext or another. Pakistan received the first payment of RS 200 million, but one of the Indian leaders, Sardar Patel, threatened to delay the payment to Pakistan until it accepted India's right over the territory of Kashmir. On Ghandi's insistence RS 500 million was transferred, but RS 50 million still remains unpaid to this day.[13] Consequently the country decided to take its own economic initiative and established the State Bank of Pakistan on 1st of July 1948, with a capital of three crore of rupees.[14] The total number of banks before partition was 38. Of these only 2 were in Pakistan and 29 were in India, while the number of exchange banks was 7.[15] The total deposits of Pakistani banks stood at RS 880 million whereas the advances stood at RS 198.0 million.[16]

In addition, in 1948 Pakistan established a Development Board to plan for the industrial development of the country. The electrical, telephone, and wireless equipment industries were nationalized.[17] The government took control of the planning and development of industry, dealing in iron, steel, heavy machinery, cement, mineral oil, sugar, and tobacco.[18] In order to respond to the long-term goals and challenges of development, Pakistan

---

[12] M. Ikram Rabbani, *New Millennium: Pakistan Affairs* (Lahore, Pakistan: Carvan Book House, 2006).

[13] *Ibid.* at 124.

[14] *Ibid.* at 130.

[15] *Supra* note 10 at 30.

[16] M. Saeed Nasir & Syed Kamal Hyder, *Economics of Pakistan* (Lahore, Pakistan: Print Planting Press, 2000) at 193.

[17] *Supra* note 12 at 131.

established a Planning Board in July 1953 and launched a "Five Year Development Plan" for the country's development, which had all the traits of making the state a planned economy.[19] Even prior to that the country had launched a six-year plan— the famous "Colombo Development Plan"—that was unsuccessful in achieving most of its objectives due to various factors such as lack of information and reliable data.[20] After the establishment of the Planning Board, Pakistan launched five-year development plans, the first of which (1955-60) was produced by the Planning Board in 1956 with the assistance of the Harvard Advisory Board.[21] Since then the Planning Board (now the Planning Commission) has been engaged in creating numerous plans.

4.3.2 Phase two: 1958-1971

After the takeover the military government abrogated the 1956 Constitution and within four years introduced a new constitution, which came into force in 1962. The 1962 constitution introduced the local body system called the "Basic Democracy" system. The members elected as a result of the new local government system were made an Electoral College to elect the President of the country. Although they were technically elected, General Muhammad Ayub Khan basically selected the members of the Local Bodies System to consolidate his hold over the governance structure of the country. Economically, the country opted for a planned economic structure, i.e. the economic goals of the country would be set up by the government and then vigorously pursued for the next five or ten years. The government used to incorporate such goals in its "Five Year Plans" for the country. However, none of these plans had been able to achieve their economic goals because of instability and corruption. The military era of General Ayub Khan was called the "Decade of Development"[22], as the General introduced various economic, agricultural[23], industrial[24] and

[18] *Ibid*.

[19] For details read Planning Commission of Pakistan, *1st Five Year Plan of Pakistan 1955-60*, accessed 26/05/2011 online: <http://www.planningcommission.gov.pk/fiveyear1st.htm>.

[20] *Supra* note 12 at 467.

[21] *Ibid.*

[22] For details read Planning Commission of Pakistan, *2nd Five Year Plan of Pakistan 1960-65*, accessed 26/05/2011 online: <http://www.planningcommission.gov.pk/fiveyear2nd.htm>.

land reforms to jump-start economic development, but the decade of achievement was undone by another war with India in 1965.[25] The war ended in the Tashkent Declaration establishing peace between the two countries but the bitterness, mistrust, and efforts to destabilize each other continued. After the establishment of peace, the national scenario for General Ayub Khan became precarious and he had to resign. He abrogated his own created constitution (the 1962 Constitution), imposed martial law, and handed over the reins of the government to General Yahya Khan. Ironically, after 22 years of independence the country was again without a workable institution and suffering a dispute of proper representation between two wings of the country when East and West Pakistan again erupted.

General Yahya offered his own legal framework to create a workable constitution but that was not acceptable to the politicians of East Pakistan, creating unrest and resulting in a military operation in East Pakistan. India took advantage of the internal unrest, supported the anti-Pakistan elements, and sent her military inside East Pakistan, which culminated in the dismemberment of East Pakistan (Bangladesh) from West Pakistan in 1971. The dismemberment was primarily the result of Indian military interference supporting anti-Pakistan elements in East Pakistan. General Yahya Khan then resigned and handed over the government to Zulfiqar Ali Bhutto (father of Benazir Bhutto).

4.3.3 Phase three 1971-1989

After the dismemberment of Pakistan, the country immediately had to frame a new constitution. After prolonged debate of over two years, a new constitution was formed and enforced on 14 August 1973. The Constitution recommended a parliamentary form of government for the country with a Prime Minister as its real head and the President as the titular head. The parliament consisted of two houses, the Senate and the National Assembly. This assembly was the first to finish its five-year term. The same constitution remained in force until 5 July 1977 when General Zia-ul-Haq, Chief of the Army Staff, took over and

---

[23] Planning Commission of Pakistan, *Development of Physical Resources: Agriculture 2nd Five Year Plan of Pakistan 1960-65* at 127, accessed 26/05/2011 online: <http://115.186.133.3/pcportal/five%20year% 20plans/2nd/2nd5yearplanCH-7editing.pdf>.

[24] *Ibid*.

[25] M. Imtiaz Shahid & Memmona Shahid, *An Advanced Study in Pakistan Affairs* (Lahore, Pakistan: Advance Publishers, 2004) at 235-252.

suspended the Constitution and held it in abeyance.[26] General Zia announced that he would hold elections in ninety days but it ended up taking seven years. General Zia ul Haq intended to have a gradual shift towards democracy and in order to do that gave an eighteen-month plan for election to various representative bodies. Before elections to those bodies occurred, General Zia ul Haq introduced some important changes to the 1973 Constitution through the Revival of the 1973 Constitution Order 1985-Presidential Order No.14 of 1985, which concentrated the powers of appointment to armed services chiefs, governors of the provinces, the Chief Election Commissioner of Pakistan, and Provincial Chief Election Commissioners. As a result of the amendments to the 1973 Constitution the President was given the power to dissolve the National Assembly if he felt that circumstances had arisen requiring the parliament to seek a fresh mandate from the public.

General Zia-ul-Haq initially held elections to the local bodies in 1983 on a non-party basis, and then in 1984 he decided to hold a referendum. The referendum was held on 19 December under the Referendum Order of 1984. Its purpose was to seek public mandate for the steps taken under martial law and to legitimize his rule and completion of the process of Islamization initiated by his martial law regime.[27] After favourable referendum results General Zia-ul-Haq decided to hold general elections in February 1985 on a non-party basis. After the general elections on 17 March 1985, he issued the Constitution of 1973 Order 1985, which enforced the 1973 Constitution with amendments, including the President's power to dissolve the National Assembly. From 1989 to 1999, presidents used the infamous eighth amendment to overthrow the democratically elected government and four democratically elected prime ministers. The U.S., the U.K., and the European countries, all ardent supporters of democracy and liberty, overlooked these actions of a military dictator.

The support of General Zia ul Haq by the U.S.-led industrialized countries was rationalized on the grounds that the U.S. and its allies needed a stable and well governed Pakistan during their war against the Soviet Union (Russia) in Afghanistan. The U.S. supplied both arms and

---

[26] Proclamation of Order Martial Law Order 1985 No. 1 of 1977, online: <http://www.vakilno1.com/saarclaw/pakistan/consitution/appendix_1.htm>.

[27] It is noteworthy here that while General Zia-ul-Haq was initiating the Islamization process in the country, the United States-led coalition was hiring jihadis from all around the world to fight against the USSR (Russia) and encouraged the Islamization process in Pakistan.

money to the Government of Pakistan for fighting a proxy war against the Soviet Union. General Zia's Afghanistan policy initially had a positive impact but in the long run it was devastating for Pakistan in every sense. It resulted in the proliferation of automatic and sophisticated weapons from Peshawar to Khyber and in an influx of Afghan refugees into Pakistan, which was economically not feasible for the government. Pakistan's involvement in the Afghan war resulted in a deteriorating law and order situation in the country and promoted corruption in the military and civil service, as the money given to the Government was non-auditable and the operation was covert, therefore all the officers involved in the distribution of aid got rich overnight.[28]

The U.S. Congress had secretly allocated $470 million to the Central Intelligence Agency (CIA) for Afghan operations but most of the material purchased by the CIA and delivered through Pakistan never reached the Mujahedin guerrillas. Washington lobbyist Andrew Eiva, Executive Director of the Federation for American Afghan Action, stated that his organization had found up to 70 percent slippage in CIA supplies.[29] The weapons slippage resulted in the introduction to Pakistan of not only weapon culture but also the drug culture. Hence even though the country was getting U.S. aid and other foreign aid from the developed world the Afghan war badly impacted the country.

The economic performance of the government during the Zia era was reasonable, as the government focused on reducing the gap between savings and investment to recover budgetary deficits and restore private sector confidence. The Government followed denationalization and deregulation policies and denationalized many chemical and fertilizers industries. Private investment was permitted in cement productions. State-owned enterprises were asked to fix prices in accordance with market prices. The assets nationalized during the Bhutto regime were given back, and the exchange rate was changed from fixed to floating

---

[28] *Supra* note 25 at 295. For details read Bruice Reidel *The Deadly Embrace: Pakistan, America and the Future of the Global Jihad* (Washington DC: Brookings Institution, 2012); Robert D. Kaplan*, Soldiers of God: With Islamic Warriors in Afghanistan and Pakistan* (New York: Vintage Books, 2001).

[29] "Pakistan: Leaks in the Pipeline" *Time* (21 June 2005), accessed 29/05/2011 online: <http://www.time.com/time/magazine/article/0,9171,1074846-1,00.html>.

and currency was devalued to boost exports.[30] In short, the country shifted its focus from nationalization to privatization.

4.3.4 Phase four: 1989-1999

In this phase, the civilian government struggled to finish their five-year term. Most of the governments were dismissed after two years and six months in office, when the President would dissolve the National Assembly. The two rival parties, the Pakistan Muslim League and the Pakistan People's Party (i.e. Mian Nawaz Sharif and Benazir Bhutto), replaced each other twice during the period 1989-1999 and each time the government was dissolved due to corruption charges, and political and financial instability.[31] Later on, in 1997, then Prime Minister Nawaz Sharif won a huge majority in the parliament and amended the constitution, concentrating powers in the office of the Prime Minister. The concentration of power again created an imbalance of power. Prime Minister Nawaz Sharif could not exercise his powers due to his differences with General Pervaiz Musharaf over the Kargil Dispute with India, which resulted in General Pervaiz Musharaf taking over the reigns of government.

Politically, General Pervaiz Musharaf emulated his predecessors in making his regime acceptable in public. He announced a referendum to seek the public mandate for continuing as the Chief Executive of the country and won a huge majority, even though he himself admitted in public the foul play in the referendum. Later on, he received legal approval from the august Supreme Court of Pakistan, which legitimized his takeover.

In order to detach himself from his predecessors General Musharaf made some important decisions to improve good governance. He introduced a new local bodies system of governance rebranded as the "Devolution Plan", aiming to introduce the substance of

---

[30] *Supra* note 28 at 298; S. Akbar Zaidi, *Issues in Pakistan Economy* (Pakistan: Oxford University Press, 1999).

[31] For details of political governance of Pakistan during this period read Christina Lamb, *Waiting for Allah: Pakistan's Struggle for Democracy* (New Delhi: Vicking Publishers, 1991); Lawrence Ziring, "Pakistan in 1989: The Politics of Stalemate" (February 1990) 30:2 Asian Survey 126; Sameena Yasmin, "Democracy in Pakistan: The Third Dismissal" (June 1994) 34:6 Asian Survey 572; Dennis Kux, *The United States and Pakistan 1947-2000 Disenchanted Allied* (Karachi: Oxford University Press, 2003); Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2001); Steve Coll, "Intrigue Permeates Pakistan: A Political Culture of Shadow Game" *The Washington Post* (15 December 1999) A 30; Edward A. Gargan, "President of Pakistan dismisses Premier and dissolved Parliament" *New York Times* (19 April 1993) A3; Tahir Ameen, "Pakistan in 1993: Some Democratic Changes" (February 1994) 34:2 Asian Survey 191.

democracy in the country. General Musharaf established the National Accountability Bureau (NAB) to crack down on the corrupt politicians and bureaucrats and initially arrested numerous politicians and bureaucrats, but he subsequently used the organization to force the same corrupt politicians to vote in his favour and get Parliament to elect him President and allow him hold dual office as President and Chief of the Army Staff.

General Musharaf further strengthened his grip after September 11, 2001, when the United States of America again relied on Pakistan for its fight against terrorism. Pakistan is a recipient of financial and military aid from the United States, but so far this aid has remained ineffective in promoting development and securing peace, law, and order. This is due to a number of reasons, but primarily because there is no system in place to track the aid money entering the country, who is in charge of it, and how it is utilized. Second, the successful implementation of development projects and development of trade and investment demands a facilitative atmosphere, which is not available at the moment due to the deteriorating law and order situation (mainly due to Pakistan's alliance with the United States) and political instability. Lately Pakistan's relations with the United States have been significantly damaged due to the capture of Osama bin Laden by the U.S. Navy Seals inside the territory of Pakistan without the U.S. sharing the details of the operation with its most trusted ally, and because of the U.S. Government's disregard of the joint resolution of the two houses of the Parliament of Pakistan condemning the U.S. operation.

The crux of the matter is that Pakistan has been swinging between military rule and the democratic setup since its independence. Simultaneously the political parties, religious political parties, and members of civil society are split on the nature of the political/democratic setup, i.e. whether Pakistan's government should be federal, unitary, parliamentary, or presidential, and whether there should be any form of local government system. Unfortunately, the governments since independence have been following various development models inconsistently, mainly because of the political instability and volatility. It is appropriate at this point to briefly identify and explain the development models adopted by Pakistan.

4.4 Development Frameworks Since Independence

4.4.1 The development matrix during the 1950s

As mentioned earlier, at the time of independence Pakistan's economic situation was precarious and therefore achievement of higher economic growth was initially the primary goal of the country. The predominant view among the economists of that era was that poverty could be eliminated through economic development and modernization. Pakistan lacked the monetary strength to effectively launch its development agenda and therefore had to rely on foreign financial aid like other newly independent countries. The financial aid during that era was deemed essential to help the newly independent countries produce substantial savings for sustainable economic growth.[32] Other factors were the expectation that the government would successfully implement a five-year development plan, the expectation that the government would be able to determine the required capital for achieving growth, and the security concerns in the wake of the Cold War.[33]

4.4.2 The development matrix during the 1960s

During this period the development efforts shifted to the interdependence of agriculture and the industrial sector. This model highlighted the importance of inter-sectoral connections and the extension of dual economic frameworks to different sectors of the economy in the development paradigm. In Pakistan, this approach, which was based on economic dualism, was evident in the shift towards industrial development through assistance from the

[32] *Supra* note 10 at 14.

[33] *Ibid*.The underlying basis for the adoption of this approach in Pakistan was the dominant Harrod-Domar economic model which was prescribed internationally for most of the developing and newly independent states. Subsequent to the Second World War, the industrialized countries were in search of a framework to analyze the development of the newly independent states and an American economist named Walt. W. Rostow gave his theory of "The Stages of Economic Growth". According to Rostow the developed countries had already achieved high economic growth, whereas the economies of newly independent developing countries were not even on the path to achieve high economic growth. He was of the opinion that there is a need to think of an "outside the box" solution to achieve and sustain high economic growth for the developing countries and suggested that in order to take off the countries need to save and then supplement savings with foreign capital in order to augment substantial capital/investment for sustainable economic growth. The model suggested by Harrod-Dommer, which postulated that in the developing countries there is always going to be a gap between the capital required for the development goals and the national savings which needs to filled by supplemental capital in the form of foreign aid. For details read Walt. W. Rostow, *The Stages of Economic Growth: A Non Communist Manifesto* (Cambridge, U.K: Cambridge University Press, 1960) at 1-4.

agricultural sector.[34] It was assumed that the emerging capital elite consisting of 22 families would be beneficial for the poor but this assumption proved misplaced, as the development plans based on this assumption were discontinued after the departure of General Ayub Khan from the political scene. According to Rashid Amjad the justification of perpetuating inequality was based on the premise that in the initial stages of capitalist development a high degree of inequality is justified to create entrepreneurial dynamism in the country; secondly, as the domestic saving was low the country had to rely on the foreign aid to fill this gap.[35] This stage in the economic history of Pakistan is considered important in the creation and promotion of a capitalist elite class and culture.[36] After the departure of General Ayub Khan, the successor governments showed tendencies towards nationalization.

4.4.3 The development matrix during the 1970s

The development decade during the 1970s was aimed at fixed growth, poverty reduction, and development of the agricultural sector, aimed at the integration of rural economy and cottage industry.[37] In Pakistan two important changes took place: the enactment of labour policy and legislation to improve the lot of the peasantry working in the rural areas.[38] The labour policy immediately provided benefits to labourers, such as compulsory benefits, cash receipts for profit participation, and old age benefits. It also put the labourers in a strong bargaining position.[39] The development model during the 1970s was based on a neo-Marxist perspective on underdevelopment and dependencies. From a neo-Marxist perspective, it was thought that

---

[34] This approach was based on the structural transformation model postulated by W. Arthur Lewis in the 1950s which suggested the transformation of agro-based economies into industrialized economies in the poor and newly independent countries. See W. Arthur Lewis, "Economic Development with Unlimited Supplies of Labour" (Paper, Manchester School 22 May 1954) at 139-151; Colin Kirkpatrick & Armando Barrientos *The Lewis Model After Fifty Years* W.P. No 9 Development Economics and Public Policy Working Paper Series (September 2004), accessed 07/06/2011 online: <http://unpan1.un.org/intradoc/groups/public/ documents/ nispacee/unpan018979.pdf>; Gustav Ranis, "Arthur Lewis' Contribution to Development Thinking and Policy" Economic Growth Center, Yale University Center Discussion Paper No. 891 (August 2004), accessed 07/06/2011 online: <http://www.econ.yale.edu/growth_pdf/cdp891.pdf>.

[35] Rashid Amjad, *Pakistan Growth Experience Objectives Achievements and Impact on Poverty 1947-1977*. Pakistan's Development Experience, Economic Research Series (Lahore, Pakistan: Progressive Publishers, 2003) at 2.

[36] *Supra* note 10 at 13-14.

[37] *Supra* note 10 at 15.

[38] *Supra* note 10 at 11.

[39] *Supra* note 10 at 15.

the underdeveloped countries are the raw material suppliers for the multinational corporations based in advanced countries. Resultantly, the development model during this era emphasized the redistribution of wealth for the elimination of most private property and fulfilling the basic needs of the poor, i.e. food, clothing, and shelter.

The basic needs approach to alleviating poverty stemmed from dissatisfaction with the policies prescribed by the IFIs and other development agencies, which were implemented by the local government. The basic needs approach and the adoption of "socialism" as an alternative economic model due to debt accumulation was also the political slogan of the Pakistan People's Party in the 1970s election.[40] The aid during this era shifted towards the relationship of population growth, employment, education, the labour market, and income distribution.[41] This development model did not continue for long and there was a visible paradigm shift in the development framework of the 1980s.

4.4.4 The development matrix during the 1980s

The development model of the 1980s represented a drastic shift in the policy agenda for national development. During this era, the policy focus was on macroeconomic stability instead of growth and the basic needs approach. The drastic shift was stimulated by the debt crisis in the developing countries around the world, including Pakistan, and in order to make the crisis manageable Pakistan was told to adopt structural adjustment measures like reduction of budget deficit; balance of payments; devaluation; privatization; deregulation; trade liberalization; institutional change; and minimized role of the government. The IFIs made loans, aid, and grants to developing countries like Pakistan conditional on the adoption of these policy measures. Those countries deficient of the required capital to make interest payments on the loans and faced with the disruption of external aid if the reforms were not adopted were forced to adopt these measures. The IMF and WB gave loans to the developing countries for interest payments to Western commercial banks, asking them to increase exports and to use the earned foreign exchange to service the foreign debt.[42] The

---

[40] Hassan Gardazi & Jamil Rashid, eds., *Pakistan: The Unstable State* (Lahore: Vanguard Books, 1983) at 11.

[41] *Supra* note 10 at 16.

[42] Walden Bello & Shea Cunningham, *Dark Victory: The United States and Global Poverty* (London: Pluto Press, 1994) at 68.

development model adopted by Pakistan redefined the whole development matrix for the country.

The development model was redefined in the development scholarship of the time in terms of nomenclature like human capital, New Institutional Economics (based on Public Choice Theory), and property rights. The property rights meant that each individual owner of a property had every right to utilize his property to his wishes. According to Public Choice Theory the state/government usually interferes with such rights, which results in the misallocation of resources and restrictions on individual freedom. A minimized role of the state/government would ensure the appropriate allocation of resources.[43] New Institutional Economics theorizes the human freedom to make choices and tries to influence human behaviour for the betterment and good of the public. It focuses on the process of evolution of institutions in response to human needs, desires and incentives and how they affect the performance of the political and economic system. Hence this period focused on the creation of new institutions and rules for development, and with this purpose the IFIs markedly changed the role of foreign aid in the borrowing countries.

Among the prominent features of the structural adjustment program during this period were the cut in government expenditure, which included spending on social development; privatization and deregulation of the economy; reduction and then ultimate elimination of protection given to domestic markets; reduction of restrictions on foreign investors; and constant devaluation of the national currency, the Pakistani Rupee, in the name of achieving export competitiveness in the international market. The role of the government in promoting development was also a subject of intense debate. It was contended that the efficiency of the market could be drastically increased through minimized role of the government and restricting its role to the supply of public goods.[44] In the next decade of development, the factories producing development models for the borrowing countries manufactured and unveiled the "Washington Consensus" model, which strongly emphasized the minimized role of the government in economic regulation of the country.

---

[43] Merliee. C. Grindle & John Thomas, *Public Choices and Public Policy Change: The Political Economy of Reform in Developing Countries* (Baltimore: John Hopkins University Press, 1991).

4.4.5 The development matrix during the 1990s

The prominent feature of development discourse of the 1990s was continuation of the previous decade with a new face in the form of the "Washington Consensus". This term was coined economist John Williamson, who prescribed a set of policies for the achievement of sustainable economic growth. These policies were privatization; deregulation of the financial system; free market; trade liberalization; and reforms in fiscal policy, the tax system, and the exchange rates system; and other relevant fiscal measures. In order to achieve these goals institutional reforms were suggested to ensure the protection of private property rights, to establish a strong judicial and police system for the maintenance of law and order, and to enforce the contracts to attract foreign investment.

During this period efforts were made to delineate the spheres of the government and the market. The institutional reforms focused on minimizing the role of the government and pushed the policies of privatization, deregulation, competition, and monopoly control. Instead of fixing the state itself, the policy shifted to reducing the state role and giving the market freedom to operate itself. The other prominent feature of this phase was the realization that the adjustment policies had a negative impact on poor people and it was contended that there was an imminent need to make adjustment with a human face.[45] In order to alleviate the miseries of the poor the continuation of structural adjustment policies was suggested.[46] The impact of these policies on Pakistan is analyzed in this chapter.

Just a glimpse of this brief overview will identify the key organizations/interest groups/vested interests running Pakistan: the politicians cum feudal lords; the military; the bureaucracy; the developed countries led by the United States of America; international financial institutions like the IMF, the WB, and other regional and development agencies like the Asian Development Bank (ADB), U.S. Aid, DFID, CIDAW, Australian Aid, and New

---

[44] Peter Self, *Government by the Market?* (San Francisco: Westview Press, 1993) at 31.

[45] Vittorio Corbo & Stanley Fischer, "Structural Adjustment, Stabilization, and Policy Reform: Domestic and International Finance" in Kenneth J. Arrow and Michael D. Intriligator, eds., *Handbook of Development Economics* vol. 3 (New York: Elsevier, 1995) 2845.

[46] World Bank. *Structural and Sectoral Adjustment Lending: World Bank Experience (1980-1992)* (Independent Evaluation Group report, 2004), accessed 10/06/2011 online: <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/5E63CA45316A46158525680E005C2961?opendocument>.

Zealand, German, Swiss and other aid organizations. For the purpose of this thesis, I will briefly explain the emergence of the major internal and external organizations/vested interests and their role in the country.[47]

4.5 Internal Organizations/Interest Groups

Since the partition of the British Raj into India and Pakistan in 1947, Pakistan has undergone a turbulent process of nation building as it has tried to create sufficient consensus and institutions necessary for stable internal politics. The struggle to establish a parliamentary democracy has been handicapped by interethnic strife, social strains, fragmented elites, praetorian rule, and the influences of external powers both regional and global. Since Pakistan's independence, the army has governed the country by administering martial law four times, ultimately seeking legitimacy through democratization. The failure of democratic foundations to take root in Pakistan has been attributed to the leaders who followed Jinnah since 1948, among other things. Instead of promoting the tradition of civilian supremacy bequeathed by Great Britain, the civilian rulers have often relied on the military to preserve their power. The underlying causes of the weaknesses of the political system include the dominating feudal structure, military interventions, the controversial interpretation of Islam by religious leaders, ethnic divisions, and a bureaucracy still fixed in a colonial mindset. Among the religious leaders, the bureaucrats, and the military leaders, the most important and strongest class was the feudal class.

4.5.1 Feudal structure

The landed class was created, empowered, and manipulated by the British for the achievement of their own strategic and long-term interests. As Britain began to harness India's agricultural wealth and convert tribesmen and rural populations into peasant farmers, it increasingly relied on feudalism—old landed families, tribal grandees, traditional religious leaders, or merchants who were granted land holdings—to ensure political order in rural areas.

To begin with, the Pakistan movement did not have had its genesis in populism or socialism as did Indian nationalism, and therefore was not inherently opposed to the landed elite. In

[47] The internal organizations or interest groups are identified and defined in the same way as defined by North.

fact, the Pakistan movement had early on been hijacked by the Muslims of privileged classes who distrusted the economic policies of the Congress party and the socialist rhetoric of some of its leaders, such as Nehru. In addition, once Pakistan was created, the state needed the landed elite for the same reasons the British did: to establish order and writ of the government in the rural areas. The Muslim League that led the Pakistan movement had little following in the provinces that later formed the new state. The support of the landed elite, especially in elections in the decade preceding independence, had been crucial to the Muslim League. The feudal lords/landed elite in Punjab, Bengal, and Sind supported the Pakistan movement, and in so doing guaranteed their influence (as a group or organization as described by North) on the future state. As a result, after the creation of Pakistan they emerged with greater power.

Along with the emergence of feudalism, certain institutions also became key players in the country's power structure. Since Pakistan's creation, any government has been under the influence of three institutional groups: the Constituent Assembly, the civil service, and the army. The impact of other forces such as religion, the landowning class, and general public opinion was not consistently decisive, and as a result these forces integrated themselves in the three institutions mentioned above and exercised their influence through them.

Soon after its independence Pakistan was dependent on the same local feudal leaders to maintain stability in the rural areas. The dependence of the state on the influence of the feudal leaders gave them new power. As the local role of the landed elite became integrated into the organization of the new state, the seeds of the future weaknesses of the state were sown. The elite's integration in the state ruling hierarchy has enabled them to equate and define their interest with the state interest. They have misused state powers to extend their influence in all four pillars of the government—the parliament, the executive branch, the army, and the judiciary. Their presence in all these departments coupled with their hold in rural areas has permanently strengthened their hold over the state power structure, reducing democracy to a mere counting of votes, which is always manipulated.

It was their lust for power that delayed the writing of a constitution for nine years. Since its creation, Pakistan has had four constitutions, dating from 1956, 1962, 1971, and 1973. The formation of a lasting constitution has been hampered primarily by the vexed question of regional representation in the central legislature. It took Pakistan nine years from independence in 1947 to frame the first constitution. Until the 1956 Constitution Pakistan was run in accordance with the Interim Constitution of 1947.

The Constitution, which is normally a sacred document regulating the working of the government, has been modified from time to time to tailor it to the personal needs of individuals rather than the people of Pakistan. Since 1947 Pakistan's politicians have never learnt a lesson from history. They have always been embroiled in personal politics: setting scores with their political rivals; robbing money from the government exchequer, putting it in their personal accounts abroad and investing that money in profitable ventures abroad to legalize the corrupt money; misusing the public office to get their personal relatives employed in government jobs; or getting people employed in the public offices in return for huge sums of money. In such a state of affairs the military generals have been taking over the government due to the inability of the politicians to give working political and economic order to the country.

4.5.2 The military

In Pakistan's early years, the civilian government bowed to army commanders on security matters. However, Quaid-e-Azam Mohammad Ali Jinnah and Liaqat Ali Khan (the first Prime Minister of Pakistan) asserted civilian primacy over the military. The death of Jinnah and Khan, along with political uncertainty, opened the doors for military interference.[48] The relationship of the military and civilian leadership began to change due to the irrational behaviour of the political leaders after Jinnah and Khan and their inability to create order and stability. The fragmentation of the political forces and growing polarization in the polity against the backdrop of serious external security pressures enabled the bureaucracy and the military to expand their role. By the early 1950s, the military emerged as a key actor in policy making on security affairs. General Ayub Khan played a major role in shaping Pakistan's decision to join the U.S.-sponsored security pacts.

---

[48] M. Asghar Khan, *Generals in Politics: Pakistan, 1958-1982* (New Delhi: Vikas Publications, 1982); Hamza Alvi, "The State in Crisis" in Hassan Gardazi and Jamil Rashid, eds., *Pakistan: The Roots of Dictatorship* (London: Zed Press, 1983) 55.

The leaders from West and East Pakistan managed to reach an uneasy consensus in the form of the 1956 constitution, but persistent disagreement once the constitution began to be enforced paved the way for military interference by the Pakistan Army under the leadership of Field Marshal Ayub Khan in 1958. Between 1958 and the reign of General Musharaf, the military took over the government four times. It has almost institutionalized its role in the country's politics. On the legal front, the Supreme Court justifies military takeover on the grounds that the circumstances demand military interference. In the public arena, the military seeks support by relying on the bureaucracy and stressing modified structures of local government to reach the people.

The military is the most formidable player in Pakistan's political and social structure. Since 1958, it has acquired sufficient experience and skills to manipulate the nature and direction of political change through its domination of the core political institutions. The top commanders subscribe to the notion of military guardianship of the internal political and socio-economic order, in addition to their primacy in policy making on key foreign policy and security issues. The top brass of the military (especially the army) has strong reservations about the ability of civilian political leaders to manage the affairs of the state on their own. The priority given to personal interests seriously compromises the politicians' ability to make tangible decisions on critical national issues. Pakistan's army is well respected by the public, but the army's frequent takeovers and subsequent efforts to consolidate its hold on power have compromised its position. In the words of General Jehangir Karamat, former Chief of Army Staff and Pakistan's Ambassador to the United States, "Whenever there is a breakdown in…stability, as has frequently happened in Pakistan, the military translates its potential into the will to dominate, and we have military intervention followed by military rule. But, as far as the track record of the military as rulers in the past is concerned, I am afraid it is not much better than the civilians."

In order to gain legitimacy, in 1962 the military government framed a new constitution facilitating Field Marshal Ayub Khan to occupy the strong office of the President by introducing a new system of local government. The members elected by the local government were empowered to elect the members of the national legislatures, who then elected Khan as President of Pakistan for the next seven years. In other words, Khan used the local government and bureaucracy as a tool to gain legitimacy in the public eye. Consequently the bureaucracy emerged as a powerful interest group. Since 1958, when the military dictator overthrew the civilian government for the first time, the government in Pakistan has been in cyclical change from military to civilian and back to military rule, and the bureaucracy has so far remained a dominant group no matter who is in control of the government.

Because Pakistan lacks political stability, a national consensus, and a body of trained political leaders, bureaucrats have assumed a dual role in policy formulation and its execution. In the words of Shuja Nawaz, "Pakistan's history is one of conflict between an underdeveloped political system and a well-organized army that grew in number and political strength as a counter weight to hostile India next door and in relation to the domestic political system."[49]

4.5.3 The bureaucracy

The most powerful and elitist administrative service in Pakistan is the Civil Service of Pakistan, the successor to the Indian Civil Service, which was organized at a time when the colonial power was interested in maintaining law and order and not too much concerned with welfare administration.[50] The bureaucracy has accumulated its power as both military and political leaders have relied on it for their interests. The bureaucracy has jealously guarded its power by aligning itself with the political parties.

Civil administration or bureaucracy is a public service institution. In a country where democracy has not taken root and politicians have not learned to respect democratic norms, those holding the reins of power stop at nothing to neutralize their rivals, and in civil servants they find an effective means towards that end.[51] The use of administrative machinery to harass political rivals, deny them political rights, and implicate them in cooked-up cases is

---

[49] Shuja Nawaz, *Crossed Swords: Pakistan, its Army, and the Wars Within* (Karachi: Oxford University Press, 2008), xxvii.

[50] Khalid B. Sayeed, *The Political System of Pakistan* (Kingston, Ontario: Queens University, 1968) at 128.

[51] Hussain H. Zaidi, *De-Politicise the Bureaucracy* Contemporary Affairs vol. 38 (Pakistan: Carvan Publishers, 2004) at 368.

endemic in such political societies or states.[52] Pakistan is one such state, where political immaturity and the politicization of the civil service have gone hand in hand.

In a mature democracy, power is preserved by strengthening political institutions. The political parties assume this power through their links with the masses. In Pakistan, such a link is weakened when a political party enters the corridors of power. It becomes so embroiled in power politics that it becomes oblivious to public problems.[53] Key party members are inducted in the cabinet or given other lucrative positions.[54] The result is that the gap between the ruling party and the masses is widened and the former loses its mass appeal.[55]

Instead of creating political solutions to political problems, those in power try to solve them through administrative structure.[56] Whenever the government faces a tough challenge from the opposition, be it an agitation, an electoral battle, or a non-confidence move against the chief executive, it relies heavily on the bureaucracy to ward off that threat.[57] Political leaders have thus disrupted the stability they are supposed to promote.

---

[52] *Ibid*.

[53] *Ibid.* at 369.

[54] *Ibid*.

[55] *Ibid*.

[56] *Ibid*.

[57] *Ibid*. Read also Peter Gizweski & Thomas Homer-Dixon "Environmental Scarcity and Violent Conflict: The Case of Pakistan", accessed 5/08/2009 online: <http://www.library.utoronto.ca/pcs/eps/pakistan/pak2.htm>. For instance, a major factor, which strained relations between the government of former Prime Minister Benazir Bhutto and that of Nawaz Sharif in Punjab after the restoration of democracy in 1988, was the transfer of the provincial chief secretary. The federal government passed orders for the transfer of the incumbent Chief Secretary, because he was considered a Sharif loyalist, and the posting of a new chief secretary, who was believed to be a Bhutto loyalist. Considering the move an attempt to weaken his government, the Chief Minister refused to relieve his top bureaucrat and accept the one appointed by the Prime Minister. During the recent judicial crisis, which sparked a countrywide crisis, General Pervaiz Musharaf used brute force through state machinery, i.e. bureaucracy and police, to crush the protest. After the election of the civilian government, the government promised to restore the sacked Chief Justice of Pakistan and later backtracked on it, sparking countrywide protests. President Asif Ali Zardari (the Civilian President) used the bureaucracy to quell the protests. Similarly, the President used the bureaucracy to impose Governor Rule in the province of Punjab and ousted the government of the Pakistan Muslim League (Nawaz Group). The bureaucracy has been given a green signal to put all their efforts into ensuring the support of the majority members favouring the Pakistan People's Party to form the government. Thus the bureaucracy instead of focusing on public service are busy earning the goodwill of the politicians to get themselves appointed in a position where they can engage in corruption.

The crux of the matter is that the same families rule Pakistan in the 21st century as ruled the country in an undivided India. These families have ruled the country since the 17th century during the Mughal era, during the reign of the English Empire, and after the independence from India. Their only objective is to preserve their hold on power and they will go beyond reasonable limits to tighten their hold over power. They are predominantly landlords, industrialists, or religious leaders. During the 1960s there were thought to be 22 of these ruling families but in contemporary Pakistan the families have intermarried or married outside the families and have multiplied to 80 in number. Marriage outside the network of ruling families is based on the wisdom that it secures the power within the family; the marriages outside usually take place with bureaucrats, police officers, custom officers, income tax officers, or members of the families in power. The intermarriages with officers working in these departments secure their hold over power and control over the general public regardless of who is running the country. It also tightens their control over the poor farmers.

The members of these privileged families are landlords and industrialists who own large areas of land and industry and a large portion of the population works for them. The dependence of a huge portion of the population on agricultural employment in rural areas and employment in industries in urban areas has created a dependent relationship between the ruling elite and the general population. This perpetuates the rule of the landlords, industrialists, military generals, and bureaucracy because the same people control the parliament, executive, judiciary, and military.

In such a social structure, the voting system and elections—which are considered the spirit of democracy—are reduced to a mere formality and deception of the poor public. It is unreasonable to imagine that a farmer or labourer who is dependent on a landlord for his life, food, job, shelter, health, and employment can have his own independent opinion and express it through his vote. It is paradoxical to assume that the landlord and industrialists giving food and shelter to the farmers in their land will represent them and fight for the protection of their rights in Parliament.

It is not hard to gauge the state of rule of law and the strength of institutions in the country if the legislators or the ruling elite disregard the law and wear multiple hats, i.e. acting as judge, prosecutor and investigator simultaneously. The people running the institutions, starting from a chef to the head of the department, are all appointees of the local landlord cum politician/industrialist and have taken an oath to protect his interests or to pay a certain sum per month to a local legislator, MP, or landlord in return for their appointment. Reformers, policy makers, and development scholars would be very mistaken in conceptualizing the strengthening of an institution as the erection of a modern tall structure/building, because when the institution houses corrupt officers the very purpose of the reforms process is defeated. In these circumstances, the institutional and organizational structure encourages the public to join the superior Civil Services of Pakistan, to build connections with the powerful politicians to be on their payroll, and to be corrupt.

The literacy rate, especially in the rural areas, is depressingly low compared to the urban areas, and the national literacy rate is low compared to other countries in the region. Interestingly, the sons and grandsons of the landlords have their next generation studying in the Ivy League schools and universities but do not have a single school, college, or university in their own constituency. The purpose of sending their relations to Ivy League schools for education is to make their next generation more educated and competitive to adapt with the demands of the modern world. In the absence of local schools, colleges, and universities, how can Pakistan convert the most valuable human capital into a catalyst for development? In addition, in such circumstances the state of research and development in the country is abundantly obvious.

The other interconnected issue is that of employment. In urban or rural areas the youth of the middle class having the means to complete university education find it very hard to get employment. The local elite in Pakistan has brilliant minds to make money in the most depressing circumstances in the country. It is well recognized that in order to get employment just the competence of the candidate is not enough; he has to pay some money in consideration for getting an important position in the public service recruited through the Provincial or Federal Public Service Commission of Pakistan. Once hired, the primary objective on the priority list of the candidate is to make up the money he paid to a legislator, MP, or the appointing authority. Corruption is institutionalized in the country to the very bottom. Public servants hired in such manner ruthlessly pursue corruption not only to make money but also to provide food and shelter for the family. In contemporary Pakistan, in every office, department, and section, it is well understood that in order to get something done (even if that is one's legal right) or in order to expedite the process the public needs to pay money to the concerned official.

Such a state of affairs naturally raises the cost of transaction in the country. Whenever the measures encouraging investment in the country are debated it is vociferously contended that there should be protection of property rights and enforcement of contracts. These are essential not only for foreign investment but also for the creation of peace, order, and justice in the local society. Unfortunately, among other paradoxes, Pakistan also has a legacy of obsolete laws and institutions protecting property rights. There are gangs and cartels involved in the killing of innocent people to grab their land and property and manipulate laws, who go unnoticed by working under the patronage of the MPs, legislators, and police. Millions of civil and criminal litigations regarding property remain pending in the courts, including in the august Supreme Court of Pakistan, and remain undecided for decades. Recently the Asian Development Bank (ADB) invested huge capital in the country under "Access to Justice" for judicial and legal reforms but the situation remains unchanged and is even worsening. I have no hesitation in concluding that the internal structure of the organizations in Pakistan and their ability to tailor their institutional structure to perpetuate their power over the people and the country accords with Professor North's image of the "Natural State" or the "Limited Access Society".[58] In these circumstances, when a common man in Pakistan is wrestling with the problems which are the making of country's leaders they also have to bear the brunt of the negative and painful impact of the country's external relationships. The internal complexities of the social-political structure coupled with bad governance and growing polarization in the society are further compounded by the consequences for Pakistan of the country's relationship with international organizations like the IMF, WB, United Nations, and Asian Development Bank (ADB), and with developed countries like the United States.

4.6 External Factors

The external factors can be broadly categorized under two headings: the relationship of Pakistan with its neighbours and the relationship of the country with the IFIs.

4.6.1 Relations with neighbours

Geographically, Pakistan occupies an important strategic location. It shares borders with Afghanistan, Iran, India, and China. India and Afghanistan have been the source of continual trouble for Pakistan.

4.6.1.1 Wars on Kashmir

The issue of Kashmir has been the major source of bad blood between India and Pakistan. Pakistan's dispute with India over Kashmir began at the time of independence and has erupted in four high-intensity wars in 1948, 1965, 1971 and 1999, as well as numerous low-intensity wars. This dispute has been a huge burden on Pakistan's limited economic resources, as well as a destabilizing factor for the country and region. It has severely hampered the progress of Pakistan towards prosperity and development.

4.6.1.2 Cold War and War on Terror

Due to Pakistan's strategic location for Cold War politics, soon after independence the country came under American influence.[59] Pakistan got important financial and military assistance in return for toeing the American line and protecting American interests, but also suffered significantly in terms of social and economic development. When Afghanistan

---

[58] Douglas C. North, John Joseph Wallis, & Barry R. Weingast, "The Natural State: The Political-Economy of Non-Development" (March 2005), accessed 14/06/2011 online: <http://www.international.ucla.edu/media/files/PERG.North.pdf>.

[59] In May 1954, Pakistan signed the Mutual Defence Assistance Agreement with the United States. Later in that year it became a member of SEATO along with the United States, Britain, France, Thailand, the Philippines, Australia, and New Zealand. A year later it joined the Baghdad Pact, another mutual defence organization with Britain, Iran, Turkey, Iran and Iraq. The United States did not join this organization but remained closely associated with it since its inception. In 1958, when Iraq left the Baghdad Pact it was renamed CENTO (Central Treaty Organization); Turkey, Iran and Pakistan were its constituent members. Early in 1959, Pakistan signed again (as did Iran and Turkey) a bilateral agreement of cooperation with the United States, which was designed further to reinforce the defensive purposes of the CENTO. Thus Pakistan was associated with the U.S. through not one but four mutual security agreements. In this sense, it has sometimes been termed "America's most allied ally in Asia". Pakistan was the only Asian country that was a member of both CEATO and SENTO. Muhammad Ayub Khan, "The Pakistan-American Alliance", accessed 28 March 2009, online: <http://www.foreignaffairs.com/articles/23567/mohammed-ayub-khan/the-pakistan-american-alliance>; Muhammad Ayub Khan, *Friends Not Masters* (London: Oxford University Press, 1967).

became a new front for the Cold War in 1979, millions of Afghan refugees entered Pakistan, becoming an economic burden and disrupting the social, political, and urban fabric of the country. The entrance of the refugees not only left an indelible mark on Pakistani society but also led to the spread of weapons in the northern part of Pakistan, which resulted in the commission of violent crimes. Employing a former British tactic, the U.S. used Islam to attract Muslims in Afghanistan, Pakistan and all over the world to fight a holy war—a jihad—against the infidel Soviets in Afghanistan. The U.S. ultimately triumphed over communism and the Soviet Union had to withdraw its forces from Afghanistan in 1987-88. After the Soviet withdrawal, the U.S. imposed sanctions against Pakistan and remained oblivious to the state-building process in Afghanistan. Pakistan remained the most "sanctioned ally" of the United States until 11 September 2001. The 9/11 attacks reinvigorated American interests in the region, and the United States again approached Pakistan to force it to cooperate in the "War on Terror."[60] Its alliance with the U.S. has brought to Pakistan numerous suicide attacks resulting in the death of innocent civilians, and has also affected Pakistan's economy and overall development.[61]

Since the start of the war on terror an overall sense of uncertainty has prevailed in Pakistan, which has contributed to capital flight and slowed down economic activities, making foreign investors jittery.[62] Apart from the psychological shock of suicide bombings killing thousands of people, a sudden increase in uncertainty made Pakistan's consumers more cautious, thus leading to reduced spending, which in turn had a negative effect on investor confidence.[63]

---

[60] For details of Pakistan-U.S. cooperation on anti-terrorism see the report prepared by K. Alan Kronstadt for the U.S. Congress, accessed 3/29/2009 online: <http://www.fas.org/man/crs/RL31624.pdf>; "US wronged Pakistan for 30 years admits Hillary" *Daily Dawn Pakistan* (20 May 2009) online: <http://65.175.69.196/wps/wcm/connect/dawn-content-library/dawn/news/world/12-us-wronged-pakistan-for-30-years-admit-hillary--bi-04#>.

[61] The economy has been affected due to high freight and insurance charges which have increased the cost of exports, dried up foreign investment and trade, and greatly damaged the tourism industry. The war on terror coupled with political instability resulted in huge flight of foreign currency from the country, causing foreign exchange reserves to fall beyond subsistence levels, consequently affecting the balance of payment.

[62] Parveen Zaiby, *Economic Impact of War on Terror and Continuing Recession in Pakistan,* online: <http://www.opfblog.com/5935/economic-impact-of-war-on-terror-and-continuing-recession-in-pakistan/>.

[63] *Ibid*. For the latest upgrades please read Jeffrey Goldberg & Marc Ambinder, "The Ally from Hell" *The Atlantic* (December 2011) 308:5 at 48-64 (this article is the product of dozens of interviews over the course of six months, and a joint project of *The National Journal* and *The Atlantic*). A few important highlights from the article can give food for thought on governance and prospects of development in Pakistan. The article also

Thus consumer and investor sentiment acted on each other to create a downward economic spiral. The country has experienced loss in exports, foreign investment, privatization, industrial output, and tax collection; growing fiscal and current account deficits; rising inflation; growth deterioration; depletion of foreign exchange reserves; and excessive risk in the country's credit, which has made borrowing from the market extremely expensive. Due to numerous suicide bombs in Pakistan the economic activity has come to a standstill. Investors feel reluctant to invest money in a country where there is no security of life and property. When an economic activity comes to a standstill it definitely affects the overall economic prosperity of the country. So if we place these effects flowing from the American war on terrorism in the context of Pakistan's internal problems and then frame Pakistan in the framework given by IFIs, the result will not be development, as the money given by the IFIs cannot create the environment for economic activity pushing growth.[64] As a result, the internal cultural, political, and institutional structure, coupled with the international politics of development governed by IFIs, has immensely hampered the progress of the country.

4.6.2 International financial institutions and Pakistan

The nature and performance of the economic system of Pakistan, like its political system, has been in constant flux. The economic system itself has been oscillating between the extremes of a state-planned system and a market system; at the same time, the growth rate and extent of poverty have fluctuated. We can attribute the mixed performance of Pakistan's economy to inconsistency in government policies.

Since its independence, Pakistan, like many other developing countries, has followed a state-centric economic model. When Field Marshal Ayub Khan took over in 1958, he shaped the

---

identifies the different organizations (as defined by North) in Pakistan. For instance, "Pakistan lies. It hosted Osama bin Laden (knowingly or not). Its government is barely functional. It hates democracy next door. It is home to both radical jihadists and a large and growing nuclear arsenal (which it fears the US will seize). Its intelligence service sponsors terrorists who attack American troops…. With a friend like this, who needs enemies? Pakistan makes its nuclear weapons more vulnerable to theft by jihadists in order to hide them from the United States…. Public Pronouncements to the contrary, very few figures in the highest ranks of the American and Pakistani governments suffer from illusion that their countries are anything but adversaries, whose national security interests clash radically and, it seems, permanently…. We cannot simply abandon Pakistan—it is, in the words of one expert, 'too nuclear to fail.'…. More challenging than capturing a loose nuke would be a 'disablement campaign'—seizing control of the Pakistani nuclear arsenal in the event of a coup or civil war".

[64] *Ibid*.

economy through a centrally planned state mechanism aimed at providing opportunity to the private sector under the supervision of the state. However, the fruits of economic development in his era remained concentrated in a few hands and could not be distributed among the masses. Although there was a reasonable growth rate during his rule, the rate of poverty did not decline; in fact, the growing poverty created frustration in the public against the Ayub Khan regime. Therefore, in 1971 the Pakistan People's Party (PPP), led by the new civilian Prime Minister Zulfiqar Ali Bhutto, reversed the achievements of the Ayub era by nationalizing privately owned enterprises, on the grounds that the policies of the Ayub era used all the public resources to enrich the few and growth had not been distributed across the social spectrum. The Zulfiqar Ali Bhutto government issued the Economic Reforms Order 1072 and took over the management control of 31 industrial units under ten categories of basic industries, including iron, steel, basic metals, heavy engineering, heavy electrical, motor vehicle assembly and manufacture, tractor, and public utilities (electricity generation, transmission, and distribution, along with gas and oil refineries). Later on, life insurance, the vegetable oil industry, banks, shipping companies, oil companies, and wheat, cotton, and rice processing units were also nationalized. The nationalizing initiative created uncertainty among the business community, which badly affected private business.

In 1977 the military government of General Zia ul Haq took over and initiated the liberalization/privatization process again on the ground that intensive nationalization had stifled growth and discouraged private entrepreneurs from investing in the country. However, the liberalization process did not go into full swing until the first government of Benazir Bhutto in 1988. The main force behind the push for intensive deregulation, liberalization, free trade, and privatization in Pakistan has been the IFIs, particularly the IMF and the WB. The agenda of liberalization has mainly been pursued through structural adjustment/conditionalities attached to loans given to the Government of Pakistan.

In 1987, a surge in imports coupled with a decline in workers' wages resulted in the current account deficit of up to 4.4 percent of the GDP and the budget deficit in the same year of 8.5 percent of GDP. Due to the paucity of monetary resources the Government of Pakistan was unable to address this persistent macroeconomic imbalance and had to sign a series of loans under the Structural Adjustment Facility (SAF). The loans were given by the IFIs on the condition that structural reforms were introduced. The assistance was to be divided between the IMF's general-purpose loan, the WB's sectoral loans, and the ADB's sectoral loans.

The nature of Pakistan's agreements with the IFIs has varied over the course of time. Pakistan has signed the Standby Arrangement, the Extended Fund Facility (EFF) and the Structural Adjustment Program Facility (SAPF) with the IMF. The details of Pakistan's agreements with the IMF are given below. They can be divided into five phases: the Structural Adjustment agreement entered into with the IMF in 1988-1991; the Structural Adjustment agreement entered into in 1991-94; the External Adjustment Facility 1997; the Musharaf Regime and the IMF; and the President Zardari Regime and the IMF.

4.6.2.1 Structural Adjustment Facility Program 1988

The first three-year Structural Adjustment Facility Program (SAFP) for $2.1 billion was ratified and signed on 28 December 1988. Its attached conditionalities prescribed major reforms in the economic structure of the country:

Conditions

The key conditions of the three-year 1988 SAFP and their annual targets were as follows. According to the prescriptions of the program the overall fiscal deficit was to be reduced to 6 percent of GDP in fiscal year 1988-89 and to 4.8 percent in 1990-1991, following these steps:

i. Contain the rate of inflation to 10 per cent in 1988-89 and reduce it gradually to 7 per cent in 1989-90, and to 6.5 percent in 1990-91.

ii. Reduce the external current account deficit to 3.4 percent of GDP in 1988-89, and further to 2.8 percent in 1989-90 and 2.6 percent in 1990-91.

iii. Reduce the civilian debt-service ratio from 27-28 percent in 1986-88 external to the sustainable level of less than 22 percent by 1990-91.

iv. Increase gross official exchange reserves from the equivalent of about 3 weeks of merchandise imports at end of 1987-89 to a level of about 7 weeks of imports by 1990-91.

v. Contain the growth of domestic credit and the money supply in line with the growth of nominal GDP at the target rate of inflation, with sufficient allowance for the desired increase in net foreign assets.

Conditionalities attached with the 1988 SAFP were implanted in Pakistan's 1988-89 budget. Sales tax was imposed on 44 items. Excise duties were imposed on some other services such as travel, advertisement, and hotels, in addition to telephone, telegraph, and postal services. Tariffs were imposed on key urban services such as water and sewage. In agriculture the government reduced the support price for essential crops like wheat, rice, cotton, sugar cane and oil seeds to ensure that they were in line with the levels and trends in the international market price. In addition, the program went into minute details such as regulating telephone rates and deregulating bus fares; designating the gas prices charged to household consumers; and setting the water and sewage tariffs and the taxes, fees, and user charges for roads, rail, ports and aviation.[65] In short, the IMF has framed Pakistan's economic policies since 1988. Pakistan's Ministry of Finance and Planning has been merely the mouthpiece of the IMF. Subsequent governments in Pakistan have had to show strict adherence to the program and have their performance evaluated by the IMF. The program has required decisions that were unreasonable for the government to carry out and detrimental to the poor. The IMF's insistence on strict adherence to the policies prescribed and the reluctance of the Government of Pakistan has resulted in soured relations between the IMF and Pakistan.

4.6.2.2 Standby agreement 1993

By 1993-94, Pakistan's external debt was $20.3 billion, which was 39.1 percent of GDP. The debt servicing was $1.7 billion, which was 16.4 percent of foreign exchange earnings and 26.4 percent of export earnings. Pakistan signed a standby agreement with the IMF worth $269 million for three years. When the Government of Pakistan was unable to meet the targets for reducing the budget deficit and tariffs, controversy erupted and the program was suspended. Within a short time of the suspension of the Structural Adjustment Program (SAP), the government again resorted to the IMF for help as its foreign exchange reserves

---

[65] For details read World Bank, *Pakistan: Medium Term Economic Policy Adjustment Report No. 7591-Pak*, (17 March 1989) at 49, accessed 10/06/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1989/03/17/000009265_3960927093800/Rendered/PDF/multi0page.pdf>.

fell below sustainable levels. To address the situation the government devalued its currency, the rupee, by 7 percent and imposed a regulatory duty of 5 to 10 percent on imports. Furthermore, duties on petroleum products were raised by 7 percent. After taking these measures, the government approached the IMF for a standby loan of $600 million at a market rate of 5 percent to be repayable in 15 months. Clearly Pakistan had become dependent on the IMF to resolve its macroeconomic imbalances.

The government pledged to take the following measures:

i. Reach an average GDP growth rate of 6.5 percent over the next 3 years. The GDP was expected to grow by 7.5 percent in 1994 depending on the size of the crucial cotton crops, compared with the record low of 3 percent of GDP growth in 1993.

ii. Restrict the budget deficit to 4 percent of GDP.

iii. Bring inflation down to 5 percent.

iv. Reduce the highest import tariff to 70 percent in 1994-95, 45 percent in 1995-96, and 35 percent in 1996-97.

v. Reduce the burden of local and foreign debt. In late 1993 the state owed $23 billion to foreign lenders, of which $4.5 billion was short-term debt. The trade reforms package included the following measures:

    a. Raw materials and intermediate goods predominantly used in the production of exports would be subject to zero duty.
    b. Existing import license fee, surcharge and goods relief surcharge will be merged with statutory tariff rates.
    c. Maximum tariff levels will be set at only 35 or 50 percent with six slabs of 10, 15, 25, 35, 45, and 50 percent.
    d. Existing tariff rates will apply to motor vehicles, alcoholic beverages, POL, wheat, fertilizers, pesticides, and life-saving drugs.
    e. Tariff reduction will be phased out gradually over a three-year period.

f. Many concessions and exemptions present in the existing tariff regime will be withdrawn gradually.

g. Tariff structure will present a cascading of nominal tariffs with progressive stages. Locally produced goods will be subject to higher tariff rates compared to goods not produced domestically.

h. Tariffs on machinery and equipment will be 10 percent unless this machinery is produced locally.

i. High-priority domestic industries (such as engineering and chemicals) will receive nominal protection of 50 percent.[66]

In this agreement, the conditionalities focused on reforms affecting trade: the elimination of multiple exchange rate practices, the full convertibility of the rupee, and stringent tariff reduction over a three-year period. Taxes were to be extended to businesses in the trading and services sectors, and further excise duties imposed. The government was also bound to eliminate all subsidies on fertilizers within three years, as well as to reduce or eliminate subsidies on other agricultural inputs. The prices of output in this sector were also to be liberalized. Other conditionalities related to further financial liberalization, the continuation of the privatization program and sustained expenditure in the social sectors through the Social Action Plan. The government of the time failed to fully comply with the conditionalities, earning the anger of the IMF and resulting in the suspension of the SAFP. The efforts of the Government of Pakistan to revive the SAFP failed; however, the IMF agreed to give a standby loan to address the balance of payments. In the meantime, the government of Benazir Bhutto was terminated on charges of corruption, damage to Pakistan's financial credibility, and reluctance to initiate much needed reforms. The caretaker government that followed managed to get the second tranche of the standby agreement with the IMF released after assuring the IMF that it would implement the reforms. Nawaz Sharif was then elected as prime minister.

---

[66] For details read World Bank, *Pakistan: Country Economic Memorandum FY 1993: Progress under the adjustment programs report No. 11590-Pak* (23 March 1993) at 44, accessed 10/06/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1989/03/17/000009265_3960927093800/Rendered/PDF/multi0page.pdf>. Total details of the IMF-Pakistan agreement accessed 10/06/2011 online: <http://www.imf.org/external/np/fin/tad/extarr2.aspx?memberKey1=760&date1key=2010-08-31>.

4.6.2.3 Extended Structural Adjustment Facility 1997

The new government under Sharif's leadership preferred an enhanced structural agreement to the expensive standby agreement with the IMF. For this purpose, the Government introduced basic tax reforms, reducing the tax rate and enhancing the tax base. The import duty was reduced from 65 percent to 45 percent, and personal income taxes were lowered across the board. Corporate tax rates for publicly listed companies were reduced from 33 percent to 30 percent; for non-listed companies, rates were reduced from 43 percent to 35 percent; for banks, rates were reduced from 58 percent to 55 percent. Further reforms reduced the general sales tax from 18 percent to a maximum rate of 12.5 percent, and to 3 percent on retail units. The purpose of these reforms was to improve tax collection and reduce the budget deficit to meet the 4 percent of GDP target in the fiscal year 1997-98, compared with the unfavourable 6 percent deficit in the fiscal year 1996-97. The IMF appreciated the reforms but concluded that only after successful implementation of reform measures and accompanying macroeconomic improvements would the IMF consider renewing its concessional Enhanced Structural Adjustment Facility (ESAF) program and Extended Fund Facility with Pakistan.

On October 20, 1997, Pakistan reached an agreement with the IMF for a three-year, $1.6 billion Structural Adjustment Agreement Loan (SAAL) package. Of the $1.6 billion, $935 million was allocated for ESAF. The first tranche worth $208 million was disbursed in October 1997. At the beginning of 1998, the IMF agreed to release the second tranche to Pakistan. This was made possible after tough negotiations and a commitment from Pakistan to strictly observe the requirements of the conditionalities attached to the loan. The conditionalities included, among many other things, reducing the budget deficit, improving access of foreign investors to oil and gas sectors, the imposition of a Goods and Sales Tax, and the privatization of state-owned public enterprises.

The packages constructed by the IMF were conditional upon the achievement of tough economic targets for Pakistan for 1998-2001. The targets included:

i. Doubling GDP growth from 3-4 percent to 5-6 percent.

ii. Halving the current account deficit from 3 percent of GDP in 1998-99 to less than 1.5 percent in 2001-02.

iii. Reducing inflation from about 9 percent to 6 percent in 2001-02.

iv. Increasing the rate of domestic savings from 12 percent of GDP to 16 percent.

v. Stabilizing the ratio of public debt to GDP.[67]

To enable achievement of the above targets, the IMF prescribed various policy changes including devaluing the currency; imposing a Goods and Sales Tax (GST) on services, petroleum, electricity and agricultural inputs; broadening the tax base; restructuring public sector enterprises before their privatization; and restructuring public sector staff to make efficient use of human resources. The Government of Nawaz Sharif was unable to implement most of the conditions, especially on the issue of electricity and the dispute with the Independent Power Producers (IPP). The settlement of the government's dispute with the IPP was one of the conditions of the loan; the reluctance of the Nawaz government to implement these conditionalities resulted in the suspension of the release of the $280 million disbursement to Pakistan. In May of the same year, Pakistan's detonation of a nuclear bomb further aggravated the nation's economic woes. The reluctance of the government to impose a 15 percent tax and the slow process of privatization and deregulation irked the IFIs and cost Sharif's government its credibility in the international donor community. Economic woes and Sharif's confrontation with the military ultimately resulted in a military takeover by General Pervaiz Musharraf.

4.6.2.4 The Musharraf regime and the IMF

After the takeover by General Musharraf, the international community suspended all forms of aid until democracy and fundamental human rights were restored. But soon there was a change of heart.[68] The IMF agreed to sign a standby agreement with the government and

---

[67] IMF, "IMF Approves Combined ESAF/EFF Financing for Pakistan" (Press Release Number 97/48, 20 October 1997), accessed 10/06/2011 online: <http://www.imf.org/external/np/sec/pr/1997/pr9748.htm>.

[68] Bessma Momani, "The IMF, The U.S. War on Terrorism and Pakistan: A Lesson in Economic Statecraft" (Spring, 2004) 31:1 Asian Affairs 41, accessed 20/11/2011 online: <http://www.tandfonline.com/doi/pdf/10.3200/AAFS.31.1.41-51>; Anton Malikin & Bessma Momani, "Emerging Powers and IMF Reform: Where Multipolarity in the World Economy is Leading the Fund" St. Anthony's International Review (May 2011) 7:1 61, accessed 16/11/2011 online: <http://arts.uwaterloo.ca/~bmomani/documents/StAnthony-MultipolarityandIMFReform.pdf>; Bessma Momani, "IMF Rhetoric on Poverty and Inequality" in Rodrden Wilkinson and Jennfer Clap, eds., *Global Governance, Poverty and Inequality* (New York: Routledge, 2010)

released $596 million. The conditions attached to the agreement included extending the GST to the agricultural sector by the end of 2001; implementing the GST in retail outlets with turnover in excess of PRs 5 million; reducing the budget deficit from 6.4 percent of GDP to 5.2 percent of GDP; adjusting petroleum prices to be in line with international market changes; and reducing the import tariff from 35 to 30 percent by June 2001 and to 25 percent by June 2002. The key components of the prescribed reform measures were the devaluation of the currency; the balance of payment; competitive pricing for outputs, inputs, and public utilities; removal of subsidies; tax reforms; and privatization and deregulation. The Musharraf government succeeded to a great extent in implementing these reforms, which led to the signing in December 2001 of the $1.3 billion PRGF (Poverty Reduction Growth Facility) for poverty alleviation.

4.6.2.5 The Zardari regime and the IMF

Recently the Government of Pakistan has signed Stand-by Agreements with the IMF, which have more conditions—imposition of more taxes including farm taxation—attached to them.[69] As a result of the new agreements, the Government has to remove subsidies on electricity, petroleum, and gas, resulting in inflation going into double digits, food prices going up, and energy crises resulting in unaffordable electricity, natural gas, and petroleum products. These increases have virtually paralyzed the life of the common man and have resulted in increases in fares for buses, cabs, and airlines.[70]

The country has also suffered a lot since 2007-2008, when several internal and external events had a calamitous impact on the country's economy. The country has experienced chain of shocks since the eruption of judicial crisis[71] in March 2007. Due to the judicial

---

71, accessed 16/11/2011 online: <http://arts.uwaterloo.ca/~bmomani/BWPI-CIGI%20IMF%20Poverty%20and%20Inequality.pdf>.

[69] IMF, "Pakistan: Letter of Intent" (17 December 2011), accessed 10/06/2011 online: <http://www.imf.org/external/np/loi/2010/pak/121710.pdf>; IMF, "IMF Approves Nine-Month Extension of Stand-By Arrangement for Pakistan" (Press Release No. 10/515, 27 December 2010), accessed 10/06/2011 online: <http://www.imf.org/external/np/sec/pr/2010/pr10515.htm>.

[70] IMF, *Pakistan: Poverty Reduction Strategy Paper IMF Country Report No. 10/183* (June 2010) at 3, accessed 11/06/2011 online: <http://www.imf.org/external/pubs/ft/scr/2010/cr10183.pdf>.

[71] Judicial crisis erupted when President General Pervaiz Musharaf, on the advice of Prime Minister of Pakistan Shaukat Aziz, suspended Mr. Iftikhar Chaudry, the Chief Justice, on charges of corruption and mismanagement. Mr. Iftikhar Chaudry and the judges of the Supreme Court were put under house arrest. This sparked a historical

crisis, the then government remained inactive on crucial matters such as the impact of hikes in oil prices in the international market. The delay in transferring the impact of the price hike to consumers caused huge budget deficit, which was filled up by excessive borrowing from the State Bank of Pakistan, adding to the already high inflation.[72] The inaction of the government on such important financial matters, domestic political and economic instability, and the devastating impact of the war on terror led to a decline in GDP growth rate from 7.5 percent to barely 5.8 percent in 2007-2008 and an expected growth rate of 3.4 percent in 2008-09.[73] A provisional growth rate of 4.1 percent on an inflation-adjusted basis was recorded for the year 2009/10.[74] In 2010-11 the Real GDP was 2.4 percent[75] and in 2011-12 the growth rate showed improvement to 3.7 percent.[76]

The procrastination of the government on critical matters of economic importance, along with the country's alliance with the United States in the war on terror, has halted all development efforts, with huge social and economic cost to the society and the country.[77] The war on terror has not only obliterated the existing infrastructure in the country, but also

---

Lawyer's movement for the restoration and independence of the judiciary in Pakistan. The political parties looked at the movement as an opportunity to destabilize the government of President Musharaf. The workers of the leading political parties, which included the Pakistan Peoples Party (PPP), Pakistan Muslim League (PML-Nawaz Group), and Pakistan Tehrek-e-Insaf (PTI) joined the Lawyer's movement. The Chief Justice was ultimately restored by the Supreme Judicial Council of Pakistan, but was again suspended by President Musharaf, leading to countrywide protests demanding the restoration of the Chief Justice and the resignation of the President. President Musharaf subsequently got himself elected from the Parliament before the completion of its five-year term. After his re-election, President Musharaf appointed General Pervaiz Kiani as his successor and himself became the civilian President. Later on after the general elections in 2008, PPP and PML emerged the leading political parties. These parties, along with others, signed the Charter of Democracy and reached an understanding to impeach President Musharaf. Musharaf, anticipating the impeachment, stepped down as the civilian President. After Musharaf's exit from Pakistan' s political scene his successor General Pervaiz Kiyani intervened and facilitated the restoration of Mr. Iftikhar Chaudry as the Chief Justice of Pakistan and of other Supreme Court Judges.

[72] *Ibid.* at 2.

[73] *Ibid.* at 2.

[74] Government of Pakistan, *Economic Survey of Pakistan: Growth and Investment* (2009-10) accessed 11/06/2011 online: <http://www.finance.gov.pk/survey/chapter_10/01_Growth_and_Investment.pdf> at 1.

[75] Imran Ali Kundi Pakistan's economy to grow at 3.9 pc: WB *The Nation* (19 January 2012), accessed online on 16/01/2013 <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/19-Jan-2012/pakistan-s-economy-to-grow-at-3-9pc-wb>.

[76] Highlights Economic Survey of Pakistan, accessed online on 16/01/2013: <http://cdn.onepakistan.com/content/2012/budget/highlights.pdf>.

[77] *Supra* note 68 at 3.

has displaced millions of people in the province and has cost billions of dollars in terms of losses in foreign investment, promotion of exports, tourism, industrial input and output, and tax collection.[78] With these losses, the energy crisis in Pakistan has also dealt a severe blow to the existing development efforts. To make things worse Pakistan has been hit by natural disasters like floods and earthquakes, which not only displaced millions of people but also magnified the incapacity of the government to deal with natural and man-made emergencies.

According to the recent Country Partnership Strategy (CPS) prepared by the WB, the country's growth and poverty reduction remained stalled during the period from 2007-2009.[79] The document further stated that the key focus area would be the achievement of macroeconomic stability through structural reforms for strong and sustainable growth. The document formulates the achievement of growth in the production sector, creating adequate economic opportunities through economic deregulation, liberalization, and transparent privatization.[80] The strategy emphasizes the World Bank's shift to a focus on flexibility, improving economic governance, improving human development and social protection, improving infrastructure and growth, and improving security and reducing the risk of conflict.[81] However, neither the shift in focus nor the depressing figures of development given are new, except for the ever-rising figures of poverty and hunger.

The joint Poverty Reduction Strategy Paper (PRSP) prepared by the IMF and Pakistan's Department of Finance has underlined three structural weaknesses needing to be addressed in order to solve the current economic imbroglio of the country: (i) government spending in excess of revenue (fiscal deficit); (ii) imports in excess of exports (trade deficits); and (iii) inadequate social services to ensure the tangible participation of the poor and vulnerable in times of stability and prosperity, and protection during the shocks. In addition, the most

---

[78] *Ibid.*

[79] World Bank, *Country Partnership Strategy FY 2010-13 Executive Summary* (2010), accessed 11/06/2011 online: <http://siteresources.worldbank.org/PAKISTANEXTN/Resources/293051-1264873659180/6750579-1279901350261/ExePakistanCPSJuly2010.pdf>.

[80] *Ibid*.

[81] *Ibid*.

recent causes of economic instability are the worsening domestic law and order situation,[82] the direct and indirect costs of alliance with the United States in the war on terror, increases in global prices of oil, food and other essential commodities, and global financial crisis.[83] These factors have resulted in a number of effects. There has been a decline in GDP growth rate, reduction in investment, damaged or destroyed physical infrastructure, loss of employment and incomes, the diversion of budgetary resources to military and security related spending, cutbacks in development sector spending, capital and human flight, reduction in capital and wealth stock, exchange rate depreciation, and inflation and loss of exports.[84]

Exports, which contribute considerably towards Pakistan's overall GDP, and are a tangible source of employment, suffered substantially in terms of loss of exports orders to competitors. Pakistan was removed from global production and the marketing chain of international brands/large buying houses, and exports were consigned to low value-added commodity products. There was sharp decline in the price/unit value for products; sharp increase in the transaction costs and costs of doing business; loss of design and technological transfer; loss of entrepreneurial capital due to capital flight and brain drain; sharp increase in shipment, insurance, and security costs; reverse trend towards greater economies of scale; and loss of income, new investment, and jobs.[85]

The war on terror has negatively impacted growth and investment in Pakistan and the economy has grown 1.2 percent in 2008-2009 with significant contraction in large-scale manufacturing at the rate of -8.2 percent per year.[86] Since July 2007, the country has incurred estimated expenses of U.S. $4 billion (2.5 percent of GDP) in security related and relief

---

[82] *Supra* note 68 at 2-3; World Bank, Country Context online: <http://siteresources.worldbank.org/PAKISTANEXTN/Resources/293051-1264873659180/6750579-1279901350261/Ch2PakistanCPSJuly2010.pdf>.

[83] Economic Survey of Pakistan: Growth and Investment, accessed 11/06/2011 online: <http://www.finance.gov.pk/survey/chapter_10/01_Growth_and_Investment.pdf> at 6-7.

[84] *Ibid*.

[85] *Ibid.* at 9.

[86] *Ibid.* at 8.

operations and U.S. $600 million for the rehabilitation and relief of internally displaced populations as a result of the war on terror.[87]

This brief overview of internal and external organizations in Pakistan highlights the deeper involvement of the IFIs in Pakistan since its independence. The IFIs have been trying to promote development through foreign aid to Pakistan but the overall impact on the country's economic development has been negative, and this trend has not changed even after five decades of experiments with various development models. The conditions of the IFIs' foreign aid to Pakistan have a negative impact on common Pakistanis; the prices of basic commodities like food and common utilities such as gas, petroleum, telephone, and electricity cannot be afforded on the monthly salary of an ordinary citizen.

According to the latest figures given by the WB, even Pakistan's key economic indicators have shown an inconsistent and declining trend.[88] What is perplexing and has remained a riddle so far for law, development, and economic scholars is that in spite of the deeper and longer involvement of the IFIs in Pakistan, the country has not developed as expected. Why have IFIs, which have numerous developing and poor countries as an experiment lab for development models, not been able to give a reasonably acceptable and workable model for Pakistan? Is the development conundrum of Pakistan a making of the country itself or of the IFIs? It is in this context that understanding the conditions and the economic environment is essential to constructing an effective development model for Pakistan.

4.7 Conclusion

In the light of the above analysis and North's institutional and economic change framework, Pakistan's development complex can be seen as the result of its own bad governance, obsolete laws, weak institutions, religious fundamentalism, corruption, and unstable political

---

[87] *Ibid.*

[88] World Bank, "Pakistan at Glance", accessed 11/06/2011 online: <http://devdata.worldbank.org/AAG/pak_aag.pdf> at 8.

system, and of the IFIs' insistence on a "one-size-fits-all" Washington Consensus approach detached from the social, political, legal, and institutional realities of the country.[89]

Broadly speaking there are three groups in Pakistan: the ruling elite, international financial institutions (IFIs), and the public. In order to create a favourable environment and effective institutional change we have to reconcile the laws, policies, and institutional structure in Pakistan and build trust and coordination between the state/government, the ruling elite, the IFIs, and the public. Before Pakistan develops an alternative approach to effect institutional and economic change it must remove the trust deficit between the public (common man) and the IFIs, the ruling elite, and the government by managing the painful impact of reforms in a way that is equally shared by rich and poor and ensure transparent and accountable systems for enforcement.

There are various alternatives available. The institutional change might come as a result of a bloody revolution replacing the current leadership with a new leadership that ruthlessly enforces law and order. The new leadership that creates a new institutional structure would then give relief to the common man by ensuring legal justice through rule of law and social justice through the equitable circulation of wealth in the society. Second, we might have an alternative in the form of Taliban rule, which will provide rigid interpretation of Islam with ruthless implementation and enforcement of Islamic law, provide expeditious justice, restore order, and impose a completely new economic system. The problem with this alternative is that it is not acceptable to the moderate and educated section of the society. Three, we might

---

[89] The IFIs, being an interest group in the governance structure of Pakistan with enormous capital at their hands, have a vital role in bringing much desired institutional change in the country. However, it depends on whether the influential members of the IFIs such as the United States and other Western countries intend to use the IFIs as the tool of development or as a tool to achieve their foreign policy objectives. If IFIs can be used as a tool to achieve their foreign policy goals they can also be used to initiate and implement desired legal, institutional and policy reforms in Pakistan. For details read Bessma Momani, "The IMF, The US War on Terrorism, and Pakistan" (Spring 2004) 30:1 Asian Affairs, accessed 24/06/2011 online: <http://arts.uwaterloo.ca/~bmomani/AA-%20IMF%20US%20war%20on%20terrorism.pdf>; Megan O'Sullivan, *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington, DC: Brookings Institution Press, 2003) at 284-318; Michael Mastanduno, "The Strategy of Economic Engagement: Theory and Practice", in Edward D. Mansfield and Brian M. Pollins, eds., *Economic Interdependence and International Conflict: New Perspectives on an Enduring Debate* (Ann Arbor: University of Michigan Press, 2003); David Baldwin, *Economic Statecraft* (Princeton: Princeton University Press, 1985) at 107; Tony Killick*, IMF Programmes in Developing Countries: Design and Impact* (London: Overseas Development Institute, 1995); Bessma Mommani, "American Politicization of International Monetary Fund (IMF)" (2004) 11: 5 Review of International Political Economy 880.

live with the current system, but adopt an extremely innovative, thoroughly researched, well-planned and organized, gradual approach. This adopted system would introduce appropriate changes via laws, policies, strong implementation/enforcement mechanisms, and an institutional structure with selective and good protectionist policies to enable the infant industry of the country to become internationally competitive, and then would gradually adopt economic and trade liberalization. I would prefer the third approach, but foresee certain possible barriers to its implementation.

A significant problem with the preferred approach is the absence of the essential atmosphere for bringing about such change, as all the policy, law, and decision-making and enforcing bodies are populated by corrupt organizations. The second problem is that in order to bring any such institutional change, Pakistan needs the developed countries to ensure that they do not harbour Pakistan's corrupt elements and protect their wealth in overseas banks and financial institutions. These corrupt elements are as dangerous as terrorists for a poor country like Pakistan. Keeping in mind the finances and international vested interests involved, it is difficult to conceive that change will happen in a short span of time, however consistent efforts by the developing countries can bring fruitful results. The third barrier might be Pakistan's dependence on the IFIs or development agencies for capital and technical support, and the IFIs' detachment from the realities of Pakistan and insistence on the Washington Consensus development model. However, I see a critical role for the IFIs to be an effective agent of change in the country by stimulating the required legal reforms and initiating some economic and social reengineering.

The IFIs have already assumed the role of promoting good governance in the country. If the IFIs attach with their grants and loans conditionalities of good governance and emphasize reforms in the existing laws and enforcement without exception, the rules of the game in Pakistan can be changed. For instance, changes in electoral laws relating to the *Election Commission of* Pakistan, the *Political Parties Act*, and the qualification of candidates to the parliament would substantially change the rules of the game. Here it is pertinent to mention that along with the introduction of new laws it is also essential to enforce existing laws relating to the election of candidates. If it is made a mandatory qualification for an election candidate to have completed two years of community work in his constituency before contesting an election, it will force all the candidates to connect with their community before going for elections. However, there is a need for a separate department doing independent evaluation and screening of the work the contesting candidate claims to have done before and after election.

It should be made mandatory for a candidate to have a substantial stake in the constituency and the country to qualify as eligible for election. The political culture of Pakistan has a pattern of candidates holding dual nationality, i.e. one from Pakistan and another from the U.S. or U.K. or Canada or another country. The candidate will have all his investments and accounts in banks and companies based in foreign countries but will be making decisions on important issues in Pakistan. Their kith and kin will be residing in foreign countries for the benefit of their businesses, property, education, and health but will be sitting in the legislature of Pakistan making decisions on the fate of millions of people within the country. In order to reverse this capital flight and brain drain it is essential to ensure that the legislatures and decision makers have valuable stakes in the country.

If the candidate is a rich person he should have invested or donated some portion or substantial amount of money (depending upon the assets he or his family members own) towards the establishment of a college, schools or health centre or should have sponsored a local needy student in his/her constituency for higher education in the country. Any money spent on such work should have come from his personal account and not from the government account. Any candidate who does work of this nature in their constituency should be given tax credits, which will encourage tax culture in the country. Two years before the end of their term as MP, a forensic audit should be conducted of the funds/money given to an MP in the name of carrying out development work in the constituency from which he was elected. In case of any irregularities the details should be made public, the money should be recovered from his personal accounts, and the MP should be barred from contesting any future election.

There should be a special quota in every party for students, women, teachers, and researchers in the grant of party tickets for elections on special seats. However, such candidates should not be in any way related to the ruling members of the party. The insistence on such reforms, their enforcement, and the enforcement of existing laws in the sphere of conditions relating to good governance would give the IFIs a high moral edge in the public eye in Pakistan and provide much required stimulus for change in the institutional structure.

The other important step in this direction would be to highlight the importance of good governance in the light of local culture and beliefs. It is important to underline the importance of religion (i.e. Islam) in this context. There are many common elements in the IFI conditions on good governance, trade, and Islam. The predominant portion of the population in Pakistan has Islam as their faith and believes in the prophethood of Mohammad (Peace Be Upon Him). Both the teachings of Islam and the teachings of Mohammad (P.B.U.H) insist on establishment of just society through individual and collective honesty, integrity, rule of law, elimination of corruption and poverty, protection of property rights, access to justice, public good, and democracy. If, when placing such conditions on aid, the IFIs also try to connect these conditions with the teachings of Islam, they would be readily accepted and owned by the local public.

In the same context, it is relevant to highlight the fact that the IFIs insist on trade liberalization, which is also one of the sacred professions in Islam. The Holy Prophet Mohammed (P.B.U.H) was a trader by profession. Islam is also against monopolies and the rent-seeking behaviour of the government and the market, promotes fair competition, and advocates enforcement of contracts and protection of property rights. These are some of the common policy elements of the Washington Consensus and Islam, and if the IFIs argue for such reforms in the sphere of good governance the general public in Pakistan would readily accept them. It would also bring the ruling elite under religious, moral, and ethical pressure to go for such reforms.

Likewise, the IFIs and the developing country should enter into a collective agreement with the governments of all the developed countries to ensure that the monetary, tangible and intangible assets of the corrupt leadership, their relatives and their friends in external banks and financial institutions (based mostly in developed countries) are declared national assets/property and returned to the country. The international community and the developed countries will have to shed the mask of hypocrisy and double standards and treat the corrupt leadership of the poor countries the same way as they treat the terrorists of today.[90] The criminals of every country need to be treated equally and in the same manner. The corrupt leaders of the poor countries and the people facilitating money laundering for them need to be tracked and dealt with in the same way as the financial resources of terrorists.

Finally, the policies of unbridled liberalization, privatization, and deregulation will not work in countries like Pakistan. Pakistan was ranked tenth in the Failed States Index 2010.[91] The policy package of the Washington Consensus might work well in a country which has advanced in its overall development index, but in a failed state fast-paced implementation of liberalization, privatization and deregulation is a perfect recipe for a weak state, weak institutions, lawlessness, bad governance, civil war, anarchy, religious extremism, and corruption—hardly an encouraging environment for any kind of investment and development.

Before economic liberalization can be implemented the state of Pakistan must be reconstructed to work for the development and welfare of the people. This implies new responsibilities of the state in a globally integrated, but uncertain world. The state needs to be made more accountable, responsible, and transparent in its actions. In order to do this, Pakistan needs to introduce legal, institutional and policy reforms and follow a selective and good form of protectionist policy[92] in order to develop its industrial, agricultural, and production sector more efficiently to compete internationally. The reforms embedded in the IFI conditionalities should be managed to reduce their worst impacts on the common people.

The IFIs should adopt a structural flexibility in dealing with countries like Pakistan. The IFIs should give more policy space to the government for pacing, sequencing, and structuring privatization and deregulation, but should also exercise influence, provide technical

---

[90] Saddam Hussain, Colonel Gaddafi, Hussnie Mubarik, Osama bin Ladin and Mullah Omar can be quoted as a few examples. The international community, led by the United States and the other developed countries, showed exemplary zeal in tracking down these individuals.

[91] Foreign Policy. *The Failed States Index 2010*, accessed 14/06/2011 online: <http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings>.

[92] As opposed to the bad type of protectionism defined by Eric Reinert, *How Rich Countries Got Rich and Why Poor Countries Stay Poor* (New York: BBS Public Affairs, 2007) at 311-316.

assistance, and lead by example to shift the policies not only towards free trade, privatization, and deregulation, but also towards the development and prosperity of the common people.

Chapter 5 Privatization: Conceptual Basis and Techniques

5.1 Introduction

Earlier, I explained the regressive impact of policy prescriptions embedded in IFI loan conditionalities on the development of borrowing countries. The failure of these policies prescriptions has mainly been attributed to the inherent ideological loopholes and their detachment from the local non-economic realities, i.e. the institutional, legal, political, social, historical, and cultural structure of the borrowing countries.

This chapter will briefly define privatization and explain the reasons for the international shift towards privatization and the current state of privatization around the globe. The chapter argues that privatization and deregulation are inadequate strategies to address the failure of state/government in borrowing countries. The chapter will shed some light on the objectives of privatization and alternatives to it. I will then discuss the various techniques of privatization and its pros and cons. The chapter underlines the importance of reconciling the privatization and deregulation objectives and technique with the social, political, and economic realities of the borrowing country.

5.2 Privatization: A Definition

There is divergence of opinion among scholars on the precise definition of privatization. In simple terms privatization has been defined as the transfer of a business from state/government ownership to private ownership.[1] In broader contexts, it can be defined as the transfer of assets supported through public taxes to private market structured by entrepreneurial spirit and competition.[2] In legal terms it has been defined as the transfer of legal title of state-owned enterprise/property in the possession of the state to a private

---

[1] Jonas Prager, "Contracting Out As a Vehicle for Privatization: Half Speed Ahead" (Winter, 1997) 50:2 Journal of International Affairs at 613; Glossary of Statistical Terms online: <http://stats.oecd.org/glossary/ detail.asp ?ID=3287>.

[2] Lawrence W. Reed, "Public Policy and American Business: The Privatization Revolution" (Adapted from remarks by Lawrence W. Reed to "The Future of American Business", Shavano Institute for National Leadership Seminar, Indianapolis, 21 May 1997), accessed 25/06/2011 online: <http://mackinac.org/6051>; Andrew Berg & Elliot Berg, "Methods of Privatization" (Winter 1997) 50:2 Journal of International Affairs at 357.

individual or group of individuals.[3] Hence, there is no precise definition of privatization rather there are as many definitions as there are modes/techniques/forms to transfer state-owned enterprises (SOEs) to private ownership in different sectors, in different countries, in different economic, political, and legal environments.

There are numerous forms of privatization, more than 57 varieties in fact.[4] It is therefore branded and packaged in different terms, such as “capitalization” in Bolivia, “peopleization” in Sri Lanka, and “equitization” in Vietnam. In Canada the privatization of state-owned enterprise Canadian National (the railway company) was flagged as “commercialization” and in Belgium the privatization of Belgacom (the Belgian telecommunications company) was branded as “strategic consolidation”.[5] In the Netherlands, the corporatization of SOEs is termed “privatization”.[6]

Between 1985 and 1999 more than 8000 privatization transactions had been executed worldwide. The value of these transactions was more than one trillion in 1985 U.S. dollars. In 1987 OECD countries sold state assets worth more than $120 billion. The average revenue of global privatizations increased from $50 billion per year (500-1000 transactions) in 1990 to $87 billion (1700 transactions) by 1995 and reached $171 billion in 1998.[7] According to the country level data for the period of 1985-99, the proceeds from privatization exceeded $100 billion (in 1985 U.S. dollars) in Italy, Japan, and the United Kingdom, and exceeded

---

[3] Andrei A. Baev, “Civil Law and the Transformation of State Property in Post-Socialist Economies: Alternatives to Privatization” (1993) 12:2 UCLA Pacific Basin L.J. at 131, 137.

[4] “Selling The State” *The Economist* 328:7825 (August 21, 1993) at 18, accessed 26/07/2011 online: <http://find.galegroup.com/econ/newspaperRetrieve.do?resultListType=RESULT_LIST&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28DA%2CNone%2C8%2919930821%24&inPS=true&sort=&tabID=T003&prodId=ECON&docId=GP4100248044&searchId=&retrieveFormat=MULTIPAGE_DOCUMENT&currentPosition=0&userGroupName=ubcolumbia&docLevel=FASCIMILE&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=GP4100248044&contentSet=LTO&callistoContentSet=ECON&docPage=page&fromPage=&newOrientation=0&uzFieldValue=econ&newScale=1.00&pageIndex=1>.

[5] Pierre Guislain, *The Privatization Challenge: A Strategic Legal, and Institutional Analysis of International Experience* (Washington, DC: World Bank, 1997) at 12, accessed 10/07/2011 online: <http://books.google.ca/books?hl=en&lr=&id=_BJjz7DQJ8wC&oi=fnd&pg=PR11&dq=Legal+Framework+for+Privatization&ots=EnZI01tOkO&sig=TLoueK48zQ7CHqLYh-XlFzaA-K0#v=onepage&q&f=false>.

[6] *Ibid.* at 12.

[7] Nancy Brune, Geoffrey Garret & Bruce Kogut, “The International Monetary Fund and the Global Spread of Privatization” (2004) 51:2 International Monetary Fund Staff Papers at 196.

$50 billion in Australia, Brazil, and France.[8] In terms of GDP, the five largest privatizers were Bolivia, Guyana, Hungary, Panama, and Portugal, which sold state assets worth more than 30 percent of their 1985 GDPs by 1999.[9] In Australia, Chile, Malaysia, and New Zealand, the revenues increased from 25 percent of 1985 GDP. In 1999, the total GDP of 60 countries crossed 5 percent of their 1985 GDP.[10]

The privatization debate started in the 1980s in the U.K. and the U.S. with the election of Prime Minister Margaret Thatcher and President Ronald Reagan respectively. Both these leaders were vehement advocates of privatization, liberalization, and deregulation; they initiated policies that minimized the role of the state in regulating the economy. Due to the dominant financial share these countries hold in the IFIs, Thatcher and Reagan stressed the conditions of privatization, deregulation, and liberalization attached to loans to borrowing countries.[11] Since then, these have been the cardinal principles of the Washington Consensus recipe prescribed by the IFIs to borrowing countries around the globe, including Pakistan.

5.3 Why Privatize?

The underlying philosophy of privatization is fundamentally based on the role of the state in the economy, i.e. the ownership and the management of SOEs. The link between the change of ownership and performance of an enterprise remains tenuous at best and depends on which side of the divide you stand.

---

[8] *Ibid.* at 196 & 216.

[9] *Ibid.* at 196.

[10] *Ibid.*

[11] Suneta Kikeri & John Nellis, "An Assessment of Privatization" (Spring, 2004) 9:1 World Bank Research Observer at 88; Yuliya Mitrofanskaya, "Privatization as an International Phenomenon: Kazakhastan" (1999) 14:5 Am. U. Int'l L. Rev. at 1401, online: <http://heinonline.org/HOL/Page?handle=hein.journals/amuilr14&div=56&collection=journals&set_as_cursor=0&men_tab=srchresults>; Lawrence W. Reed, *supra* note 2.

5.3.1 Arguments against state-owned/public enterprises

The most common reasons cited for the global shift towards privatization are:

(i) The dismal performance of the state-owned enterprise (SEO). Even though there might be some rare exceptions where state-owned enterprises have been performing efficiently, the general majority of SEOs have been inefficient.[12]

(ii) Budget deficits and public finance crises.[13]

(iii) International obligations.[14]

---

[12] Gerd Schwartz & Paulo Silva Lopes, "Privatization and Reform of Public Enterprises: An Overview of Policy Trade-Offs, Experiences and Outcomes" in Demetrius S. Iatridis & June Gary Hopps, eds, *Privatization in Central and Eastern Europe-Perspectives and Approaches* (USA: Praeger Publications, 1998) at 38-39; *supra* note 5 at 6, accessed online 24/02/2012 <http://www-wds.worldbank.org/external/default/ WDSContentServer/ WDSP/IB/1997/01/01/000009265_3970716145109/Rendered/PDF/multi0page.pdf>; Stilpon Nestor & Ladan Mehboobi, "The Privatization of Public Utilities: The OECD Experience", accessed 24/02/2012 online: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.oecd.org% 2Fdataoecd%2F48%2F24%2 F19 29700.pdf>; OECD. *Privatization Trends in OECD Countries* (June 1996), accessed 24/02/2012 online: www.oecd.org <http://www.oecd.org/dataoecd/57/34/1897976.pdf>; Robert Poole Jr, "Privatization: Providing Better Services with Lower Taxes" (1988) accessed 24/02/2012 online: International Society for Individual Liberty <http://www.isil.org/resources/lit/privatization-english.html>; Olivier Bouin*, The Privatization in Developing Countries: Reflections on a Panacea* (OECD Development Center, Policy Brief No. 3 1992), accessed online 24/02/2012: <http://www.oecd.org/dataoecd/22/62/1918716. pdf>; "Privatizing State-Owned Companies", The Prosperity Papers Series, Prosperity Paper Three, accessed 24/02/2012 online: <http://www. cipe.org>; Paul Starr, "The New Life of the Liberal State: Privatization and the Restructuring of State-Society Relations", accessed 24/02/2012 online: <http://www.princeton.edu/~starr/newstate.html>.

[13] *Supra* note 5 at 6, accessed online 24/02/2012 <http://www-wds.worldbank.org/external/default/ WDSContentServer/WDSP/IB/1997/01/01/000009265_3970716145109/Rendered/PDF/multi0page.pdf>; Timothy Ash, Paul Hare & Anna Canning, "Privatization in the Former Centrally Planned Economies" in Peter M. Jackson & Catherine M. Price, eds., *Privatization and Regulation—A Review of the Issues* (London & New York: Longman,, 1994) at 215; John Heath, "Survey of Contributions" in John Heath, ed., *Public Enterprise at the Crossroads-Essays in Honour of V.V.Ramanadham* (London & New York: Routledge, 1990) at 4.

[14] Moazzem Hossain, "Liberalisation and Privatization: India's Telecommunications Reforms", in Moazzem Hossain & Justin Malbon, eds., *Who Benefits from Privatization*? (London & New York: Routledge, 1998) at 214. The countries receiving financial support from the IMF and the World Bank were asked to pursue privatization and deregulation as part of structural adjustment programs attached to the financial support. Pakistan, Romania, and Bulgaria can be quoted as examples. See Daniel Daianu, "The Changing Mix of Disequilibra during Transition: A Romanian Perspective" in Laszlo Csaba, ed., *Privatization, Liberalization and Destruction-Recreating the Market in Central and Eastern Europe* (England & USA: Dartmouth Publishing, 1994) at 198; Tatiana Houbenova-Dllisivkova, "Liberalization and Transformation in Bulgaria" in in Laszlo Csaba, ed., *Privatization, Liberalization and Destruction-Recreating the Market in Central and Eastern Europe* (England & USA: Dartmouth Publishing, 1994) at 218. While delivering a speech at the CIPE's Regional Conference "Generating Investment through Economic Reform" in Bucharest, Emil Constantinescu stated, "The restructuring of the Romanian economy as well as the whole program…pursues the well-known directions of the International Monetary Fund and of the World Bank". According to the Bulgarian Government the privatization program is in compliance with the agreements made with the IMF and the World Bank. See online: <http://www.bfia.org/privat.htm>; <http://www.privatisation.online.bg>; Lambirto Dini, "Privatization

(iv) Changes in the international economy.[15]

(v) Ideological debate on economic management.[16]

(vi) Important roles of certain state-owned enterprises.[17]

In the privatization literature public enterprises are usually portrayed as inefficient compared to private enterprises, for the following reasons:

a. Excessive political intervention in the governance and management of an enterprise. Undue political intervention is the predominant characteristic of public-owned enterprises. Such intervention results in inefficient decision-making processes based on political and short-term considerations rather than profit-making considerations.[18]

b. The objectives of the management in public-owned enterprises are mostly vague, unrealistic, and constantly changing.[19]

Processes in Eastern Europe: Theoretical Foundations and Empirical Results" in Maria Baldassarri, Luigi Paganetto & Edmund S. Phelps, eds., *Privatization Process in Eastern Europe: Theoretical Foundations and Empirical Results* (New York: St. Martin Press, 1993) at 9.

[15]The scientific invention in the field of telecommunications and Information Technology has completely changed the mode of trade and businesses around the world.

[16] Neil Robinson, "Corporate Interests and the Politics of Transition in Russia: 1991-1994" in Demetrius S. Iatridis & June Gary Hopps, eds., *Privatization in Central and Eastern Europe: Perspectives and Approaches* eds. (USA, Praeger, 2008) at 170-173; *Supra* note 5 at 8, accessed online 24/02/2012 <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1997/01/01/000009265_3970716145109/Rendered/PDF/multi0page.pdf>.

[17] Bulent Seven, *Legal Aspects of Privatization: A Comparative Study of European Implementations* (Dissertation.com USA, 2002) at 62-63; Cosmo Graham & Tony Prosser, "Privatizing Nationalised Industries: Constitutional Issues and New Legal Techniques" (January 1987) 50:1 Modern Law Review 16-51, accessed 27/02/2012 online: <http://heinonline.org/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22%20Graham,%20Cosmo%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search>; Cosmo Graham, "Privatization—The United Kingdom Experience" (1995) 21:1 Brooklyn J. of Int'l L. 185-212, accessed online 27/02/2012: <http://heinonline.org/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22%20Graham,%20Cosmo%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search>.

[18] Howard Raiffa, "Decision Making in the State-Owned Enterprises" in Raymond Vernon & Yair Aharoni eds., *State-Owned Enterprise in the Western Economies* (London: Croom Helm, 1981) at 54-62

[19] Yair Aharoni, "Managerial Discretion" in Raymond Vernon & Yair Aharoni eds., *State-Owned Enterprise in the Western Economies* (London: Croom Helm Limited, 1981) at 184.

c. The public-owned enterprises run by politicians and bureaucrats have the managerial culture of inefficient utilization of valuable resources.

d. The unions in public sector enterprises are usually very powerful and manage to get higher wage rates, and better employment levels and conditions than the market.

e. During financial crisis private firms are strictly subjected to bankruptcy, liquidation and hostile take-over, whereas public firms have easy access to public funds.

f. Management salaries are comparatively better in the private sector than the public sector, which consequently affects performance in the private sector.

g. The rewards in the public sector are given more on the basis of political affiliations than performance.

h. The public sector firms have extremely poor customer service orientation.

i. The line between regulation and ownership often blurs in the public enterprises, resulting in ineffective regulation of the firm.

j. In a market economy the capital markets set higher standards of scrutiny for private enterprises. Public firms, on the other hand, have fairly easy access to the public money, capital on low interest as compared to the market rate, subsidies, and numerous other concessions from the state.

k. As private firms are motivated by self-interest they are inclined to manage the resources of the firm efficiently as compared to public sector firms.[20]

l. Public sector enterprises are not profitable.[21]

In centrally planned economies the state controls the distribution and utilization of resources, which taxes the state heavily. The cost of the government growth and control burdens

---

[20] Timoth Ash, Paul Hare & Anna Canning, "Privatization in the Former Centrally Planned Economics" in Peter M. Jackson & Catherine M. Price, eds., *Privatization and Regulation: A Review of the Issues* (London & New York: Long, 1994) p 215.

[21] Joshua Aizeman, "Privatization in Emerging Markets". National Bureau of Economic Research, Working Paper No. 6524 Cambridge (April 1988), accessed 3/03/2012: <http://www.nber.org/papers/w6524>.

millions of people unnecessarily.[22] The same state when it is short of revenues is in a dilemma regarding increasing taxes: the taxes are already high and further increase forces investors and businesses to a comparatively friendlier environment. When the state reaches such a level it can opt to transfer the state ownership of commercial enterprises to private owners instead of increasing taxes.[23]

The economic logic given by the IFIs and leading economists generally highlights the difference between state-owned and privately owned enterprises in the efficiency and management of assets and resources.[24] The economists from the "property rights" school of thought employ multiple economic models to prove that organizations run by the government are inefficient compared to organizations managed by the private sector. The predominant logic given by this school of thought follows from the idea that:

> The personal and attractive incentive in the ownership of the property is the fountain of efficient management. An asset will be used more efficiently if the property rights in the asset are owned by the person who can enjoy and take pleasure from the gains from its efficient use than in the situation where he works for the government to efficiently manage her asset.[25]

The efficient management of resources by stems from the belief that along with privatization there will be market liberalization, which will abolish monopoly and create competitive atmosphere.[26] The competition in the market compels the market players to efficiently utilize their resources, resulting in the creation of alternative choices for consumers to buy products at reasonable prices. The price stability in the market is regulated by its competitive nature, i.e. the markets will produce innovative and reasonably priced products to attract more customers. The competitive nature of the market helps the market regulate itself hence there

---

[22] Yuliya Mitrofanskaya, *supra* note 11 at 1402.

[23] *Ibid.* at 1403

[24] Jeffrey Davis et al., "Fiscal and Macroeconomic Impact of Privatization" (IMF Occassional Paper No. 194, 2000), accessed 3/07/2011 online: <http://www.imf.org/external/pubs/nft/op/194/index.htm>; Oleh Havrylyshyn & Donal McGettigan, "Privatization in Transition Countries: Lessons of the First Decade" (IMF Economic Issues No. 18), accessed 3/07/2011 online: <http://www.imf.org/external/pubs/ft/issues/ issues18/ index.htm>.

[25] *Supra* note 2, accessed 25/06/2011 online: <http://mackinac.org/6051>

[26] David Gordon, "Privatization in Eastern Europe: The Polish Experience" (1994) 25:2 Law & Pol'y Int'l Bus. at 517-518, accessed 2/07/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/geojintl25&id =529&collection=journals&index=journals/geojintl>.

should be de-regularization as well. Employing this logic, the policy of privatization undergirded by deregulation and liberalization has been actively promoted and enforced by the international financial organizations by being drafted in their structural adjustment programs.[27] Privatization, deregulation, and liberalization have thus been adopted as a development recipe.[28]

Recently in its special report, *The Economist* identified the pros and cons of state capitalism and concluded that, notwithstanding its benefits and achievements in countries like China, state capitalism is worse than the market-led Western economies. Factors identified in the special report included the rent-seeking characteristic of the state-owned corporate elite; its origin and roots in problematic states; the inability of the state-led corporations to clearly distinguish between political and commercial decisions; concentration of power leading to the misuse of power by the corporate elite; the absence of liberty to adopt innovative approaches in the management and other aspects of the economy; and the principle-agent problem in the management of the state-run enterprises.[29]

The crux of the matter is that a multitude of factors are responsible for the inefficient performance of the public firms ingrained in the public image, which has stimulated the shift towards privatization. These reasons become more obvious in the transition and development economies that are without any institutional structure or corporate, financial, and legal practices to help firms achieve efficient management and utilization of firm resources. In addition, the existing economic literature based on varied approaches and empirical studies[30]

---

[27] Oleh Havrylyshyn & Donal McGettigan,*supra* note 24; Kenneth S. Rogoff, "Has Russia Been on the Right Path? A Commentary" (26 August 2002), accessed 3/07/2011 online: <http://www.imf.org/external/np/vc/2002/082602.htm>

[28] Philip M. Nichols, "Creating a Market along the Silk Road: A Comparison of Privatization Techniques in Central Asia" (1997) 29:2 New York U. J. Int'l L. & Pol. at 299-300, accessed 2/07/2011 online: <http://heinonline.org/HOL/Index?index=journals/geojintl&collection=journals>; "Privatization in Poland: An Interview with Jeffrey Sachs" (1992) 15:2 Suffolk Transnat'l L.J. at 441 and 445, accessed 2/07/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/sujtnlr15&id=447&collection=journals&index=journals/sujtnlr>.

[29] "Special Report: State Capitalism" *The Economist* 402:8768 (21 January 2012) at 3-18.

[30] John Vickers & George Yarrow, *Privatization: An Economic Analysis* (England: MIT Press, 1998); Sheshinski Eytan & Lopez-Calva Luis Felipe, "Privatization and Its Benefits: Theory and Practice" (Discussion Paper No. 698, Harvard Institute for International Development, Harvard University, April 1999); Narendar V. Rao, C. Bhaktavatsala Rao & Steve Durphy, "International Perspectives on Privatization of State Owned Enterprises", accessed 4/03/2012 online: Small Business Advancement Center, University of Central Arkansas

tries to illustrate the direct link between efficiency gains, increased productivity and growth, superior performance, increased profitability, increased welfare gains, and the ownership change from public to private. A balanced approach towards these critical studies reinforces

---

<http://www.sbaer.uca.edu./>; Oleh Havrylyshyn & Donal McGettigan, "Privatization in Transition Countries: Lessons of the First Decade" (August 1999) 18 IMF Economic Issues, accessed 04/03/2012 online: <http://www.imf.org/external/pubs/ft/issues/issues18/index.htm>; Matthew Bishop & John Kay, *Does Privatization Work?: Lessons from the United Kingdom*, London Business School Center for Business Strategy Report Series (Southampton: Hobbs, 1988); Demetra Smith, Nightingale & Nancy Pindus, "Privatization of Public Social Services: A Background Paper" (Urban Institute October 15, 1997), accessed 04/03/2012 online: <http://www.urban.org>; Stilpon Nestor & Ladan Mahboobi, "Privatization of Public Utilities: The OECD Experience Rio" (April 23 1999), accessed 04/03/2012 online: <http://www.oecd.org/dataoecd/48/24/ 1929 700.pdf>; John Redwood, "Privatization: A Consultant's Perspective" in Dennis J. Gayle & Jonathan N. Goodrich, eds., *Privatization and Deregulation in Global Perspective* (USA: Pinter Publishers, 1990) at 61; Peter Young, "The Lessons of Privatization", accessed online 04/03/2012: <http://www.cipe.org/publications/ ert/e27/E27_02.pdf>; Allan Brown, "The Economics of Privatization: Case Study of Australian Telecommunications" in Moazzem Hossain & Justin Malbon, eds., *Who Benefits from Privatization?* (London & New York: Routledge Studies in Modern Economy, 1998) 68; Colin Kirkpatrick, "The United Kingdom Privatization Model: Is it Transferable to Developing Countries" in V.V. Ramandaham ed., *Privatization in UK* (London & New York: Routledge, 1988) 235-236; Nick Woodward, "Public Enterprises, Privatization, and Cultural Adoption" in John Heath ed., *Public Enterprise at the Crossroads: Essays in Honour of V.V. Ramandham* (London & New York: Routledge, 1990) 270; Melvin Burke, "Private versus Public Construction in Honduras: Issues of Economics and Ideology" in Dennis J. Gayle & Jonathan N. Goodrich, eds., *Privatization and Deregulation in Global Perspective* (London: Pinter Publishers, 1990) 214; William L. Megginson, Robert C. Nash & Matthias van Randenborgh, "The Privatization Dividend: A Worldwide Analysis of the Financial and Operating Performance of Newly Privatized Firms" (Public Policy for the Private Sector, World Bank Note No. 68, February 1996), accessed online 05/03/2012 <http://rru.worldbank.org/ documents/ publicpolicyjournal/068meggin.pdf>; Robert E Anderson, Simeion Djankov & Gerhard Pohl, "Privatization and Restruction in Central and Eastern Europe" (Public Policy for the Private Sector, World Bank Note No. 123, July 1997), accessed online 05/03/2012: <http://rru.worldbank.org/documents/ publicpolicyjournal/ 123pohl. pdf>; Sunita Kikeri, John Nellis & Mary Shirley, "Policy Views from the Country Economics Department" (July 1992), accessed online 05/03/2012: The World Bank <http://www.worldbank.org /html/prddr/outreach/ or3.htm>; Ahmad Galal et al., *Welfare Consequences of Selling Public Enterprises: An Empirical Analysis: a summary* (Washington, DC: The World Bank, 1995); Narjess Boubakri & Jean-Claude Cosset, "The Financial and Operating Performance of Newly Privatized Firms: Evidence from Developing Countries", (June 1998) LIII Journal of Finance at 1081-1110; Raphael La Porta & Florencio Lopez-de-Silanes, "The Benefits of Privatization: Evidence from Mexico", Quarterly Journal of Economics, 114: 4 (November, 1999), pp. 1193-1242; O. Havrylyshyn and D. McGettigan, "Privatization in Transition Economies", (2000) 16 *Post-Soviet Affairs* 257-286; John Nellis, "Time to Rethink Privatization in Transition Economies?" in Oleh Havrylyshyn & Saleh M. Nsouli, eds., *A Decade of Transition: Achievements and Challenges* (Washington, DC: International Monetary Fund, 2001) at 160; David Donaldson & Dileep Wagle, *Privatization: Principles and Practice* (Washington, DC: International Finance Corporation, 1995); Rafael La Porta & Florencio Lopez-de-Silanes, "The Benefits of Privatization: Evidence from Mexico Public Policy for the Private Sector" (World Bank Group Note No. 117, June 1997) at 1, accessed online 05/03/2012: <http://rru.worldbank.org /documents/public policy journal/117porta.pdf> and http://www.jstor.org/ stable/pdfplus/2586962.pdf? acceptTC=true; Lawrence Bouton & Mariusz A. Sumlinski, "Trends in Private Investment in Developing Countries, Statistics for 1970-98" (IFC Discussion Paper No. 31 & 41, December 1996, February 1997 (Revised)), accessed online 05/03/2012 <http://www-wds.worldbank.org/ external/def ault/WDSContentServer/ WDSP/IB/2001/12/01/ 000094946_ 01111704003344/Rendered/PDF/multi0page.pdf>; William L. Megginson & Jeffrey M. Netter, *Equity to the People: The Record on Share Issue Privatization Programs* (Washington DC: The World Bank, 1997), accessed 05/03/2012 online: <https://docs.google.com/ viewer?url=http%3A%2F %2Ffaculty-staff.ou.edu%2FM%2F William.L.Megginson-1%2Fprvintxt.pdf>.

the fact that enterprises have made significant gains after privatization. However, in the voluminous literature on privatization, economics, and development there are some arguments in favour of SOEs.

5.3.2 Arguments in favour of state-owned/public enterprises

Among all the arguments in favour of state-owned/public enterprises, the most powerful arguments made to illustrate the fact that change of ownership is immaterial come from China and Poland. The amazing contribution of the Chinese Village and Town Enterprises (VTE) to China's economic development is envied around the world. These enterprises, which are fundamentally state run but have been made to function like private enterprises, now account for 20 percent of China's industrial production and employ 90 million people.[31]

China has made some amazing strides in various sectors: infrastructure, telecommunication, oil exploration, energy, etc. For instance, China has progressed significantly in the infrastructure hydroelectric project, the Three Gorges dam. China has 6400 km of high-speed rail and has started new airports and railway terminals. Chinese companies are also engaged in the construction of roads and railways in Africa, power plants and bridges in South-East Asia, and schools and bridges in America.[32] China has the world's largest mobile phone and Internet network. China's Geely International managed to get access to advanced manufacturing skills in the auto-manufacturing sector when it took over Volvo for $1.8 billion. Shanghai Electric Group markedly improved its engineering knowledge when it purchased Goss International for $1.5 billion and structured joint ventures with Siemens and Mitsubishi.[33] In October 2007 Chinese President Hu Jintao inaugurated a research facility for development and innovation in the field of science of technology and invited giants like Google and Microsoft to establish research facilities in the country. The President advised the local technological manufacturers to be more innovative and granted more money to

---

[31] John Nellis, "Is Privatization Necessary?" (Public Policy for the Private Sector, FPD Note No. 7, May 1994), accessed 08/03/2012 online: The World Bank <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/007nellis.pdf>.

[32] "Special Report: State Capitalism" *supra* note 29 at 13.

[33] *Ibid* at 14.

scientific centres like Beijing Zhongguancun Science Park.[34] In addition, China is also involved in structuring transactions around the globe.

China has managed to get deals in difficult areas of the world like Sudan and Iran to access oil reserves and raw materials. It has approximately 10,000 workers in Sudan. It has lent $25 billion to Russia as an export-backed loan to assist Rosneft and Transneft to supply China with 300,000 barrels per day of crude oil. Similarly it signed a $1.7 billion deal with Iran to develop parts of the North Azadegan Oilfields. China National Petroleum Corporation is one of two companies that managed to get contracts for oil exploration in Iraq's oilfields. Pakistan named the Industrial and Commercial Bank of China to lead a consortium in order to finance the natural gas pipeline from Iran to Pakistan, worth $1.2 billion dollars.[35]

If the other supplementary requirements for the efficient performance of enterprises—well-designed policy, institutional structure, legal protection, and effective enforcement mechanisms that align with the local conditions—are put in place, ownership change is irrelevant. This approach is popularly postulated as the "Beijing Consensus", the "Chinese Model", the "Global South approach", "Capitalism with Chinese Characteristics" or "Socialism with Chinese Characteristics". The term "Beijing Consensus" was initially coined by Joshua Cooper Ramo in a paper entitled "The Beijing Consensus: Notes on the New Physics of Chinese Power", published by the Foreign Policy Centre in the United Kingdom in 2004.[36] The Beijing Consensus was fundamentally an alternative to the Washington Consensus,[37] based on three theorems. The first emphasizes the innovative approach to the

---

[34] *Ibid.*

[35] *Ibid* at 15

[36] Joshua Cooper Ramo, "Beijing Consensus: Notes on the New Physics of Chinese Power",(May 2004), accessed online 08/03/2012: The Foreign Policy Centre <http://fpc.org.uk/fsblob/244.pdf>.

[37] Mark Beeson, "Developmental States in East Asia: A Comparison of the Japanese and Chinese Experiences" (2009) 33:2 Asian Perspective 5; Mark Beeson & Iyanatul Islam, "Neoliberalism and East Asia: Resisting the Washington Consensus" (February, 2005) 41:2 Journal of Development Studies 197; Alice H. Amsden, *The Rise of "The Rest": Challenges to the West from Late-Industrializing Economies* (Oxford: Oxford University Press, 2001). It is pertinent to point out that there is voluminous literature available that considers the developmental models and experiences of South Korea, Taiwan, Singapore, and Southeast Asia, the analytical study of which is beyond the scope of this research. For overview read Mark Beeson, *Regionalism, Globalization, and East Asia: Politics, Security, and Economic Development* (Basingstoke: Palgrave, 2007); Charles Kenny & David Williams, "What Do We Know About Economic Growth? Or, Why Don't We Know Very Much About Economic Growth?" (2001) 29:1 World Development at 1-22; Steven. K. Vogel, *Japan*

solution of the problem that triggers change and has the capacity to expeditiously address the problems arising from such change.[38] The second component emphasizes the creation of a development model that ensures the equal economic distribution of wealth in the society to prevent internal unrest and chaos.[39] The third theorem underlines the importance of self-determination in dealing with international powers having hegemonic tendencies.[40] Ramo's explanation of the Consensus has been the subject of critical debate among development and economic scholars around the world.[41] Nevertheless, his explanation underlines the importance of the state/government role[42]; the flexibility to adopt innovative approaches; and

---

Remodeled: How Government and Industry are Reforming Japanese Capitalism (Ithaca, New York: Cornell University Press, 2006); Edith Terry, *How Asia Got Rich: Japan, China, and the Asian Miracle* (Armonk, New York: M.E. Sharpe, 2002); Seung-Wook Baek, "Does China Follow 'the East Asian Model'?" (2005) 35:4 Journal of Contemporary Asia at 485-98; David Kerr,"Has China Abandoned Self Reliance?" (2007) 14:1 Review of International Political Economy at 77-104.

[38] *Supra* note 36 at 12.

[39] *Ibid*.

[40] *Ibid.* at 11.

[41] Arif Dirlik, "Beijing Consensus: Beijing "Gongshi." Who Recognizes Whom and to What End?", accessed online 10/030/2012: <http://www.globalautonomy.ca/global1/servlet/Position2pdf?fn=PP_Dirlik_ Beijing Consensus>; Mark Beeson, "Developmental States in East Asia: A Comparison of the Japanese and Chinese Experiences" (2009) 33:2 Asian Perspective.

[42] Scott Kennedy, "The Myth of the Beijing Consensus" (June 2010) 19:65 Journal of Contemporary China at 461-477, accessed online 10/03/2012: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e11f7%40sessionmgr12&vid=4&hid=7>; Suisheng Zhao, "The China Model: Can It Replace the Western Model of Modernization? (June 2010) 19:65 Journal of Contemporary China at 419-436, accessed online 11/03/2012: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e11f7%40sessionmgr12&vid=4&hid=7>; Barry Naughton, "China's Distinctive System: Can it be a Model for Others?" (June 2010) 19:65 Journal of Contemporary China at 437-460, accessed online 11/03/2012: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e 11f7%40sessionmgr12&vid=4&hid=7>; Minglu Chen & David S.G. Goodman, "The China Model: One Country, Six Authors (January 2012) 21:73 Journal of Contemporary China at 169-185, online: <http://www. tandfonline.com/doi/pdf/10.1080/10670564.2012.627672>; Che-Po Chan & Wai-Kit Poon, "The Chinese Local Administrative Measures for Building Up the 'Headquarter Economy': A Comparison Between Pudong and Shenzhen" (January 2012) 21:73 Journal of Contemporary China at 149-167, accessed online 11/03/2012: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.627671>; Vincent H. Shie, Craig D. Meer & Nian-Feng Shin, "Locating China in the Twenty First Century Knowledge-Based Economy (January, 2012) 21:73 Journal of Contemporary China at 113-130, accessed online 11/03/2012: <http://www.tandfonline.com /doi/pdf/10.1080/10670564.2012.627669>; Yusheng Yao, "Village Elections and the Rise of Capitalist Entrepreneurs (March 2012) 21:74 Journal of Contemporary China at 317-332, online: <http://www.tand fonline.com/doi/pdf/10.1080/10670564.2012.635933>; Chiew Ping Yew, "Pseudo Urbanization? Competitive Government Behaviour and Urban Sprawl in China" (March 2012) 21:74 Journal of Contemporary China at 281-298, accessed 11/03/2012 online: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.635931>.

the intellectual independence of China in addressing its development challenges, which has enabled the country to grow at an amazingly fast pace.

When Ramo wrote his article the West was oblivious to the symptoms within the system hinting at the looming financial crisis. The IFIs were still pushing the policies of privatization, deregulation, and minimum government intervention when in the last quarter of 2007 the crisis gradually emerged and took the financial core of the world by surprise. The only tool that the top economic and financial risk management experts could get hold of was government/state intervention. Government intervention in the financial core to avert a complete financial meltdown and the positive impact of the state-regulated economy in China have reignited the contentious debate on state ownership and the role of the state in regulating the economy and have put the role of state capitalism at the forefront of the debate on the current financial crisis. During an era when the countries of the financial core vigorously preached and pursued economic structure based on market fundamentalism for development around the world, China picked up the best from the Washington Consensus and structured their own brand of state capitalism. When most of Europe and North America is in financial crisis, China is prospering.

After critical analysis of the arguments from both sides in the light of the current global financial crisis, it is difficult to isolate a single variable determining the relationship between ownership and performance. Even though the ownership of enterprises by the state is criticized for corruption, nepotism, and over regulation, critical analysis reinforces the fact that if left unbridled the wild forces of the market also get corrupt, selfish, and manipulative, and they go astray for the same reasons as state ownership. If the assistance of the state developed the rent-seeking behaviour of the public corporations, the unregulated private corporations and market developed the culture of the pursuit of unrealistic and irresponsible goals without any accountability in the absence of regulatory structure. While state bureaucrats got corrupt and rendered favours to their friends and family members working in state enterprises, the chief executive officers (CEOs) of the leading financial giants also rendered favour on their friends and continued to do so even in the middle of the crisis when the CEOs were awarded millions of dollars in bonuses. The governments of most of the industrialized countries intervened to save the financial sector from complete disaster and mitigate impact on the public. The government intervention in these countries reinforces the vital state/government role in the economic development of the country.

Hence, we are confronted with two extremes: imperfection of the market and imperfection of the state. Resultantly, the impact of change in the ownership of enterprises (public or private) on economic performance is abstract and the debate will remain contentious for a long time to come. The alternative seems to be a union of market and state, i.e. in some sectors of the economy the state can be an effective player while in others the market might be an effective player. It is therefore important for the developing countries and emerging economies to determine appropriate roles for the state and the market that are consonant with their individual social and economic realities and tailor a legal and institutional design that has the flexibility to adjust the roles for the state and the market in their specific circumstances. If ownership is supplemented by conditions of perfect competition, flexible innovative practices of good governance, regulation, transparency, rule of law, access to information, enforcement of contacts, and protection of private property the ownership (whether public or private) is irrelevant. Consequently, it is important for a country to assess and specify the objectives of its privatization program before initiating it in any sector of the country.

However, in the context of emerging economies the appropriate strategy would be to selectively adopt the good features of the two imperfect extremes—i.e. the market and the state—and structure a flexible hybrid model. For instance, assume that Country "X" has huge infrastructure facilities available in its basic utilities sector (water supply and distribution) but the government lacks the capital, human resources, technological innovation, and capacity to process, deliver, and distribute clean drinking water at reasonable prices to its population of millions. In this scenario, the government of Country "X", in consultation with the stakeholders, decides to gradually liberalize this utility by sharing its infrastructure with a private sector (local or foreign) and the private sector invests its capital and technical know-how in the processing, delivery, distribution, and revenue collection with the government of Country "X" on a limited scale. Members of the government, members of the private sector investing in the project, citizens of the locality, and local and foreign experts share the regulation (monitoring and evaluation) of the process. The experimentation with such a model on a limited scale would on the one hand ensure that the creation of a hybrid model is possible, but would also highlight the limitations of the model, which can be improved in further expansion. Similarly, in another location in the same sector the government delivery and distribution system might be weak, but the infrastructure and processing plant might be in a working condition. The government of Country "X" can privatize the delivery and distribution system to a private sector but might retain the ownership of the processing plant and infrastructure itself.

It is imperative that this partnership is able to supply the water at affordable prices to the local poor people. If the prices of the water are high enough to be beyond the capacity of a person earning $2 a day, then in that scenario the privatization, deregulation, and liberalization might result in improved distribution of the water supply to a locality but would make access to clean drinking water beyond the capacity of a poor man. This scenario is simulated based on assumption, but further adjustment cannot be ruled out subject to further exploration.

5.3.3 Objectives of privatization

The specification and prioritization of objectives is central to the fruitful outcome of the privatization process. Privatization in the absence of goals and prioritization would result in risky policy choices resulting in failure and undesirable impacts. As privatization is a multidimensional process, with multiple techniques, it therefore might have multiple political, social, and economic objectives in countries with different political, social, economic, and development objectives.

Broadly speaking privatization aims to reduce the government role in regulating the economy and to improve the economic efficiency of state enterprises. It can be as specific as reducing the balance of payment problem; reducing the influence of trade unions; developing the capital markets in a country; promoting domestic investment; attracting foreign investment and technology; increasing employment opportunities; or increasing the operating and economic efficiency of public enterprises.[43] As mentioned earlier the social, political, and economic circumstances play a vital role in determining the order of priorities in the privatization process. For instance, the communist countries, after the failure of their

---

[43] For a detailed list of aims and objectives of privatization read Bulent Seven, *supra* note 17 at 78-82.

economic and political systems, had to resort to privatization in order to transition to the market economic structure. Similarly in countries like Argentina, Mexico, Brazil, and Pakistan, privatization of SOEs was considered the revenue bloodline for macroeconomic stability. In industrialized countries like the U.K., the U.S., and France, privatization was utilized as a major stimulus to improve industrial efficiency.

Privatization goals can sometimes be conflicting, which might complicate the process. For example, the sale of a public enterprise enjoying a natural monopoly without any regulatory legislation in place can fetch higher revenue to reduce public sector debt, but it might not encourage competition and economic efficiency. Another example can be the trade-off between the promotion of wide/dispersed ownership and good governance. However, with specific objectives and appropriate technique, sequence, and legal, policy, and institutional design such conflicts can be avoided.

It is beyond the scope of this chapter to discuss in detail the multivariate forms and techniques of privatization, but it is imperative to briefly elaborate on the most commonly adopted techniques. However, they cannot be copied or transplanted in original form in different enterprises, and in economic sectors in countries with diverse culture and traditions.[44] As mentioned, there is no straightjacket approach to privatization, hence laws and regulations can lay down the major techniques and approaches and also insert built-in flexible systems and mechanisms to ensure the adoption of an appropriate technique for the privatization of a specific enterprise.[45]

---

[44] *Ibid.* at 231.

[45] *Supra* note 5. The following are some of the privatization techniques: selling the whole by Public Share Issue; selling a portion of the whole operation; selling parts to private buyers; selling to workforce or management; giving it to workforce; contracting out the service to private business; diluting the public sector; buying out existing interest groups; charging for the interest; setting up counter-groups; deregulation via private associations; encouraging alternative institutions; making small-scale trials; repealing monopolies to let competition grow; encouraging exit from state provision; using vouchers; admitting demand pressures; curbing state powers; applying closure proceedings; withdrawal from the activity; and the right to private substitution.

Supra note 43 at 233.

5.4 How to Privatize?

Broadly speaking the most common techniques adopted around the world include sales of shares or assets; capital dilution; management-employee buyouts (MEBOs); broad based/mass privatization; and indirect/partial privatization through management contracts such as leases or service contracts. The following section provides a brief description of the most commonly used techniques. [46]

5.4.1 Direct privatization

a. Public offering or sales of shares or assets.

The most common method of privatization is the sale of shares and assets of the enterprise. The sale is made through public offerings of shares on the stock exchange; by open, transparent and competitive bidding process for shares or assets; or by selling of shares and assets to a strategic investor through a non-competitive bidding process.[47]

b. Sale of shares through initial public offering (IPO).

This method prescribes the sale of all or a certain portion of state enterprise shares to the public through stock markets or part of the stocks it holds in any other enterprise. Usually the shares are sold in the public and given to the employees on favourable terms. This method has its own pros and cons, which are reflected in the objectives of the privatization program

---

[46] This subsection of the chapter is substantially based on the work of Andrew Berg & Elliot Berg "Methods of Privatization" (Winter 1997) 50:2 Journal of International Affairs at 357-390; Pierre Guislain, *The Privatization Challenge: A Strategic Legal, and Institutional Analysis of International Experience* (Washington, DC: The World Bank, 1997; Bulent Seven, *supra* note 17; Philip M. Nichols, "Creating a Market Along the Silk Road: A Comparison of Privatization Techniques in Central Asia" (1996-97) 29: 3 N.Y.U.J. Int'l L. & Pol. accessed online 26/07/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/nyuilp29&id=307&collection=journals&index=journals/nyuilp>; Government of Poland, Ministry of Treasury, *Privatization Procedures*, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/598/Privatisation.html>; Government of Poland, Ministry of Treasury *Privatization Procedures: Indirect Procedures*, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/600/Indirect_privatisation.html>; Government of Poland, Ministry of Treasury, *Privatization Procedures: Direct Privatization*, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/602/Direct_privatisation.html>; Government of the Czech Republic, Ministry of Finance, "Dept 45 Implementation of Disposition of State Property Department ", accessed 31/10/2011 online, accessed 31/10/2011 online: <http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/en_organisation_chart_30615.html>.

[47] *Supra* note 46 at 360; Oleh Havrylyshyn & Donal McGettigan, "Privatization in Transition Countries: Lessons of the First Decade" IMF Economic Issue No. 18, accessed 3/07/2011 online: <http://www.imf.org/external/pubs/ft/issues/issues18/index.htm; *supra* note 5 at 12.

adopted by the government in the light of the demands specific to the enterprise in a specific sector.

This mode is politically appealable, has great revenue raising potential, and allows broad ownership, which is more popular than the sale of the enterprise to powerful foreign buyers.[48] Selling the enterprise through IPO helps in developing the local capital market. One of the main concerns in the privatization process is the high probability of corruption, manipulation, and tempering. This is remedied through public flotation as the market determines the prices, with free access to the information. In selling the shares through the stock market the concerns of inequity are also addressed when the shares are given to pension funds, to disadvantaged groups, or to employees.[49] However, the factors that make the IPO an appropriate method of privatization can also make it inappropriate if speed is the objective in the privatization process, because the public offering of state enterprises is usually preferred for its gradual approach towards privatization.

The purpose of adopting a gradual approach is to ensure transparency in the process, which increases the cost of transaction. For instance, sale through IPO demands adequate preparation for sale, i.e. management, analysis, and valuation of the offer, and appropriate reforms before the sale of the enterprise to make it attractive for the investors/buyers. If the government decides to privatize through IPO it usually takes the burden of outstanding debts and restructures the enterprise in order to attract new investment and make the enterprise attractive for sale. Similarly the differences over the price or valuation of the enterprise can also slow down the privatization process. The government intends to get a reasonable price to achieve its revenue targets and to dispel the impression that the valuable assets of the country have been put on sale. It is usually tempting to price the shares low in order to attract investors, but it causes political backlash when after IPO the price of the shares increases and the shareholder sells their shares. The privatization of the Polish Bank can be a good case to quote in this context.

---

[48] Andrew Berg & Elliot Berg, "Methods of Privatization" (Winter 1997) 50:2 Journal of International Affairs at 361.

[49] *Ibid.*

The Government of Poland decided in 1993 to privatize major commercial banks with the combination of IPOs and sale to employees or to strategic investors, or remaining with the Treasury. The plan initially seemed to work well, but the subsequent transaction to privatize showed that the shares were underpriced, as the prices of the shares increased more than ten-fold on the first day of the sale. Those who purchased the share initially—employees and the management—made huge profits that attracted negative public attention. It significantly delayed the privatization of the other banks in the country.

Another negative impact resulting from the IPO mode of privatization is diffused ownership. One of the core purposes of privatization is also to qualitatively improve the management of SOEs. The IPO mode of privatization results in diffused ownership among many shareholders, which does not help change the management of the privatized enterprise. Ultimately, it's the difficulty of balancing the political and economic objectives that guides governments in many countries to structure IPOs with selling substantial portions of shares to strategic investors, both foreign and local, which results in improved management, substantial capital and technical investment, and access to new markets. This approach was employed by advanced transition economies like Hungary, the Czech Republic, and Poland, which were initially without well-developed stock markets, and financial and regulatory institutional structure.

5.4.2 Competitive bidding

Competitive bidding is the sale of the assets or shares of the SOE through public auction. It is usually a preferred mode for the sale of shops, retails, and other industrial enterprises working on small scale, but it can also be used for the sale of intermediate and large industrial enterprises.[50] For instance, this method was adopted in Eastern Europe and the former Soviet Union through public auction of shares for vouchers (coupons). However, the firm enterprise needs to do some pre-privatization work that is usually done by investment banks or management-consulting firms financed by foreign aid.[51]

---

[50] *Ibid.* at 365-66.

[51] *Ibid.*

In order to make the enterprise attractive for potential bidders, the firm's account needs to be properly maintained to determine its liabilities and prospects of earning profits. Such pre-paid work would help in estimating the minimum price value for the enterprise and the information for potential bidders. It also enables the government to determine the potential of the bidder to provide employment and inject new investment in the enterprise. In addition to the above steps, while finalizing the sale the government may also determine to put the enterprise on sale by initially disposing of its assets rather than its shares. The decision to sell assets might be for two reasons: either the enterprise is too small to be converted into a joint stock company or the government wants to adopt a gradual approach and intends to privatize the unprofitable, non-functional branches of the enterprise before selling the core company.[52] Sometimes it is preferable not to privatize the enterprise by selling its shares, due to its liabilities. In such cases, the enterprise is usually dissolved, liquidated and its assets sold without any liabilities.

The sale of a state-owned enterprise (SOE) through competitive bidding has certain advantages over IPOs. Sale through competitive bidding improves the corporate governance and enhances the firm efficiency as compared to public offerings. The buyers are usually investors putting their capital in with the intention to improve performance through better organization and management, substantial investment, technical knowledge, and access to a diverse market.

The revenue targets can also be met through this method, however that is dependent on the restructuring of the costs and debts of the privatized enterprise and the liabilities taken on by the government for those costs and debts. The income from the sale is also dependent on the ability of the government to look for a potential buyer and the capacity of the buyer to invest capital. Potential buyers can be attracted through a strong marketing strategy attracting international bids from foreign investors. Weak marketing strategies, for example sale ads not being put in major international newspapers and magazines, will not attract foreign investors and will undermine the price of the enterprise.

---

[52] *Ibid.*

The factors making competitive bidding an attractive option also underline its disadvantages. In the bidding process the government has to balance the political acceptability and the economic efficiency and make an objective evaluation of the offers. The objective evaluation requires transparency, openness, and publication of the bidders and their offers. From an objective perspective it is clear that the highest bidder would be successful, but to address the political acceptability factor the government considers factors like the ability of the buyer to bring substantive investment, the debt obligations, and the commitments for local employment. This makes the whole exercise uncertain but competitive bidding is still eyed as the quickest and most transparent method of privatization.

The other important factor is the element of speed in privatizing through competitive bidding. Sometimes the desire to make money and expedite the privatization compromises the other objectives of the privatization process. Most often a privatization process completed in haste results in governments making unfavourable concessions to bidders, which makes the whole process non-transparent and results in weak regulatory mechanisms being put in place for the regulation of the privatized firms.

Notwithstanding its disadvantages this mode of privatization has been extensively used in middle-income developing countries like Jamaica, Venezuela, Argentina, Mexico, Mongolia, sub-Saharan Africa, and transition economies like Estonia and Hungary.[53]

5.4.3 Non-competitive bidding

The term non-competitive is self-explanatory: the sale or transfer not involving competitive bidding. The common feature of this method is the transfer or sale of the enterprise by the government to a preselected buyer. Usually the government transfers or sells the enterprise to a strategic investor who might have made a good price offer supplemented by other favourable incentives, prompting the government to privatize without any bidding. The sale through non-competitive bidding can also be supplemented by other methods such as public offerings and transfer to employees on favourable terms. Such methods can take many different shapes.

[53] *Ibid.* at 369.

For instance, non-competitive transfer is made when the shares are placed with insurance companies, pension funds or any other financial organizations. The enterprise can be returned to its previous owners through restitution. In a joint venture between the strategic investor and the government a mixed company can be formed in which the investor reserves for himself the right of pre-emption, i.e. if the core company decides to sell shares it will be the investor that has the prior right to buy those shares. The sale of shares to trusts is another method of non-competitive sale or transfer.

Non-competitive sale has the benefit of being cheaper, easier, and quicker than the other alternatives. It has an inherent edge over the other modes to accommodate the political and social objectives of privatization and to promote business. However, for the same reasons, the non-competitive mode is considered less transparent and is prone to attack on the grounds of corruption and nepotism. Due to its non-transparent nature it can sometimes complicate the relationship between the government and the buyer partner and is therefore not preferred by governments, however it was the most important instrument in one third of the 1800 privatization transactions made in sub-Saharan Africa.[54]

5.4.4 Capital dilution or capitalization

Government/the state can pursue privatization without selling any state assets but on the contrary can inject more capital into a state enterprise by entering into partnership with a private investor. Such joint ventures are politically feasible for a government as it retains its major or minor share in the enterprise. Depending upon the financial position of the enterprise the government can retain a minor share if it wants to serve the efficiency goals, i.e. it becomes a passive partner and leaves the major operation to the private partner. If the position of the enterprise is sound or the government wants to serve political goals, then the government might be inclined to retain the major share and give a minor share to the private owner. This mode is very helpful in providing a capital-starved state enterprise with the required capital, however the problems of lack of transparency and equity might still exist in setting the share prices in case of internal acquisitions.[55]

---

[54] *Ibid.* at 370-71.

[55] *Ibid.* at 373-74.

5.4.5 Management-Employee Buyouts (MEBOs)

Management-Employee Buyout (MEBO) means the ownership is taken over by either the employees or the management. However, MEBO depends on the context of the economic circumstances and the country's political conditions. Broadly speaking, there are three main types of MEBOs. Small retail shops, hotels, guesthouses, trucks, and buses can be sold to employees and the transaction can be completed quickly. Sometimes the small enterprises are listed for liquidation, because the state enterprises are usually dissolved before handover to the employees or the management. Numerous state enterprises were sold this way in Eastern Europe and the former Soviet Union.[56]

In another form of MEBO the employees take the stock ownership of the medium and huge enterprises. An instance from Pakistan can illustrate this kind of MEBO. In the privatization of Millat Tractors, the employees of the enterprise participated. Forty percent of the price was paid in cash and the remaining amount was secured through a bank loan secured with their pension.[57] Subsequent to its takeover the company appointed seven of the nine directors, although the lending financial banks appointed five of the seven.[58] The shares were distributed in such a manner that employees had the control; they had 51 percent of the shares. The 51 percent employee share was further broken down between employees and managers, the employees holding 30 percent and the managers holding 70 percent. Stockholders held the remaining 49 percent of the shares, which they purchased on the stock exchange. The post-privatization performance of the enterprise improved considerably.

The third variant of MEBO is when the insiders of the enterprise control the sale of the enterprise under the guise of open privatization. The industrial privatization in Russia is an appropriate illustration of the insiders' dominance in the privatization process. In Poland, most of the enterprises were sold through liquidation, either through sale or auction, but

---

[56] John S. Earle et al., *Small Privatization: The Transformation of Retail Trade and Consumer Services in the Czech Republic, Hungary, and Poland* (CEU Privatization Reports Vol. 3) (Budapest: Central European University Press, 1994).

[57] Sharit K. Bhowmik, "Takeover by Employees: A Response to Privatization in Pakistan (29 April 1995) 30:17 Economic and Political Weekly at 931-933, accessed 25/07/2011 online: <http://www.jstor.org/stable/4402684>.

[58] *Ibid.*

ultimately ended up in the hands of the employees or the managers.[59] This form of MEBO addresses the fundamental issue of ownership and possession in the absence of strong legal and judicial structures, especially in transition economies.

The basic purpose of privatization is the transfer of ownership from public to private hands. The insiders in an enterprise have the dominant de facto claim on the ownership based on their possession and detailed knowledge of the working of the enterprise. In this context, it depends on who are the "insiders". In Russian and Hungary it was bureaucrats and the enterprise managers who could be called "insiders" but in case of Poland it also included the workers. The pros and cons of this method can be described in the light of the specific objectives pursued through privatization. This mode of privatization is quicker and politically feasible as the ownership and possession is transferred to the group of people already running the enterprise and most of the employees retain their jobs. However, achieving efficiency through management reforms remains difficult unless the subsequent decisions of the enterprise management encourage foreign participation. This mode of privatization, like others, is not faultless. The maximization of the benefits from MEBO privatization is dependent on size and the financial stability of an enterprise.

MEBO can be an appropriate mode of privatization for small enterprises and for enterprises not attractive to outside buyers. The takeover by the employees may result in immediate efficiency (due to the deep knowledge of the working of the enterprise and the bottlenecks involved to prevent its effective working) but there is no immediate change in the management of the company. Employing MEBO might not be beneficial for the privatization of large enterprises. Due to the size of an enterprise the debt obligations are usually taken over by the government and the sale is often financed through credit advanced by financial institutions. The advancement of credit by the financial institutions means their involvement/interference in the enterprise, which sometimes results in the takeover by the government.

---

[59] *Supra* note 48 at 376.

5.4.6 Mass privatization

Mass privatization is the selling of a large number of state enterprises in a single phase. If speed is the objective, a combination of the different methods mentioned above is used to model various kinds of mass privatization featuring the free distribution of shares, assets, or vouchers as the important element. This form of privatization was mostly used in transition economies like Poland, the Czech Republic, Romania, Lithuania, Kazakhstan, Kyrgyzstan, and Mongolia. It was considered most appropriate for these countries because the state developed the structure of industry and enterprise, and market structure, laws, and institutions were virtually non-existent. Resultantly, it was difficult to properly evaluate the existing worth of the state enterprises being put on sale and the prospects of their future profitability in the absence of market institutions. In addition, the low public savings and nonexistent capital markets resulted in few private local buyers and made them wary. The foreign investors were willing to invest but the public hostility towards the handover of the large public enterprises forced the policy makers to structure and synthesize various modes of privatization to achieve the twin goals of revenue generation and public acceptability.

It is essential to identify the important elements common to any model of mass privatization. The two most important ingredients are the “supply side” and the “demand side”. The “supply side” guides how the enterprises are chosen and prepared for privatization. Selecting and prioritizing enterprises for privatization is a complex process and can result in the emergence of unexpected and complicated issues if the enterprise is going to be privatized in a limited time. The element of time constraint on the supply side makes it more difficult to decide issues arising from the claims of multiple stakeholders in an organization, i.e. the claims of the insider employees and the management, who have the real influence over the enterprise.

The “demand side” decides the allocation of ownership in privatized enterprises. In mass privatization on the demand side it is difficult to find appropriate owners for numerous enterprises being privatized. In such circumstances, there is potential temptation to hasten and expedite the privatization, resulting in the widespread distribution of shares, which creates diffused ownership and thus undermines efficient and effective management and good corporate governance. Privatization in Poland and Czech Republic are the relevant examples.

Poland announced its privatization program in 1991, but started implementing it in 1996. Almost 500 medium and large enterprises were privatized with the consent of the workers who received ten percent of the shares without any charge. On the demand side, the policy makers wanted the ownership of the large enterprises to be diffused, which ultimately would have had a negative impact on governance. In order to address the issue of diffused ownership and efficient management, the government created 15 National Investment Funds (NIFs) to act as mutual funds organizations. The NIFs were jointly managed by the private fund management and foreign financial institutions selected by the government and were given a special stimulus package to increase the value of their shares. The shares of the privatized companies were distributed between the NIF and the public: one-third shares of each of the privatized companies were given to a single NIF and citizens. The citizens were allowed to purchase a voucher (which is essentially a share) in each of the NIFs for a nominal fee. The design of this program met stiff resistance from the influential insiders, causing substantial delays in launching the program. The privatization program was completed in 1991 but the shares could not be sold until November 1995.

The Czech Republic followed the same path. It distributed a large number of shares to the general public for a nominal voucher fee. In 1992, citizens could buy 1000 shares in ten companies for $30 dollars, either through investment funds set up by the bank or through direct sale bidding. The powerful central government and weak insiders in the enterprises dominated the supply side. The government would select the enterprise and the appropriate model for its privatization, but anyone could submit a privatization project to the government. Enterprise managers recommended most of the enterprises selected for privatization.

These privatization projects identified the appropriate method of privatization for these enterprises: tender, voucher auction, cash purchase, or various other options. In the first phase of privatization (concluding in December 1992) the Government of the Czech Republic employed this mode and privatized property worth more than $23 billion, of which

$7 billion was sold through voucher sale. The investment funds emerged as the dominant owners, owning more than 70 percent of the shares sold in the first phase and the same number of vouchers in the second wave, which concluded in 1994.

Privatization in Poland and the Czech Republic illustrates the blessings and problems of mass privatization. It illustrates how large enterprises can be privatized quickly through open and free distribution of shares in the public or through financial intermediaries. It also highlights the problems inherent in mass privatization: the impact of widespread ownership of investment funds is the same as diffused ownership. The widespread ownership of funds makes it difficult to control the behaviour of the manager. Poland adopted a central approach in order to deal with this problem, where government would appoint the fund managers, but concerns of state interference were raised even after privatization. The Czech government, on the other hand, opted for a much reduced government role but the ownership of the industry and the banks was concentrated in a few funds controlled by the Czech banks. This resulted in a conflict of interest for the banks as lenders and as managers, and in state interference because the state owned a substantial number of stocks in the banks, which discouraged foreign investors from investing. Hence there is a need to balance speed and transparency in the mass privatization of large enterprises.

5.4.7 Indirect privatization

Indirect privatization is a reflection of government unwillingness to sell inefficient state owned enterprises, but at the same time is a first step towards complete privatization. Indirect privatization has the elements of gradualism and cautiousness, making it politically acceptable and avoiding the risk associated with full privatization. For instance, the problem of evaluation is not involved because indirect privatization involves leases or contracting out the operations, resulting in the retention of ownership as the arrangement is temporary. It provides valuable opportunities to the SOEs and private investors for joint learning and experimentation, which facilitates the path for complete privatization of the enterprise concerned. Indirect privatization can be pursued through approaches like management contracts, lease contracts, concessions, and sub-contracting or contracting out.

5.4.7.1 Management contracts

Management Contracts are when the management of an enterprise is given to a private sector with the aim of improving productivity and efficiency. With these objectives, it either involves straight fees or the payment is subject to the performance of the enterprise. The key issue in such arrangements is the liberty of the contractor to restructure the setup of an enterprise to enhance administrative and economic efficiency. The effectiveness of this approach is evident from studies conducted by the WB.[60]

5.4.7.2 Lease contracts

Lease Contracts are commonly referred to as affermage, in which the contractor or lessee takes the responsibility to operate the facility and bears the financial risk in lieu of payment to the public owner. This method is usually adopted to improve the performance of power, ports, urban transport, and the waste disposal sector. The contractor is responsible for the collection of tariffs and gives a certain portion of the tariff to the government. The fallout of this method can be huge regulatory burden.

5.4.7.3 Concessions

Compared to leases, concessions give greater responsibility to the contractor for replacing fixed assets. The usual duration for this kind of technique is from 15-30 years and it is employed in water supply, waste disposal, toll roads and ports. Usually the employment of this technique results in the creation of two companies: a *societe de patrimoine* (a 100 percent SOE that owns the assets) and a *societe d'exploitation* (predominantly privately owned). The coordination between the two companies is the most common issue in this technique. The concession technique has been successfully employed in Cote d'Ivoire (urban water supply sector) and in Guinea (water sector).

5.4.7.4 Contracting out/outsourcing/subcontracting

This technique is mostly prevalent in the United States in the public sector. It is employed in order to avoid public outcry in response to selling public property at cheaper prices and helps in preparing the groundwork for gradual progress towards complete privatization. It improves

---

[60] A.S. Sheikh & M. Minovi *Management Contracts: A Review of International Experience* (Washington, DC: World Bank, 1994), online 17/10/2011 <http://rru.worldbank.org/documents/toolkits/highways/pdf/14.pdf>.

efficiency in the hiring of specialized and rare skills for a limited time period and minimal capital, which improves the production and delivery of services through the achievement of economy of scale. Broadly speaking anything can be contracted out, but janitorial, security, transportation, garbage disposal, and waste management services are some of the common areas where government or SOEs can adopt the contracting out mode of privatization. It attracts specialized employees for recruitment not available in the public sector due to unattractive salaries, which helps in the effective delivery of services through efficient utilization of resources. Hence, it has similar flexibility of experimentation, tentativeness, and political acceptance as in the case of management contracts, lease contracts, and concessions.[61]

The list of privatization techniques mentioned above is not exhaustive and a combination of different techniques can result in the invention of new techniques. Hence, there is no one privatization jacket that fits all; the structure of privatization transactions, including the technique/mode, depends on multiple other factors including the fundamental objectives and purpose of the privatization.

5.5 Conclusion

The current global financial crisis and the negative impact of privatization and deregulation on the emerging economies have renewed the debate on the role of the state, and the emerging shift is towards public-private partnership. China and India are usually quoted as examples of such partnership even though each has trudged a different path. The experience of host countries with the Washington Consensus has had mixed results and built up a strong case for the adoption of the Beijing Consensus, with local adaptations. Such efforts are more inclined towards the participative public-private partnership that again demands an institutional design for proper and effective representation of not only public and private ownership, but various other sections of the society as well: members of the civil society, the non-profit sector, and scholars and researchers. However, there is no single model for such a partnership.

---

[61] S*upra* note 48.

The shift towards privatization, deregulation, and liberalization in most of the transitioning and poor countries has been the result of state failure to efficiently manage the resources and the development blueprint given to the countries by the IFIs in the form of the Washington Consensus. The IFI response to the inefficiency of the state in emerging economies was the virtual elimination of the state. Minimizing the state/government role was not an appropriate strategy in emerging countries because it did not fix the inefficiency of the government. The government has an important role even in the post-privatization and deregulation period: the stable and well-functioning state machinery has the most vital task of creating an enabling environment for the markets to work. The IFIs' efficient/perfect market alternative to the inefficient state was neither able to achieve the objective of creating perfect market structure (private) nor to address the problem of "fixing the state inefficiency" (public). Hence there is an urgent need to fix the broken state/government and the unreliable market structure in the emerging countries.

Notwithstanding the borderless global world, state/government is still the core of vital activities that cannot be substituted by the market. In the wake of globalization the role of the state has changed drastically but certainly has not diminished, and that has obviously put enormous pressure on the archaic state/government structures in the emerging economies. The archaic structure of the state institutions was not able to swiftly adjust itself to the strong global market forces. Consequently, the blind pursuit of privatization, deregulation, and liberalization resulted in the transfer of public enterprises monopoly from the elite as public guardian of the enterprise to the elite as the owner of the private enterprise. Such institutional change is negative in that it perpetuates the rule of the elite and defeats the well-intended objectives of the IFI efforts. It is crucial for the IFIs to decipher the local power structure before initiating any policy, legal, and institutional change in the borrowing countries.

In addition to the above, it is important that whatever strategy is adopted, whether takeover of the public enterprise by the private sector or the transfer of private enterprise to the government, it is done the right way. The transaction should be well planned, organized, and structured, and it should be executed in a transparent, participative manner that earns the trust of the players in the system. Such efforts facilitate the observance of rule of law, due process, active participation of the stakeholders, transparency, and accountability, which are the salient features for the success of any system.

The failure of privatization, deregulation and liberalization can be attributed to multiple factors: the fixation of multiple goals; the trade-off between speed and the quality of privatization transactions; the trade-off between equity and corporate governance; absence of social corporate responsibility; the absence of policy, legal, and institutional frameworks[62]; and lack of knowledge of the local power, political, social, cultural, and legal and institutional environment and its operation. So many requirements for successful privatization make it a long, complex, problematic, and frustrating process.[63] Consequently, it is valuable to learn from other experiences and tailor techniques that align well with the goals, objectives, and local environment of the host country.

The next chapter will analyze the objectives, mode, and impacts of privatization in the transition economies of Central Eastern Europe countries and of Pakistan in the banking and telecommunication sectors. The analysis will underline the importance of clear objectives, adoption of right technique, and appropriate legal and institutional design for execution of privatization in local political, social, and economic conditions.

---

[62] Bulent Seven, *supra* note 17.

[63] Michele Balfour & Cameron Crise, "A Privatization Test: The Czech Republic, Slovakia, and Poland" (1993) 17:1 Fordham Int'l L.J. at 85.

Chapter 6 Privatization in Pakistan and Central Eastern Europe: A Comparison of Telecommunications and Banking Sector Reforms

6.1 Introduction

Privatization is a complex but multifaceted phenomenon. A privatization strategy needs appropriate institutional, legal, policy, and regulatory design in the pre- and post-privatization periods to achieve its desired objectives, including the speed of the process. In addition, the regulation of the privatization process would not only restore investor (local and foreigner) confidence, but also provide much needed credibility, transparency, and access to information regarding the execution of the privatization transaction. The speedy execution of privatization in an institutional, legal, policy, and regulatory vacuum is the perfect recipe for bad governance in a country and often results in the sale of valuable national assets at throwaway prices.

This chapter contends that even if it is presumed that privatization is the most appropriate approach to promote economic development in a country, if it is executed speedily without proper preparation and regard for due process, and in a non-transparent manner, it will foster bad governance, create uncertainty in the market, and undermine the strength and stability of the same institutions as are vital for successful transition and development of market economy. The IFIs should therefore include conditions requiring appropriate legal and institutional structure, and observance of due process of law, in loans to borrowing countries. Insistence on such conditions would force a much-needed institutional change in countries like Pakistan. This institutional change would be positive and more responsive to the needs of the public at large. The implementation of privatization with ideological focus without due consideration to the specific environment of the host country and other prerequisites for the development of the market economy is self-contradictory and will defeat the very purpose of the privatization exercise.

The promotion of good governance has not only been the primary goal of the national governments of poor countries, but also has been the key ingredient in the recent shift in structural adjustment programs prescribed by the IFIs and the United Nations Millennium development goals. This chapter explains how the Government of Pakistan has dealt with them and identifies drawbacks in the legal and institutional design for privatization, both generally and specifically in the telecommunication and banking sectors of the country. It will analyze the privatization process through North's theoretical framework of institutional change and understanding economic change. The chapter makes recommendations for reforms in the legal and institutional design, the sequence, and the techniques for transparent, efficient, and effective and development oriented privatization in Pakistan.

The chapter compares privatization of the banking and telecommunications sectors in Pakistan with privatization of the same sectors in Central Eastern European countries. Comparative analysis underlines the importance of the legal and institutional structure of privatization and its impact on good governance. The reforms in these two sectors have been key factors in the liberalization of trade, foreign investment, and integration of the world into a global village. These sectors played an important role in shrinking physical distance between countries and their efficient performance was attributed to liberalization, deregulation, and privatization.

In order to integrate the developing countries/transition economies into the global economic structure it was considered essential to pursue the policies of privatization, deregulation, and liberalization in the banking and telecommunications sectors. The absence or underdevelopment of these two sectors in the poor and emerging economies like Pakistan was considered a huge barrier in the smooth transition towards the market economic structure. The IFIs, therefore, incorporated privatization in their structural adjustment programs in the form of conditions attached with the loans. Pakistan, being dependent on the IFIs, had to comply with these conditions and hence privatized various banks, including Habib Bank Pakistan, Union Bank, Muslim Commercial Bank, Allied Bank, and Industrial Bank.

Privatization can be pursued through various modes, but in developing countries generally three modes have been adopted: the "big bang" approach of the Latin American and Caribbean countries; the "go-slow and institutional" approach of the Asian and East Asian countries; and the "marketization" political approach of the East European countries.[1] The impact of these modes has of course varied across regions and countries. In Pakistan, the Latin American big bang approach and East European marketization approach have been followed, and Pakistan has privatized the highest number of public owned enterprises in the South Asian region.[2]

6.2 Origins of Privatization in Pakistan

Privatization is not a new phenomenon for Pakistan. It can be traced back to the 1950s when the Government of Pakistan established the Pakistan Industrial Development Corporation (PIDC) to boost industrial development in the country. The PIDC managed to establish 50 corporations in Pakistan and after putting the performance of these industrial units on sound footing transferred them to the private sector. The progress made in privatization was reversed in the nationalization phase initiated under the civilian government of Prime Minister Zulfiqar Bhutto in 1971-72, which was a big setback for the economic development of the country. After a military takeover in 1977 by General Zia ul Haq, privatization was resumed. However, it was not until 1991 that privatization was resumed with full vigour. In its effort to satisfy the IMF and WB conditionalities Pakistan has pursued senseless privatization policies, none of which have been able to achieve any of the fundamental purposes of privatization.

6.3 Objectives/Purposes of Privatization in Pakistan

Since it started privatization the Government of Pakistan has not been able to come up with clear and direct goals for its privatization program. There is nothing available on the Privatization Commission website that could help one understand the goals and objectives of the privatization program in general or in sector-specific terms.[3] However, the multiple goals and objectives of privatization generally and in particular in the banking sector can be

---

[1] Gerard Ronald, "On the Speed and Sequencing of Privatization and Restructuring" (September 1994) 104:426 Economic Journal at 1158-1168, accessed 07/04/2012 online: <http://www.jstor.org/stable/2235073>; M. Dewatripont & Gerard Roland, "Virtues of Gradualism and Legitimacy in the Transition to a Market Economy" (1992) 102 Economic Journal at 291-300.

[2] "Privatization Process", accessed 22/11/2011 online: Privatization Commission of Pakistan <http://www.privatisation.gov.pk/about/pc-process.htm>.

[3] Privatization Commission of Pakistan, online: <http://www.privatisation.gov.pk/>.

discerned from the papers published by prominent economists of the country. According to A. R. Kemal,

> The country's privatization program focused on the creation of market based economy; promoting the efficiency and expansion of private sector enterprises; encourage competition, especially by abolishing the monopolies, and promote integration of domestic economy into the world economy; support wider capital ownership and encourage employee owner relationship; establish and develop capital markets for mobilization of domestic savings; reverse the flight of capital abroad and repatriate capital already transferred; mobilization of private sector sources for future investments; promote economic flexibility; maintain or create employment; improve the quality of goods and services; maximize receipts from privatization to pay public debts and reduce the public sector deficits; substantially reduce the size and scope of public sector; substantially reduce the financial drain of public enterprises on the government; decrease the opportunities for misuse and corruption of public property by government officials and public sector managers.[4]

As Kemal suggests, "these goals are noble but ambitious".[5]

In addition, the goals are contradictory. For instance, the objective to support wider capital ownership and encourage employee-owner relationships might result in dispersed and entrenched ownership held by former employees that will negatively impact the governance, decision making, and performance of the privatized enterprise. Similarly, goals like the reversal of capital flight have no direct link with privatization. The Government of Pakistan was uncertain about its privatization goals but had to pursue privatization due to its commitment to the IFIs under the structural adjustment program. Hence, the parameters of the privatization program were defined by the objectives of creating market economy, reducing public debt, and improving the efficiency of the public sector enterprises, including financial institutions.

Privatization was important because Pakistan had to comply with the IFI requirements to improve the efficiency of non-performing SOEs by transferring the ownership or management to the private sector, attracting foreign direct investment, and adjusting the

---

[4] A.R. Kemal, "Privatization in Pakistan" accessed 27/03/2012 online: <http://www.ilo.org/public/english/region/asro/bangkok/paper/privatize/chap5.pdf>.

[5] *Ibid*.

proceeds in debt retirement and poverty reduction. The fruitful impact of these policies is vitally dependent on design in the pre- and post-privatization periods. Modeling such design requires comprehensive understanding of the political, social, cultural, and historical roots, the identification of economic and non-economic players, the nature of the associated constraints, and the tools to overcome these obstacles. Speeding up privatization in a country with abstract privatization goals or a legal and institutional vacuum can result in transfer of monopoly from public to private. It is therefore wise to adopt a gradual, structured, and regulated approach towards privatization generally, and specifically of large SOEs.

In Pakistan, privatization has resulted in transfer of monopoly from the public to the private sector, which raises several vital questions. Are privatization, deregulation, and liberalization the only remedies to address the inefficiency of public sector enterprise? How can the inefficiency of public sector enterprises be addressed? Is it privatization itself, or only doing it the wrong way in an inadequate legal and institutional framework that makes it important to regulate the privatization process?

6.4 Sectors Targeted for Privatization in Pakistan

Between 1991 and 2007 the Government of Pakistan privatized 167 units.[6] These units were mainly in the mega state-owned public enterprises in the financial, industrial, telecommunications, energy, and capital market sectors. It is important to analyze the privatization of the big SOEs in Pakistan to evaluate the achievement of privatization objectives. However, it should be mentioned here that Pakistan does not have the culture of openness, transparency, data collection, and research that could enable us to fully examine the bottlenecks in privatization efforts. Most of the available information on privatization in Pakistan is from the website of the Privatization Commission of Pakistan and secondary resources, i.e. articles published in various scholarly journals, magazines, and newspapers. Consequently, a critical analysis of the specific cases of privatization in the banking and the telecommunications sectors of the economy will be employed to illustrate the utility of the privatization process and its objectives in Pakistan.

---

[6] Privatization Commission of Pakistan, “Privatized Transactions from 1991 to June 2010”, accessed online 24/12/2011 <http://www.privatisation.gov.pk/about/Completed%20Transactions%20(new).htm>.

In Pakistan, the Privatization Commission of Pakistan (hereafter the Commission) is the agency responsible for structuring and executing privatization transactions in the country. The agency proceeds with the privatization of an enterprise on the recommendations of the Government of Pakistan, which usually receives its instructions from the IFIs. However, up till now there has been no prescribed framework for privatization in different sectors of the country as long as the government showed substantial progress in privatizing the major SOEs. The Commission was established on 22 January 1991. Its initial focus was on an industrial sector that subsequently extended to sectors such as energy, transportation (aviation, railways, ports, and shipping) banking, insurance, and telecommunications. Between January 1991 and June 2009, the Commission completed 167 transactions worth RS 476.421 billion.[7] Having so many privatization transactions under its belt, Pakistan is expected to show qualitative improvement in the subsequent transactions. Careful analysis of the privatization process in the banking and the telecommunication sectors suggests that this presumption is misplaced.

6.5 Privatization of the Banking Sector in Pakistan

This section will focus on the method, sequence, legal, and institutional structure for privatization in the country and its impact on good governance in the country Pakistan being dependent on the IFIs had to comply with their conditions and hence privatized various banks, including Habib Bank Pakistan Ltd, Union Bank Ltd, Muslim Commercial Bank Ltd, Allied Bank Ltd and Industrial Bank Ltd. This section will discuss the privatization of Habib Bank and Allied Bank.

6.5.1 Habib Bank

The Habib Bank was incorporated in 1941 in Bombay, established its operations in Pakistan in 1947, and moved its head office to Karachi. With a domestic market share of over 40 percent HBL was nationalized in 1974 under the *Nationalization Act* and it continued to dominate the commercial banking sector with a major market share in inward foreign remittances (55 percent) and loans to small industries, traders, and farmers. International operations were expanded to include the U.S., Singapore, Oman, Belgium, Seychelles,

---

[7] Privatization Commission of Pakistan, "Progress to date" , accessed online 24/11/2011: <http://www.privatisation.gov.pk/about/Progress-in-PC(latest).htm>.

Maldives, and the Netherlands. In 1997, the Government of Pakistan decided to privatize the Bank.

6.5.1.1 Factors leading to privatization of Habib Bank

The reasons for the Privatization Commission deciding to privatize the Habib Bank were as follows:

i. To show compliance with the conditions of the IMF and WB.

ii. Shortage of trained and specialized staff at lower executive and officer levels for consumer banking.

iii. High ratio of non-performing loans.

iv. Undue government intervention in the administrative policies of the bank.

v. Lagging behind in the upgrading and automation of the bank's branches.

vi. Substantial amounts stuck in advance tax.

Public announcement for expression of interest (EOI) was made in April 2003. It was decided that potential investors would be prequalified for entering into the data room based on the statement of qualification and preliminary meetings by August 2003. A minimum of 26 percent shareholdings with full management was offered for sale. It was decided that it would be sold to a successful bidder in an auction sale. Later on the number of shares to be sold was increased from 26 percent to 51 percent. The Commission had received 19 EOIs from reputed international and Pakistani parties (the Pakistani parties participated solely or as part of a consortium) for the privatization. As a result of sale, the Habib Bank was handed over to the Aga Khan Fund for Economic Development (AKFED), which emerged the successful bidder amongst the 19 bidders by offering RS 22.409 billion (U.S. $389 million) for 51 percent strategic shares to acquire management control of the bank.[8] The second-highest bidder was the Qatar Supreme Council for Economic Affairs and Investment, which bid RS 21.99375 billion. In accordance with the instructions of the Privatization Commission, the AKFED made immediate payment for 26 percent of the shares, with the remaining 25 percent payable in the third quarter of 2006.

---

[8] "The Habib Bank Limited: History" accessed online 28/12/2011: <http://www.hbl.com/about-us-history.php>.

The privatization of Habib Bank was soon challenged in the Lahore High Court and in the august Supreme Court of Pakistan in its Original Jurisdiction. Dr. Akhtar Hussain, former Secretary of the Planning Commission, filed a constitutional petition challenging the privatization. The Supreme Court accepted the petition and issued notices to the Cabinet Committee of Pakistan (CCoP), the Agha Khan Fund for Development (AKFD), the Chairman of the Privatization Commission of Pakistan, and the President of Habib Bank Limited.[9] The petitioner basically contended that the AKFD, which emerged as the successful bidder, owed money to the Habib Bank when AKFD was participating in the bidding process.[10] The petitioner further contended that the Commission and the CcoP were fully aware of and concealed this fact.[11] The decision to challenge the privatization of HBL was based mainly on its sale at a throwaway price, i.e. at a price that was much lower than its actual value, and on the lack of transparency in the privatization process, which was pushed by the Government and the Privatization Commission.

6.5.1.2 Issues with the privatization of Habib Bank

In order to assess the objectives and results of the privatization it will be worthwhile to briefly analyze the mechanism and model adopted for the privatization of Habib Bank.

i. The Government had spent a huge sum of money—RS 18 billion—in the restructuring of the Bank to make it more attractive to investors.

ii. After shortlisting of the three bidders, the Government gave benefits of RS 18.84 billion to HBL. If the same benefits had been announced before requesting the EOI for sale, the response would have been much better.

---

[9] Rafaqat Ali, "Court Issues notices on petition challenging HBL Privatization" *The Daily Dawn* (31 March 2004), accessed 24/11/2011 online: <http://archives.dawn.com/2004/03/31/top13.htm>; Staff Report, "SC accepts plea against HBL privatization" *The Daily Times* (Friday, 16 September 2011), accessed 7/11/2011 online: <http://www.dailytimes.com.pk/default.asp?page=2011%5C09%5C16%5Cstory_16-9-2011_pg7_29>.

[10] Privatization Commission of Pakistan, accessed online 28/12/2011: <http://www.privatisation.gov.pk/Handout/HO-AR-03/December-03/HO-22122003-BIDDING%20FOR%20PRIVATISATION%20OF%20HABIB%20BANK%20LIMITED%20(HBL)%20ON%20DECEMBER%2029-THREE%20%20BIDDERS%20PRE-QUALIFIED-Handout.htm>.

[11] Staff Report, "SC accepts plea against HBL privatization" *supra* note 9.

a) In order to make HBL more attractive for privatization the ECC approved issuance of bonds amounting to RS 9.8 billion against the income tax refund due to HBL.

b) The Ministry of Finance also authorized transfer of RS 9 billion of HBL debts to the Corporate and Industrial Restructuring Corporation (CIRC).[12]

iii. The Government of Pakistan spent RS 36.8 billion in restructuring and efforts to make it more viable but sold its 50 percent shares for just RS 22.4 billion, at a loss of RS 14.4 billion.

iv. The net assets of HBL increased from RS 12.8 billion in 2001 to RS 23.7 billion, which shows that the net assets of the HBL were more than the sale price offered.

v. The petitioner contended that AKFED was asked to pay 50 percent up front and the remaining amount in two instalments, whereas this relaxation had not been shown in the privatization of Allied Bank Limited (ABL).

vi. This challenge of the privatization is validated by the government rejection of the offer worth RS 60 billion offered by the Canadian Group, based on estimation that the privatization of HBL should fetch an amount between RS 80 billion and RS100 billion.[13]

These facts have been constantly reported in the press and in litigation in the courts, and the government to this day has not been able to give a satisfactory answer.

6.5.2 Allied Bank Ltd

The Allied Bank Ltd (ABL) was the first bank to be established in Pakistan. It was established in Lahore in December 1942 as the Australasia Bank, with a paid up share capital of RS 0.12 million. Under the chairmanship of Khawja Bashir Bux the Bank attracted

---

[12] The CIRC was a corporation/hospital bank established in the Czech Republic under the name Konsolidacni Banka (KOB) along the lines of the centralized "hospital bank". The *Corporate and Industrial Restructuring Corporation Ordinance 2000 (Pakistan)*, accessed on 2/04/2012 online: <http://www.ahmedandqazi.com/actsandregulations/companiesLaw/theCorporateIndustrialRestructuringCorporationOrdinance2000.pdf>. See also Shamim Ahmed Rizwi, "The Sale of 868 sick Units" (12-25 March 12-25, 2001) 40:11/12 Finance and Markets, accessed 2/4/2012 online: <http://www.pakistaneconomist.com/issue2001/issue11&12/f&m2.htm>.

[13] Staff Report, "SC accepts plea against HBL privatization" *supra* note 9.

deposits equivalent to RS 0.431 million in its first eighteen months of business. At the time its total assets amounted to RS 0.572 million. In 1974 the Board of Directors of Australasia Bank was dissolved and the bank was renamed the Allied Bank. The profit earned in the first year was remarkable, in excess of RS 10 million. ABL flourished from 1974 until its privatization in 1994. Its branches increased from 353 in 1974 to 748 in 1991. In the same period deposits increased from RS 1.46 billion and advances and investments increased from RS 1.34 billion to RS 22 billion. ABL also opened three branches in the U.K. In 1991, ABL was privatized and became the first bank in the world to be owned and managed by its employees. On 9 September 1991, 26 percent shares were sold to the Allied Management Group, which represented ABL's employees, at a price of RS 70 per share. Under the *Nationalization Act,* 1974, 51 percent of ABL's holding shares were sold, which resulted in the transfer of ABL's management from the Government to ABL employees and ABL became privatized. However, the privatization was controversial and proved to be non-transparent.

In 1999, eight years after ABL's privatization, it was discovered that one of the bank's major defaulters had purchased about 35-40 percent shares from ABL employees. Subsequently, the State Bank of Pakistan (SBP) imposed restrictions on the transfer of shares from employees to non-employees except with the approval of the SBP. On 3 August 2001 the SBP removed ABL's Chairman and the three directors who were working against the interests of ABL and its depositors. The board was replaced and the SBP later on recommended that the Privatization Commission remove ABL from the list of privatizations and transfer the sale of its 49 percent strategic shares to the SBP in April 2003. Subsequently, in February 2004, the SBP pre-qualified six parties for bidding for the 49 percent ABL shares. In August 2004, as a result of capital reconstruction, the Bank's ownership was transferred to a consortium comprising Ibrahim Leasing and Ibrahim Ltd.

The ABL case profoundly illustrates the need for regulation of the mode of privatization employed, thoughtful analysis to evaluate the organization to be privatized, and verification of the interested parties' credentials. The mode of privatization employed in the case of ABL was reflected in the post-privatization scenario. The management of ABL by its employees did not result in improvement in its performance; rather an alarming situation arose as a result of an increase in the number of non-performing loans. The non-performing loans badly affected profitability, and the Bank suffered huge losses until 2003 when the SBP interfered.

Analysis of the privatization of these two banks in Pakistan reinforces the importance of appropriate objectives, policy, method, speed, sequencing, legislation, institutional and regulatory structure, openness, and transparency of privatization in developing countries transitioning from state to market economy. It also underlines the complex nature of the privatization process in transitioning economies. Such economies can have problems with bad governance, unstable political systems (privatization is a politically sensitive process as the assets change hands from state to private), and non-existent or weak institutional structure. The laws may be obsolete, there may be an absence of due process, and the government may have weak negotiating power compared to the foreign investors. Rampant corruption in privatization transactions can also be a problem.

The privatization process cannot be completely foolproof, but an appropriate strategy can bear fruitful results. It was important for the Government of Pakistan to structure its privatization program based on comprehensive research and valuable experience of other transition economies like Eastern European or Latin American countries, and/or the Asian experience. The next section will briefly examine the banking sector privatization strategies adopted by the transition economies of the Central Eastern European countries. These economies had been under the deep influence of communism yet have successfully managed transition towards the market economy even though their privatization process might not be faultless.

6.6 Privatization of the Banking Sector in Central Eastern Europe

Briefly speaking, privatization in the banking sector in the Central Eastern European countries Hungary, Poland, and the Czech Republic (being three fast-track transition economies) followed different approaches and produced different outcomes. However, there were certainly important techniques/strategies adopted by these countries that could have been emulated by Pakistan to structure privatization transactions in the banking sector in order to maximize gains.

Hungary adopted the privatization sequence of restructuring, recapitalization, and then transfer of the firm to private hands. Poland initially resisted the entrance of foreign competitors and structured government-directed privatization in consultation with the WB, but later on Poland realized the importance of strategic foreign investors and created a mix of state-directed privatization allowing the entry of strategic foreign investors. The Czech Republic initiated restructuring, but retained a strong state control over the banks. As a result the privatization of the banking sector in the Czech Republic did not achieve significant gains compared to Hungary and Poland.

6.6.1 Hungary

Hungary's successful privatization strategy was based on the reconciliation of equation between proper sequencing, recapitalization, and privatization to attract a strategic foreign investor.[14] Hungary structured its equation by initiating the recapitalization, restructuring, and endowment of its financial institution before its privatization. Secondly, in order to attract strategic foreign investors, Hungary structured incentive contracts and creative arrangements to detach itself from past legacies and policies.[15] These incentive contracts motivated the investors to invest their reputational value, which was of comparatively more value than the financial capital. Hungary focused more on attracting the foreign investor than on getting the

[14] For details on privatization of the banking sector in Hungary see Ronald Anderson & Chantal Kegels, *Transition Banking: Financial Development of Central and Eastern Europe* (Oxford: Clarendon Press, 1998); John P. Bonin, "On the Way To Privatizing Commercial Banks: Poland and Hungary Take Different Roads" (Winter 1993) 35:4 Comparative Economic Studies 103; John P. Bonin, Bozena Leven & Market E. Shaffer, "Unlocking Frozen Assets and Creating Market Culture: Hungary and Poland Take Different Approaches" in H. Brezinski, E. Fracnk and M. Fritsch, eds., *Microeconomics of Transition and Growth* (Cornwall, U.K.: Edward Elgar Publishing, 1998) 76; John P. Bonin et al., *Banking in Transition Economies: Developing Market Oriented Banking Sectors in Eastern Europe* (Cornwall, U.K.: Edward Elgar Publishing, 1998); Roger C. Kormendi & Karen Schatterly, "Bank Privatization in Hungary and the Magyar ulkereskedelmi Bank Transaction", The William Davidson Institute, March 1996; Gyorgy Suranyi, "Restructuring the Banking Sector in Hungary" (mimeo, National Bank of Hungary October, 1998); Éva Várhegyi, "Hungarian Banking Sector After Privatization" (February 1999) Central European Banker at 5-12.

[15] John Bonin & Paul Wachtel, "Lessons from Bank Privatization in Central Europe" (Working Paper No. 245, May 1999) at 15, accessed 04/12/2011 online: <http://deepblue.lib.umich.edu/bitstream/ 2027.42/39631/3/ wp245.pdf>.

price right in its privatization transactions, especially in the banking sector where the capital from the transaction was taken by the state not the bank.[16]

Hungary started its reform process in 1987 with the introduction of the two-tier banking system, i.e. central banking and commercial banking. The National Bank assumed the duties of central banking and, in addition, three state-owned commercial banks were created and assigned different sectors to support. Even during the Communist Era, the country had a state-owned savings bank and a bank focused on promoting foreign trade.

After determining the total cost of restructuring and recapitalization, which at that time was 10% of the GDP, Hungary initiated the restructuring and recapitalization process.[17] In a restructuring stage, the country first initiated a portfolio clean-up strategy. The strategy focused on the takeover of 40% face value of the bad loans by the Hungarian Investment and Development Bank. Subsequently, these loans were auctioned in the secondary markets. The remaining 60% of the loans were left with the banks for recovery.[18] The banks framed various incentive contracts to ensure recovery. The restructuring effort was then followed by multiple recapitalizations. In 1993/94 during the second phase of recapitalization Hungary followed the bank-based mechanism (as used in Poland) but adopted a fast-track version of it based on Chapter 11 of the *U.S. Bankruptcy Code*[19] to launch major financial restructuring. This resulted in the insolvency of most of the large state-owned banks with the exception of the foreign trade bank, which cost the state 10 percent of GDP at the time.

The "legislative shock therapy" was also part of the restructuring process. The country introduced a new *Financial Institutions Act*, *Tax Act*, *Accounting Act*, and *Bankruptcy Act*. The *Financial Institutions Act* incorporated stringent provisions for loan classification based

---

[16] *Ibid.* at 15-16; Sevil Acar, "Privatization Policies and Implications: The Cases of Hungary and Turkey", accessed online 18/01/2012: <https://docs.google.com/viewer?url=http%3A%2F%2Fgdri.dreem.free.fr%2Fwp-content%2Fe4-2acar-sevil-dreem.pdf>.

[17] *Supra* note 15 at 12.

[18] *Ibid.*

[19] 11 USC Title 11- Bankruptcy online: < http://uscode.house.gov/download/pls/11T.txt>.

on international standards.[20] The *Tax Act* was amended to allow taxes on pre-tax profits.[21] The new *Accounting Act* barred the incorporation of unrealized interest as an actual income in the books of the banks.[22] The new *Bankruptcy Act* envisaged self-bankruptcy procedures for the firms that defaulted on their debts for more than 90 days.[23] Financial restructuring was followed by the privatization of five major banks. Magyar Kulkereskedelmi Bank (MKB—the Foreign Trade Bank), Orszagos Takarekpenztar es Keresedelmi Bank (OTP—the Savings Bank) and three commercial banks—Budapest Bank (BB), Magyar Hitel Bank (MHB), and Kereskedelmi es Hitel Bank (K&H)—were successfully privatized.[24]

Among the Central Eastern European countries, Hungary's privatization of the banking sector is considered the most successful. The privatization transaction for each bank was structured in a strategy to attract strategic foreign investors, which remained the prominent feature of Hungary's privatization efforts and helped the country to develop a strong and vibrant banking sector in the region.

6.6.2 Poland

Poland opted to synchronize its restructuring and privatization program. The restructuring plan was based on bank-led, enterprise restructuring modelled after consultation with the WB.[25] The restructuring component of the reform process consisted of the Polish *Privatization Act* of 1993. The Act provided for the bank conciliatory procedure (BCP), which incorporated the lead bank. The lead bank was responsible for the financial and operational redesigning, mainly focusing on the tracking and rescheduling of debts; refinancing obligations with decreased interest rates; partial write off, debt/equity swap or combinations of these; and recovery and restructuring of bad loans and recapitalization. The

---

[20] Gyorgy Szapary, "Banking Sector Reforms in Hungary: Lessons Learned, Current Trends and Prospects" (Paper presented to Current Issues in Emerging Market Economies, the Seventh Dubrovnik Economic Conference, Dubrovnik, Croatia 28-30 June 2001), accessed 20/03/2012 online: <http://www.hnb.hr/dub-konf/7-konferencija-radovi/szapary-banking-sector-reform.pdf>.

[21] *Ibid*.

[22] *Ibid*.

[23] *Ibid*.

[24] *Supra* note 15 at 13.

[25] *Supra* note 15 at 6.

debt/equity swap resulted in the bank owning equity holding in their clients, which apparently led to conflict of interest as lender and as owner, something that does not align well with the objective of creating a vibrant independent banking sector. It shows that Poland's privatization program was based on inconsistent policies and objectives. Consequently, the privatization effort in the banking sector produced mixed results.

The privatization program in Poland resisted the entrance of foreign banks and tried to retain state control over the banking sector to use it as source of revenue generation for the government, to make local banks more competitive against the foreign banks, and to capitalize pension funds and utilize them for social objectives.[26] However, the government subsequently realized the importance of strategic foreign investors in the creation of a vibrant banking sector in the country and encouraged their entrance. The privatization initiative in Poland was heterogeneous and fluid, swinging between the two poles of the initial public offerings (IPO) approach and strategic investors in tender sales.[27] This privatization technique would result in a distribution of shares that would restrict the entry of strategic foreign investors.

The privatization of Wielkopolski Bank Kredytowy (WBK) in Poznan, and Bank Slaski (BSK) in Katowice illustrates the state resistance to opening the market for strategic foreign investors. WBK was privatized on 15 March 1993. WBK issued new shares to attract foreign investors but was not successful, and the European Bank for Reconstruction and Development (EBRD) bought a 28.5 percent stake for $12.6 million in order to find strategic foreign investors within five years. The applied price per share was settled at $6.89/share in the IPO. The share distribution encouraged local large and small investors. In the IPO a 27.2 percent stake was sold; 7.2 percent of the shares were sold to a large investor and 20 percent were sold to small investors. Most of the shares were purchased by Polish domestic investors. Employees also purchased a share of about 15 percent at a discounted price. The privatization effort was not able to attract a strategic foreign investor until March 1995 when Allied Irish Banks (AIB) purchased a 16 percent stake in WBK for $20 million. Later on the

---

[26] *Ibid.*

[27] *Supra* note 15 at 3.

state sold additional shares in WBK to AIB and by 1997 AIB was a dominant owner of 60 percent shares in the bank. It took the state four years to gradually hand over the control to the strategic foreign investor. This is an example of the "going slow" approach in privatization of the banking sector.

Poland followed a similar approach in the privatization of Bank Slaki (BSK), Bank Przemyslowo-Handlowy (BPH) in Krakow, Bank Gdanski (BG), and Powszechny Kreytowy (PBK). However, in the privatization of the Pekao Group there was a substantial departure from this approach, mainly attributed to the country's EU membership, which set the condition of open financial markets.

The brief review of banking sector privatization in Poland provided above illustrates the negative impact of inconsistent goals on the outcome of privatization. Undue focus on getting the right price to maximize revenue generation for the state significantly delays the conclusion of the privatization process. There might be underestimation of the local demand and overestimation of the foreign demand, which might result in diffused ownership. The understanding of the specific links between the sale and the development of equity market is essential to prevent institutional problems. The state might continue its direct involvement in the banking sector, which could retard the progress of privatization.[28]

6.6.3 The Czech Republic

The Czech Republic initiated reforms in 1989 and 1990. The privatization technique adopted for the banking sector in the Czech Republic followed the trend towards the retention of state

[28] Jeffrey S. Abarbanell & John P. Bonin, "Bank Privatization in Poland: The Case of Bank Slaski" (August 1997) 25:1 Journal of Comparative Economics at 31-61, accessed 22/03/2012 online: <http://ac.els-cdn.com/S0147596797914475/1-s2.0-S0147596797914475-main.pdf?_tid=9de03907ad40cf1efefe94301eb129cf&acdnat=1332480065_e3f25b24e672cc60384c650f5a9c5ec8>; John P. Bonin & Bozena Leven, "Polish Bank Consolidation and Foreign Competition: Creating a Market-Oriented Banking Sector (August 1996) 23:1 Journal of Comparative Economics 52, accessed 22/03/2012 online: <http://www.sciencedirect.com/science/article/pii/S0147596796900438>; Andrzej Bratkowiski & Stefan Kawalec, "Market for Banking Services in Poland" (Report for the Fourth Annual "Banking and Finance: The Experience of Central Banking" Conference, Warsaw, October 1996); Maria Lissowska, "Institutional Barriers to Active Crediting Strategies of Polish Banks" Warsaw School of Economics, 1996; Anna Meyendorff & Edward A. Snyder, "Transactional Structures of Bank Privatizations in Central Europe and Russia" (August 1997) 25:1 Journal of Comparative Economics at 5-30, accessed 22/03/2012 online: <http://ac.els-cdn.com/S0147596797914463/1-s2.0-S0147596797914463-main.pdf?_tid=5a5f17ac21c3234bbcfc6df17dcf013c&acdnat=1332480942_318776f93def3aa64605876ebe919e5f>.

and inside control. The technique adopted was the voucher distributions system; however, the portion of the shares given through the voucher scheme was small compared to the number of shares retained by the state. The retention of control by the government resulted in the continuation of old banking and management practices that were self-defeating.

The Czech Republic restructured its banking sector before privatization of the banks but continued to lend money to large enterprises based on old and political affiliations, defeating the purpose of the restructuring efforts.[29] The country established a centralized bank named Konsolidacni Banka (KOB), which acted as a hospital for cash-starved public enterprises. KOB was mandated to take over the portfolio of the low fixed interest and revolving credit loans without any collateral (TOZ loans) and restructure them to seven-year maturity loans on market interest rates.

The Komercni Banka (KB) was the first bank to use KOB for the deposit of its bad loans. Ceska Sporitelna (CS)—the Czech savings bank—and Investicni a Postovni Banka (IPB) also used KOB for deposit of bad loans. In 1992 these banks participated in the first phase of voucher privatization, dominated by the investment funds. The investment funds bought 72 percent of the shares and were sponsored by the banks themselves; hence the banks were involved on both sides. The bank shares being put on sale were already included in the scheme and the investment banks capitalized/sponsored by the same banks became owners in the Czech companies put up for privatization. This resulted in the creation of an interlocking relationship between the banks and clients that gave more control to the state and ousted foreign or non-state investors from buying the shares, which defeated the privatization exercise.

It is pertinent to mention here that these countries spent reasonable time preparing financial institutions for privatization. The development of a strong banking sector in transition countries demands time, as the transformation of the sector usually involves several stages. In the case of the three Central Eastern European countries discussed above, these stages

---

[29] Edward A. Snyder & Roger C. Kormendi, "Privatization and Performance of the Czech Republic's Konercni Banka" (1997) 25 Journal of Comparative Economics at 97-128; Robert Ebel, Milton Friedman & Tom Hazlett, "Privatization Trends in Eastern Europe", Free to Choose Enterprise, accessed 18/06/2012 online: <http://www.youtube.com/watch?v=xM8Re7RKTk8>.

were the conversion of commercial banks and central banks from the Soviet period into joint stock companies; the restructuring of bank portfolios and the recapitalization of the banks; and the transfer of ownership to the private sector.[30]

Broadly speaking, the important lessons that can be learned from the experience of the three Central Eastern European countries are the following:

1. Avoidance of conflicting goals and determination of realistic objectives before initiating the privatization process. Conflicting goals result in undermining even the best and most well intentioned programs.

2. It is imperative to structure an appropriate sequence between the restructuring and the privatization process to create attractive incentives for future lending on commercial lines.[31]

3. The execution of appropriate sequence in the privatization process demands a cautious, "go-slow", and "structured" approach. For instance, Hungary started restructuring its banking sector in 1986-87 and completely privatized its major banking sector over a decade into the twenty-first century.[32] Hungary introduced the

---

[30] *Supra* note 15 at 3.

[31] *Supra* note 15 at 1; Ronald Gerard, "On the Speed and Sequencing of Privatization and Restructuring" (1 September 1994) 104 The Economic Journal at 1158-68, accessed 2/06/2012 online: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=3&hid=11&sid=e4226791-bb5e-4b51-be36-bb5a591872a2%40 sessionmgr11>.

[32] *Supra* note 20. See also C.W. Neale & S. Bozsik, "How the Hungarian State-Owned Banks were Privatized" (2001) 13:2 Post-Communist Economies at 147, accessed 28/12/2011 online: <http://info.worldbank.org/etools/docs/library/83807/nealebozsik_hungarian.pdf>; *Supra* note 15; Kou Takata, "Evolution of Banking Sector Structures within Central European Structures During Transition" (Discussion Paper No. 65 delivered at Kyoto University, March 2005), accessed 28/12/2011 online: <http://www.kier.kyoto-u.ac.jp/coe21/dp/61-70/21COE-DP065.pdf>; David Newbery, "Reform in Hungary: Sequencing and Privatization" (1991) 35:2:3 European Economic Review at 571-580, accessed 2/06/2012 online: <http://pdn.sciencedirect.com/science?_ob=MiamiImageURL&_cid=271652&_user=1022551&_pii=001429219190159G&_check=y&_origin=browse&_zone=rslt_list_item&_coverDate=1991-04-30&wchp=dGLbVBA-zSkWA&md5=a02d3a507b603f972a43ffcf745d76e9/1-s2.0-001429219190159G-main.pdf>; John Hawkins & Dubravko Mihaljack, "The Banking Industry in Emerging Market Economies: Competition, Consolidation, and Systematic Stability—an Overview" (August 2001) , accessed 28/12/2011 online: <http://www.bis.org/publ/bppdf/bispap04a.pdf>; John P. Bonin & Istvan Abel, "Retail Banking In Hungary: A Foreign Affair? (December, 2000) William Davidson Institute Working Paper No. 356, accessed online on 16/01/2013: <http://papers.ssrn.com/sol3/papers.cfm? abstract_id=260759>; Ivanka Petkova, "Bank Privatization in Bulgaria—A Comparative Study to Hungary and Poland" accessed 16/01/2013 online: Institute of Market Economics <http://ime.bg/pdf_docs/papers/bankpriv.pdf>.

two-tier central and commercial banking system in 1987. Poland and Czechoslovakia introduced the two-tier banking system in 1989 and 1991 respectively. The next step in the sequence is (a) bank consolidation, i.e. restructuring of the portfolios; (b) enterprise-oriented portfolio cleaning; and (c) the recapitalization of the banks.

4. The appropriate sequence should be supplemented by open, transparent, and credible transfer of state control to the private sector.[33]

5. Foreign ownership and participation are vital for the development of the banking sector in small economies. Hungary can be quoted as a relevant illustration.[34]

The comparative analysis of banking sector privatization in these three countries underlines the importance of determined objectives, a proper sequence, transfer of control from the state to the private body, and ensuring the presence of strategic foreign investors to attract capital, technology, corporate culture, and knowledge. These elements are essential for transitioning economies, which have significant budgetary and technical constraints. The Privatization Commission and Government of Pakistan could have successfully incorporated these lessons in Pakistan's banking sector privatization.

6.7 Comparative Analysis of Banking Sector Privatization in Pakistan and Central Eastern Europe

Comparative analysis of banking sector privatization in Pakistan and Eastern Europe allows us to examine the privatization of Pakistan's banking sector from a policy and legal perspective and identify the areas where Pakistan could have benefited from the experience of the transitioning economies of Eastern Europe and achieved a fruitful outcome.

6.7.1 Policy perspective

From a policy perspective, it is important for any government initiating a privatization program to first determine and prioritize the goals and objectives of privatization in the country and then adopt appropriate preparation, pace, sequence, technique, and transaction structure.

---

[33] *Supra* note 15 at 1.

[34] *Ibid.*

6.7.1.1 Goals and objectives

As mentioned earlier the Government of Pakistan, unlike the Central Eastern European countries, was initially indecisive about the fundamental purpose of privatization. However, subsequently the focus shifted to the creation of a genuinely competitive and market-friendly banking sector that was considered an important component for the successful transition from planned to market economy. These goals were primarily set by the IFIs in the form of conditionalities attached with the IFIs' structural adjustment programs for Pakistan. The government incorporated these goals in its economic agenda, in which privatization and deregulation generally and of the banking sector specifically was the key feature. The Government of Pakistan viewed privatization as an important tool but did not consider its complex and multifaceted dimensions and its deep impact on the economic development and welfare of the people. It privatized many public sector banks, producing mixed results. The speedy and ill-planned privatization of these institutions speaks volumes about the privatization process in the country. Privatizing unprofitable SOEs might be a wise decision, but the non-transparent manner in which the privatization transactions were executed in Pakistan defeated even the fundamental goal of privatization: the successful transition towards market-based economy.

Transition towards market economy might result in transition towards chaos if privatization and deregulation are not done well. Hence it is imperative for any government intending privatization to determine the goals it wants to achieve through privatization. A clear vision of its goals will help the government determine the appropriate sequence, technique, and transaction structure of the privatization transaction in the pre-privatization period and the appropriate regulatory and competitive structures in the post-privatization period. It also helps the government in formulating a legal and institutional design that reconciles with the local realities of the country.

The execution of privatization in a non-transparent manner weakens public and investor trust in the same legal and public institutions that are required to provide regulatory safeguards in the post-privatization period. It is also the negation of the IFIs' good governance objectives and the UN Millennium Goals. It is therefore crucial for the IFIs to incorporate the conditions of “observance of rule of law; due process of law; transparency and accountability” in their structural adjustment programs for borrowing countries.

6.7.1.2 Sequence and pace

After the determination of precise and prioritized goals, the next phase is the sequence of the privatization process. The sequence for privatization of a public enterprise varies depending on the country and the specific situation within the department or institution. The appropriate sequence implies anything from initiating deregulation and liberalization of the specific sector prior to privatization to the steps that need to be taken before, during, and after privatization of public enterprise, i.e. whether there is a need to restructure the enterprise first before it is privatized or if the government should liberalize and deregulate the public enterprises in the public sector before they are privatized.

In Eastern Europe, countries like Hungary and Poland initiated consolidation and restructuring of the banks before privatizing them. They identified the weak areas such as bad debt and its recovery, they incorporated the principles of prudence and ensured that the banks did not make further bad loans, and they created a separate department to deal with such loans.[35] The separation of bad portfolios from good portfolios was followed by recapitalization efforts and then privatization. The recapitalization focused on the Capital Adequacy Ratio (CAR). In Hungary, the CAR was raised to zero percent in the first stage; in the second stage the ratio was raised to four percent; and in the third stage the CAR of four state-owned banks was raised to 8 percent as per the requirement of the rules of the Bank of Settlement.[36]

The consolidation of the Hungarian banking system concluded when a commercial bank abroad, owned and operated by NBH, could not be sold after several attempts and had to shut down its operations in 2000.[37] The whole consolidation process spanning over eight years from 1992-2000 was 13 percent of GDP, which according to international estimates was

---

[35] *Supra* note 20 at 9.

[36] *Ibid.* at 8.

[37] *Ibid.* at 9.

much lower than other emerging markets.[38] In addition, in the first phase of privatization the Hungarian government retained minority shareholder stake, shared by the European Bank for Reconstruction and Development (EBRD). The initial presence of the government and EBRD was considered a guarantee for the strategic investors if the banks ran into problems in the post-privatization period. The strategic owners later bought out these minority shareholders. In the last quarter of 1995, the state-owned banks held 31 percent of the market share, that amount falling to 20 percent in 1997.[39] This strategy was supplemented by the government's liberal licensing policy, which allowed numerous foreign banks to set up their subsidiaries in Hungary. This sequence resulted in a vibrant banking sector as compared to other countries (Poland and the Czech Republic) in the region.

In contrast, the privatization program in Pakistan was executed in a policy, legal, and institutional vacuum. The country could have incorporated the prominent features of the privatization strategy followed by the transition economies of Eastern Europe and other emerging economies. The government of the time should have initiated the consolidation and reconstruction work before privatization and in the meantime should have gradually liberalized the banking sector to increase the competition by allowing foreign investors.

The restructuring efforts should have been based on an innovative screening mechanism to differentiate good firms from bad firms and then within firms to differentiate bad loans from good loans. The screening exercise would have enabled the government to develop a priority list of firms that were ready to be privatized. The firms that were in bad shape and either needed restructuring or to be closed down should have been in government control; the firms in a better position should have been put on the priority list of firms ready for privatization. The identification of these firms would have considerably expedited the privatization process, as the firms that were ready for privatization would have been privatized; the firms that were non-functional would have been shut down; and the firms that needed restructuring/reconsolidation would have been left with the government.

---

[38] *Ibid.* at 9-10.

[39] *Ibid.* at 12.

Liberalization should have been supported by the competition and regulatory mechanism. After the successful restructuring and gradual liberalization of the banking institutions the banking sector should have been privatized with the retention of some shares by the government. The government followed approximately this strategy in the case of the Habib Bank but deviated when it gave benefits to the prospective buyers after finalizing the selection of the buyers, wrote off the bank's debts instead of recovering them, and gave millions of rupees of tax credits to the bank while it was in the process of being privatized. The Government of Pakistan gave the benefit of RS 18.84 billion after the shortlisting of the competitive bidders. The grant of such benefits would have made more sense before the start of privatization of the bank. The Government of Pakistan wrote off the bad loans, pumped in taxpayer money in billions, and then privatized the banks at a lower price to either a local investor or a foreign strategic investor. The privatization of Habib Bank and ABL amply illustrates this point.[40]

The governments of the Central East European Countries had ample time to pace the privatization of their banking sector. The common feature of the privatization in the banking sector of these countries was the gradual approach in multiple phases. Pakistan, in contrast, had to comply with the IFI conditions and seemed to be more focused on expediting the privatization.

6.7.1.3 Technique/method

The lack of clarity in the objectives of privatization in the banking sector can be illustrated by the fact that the Government of Pakistan adopted inadequate approaches/techniques for privatization of banks. For instance, the Habib Bank was privatized and given to a foreign investor with the objective to attract capital and advance management techniques, but the Allied Bank was privatized and handed over to the employees of the bank. These different approaches sent conflicting signals to prospective foreign investors. Pakistan had high public debt and needed foreign capital to reduce the debt deficit, which was also one of the objectives of the privatization program. The tender sale to a strategic foreign investor would

---

[40] Akhtar Hasan Khan, "Is Privatization in Pakistan Purposeful?" at 8-12, accessed 27/03/12 online: <http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf>. The

have helped in achieving the objective of attracting foreign capital, investment, and technology to the sector. The techniques used in the privatization of banks in Hungary, Poland, and/or the Czech Republic could have provided some valuable lessons for the Government of Pakistan in this regard.

Another step in sequence is the structure of the privatization transaction.[41] The transaction structure has been the prominent feature of bank privatization in Hungary. For instance, in the privatization of Magyar Kulkereskedelmi Bank (MKB) the transaction might be termed a "multiple equity tranche structure", in which each tranche featured a different kind of investor.[42] Before privatization the government was an owner of 60 percent, with 30 percent ownership held in the private sector, including employees, and 10 percent held by diffused foreign ownership.[43] After privatization, the government share got reduced to 25 percent, the strategic foreign investor Bayerische Landesbank (BLB) had 25 percent, and the European Bank for Reconstruction and Development (EBRD) had 17 percent.[44] The share of the diffused foreign ownership went up to 30 percent in total.[45] Such multiple tranche transactions had been the hallmark of privatization in Hungary.

The prominent feature of the multiple tranche transaction structure was the incorporation of the price adjustment mechanism. The performance based price adjustment mechanism had two stages. In stage one, performance was based on the earnings for the last six months of 1994, and in stage two, performance was based on the earnings for the first six months of 1995. If the earnings of the MK Bank in 1994 were more than two thirds of its earnings in 1993 then the BLB and EBRD were obligated to pay a 30 percent price premium of its shares. The premium would be prorated on the basis of performance on the scale of zero and

---

privatization of Bankers Equity Limited and ABL further highlights the inadequate sequence followed by the Government of Pakistan at the cost of tax-payer money.

[41] Roger C. Kormendi & Karen Schnatterly, "Bank Privatization in Hungary and the Magyar Kulkereskedelmi Bank Transaction" (Working Paper 3, William Davidson Institute, University of Michigan Business School, May 1996), accessed 27/03/2012 online: <http://wdi.umich.edu/files/publications/workingpapers/ wp3.pdf>.

[42] *Ibid.* at 6.

[43] *Ibid.*

[44] *Ibid.* at 7.

[45] *Ibid.*

the target given. In 1995, the MK Bank was supposed to make earnings of half of the earnings of 1993 at a 25 percent premium rate, to be paid by BLB and EBRD. This mechanism gave a performance-oriented incentive to MK Bank to perform well even though the targets given for evaluating performance were low, but the primary concern of BLB and EBRD was to enable the bank to weather the crisis.

Second, it was predicted that the performance evaluation based on one year might encourage ad hoc measures to achieve short-term goals at the cost of long-term ones, but such concerns never materialized, as the bank was able to achieve its goals reasonably well. The third feature of the mechanism helped in addressing the investor concerns of uncertainty emanating from the information and knowledge asymmetry between the buyer and the seller. The closure of such gaps through the standard method of the buyer's due diligence is costly and still does not address the uncertainty that is characteristic of transitional economies.[46] The price adjustment mechanism can also be helpful in modelling various privatization structures in transitional economies when it extends its scope to performance indicators, duration of the economies, performance targets, and premium structures.[47] The extension of this mechanism can also be helpful in transactions with a primary focus on getting the price right.

Another important feature of the MKB transaction had been the retention of the government share. When the government retained its share there were concerns that it might exercise an influence on governance, but it also acted as a guarantee that in case of crisis the government would intervene. Also, if the government subsequently decided to sell its share through IPO on the stock exchange, the value of the shares on the stock market might increase (due to the fact that government influence would be completely eliminated from the governance of the bank), and that would earn revenue for the government.[48]

---

[46] *Ibid.* at 9.

[47] *Ibid.* at 9.

[48] *Ibid.* at 10.

Similar multi-tranche transactions were also structured in the privatization of Bank of Budapest (BB) and OTP.[49] In OTP the Hungarian government retained a dominant share that attracted a foreign investor as a passive shareholder, whereas in the privatization of the Bank of Budapest (BB) the strategic foreign investor General Electric (GE) was a dominant shareholder (27.5 percent) compared to the government (22 percent) and the EBRD (32.5 percent). GE was granted full management rights and call right to the shares of both the government and the EBRD. The call right mechanism ensured 80 percent of ownership rights for GE in case of positive performance of BB, and the remaining 20 percent would remain with the diffused ownership. If the performance of BB was bad, both GE and the EBRD had the option to put back their shares to the government.[50] These provisions were innovative in the sense that they provided positive incentive to the strategic foreign investor to invest and engage itself in positive risk-taking ventures. Such innovative approaches had a considerable impact on the entry of foreign competitors in Hungary's banking sector and significantly improved the system's performance.

In contrast, the privatization transaction of the Habib Bank Limited (HBL) and the Allied Bank Limited (ABL) in Pakistan lacked such innovative provisions. In the case of HBL, the government initially decided to sell 26 percent of shares with full management right, but the number of shares was later increased to 51 percent. The increase in the number of shares without due process smacks of a lack of transparency and due process. As indicated earlier in this thesis, the Government of Pakistan spent RS 36.8 billion in restructuring in an effort to make the bank more viable but ended up selling its 50 percent shares for just RS 22.4 billion, thus incurring a loss of RS 14.4 billion.

In the case of ABL, after the scandal involving a major defaulter of the bank buying significant shares in the bank, the State Bank of Pakistan (SBP) removed the bank staff involved and resold the bank to another consortium. The SBP did not act the same manner in the case of HBL. The ability of the defaulter to own shares underlines the importance of mechanisms for the supervision, monitoring and evaluation of privatization transactions and

---

[49] *Ibid.* at 12-17.

[50] *Ibid.* at 14.

correct techniques in the privatization of the banking sector. In the first place, ABL should have been sold to the strategic foreign investor instead of to employees. Further, the resale of ABL after its privatization sends a wrong signal to a foreign investor. The privatization of HBL, ABL, and other banking and financial institutions should have followed the same sequence as in the Central Eastern European transition economies. The lack of clarity in the policy objectives of privatization also delayed the legal reforms that have a vital role in successful transition. The IFIs should have initiated a legal transition program on the pattern of the EBRD for new members aiming to join the European Union.

6.7.2 Legal perspective

The Central Eastern European countries enacted new laws on accounting, tax, bankruptcy, companies, financial institutions, and prudential regulations. The Government of Hungary has enacted (i) the Hungarian Financial Supervisory Authority (HFSA) Act CLVIII of 2010; (ii) the Credit Institutions and Financial Enterprises Act CXII of 1996; (iii) the Hungarian National Bank Act LVIII of 2001 on; (iv) Act CXX of 2001; (v) the Payment Services Act LXXXV of 2009; (vi) the Prevention of and Combatting Money Laundering and Terrorism Financing Act CXXXVI of 2007; (vii) the Home Savings and Loan Associations Act CXIII of 1996; (viii) the Mortgage Loan Companies and Mortgage Bonds Act XXX of 1997; (ix) the Hungarian Export-Import Bank Corporation and Hungarian Export-credit Insurance Company Act XLII of 1994; (x) Hungarian Development Bank Company Act XX of 2001; and (ix) an Act to incorporate the new International Auditing Standards for the purpose of auditing and regulating the profession.[51]

According to the recent country law assessment survey published by the EBRD, Hungary's effort to upgrade its legal framework shows compliance with the international standard, but its laws relating to its judiciary, central bank, and data protection agency are still a source of concern.[52] The assessment further suggests that the country needs reforms in areas of law such as the *Concessions Act*, and the *Insolvency Law* needs substantial reforms to bring it to

---

[51] The World Bank, *Report on the Observance of Standards and Codes (SOC)* (20 June 2004), accessed 2/04/2012 online: <http://www.worldbank.org/ifa/rosc_aa_hun.pdf>; EBRD, *Commercial Laws of Hungary: An Assessment by the EBRD* (July 2010), accessed 13/04/2012 online <http://www.ebrd.com/downloads/sector/legal/hungary.pdf>.

[52] *Ibid.*

the international standards necessary for market economy.[53] The assessment also shows concern about the effectiveness of Hungary's commercial laws due to inadequate administrative and judicial support.[54] According to the survey, negotiations are in progress between the European Union and Hungary on the aforementioned gaps and if the country fails to comply it can be proceeded against in the European Court of Justice.[55]

Poland initiated a bank-led enterprise-restructuring program that was prepared in consultation with the WB. The restructuring focused on the recovery of debts, recapitalization, bankruptcy, interest rates, writing off debts, and executing debt/equity swap. In order to recover outstanding loans, the restructuring efforts focused on settling the loans outside the courts through banks themselves. It was a departure from the existing court-based Chapter Seven procedure to recover the loans. In 1993, new Polish legislation introduced the Bank Conciliatory Procedure (BCP), which created and empowered the new lead bank to structure financial and operational design. The country also introduced new laws on bankruptcy, liquidation, and insolvency procedures.[56] According to the EBRD country assessment report Poland has drastically upgraded its legal and institutional design.[57]

The Czech Republic similarly established a bank that would deal with the sick units in the banking sector. The Bank was primarily pumping capital into the sick banks and swapping it for their outstanding loans. However, the country's restructuring efforts were not supplemented by an adequate legal framework that could introduce prudential regulations to prevent bad lending.[58] This defeated the reform efforts in the banking sector. [59] All these

---

[53] *Supra* note 51 online <http://www.ebrd.com/downloads/sector/legal/hungary.pdf>.

[54] *Ibid*.

[55] *Ibid*.

[56] Allen & Overy, "Corporate Restructuring and Insolvency Procedures in Poland" (Fact Sheet, January 2011), accessed 3/04/2011 online: <https://www.aohub.com/aoos/attachment_dw.action?key=Ec8teaJ9VarUhj%2BMG9RV1F7eOOGbnAEFKCLORG72fHz0%2BNbpi2jDfaB8lgiEyY1JAvAvaah9lF3d%0D%0AzoxprWhI6w%3D%3D&attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWHb%2FPDBPVvgudAM1xb7%2B5u&fromContentView=1&fromDispatchContent=true&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQ%2FHLCIrtYuIY%3D&uid=cyJ36OT6u1s%3D&popup=HxapDW%2FMKd4%3D>.

[57] EBRD, *Commercial Laws of Poland An Assessment by EBRD* (July 2010), accessed 13/04/2012 online: <http://www.ebrd.com/downloads/sector/legal/poland.pdf>.

[58] Vit Barta & Miroslav Singer, "The Banking Sector after 15 years of Restructuring: The Czech Experience and Lessons", accessed 3/4/2012 online: <http://www.bis.org/publ/bppdf/bispap28k.pdf>.

countries had another advantage in EU membership that required compliance with specific legal standards. They were evaluated on the basis of compliance in terms of the quality and effectiveness of their laws. It was the economic importance of these countries integrating into the EU that forced them to drastically reform their legal and institutional design.

Unlike Hungary, Poland, and the Czech Republic, Pakistan was not seeking any membership that could have forced the country to change its legal and institutional design. The only stress that might be expected on the country is from the IFIs in the form of their conditionalities. Pakistan initiated the general privatization process and then privatization of the banking sector in an institutional and legal vacuum. Pakistan started the privatization of the banking sector in 1997 but enacted the Privatization Commission Ordinance 2000 during the tenure of General Pervaiz Musharaf.[60] The Ordinance is further explained and developed by different sets of rules: the *Privatization Commission of Pakistan (Modes and Procedures) Rules 2001*[61]; *Amendment I*[62]; *Amendment II*[63]; *Hiring of Valuers Regulations 2001*[64]; the *Privatization Commission of Pakistan (Hiring of Financial Advisors 2007) Regulations*[65]; the *Privatization Commission of Pakistan (Valuation of Property) Rules 2001*[66]; *Authentication*

---

59 *Supra* note 15 at 16-19.

60 *Privatization Commission Ordinance*, 2000, accessed online: 5/4/2012: <http://www.ahmedandqazi.com/actsandregulations/privatization/privatizationCommissionOrdinance2000.pdf> & <http://www.privatisation.gov.pk/Rules/Rules.htm>.

61 *Privatization Commisson of Pakistan, Privatization (Modes and Procedures) Rules, 2001)*, accessed online 05/04/2012: <http://www.privatisation.gov.pk/Rules/11(1)L-P&C-2001-Modes.htm>; *Amendment I*, online: <http://www.privatisation.gov.pk/Rules/Modes%20and%20Procedures%20(Amendment)-P&C-2001-Modes.htm>; *Amendment II*, online: <http://www.privatisation.gov.pk/Rules/11(1)L-P&C-2001-Modes%20(Amendent).htm; *Hiring of Valuers Regulations 2001*; *Privatization Commission of Pakistan (Hiring of Financial Advisors 2007) Regulations*, accessed online: <http://www.privatisation.gov.pk/Rules/Hiring%20of%20Financial%20Advisors%20(Regulations)2007.htm>.

62 *Privatization Commission of Pakistan (Modes and Procedures) Rules 2001*, accessed online 11/04/2012: <http://www.privatisation.gov.pk/Rules/Modes%20and%20Procedures%20(Amendment)-P&C-2001-Modes.htm>.

63 *Ibid*.

64 *Privatization Commission of Pakistan Hiring of Valuers Rules 2001*, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(24)-2001-values.htm>.

65 *Privatization Commission of Pakistan Hiring of Financial Advisors Regulations 2007*, online: <http://www.privatisation.gov.pk/Rules/Hiring%20of%20Financial%20Advisors%20(Regulations)2007.htm>.

66 *Privatization Commission of Pakistan Valuation of Property Rules 2001*, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(15)-2001-valuation.htm>; *Valuation of Property Rules 2007*,

of Documents Under Common Seal Regulations, 2001[67]; and the *Privatization Commission of Pakistan (Valuation of Property) Rules 2007*.[68]

The whole Ordinance describes the structure, membership, powers and functioning of the Privatization Commission. The Ordinance does not give any detail on the eligibility criteria for an enterprise to be selected for privatization. The Commission simply has to act on the decision of the Cabinet. In order to make the process more transparent, participative, open, and research-based there is a need to insert provisions regarding the constitution of a body that includes the members of the Privatization Commission, but also members from the civil society, members of the enterprise being privatized, and the legal and financial experts, who are not part of the Privatization Commission. This body will evaluate the proposals of the Cabinet on privatization of any publicly owned enterprise, the objectives of the privatization, and how to achieve those objectives.

Art. 25 of the Ordinance broadly promulgates the modes/techniques of privatization and further techniques have been provided in the three amendments made in 2001, but the Ordinance still does not put in place any mechanism that could deliberate the purpose of privatization in a specific sector and of specific institutions. The Ordinance puts extraordinary discretionary power in the hands of the Privatization Commission, without any checks and balances. Historically, officeholders in Pakistan have usually misused discretionary powers therefore it would be appropriate to insert a review mechanism in the Ordinance.

A Review Board should be constituted, on which there would be one representative from each of the legal, financial, and business sectors, and an expert from the sector in which the enterprise is being privatized. These members would review the execution of the privatization transactions, i.e. the steps taken and how the Commission is executing them

---

accessed online 11/04/2012: <http://www.privatisation.gov.pk/Rules/16(26)-2001-valuation%20of%20propertly%20rules2007.htm>.

[67] *Privatization Commission (Authentication of Documents Under Common Seal) Regulations, 2001*, accessed online 11/04/2012: <http://www.privatisation.gov.pk/Rules/16(14)-2001-common-Seal.htm>.

[68] *Privatization Commission of Pakistan (Valuation of Property) Rules 2007*, accessed online 5/04/2012: <http://www.privatisation.gov.pk/Rules/16(26)-2001-valuation%20of%20propertly%20rules2007.htm>.

before, during, and after the privatization transaction. The Review Board will ensure that both the Commission and the prospective buyer have complied with all the legal requirements, both in letter and in spirit. In case of violation of any of the provisions the Review Board shall have the power to identify and investigate the deviation and immediately recommend remedial measures. The Review Board should give the final approval of the privatization transaction. In case any of the parties feel aggrieved by the decision of the Review Board, the parties should have the right to file appeal in an Appellate Tribunal.

Currently, the High Courts of the respective provinces in Pakistan have been given appellate powers. The High Courts are backlogged with cases and are not in a position to decide appeals within the time prescribed. There should be a separate specialized appellate tribunal presided over by the judge of the status of the High Court for hearing appeals specifically in such cases. Appeals against the decisions of such appellate tribunal should be filed before the august Supreme Court of Pakistan. The establishment of the tribunal would facilitate the expeditious disposal of cases.

The recent decision of the august Supreme Court of Pakistan on the privatization of HBL amply demonstrates the need for a separate legal jurisdiction. HBL was privatized in 2001-03, and the litigation to determine whether the transaction was properly done took ten years in the courts. Such a long delay definitely impacts the decision of the judges who not only have to ensure the rule of law, but also must consider the economic impact of their decisions. For instance, after a decade of privatization, if the Supreme Court had declared the privatization transaction of the HBL illegal it would have been a devastating blow to the investment climate of the country. An adverse decision would have sent a wrong message to the foreign strategic investors.

The Privatization Ordinance should also lay down provisions regarding assurances from the foreign strategic investor for voluntary compliance with the laws of the land and prohibiting the foreign strategic investor from participating in any activity that undermines the golden rules of good governance, rule of law, due process, transparency, and accountability. Such provisions would prevent any influential foreign investor from undermining the due process of law in privatization transactions. It is important to keep in mind the weak negotiating power of the country in relation to development organizations or corporations based in industrialized countries. For instance, in the case of HBL the buyer was a well-reputed AKFED development organization. The organization should have voluntarily complied with the terms and conditions of the transaction and the requirements of Pakistan's laws, but the organization managed to influence the government after privatization to increase the number of shares being sold, to extend the time period given for the deposit of the purchase money, and to take over the bank at a throwaway price. Because of the frequency of such dealings in privatization transactions any citizen or organization of Pakistan, including a non-profit organization, should have the right to file a complaint against a privatization transaction that might have a direct or indirect negative impact them and on the country's economic development generally.

Unlike the Central Eastern European countries, Pakistan did not introduce appropriate changes in the banking, bankruptcy, and insolvency laws during the restructuring of the banking sector to introduce innovative solutions for debtors to pay off their debts. Instead Pakistan established Banking Courts under the *Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act*, 1997, and then under the *Financial Institutions (Recovery of Finances) Ordinance*, 2001.[69] The statute prescribed the duration for the conclusion of the process, but did not incorporate the realities of the system that result in delays beyond the prescribed time, usually years. The specialized Banking Courts adjudicate only on such disputes and have been given the powers of the civil courts to execute orders and judgments.[70] If the amount of money to be recovered is more than RS 15 million, the jurisdiction for the trial extends to the High Courts.[71] Most of the efforts for the recovery of the bank debts have proved futile, as the debtors are more influential than the banks. Some of these debtors had been either sitting parliamentarians or were in some way associated with someone in power and managed to get their loans written off.

---

[69] *Financial Institutions (Recovery of Finances) Ordinance*, Ordinance No. XLVI 2001, accessed online 11/04/2012: <http://www.sbp.org.pk/about/ordinance/r_ordinance.htm>.

[70] *Ibid.* Sec. 2 (b).

[71] *Ibid.*

Since 1997 Pakistan has been obsessed with enacting legislation for the purpose of recovering debts and to revive sick industrial units. It enacted the *Recovery Act,* 1997, the *National Accountability Ordinance*, 2000 (NAB),[72] the *CIRC (Corporate and Industrial Rehabilitation) Ordinance*, 2000, and the *Recovery Act*, 2001, and now efforts are in progress to enact a *Corporate Rehabilitation Act* that has recently been approved by the Cabinet and is in the final stages of implementation. The procrastination on the part of various governments of Pakistan underlines the bottlenecks within the governance structure, which are exploited by the powerful and influential to delay the process. Such delays are evidence that the government made no legal preparations for transition before it embarked on the program of privatization, deregulation, and liberalization, and it is reluctant to initiate institutional and legal reforms on the pattern of the reforms introduced by Hungary, Poland, and the Czech Republic.

As the country had to comply with commitments it made to the WB and IMF, speed was an important component of the privatization exercise and the government ignored the other prerequisites, i.e. reforms in institutional, legal, and administrative design. For instance, if the key goal of the government was just to privatize, notwithstanding the goals of revenue generation and a market-friendly banking sector, then the government should not have wasted huge financial resources in its restructuring and recapitalization exercise. Ironically, the government did not learn from past experience and made blunders in the privatization of Pakistan Telecommunication Limited (PTCL).

6.8 Privatization of the Telecommunications Sector in Central Eastern Europe

The technological developments in the last two decades have transformed our mode of communications and virtually removed the physical barriers between countries, shrinking the world into a global village. In the modern world the economic development of a country depends on the development of its telecommunications sector, which has a vital role in the integration of the country into the world economy.[73] These scientific developments have

---

[72] *National Accountability Ordinance*, accessed 12/04/2012 online: <http://www.sbp.org.pk/l_frame/ NAB_ Ord_1999.pdf>.

[73] John de la Mothe & Gilles Paquet, "Finance and the technology-trade nexus" (March 1998) 20:4 Technology in Society 441, accessed 30/04/2012 online: <http://ac.els-cdn.com/S0160791X9800027X/1-s2.0-S0160791X98

revolutionized telecommunications across the world and drastically changed our way of doing business, trade, education, transportation, communication, travelling, health etc.

Telecommunications is a technology intensive sector that constantly changes due to new inventions and discoveries of new modes of communication. These developments demand a thorough understanding and appreciation of telecommunication technologies: analog and digital communications; landline and wireless communications; mobile cellular communications; data communications and networking; local area networks; wide area networks; microwave and cellular systems; satellite systems; interconnections facilitating local and long distance calls for voice, data, audio/video text services; video conferencing; radio paging; the Internet and its structure; the World Wide Web; and electronic mail.[74] This section will not deliberate on these technologies and their multiple dimensions, but rather will focus on the privatization of the telecommunication sector generally. How was it done, and why was it was done in that specific way? What was its impact? What could have been done differently? And what is the important role of the individual or corporate foreign investor in the host countries?

The breakup of AT&T in 1984 and the privatization of British Telecom in the U.K. triggered an international move towards the liberalization and deregulation of the telecommunications sector; however, the developing countries took their time to liberalize this sector. On 15 April 1994, the Uruguay Agreement concluded the General Agreement on Trade in Services (GATS) with an annex on telecommunications that pushed the member countries further towards liberalization of the sector. GATS provided for national treatment and most favoured nation status with respect to public communication transport networks and services, but neglected basic telecommunications services. In February 1997, the sixty-nine member countries to the GATS agreement concluded the fourth protocol, which asked for the opening of the telecommunications market for member countries' telecommunications network

---

00027X-main.pdf?_tid=ebecf75ddeefde4215201b8a4eb12e90&acdnat=1335863357_326206910b20168a1dbf26229dc517c3>.

[74] Amit K. Maitra, "Privatization, Liberalization, and Regulatory Reforms: The Case of Telecommunications" (Working Paper on Information Systems, Case Western Reserve University, USA), accessed online 13/04/2012: <http://sprouts.aisnet.org/48/1/060102.pdf>.

operators and service providers.[75] The opening of the market would promote competition between the local and foreign service providers.

The GATS provisions for telecommunications liberalization in WTO member countries were further strengthened by the conditionalities of the IFIs and the desire of the member countries for effective integration into the world economy. In addition, the transition economies of Central Eastern European were also aspiring to EU membership, which motivated them to liberalize, deregulate, and privatize the telecommunications sector. Hence technological developments, desire to integrate into a world economy, international commitments under the WTO GATS agreement, binding obligations under the IFIs' structural conditions, and ambitions for membership of regional organizations like the EU forced developing countries to initiate structural and technological changes in their telecommunications sector. This put these countries under tremendous pressure, as they had to protect their telecommunications sector from the technologically superior foreign corporations and at the same time develop and liberalize the sector to make it more competitive. They had to balance out the importance of foreign strategic investment and the development of the local service provider. These realities led to a paradigm shift in the policy, legal and institutional structures of the Central Eastern European countries like Poland and Hungary dealing with the telecommunications sector. Other developing countries party to the GATS agreement, such as Pakistan, had to confront the same situation. The next section provides a brief comparative analysis of the policy and legal framework developed by these countries to develop their telecommunications sectors and make them more competitive towards foreign corporations.

6.8.1 Poland

The telecommunications services in Poland, Hungary, other countries of Central Eastern Europe, and other transitional economies feature common barriers, like dissatisfaction attributed to the out-dated technological equipment; long wait for telephone connections; bad quality of service, i.e. frequently dropped calls and improper connections due to inadequate telecommunications infrastructure; the inadequacy of the institutional structure running the telecommunication services; lack of capital and scientific knowledge; and the dearth of

[75] World Trade Organization, *General Agreement on Trade in Services (GATS): Objectives, coverage, and disciplines*, accessed 14/04/2012 online: <http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm#3>.

adequate regulatory structures to regulate the utilities.[76] In order to comply with the WTO commitments and the requirements for EU membership[77] these countries had to transform their telecommunications sector to make it more responsive to the demands of the modern global economy and had to initiate important policy, regulatory, structural and legal reforms. The vital component of these reforms was privatization.

Poland decided to follow the sequence of regulation, restructuring, and privatization, whereas Hungary followed a different path. Unlike Poland, Hungary initially privatized the telecommunications sector via sale to a strategic foreign investor that would bring in much needed capital, technological know-how, and management skills to the local and national telecommunications service providers. At the same time Hungary structured a regulatory framework that would encourage real competition based on technical innovation and delivery of service. Hungary structured a private-public ownership transaction in the telecommunications sector to achieve its privatization goals.[78]

6.8.1.1 Policy perspective

Poland's strategy in the telecommunications sector had been the same as in its banking sector: the country initially tried to retain state control in the national telecommunication service provider, Telekomunikacja Polska (also known as TPSA), and tried to strengthen the national telecommunications sector before it liberalized and privatized the TPSA.[79] The country had no problem in successfully transitioning towards the mobile telephony services

[76] Marek. M. Michalski, "Regulation in Polish Telecommunications: Commitment, Incentives, and Outcomes" (1996) 13:4 Telematics and Informatics, accessed 16/04/2012 online: <http://ac.els-cdn.com/S0736585396000020/1-s2.0-S0736585396000020-main.pdf?_tid=c451ebb37222b364b3f8383dab28e296&acdnat=1334532560_c3bdbbb26058fc5985685bd9ca52aa5d>.

[77] Poland, Obligation Under Article 10 of Directive 2006/24/EC, accessed online 25/05/2012: <https://www.bof.nl/live/wp-content/uploads/PL_info_2006.24.EC_data-retention-dve.pdf>.

[78] Judit Vanyai, "A new era: the development of telecommunications in Hungary" (March 1998) 20:1 Technology in Society 25, accessed 30/04/2012 online: <http://ac.els-cdn.com/S0160791X97000274/1-s2.0-S0160791X97000274-main.pdf?_tid=6b0c2efff46b924e9f91dbd43ee9a141&acdnat=1335862947_7d7faec61a12cf3b0a08e68a1f2edbbb>.

[79] David Dornisch, "Competitive Dynamics in Polish Telecommunications, 1990-2000: growth, regulation, and privatization of an infrastructural multi-network" (2001) 25:6 Telecommunications Policy at 385, accessed 23/04/2012 online: <http://ac.els-cdn.com/S0308596101000131/1-s2.0-S0308596101000131-main.pdf?_tid=73cc0fab1848fd15774371d83c50c18b&acdnat=1335171954_955edde2803f856e8a10c74a30ab015>c>.

that had mostly been structured by competition based on technological innovation, and the state had not enjoyed a monopoly in this sector.[80]

In order to address the situation in the basic telephony services, the Polish government spent considerable time preparing its telecommunication sector for privatization/liberalization, resulting in significant delay in the privatization process. It prepared a three-pronged strategy consisting of attracting a foreign investment, stimulating technological innovation, and promoting the local services.[81] The country's policy makers preferred restructuring of TPSA to privatization to make the organization more attractive for foreign investors and to make the national service provider more competitive and ready for privatization.

The Polish government decided to establish a highly modern system of international and long distance connections with the aim of attracting profit to provide appropriate subsidies to the rural service providers.[82] In 1991, the international telecommunication exchange was established, supported by a digital radio link with a satellite telecommunications centre in Psary that also contained digital equipment that significantly enhanced the output of the two Intelsat satellite stations.[83] In 1991, the government launched another project in partnership with Danish companies for the construction of a North-South fibre-optic trunk line from the island of Bornholm, through Koszalin and Warsaw, to the southern border of Poland. The country completed the East-West fibre-optic line with financial assistance from the WB.[84] The successful completion of these projects by TPSA had a significant impact on the telecommunications sector, but the sector also needed legal, institutional, and policy reforms to prosper.

6.8.1.2 Legal reforms

The Polish government introduced legal changes at various stages to implement its policy goals in the telecommunications sector. In order to elaborate the law the government also

---

[80] *Ibid.* at 394.

[81] Jennifer. L. Feltham, "Polish Telecommunications Law: Telecommunications Takes Off in Transition Countries But at What Price Are They Becoming Wired?" (2000) 33:1 Vand. J. Transnat'l L.147.

[82] *Ibid.* at 7.

[83] *Ibid.*

[84] *Ibid.*

issued various administrative decrees and strategies. The following is a list of the statutes, strategies, and administrative decrees:

Statutes

i. *Communications Act*, 1990.
ii. *Amendment in the Communications Act*, 1995.
iii. *Communications Act*, 2000.
iv. *Polish Telecommunications Act*, 2004.[85]
v. *Development of Telecommunications and Network Services Act*, 2010.[86]

Government Strategy

i. Telecommunications Development Strategy 1996.
ii. Outline of the Strategy of Telecommunications Market Development in the Years 1998-2001.

Ministerial Ordinances

i. *Regulation on Interconnection Conditions Ordinance*, OJ No. 127/608 1995.
ii. *Exemptions from the Obligations to Obtain Telecommunications Licenses and Permits Ordinance*, OJ No. 118/571 1995.

[85] Republic of Poland: Office of Electronic Communications online: <http://www.en.uke.gov.pl/_gAllery/10/58/1058/telecommunications_law.pdf>; Poland, accessed online 25/05/2012: <http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/annualreports/15threport/pl.pdf>.

[86] The 2010 Act amended various Acts: the *Public Roads Law Act* of 21 March 1985, the *Geodesic and Cartographic Law* of 17 May 1989; the *Local Self Government Act* of 1990; the *Construction Act* of 1994; the *Municipal Services Act 1996*; the *Property Management Act* of 1997; the *Voivodeship Self-government Act* of 1998; the *County Self Government Act* of 1998; the *Spatial Planning and Development Act* of 2003; the *Telecommunications Law* of 2004; the *Access to Information Act* of 2008; the Act on Access to Information on environment and its protection; public participation in environmental protection and impact assessment; the Act on public-private partnership 2008 and the 2009 statute on licenses for construction works or services, accessed 09/05/2012 online: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.itu.int%2FITU-D%2Feur%2FNLP-BBI%2FCaseStudy%2FPoland-Mega-Bill-Official_Translation_2010.doc>; Republic of Poland: Office of Electronic Communications, online: <http://www.en.uke.gov.pl/_gAllery/10/58/1058/telecommunications_law.pdf>.

iii. *The Level and Manner of Payment for Telecommunication and Postal Service License and for Access to Tender Document Ordinance*, OJ No. 118/572 1995.

iv. *General Conditions of the Provision of Public Network Service Ordinance*, OJ No. 20/93 1996.

v. *Quality of Service Ordinance*, OJ No. 39/238 1997.

vi. *General Terms of Interconnection and Settlement Ordinance*, OJ No. 79/897 1999.

vii. *Procedure and Terms of Carrying out Tender to Select Operators to Whom Licenses will be Granted Ordinance*, OJ No. 53/333 1999.

viii. *Detailed Criteria and Method for Establishing an Operator's Share in the Market for Given Telecommunications Services Ordinance*, OJ No. 31/358 2001.[87]

These legal reforms have been gradually changing the telecommunications market structure in Poland, but paradigm shift took place after the enactment of the *Telecommunications Act* 2000. The country introduced these reforms in a bid to earn membership of the EU and comply with EU conditions. The *Telecommunications Act* 2000 drastically reduced the dominance of the TPSA in order to promote competition, but the TPSA still retained monopoly over the international long distance telephony. The Act further liberalized the telecommunications sector, changed the regulatory regime and the internal structure of the departments having a vital role in the development of the sector, and established new institutions to comply with the EU standards to create a real competitive environment in the country.[88]

In 1992 the TPSA was incorporated as a distinctive entity (company) independent from the control of the socialist state structure, which had merged postal, telegraph, and telephony

---

[87] OECD Reviews of Regulatory Reforms, *Regulatory Reforms in Poland: From Transition to New Regulatory Challenges* (2002), accessed 2/05/2012 online: <http://www.oecd.org/dataoecd/50/51/1940211.pdf>; EBRD, *Commercial Laws of Poland: An Assessment by the EBRD* (July 2010), accessed online 20/05/2012: <http://www.ebrd.com/downloads/sector/legal/poland.pdf> at 13-16.

[88] OECD Reviews of Regulatory Reforms, *Regulatory Reforms in Poland: From Transition to New Regulatory Challenges* (2002), accessed 2/05/2012 online: <http://www.oecd.org/dataoecd/50/51/1940211.pdf> at 14-47.

services in one enterprise (PPTiT, of Polska Poczta, Telegraf if Telefon). In addition to the installation of new technology and the incorporation of the new national entity, the Ministry of Communication adopted different strategies for local telephony basic services and the intercity (long distance) network. The *Telecommunication Law* of 1990 (as amended in 1995) allowed competition in the basic local telephony services. Under the *Telecommunication Law* of 1990 (as amended in 1995) and the administrative directives of the Ministry of Telecommunications the Ministry promoted a duopoly structure of competition in the local communications market, in which at the local level one private local operator provides telephony services in addition to the TPSA.[89]

The first phase from 1990-1995 can be described as the bottom-up locality specific telephony market evolution. Under the bottom-up locality approach the Ministry awarded rights to private investors, encouraging them to invest in local exchanges at the site of their choice for the development of an independent telecommunications infrastructure.[90] The underlying aim of this policy was the development of telecommunications infrastructure in far-flung underdeveloped rural areas. The policy did not fulfill the Ministry's desired objectives, so the Ministry abandoned the bottom up duopoly approach and grant of site-specific permits and extended the scope of permits to big companies and provinces.

The Ministry also introduced a system of organized competition or open tenders (przetargi) for the operative purpose of granting concessions (koncesje) in which an independent telephony company would submit its report on the development of specific localities (gminy), sets of localities, or provinces (voivodships or wojewodztwa).[91] This shift in the policy led to a 1995 amendment of the Telecommunications Law of 1990 that changed the objectives of the grant of permit. Permits were granted through tender and given to big operators to cover larger areas, with the exception of few urban capital cities.[92]

---

[89] *Supra* note 79 at 386.

[90] *Ibid.*

[91] *Ibid.* at 387.

[92] *Ibid*. at 388; OECD Directorate for Financial, Fiscal, and Enterprise Affairs, Committee on Competition Law and Policy, "Developments in Telecommunications: An Update—Poland" (Note submitted by the Polish Delegation to Working Party No. 2, DAFFE/WP2/WD (97) 22, October 20th, 1997), accessed 27/04/2012

The permits extended the area for private telephone service provider operations, but due to bureaucratic barriers, the TPSA's anti-competitive/monopoly barriers and contradictory institutional role as "service operator" and "regulator", and the political nature of the privatization process, the desired objectives of developing the private market in this sector and achievement of the targeted number of customers have not been realized.[93] Consequently, analysts and policy makers concluded that the experiment in prioritizing restructuring before privatization did not encourage real competition and development of the telecommunications sector, and it was deemed essential to initiate privatization of the national service provider, the TPSA, prior to deregulation and competition.[94] Despite the realization of this sequence, however, the Ministry of Communications still delayed the privatization of TPSA.

6.8.1.3 Privatization of TPSA

Privatization of TPSA was delayed till 1998 when 15 percent of shares were sold to individual shareholders in open stock as Global Depository Receipts on the Warsaw and London Stock Exchanges.[95] Of 15 percent, 1400 shares, or 10 percent of the total 1400 million shares were put up for international public offering and 70 million or 5 percent of the stakes were offered to the local population. The sale managed to earn $840 million dollars, the highest amount earned from the sale of the public enterprise.[96] The same year (1998) the

---

online: <http://www.oecd.org/dataoecd/1/28/2379822.pdf>.. The Polish government enacted a new law in 2010 called the *Polish Act on Supporting the Development of Telecommunication Services and Networks*, accessed 27/04/2012 online: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.itu.int%2FITU-D%2Feur%2FNLP-BBI%2FCaseStudy%2FPoland-Mega-Bill-Official_Translation_2010.doc>. The ACT provides a complex solution for efficient investment in the telecommunication sector that will make the local service providers more competitive. See also "Mega Bill: The Act on supporting the development of telecommunication services and network goals, new possibilities, and problems" accessed online 27/04/2012: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.itu.int%2FITU-D%2Feur%2FNLP-BBI%2FCaseStudy%2FNLP_BBI_Poland.ppt>.

[93] *Supra* note 79 at 389-390.

[94] *Supra* note 79 at 398.

[95] *Ibid.*; EBRD, *Commercial Laws of Poland: An Assessment by the EBRD*, *supra* note 87 at 13.

[96] EBRD, *Commercial Laws of Poland: An Assessment by the EBRD*, *supra* note 87 at 13.

Polish government sold another 15 percent to its employees in accordance with Article 82 of the *Communications Act*, 1990.[97]

In the second phase the Polish government had planned to sell 35-50 percent of TPSA shares to a strategic foreign investor by the end of 1999, but it was delayed till 2000. The government had amended the *Communications Act* in 1999 to remove the requirement that government would retain a majority, i.e. 51 percent ownership of TPSA, and offered 25-35 percent of TPSA for bidding. France Telecom emerged as the sole bidder in the bidding process; however, the state treasury department rejected the France Telecom proposal for offering too low a price with hard management conditions.[98]

In the second round, the government reopened the tender for sale in January 2000 and made some changes that provided incentives to the investor to buy the shares. For instance, the government removed the restriction on foreign investors holding majority shares in TPSA. The government offered a further ten percent of shares of the company to a successful bidder, and if there were a second round of bidding the government would reserve six percent of shares for the buyer.[99] Additionally, the Polish government offered UMTS the service license to Centertel (the subsidiary mobile company of TPSA). In the second round France Telecom and Telecom Italia were shortlisted as the successful bidders, but France Telecom was able to outbid Telecom Italia through its joint bid with Kulcyzk Holdings. There are no precise figures available, but it is believed that France Telecom paid 4.3 billion USD at 38 zlotys per share.[100]

The discussions about and amendments made to the Telecommunications Law of 2000 at the time of its enactment and the incentives the law offered investors highlight the short-term revenue generation objectives of the government's privatization strategy. The Polish government delayed the sale of TPSA equity in tender until 2000 and did not disclose the

---

[97] *Ibid.*

[98] *Ibid.*

[99] *Ibid.*

[100] *Ibid.*

details of the agreement with France Telecom that created uncertainty in the market. The government pursued similar objectives in the third phase as well.

In the third phase, the Polish government procrastinated about the further privatization of TPSA and ended up receiving a reduced price for the shares sold. France Telecom was given the option of buying a further 10 percent of shares in TPSA by the end of July 2000 (in July 2000 the share value of TPSA was 40 zlotys per share, but France Telecom negotiated with the government before the Polish parliamentary election on 23 September 2001.[101] In the meantime by December 2001 the value of a TPSA share had fallen to half of its July 2001 value and was now 14-16 zlotys. As it was election year and the Polish government was desperate to secure 4.23 million USD in order to finance the growing fiscal deficit, it concluded the sale of 12.5 percent of TPSA at the rate of 20 zlotys per share with an option to seek another 2.5 percent shares in 2002, which would give France Telecom absolute majority in the firm.[102] In October 2001 the Polish government struck another quid pro quo with France Telecom. It increased the payment from 3.5 billion to 3.66 billion zlotys in lieu of reducing demand from 450 million to 160 million zlotys dividend to shareholders.[103]

The timely conclusion of the third phase would have prevented significant financial loss to the country and developed genuine competitive environment. The privatization experience of the Polish telecommunications sector brings into the limelight the importance of a regulatory structure to create and maintain perfect competition before liberalizing and privatizing a state enterprise.[104] It is easy to control or challenge the monopoly of a state enterprise but difficult to control a private monopoly in the absence of any checks and balances. It also underlines the importance of transparency, openness, and accountability in the implementation of the privatization strategy and policies.

---

[101] *Ibid.* at 14.

[102] *Ibid.*

[103] *Ibid.*

[104] *Ibid.*

6.8.2 Hungary

Unlike Poland, Hungary had a clearly defined goal for the privatization, liberalization, and regulation of its telecommunications sector: promoting competition in the sector. Hungary maintained the monopoly of the public switched telecommunications services, but did not give monopoly to the incumbent service provider. The country started reforms in the telecommunications sector in 1989 after the political change. For the purpose of convenience the reforms can be divided into four periods.

The first phase ran from 1990-93, with the implementation of a telecommunications strategy that focused on the erection of a national digital network infrastructure. In the second phase (1994-97) the country focused on network modernization and expansion aimed at providing upgraded services for business customers. In the third phase (1997-2000) the focus shifted to the provision of business communication and information services, and to improvement in the quality of diversification of services at lower rates. The fourth phase (2000-onwards) has involved a shift in focus to the provision of advanced telecommunications services, comprising high-tech intelligent services, personal communication services, and ISDN and broadband multimedia services. The successful implementation of these four phases considerably reformed the telecommunications sector of the country.[105] Hungary also introduced legal reforms to support the successful implementation of its privatization policy. The statutes enacted by the country were the following:

Acts

i. Act LXXXVII of 1990 on price fixing.
ii. Act XVI of 1991 relating to the award of concession contracts to supply telecommunications services.
iii. *Telecommunication Act* (LXXII) of 1992, which installed major regulatory changes.
iv. Act LXII of 1993 on frequency management.

---

[105] OECD, *Regulatory Reform in Hungary: Regulatory Reform in the Telecommunications Industry* (2000) at 5-63, accessed online 2/05/2012: <http://www.oecd.org/dataoecd/31/56/18352848.pdf>.

v. Act LVII of 1996 concerning the prohibition of unfair and restricted market practices.

vi. Act LXV of 1997, which modified the Telecommunications Act (LXXII) of 1992.

vii. Act C of 2003 on Electronic Communications came into effect on 1 January 01 2004, superseding the *Communications* Act 1992.

Government (Korm) Decrees

i. 158/1993 (XI.11) concerning the interconnection of telecommunications network.

ii. 48/1997 (III.14) on licensing telecommunications services.

iii. 232/1997 (XII.12) relating to the establishment of Communications Authority Hungary (HIF) and on amendment of certain legal rules affecting communications.

iv. 243/1997 (XII.20) on subscriber contracts for telecommunication services.

Decrees of the Minister of Transport, Communications, and Water Management (KHVM)

i. 24/1993 (IX.9) on the numbering plan for the public telephone network.

ii. 29/1997 (XII.20) on terms and conditions of particular telecommunications subscriber contracts, associated with the protection of consumers and quality of service.

iii. 31/1997 (XII.20) on usage charges for public telephony services.

iv. 1/1998 (I.12) on the distribution of revenue relating to telecommunications services subject to concession.

v. 1071/1998 (V.22) Government Resolution formalizing the government's telecommunications policy for the period 1998-2005.

vi. 6/1999 (II.19) Decree revising interconnection fees.[106]

---

[106] EBRD, *Commercial Laws of Hungary: An Assessment by the EBRD* (July 2010) at 19-23, accessed online 20/05/2012: <http://www.ebrd.com/downloads/sector/legal/hungary.pdf>.

6.8.2.1 Privatization of Magyar Telekom Tavkozlesi Reszvenytarsasag (MATAV)

MATAV was privatized in three phases. In the first phase in 1993, the government sold 30.2 percent shares to MagyarCom (a consortium of U.S. Ameritech) and Deutsche Telekom (German Telecom). In the second phase in 1995, an additional 37 percent of MATAV's share was sold to MagyarCom. In the third phase in 1997, the government placed 27 percent of MATAV's share simultaneously on the New York and Budapest Stock Exchanges, raising U.S. $1 billion dollars.[107] By 1999 MagyarCom was able to hold about 60 percent of MATAV's shares, of which 35 percent were publicly traded. The Hungarian government owned the balance of 5.74 percent of the shares. They were sold in June 1999 due to the criticism that the government ownership implied that the government was not an impartial regulator. Unlike Poland, Hungary initiated the reforms in the telecommunications sector and sold the shares to a strategic foreign investor (to attract capital, management skills, and technical knowledge in the field), facilitated by appropriate regulatory reforms.[108]

While pursuing privatization, Hungary simultaneously made significant changes in its laws and institutional design that resulted not only in the creation of new regulatory institutions, but also to a great extent ensured the independence of the regulator; introduced clarity of responsibilities and functions amongst the newly created institutions and departments; ensured transparency and accountability; promoted competition[109]; protected consumers through price and quality regulation; and facilitated interconnection, right of way, and selection of carrier choices for the foreign investors.[110] The country is currently in the process of developing the next generation regulatory structure in the light of new technological developments and the services available for consumption.

---

[107] *Supra* note 105 at 11.

[108] *Supra* note 105 at 11.

[109] *Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices* (Pakistan) LVII (1996) [*Competition Act 1996*].

[110] *Supra* note 105 at 11-58.

6.8.3 The Czech Republic

The Czech Republic delayed its privatization and liberalization program in the telecommunications sector compared to Hungary and Poland. As in the case of other countries in the region, the privatization and liberalization program in the Czech telecommunications sector was motivated by compliance with the requirements of the EU accession and WTO 1997 commitments. Under its WTO commitment the Czech Republic agreed to open up its telecommunications sector by 1 January 1998, within the parameters of the restrictions given in the appendices to the fourth protocol of the WTO agreement, and to open its voice telephony sector by 1 January 2001.

Before 1989 the postal and telecommunications services were under state control. In 1989 the government established SPT (Sprava post a telekomunikaci), a state provider for the postal and telecommunications services, and in January 1993 the telecommunications services were separated from postal services when the government established SPT (the monopoly telecommunications service provider). SPT was transformed into a joint stock company in January 1994 when Telsource—a joint venture between Swiss PTT Telecom (Swiss Com) and PTT Netherlands (now KPN Royal Dutch Telecom), with technical support from AT&T—acquired a 27 percent stake in SPT Telecom. In January 2000 the company was renamed Cesky Telecom (Czech Telecom).[111]

In 1994 the Czech government unveiled its telecommunications policy, which had privatization, deregulation, and competition as its prominent policy features. The strategy postulated the partial privatization of SPA with retention of the state monopoly over voice telephony over long distance and international service until the year 2001; liberalization of the regulatory regime; and introduction of competition through the issuance of licences for local telephony services. In 1999 the Czech government introduced significant reforms that liberalized the voice telephony services through open network provision, universal service obligation, privatization, and the establishment of an independent regulatory regime.[112]

---

[111] *Ibid*.

[112] OECD, *Regulatory Reform in the Czech Republic: Regulatory Reforms in the Telecommunications Sector* (2001), accessed online: <23/05/2012: http://www.oecd.org/dataoecd/45/59/2506517.pdf>.

Until the end of 2000 Cesky Telecom was a monopoly service provider for public telephony services apart from 16 selected local networks and 2 pilot projects. Being the incumbent service provider, Cesky Telecom was granted a license that provided it monopoly over long distance and international telecommunications services until 1 January 2001.[113] In December 1998, KPN (one of the participants in Telsource) increased its interest in SPT (later Cesky Telecom) by 6.5 percent and, in partnership with Telsource, took control of 33.5 percent.[114] The Czech government was in the process of seeking a strategic investor to buy Cesky Telecom by 2001.The state continued to own 51 percent of shares. It also owned 51 percent in Ceske Radiokomunikace, the leading operator of radio and television broadcasting, and an important provider of leased lines for provision of data services, with TelDanmark owning a 20.8 percent stake.[115]

Even though the country had partially privatized the telecommunications sector, the state still had a substantial share in SPT/Cesky Telecom and Ceske Radiokomunikace in order to control management and administration. Through these two companies the state controlled the entrance of new competitors. The shares in SPT/Cesky Telecom and Ceske Radiokomunikace were held by the National Property Fund, which had the mandate to appoint company directors. However, despite this apparent separation government officials would still sit on these companies' boards of directors, either because the National Property Fund appointed them or because the Fund had asked the Minister of Transport to nominate members for the boards and the Fund then appointed these members.

The presence of government officials on the boards of these companies undermined the independence of the regulatory authority, meant that genuine competitive environment for new entrants was absent, and was conceived as an attempt on the part of the government to enhance the commercial attractiveness of the company in order to attract a strategic foreign investor for the sale.[116] Notwithstanding the underlying aims of the above strategy, the

---

[113] *Ibid.* at 12.

[114] *Ibid.*

[115] *Supra* note 112. The two companies were privatized during the 1994-1998 period; 49 percent of shares of SPT were privatized in 1994-95 and 49 percent shares of Ceske Radiokomunikace were privatized in 1995-98.

[116] *Ibid.* at 8.

strategy was inherently in contravention of the EU membership requirements. The government officials should have resigned from the boards of these companies in compliance with the conditions of accession to the EU and to promote a genuine competitive atmosphere in the sector.[117]

In 2005 the Czech government sold the remaining 51 percent shares in Cesky Telecom to Spain's Telephonica for 2.71 billion Euros. Three western telecom companies—Swisscom, Belgacom, and Spain's Telephonica—and two financial consortiums were shortlisted for bidding in April 2005. Finally the bid was narrowed down to just Swisscom and Spain Telephonica.[118] As the final bidding began for Cesky the price of the Cesky shares increased to a 40 percent premium before bidding that created huge political crisis for the government and sparked a no-confidence movement, which the government survived by a small margin. Ultimately, Spain Telephonica was willing to pay a higher price compared to Swisscom and the Cabinet survived to approve the transaction on April 6, 2005.[119]

Before the conclusion of the privatization transaction, which resulted in the sale of the remaining 51 percent shares to the strategic foreign investor, the Czech Republic had also embarked on legislative reforms in accordance with the directives of the European Union[120]

---

[117] *Ibid.* at 8.

[118] William L. Megginson, "Major Deals of 1H2005" (July 2005) 3 The Privatization Barometer Newsletter: Reporting on Privatization in the Enlarged Europe at 18, accessed 25/05/2012 online: <http://www.privatizationbarometer.net/PUB/NL/5/NL3_FINAL.pdf>.

[119] *Ibid*.

[120] European Union, *Directive 2002/21/EC of the European Union Parliament and of the Council of 7 March, 2002 on Common Regulatory Framework for electronic communications network and services (Framework Directive)* [2002] O.J. L. 108/33, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0050:EN:PDF>; *Regulation 717/2007 of the European Union Parliament and of the Council of 27 June 2007 on roaming on public telephone networks within the community and amending directive 2002/21/EC* [2007] O.J. L. 171/32, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0032:0040:EN:PDF>; *Regulation 544/2009 on roaming on public mobile telephone network within the community* [2009] O.J. L. 167/12, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>; *Directive 2009/140/EC of the European Union Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a Common Regulatory Framework for electronic communications network and services, 2002/1/EC on access to, and interconnection of electronic communications networks and associated facilities, and 2002/20/EC on authorisation of electronic communications network and services* [2009] O.J. L. 337/37, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF>; EU, *Regulatory Framework for Electronic Communications* (2009), accessed 25/05/2012 online: <http://europa.eu/legislation_summaries/information_society/legislative_framework/l24216a_en.htm#amendingact>; Details of legislation in force online: <http://ec.europa.eu/information_society/policy/ecomm/

and to facilitate the liberalization of the telecommunications market in the country. The key legislative measures included the following:

i. Act No. 253/1994 Coll. The Act basically amended the 1992 *Telecommunications Act* and dealt with TV and Radio Broadcasting.

ii. Government Decree No. 486/94. The decree was a policy instrument that defined the prominent features of the country's telecommunication policy.

iii. Government Decree No. 324/99. The decree was a policy instrument that redefined the policy objectives of the country's telecommunication policy.

iv. Telecommunication Act No. 151/2000. This was a key piece of legislation that reformed the structure of the telecommunication.

v. Government Order No. 181/2000 Coll. The order prescribed the charges for the assigned frequencies and the numbers.

vi. Decree No. 182/2000 The order approved telecommunications terminal and radio equipment.

vii. Decree No. 195/200 Coll. The order defined the types and characteristics of the terminal points and the interfaces of the telecommunications network.

viii. Decree No. 196/200 Coll. Defines the characteristics, parameters, and criteria for quality of services provided within the framework of universal service.

ix. Decree No. 197/200 Coll. On leasing of telecommunications circuits.

x. Decree No. 198/2000 laid down the requirements of a proposal for concluding a contract on interconnection and access to a network, and on technical and operational requirements of access to network.

---

library/legislation/index_en.htm>; Summaries of EU Legislation: Current General Legal Framework accessed on 25/05/2012 online: <http://europa.eu/legislation_summaries/information_society/legislative_framework/index_en.htm>.

xi. Decree No. 199/200 Coll. The Order identified the means of proving financial competence to carry out telecommunications operations.

xii. Decree No. 200/200 Coll. Defined the method of generation of calling signals, their use and on types of telecommunications services for which they are required.

xiii. Decree No. 203/200 Coll. The Order dealt with the cancellation of some legal regulations falling within the mandate of the Ministry of Transport and Communications.[121]

The new law resulted in restructuring of the institutional structure regulating the telecommunications sector. New institutions were established, such as the Czech Telecommunications Office and the Office for the Protection of Economic Competition. The latter was established in 1991-92 and was upgraded and placed with the Ministry of Economic Competition. In that sequence the responsibilities of the Ministry of Transport and Communications were also changed. It became responsible for the formulations of national telecommunications policy, principles of telecommunications regulations that included legislative activities, and ensuring compliance with the international and EU obligations in the telecommunications sector.[122] These regulatory institutions focused on a wide range of issues in voice telephony: local, local long distance, and international telephony; provision of internet services, i.e. Wi Fi, DSL, Cable, and Data; provision of universal telephony services; price regulation; quality of services; consumer protection and information; accounting separation; satellites; rights of way, unbundling; and further streamlining of regulation leading to the convergence of regulatory structures and laws.[123]

In addition to the above legal measures the OECD country report on regulatory reforms in the Czech Republic suggested further significant policy reforms to ensure effective

[121] *Supra* note 112 at 10.

[122] *Ibid.* at 5.

[123] *Ibid.* at 4-41.

implementation of regulatory reforms in a non-discriminatory and transparent manner.[124] The report suggested that in order to ensure transparency it was essential that the government officials should resign from the boards of Cesky Telecom and Ceske Radiokomunikace; their resignation would ensure complete regulatory separation at the ministerial level as long as the state had shareholding in the company.[125] The report further suggested the use of a class licensing system to minimize the requirements for obtaining a license and the conditions attached with the license. Reprofiling of the CTU staff was recommended, to ensure that prices are rebalanced as rapidly as possible with the specified transparent time schedule. The report also suggested simplification and streamlining of the price cap system; imposition of EU best practice interconnect rates on Cesky Telecom without any delay in the cost studies for the purposes of guiding LRAIC based interconnection price; and implementation of number portability and full carrier selection to ensure that numbering allocation policies for both fixed wire line and mobile carriers are neutral. In addition it was recommended that Cesky Telecom provide unbundled access to its network by other operators on reasonable terms, including any Xdsl enhanced segments.[126]

The OECD country report underlined the importance of reforms in regulation to further stimulate competition and elimination of the regulations if there is clear evidence that its elimination would serve the public interest. The report underlines the importance of a constant review mechanism to ensure that regulations in all areas of telecommunications are regularly and systematically reviewed, which will help in further streamlining the regulations. In addition to that the report also identifies the importance of availability of accurate and timely information for consumers to compare prices and service qualities of carriers.[127] In order to further enhance the effectiveness of the regulatory structure the report recommended constant review of the scope, effectiveness, and enforcement of competition policy, the usage of asymmetric regulation in areas where Cesky's power would prevent fair competition, staffing of the competition office with adequately trained and skilled staff, and

---

[124] *Ibid.* at 39.

[125] *Ibid.*

[126] *Ibid.* at 40.

[127] *Ibid.* at 42.

cooperation between the competition office and CTU to enforce the memorandum of cooperation for articulating clear procedures for cooperation in pro-competition regulation.[128]

This brief overview of the telecommunications sector in the Central Eastern European countries signifies the role of external/exogenous factors triggering change in the same sector. The reforms in the telecommunications sector were triggered by their commitments under the WTO agreements and compliance with the conditions for membership of the European Union, in addition to fast-paced developments in the field of information and telecommunication technology.

6.9 Privatization of the Telecommunications Sector in Pakistan

Pakistan followed the Eastern European marketization approach for the privatization of PTCL. It started with the corporatization of PTCL in 1991. In 1991 Pakistan Telecommunication and Telegraph Department (PTTD) was converted into Pakistan Telecommunication Corporation (PTC) under the *Pakistan Telecommunication Corporation Act*, 1991. Initially the Government of Pakistan had the sole ownership of shares and all the shares of PTTD were transferred to PTC.[129] After corporatization, the government embarked on the restructuring of the company. The restructuring of the telecommunications sector started with the enactment of *Pakistan Telecommunications (Re-organisation) Act*, 1996, which created four new institutions: (i) the Pakistan Telecommunication Authority (PTA)[130]; (ii) the National Telecommunication Corporation (NTC)[131]; (iii) the Frequency Allocation Board (FAB)[132]; and (iv) Pakistan Telecommunications Corporation Limited (PTCL).[133]

---

[128] *Ibid.*

[129] Joseph Wilson, "Telecom Regulatory and Policy Environment in Pakistan: Results of the 2008 TRE Survey", accessed online 19/06/2012: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1558870>.

[130] Pakistan Telecommunication Authority, online: <http://www.pta.gov.pk/index.php?cur_t=vnormal>.

[131] National Telecommunication Corporation of Pakistan, online: <http://www.ntc.net.pk/>.

[132] Frequency Allocation Board of Pakistan, online: <http://www.fab.gov.pk/index.php>.

[133] Pakistan Telecommunication Authority, online: <http://www.ptcl.com.pk/index_0.php>.

6.9.1 Pakistan Telecommunication Authority (PTA)

The Pakistan Telecommunication Authority is a regulatory authority to promote the provision of high quality, efficient, cost effective, and competitive telecom services in Pakistan. Under Section 4 of the Pakistan Telecommunication Re-Organization Ordinance (1996) the Authority also has the mandate of protecting consumer rights and interests and promoting fair competition in the telecommunications sector; performing adjudicative and investigative functions regarding complaints filed by service providers; making recommendations to the government on international telecommunications; and receiving applications for the use of the radio-frequency spectrum.[134] Under Section 5 of the Ordinance the Authority has the power to grant and renew licenses for any telecommunications services; to monitor and enforce the terms of licenses granted; to receive applications for the use of radio frequencies; to regulate tariffs for telecommunications services; to recommend standards of telecommunications equipment and terminal equipment; to prescribe guidelines and terms of interconnection between the licensees; and to issue regulations to execute its power and perform its functions.[135]

The *Pakistan Telecommunications (Re-organisation) Act*, 1996 also fixed telephony rights to PTCL for seven years ending in 2003. The Act facilitated the privatization of PTCL by converting it from a corporation to a public limited company.

6.9.2 National Telecommunication Corporation (NTC)

The National Telecommunication Corporation was formed to meet the telephonic requirements of government departments and employees.[136]

6.9.3 Frequency Allocation Board (FAB)

The Frequency Allocation Board (FAB) is entrusted with the power to allocate and assign portions of the radio frequency spectrum to telecommunication services operators, system vendors, radio and telecommunication broadcasting operators, public and wireless operators

---

[134] Section 4 of the *Pakistan Telecommunications Act 1996.*

[135] Section 5 of the *Pakistan Telecommunications Act 1996.*

[136] National Telecommunication Corporation of Pakistan, online: <http://www.ntc.net.pk/>.

etc. Since 2007 FAB has functioned under the administrative supervision of the Pakistan PTA.[137]

6.9.4 Pakistan Telecommunication Corporation Limited (PTCL)

The privatization of PTCL had been marred by the accusation of lack of transparency and selling it at throwaway price.[138] The lack of transparency is evident from the fact that the details of the transaction are not available on the website. The allegations of lack of transparency surfaced in the newspapers and in the countrywide protests of the PTCL workers. So far the information available regarding this transaction is in various newspaper reports.

6.9.4.1 Issues with the privatization of PTCL

Before privatization PTCL was a government-owned organization, with the government owning 88 percent of its shares while 12 percent were listed on the stock exchange. Later on, the government decided to privatize 26 percent of its shares and sell to the strategic investor. The Privatization Commission of Pakistan appointed a financial advisory consortium co-led by Goldman Sachs and JP Morgan Chase for structuring the privatization transaction of PTCL. Eighteen applications for expression of interest were received, coming from many countries of the Organization of Islamic Conference including Kuwait and UAE. From eighteen applications, nine were accepted. Etisalat offered the highest bid of $1.96 dollars per share; Chine Mobile of China was the second highest bidder, offering $1.063 dollars, and Sing Tel of Singapore offered 0.88 per share at a bidding ceremony held in Islamabad by the Privatization Commission. The problems arose after the completion of transaction, when Etisalat refused to pay the amount offered and demanded undue concession.

a. Original Agreement with the Successful Bidder

It was announced that Etisalat had purchased 26 percent stakes in PTCL for the agreed price of $2.6 billion on July 2005. The bidder was supposed to pay the due amount within 90 days.

---

137 Frequency Allocation Board of Pakistan, online: <http://www.fab.gov.pk/index.php>.

138 Kamran Siddiquei & Riaz Ahmed Mangi, "Failure of Corporate Governance: Privatization of PTCL Pakistan", accessed online 19/06/2012: <http://saicon2011.ciitlahore.edu.pk/Business%20Ethics/11-1095.pdf>.

The terms of the agreement required Etisalat to pay 25 percent of the total within 14 days and the rest within 60 days, or by August 28. The bidder did not pay the said amount by the due date, and the Privatization Commission of Pakistan should have cancelled the transaction and required the bidder to forfeit the deposit, as per the agreement. However, the Privatization Commission extended the date by which full payment was to be received until October 28. Even after the extension of the date Etisalat failed to deposit the requisite amount and the Government of Pakistan, alarmed by the situation, sent its Minister to persuade the representatives of the company to complete the deal. As a result the Government entered into a fresh share-purchase agreement in which the bid amount was reduced to $2.205 billion ($2205 million) from the original bid of $2.599 billion ($2599 million). Hence the country suffered a huge loss of billions of dollars; besides, it was also violation of Art. 30 of the Public Procurement Rules 2004. For instance, the privatized PTCL is exempt from the purview of the Public Procurement Regulatory Authority Ordinance 2002 in the federal budget. In addition, the majority shareholders (62 percent) have been made toothless in the face of the 26 percent shareholders and they are bound by the decisions made by the 26 percent shareholders. These concessions were not made in the original deal.

b. Revised Agreement between the Government of Pakistan and Etisalat

According to the Art. 30 clause 1 of the Public Procurement Rules 2004, "all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided in sub-clause iv of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents".[139] In the light of the revised agreement, the Government of Pakistan made the following concessions to the Company Etisalat:

i. In the revised agreement Etisalat has been authorized to sell PTCL property worth of billions of rupees. PTCL has been given primary commercial property in all the major locations of the country by municipalities, provincial and federal government in the name of public service. The expensive PTCL

---

[139] *Public Procurement Rules 2004*, accessed 18/01/2013 online: <http://www.ppra.org.pk/doc/rules.pdf>.

property consists of telephone exchanges, and residential, commercial, and industrial property worth billions of rupees.

ii. The Government agreed to pay half the cost of the Golden Handshake scheme to the surplus/laid off employees who were assured attractive packages after prolonged protests against the privatization of PTCL.

iii. The Golden Handshake or Voluntary Separation Scheme would cost billions of rupees as the Government paid half the amount to the employees. The government agreed to bear the total responsibility of the Golden Handshake Scheme (GHS) and the Voluntary Separation Scheme (VSS), worth RS 15 billion.

iv. Etisalat International Pakistan was given undue concessions to make an upfront payment of $1.4 billion including earnest money, while the rest of the amount was to be paid in nine equal semi-annual instalments.

v. In the light of the revised agreement the Government members in the Board of Directors would support Etisalat representatives in matters relating to utilization of PTCL reserves toward acquiring telecom companies within Pakistan and beyond, or in any other way deemed beneficial by the PTCL Board.

vi. Etisalat has also been given permission to sell its share in PTCL while maintaining a minimum of 51 percent. The government members of the PTCL Board of Directors (BOD) are bound to support Etisalat management regarding declaration of net profits and minimum guaranteed dividends to the shareholders.

vii. Etisalat would also charge a management fee from PTCL for running its affairs besides owing shares and earning profits.

viii. The government has also agreed to a payment of up to RS 3 billion ($50 million) annually for period of five years in the form of a technical service agreement to Etisalat UAE.

There were countrywide protests by the PTCL employees, who were brutally suppressed using state force, and the government has still not rebutted the allegations. The privatization of PTCL was also challenged in the Sind High Court by petitioner Atique Hussain, but the challenge was dismissed on technical grounds. The decision of the High Court has been challenged in the august Supreme Court of Pakistan and the matter is sub judice before it. Etisalat has not as yet paid the balance of the amount owed to the Government of Pakistan.

There is ample evidence that countries around the world have experimented enough to structure appropriate strategy, methods, sequence, and objectives of privatization, and have developed legal, institutional and regulatory models required for the execution of the privatization transactions and addressing post-privatization issues of an enterprise.[140] The analysis of privatization in transitional economies of Eastern Europe like Hungary, Poland, Czechoslovakia, and Pakistan reinforces the point that it is the political and government will (adaptive efficiency)[141] of a country to vigorously implement policies to encourage foreign investment and participation of external shareholders in proper sequence and pace that is more important than simply expediting the privatization/change in the ownership.[142] Pakistan

---

[140] For a detailed report of the latest privatization transactions in the world see William L. Megginson, "Privatization Trends and Major Deals in 2010" (2010) The Privatization Barometer Report, 2010: Here Comes Another Privatization Wave, accessed 17/10/2011online: <http://www.privatizationbarometer.net/PUB/NL/4/7/PB_Report_2010.pdf>.

[141] Douglas C. North, "Privatization, Incentives and Economic Performance" (1994) , accessed 22/06/2012 online: <http://bbs.cenet.org.cn/UploadImages/20058142228993465.pdf>.

[142] Matija Rojec, "Balance of Privatization Policies related to Foreign Investment in the Transition Countries of Central and Eastern Europe", accessed 21/10/2011 online: <http://www.ucm.es/BUCM/revistas/cee/15766500/articulos/PAPE0505120011A.PDF>; Scott Wallsten, "Does Sequencing Matter? Regulation and Privatization in Telecommunication Reforms Volume 1" (World Bank Policy and Research Working Paper WPS No. 2817, 15 May 2002), accessed 21/10/2011 online: <http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469382&piPK=64165421&menuPK=64166093&entityID=000094946_02041804272576>; World Bank, World Bank. *Privatization: Legal Guidelines for Privatization Programs* (2009), accessed 21/10/2011 online: <http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/privatization_guide.pdf>; <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:20372395~menuPK:1696164~pagePK:148956~piPK:216618~theSitePK:445634,00.html>; Hans Smith & Vratislav Pechota, *Privatization in Eastern Europe: Legal, Economic and Social Aspects* (New York: Parker School of Foreign and Comparative Law, Columbia University, 1994), accessed 21/10/2011 online: <http://books.google.ca/books?id=rnA5VdY2_4YC&pg=PA48&lpg=PA48&dq=Legal+Guidelines+for+Privatization+Programs&source=bl&ots=r3tuiZOWQG&sig=SYcCLVe2E4YI7KueRZZi9P9Bl9s&hl=en&ei=IGmhTuX7A8njiAKh5vxM&sa=X&oi=book_result&ct=result&resnum=3&ved=0CE0Q6AEwAg#v=onepage&q=Legal%20Guidelines%20for%20Privatization%20Programs&f=false>; ADB, "Indonesia: State Owned Enterprise Governance and Privatization Program" (Completion Report, November 2008) at 21, accessed 21/10/2011 online: <http://www.adb.org/Documents/PCRs/INO/32517-INO-PCR.pdf>; *Avoiding*

could have innovatively structured the privatization transaction of PTCL in a way that would have been beneficial for the development of the telecommunications sector before privatizing the PTCL.

6.10 Comparative Analysis of Telecommunications Sector Privatization in Central Eastern Europe and Pakistan

In the light of the privatization experience worldwide and in transition countries it is abundantly clear that privatization is not just a trade transaction or restructuring component of the wider economic development effort. It is in fact a transformation of the country—its economic, legal, institutional, political, and social structure—that can have a long lasting impact on the people and can take years to take root.

Resultantly, such reform in transitioning countries cannot happen instantly but rather is a complex, time consuming, and frustratingly slow process due to numerous political and other impediments. It is frustratingly slow in countries where there is a need to develop market institutions from scratch. The speeding up of privatization will result in public assets being thrown away at an inadequate price. What is needed is a gradual approach with the proactive participation of the key players, adequate planning, strong implementation, the legal, institutional structure to regulate privatization, and application of appropriate privatization technique. In the absence of strong regulatory institutions, laws, rules, and competitive structure in the post-privatization period, monopoly of the state-owned enterprise simply changes from public to private hands. It is comparatively easier to regulate state-owned enterprises than private monopolies.

Most of the transitioning countries of Eastern Europe and South Asia had a huge legal, institutional and policy void when they started the privatization, deregulation, and liberalization process. Hence, the development of legal and policy framework and institutional structure in both pre- and post-privatization periods was a time consuming process. Nevertheless, the privatization record of Central and Eastern Europe is comparatively better than the South Asian countries like Pakistan. Pakistan was not only

---

Corruption in Privatization: A Practical Guide, accessed 21/10/2011 online: <http://www.u4.no/document/literature/gtzcorruptionandprivatization.pdf>.

without an institutional, legal, regulatory and policy framework, but also had issues like bad governance. Privatization in countries with problems of bad governance needs to be regulated, open, transparent, and participative.

Pakistan and other developing countries can glean multiple lessons from critical analysis of the privatization experience in the telecommunications and banking sectors of the Central Eastern European countries. The three countries pursued gradual privatization using different privatization techniques, sequence, and pace, and they created new institutions both before and after privatization for a structured approach to privatization and subsequent regulation of the privatized enterprises. The countries that retained significant state control were not able to create a competitive environment contributing towards the development of the telecommunications sector and the economic growth of the country.[143]

The distinct approaches followed by Poland, Hungary, and the Czech Republic underline the significance of the reform sequence in transition/developing/emerging economies. Leaving aside the constraints specific to these countries, the desire to acquire European Union (EU) membership forced these countries to initiate reforms. This reinforces the fact that the international institutions have assumed the status of influential player/organization[144] in the national and local governance framework of the transitioning/emerging/developing economies. The role of international players should be seen in juxtaposition with the role of internal players in the host country.

Pakistan followed almost the same sequence and technique in the privatization of the telecommunications sector as the Central Eastern European countries, but it did not follow the due process, laws, and rules, and it showed flexibility with Etisalat in the negotiation of the price. Here it is pertinent to identify the factors that significantly reduced the negotiation power of the Government of Pakistan (not only the government that executed the privatization of PTCL, but also subsequent governments to this day). The weak negotiation

---

143 Wei Li & Lixin Colom Xu, "The Impact of Privatization and Competition in the telecommunication sector around the World" (April 2004) 47:1 J.L. & Econ 395, accessed 7/06/2012 online: <http://heinonline.org/HOL/Page?handle=hein.journals/jlecono47&id=399&collection=journals&index=journals/jlecono>.

144 Douglas C. North, Institutions, *Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990) at 8.

power of the government can be attributed to multiple factors, but mostly to the fact that most of the government representatives—ministers, presidents (both political and military generals), and prime ministers—have properties and businesses in Dubai, and their family members (sons and daughters) reside in Dubai for education and medical treatment. Dubai has remained a country of refuge for many political and military rulers of Pakistan fleeing from charges of corruption, mismanagement, and bad governance. It is difficult for such representatives to make decisions in the national interest when they have their personal interest at stake, yet the people of Pakistan still elect them.

The critical studies of banking and telecommunications in Pakistan, viewed in the framework of North's theory on institutional and economic change, underlines the role of local players (national leaders/politicians); international trade and financial institutions (WTO and IFIs); the multinational corporations (MNCs), and international development organizations. The presence of demagogue politicians with strong family ties to each other ensures their dominance in the legislature and executive arm of the government from generation to generation. It is in their interest to preserve the status quo in order to maintain their hold over the power. Their presence raises concerns about the quality of the legislation in Pakistan and for triggering much desired institutional change, i.e. who will be the agent of institutional change in the country when the ruling elite dominates both the state machinery and the private market. How will the institutional change be effected when the players who control the institutions mandated with setting and creating new rules prefer the status quo and/or use their dominance in the government to strengthen their partners in the private market? The general public is powerless in that the power to build the institutions and make the rules remains concentrated in the hands of corrupt players who either refuse to enforce the rules or enforce the rules imperfectly. In this context the role of the IFIs, WTO, and international and regional development organizations becomes very important.

The government (the ruling elite) of Pakistan, in compliance with the conditions of the IFIs and their commitment under the WTO GATS agreement, privatized, de-regularized, and liberalized the telecommunications and banking sectors at the cost of development, but preserved their own interest. Hence, the pain of transition had to be borne by the poor and the middle class. Even after transition it's only the rich and affluent that can afford the services provided by these sectors. There might be visible change in this sector with comparatively wide option to the customers to choose between various service providers, but there is still a huge gap in the provision of these services in the rural and urban centres.

Even though Pakistan's population is living in the twenty-first century, a huge proportion does not have access to electricity, landline telephony, and Internet services. Similarly in the banking sector the credit market is not that developed, and only the rich can utilize the services of the sector as they have the capital and capacity to pay back the loans. The poor and middle class people do not have the collateral for loans from financial institutions to make investment in business and development projects, so they do not have access to capital from banks. These bitter realities of Pakistan have confronted the leading scholars of the country and specialists on Pakistan to provide alternative recipe to address the country's development conundrum.

There is no simple and easy solution to address the governance and other related issues of a difficult country like Pakistan; however, it does not imply that all sections of the population are unwilling to induce institutional change. In the political, social, economic circumstances specific to Pakistan it is essential that privatization in Pakistan should be regulated by an institutional structure incorporating rule-based regulation and a dispute resolution mechanism. The institutional structure should also encourage the private/public or state/market partnership for the development of the country, with a special focus on the rural areas of Pakistan. The Government of Pakistan should follow good protectionism (as defined by Eric Reinert) and enact a Public-Private Partnership Act regulating the cooperation and coordinating the interaction between the public and private sectors, and should identify the sectors and specify the rules attracting and regulating foreign investment in joint ownership. The detailed provisions of such a statute should be written in consultation with the stakeholders, i.e. businessmen, economists, academia, members of the civil society, non-profit organizations, traders, labour unions, etc. Such joint public-private partnerships should ensure the technological know-how and facilitate further research in partnerships with the local universities.

The key is to make the system and institutions responsive to the needs of the people. The IFI conditionalities and WTO agreements have undoubtedly liberalized the market in the transition/emerging economies, but they have overlooked the social efficiency of their prescribed policies and failed to respond to the economic needs of the general population. The responsiveness of the institutions can be determined by their sensitivity to the needs of the people and their willingness to address the needs of the public. The institutions can address the needs of the people when they are flexible, open, transparent, accountable, observe, and follow rule of law. The Government of Pakistan has rushed privatization and deregulation in telecommunications and banking without due process, rule of law, transparency, and accountability.

Undoubtedly, it is primarily the responsibility of the national government to ensure the existence of institutions responsive to the needs of the people, but in a deeply integrated globalized world it is also the responsibility of the developed countries, multinational corporations, IFIs, and international and regional development organizations to promote openness, transparency, accountability, good governance, and rule of law by strict adherence to the laws of the host country. If IFIs attach these as conditions in the execution of the privatization transaction it will be a strong message to the host governments from the international community.

If the international development organizations like the Aga Khan Development Foundation had voluntarily paid a reasonable amount of money to the Government of Pakistan for the purchase of Habib Bank Limited, and Etisalat had respected their commitment under the provisions of their agreement with the Government of Pakistan and paid the sale amount agreed on time, it would have had a significant impact on the economic development and promotion of good governance in the country.

The privatization of PTCL did not significantly contribute anything in real terms towards the development of the telecommunications sector and the overall development of the country. The structure of the privatization transaction did not incorporate any provision on the transfer of technology. Instead of emulating the innovative provisions from the privatization transaction of Central Eastern European countries, the government privatized 26 percent shares with the management rights to Etisalat. The transaction could have included a performance provision whereby if Etisalat significantly improved the performance of PTCL in a reasonable time and narrowed down the digital divide between the rural and urban centres of the country through infrastructure development, provision of landline and mobile telephony services in rural areas, and transfer of technological know-how to PTCL, the government would sell 26 percent shares to Etisalat at a discounted rate.

In the same context, if the agreement had also incorporated the provision of Internet and telephony services to research institutes in Pakistan would it have had a significant impact on the promotion of research across the country? A major portion of the research institutions across the country are without telephony, Internet, and cable access, which discourages promotion of a research culture. Such quid pro quo would have been a win-win recipe for both Pakistan and Etisalat. It would have given a good incentive to Etisalat for the injection of capital and technology and would have promoted good governance practices within the company and Pakistan. The government would have retained significant shares in the company and would also have improved its performance.

The privatization (transfer) of PTCL from public to private (local or foreign investors) at a throwaway price was not the most efficient solution to improve performance. The reduced negotiation power of the government results in the sale of valuable national assets at a throwaway price; it is not different than the provision of subsidies for private investors and strengthening their monopoly. It also promotes nepotism, kickbacks, corruption, and bad governance, and it does not promote the private market in countries like Pakistan. It is therefore imperative for the international community to enact an international protocol on good governance, good practices of management, social corporate responsibility, and development standards. This protocol should be incorporated as part of the WTO agreements and the IFIs' program for the developing countries and should be treated as a universal document, binding on all the multinational corporations investing in developing countries and enforceable in any court of law in any part of the world.

The successful shift towards privatization and deregulation is based on multiple factors: the economic sector; the nature, size and current state of the public enterprise to be privatized;

the goals and objectives of the country's privatization program; the adopted technique for privatization in the intended sector; the general political, social, and economic makeup of the countries; and the existing policy, legal and institutional structure of the country in the pre-privatization period. These factors require reforms in both pre- and post-privatization eras. The pre-privatization period reforms might include the laws, rules, institutional set up for privatization and stakeholders involvement; the feasibility reports, research based Studies and standards to select the SOEs for privatization; and the regulation of privatization itself through credible regulatory structure.

In the post-privatization period, the focus shifts to the performance and efficiency of the privatized enterprises, which is strongly dependent on the policy, legal and institutional structure. A multitude of issues arise that demand attention, such competition laws, labour laws, consumer protection laws, enforcement of contracts, protection of property rights, accounting and auditing laws, bankruptcy, liquidation, intellectual property, protection of environment, company, taxation and tax laws, foreign investment laws and policies, dispute resolution mechanisms, regulatory authority/frameworks, good governance, transparency, openness, accountability, access to information, institutional framework, independence/impartiality of judiciary, rule of law, same and equal application of laws, and creation of a facilitative environment for foreign investment and private sector development.

In order to pursue a purposeful privatization it is essential to create a facilitative legal, policy, and institutional nexus that would ensure the achievement of the ultimate objectives of privatization. The comparative studies of privatization in the telecommunication and banking sectors of Central Eastern European countries and Pakistan underline the positive impact this can have on the privatization process. Pursuing privatization without adequate preparation will encourage bad governance and defeat the very purpose for which privatization was intended. Instead of curing the problem it will become part of the problem itself.

Chapter 7 Conclusion

Globalization as perceived by the international financial institutions (IFIs) is the rapid economic integration of poor and rich countries in terms of trade and investment. The most forceful argument in favour of globalization is its claim of trade and investment promoting prosperity and development in the poor and developing countries. The IFIs have showcased an interrelated set of policies for the promotion of such trade and investment in the form of the "Washington Consensus". It is this claim of development emanating from economic globalization that makes globalization the most contentious and controversial phenomenon.

The IFIs' fast-track version of marketing free trade and investment around the globe has in poor developing countries significantly constricted the role of the state/government in the regulation of the economy and delegated this role to the market. Ironically, the process has not only increased the gap between the developed and developing countries, but also has locked the developing/poor countries in a dependent relationship with the rich countries. The proponents of the Washington Consensus have attributed failure to the internal institutional, policy, legal, and governance problems of the emerging economies, whereas its opponents have termed the governance structure of the IFIs as undemocratic and the logical foundation of their policies as faulty and detached from the realities of the poor countries. The failure of these policies to achieve the desired results has sparked a contentious global debate among the development experts on the causes of the failure. The economic crisis in Latin America, East Asia, Russia, and Pakistan, and the recent global financial crisis can be quoted as prominent examples of failure.

As a matter of fact, the failure of the Washington Consensus is the result of the interplay of the internal weaknesses of emerging economies, the inherent incoherency of the Washington Consensus policies with the ground realities of the emerging countries, and the absence of understanding amongst the IFIs and the developed and developing countries on how to structure a coherent and comprehensive development strategy encompassing legal, policy, institutional, and regulatory design without active state participation. Resultantly, it is reforms within the governance and policy design of the IFIs and borrowing countries that will bring the desired change in the conditions of the borrowing countries.

These policies appear to be flawless, but they become faulty when they do not incorporate the non-economic realities of the host countries and are not implemented in the right way, at the right pace and time, and in the right sequence in a facilitative institutional, legal, and policy environment. As the IFIs have expanded the scope of their mandate and their current involvement in the borrowing countries is deeper than ever before, it is therefore the responsibility of IFIs and national governments of developing countries, developed countries, and multinational corporations to work in collaboration with each other for the creation of the required facilitative environment, as all of them claim to work for development around the world and in their respective countries.

In the absence of a facilitative environment, the mechanical application of the Washington Consensus policies locks the poor countries at their current stage of development into economic activities based on diminishing returns, as their production is mainly based on natural resources that diminish over time. The developed countries, on the contrary, due to their technological edge, engage themselves in production activities that are dependent on man-made resources and advances in science and technology. When they trade, the developed countries have a natural advantage over the poor countries.

In addition, the IFIs prohibit the developing countries from emulating the advanced countries' policies of state intervention for the promotion of their industrial and manufacturing sectors. It is only after achieving a scientific and technological edge over the rest of the world that the developed countries have started advocating free trade, as at the current stage of their development adopting the free trade posture is in their economic interest. In order to preserve their monopoly over markets and knowledge, the developed economies have incorporated the provisions of national treatment, equal treatment, and protection of intellectual property rights (TRIPs) in the WTO agreements. As emerging economies are at the initial stages of their development, there is a need to revisit agreements like TRIPS and GATS, and provisions like national treatment and non-discrimination under the WTO. The same developed countries during the recent global financial crisis have in their own national interest resorted to protectionist policies, thus reinforcing the adoption of right policy at the right time. Neither free trade nor protectionism is harmful, but it's the adoption of either of these at the wrong or the right time that can make the difference. The key for successful implementation and fruitful outcome is the timing and mode of reform.

The emerging economies should adopt a strategic posture of selective protectionism focused primarily on the strengthening of sectors that are indispensable for real development in a country —the industrial, technological, and manufacturing sectors—in partnership with the private sector. Advocating protectionism in the age of globalization might seem odd, but it is not misplaced. Most of the developed countries in the modern world have consistently followed protectionism until the time when the shift from protectionism to free trade was the most appropriate one.

Most of the newly developed countries, like China, India, and South Korea, have followed the same path. In the wake of the current global financial crisis the countries that have been the bastions of free trade have selectively adopted protectionism. However, this does not imply that the developing or emerging economies should follow the path of complete protectionism. The appropriate strategy seems to be the pursuance of selective protectionism. It would serve multiple purposes, but primarily three: regulation of state intervention to check the rent-seeking tendency of the state; creation and innovation of a state-market partnership model; and supporting market development through institutional regulation.

The successful adoption of selective protectionism requires a positive and proactive role of state, law, institutions, policy, and an enforcement mechanism. The IFIs can be an effective facilitator in designing innovative state-market partnership models with an emphasis on a positive role for the private sector in developing countries through conditions attached with their loans and grants. The presence of strong and stable government in countries like Pakistan (on the brink of being declared failed states) is fundamental to provide a degree of stability for the smooth execution of market-oriented policies. The governments of emerging countries should insert provisions in the laws relating to privatization, regulations, and investment that carefully regulate these processes to achieve these objectives. The IFIs and the governments of borrowing countries, for example the Government of Pakistan, can design a pilot project simulating selective protectionism based on public-partnership in a specific sector and further perfect the design with modification for application in different sectors.

Selective protectionism signifies an institutionally regulated and rule-based partnership between the state and the market. The purpose of the partnership is to specify the reasons to protect specific enterprises in specific sectors and to prepare them for competition. The state will enter into an arrangement with the private players to improve the efficiency of state-run enterprises through sharing of technical knowledge, good practices of management, and governance. The consistent observance of these practices will make the country's industrial and manufacturing sector more competitive and follows the Schumpeterian principles of constructive destruction in institution building; creation of innovative state-market partnerships; facilitative environments for strong market economy through political, legal, and regulatory reforms; and good governance, rule of law, protection of private property, enforcement of contracts, and strong and stable institutional structure.

Notwithstanding the nature of the economic structure (i.e. state dominated, market-led economy, or public-private partnership) the presence and rightful working of the institutional network is the essence for the success of any system. In the absence of such an environment the policies of privatization, deregulation, and liberalization would result in the transfer of monopoly from public to private without any regulation. The economic quandary of Pakistan illustrates the above contention.

In the terms of North's framework in *Institutions, Institutional Change and Economic Development*, the internal governance structure of Pakistan is perpetually dominated by a few selected actors: feudal lords, industrialists, the religious parties, the Pakistan Army, the bureaucracy, politicians, and the IFIs. The IFI policies have focused incessantly on the promotion of trade and investment in borrowing countries. The IFIs aggressively enforced privatization, deregulation, and liberalization through conditions in a legal, institutional, and regulatory vacuum without adequate protections or an effective formal law enforcement mechanism. This has further strengthened the ruling class in Pakistan, as that class is the local investor in possession of capital resources.

In addition, the country has a corrupt and fragile political system that resists any change compromising the elite's vested interests. Due to the immense influence of these organizations in the institutional structure, the rules of the game are tailored to perpetuate their hold over power and keep the fruits of development within the ruling class. The same class remains in power, whether it is in a state-regulated economy or a market economy. The ultimate result is the concentration of wealth and power in the specific section of the society that is resistant to change.

The IFIs have assumed a forceful and assertive position to effect positive institutional change in Pakistan. They are already deeply engaged in good governance reforms and instead of speeding up the privatization should force the Government of Pakistan to ensure due process, the rule of law, and an open, transparent, and accountable system for the execution of privatization transactions. The example of legal and institutional reforms in Poland, Hungary, and the Czech Republic demonstrates the proven role of IFIs and regional institutions like the European Union (EU) in engineering institutional change specific to a country's environment.

The instances of the privatization of the Habib Bank and the Allied Bank in the banking sector and of PTCL in the telecommunications sector of Pakistan forcefully highlight the importance of appropriate policy, legal, and institutional design for privatization. Regulatory regimes for privatization in the pre- and post-privatization periods help in determination of clear, consensus-based objectives. Determining clear goals for privatization will enable the government to execute privatization in proper sequence, through appropriate technique. The employment of any technique in any privatization transaction should ensure simplification of the whole process in an open and transparent manner. In order to achieve the transparency the public and local and foreign investors should have easy access to the relevant document and details of the privatization transaction. Transparency and fairness demand that there should be equal treatment of both local and foreign investors. It is therefore essential to establish an independent, impartial, and reliable dispute resolution mechanism, i.e. review and appellate procedures, before initiating the privatization process.

The existence of these prerequisites would prevent the national valuable assets being sold at throwaway prices and ensure rule of law, which in turn would restore public confidence in the institutions and system. The restoral of confidence in the system would help the country overcome the political obstacles to expeditious privatization and would make privatization a legal rather than a political process. Such a system would also discourage the foreign-based investor corporations from giving gratification to selfish politicians who seek favours.

Similarly there is a need for the development of universal international protocols prescribing a strict international standard code of conduct to be observed by foreign individuals, corporate investors and national governments in any investment and privatization transaction, to make the whole exercise development-oriented and responsive to the public need. The existence of such a code and strict adherence to it would minimize the possibility of national assets being sold at a throwaway price because of national governments having reduced negotiation power. It would also ensure the ability of the enterprises being privatized to respond positively to public needs and national development, especially when they feature prominently in the development rhetoric of IFIs, multinational corporations, and national governments.

It is important to realize that development and eradication of poverty feature prominently in the agenda and mandate of the national governments and IFIs, and they should therefore be the heart of all the remedies. The IFIs, being among the powerful players, should place development at the centre of their conditionalities. The IFIs should incorporate a facilitative policy, legal, and institutional network to execute the conditionalities in a way that strengthens the state role to promote good governance, rule of law, and substantial participative democracy. The establishment of such a facilitative atmosphere would empower the developing countries and put them on path to bring them to a competitive level in international trade.

Bibliography

LEGISLATION

Pakistan

Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Pakistan) LVII (1996) [*Competition Act 1996*].

Competition Act of Pakistan, *2010*, Act No. XIX, *Pakistan Gazette,* No. M-302/L.-7646 [*Competition Act 2010*], accessed 25/03/2011 online: <http://www.cc.gov.pk/images/Downloads/competitionn_act_2010.pdf>.

Corporate and Industrial Restructuring Corporation Ordinance 2000, accessed 2/04/2012 online: <http://www.ahmedandqazi.com/actsandregulations/companiesLaw/theCorporateIndustrialRestructuringCorporationOrdinance2000.pdf>.

Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, Ord. No. V 1970 (26 February 1970), accessed 25/03/2011 online: <http://www.globalcompetitionforum.org/regions/asia/pakistan/ATT01665.pdf>.

Financial Institutions (Recovery of Finances) Ordinance, 2001, Ord. No. XL VI, accessed 11/04/2012 online: <http://www.sbp.org.pk/about/ordinance/r_ordinance.htm>.

National Accountability Ordinance, 1999, accessed 12/04/2012 online: <http://www.sbp.org.pk/l_frame/NAB_Ord_1999.pdf>.

Pakistan Telecommunication Act No. XVII 1996, 13th October, 1996 The Gazette of Pakistan Extraordinary Online: <http://www.pta.gov.pk/media/telecom_act_170510.pdf>.

Privatization Commission Ordinance 2000, accessed: 5/4/2012 online: <http://www.ahmedandqazi.com/actsandregulations/privatization/privatizationCommissionOrdinance2000.pdf>; <http://www.privatisation.gov.pk/Rules/Rules.htm>.

Proclamation of Order Martial Law Order 1985, No. 1 1977, online: <http://www.vakilno1.com/saarclaw/pakistan/consitution/appendix_1.htm>.

West Pakistan Industries (Control on Establishment And Enlargement) Ordinance, No. IV of 1963, accessed 8/03/2011 online: <http://www.khyberpakhtunkhwa.gov.pk/Gov/Details.php?id=155>.

Rules and Regulations

Privatization (Rules and Procedures), 2001, Privatization Commission of Pakistan, accessed 05/04/2012 <http://www.privatisation.gov.pk/Rules/11(1)L-P&C-2001-Modes.htm>, followed by Amendment I <http://www.privatisation.gov.pk/Rules/Modes%20and%20Procedures%20(Amendment)-P&C-2001-Modes.htm> and then Amendment II <http://www.privatisation.gov.pk/Rules/11(1)L-P&C-2001-Modes%20(Amendent).htm>.

Privatization Commission of Pakistan (Authentication of Documents Under Common Seal) Regulations, 2001, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(14)-2001-common-Seal.htm>.

Privatization Commission of Pakistan (Hiring of Financial Advisors) Regulations, 2007, accessed online: <http://www.privatisation.gov.pk/Rules/Hiring%20of%20Financial%20Advisors%20(Regulations)2007.htm>.

Privatization Commission of Pakistan (Hiring of Valuers) Rules, 2001, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(24)-2001-values.htm>.

Privatization Commission of Pakistan (Modes and Procedures) Rules 2001, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/Modes%20and%20Procedures%20(Amendment)-P&C-2001-Modes.htm>.

Privatization Commission of Pakistan (Valuation of Property) Rules, 2001, accessed 11/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(15)-2001-valuation.htm>.

Privatization Commission of Pakistan (Valuation of Property) Rules, 2007, accessed 5/04/2012 online: <http://www.privatisation.gov.pk/Rules/16(26)-2001-valuation%20of%20propertly%20rules2007.htm>.

Government of Pakistan, Ministry of Finance and Economic Affairs, Statistics and Revenue (Revenue Division), SRO 439(1)/2001 (18th June 2001), accessed 11/11/2011 online: <http://www.findpk.com/engineeringindustry/html/sro_439.html>.

Poland

Polish Act on Supporting the Development of Telecommunication Services and Networks, accessed 27/04/2012 online: <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.itu.int%2FITU-D%2Feur%2FNLP-BBI%2FCaseStudy%2FPoland-Mega-Bill-Official_Translation_2010.doc>.

Poland, Obligation under Article 10 of Directive 2006/24/EC, accessed 25/05/2012 online: <https://www.bof.nl/live/wp-content/uploads/PL_info_2006.24.EC_data-retention-dve.pdf>.

Rules and Regulations

Government of Poland, Ministry of Treasury, Privatization Procedures, year, accessed on 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/598/Privatisation.html>.

Government of Poland, Ministry of Treasury Privatization Procedures: Indirect Procedures, year, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/600/Indirect_privatisation.html>.

Government of Poland, Ministry of Treasury, Privatization Procedures: Direct Privatization, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/602/Direct_privatisation.html>.

United States of America (U.S.)

American Recovery and Reinvestment Act, 2009, online: <http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/ARRA.aspx?lang=eng#1605>.

11 U.S.C. Title 11 2012 Bankruptcy online: <http://uscode.house.gov/download/pls/11T.txt>.

INTERNATIONAL DOCUMENTS

Asian Development Bank (ADB)

ADB. "Indonesia: State Owned Enterprise Governance and Privatization Program" (Completion Report, November 2008), accessed 21/10/2011 online: <http://www.adb.org/Documents/PCRs/INO/32517-INO-PCR.pdf>.

European Union (EU)

European Bank for Reconstruction and Development. *Commercial Laws of Hungary: An Assessment by the EBRD* (July 2010), accessed 13/04/2012 online <http://www.ebrd.com/downloads/sector/legal/hungary.pdf>.

European Bank for Reconstruction and Development. *Commercial Laws of Poland: An Assessment by the EBRD* (July 2010), accessed 20/05/2012 online: <http://www.ebrd.com/downloads/sector/legal/poland.pdf>.

EU. *Directive 2002/21/EC of the European Union Parliament and of the Council of 7 March, 2002 on Common Regulatory Framework for electronic communications network and services (Framework Directive)* [2002] O.J. L. 108/33, accessed 25/05/2012 online:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033: 0050:EN:PDF>.

EU. *Directive 2002/21/EC on Common Regulatory Framework for Electronic Communications network and services* [2009] O.J. L. 167/12, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>.

EU. *Directive 2009/140/EC of the European Union Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a Common Regulatory Framework for electronic communications network and services, 2002/1/EC on access to, and interconnection of electronic communications networks and associated facilities, and 2002/20/EC on authorisation of electronic communications network and services* [2009] O.J. L. 337/37, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF>.

EU. *Regulation 717/2007 of the European Union Parliament and of the Council of 27 June 2007 on roaming on public telephone networks within the community and amending directive 2002/21/EC* [2007] O.J. L. 171/32, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0032:0040:EN:PDF>.

EU. *Regulation 544/2009 on roaming on public mobile telephone network within the community* [2009] O.J. L. 167/12, accessed 25/05/2012 online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>.

EU. *Regulatory Framework for Electronic Communications* (year), accessed 25/05/2012 online: <http://europa.eu/legislation_summaries/information_society/legislative_ framework/l24216a_en.htm#amendingact>.

EU. Summaries of EU Legislation: Current General Legal Framework, accessed 25/05/2012 online: <http://europa.eu/legislation_summaries/information_society/legislative_ framework/index_en.htm>.

International Monetary Fund (IMF)

Brune, Nancy, Geoffrey Garret & Bruce Kogut. "The International Monetary Fund and the Global Spread of Privatization" (2004) 51:2 IMF Staff Papers 196.

Davis, Jeffrey et al. "Fiscal and Macroeconomic Impact of Privatization" (IMF Occasional Paper No. 194, 2000), accessed 3/07/2011 online: <http://www.imf.org/external/pubs/ nft/op/194/index.htm>.

Gregory, Rob et al. "Trade and the Crisis: Protect or Recover" IMF Staff Position Note SPN/10/07 (16 April 2010), accessed 08/02/2011 online: <http://www.imf.org/external/pubs/ft/spn/2010/spn1007.pdf>.

Havrylyshyn, Oleh & Donal McGettigan. " Privatization in Transition Countries: Lessons of the First Decade" (1999) 18 IMF Economic Issues, accessed 3/07/2011 online: <http://www.imf.org/external/pubs/ft/issues/issues18/index.htm>.

IMF. *Articles of Agreement*, accessed 11/10/2010 online: <http://www.imf.org/external/pubs/ft/aa/aa.pdf>.

IMF. *Trade Policy Conditionality in Fund Supported Programs* (2001), accessed 12/28/2008 online: <http://www.imf.org/external/np/pdr/cond/2001/eng/trade/index.htm#I>.

IMF. *Guidelines on Conditionality Prepared by Legal and Policy Development and Review Departments* (2002), accessed 1/3/2009 online: <http://www.imf.org/External/np/ pdr/cond/2002/eng/guid/092302.pdf>.

Total detail of the IMF-Pakistan agreement, accessed 10/06/2011 online: <http://www.imf.org/external/np/fin/tad/extarr2.aspx?memberKey1=760&date1key=2010-08-31>.

IMF. "IMF Approves Combined ESAF/EFF Financing for Pakistan" (Press Release No. 97/48, 20 October 1997), accessed 10/06/2011 online: <http://www.imf.org/external/ np/sec/pr/1997/pr9748.htm>.

IMF. "IMF Approves Nine-Month Extension of Stand-By Arrangement for Pakistan" (Press Release No. 10/515, 27 December 2010), accessed 10/06/2011 online: <http://www.imf.org/external/np/sec/pr/2010/pr10515.htm>.

IMF. "Pakistan: Letter of Intent" (17 December 2011), accessed 10/06/2011 online: <http://www.imf.org/external/np/loi/2010/pak/121710.pdf>.

IMF. *Pakistan: Poverty Reduction Strategy Paper* (IMF Country Report No. 10/183, June 2010), accessed 11/06/2011 online: <http://www.imf.org/external/pubs/ft/scr/2010/cr10183.pdf>.

Op de Beke, Anton. IMF Policy Development and Review Department. *IMF Activities to Promote Good Governance and Combat Corruption: An Overview* (7 June 2002), accessed 08/05/2011 online: <http://info.worldbank.org/etools/docs/library/207469/assessing/pdf/op_de_becke.pdf>.

Rogoff, Kenneth S. "Has Russia Been on the Right Path? A Commentary" (26 August 2002), accessed 3/07/2011 online: <http://www.imf.org/external/np/vc/2002/082602.htm>.

OECD

OECD. Privatization, online: Glossary of Statistical Terms: <http://stats.oecd.org/glossary/detail.asp?ID=3287>.

Bouin, Olivier, OECD Development Center. *The Privatization in Developing Countries: Reflections on a Panacea* (Policy Brief No. 3, 1992), accessed 24/02/2012 online: <http://www.oecd.org/dataoecd/22/62/1918716.pdf>.

OECD. *Privatization Trends in OECD Countries* (June 1996), accessed 24/02/2012 online: <http://www.oecd.org/dataoecd/57/34/1897976.pdf>.

OECD. *Regulatory Reforms in Hungary: Regulatory Reform in the Telecommunications Industry* (2000), accessed 2/05/2012 online: <http://www.oecd.org/dataoecd/31/56/18352848.pdf>.

OECD. *Regulatory Reforms in Poland: From Transition to New Regulatory Challenges* (2002), accessed 2/05/2012 online: <http://www.oecd.org/dataoecd/50/51/1940211.pdf>.

OECD. *Regulatory Reform in the Czech Republic: Regulatory Reforms in the Telecommunications Sector* (2001), *accessed* 23/05/2012: <http://www.oecd.org/dataoecd/45/59/2506517.pdf>.

OECD Directorate for Financial, Fiscal, and Enterprise Affairs, Committee on Competition Law and Policy. "Developments in Telecommunications: An Update—Poland" (Note submitted by the Polish Delegation to Working Party No. 2, DAFFE/WP2/WD (97) 22, 02 Oct 1997), accessed 27/04/2012 online: <http://www.oecd.org/dataoecd/1/28/2379822.pdf>.

United Nations (UN)

Kapoor, Davesh & Richard Webb. "Governance-related Conditionalities of the International Financial Institutions", G-24 Discussion Paper Series UNCTAD/GDS/MDPB/G-24/6, (August, 2000), accessed 08/05/2011 online: <http://info.worldbank.org/etools/ docs/library/156006/pillars/pdfs/bib/kapur.pdf>.

Kirkpatrick, Colin & Armando Barrientos. *The Lewis Model After Fifty Years,* Development Economics and Public Policy Working Paper No. 9 (September 2004), accessed 07/06/2011 online: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/ unpan01 8979.pdf>.

Shafaeddin, Mehdi. "How did Developed Countries Industrialize? The History of Trade and Industrial Policy: The Cases of Great Britain and the USA" UNCTAD/OSG Discussion Paper 139 (December 1998) 2, online: <http://unctad.org/en/Docs/dp_139.en.pdf>.

Shafaeddin, Mehdi. “What did Frederick List Actually Say?: Some Clarifications on the Infant Industry Argument” UNCTAD/OSG Discussion Paper 149 (July 2000), online: <http://unctad.org/en/Docs/dp_149.en.pdf>.

Shafaeddin, Mehdi. “Free Trade or Fair Trade?: An Inquiry into the Causes of failure in recent trade negotiations” UNCTAD/OSG Discussion Paper 153, (December 2000), online: <http://unctad.org/en/Docs/dp_153.en.pdf>.

Sundaram, Jomo Kwame. “Growth After the Asian Crisis: What Remains of the East Asian Model?” G-24 Discussion Paper Series-Paper, UNCTAD & Centre for International Development Harvard University (10 March 2001), accessed 12/28/2008 online: <http://www.unctad.org/en/docs/pogdsmdpbg24d10.en.pdf>.

Sundaram, Jomo Kwame. “Obstacles to Implementing Lessons from the 1997-98 East Asian Crises”, DESA Working Paper No. 66 ST/ESA/2008/DWP/66 (August 2008), accessed 17/12/2012 online: <http://www.un.org/esa/desa/papers/2008/wp66_2008.pdf>.

UN. *Rio Declaration on Environment and Development* (Rio De Janeiro, 3-14 June 1992), online: <http://www.un.org/millenniumgoals/>.

UN Commission on Trade and Development. *The Least Developed Countries 2000 Report,* UNCTAD/LDC/2000 101-164, online: <http://unctad.org/en/docs/ldc2000_en.pdf>.

UN. *Declaration on the Right to Development*, UN GAOR, 41st Sess. Annex, Agenda Item 101, 97th Plenary meeting, UN Doc. A/RES/41/128 (4 December 1986), online: <http://www.un.org/documents/ga/res/41/a41r128.htm>.

UN FAOOR. FAO *Symposium on Agriculture, Trade and Food Security Paper No. 3* (1999), accessed 19/03/2011 online: <http://www.fao.org/DOCREP/meeting/x3065E.htm>.

UN GAOR. *Vienna Declaration on Human Rights,* UN World Conference on Human Rights, UN GAOR, UN doc. A/CONF. 157/24 Part One (12 July 1993), online: <http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en>.

UN Millennium Project. *Investing in Development: A Plan to achieve the Millennium Development Goals* (2005), online: <http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf>.

World Bank

Anderson, Robert E., Simeion Djankov & Gerhard Pohl. “Privatization and Restruction in Central and Eastern Europe” (July 1997) 123 Public Policy for the Private Sector, accessed 05/03/2012 online: <http://rru.worldbank.org/documents/publicpolicyjournal/123pohl.pdf>.

Bouton, Lawrence & Mariusz A. Sumlinski. "Trends in Private Investment in Developing Countries, Statistics for 1970-98" (IFC Discussion Paper No. 31 & 41, December 1996 & February 1997, revised), accessed 05/03/2012 <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/12/01/000094946_01111704003344/Rendered/PDF/multi0page.pdf>.

Dollar, David & Lant Pritchett. "Assessing Aid: What Works, What Doesn't, and Why" (World Bank Policy Research Report No. 18295, November 1998), accessed 08/05/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/02/23/000094946_99030406212262/Rendered/PDF/multi_page.pdf>.

Guislain, Pierre. *The Privatization Challenge: A Strategic Legal, and Institutional Analysis of International Experience* (Washington, DC: The World Bank, 1997), accessed 10/07/2011 <http://books.google.ca/books?hl=en&lr=&id=_BJjz7DQJ8wC&oi=fnd&pg=PR11&dq=Legal+Framework+for+Privatization&ots=EnZI01tOkO&sig=TLoueK48zQ7CHqLYh-XlFzaA-K0#v=onepage&q&f=false>.

Kikeri, Sunita, John Nellis & Mary Shirley. "Policy Views from the Country Economics Department" (July 1992), accessed 05/03/2012 online: World Bank <http://www.worldbank.org/html/prddr/outreach/or3.htm>.

La Porta, Rafael & Florencio Lopez-de-Silanes, "The Benefits of Privatization: Evidence from Mexico" Public Policy for the Private Sector, The World Bank Group Note No. 117, June 1997 at 1, accessed 05/03/2012: <http://rru.worldbank.org/documents/public policy journal/117porta.pdf>; <http://www.jstor.org/stable/pdfplus/2586962.pdf? accept TC=true>.

Lederman, Daniel, William F. Maloney & Luis Servan. *Lessons from NAFTA for Latin America and the Caribbean Countries: A Summary of Research Findings* (Washington DC: World Bank, 2003).

Megginson, William L. & Jeffrey M. Netter. *Equity to the People: The Record on Share Issue Privatization Programs* (Washington DC: The World Bank, 1997), accessed 05/03/2012 online: <https://docs.google.com/viewer?url=http%3A%2F%2Ffaculty-staff.ou.edu%2FM%2FWilliam.L.Megginson-1%2Fprvintxt.pdf>.

Megginson, William L., Robert C. Nash & Matthias van Randenborgh. "The Privatization Dividend: A Worldwide Analysis of the Financial and Operating Performance of Newly Privatized Firms" (February 1996) 68 Public Policy for the Private Sector, accessed 05/03/2012 online: <http://rru.worldbank.org/documents/publicpolicyjournal/068meggin.pdf>.

Nellis, John. "Is Privatization Necessary?" (May 1994) 7 Public Policy for the Private Sector, accessed 08/03/2012, online: <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/007nellis.pdf>.

Sen, Amartya. “Role of Legal and Judicial Reforms in Development” (Paper delivered to the World Bank Legal Conference, Washington, DC, June 5 2000), accessed 30/03/2011 online: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/legalandjudicial.pdf>.

Sheikh, A.S. & M. Minovi. *Management Contracts: A Review of International Experience* (Washington, DC: World Bank, 1994), accessed online 17/10/2011 <http://rru.worldbank.org/documents/toolkits/highways/pdf/14.pdf>.

Wallsten, Scott. “Does Sequencing Matter? Regulation and Privatization in Telecommunication Reforms Volume 1” (World Bank Policy and Research Working Paper WPS No. 2817, 15 May 2002), accessed 21/10/2011 online: <http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469382&piPK=64165421&menuPK=64166093&entityID=000094946_02041804272576>

World Bank. *World Development Report 1987*, online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1987/06/01/000178830_98101911073518/Rendered/PDF/multi0page.pdf>.

World Bank. *World Development Report: Knowledge for Development* (September 1998), accessed 21/08/2011 online: <http://www-wds.worldbank.org/ external/default/WDSContentServer/WDSP/IB/1998/11/17/000178830_98111703550058/Rendered/PDF/multi0page.pdf>.

World Bank. *Building Institutions for the Markets* (World Development Report, 2002), accessed 09/05/2011 online: <http://wdronline.worldbank.org/worldbank/a/c.html/world_development_report_2002/abstract/WB.0-1952-1606-7.abstract>.

World Bank. *Country Partnership Strategy FY 2010-13 Executive Summary* (2010), accessed 11/06/2011 online: <http://siteresources.worldbank.org/PAKISTANEXTN/ Resources/293051-1264873659180/6750579-1279901350261/ExePakistanCPSJuly2010.pdf>.

World Bank. *Pakistan at Glance* (2010), accessed 11/06/2011 online: <http://devdata.worldbank.org/AAG/pak_aag.pdf>.

World Bank. *Pakistan: Country Economic Memorandum FY 1993: Progress under the adjustment programs report No. 11590-Pak* (23 March 1993), accessed 10/06/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1989/03/17/000009265_3960927093800/Rendered/PDF/multi0page.pdf>.

World Bank. *Pakistan: Medium Term Economic Policy Adjustment Report No. 7591-Pak* (17 March 1989), accessed 10/06/2011 online: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1989/03/17/000009265_3960927093800/Rendered/PDF/multi0page.pdf>.

World Bank. *Privatization: Legal Guidelines for Privatization Programs*, (May 18, 2009) accessed 21/10/2011 online: <http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/privatization_guide.pdf>.

World Bank, *Report on the Observance of Standards and Codes (SOC)* (20 June 2004), accessed 2/04/2012 online: <http://www.worldbank.org/ifa/rosc_aa_hun.pdf>.

World Bank. *Structural and Sectoral Adjustment Lending: World Bank Experience (1980-1992)* (Independent Evaluation Group report, 1995), accessed 10/06/2011 online: <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/5E63CA45316A46158525680E005C2961?opendocument>.

World Bank Operations Policy and Country Services. *Good Practices Principles For the Application of Conditionality: A Progress Report* (6 November 2006), accessed 1/05/2011 online: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/Conditionalitypaperfinal.pdf>.

World Bank Operations Policy and Country Services. *Review of World Bank Conditionality* (September 2005), accessed 29/12/2008 online: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf>.

World Bank Public Sector Group Poverty Reduction and Economic Management Group (PREM) Network. *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy* (November 2000), accessed 08/05/2011 online: <http://www1.worldbank.org/publicsector/Reforming.pdf>.

World Trade Organization (WTO)

WTO. "The Case for Open Trade", accessed 14/03/2010 online: World Trade Organization <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm>.

WTO. *General Agreement on Trade in Services (GATS): Objectives, coverage, and disciplines*, accessed 14/04/2012 online: <http://www.wto.org/english/ tratop_e/serv_e/gatsqa_e.htm#3>.

WTO. *Trade Policy Review: Pakistan, Trade Policies by Sector*, WT/TPR/S 193 (2008), accessed 22/2/2011: <http://www.wto.org/english/tratop_e/tpr_e/tp293_e.htm>.

GOVERNMENT MATERIALS

Czech Republic

Government of the Czech Republic, Ministry of Finance. "Dept-45 Implementation of Disposition of State Property Department", accessed 31/10/2011 online: <http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/en_organisation_chart_30615.html>.

Hungary

Petkova, Ivanka. "Bank Privatization in Bulgaria—a Comparative Study to Hungary and Poland", accessed 16/01/2013 online: Institute of Market Economics <http://ime.bg/pdf_docs/papers/bankpriv.pdf>.

Norway

Bull, Benedicte, Alf Morten Jerve & Erlend Sigvaldsen. *The World Bank and the IMF's Use of Conditionality to Encourage Privatization and Liberalization: Current Issues and Practices* (Report prepared for the Norway Ministry of Foreign Affairs, November 2006), accessed 1/05/2011 online: <http://www.regjeringen.no/upload/kilde/ud/ rap/2006/0164/ ddd/pdfv/300495-7final_conditionality_report.pdf>

Federal Ministry for Economic Cooperation and Development *Avoiding Corruption in Privatization: A Practical Guide* (2004), accessed 21/10/2011 online: <http://www.u4.no/document/literature/gtzcorruptionandprivatization.pdf>

Pakistan

Competition Commission of Pakistan. "Price Fixing Agreement between All Pakistan Sugar Mills Association and Ministry of Industries and Production" (Policy Note, accessed 3/04/2011 online: <http://www.cc.gov.pk/images/ActionsPolicy_Notes_ Policy_Note_on_Sugar-Price_Fixing.pdf>.

Frequency Allocation Board of Pakistan, online: <http://www.fab.gov.pk/index.php>.

Government of Khyber Pakhtunkhwa, Pakistan. *Functions of the Department of Industry*, accessed 3/3/11 online: <http://www.khyberpakhtunkhwa.gov.pk/Departments/ Industries/ Functions.php>.

Government of Khyber Pakhtunkhwa, Pakistan. *Objectives and Functions of the Department of Planning and Development*, accessed 3/3/11 online: <http://www.khyberpakhtunkhwa.gov.pk/Departments/PnD/Development-Strategy.php>.

Government of NWFP. Investment Facilitation Centre. *Investment Policies and Opportunities in NWFP-Pakistan: Another Milestone towards prosperity* (2005), accessed 8/03/2011 online: <http://www.khyberpakhtunkhwa.gov.pk/cms/downloads/nwfp.gov.pk-downlaods-%20fb46932ea948c3dda0596b9705bd3e70.pdf>.

Government of Pakistan. *Economic Survey of Pakistan: Growth and Investment* (2010) accessed 11/06/2011 online: <http://www.finance.gov.pk/survey/chapter_10/01_Growth_and_Investment.pdf>.

Government of Pakistan, Lower Chamber of the Legislature. *National Assembly,* 28th Sess. (31 January 2011) (Honourable Federal Minister for Industries and Production, Pakistan Mir Hazar Khan Bijarani) at 8, accessed March 5th, 2011 <http://www.na.gov.pk/questions/session28/monday310111.pdf> (p. 43).

National Telecommunication Corporation of Pakistan Online: <http://www.ntc.net.pk/>.

Pakistan Electronic Media Regulatory Authority.

Pakistan National Power Regulatory Authority.

Pakistan Nuclear Regulatory Authority.

Pakistan Oil and Gas Regulatory Authority.

Pakistan Public Procurement Regulatory Authority.

Pakistan Telecommunication Authority.

Planning Commission of Pakistan. *1st Five Year Plan of Pakistan 1955-60* (1955), accessed 26/05/2011 online: <http://www.pc.gov.pk/fiveyear1st.htm>.

Planning Commission of Pakistan, *2nd Five Year Plan of Pakistan 1960-65*(1960) accessed 26/05/2011 online: <http://115.186.133.3/pcportal/five%20year%20plans/2nd/2nd5yearplan Introductionediting.pdf>.

Privatization Commission of Pakistan, "Privatization Process", accessed 22/11/2011 online: <http://www.privatisation.gov.pk/about/pc-process.htm>.

Privatization Commission of Pakistan. "Privatized Transactions from 1991 to June 2010" accessed on 24/12/2011 online: <http://www.privatisation.gov.pk/about/Completed%20Transactions%20(new).htm>.

Privatization Commission of Pakistan. "Progress to date", accessed 24/11/2011 online: <http://www.privatisation.gov.pk/about/Progress-in-PC(latest).htm>.

Privatization Commission of Pakistan, “ Bidding for Privatization of Habib Bank Limited (HBL) on December 29-Three Bidders Pre-Qualified ” (22 December, 2003), accessed 28/12/2011 online: <http://www.privatisation.gov.pk/Handout/HO-AR-03/December-03/HO-22122003-BIDDING%20FOR%20PRIVATISATION%20OF%20HABIB%20BANK %20 LIMITED%20(HBL)%20ON%20DECEMBER%2029-THREE%20%20BIDDERS%20PRE-QUALIFIED-Handout.htm>.

Security and Exchange Commission of Pakistan.

Small and Medium Enterprises Development Authority (SMEDA).

State Bank of Pakistan.

Pakistan Electronic Media Regulatory Authority

Pakistan National Power Regulatory Authority

Pakistan Nuclear Regulatory Authority

Pakistan Oil and Gas Regulatory Authority

Pakistan Public Procurement Regulatory Authority

(Pakistan?) Small and Medium Enterprises Development Authority (SMEDA)

Pakistan Telecommunication Authority

Privatization Commission of Pakistan

Security and Exchange Commission of Pakistan

State Bank of Pakistan

Poland

Government of Poland, Ministry of Treasury. Privatization Procedures, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/598/Privatisation.html>.

Government of Poland, Ministry of Treasury. Privatization Procedures: Indirect Procedures, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/600/Indirect_ privatisation.html>.

Government of Poland, Ministry of Treasury. Privatization Procedures: Direct Privatization, accessed 31/10/2011 online: <http://www.msp.gov.pl/portal/en/35/602/Direct_privatisation.html>.

Government of Poland. *Postal Law 2003*. Online: <http://www.en.uke.gov.pl/act-of-12-june-2003-postal-law-52>.

Government of Poland. *Telecommunications Act, 2004*. Online: <http://www.en.uke.gov.pl/files/?id_plik=41>.

Republic of Poland, Office of Electronic Communications. Telecommunication Laws Online: <http://www.en.uke.gov.pl/_gAllery/10/58/1058/telecommunications_law.pdf>; <http://www.en.uke.gov.pl/files/?id_plik=63>; <http://www.en.uke.gov.pl/act-of-29-december-2005-on-transformations-and-modifications-to-the-division-of-tasks-and-powers-of-state-bodies-competent-for-communications-and-broadcasting-112>.

United Kingdom (U.K.)

Brown, Gordon. “Seizing the Opportunity to help the Poor” (Address given at the United Kingdom Department of International Development Annual Conference, 9 March 2009). National Archives, Government of the United Kingdom, accessed 11/02/2011 online: <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/news/files/Speeches/pm-conf-speech.asp>.

United States of America (U.S.)

Meltzer, Allan H. “Report of the International Financial Institutional Advisory Commission” (March 2000), accessed 10/10/2011 online: <http://www.house.gov/jec/imf/meltzer.pdf>.

U.S. Agency for International Development, Land & Business. *Formalization for Legal Empowerment of the Poor: From Concepts to Assessment* (2007), online: <http://pdf.usaid.gov/pdf_docs/PNADM500.pdf>.

U.S., The White House, Office of the Press Secretary. “Remarks by the President of the United States to The Ghanaian Parliament” (11 July 2011), accessed 1/05/2011 online: <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-the-Ghanaian-Parliament>.

SECONDARY MATERIALS

Books

Adams, Johan, & Anthony Scaperlanda, eds. *The Institutional Economics of the International Economy* (Boston: Kluwer, 1996).

Ali, Tariq. *The Duel: Pakistan on the Flight Path of American Power* (New York, NY: Scribner, 2008).

Amjad, Rashid. *Pakistan's Growth Experience: Objectives, Achievements, and Impact on Poverty 1947-1977* (Lahore, Pakistan: Progressive Publishers, 2003).

Amsden, Alice H. *The Rise of "The Rest": Challenges to the West from Late-Industrializing Economies* (Oxford: Oxford University Press, 2001).

Anderson, Ronald & Chantal Kegels. *Transition Banking: Financial Development of Central and Eastern Europe* (Oxford: Clarendon Press, 1998).

Arrow, Kenneth J. & Michael D. Intriligator, eds. *Handbook of Development Economics*, vol. 3 (New York, NY: Elsevier, 1995).

Aziz, K.K. *The Making of Pakistan: A Study in Nationalism* (London: Chatto & Windus, 1967).

Bairoch, Paul. *Economics and World History: Myths and Paradoxes* (Hempstead, U.K.: Harvester & Wheatsheaf, 1993).

Baldassarri, Maria, Luigi Paganetto & Edmund S. Phelps, eds. *Privatization Process in Eastern Europe: Theoretical Foundations and Empirical Results* (New York: St. Martin Press, 1993).

Baldwin, David. *Economic Statecraft* (Princeton, NJ: Princeton University Press, 1985).

Bartlett, Bruce. "The Truth About Trade in History" in Edward L. Hudgins *Freedom to Trade: Refuting the New Protectionism* (Massachusetts, Washington DC: CATO Institute, 1997) accessed online 10/06/2010: <http://www.cato.org/pub_display.php?pub_id=10983> & <http://store.cato.org/node/10875/done?sid=53652>.

Bello, Walden & Shea Cunningham. *Dark Victory: The United States and Global Poverty* (London: Pluto Press, 1994).

Bernstein, William J. *A Splendid Exchange: How Trade Shaped the World* (New York, NY: Atlantic Monthly Press, 2008).

Beeson, Mark. *Regionalism, Globalization, and East Asia: Politics, Security, and Economic Development* (Basingstoke: Palgrave, 2007).

Bhala, Raj. *Trade, Development, and Social Justice* (Durham, NC: Carolina Academic Press, 2003).

Bhutto, Zulfiqar Ali. *The Myth of Independence* (Karachi: Oxford University Press, 1969).

Bishop, Matthew & John Kay. *Does Privatization Work?: Lessons from the United Kingdom* (Southampton, U.K.: London Business School Centre for Business Strategy, 1988).

Boas, Morten & Desmond McNeill, eds. *Global Institutions and Development: Framing the World?* (London & New York: Routledge Taylor & Francis, 2004).

Bonin, John P., Kalman Mizsei, Istaven Szekely & Paul Watchel. *Banking in Transition Economies: Developing Market Oriented Banking Sectors in Eastern Europe* (Cornwall, U.K.: Edward Elgar Publishing, 1998).

Brecher, Jeremy & Tim Costello. *Global Village or Global Pillage: Economic Reconstruction from the Bottom up*, 2d ed. (Cambridge, MA: Clarendon Press/South End Press, 1998).

Brezinski, H., E. Fracnk & M. Fritsch, eds. *Microeconomics of Transition and Growth* (Cornwall, U.K.: Edward Elgar Publishing, 1998).

Burke, S.M. *Mainsprings of Indian and Pakistani Foreign Policies* (Minneapolis: University of Minnesota Press, 1974).

Burke, S.M. & Lawrence Ziring. *Pakistan's Foreign Policy: An Historical Analysis* (Karachi: Oxford University Press, 1990).

Burki, Shahid Javed & Guillermo Perry. *Beyond the Washington Consensus: Institution Matters* (Washington, DC: The World Bank, 1998), online: <http://books.google.ca/books?id=R29j4aeQz98C&pg=PA159&lpg=PA159&dq=Shahid+Javed+Burki+Washington+Consensus+Institution+Matters&source=bl&ots=G0mxpSjU6E&sig=4ZsGkmOgDVrCyvEuntyhk1pSsu4&hl=en&ei=dHXHTZuNG5TCsAPp9fCfAQ&sa=X&oi=book_result&ct=result&resnum=7&ved=0CD8Q6AEwBg#v=onepage&q&f=false>.

Bush, George W. *Decision Points* (New York, NY: Crown Publishers, 2010).

Chang, Ha Joon. *23 Things They Don't Tell You about Capitalism* (London, New Delhi, New York & Sydney: Bloomsbury Press, 2010).

Chang, Ha Joon. *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (New York, Berlin & London: Bloomsbury Press, 2008).

Chang, Ha Joon. *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2005).

Collier, Paul. *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (Oxford: Oxford University Press, 2007).

Constable, Pamela. *Playing with Fire: Pakistan at War with Itself* (New York, NY: Random House, 2011).
Cook, Gary, ed. *The Economics and Politics of International Trade*, vol. 2 (London: Routledge, 1998).

Csaba, Laszlo, ed. *Privatization, Liberalization and Destruction: Recreating the Market in Central and Eastern Europe* (England & USA: Dartmouth Publishing, 1994).

Donaldson, David & Dileep Wagle, *Privatization: Principles and Practice* (Washington, DC: The World Bank & International Finance Corporation, 1995).

Dunkley, Graham. *The Free Trade Adventure: The Uruguay Round and Globalism: A Critique* (Melbourne: Melbourne University Press, 1997).

Durkheim, Emile. *The Division of Labour in Society*, trans. by W.D. Halls (New York, NY: Free Press, 1984). [originally published 1893]

Earle, John S. et al. *Small Privatization: The Transformation of Retail Trade and Consumer Services in the Czech Republic, Hungary, and Poland* (CEU Privatization Reports Vol. 3) (Budapest: Central European University Press, 1994).

Easterly, William. *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics* (Cambridge, MA & London, England: The MIT Press, 2002).

Friedman, Thomas L. *The Lexus and The Olive: The World is Flat* (New York, NY: Farrar, Strauss & Giroux, 1999).

Gardazi, Hassan & Jamil Rashid, eds. *Pakistan: The Roots of Dictatorship* (London: Zed Press, 1983).

Gardazi, Hassan & Jamil Rashid, eds. *Pakistan: The Unstable State* (Lahore, Pakistan: Vanguard, 1983).

Galal, Ahmad, Leroy Jones, Pankaj Tandones & Ingo Vogelslang. *Welfare Consequences of Selling Public Enterprises: An Empirical Analysis: a summary* (Washington, DC: The World Bank, 1995).

Gayle, Dennis J. & Jonathan N. Goodrich, eds. *Privatization and Deregulation in Global Perspective* (London: Pinter Publishers, 1990).

Gray, John. *False Dawn: The Delusions of Global Capitalism* (London: Granta Publications, 1998).

Greider, William, *One World Ready or Not: The Manic Logic of Global Capitalism* (New York: Touchstone, 1997).

Griesgraber, Jo Marie, & Bernhard G. Gunte, eds. *World Trade: Toward Fair Trade and Free Trade in the Twenty-First Century* (London: Pluto Press, 1997).

Grindle, Merliee C. & John Thomas. *Public Choices and Public Policy Change: The Political Economy of Reform in Developing Countries* (Baltimore: John Hopkins University Press, 1991).

Guislain, Pierre. *The Privatization Challenge: A Strategic Legal, and Institutional Analysis of International Experience* (Washington DC: The World Bank, 1997).

Havrylyshyn, Oleh & Saleh M. Nsouli, eds. *A Decade of Transition: Achievements and Challenges* (Washington, DC: International Monetary Fund, 2001).

Heath, John, ed. *Public Enterprise at the Crossroads: Essays in Honour of V.V. Ramanadham* (London & New York: Routledge, 1990).

Hossain, Moazzem & Justin Malbon, eds. *Who Benefits from Privatization*? (London & New York: Routledge, 1998).

Iatridis, Demetrius S. & June Gary Hopps, eds. *Privatization in Central and Eastern Europe-Perspectives and Approaches* (USA, Praeger Publications, 2008).

Isbister, John. *Promises Not Kept: Poverty and The Betrayal of Third World Development* (Bloomfield, CT: Kumarian Press, 2003).

Jackson, John H. *The World Trading System: Law and Policy of International Economic Relations* (Cambridge, MA: The MIT Press, 1989)

Jackson, Peter M. & Catherine M. Price, eds., *Privatization and Regulation—A Review of the Issues* (London & New York: Longman, 1994).

Kaplan, Robert D. *Soldiers of God: With Islamic Warriors in Afghanistan and Pakistan* (New York, NY: Vintage Books, 2001).

Khan, M. Asghar. *Generals in Politics: Pakistan, 1958-1982* (New Delhi: Vikas Publications, 1982).

Khan, Hamid. *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press 2001).

Khan, Mohammad Ayub. *Friends Not Masters: A Political Autobiography* (New York, NY: Oxford University Press: 1967).

Khan, Shahrukh Rafi. *Fifty Years of Pakistan* (Karachi: Oxford University Press, 1999).

Killick, Tony. *IMF Programmes in Developing Countries: Design and Impact* (London: Overseas Development Institute, 1995).

Kufour, Kofi Oteng. *The Institutional Transformation Of The Economic Community Of West African States* (Wiltshire: Antony Rowe, 2006), online: <http://www.amazon.ca/Institutional-Transformation-Economic-Community-African/dp/075464488X/ref=sr_1_fkmr1_1?ie=UTF8&qid=1304503468&sr=8-1-fkmr1>.

Kux, Dennis. *The United States and Pakistan 1947-2000 Disenchanted Allied* (Karachi: Oxford University Press, 2003).

Lamb, Christina. *Waiting for Allah: Pakistan's Struggle for Democracy* (New Delhi: Vicking Publishers, 1991).

Lieven, Anatol. *Pakistan: A Hard Country* (New York: Penguin, 2011).

List, Friedrich. *The National System of Political Economy*, trans. by Sampson S. Lloyd (London: Longman Green, 1885).

Lodhi, Maleeha, ed. *Pakistan: Beyond the 'Crisis State'* (United Kingdom: C. Hurst & Co., 2011).

MacEwan, Arthur. *Neo-Liberalism or Democracy?* (London & New York: Zed Books, 1999).

Mansfield, Edward D. & Brian M. Pollins. *Economic Interdependence and International Conflict: New Perspectives on an Enduring Debate* (Ann Arbor: University of Michigan Press, 2003).

Marrison, Andrew, Geriant Parry & Hillel Steiner, eds. *Free Trade and its Reception, 1815-1960, Freedom and Trade*, vol. 1 (London & New York: Routledge, 1998).

Martin, Hans-Peter & Harald Schumann. *The Global Trap: Globalization and The Assault on Prosperity and Democracy,* trans. Patrick Camillar (New York, NY: Zed Books, 1997).

McQuillan, Lawrence J. & Peter C. Montgomery, eds. *The International Monetary Fund Financial Medic to the World? A Primer on Mission, Operations and Public Policy Issues* (Stanford, CA: Hoover Institution Press, Stanford University, 1999).

Menard, Claude & Mary M. Shirely, eds. *Handbook of New Institutional Economics* (Heidelberg: Springer-Verlag, 2008).

Moyo, Dambisa. *Dead Aid: Why Aid is not working and How There is a Better way for Africa* (New York, NY: Farrar, Strauss and Giroux, 2009).

Nasir, M. Saeed & Syed Kamal Hyder. *Economics of Pakistan* (Lahore, Pakistan: Print Planting Press, 2000).

Nawaz, Shuja. *Crossed Swords: Pakistan, its Army, and the Wars Within* (Karachi: Oxford University Press, 2008).

North, Douglas C. *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).

North, Douglas C. *The New Institutional Economics and Development* (St Louis: Washington University, 1993).

North, Douglas C. *Understanding the Process of Economic Change* (Princeton, NJ: Princeton University Press, 2005).

O'Rourke, Kevin H. & Jeffery G. Williamson, eds. *Globalization and History* (Cambridge, MA: MIT Press, 1999).

O'Sullivan, Megan. *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington, DC: Brookings Institution Press, 2003).

Peet, Richard. *Unholy Trinity: IMF, World Bank and World Trade Organization* (London & New York: Zed Books, 2003).

Potter, Pitman. B. & Ljiljana Biukovic, eds. *Globalization and Local Adaptation in International Trade* Law (Vancouver & Toronto: UBC Press, 2011), accessed 21/09/2011 online: <http://www.ubcpress.ca/books/pdf/chapters/2011/GlobalizationAndLocalAdaptationInInternationalTradeLaw.pdf>.

Rabbani, M. Ikram. *New Millennium: Pakistan Affairs* (Lahore, Pakistan: Carvan Book House, 2006).

Raghavan, Chakravarthi. *Recolonization: GATT, the Uruguay Round & The Third World* (London: Zed Books, 1990).

Rajagopal, Balakrishnan. *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

Ramandaham, V.V., ed. *Privatization in the United Kingdom* (London & New York: Routledge, 1988).

Ranis, Gustav, James Raymond Veerland & Stephen Kosack, eds. *Globalization and Nation State: The Impact of the IMF and the World Bank* (London & New York: Routledge, Taylor & Francis, 2006).

Rao, Narendar V., C. Bhaktavatsala Rao & Steve Durphy. "International Perspectives on Privatization of State Owned Enterprises" Small Business Advancement Center, University of Central Arkansas Accessed on 4/03/2012 online: <http://www.sbaer.uca.edu./>.

Rashid, Ahmed. *Descent into Chaos: The United States and the failure of Nation Building in Pakistan, Afghanistan, and Central Asia* (New York: Viking Penguin, 2008).

Reidel, Bruice. *The Deadly Embrace: Pakistan, America and the Future of the Global Jihad with A New Preface* (Washington DC: The Brookings Institution, 2012).

Reider, William. *One World Ready or Not: The Manic Logic of Global Capitalism* (San Francisco, CA: Jossey-Bass, 1997).

Reinert, Erik. S. *Globalization, Economic Development and Inequality: An Alternative Perspective* (Massachusetts, USA: Edward Elgar Publishing, 2004).

Reinert, Erik S. *How Rich Countries Got Rich...And Why Poor Countries Stay Poor* (New York, NY: Public Affairs, 2007).

Reinert, Erik S. *How Rich Countries Got Rich…And Why Poor Countries Stay Poor* (London: Constable & Robinson, 2007).

Ricardo, David. *Principles of Political Economy and Taxation* (London: John Murray, 1817).

Ricardo, David. *The Works and Correspondence of David Ricardo*, ed. by Piero Sraffa (Cambridge, MA: Cambridge University Press, 1951).

Rodrik, Dani. *Has Globalization Gone Too Far?* (Washington, DC: Institute for International Economics, 1997).

Rodrik, Dani. *One Economics, Many Recipes: Globalization, Institutions, and Economic Growth* (Princeton, NJ: Princeton University Press, 2007).

Rostow, Walt. *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, U.K.: Cambridge University Press, 1960).
Sachs, D. *The End of Poverty: The Economic Possibilities of Our Time* (New York, NY: Penguin, 2005).

Sayeed, Khalid B. *The Political System of Pakistan* (Kingston, Ont.: Queens University, 1968).

Schelkle, Waltraud et al., eds. *Paradigms of Social Change: Modernization, Development, Transformation, Evolution* (New York, NY: St Martin's Press, 2000).

Schultz, Theodore W. *Transforming Traditional Agriculture* (New Haven, CT: Yale University Press, 1964).

Self, Peter. *Government by the Market?* (San Francisco, CA: Westview Press, 1993).

Sen, Amartya. *Development as Freedom* (New York, NY: Anchor Books, 1999).

Sen, Amartya. *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009).

Shahid, M. Imtiaz & Memmona Shahid. *An Advanced Study in Pakistan Affairs* (Lahore, Pakistan: Advance Publishers, 2004).

Shirt, Susan L. *How China Opened Its Doors: The Political Success of PRC's Foreign Trade and Investment Reforms* (Washington, DC: Brookings Institution, 1994).

Skinner, A.S. & T. Wilson, eds. *Essays on Adam Smith* (Oxford: Clarendon Press, 1975).

Smith, Adam. *An Inquiry into the Nature and Causes of The Wealth of Nations*, vol. 1, ed. by Edwin Cannan (Chicago: University of Chicago Press, 1967) [first published 1776].

Smith, Adam. *The Theory of Moral Sentiments,* ed. by A.L. Macfie and D.D. Raphael (Oxford: Clarendon Press, 1976).

Smith, Hans & Vratislav Pechota. *Privatization in Eastern Europe: Legal, Economic and Social Aspects* (New York: Parker School of Foreign and Comparative Law, Columbia University, 1994), accessed 21/10/2011 online: <http://books.google.ca/books?id=rnA5VdY2_4YC&pg=PA48&lpg=PA48&dq=Legal+Guidelines+for+Privatization+Programs&source=bl&ots=r3tuiZOWQG&sig=SYcCLVe2E4YI7KueRZZi9P9Bl9s&hl=en&ei=IGmhTuX7A8njiAKh5vxM&sa=X&oi=book_result&ct=result&resnum=3&ved=0CE0Q6AEwAg#v=onepage&q=Legal%20Guidelines%20for%20Privatization%20Programs&f=false>.

Soros, George. *The Crisis of Global Capitalism* (New York, NY: Public Affairs, Perseus Books Group, 1998).

Stiglitz, Joseph E. *Globalization and Its Discontents* (New York & London: W.W. Norton & Co., 2002).

Stiglitz, Joseph E. *Making Globalization Work* (London: W.W. Norton & Co., 2006).

Stiglitz, Joseph E. *Roaring Nineties: A New History of the World's Most Prosperous Decade* (New York, NY: W.W. Norton & Co., 2003).

Stiglitz, Joseph E. & Andrew Charlton. *The Development Round of Trade Negotiations in the Aftermath of Cancun: A Report for the Commonwealth Secretariat* (Place: Commonwealth Secretariat Marlborough House, 2004).

Terry, Edith. *How Asia Got Rich: Japan, China, and the Asian Miracle* (Armonk, NY: M.E. Sharpe, 2002).

Thorup, Cathryn L., ed. *The United States and Mexico: Face to Face with New Technology*, US Third World Policy Perspective Series No 8 (New Brunswick, NJ: Transaction Books, 1987).

Trubek, David M. & Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006).

Vernon, Raymond & Yair Aharoni, eds. *State-Owned Enterprise in the Western Economies* (London: Croom Helm, 1981).

Vickers, John & George Yarrow. *Privatization: An Economic Analysis* (England: MIT Press, 1998).

Vogel, Steven. K. *Japan Remodeled: How Government and Industry are Reforming Japanese Capitalism* (Ithaca, NY: Cornell University Press, 2006).

Wallach, Lori & Michelle Sfroza *The WTO: Five Years of Reasons to Resist Corporate Globalization* (New York, NY: Seven Stories Press, 1999).

Weaver, Mary Anne. *Pakistan: Deep Inside the World's Most Frightening State* (New York, NY: Farrar, Strauss & Giroux, 2010).

Weber, Max. *The Protestant Ethic and the Spirit of Capitalism*, trans. by Talcott Parsons, 1904-05, with a foreword by R. H. Tawney (London: Allen & Unwin, 1930).

Zaidi, Hussain H. *De-Politicise the Bureaucracy* Contemporary Affairs Vol.38 (Pakistan: Carvan Publishers, 2004).

Zaidi, S. Akbar. *Issues in Pakistan Economy (*Pakistan: Oxford University Press, 1999).

Ziring, Lawrence. *Pakistan in the Twentieth Century: A Political History* (Karachi: Oxford University Press, 2001).

Articles

Abarbanell, Jeffrey S. & John. P. Bonin. "Bank Privatization in Poland: The Case of Bank Slaski" (August 1997) 25:1 Journal of Comparative Economics 31, accessed 22/03/2012 online: <http://ac.els-cdn.com/S0147596797914475/1-s2.0-S0147596797914475-

main.pdf?_tid=9de03907ad40cf1efefe94301eb129cf&acdnat=1332480065_e3f25b24e672cc60384c650f5a9c5ec8>.

Acar, Sevil. “Privatization Policies and Implications: The Cases of Hungary and Turkey” (year etc.), accessed 18/01/2012: <https://docs.google.com/viewer?url=http%3A%2F%2Fgdri.dreem.free.fr%2Fwp-content%2Fe4-2acar-sevil-dreem.pdf>

Adams, John. “Institutional Coordination, Transaction Costs and International Trade” in John Adams & Anthony Scaperlanda, eds., *The Institutional Economics of the International Economy* (Boston: Kluwer, 1996) 67.

Adams, Johan & Anthony Scaperlanda, “Introduction: The Institutional Economics of the International Economy” in John Adams & Anthony Scaperlanda, eds. *The Institutional Economics of the International Economy* (Boston: Kluwer, 1996) 1.

Adelman, Carol C. & Eberstadt, Nicholas, “Foreign Aid: What Works and What Doesn’t” (October 2008) 3 Development Policy Outlook 1, accessed 08/05/2011 online: <http://www.aei.org/docLib/20081027_23618DPONo3g.pdf>.

Aharoni, Yair. “Managerial Discretion” in Raymond Vernon & Yair Aharoni, eds. *State-Owned Enterprise in the Western Economies* (London: Croom Helm, 1981) 184.

Aizeman, Joshua. “Privatization in Emerging Markets”. National Bureau of Economic Research, Working Paper No. 6524 Cambridge (April 1988), accessed 3/03/2012: <http://www.nber.org/papers/w6524>.

Allen & Overy. “Corporate Restructuring and Insolvency Procedures in Poland” (Fact Sheet, January 2011), accessed 3/04/2011 Online: <https://www.aohub.com/aoos/attachment_dw.action?key=Ec8teaJ9VarUhj%2BMG9RV1F7eOOGbnAEFKCLORG72fHz0%2BNbpi2jDfaB8lgiEyY1JAvAvaah9lF3d%0D%0AzoxprWhI6w%3D%3D&attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWHb%2FPDBPVvgudAM1xb7%2B5u&fromContentView=1&fromDispatchContent=true&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQ%2FHLCIrtYuIY%3D&uid=cyJ36OT6u1s%3D&popup=HxapDW%2FMKd4%3D>.

Alkire, Sabina. “Structural Injustice and Democratic Practice: The Trajectory in Sen’s Writings” (2006) 19:1 Library of Ethics and Applied Philosophy 47, online: <http:www.springerlink.com/content/r712246564q32153>.

Alston, Phillip. “The Myopia of the Handmaidens: International Lawyers and Globalization” (1997) 8 E.J.I.L. 435.

Alvi, Hamza. “The State in Crisis” in Hassan Gardazi & Jamil Rashid, eds. *Pakistan: The Roots of Dictatorship* (London: Zed Press, 1983) 55.

Ameen, Tahir. "Pakistan in 1993: Some democratic changes" (February 1994) 34:2 Asian Survey 191.

Angie, Antony. "Time Present and Time Past: Globalization, International Financial Institutions, and The Third World" (1999) 32 N.Y.U.J. Int'l. L. & Pol. 243.

Ash, Timothy, Paul Hare & Anna Canning. "Privatization in the Former Centrally Planned Economies" in Peter M. Jackson & Catherine M. Price, eds. *Privatization and Regulation—A Review of the Issues* (London & New York: Longman, 1994) 215.

Babu, R. Rajesh. *IMF Conditionality: A Perspective* (2001), Silver Jubilee Issue: 25 Cochin University Law Review 296 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=885847>.

Baek, Seung-Wook. "Does China Follow 'the East Asian Model'?" (2005) 35:4 Journal of Contemporary Asia 485.

Baev, Andrei A. "Civil Law and the Transformation of State Property in Post-Socialist Economies: Alternatives to Privatization" (1993) 12:2 UCLA Pac. Basin L.J. 131.

Bailey, Michael, Judith Godstein & Barry R. Weingast. "The Institutional Roots of American Trade Policy: Politics, Coalitions and International Trade" (April 1997) 49:3 World Politics 309.

Balfour, Michele & Cameron Crise. "A Privatization Test: The Czech Republic, Slovakia, and Poland" (1993) 17:1 Fordham Int'l L.J. 84.

Barta, Vit & Miroslav Singer. "The Banking sector after 15 years of restructuring: the Czech experience and lessons" (August, 2006), accessed 3/4/2012 online: <http://www.bis.org/publ/bppdf/bispap28k.pdf>.

Beeson, Mark. "Developmental States in East Asia: A Comparison of the Japanese and Chinese Experiences" (2009) 33:2 Asian Perspective 5.

Beeson, Mark & Iyanatul Islam. "Neoliberalism and East Asia: Resisting the Washington Consensus" (February 2005) 41:2 Journal of Development Studies 197.

Berman, Nathaniel. "In the Wake of Empire"(1999) 14 Am. U. Int'l Law Rev. 1521.

Berg, Andrew & Elliot Berg. "Methods of Privatization" (Winter 1997) 50:2 Journal of International Affairs 357.

Bhowmik, Sharit K. "Takeover by Employees: A Response to Privatization in Pakistan" (29 April 1995) 30:17 Economic and Political Weekly 931, accessed 25/07/2011 online <http://www.jstor.org/stable/4402684>.

Birdsall, Nancy. "Life is Unfair: Inequality in the World" (Summer 1998) 111 Foreign Policy 76.

Birdsall, Nancy, Dani Rodrik & Arvind Subramanian. "How to Help Poor Countries" (July/August 2005) 84:4 Foreign Affairs 136, accessed 07/09/2011 online: <http://www.cgdev.org/doc/commentary/FAhelp.pdf>.

Biukovic, Ljiljana. "Global Competition Governance: A Step Towards Constitutionalization of the WTO" in Pitman. B. Potter & Ljiljana Biukovic, eds. *Globalization and Local Adaptation in International Trade* Law (Vancouver & Toronto: UBC Press, 2011) 27, accessed 21/09/2011 online: <http://www.ubcpress.ca/books/pdf/chapters/2011/GlobalizationAndLocalAdaptationInInternationalTradeLaw.pdf>.

Blanco, Sandra. *The 1960s and 1970s: The World Bank attacks Poverty; Developing Countries Attack the IMF* <http://www.uiowa.edu/ifdebook/ebook2/contents/part1-IV.shtml>.

Bloomfield, Arthur I. "Adam Smith and the Theory of International Trade" in A.S. Skinner & T. Wilson, eds. *Essays on Adam Smith* (Oxford: Clarendon Press, 1975) 472.

Bonin, John P. "On the Way To Privatizing Commercial Banks: Poland and Hungary Take Different Roads" (Winter 1993) 35:4 Comparative Economic Studies 103.

Bonin, John P. & Bozena Leven. "Polish Bank Consolidation and Foreign Competition: Creating a Market-Oriented Banking Sector (August 1996) 23:1 Journal of Comparative Economics 52, accessed 22/03/2012 online: <http://www.sciencedirect.com/science/article/pii/S0147596796900438>.

Bonin, John P., Bozena Leven & Market E. Shaffer. "Unlocking Frozen Assets and Creating Market Culture: Hungary and Poland Take Different Approaches" in H. Brezinski, E. Fracnk & M. Fritsch, eds. *Microeconomics of Transition and Growth* (Cornwall, U.K.: Edward Elgar Publishing, 1998) 76.

Bonin, John P. & Istvan Abel. "Retail Banking In Hungary: A Foreign Affair?" (December 2000) William Davidson Institute Working Paper No. 356, accessed 19/12/2012 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=260759>.

Bonin, John P. & Paul Wachtel. "Lessons from Bank Privatization in Central Europe" Working Paper Number 245, May 1999, accessed 04/12/2011 online: <http://deepblue.lib.umich.edu/bitstream/2027.42/39631/3/wp245.pdf>.

Boubakri, Narjess & Jean-Claude Cosset. "The Financial and Operating Performance of Newly Privatized Firms: Evidence from Developing Countries" (June 1998) LIII:3 Journal of Finance 1081.

Boughton, James M. “The IMF and the Force of History: Ten Events and Ten Ideas That Have Shaped the Institution” IMF Working Paper WP/04/75, Policy Development and Review Department (May 2004), accessed 12/17/2012 online: <http://www.imf.org/external/pubs/ft/wp/2004/wp0475.pdf>.

Boughton, James M. “Who’s in charge?” in Gustav Ranis, James Raymond Veerland & Stephen Kosack, eds. *Globalization and Nation State: The Impact of the IMF and the World Bank* (London & New York: Routledge, Taylor & Francis, 2006) 19.

Boughton, James M. & Alex Mourmouras. “Is Policy Ownership an Operational Concept?” (IMF Working Paper Policy, Development and Review Department, April 2002), accessed 5/1/2009 online: <http://www.imf.org/external/pubs/ft/wp/2002/wp0272.pdf>.

Broad, Robin & John Cavanagh. “The Death of Washington Consensus?” (Fall 1999) 16:3 World Policy Journal 79, accessed 12/04/2011 online: <http://www.jstor.org/stable/40209648>.

Brown, Allan. “The Economics of Privatization: Case Study of Australian Telecommunications” in Moazzem Hossain & Justin Malbon, eds. *Who Benefits from Privatization?* (London & New York: Routledge, 1998) 68.

Buckley, Ross P. “The Economic Policies of China and India and of the Washington Consensus: An Enlightening Comparison” (2010) 27:4 Wis. Int’l L.J. 707.

Buira, Aerial. “An Analysis of IMF Conditionality” (year), accessed 26/12/2008 online: <http://ksghome.harvard.edu/~drodrik/g24buira.pdf>.

Bunn, Isabella D. “The Right to Development: Implications for International Economic Law” (1999-2000) 15 Am. U. Int’l L. Rev. 1425, accessed 16/01/2011 online: <http://heinonline.org>.

Burke, Melvin. “Private versus Public Construction in Honduras: Issues of Economics and Ideology” in Dennis J. Gayle & Jonathan N. Goodrich, eds. *Privatization and Deregulation in Global Perspective* (London: Pinter Publishers, 1990).

Caddish, Alon. *“*Free Trade and High Wages: The economics of the Anti-Corn Law League*”* in Andrew Marrison, Geriant Parry & Hillel Steiner, eds. *Free Trade and its Reception, 1815-1960, Freedom and Trade*, vol. 1 (London & New York: Routledge, 1998).

Chan, Che-Po & Wai-Kit Poon. “The Chinese Local Administrative Measures for Building Up the ‘Headquarter Economy’: A Comparison Between Pudong and Shenzhen” (January 2012) 21:73 Journal of Contemporary China 149, accessed 11/03/2012 online: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.627671>.

Chen, Minglu & David S. G. Goodman. "The China Model: one country, six authors (January 2012) 21:73 Journal of Contemporary China 169, online: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.627672>.

Clapham, J.H. "The Last Years of the Navigation Acts" (July 1910) 25:99 English Historical Review 480. Reprinted in Cares Wilson, 1954.

Clark, G. Kitson. "The Repeal of the Corn Laws and Politics of the Forties" (1951) 4:1 Economic History Review, New Series 1.

Coase, Ronald H. "The Institutional Structure of Production" in Claude Menard & Mary M. Shirely, eds. *Handbook of New Institutional Economics* (Heidelberg: Springer-Verlag, 2008) 31.

Coase, Ronald H. "The Nature of the Firm" (November 1937) 4:16 Economica New Series 386, accessed 4/5/2011 online: <http://www.jstor.org/stable/pdfplus/2626876.pdf>.

Coase, Ronald H. "The Problem of the Social Cost" (October 1960) 3 J.L. & Econ. 1, accessed 4/05/2011 online: <http://www.jstor.org/stable/pdfplus/724810.pdf>.

Corbo, Vittorio & Stanley Fischer. "Structural Adjustment, Stabilization, and Policy Reform: Domestic and International Finance" in Kenneth J. Arrow & Michael D. Intriligator, eds. *Handbook of Development Economics*, vol. 3 (New York, NY: Elsevier, 1995) 2845.

Daianu, Daniel. "The Changing Mix of Disequilibra during Transition: A Romanian Perspective" in Laszlo Csaba, ed. *Privatization, Liberalization and Destruction: Recreating the Market in Central and Eastern Europe* (England & USA: Dartmouth Publishing, 1994) 189.

Davis, Kevin & Michael Trebilcock. "The Relationship between Law and Development: Optimists versus Skeptics (2008) 56:4 Am. J. Comp. L. 895.

Davis, Ralph. "English Foreign Trade 1660-1700" (1954) 7:2 Economic History Review, New Series 150.

Davis, Ralph. "The Rise of Protection in England 1689-1786" (1966) 19:2 Economic History Review New Series 306.

Dewatripont, M. & Gerard Roland. "Virtues of Gradualism and legitimacy in the transition to a market economy" (1992) 102 Economic Journal 291.

Dini, Lambirto. "Privatization Processes in Eastern Europe: Theoretical Foundations and Empirical Results" in Maria Baldassarri, Luigi Paganetto & Edmund S. Phelps, eds. *Privatization Process in Eastern Europe: Theoretical Foundations and Empirical Results* (New York: St. Martin Press, 1993) 205.

Dirlik, Arif. “Beijing Consensus: Beijing “Gongshi.” Who Recognizes Whom and to What End?” Accessed 10/030/2012 online: <http://www.globalautonomy.ca/global1/servlet/Position2pdf?fn=PP_Dirlik_BeijingConsensus>.

Dornisch, David. “Competitive Dynamics in Polish Telecommunications, 1990-2000: growth, regulation, and privatization of an infrastructural multi-network” (2001) 25:6 Telecommunications Policy 381, accessed 23/04/2012 online: <http://ac.els-cdn.com/S0308596101000131/1-s2.0-S0308596101000131-main.pdf?_tid=73cc0fab1848fd15774371d83c50c18b&acdnat=1335171954_955edde2803f856e8a10c74a30ab015>c>.

Falk, Richard. “State of Siege: Will Globalization Win Out?” (1997) 73:1 International Affairs 123.

Farnell, J.E. “The Navigation Act of 1651, the First Dutch War, and the London Merchant Community” (1964) 16:3 Economic History Review New Series 439.

Feltham, Jennifer. L. “Polish Telecommunications Law: Telecommunications Takes Off in Transition Countries But at What Price Are They Becoming Wired?” (2000) 33:1 Vand. J. Transnat’l L. 147.

Fernandez-Kelly, M. Patricia. “Technology and Employment Along the US-Mexican Border” in Cathryn L. Thorup, ed., *The United States and Mexico: Face to Face with New Technology*, US Third World Policy Perspective Series No 8 (New Brunswick, NJ: Transaction Books, 1987) 153.

Fratianni, M. & J. Pattison. “Who is Running the IMF: Critical Shareholders of the Staff?” (January, 2004) 1, accessed 10/05/2011 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=959611>.

Friedman, Thomas L. *The Lexus and The Olive; The World is Flat* (New York: Farrar, Strauss & Giroux, 1999).

Gallagher, John & Ronald Robinson. “The Imperialism of Free Trade” (1953) 6:1 Economic History Review, New Series 1.

Ghosh, Jayati. “China and India: The Big Differences”, accessed 07/09/2011 online: International Development Economics Associates (IDEAS, New Delhi, India, 2005) <http://www.networkideas.org/news/aug2005/news25_China_India.htm>.

Ginsberg, Tom. “Does Law Matter for Economic Development? Evidence from East Asia” (2000) 34:3 Review Essay, Law & Soc’y Rev. 829, accessed 17/12/2012 online: <http://heinonline.org/HOL/Page?handle=hein.journals/lwsocrw34&id=843&collection=journals&index=journals/lwsocrw>.

Gizweski, Peter & Thomas Homer-Dixon. "Environmental Scarcity and Violent Conflict: The Case of Pakistan", accessed 5/08/2009 online: <http://www.library.utoronto.ca/pcs/eps/pakistan/pak2.htm>.

Gonzalez, Carmen G. "Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage" (2006)17:65 Berkeley LA RAZA L.J. 65.

Gonzalez, Carmen G. "Trade Liberalization, Food Security and the Environment: The Neoliberal Threat to Sustainable Rural Development" (2004-2005) 14:2 Transnat'l L. & Contemp. Probs. 419

Gonzalez, Carmen G. "Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries Columbia" 27:2 (2002) Columbia J. Envtl. L. 433

Gordon, David "Privatization in Eastern Europe: The Polish Experience" (1994) 25:2 Law & Pol'y Int'l Bus. 517, accessed 2/07/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/geojintl25&id=529&collection=journals&index=journals/geojintl>.

Gore, Charles. "The Rise and Fall of Washington Consensus as a Paradigm for Developing Countries" (2000) 28:5 World Development Report 789-804.

Graham, Cosmo. "Privatization—The United Kingdom Experience" (1995) 21:1 Brooklyn J. of Int'l L. 185, accessed 27/02/2012 online: <http://heinonline.org/HOL/Lucene_Search?specialcollection=&terms=creator%3A%22%20Graham,%20Cosmo%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search>.

Graham, Cosmo & Tony Prosser. "Privatizing Nationalised Industries: Constitutional Issues and New Legal Techniques (January 1987) 50:1 Mod. L. Rev. 16, accessed 27/02/2012 online: <http://heinonline.org/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22%20Graham,%20Cosmo%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search>.

Gregory, Rob et al. "Trade and the Crisis: Protect or Recover" IMF Staff Position Note SPN/10/07 (16 April 16 2010) International Monetary Fund, accessed 08/02/2011 online: <http://www.imf.org/external/pubs/ft/spn/2010/spn1007.pdf>.

Greider, William. *One World Ready or Not: The Manic Logic of Global Capitalism* (New York, NY: Touchstone, 1997).

Gruben, William C. "Do Maquiladoras Take American Jobs? Some Tentative Econometric Results" (1990) 5:1 Journal of Borderland Studies Spring 31.

Gruben, William C. "Was NAFTA Behind Mexico's High Maquiladora Growth?" (2001) Economic & Financial Review (Third Quarter) 11.

Chang, Ha Joon. *The Real History of Free Trade* in *Globalization and the Myths of Free Trade: History, theory, and empirical evidence* edited by Anwar Shaikh Routledge Taylor and Francis Group 2007 23

Havrylyshyn, Oleh & Donal McGettigan. "Privatization in Transition Economies" (2000) 16 Post-Soviet Affairs 257.

Hawkins, John & Dubravko Mihaljack. "The Banking Industry in Emerging Market Economies: Competition, Consolidation, and Systematic Stability—an Overview" (2001), accessed 28/12/2011 online: <http://www.bis.org/publ/bppdf/bispap04a.pdf>.

Heath, John. "Survey of Contributions" in John Heath, ed. *Public Enterprise at the Crossroads-Essays in Honour of V.V. Ramanadham* (London: Routledge, 1990) 3.

Hossain, Moazzem. "Liberalisation and Privatization: India's Telecommunications Reforms" in Moazzem Hossain & Justin Malbon, eds. *Who Benefits from Privatization*? (London & New York: Routledge, 1998) 213.

Houbenova-Dllisivkova, Tatiana. "Liberalization and Transformation in Bulgaria" in Laszlo Csaba, ed. *Privatization, Liberalization and Destruction-Recreating the Market in Central and Eastern Europe* (England & USA: Dartmouth Publishing, 1994) 217.

Irwin, Douglas A. "Free Trade and Protection in Nineteenth Century Britain and France Revisited: A Comment on Nye" (March, 1993) 53:1 Journal of Economic History 146.

Irwin, Douglas A. "Political Economy and Peel's Repeal of the Corn Laws" (Spring 1989) 1:1 Economics and Politics 41.

James, Harold. "From Grandmotherliness to Governance: The Evolution of IMF Conditionality" (December 1998) 35:4 Finance and Development 44, accessed 08/05/2011 online: <http://www.imf.org/external/pubs/ft/fandd/1998/12/james.htm>.

Johnson, Doug & Tristan Zajonc. "Can Foreign Aid Create an Incentive for Good Governance? Evidence from the Millennium Challenge Corporation" (April 11, 2006) Center for International Development, Harvard University Graduate Student Working Paper and Postdoctoral Fellow Working Paper No.11, accessed 13/05/2011 online: <http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/student-fellows/wp/011.pdf>.

Kadish, Alon. "Free Trade and High Wages: The economics of the Anti-Corn Law League" in Andrew Marrison, Geriant Parry & Hillel Steiner, eds., *Free Trade and its Reception 1815-1960: Freedom and Trade,* vol. 1 (London & New York: Routledge, 1998) 14.

Kelly, Thomas. "Beyond the Washington Consensus and New Institutionalism: What is the Future of Law and Development?" (2009-2010) 35:2 N.C.J. Int'l L. & Com. Reg. 542, accessed 1/5/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/ncjint35&id=1&size=2&collection=journals&index=journals/ncjint>.

Kemal, A.R. “Privatization in Pakistan”, accessed 27/03/2012 online: <http://www.ilo.org/public/english/region/asro/bangkok/paper/privatize/chap5.pdf>.

Kemp, Betty. “Reflections on the Repeal of the Corn Laws” (March 1962) 5:3 Victorian Studies 189.
Kennedy, David. “Background Noise: The Underlying Politics of Global Governance” (Summer 1999) Harv. Int’l Rev. 52.

Kennedy, David. “The “Rule of Law, Political Choices, and the Development of Common Sense” in David Trubek & Alvaro Santos eds. *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press) 95, accessed 17/08/2011 online: <http://www.law.yale.edu/documents/pdf/Intellectual_Life/LTW-Kennedy.pdf>.

Kennedy, Scott. “The Myth of the Beijing Consensus” (June 2010) 19:65 Journal of Contemporary China 461, accessed 10/03/2012 online: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e11f7%40sessionmgr12&vid=4&hid=7>.

Kenny, Charles & David Williams. “What Do We Know About Economic Growth? Or, Why Don’t We Know Very Much About Economic Growth?” (2001) 29:1 World Development 1.

Kerr, David. “Has China Abandoned Self Reliance?” (2007) 14:1 Review of International Political Economy (2007) 77.

Khan, Akhtar Hasan. “Is Privatization in Pakistan Purposeful?” Accessed 27/03/12 online: <http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf>.

Khan, Muhammad Ayub. “The Pakistan-American Alliance”, accessed 28/03/2009 online: <http://www.foreignaffairs.com/articles/23567/mohammed-ayub-khan/the-pakistan-american-alliance>.

Kikeri, Suneta & John Nellis. “An Assessment of Privatization” (Spring, 2004) 9:1 World Bank Research Observer 87.

Kindleberger, C.P. “The Rise of Free Trade in Western Europe 1820-1875” (1975) 35:1 Journal of Economic History 30.

Kingsbury, Benedict. “Sovereignty and Inequality” (1998) 9 E.J.I.L. 599.

Kirkpatrick, Colin. “The United Kingdom Privatization Model: Is it Transferable to Developing Countries” in V.V. Ramandaham ed. *Privatization in the United Kingdom* (London & New York: Routledge, 1988) 235.

Kirkpatrick, Colin & Armando Barrientos. “The Lewis Model After Fifty Years” Development Economics and Public Policy Working Paper Series, ” W.P. No. 9 (September 2004), accessed 07/06/2011 online: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan018979.pdf>.

Kormendi, Roger C. & Karen Schnatterly. “Bank Privatization in Hungary and the Magyar Kulkereskedelmi Bank Transaction” The William Davidson Institute, University of Michigan Business School Working Paper # 3, May 1996, accessed 27/03/2012 online: <http://wdi.umich.edu/files/publications/workingpapers/wp3.pdf>.

Kronstadt, K. Alan. “Report for US Congress”, accessed 3/29/2009 online: <http://www.fas.org/man/crs/RL31624.pdf>.

Krueger, Anne. “Comments on ‘New Structural Economics’ by Justin Yifu Lin” August, 2011) 26:2 World Bank Research Observer 222, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>.

Krugman, Paul. “Ricardo’s Difficult Idea: Why Intellectuals Don’t Understand Comparative Advantage” in Gary Cook, ed. *The Economics and Politics of International Trade,* vol. 2 (London: Routledge, 1998) 22.

Krugman, Paul & Anthony J. Venables. “Globalization and the Inequality of Nations” (1995) 110:4 Quarterly Journal of Economics 857.

La Porta, Raphael & Florencio Lopez-de-Silanes. “The Benefits of Privatization: Evidence from Mexico” (November 1999) 114:4 Quarterly Journal of Economics 1193.

Lewis, W. Arthur. “Economic Development with Unlimited Supplies of Labour” (Paper, Manchester School 22 May 1954) 139.

Li, Hei. “The Chinese Path of Economic Reform and its Implications” (Winter 2005) 31:4 Asian Affairs: An American Review 195, accessed 07/09/2011 online: <http://www.jstor.org/stable/pdfplus/30172860.pdf>.

Li, Wei & Lixin Colom Xu. “The Impact of Privatization and Competition in the telecommunication sector around the World” (April 2004) 47:1 Journal of Law and Economics, 395 accessed 7/06/2012 online: <http://heinonline.org/HOL/Page?handle=hein.journals/jlecono47&id=399&collection=journals&index=journals/jlecono>.

Lin, Justin Yifu. “New Structural Economics: A Framework for Rethinking Development” (August 2011) 26:2 World Bank Research Observer 194, accessed 28/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf+html>.

Lissowska, Maria. "Institutional Barriers to Active Crediting Strategies of Polish Banks" in Jeffery S. Abarbanell & John P. Bonin, eds., "Bank Privatization in Poland: The Case of Bank Slaski" (April 1997), accessed 19/12/2012 online: <http://tep.home.pl/app/webroot/files/okiem_amerykanskich_ekspertow.pdf>.

Long, Norman. "Contesting Policy ideas from Below" in Morten Boas & Desmond McNeill, eds. *Global Institutions and Development: Framing the World?* (London & New York: Routledge Taylor & Francis, 2004) 24.

Loschky, David J. "Studies of the Navigation Acts: New Economic Non-History?" (1973) 26:4 Economic History Review New Series 689.

Love, Joseph L. "Raul Prebisch and the Origins of the Doctrine of Unequal Exchange" (1980) 15:3 Latin American Research Review 45, online: <http://www.jstor.org/stable/2502991>.

Maitra, Amit K. "Privatization, Liberalization, and Regulatory Reforms: The Case of Telecommunications" (Working Paper on Information Systems, Case Western Reserve University, USA), accessed 13/04/2012 online: <http://sprouts.aisnet.org/48/1/060102.pdf>.

Malikin, Anton & Beesma Momani. "Emerging Powers and IMF Reform: Where Multipolarity in the World Economy is Leading the Fund" St. Antony's International Review (May 2011) 7:1 61, accessed 16/11/2011 online: <http://arts.uwaterloo.ca/~bmomani/documents/StAnthony-MultipolarityandIMFReform.pdf>.

Maloney, John. "Gladstone, Peel and the Corn Laws" in Andrew Marrison, Geriant Parry & Hillel Steiner, eds. *Free Trade and its Reception 1815-1960: Freedom and Trade*, vol. 1 (London & New York: Routledge, 1998) 28.

Mastanduno, Michael. "The Strategy of Economic Engagement: Theory and Practice" in Edward D. Mansfield & Brian M. Pollins, eds. *Economic Interdependence and International Conflict: New Perspectives on an Enduring Debate* (Ann Arbor: University of Michigan Press, 2003) 175.

McKeown, T.J. "The Politics of Corn Law Repeal and Theories of Commercial Policy" (July 1989) 19:3 British Journal of Political Science 353.

Megginson, William L. "Major Deals of 1H2005" (July 2005) 3 The Privatization Barometer Newsletter: Reporting on Privatization in the Enlarged Europe at 18, accessed 25/05/2012 online: <http://www.privatizationbarometer.net/PUB/NL/5/NL3_FINAL.pdf>.

Meyendorff, Anna & Edward A. Snyder. "Transactional Structures of Bank Privatizations in Central Europe and Russia" (August 1997) 25:1 Journal of Comparative Economics 5, accessed 22/03/2012 online: <http://ac.els-cdn.com/S0147596797914463/1-s2.0-S0147596797914463-main.pdf?_tid=5a5f17ac21c3234bbcfc6df17dcf013c&acdnat=1332480942_318776f93def3aa64605876ebe919e5f>.

Michalski, Marek M. “Regulation in Polish Telecommunications: Commitment, Incentives, and Outcomes” (1996) 13:4 Telematics and Informatics 191, accessed 16/04/2012 online: <http://ac.els-cdn.com/S0736585396000020/1-s2.0-S0736585396000020-main.pdf?_tid=c451ebb37222b364b3f8383dab28e296&acdnat=1334532560_c3bdbbb26058fc5985685bd9ca52aa5d>.

Mitrofanskaya, Yuliya. “Privatization as an International Phenomenon: Kazakhastan” (1999) 14:5 Am. U. Int’l L. Rev. 1399, online: <http://heinonline.org/HOL/Page?handle= hein.journals/amuilr14&div=56&collection=journals&set_as_cursor=0&men_tab=srchresults>.

Momani, Bessma. “American Politicization of International Monetary Fund (IMF)” (December 2004) 11:5 Review of International Political Economy 880 Accessed online on 3/09/2013: <http://www.tandfonline.com.ezproxy.library.ubc.ca/doi/pdf/10.1080/0969229042000313064>

Momani, Bessma. “The IMF, The US War on Terrorism and Pakistan: A Lesson in Economic Statecraft” Asian Affairs 31:1 (Spring, 2004) 41, accessed 20/11/2011 online: <http://www.tandfonline.com/doi/pdf/10.3200/AAFS.31.1.41-51>.

Momani, Bessma. “IMF Rhetoric on Poverty and Inequality” in Rodrden Wilkinson and Jennifer Clap, eds., *Global Governance, Poverty and Inequality* (New York: Routledge, 2010), 71 accessed 16/11/2011 online: <http://www.arts.uwaterloo.ca/~bmomani/documents/BWPI-CIGI_IMF_Poverty_and_ Inequality.pdf>.

Mothe, John de la & Gilles Paquet. “Finance and the technology-trade nexus” (March 1998) 20:4 Technology in Society 441, accessed 30/04/2012 online: <http://ac.els-cdn.com/ S0160791X9800027X/1-s2.0-S0160791X9800027X-main.pdf?_tid=ebecf75ddeefde4215201b8a4eb12e90&acdnat=1335863357_326206910b20168a1dbf26229dc517c3>.

Murphy, Sophia et al. “WTO Agreement on Agriculture: A Decade of Dumping, Institute for Agriculture and Trade Policy” 1 (2005), accessed 19/03/2011: <http://www.tradeobservatory.org/library.cfm?RefID=48532>.

Myint, Hla. “Adam Smith’s Theory of International Trade in the Perspective of Economic Development” (1977) 44 Economica 231.

Nanda, Ved P. “The “Good Governance” Concept Revisited” (2006) 603 Annals of the American Academy of Political and Social Science 269, accessed 09/05/2011 online: <http://ann.sagepub.com/content/603/1/269>.

Naughton, Barry. “China’s Distinctive System: Can it be a model for others?” (June 2010) 19:65 Journal of Contemporary China 437, accessed 11/03/2012 online: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e11f7%40sessionmgr12&vid=4&hid=7>.

Neale, C.W. & S. Bozsik. "How the Hungarian State-Owned Banks were Privatized" (2001) 13:2 Post-Communist Economies 147, accessed 28/12/2011 online: <http://info.worldbank.org/etools/docs/library/83807/nealebozsik_hungarian.pdf>.

Nellis, John. "Time to Rethink Privatization in Transition Economies?" in Oleh Havrylyshyn & Saleh M. Nsouli, eds. *A Decade of Transition: Achievements and Challenges* (Washington, DC: International Monetary Fund, 2001) 160.
Nestor, Stilpon & Ladan Mehboobi. "The Privatization of Public Utilities: The OECD Experience" (1999), accessed 24/02/2012 online: <https://docs.google.com/viewer?url= http%3A%2F%2Fwww.oecd.org%2Fdataoecd%2F48%2F24%2F1929700.pdf> & <http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/1929700.pdf>

Newbery, David. "Reform in Hungary: Sequencing and Privatization" (1991) 35:2:3 European Economic Review 571, accessed 2/06/2012 online: <http://pdn.sciencedirect.com/ science?_ob=MiamiImageURL&_cid=271652&_user=1022551&_pii=001429219190159G &_check=y&_origin=browse&_zone=rslt_list_item&_coverDate=1991-04-30&wchp= dGL bVBA-zSkWA&md5=a02d3a507b603f972a43ffcf745d76e9/1-s2.0-001429219 190 159G-main.pdf>.

Ngugi, Joel M. "The World Bank And The Ideology of Reform And Development In International Economic Development Discourse" (bepress legal series, Paper 1377, 2006), accessed 12/25/2008 online: <http://law.bepress.com/cgi/viewcontent.cgi?article=6317&context=expresso>.

Nichols, Philip M. "Creating a Market along the Silk Road: A Comparison of Privatization Techniques in Central Asia" (1997) 29:2 New York U. J. Int'l L. & Pol. 299, accessed 2/07/2011 online: <http://heinonline.org/HOL/Index?index=journals/geojintl&collection=journals>.

North, Douglas C. "Economic Performance Through Time" (June 1994) 84:3 American Economic Review 359.

North, Douglas C. "Institutions and the performance of Economies over Time" in Claude Menard & Mary M. Shirely, eds. *Handbook of New Institutional Economics* (Heidelberg: Springer-Verlag, 2008) 31.

North, Douglas C. "The New Institutional Economics and Development" (Washington University, St. Louis, 1992), accessed 11/05/2011 online: <http://qed.econ.queensu.ca/pub/faculty/lloyd-ellis/econ835/readings/north.pdf>.

North, Douglas C. "Privatization, Incentives and Economic Performance" (1994), accessed 22/06/2012 online: <http://bbs.cenet.org.cn/UploadImages/20058142228993465.pdf>.

North, Douglas C., John Joseph Wallis, & Barry R. Weingast. "The Natural State: The Political-Economy of Non-Development" (2005), accessed 14/06/2011 online: <http://www.international.ucla.edu/media/files/PERG.North.pdf>.

Norton, Joseph J. “Introduction: The Washington Consensus Redefined” (2009) 15 Law & Business Review of the Americas 7, accessed 12/04/2011 online: <http://heinonline.org>.

Nye, John Vincent. “The Myth of Free-Trade Britain and Fortress France: Tariffs and Trade in the Nineteenth Century” (March, 1991) 51:1 Journal of Economic History 23.

Nye, John Vincent. “Reply to Irwin on Free Trade” (March, 1993) 53:1 Journal of Economic History 153.

Ohnesorge, John. “Developing Development Theory: Law and Development Orthodoxy and the Northeast Asian Experience” (Spring 2007) 28:1 U. Pa. J. Int’l Econ. L. 219, accessed 17/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/upjiel28&id=223&collection=journals&index=journals/upjiel>.

Orford, Anne. “Locating the International: Military and the Monetary Interventions After the Cold War” (1997) 38 Harv. Int’l L.J. 443.

Pasha, Hafiz A. & Fatima Mahnaz. “Fifty Years of Public Finance in Pakistan: A Trend Analysis” in Shahrukh Rafi Khan, ed. *Fifty Years of Pakistan* (Karachi: Oxford University Press, 1999) 201.

Poole, Robert Jr. “Privatization: Providing Better Services with Lower Taxes” (1988) accessed 24/02/2012 online: International Society for Individual Liberty <http://www.isil.org/resources/lit/privatization-english.html>.

Prager, Jonas “Contracting Out As a Vehicle for Privatization: Half Speed Ahead” (Winter, 1997) 50:2 Journal of International Affairs 613.

Potter, Pitman B. “Selective Adaptation, Institutional Capacity, and the Reception of International Law Under the Conditions of Globalization” in Pitman. B. Potter & Ljiljana Biukovic, eds., *Globalization and Local Adaptation In International Trade Law* (Vancouver: UBC Press, 2011), accessed 21/09/2011 online: <http://www.ubcpress.ca/books/pdf/chapters/2011/GlobalizationAndLocalAdaptationInInternationalTradeLaw.pdf>.

Pound, Roscoe. “Law in Books and Law in Action” (1910) 44:1 Am. L. Rev 12, accessed 16/08/2011 online: <http://heinonline.org/HOL/LuceneSearch?searchtype=advanced&submit=Go&search_within=&prev_q=&prev_origterms=&cited_by=&maxresults=25&terms=creator:%22%20Pound,%20Roscoe%20%22&origterms=creator:%22%20Pound,%20Roscoe%20%22&termtype=word&termtypea=&termtypeb=&termtypec=&sortby=relevance&collection=journals&specialcollection=&operator=&operatorb=&termsa=&termsb=&termsc=&typea=&other_cols=&typeb=&typec=&yearlo=&yearhi=&all=&solr=true&dontsave=1&current_historical=&latest=&journal=ALL&subject=ANY&authority_type=&country_code=&collections=&jump=true&firstdoc=100&initcounter=124&base=>.

Radelet, Steven & Jeffrey Sachs. "The Onset of East Asian Financial Crisis" (Harvard Institute for International Development, March 30, 1998), accessed 12/26/2008 online: <http://www.earth.columbia.edu/sitefiles/File/about/director/pubs/paper27.pdf>.

Raiffa, Howard. "Decision Making in the State-Owned Enterprises" in Raymond Vernon & Yair Aharoni, eds. *State-Owned Enterprise in the Western Economies* (London: Croom Helm, 1981) 54.

Ranis, Gustav. "Arthur Lewis' Contribution to Development Thinking and Policy" Economic Growth Center, Yale University Center Discussion Paper No. 891 (August 2004), accessed 07/06/2011 online: <http://www.econ.yale.edu/growth_pdf/cdp891.pdf>.

Ramo, Joshua Cooper. "Beijing Consensus: Notes on the New Physics of Chinese Power" (May 2004), accessed online 08/03/2012: The Foreign Policy Centre <http://fpc.org.uk/fsblob/244.pdf>.

Redwood, John. "Privatization: A Consultant's Perspective" in Dennis J. Gayle & Jonathan N. Goodrich, eds. *Privatization and Deregulation in Global Perspective* (USA: Pinter Publishers, 1990) 48.

Regima, Anita et al. "Emerging Trade Issues for Developing Countries" (April 2000) Agriculture Outlook, Economic Research Service, Unites States Department of Agriculture 20, accessed 19/03/2011 online: <http://www.ers.usda.gov/publications/agoutlook/apr2000/ao270f.pdf>.

Robinson, Neil. "Corporate Interests and the Politics of Transition in Russia: 1991-1994" in Demetrius S. Iatridis & June Gary Hopps, eds. *Privatization in Central and Eastern Europe: Perspectives and Approaches* (USA, Praeger, 2008) 169.

Rodrik, Dani. "Comments on 'New Structural Economics' by Justin Lin (August, 2011) 26:2 World Bank Research Observer 227, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>.

Rodrik, Dani. "Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform" (December 2006) 44:4 Journal of Economic Literature 978, online: <http://www.jstor.org/stable/i30032386>.

Rojec, Matija. "Balance of Privatization Policies related to Foreign Investment in the Transition Countries of Central and Eastern Europe" (2005), accessed 21/10/2011 online: <http://www.ucm.es/BUCM/revistas/cee/15766500/articulos/PAPE0505120011A.PDF>.

Ronald, Gerard. "On the Speed and Sequencing of Privatization and Restructuring" (September 1994) 104:426 Economic Journal 1158, accessed 07/04/2012 online: <http://www.jstor.org/stable/2235073>.

Rose, Carol. V. "The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study" (1998) 32:1 Law and Soc'y Rev. 93, accessed 20/07/2011 online: <http://www.jstor.org/stable/827750>.

Rosenberg, Nathan. "Some Institutional Aspects of the Wealth of Nations" (1960) 1968 Journal of Political Economy 557.

Santiso, Carlos. "Good Governance and Aid Effectiveness: The World Bank and Conditionality (Fall 2001) 7:1 Georgetown Public Policy Review 1, accessed 08/05/2011 online: <http://www.swisstph.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf>.

Sawers, Larry. "The Navigation Acts Revisited" (May 1992) 45:2 Economic History Review New Series 262.

Schwartz, Gerd & Paulo Silva Lopes. "Privatization and Reform of Public Enterprises: An Overview of Policy Trade-Offs, Experiences and Outcomes" in Demetrius S. Iatridis & June Gary Hopps, eds. *Privatization in Central and Eastern Europe-Perspectives and Approaches* (USA: Praeger Publications, 1998) 37.

Shapiro, H., & L. Taylor. "The State and Industrial Strategy" (1990) 18:6 World Development 86.

Sherman, F. Charles. "Law and Development Today: The New Developmentalism" (2009) 10:9 German Law Journal 1257, accessed 13/08/2011 online: <http://www.germanlaw journal.com/pdfs/Vol10No09/PDF_Vol_10_No_09_1257-1273_Articles_Sherman.pdf>.

Sheshinski, Eytan & Lopez-Calva Luis Felipe. "Privatization and Its Benefits: Theory and Practice" (Discussion Paper No. 698, Harvard Institute for International Development, Harvard University, April 1999), online: <http://www.cid.harvard.edu/hiid/698.pdf>.

Shie, Vincent H., Craig D. Meer & Nian-Feng Shin. "Locating China in the Twenty First Century Knowledge-Based Economy (January, 2012) 21:73 Journal of Contemporary China 113, accessed 11/03/2012 online: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.627669>.

Siddiquei, Kamran & Riaz Ahmed Mangi. "Failure of Corporate Governance: Privatization of PTCL Pakistan" (2011), accessed online 19/06/2012: <http://saicon2011.ciitlahore.edu.pk/Business%20Ethics/11-1095.pdf>.

Sidell, Scott R. "Brief History of Conditionality" in Lawrence J. McQuillan & Peter C. Montgomery, eds. *The International Monetary Fund: Financial Medic to the World?: A Primer on Mission, Operations and Public Policy Issues* (Stanford: Hoover Institution Press/Stanford University, 1999) 66.

Skinner, Andrew S. "The Shaping of Political Economy in the Enlightenment" (1990) 37 Scottish Journal of Political Economy 145.

Smith, Demetra, Smith, Nightangle & Nancy Pindus. “Privatization of Public Social Services: A Background Paper” (Urban Institute October 15, 1997), accessed 04/03/2012 online: <http://www.urban.org>.

Smelser, Neil. “Towards a theory of modernization” in Smelser, Neil ed. *Essays in Sociological Explanation* (Englewood Cliffs, NJ: Prentice Hall, 1968) 125.
Snyder, Edward A. & Roger C. Kormendi. “Privatization and Performance of the Czech Republic’s Konercni Banka” (1997) 25 Journal of Comparative Economics 97.

Starr, Paul. “The New Life of the Liberal State: Privatization and the Restructuring of State-Society Relations” in John Waterbury and Ezra Suleiman, eds., *Public Enterprise and Privatization* (Boulder, CO: Westview Press, 1990), 22 accessed 24/02/2012 online: <http://www.princeton.edu/~starr/newstate.html>.

Stigler, George J. “The Successes and Failures of Professor Smith” (1976) 84 Journal of Political Economy 1199.

Stiglitz, Joseph E. “Rethinking Development Economics” (August, 2011) 26:2 World Bank Research Observer 193, accessed 26/08/2011 online: <http://wbro.oxfordjournals.org/content/26/2/193.full.pdf>.

Stiglitz, Joseph E. “Democratizing the International Monetary Fund and The World Bank: Governance and Accountability (January, 2003) 16:1 Governance: An International Journal of Policy, Administration and Institutions 132, accessed 10/10/2011 online: <http://policy dialogue.org/files/publications/Democratizing_International_Monetary_Fund_Stiglitz.pdf>.

Trubek, David M. “The Owl and the Pussy-cat: Is there a future for ‘Law and Development’?” (2007) 25:2 Wis. Int’l L.J. 235, accessed 20/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/wisint25&id=215&collection=journals&index=journals/wisint>.

Trubek, David M. “The Rule of Law in Development Assistance: Past, Present and Future” in David Trubek & Alvaro Santos eds. *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006) 74.

Trubek, David M. & Marc Galanter. “Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States” (1974) 1062:4 Wis. L. Rev. 1062, accessed 13/08/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/wlr1974&id=1074&collection=journals&index=journals/wlr>.

Truett, Lila J. & Dale B. Truett. “Maquiladora Response to US and Asian Relative Wage Rate Changes” (January 1993) 11 Contemporary Policy Issues 18.

Vanyai, Judit. “A new era: the development of telecommunications in Hungary” (March 1998) 20:1 Technology in Society 25, accessed 30/04/2012 online: <http://ac.els-cdn.com/

S0160791X97000274/1-s2.0-S0160791X97000274-main.pdf?_tid=6b0c2efff46b924e9f91dbd43ee9a141&acdnat=1335862947_7d7faec61a12cf3b0a08e68a1f2edbbb>.

Viner, Jacob. "Adam Smith and Laissez Faire" (1927) 35 Journal of Political Economy 198.

Várhegyi, Éva. "Hungarian Banking Sector after Privatization" (February 1999) in EIB Papers 7:1 2002 5-12. Online: <http://www.eib.org/attachments/efs/eibpapers/eibpapers_2002_v07_n01_en.pdf>.

Ward, Paul. "Is the World Bank good for the poor? Does it fulfill its original mission?" Online: <http://salises.uwimona.edu.jm:1104/sa64a/PaulWard_Final%20Assignment.pdf>.

Williamson, John. "A Short History of the Washington Consensus" (2009) 15 Law and Business Review of Americas 7, accessed 12/04/2011 online: <http://heinonline.org>.

Williamson, John. "What Should the World Bank Think about the Washington Consensus?" (2000) 15:2 The World Bank Research Observer 251.

Wilson, Joseph. "Telecom Regulatory and Policy Environment in Pakistan: Results of the 2008 TRE Survey" at 1, accessed 19/06/2012 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555470>.

Woods, Ngaire. "Challenge of Good Governance For the IMF and World Bank Themselves" (2000) 28:5 World Development 823.

Woods, Ngaire. "The United States and The International Financial Institutions: Power and Influence Within The World Bank and The IMF" in Rosemary Foot, S. Neil. MacFarlane & Michael Mastanduno, eds. *US Hegemony and International Organizations* (Oxford: Oxford University Press, 2003) 92.

Woodward, Nick. "Public Enterprises, Privatization, and Cultural Adoption" in John Heath ed. *Public Enterprise at the Crossroads: Essays in Honour of V.V. Ramandham* (London & New York: Routledge, 1990) 266.

Yao, Yusheng. "Village Elections and the Rise of Capitalist Entrepreneurs (March 2012) 21:74 Journal of Contemporary China 317, accessed <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.635933>.

Yasmin, Sameena. "Democracy in Pakistan: The Third Dismissal" (June 1994) 34:6 Asian Survey 572.

Yew, Chiew Ping. "Pseudo Urbanization? Competitive government behaviour and Urban Sprawl in China" (March 2012) 21:74 Journal of Contemporary China 281, accessed 11/03/2012 online: <http://www.tandfonline.com/doi/pdf/10.1080/10670564.2012.635931>.

Young, Peter. "The Lessons of Privatization" Economic Reform Today, No. 1(1998) Center for International Private Enterprise accessed on 04/03/2012 online: <http://www.cipe.org/publications/ert/e27/E27_02.pdf>.

Zaiby, Parveen *Economic Impact of War on Terror and continuing recession in Pakistan, online*: <http://www.opfblog.com/5935/economic-impact-of-war-on-terror-and-continuing-recession-in-pakistan/>.

Zhao, Suisheng. "The China Model: Can It replace the Western Model of Modernization? (June 2010) 19:65 Journal of Contemporary China 419, accessed 11/03/2012 online: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ba8cd2f0-a17e-40cd-84f4-10df702e11f7%40sessionmgr12&vid=4&hid=7>.

Ziring, Lawrence. "Pakistan in 1989: The Politics of Stalemate" (February 1990) 30: 2 Asian Survey 126.

Zumbansen, Peer. "Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflexive Law" (2008) 56:3 Am. J. Comp. L. 769, accessed 16/08/2011 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1128144> and <http://heinonline.org/HOL/Page?handle=hein.journals/amcomp56&id=775&collection=journals&index=journals/amcomp>.

Theses and Dissertations

Fatima, Noor. *Pakistan and International Economic Agencies* (Ph. D. Dissertation, Quaid-e-Azam University, 2007) [online: <http://prr.hec.gov.pk/thesis/2314.pdf>].

Seven, Bullent. *Legal Aspects of Privatization: A Comparative Study of European Privatization* (Dissertation.com, USA 2002)

Conference Papers and Presentations

Bratkowiski, Andrzej & Stefan Kawalec. "Market for Banking Services in Poland" (Report for the Fourth Annual "Banking and Finance: The Experience of Central Banking" Conference, Warsaw, October 1996).

Lamy, Pascal. "Comparative Advantage is Dead? Not at All" (Speech, Paris School of Economics Conference on Trade and Inclusive Globalization: Facts and Fiction in International Trade Economics, 12 April 2010), accessed 13/04/2010 online: <http://www.wto.org/english/news_e/sppl_e/sppl152_e.htm>.

Obama, President Barak Hussain. "Remarks at Graduation of Columbus Police Division's 114th class" (Aladdin Shrine Center, Columbus Ohio, 6 March 2009), accessed 11/02/2011 online: <http://www.whitehouse.gov/the-press-office/remarks-president-graduation-columbus-police-divisions-114th-class>.

Reed, Lawrence W. "Public Policy and American Business: The Privatization Revolution" (Adapted from remarks by Lawrence W. Reed to "The Future of American Business", Shavano Institute for National Leadership Seminar, Indianapolis, 21 May 1997), accessed 25/06/2011 online: <http://mackinac.org/6051>.

Szapary, Gyorgy. "Banking Sector Reforms in Hungary: Lessons Learned, Current Trends and Prospects" (Paper presented to Current Issues in Emerging Market Economies, the Seventh Dubrovnik Economic Conference, Dubrovnik, Croatia 28-30 June 2001), accessed 20/03/2012 online: <http://www.hnb.hr/dub-konf/7-konferencija-radovi/szapary-banking-sector-reform.pdf>.

Takata, Kou. "Evolution of Banking Sector Structures within Central European Structures During Transition" (Discussion Paper No. 65 delivered at Kyoto University, March 2005), accessed 28/12/2011 online: <http://www.kier.kyoto-u.ac.jp/coe21/dp/61-70/21COE-DP065.pdf>.

Trubek, David M. "Developmental States and the Legal Order: Towards a New Political Economy of Development and Law", University of Wisconsin Legal Research Paper No. 1075 (February 2009), accessed 13/08/2011 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1349163>.

Book Reviews

Batabyal, Amitrajeet A. Book Review of *Development as Freedom* by Amartya Sen (2000) 12:2 Journal of Agriculture and Environmental Ethics 227, online: <http://springerlink.com/content/r5m6328t6878lw21/fulltext.pdf>.

Manji, Firoze. Book Review of *Development as Freedom* by Amartya Sen (2010), online: <http://socialtheoryblog.files.wordpress.com/2010/04/developmentasfreedom-by-manji.pdf>.

Poole, Steven. "Book Review of *The Idea of Justice* by Amartya Sen" *The Guardian* (7 November 2009), online: <http://guardian.co.uk/books/2009/nov/07/amartya-sen-justice-book-review>.

Magazine Articles

"Are we there yet? America's recovery will be much slower than that from most recessions; but the government can help a bit" *The Economist* 396: 8700 (18 September 2010) 13.

Chimni, B.S. "Marxism and International Law: A Contemporary Analysis" *Econ. & Policy Weekly* (6 February 1999), 337.

Goldberg, Jeffrey & Marc Ambinder. “The Ally from Hell” *The Atlantic* (December 2011) 308:5 48.

“Leviathan Stirs again” *The Economist* 394: 8666 (23 January 2010) at 23.

Micklethwait, John. “Bamboo Capitalism” *The Economist* (*Leaders Section*) 398:8724 (12 March 2011) 13.

Micklethwait, John, “Taming Leviathan” *The Economist* (*A Special Report on the future of the state*) 398:8725 (19 March 2011) 3.

“Pakistan: Leaks in the pipeline” *Time* (21 June 2005), accessed 29/05/2011 online: <http://www.time.com/time/magazine/article/0,9171,1074846-1,00.html>.

“A rivalry that threatens the world” *The Economist* 399:8734 (21 May 2011) 47.

“Selling The State” *The Economist* 328:7825 (21 August 1993) 18, accessed 26/07/2011 online: <http://find.galegroup.com/econ/newspaperRetrieve.do?resultListType=RESULT_LIST&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28DA%2CNone%2C8%2919930821%24&inPS=true&sort=&tabID=T003&prodId=ECON&docId=GP4100248044&searchId=&retrieveFormat=MULTIPAGE_DOCUMENT&currentPosition=0&userGroupName=ubcolumbia&docLevel=FASCIMILE&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=GP4100248044&contentSet=LTO&callistoContentSet=ECON&docPage=page&fromPage=&newOrientation=0&uzFieldValue=econ&newScale=1.00&pageIndex=1>.

“The size and power of the state is growing and discontent is on rise” *The Economist* 394: 8666 (23 January 2010) 23.

“Special Report: State Capitalism” *The Economist* 402:8768 (21 January 2012) 3.

Newspapers

Pakistan Herald, accessed 16/05/2011 online: <http://hafeezshaikh.com/>; <http://pakistanherald.com/Profile/Abdul-Hafeez-Shaikh-735>.

“Bhutto expands Cabinet; Names Husband to a Post” *The New York Times* (1 August 1996), accessed 18/05/2011 online: <http://www.nytimes.com/1996/08/01/world/bhutto-expands-cabinet-names-husband-to-a-post.html?src=pm>.

“Bhutto’s Husband Acquitted on Corruption Charge Again” *The New York Times* (30 May 1991), accessed 18/05/2011 online: <http://www.nytimes.com/1991/05/30/world/bhutto-s-husband-acquitted-on-corruption-charge-again.html?src=pm>.

Boxell, James. “Osborne freezes Gaddafi’s UK assets” *Financial Times* (27/28 February 2011), accessed 16/05/2011 online: <http://www.ft.com/cms/s/0/efdf458a-42b4-11e0-8b34-00144feabdc0.html#axzz1MaFMHBNW>.

Burns, John F. “House of Graft: Tracing the Bhutto Millions—A Special Report. Bhutto Clan Leaves Trail of Corruption” *The New York Times* (9 January 1998), accessed 18/05/2011 online: <http://www.nytimes.com/1998/01/09/world/house-graft-tracing-bhutto-millions-special-report-bhutto-clan-leaves-trail.html>.

Coll, Steve. “Intrigue Permeates Pakistan: A political culture of shadow game” *The Washington Post* (15 December 1999) A30.

Daily Dawn (8 October 2008), accessed 16/05/2011: <http://archives.dawn.com/2008/10/08/top10.htm>.

“Pakistan slashes development to meet IMF targets” *The Daily Dawn* (24 November 2010), accessed 19/05/2011 online: <http://www.dawn.com/2010/11/24/pakistan-slashes-development-to-meet-imf-targets.html>.

Gargan, Edward A. “President of Pakistan dismisses Premier and dissolved Parliament” *New York Times* (19 April 1993) A3.

“IMF arm-lock leaves Pakistan in deep trouble” *The Pakistan Tribune* (2 June 2011), accessed online: <http://www.paktribune.com/news/index.shtml?239958>.

Khan, Mubarak Zeb. “New Taxes through ordinance may face tough opposition” *The Dawn* (5 March 2011), accessed 08/04/2011 online: <http://www.dawn.com/2011/03/05/new-taxes-through-ordinance-may-face-tough-opposition.html>.

Kiani, Khaleeq. “Accord on economic, fiscal measures reached with the IMF” *The Daily Dawn* (18 May 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/05/18/accord-on-economic-fiscal-measures-reached-with-imf.html>.

Kiani, Khaleeq. “Title of article” *The Daily Dawn* (24 February 2010), accessed 16/05/2011 <http://archives.dawn.com/archives/36364>.

Kiani, Khaleeq. “IMF talks extended after commitments” *The Daily Dawn*, (March 9th, 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/03/09/imf-talks-extended-after-commitments.html>.

Mullen, Mike. “Title of article” *The Daily Dawn* (13 January 2011), Muharram 17, 1434.

O’Neil, Peter. “France backtracks on Trade EU Deal: Canada’s ally in negotiating trade with Europe pushes protectionist measure” *The Province* (18 August 2010) A26.

"The Peril of 'Buy American'" (Editorial) *The New York Times* (3 June 2009), online: N.Y.Times.com <http://www.nytimes.com/2009/06/03/opinion/03weds1.html?_r=1&pagewanted=print>.

Rafaqat Ali. "Court Issues notices on petition challenging HBL Privatization" *The Daily Dawn* (31 March 2004), accessed 24/11/2011 online: <http://archives.dawn.com/2004/03/31/top13.htm>.

Reuters. "IMF postpones Pakistan talks, delays disbursement deal" *The Daily Dawn* (4 May 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/05/04/imf-postpones-pakistan-talks-delays-disbursement-deal.html>.

Reuters. "Pakistan, IMF Start key talks on targets, reforms in coming budget" *The Daily Dawn* (11 May 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/05/11/pakistan-imf-start-key-talks-on-targets-reforms-in-coming-budget.html>.

Reuters. "Pakistan's July-March foreign investment falls 0.3 percent" *The Daily Dawn* (14 April 2011), accessed 03/06/2011 online: <http://www.dawn.com/2011/04/14/pakistans-july-march-foreign-investment-falls-0-3-per-cent.html>.

Reuters. "Pakistan slashes development to meet IMF targets" *The Daily Dawn* (24 November 2010), accessed 03/06/2011 online: <http://www.dawn.com/2010/11/24/pakistan-slashes-development-to-meet-imf-targets.html>.

Rizwi, Shamim Ahmed. "The Sale of 868 sick Units" (12-25 March 2001) *Finance and Markets*, accessed 2/4/2012 online: <http://www.pakistaneconomist.com/issue2001/issue11&12/f&m2.htm>.

Staff Reporter, "SC accepts plea against HBL privatization" *The Daily Times* (16 September 2011), accessed 7/11/2011 online: <http://www.dailytimes.com.pk/default.asp?page=2011%5C09%5C16%5Cstory_16-9-2011_pg7_29>.

Staff Reporter, "Government may seek new IMF programme" *The Daily Dawn* (8 March 2011), accessed 18/05/2011 online: <http://www.dawn.com/2011/03/08/govt-may-seek-new-imf-programme.html>.

"Swiss Freeze Funds In Bhutto Accounts" *The New York Times* (17 October 1997), accessed 18/05/2011 online: <http://www.nytimes.com/1997/10/16/world/world-news-briefs-swiss-freeze-funds-in-bhutto-accounts.html?src=pm>.

"US wronged Pakistan for 30 years admits Hillary" *The Daily Dawn* (20 May 2009), online: <http://65.175.69.196/wps/wcm/connect/dawn-content-library/dawn/news/world/12-us-wronged-pakistan-for-30-years-admit-hillary--bi-04#>.

Watt, Nicholas. “Gaddafi family assets frozen” (27 February 2011), accessed <http://www.guardian.co.uk/world/2011/feb/27/gaddafi-family-assets-frozen-queen>.

Video Interviews Online

Bush, President George W. “Interview with Matt Lauer” *Dateline* (NBC, November 08, 2010), accessed 05/04/2011 online: <http://www.youtube.com/watch?v=bx2rxF67L_E&feature=related>.

Di Micco, Daniel R. “Interview with Lesley Stahl” *CBS News 60 Minutes* (CBS, May 24, 2009 0800am), accessed 7/04/2011, online Video: <http://www.cbsnews.com/video/watch/?id=5037292n&tag=related;photovideo>.

Kirk, Michael. *Frontline: The Warning* (20 October 2009) (Documentary), online: pbs.org <http://www.pbs.org/wgbh/pages/frontline/warning/view/?autoplay&utm_campaign=searchpage&utm_medium=videosearch&utm_source=videosearch>.

Ebel, Robert, Milton Friedman & Tom Hazlett. “Privatization Trends in Eastern Europe” Free to Choose Enterprise, accessed 18/06/2012 online: <http://www.youtube.com/watch?v=xM8Re7RKTk8>.

OTHER MATERIALS

Foreign Policy. *The Failed States Index 2010*, accessed 14/06/2011 online: <http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings>.

Habib Bank Limited. “About Us: History”, accessed 28/12/2011 online: <http://www.hbl.com/about-us-history.php>.

International Food Policy Research Institute, How Much Does it Hurt? The Impact of Agricultural Trade Policies on Developing Countries 2 (2003), accessed 19/03/2011 online: <http://www.agtradepolicy.org/output/resource/IFPRI.pdf>.

IMF and World Bank Online: <http://www.utexas.edu/lbj/faculty/gavin/articles/imf_world_bank.pdf at 38>.

Eurodad. *The IMF and World Bank Conditionality: a development injustice* (Report, June 2006), accessed 1/2/2009 online: <http://www.globalpolicy.org/socecon/bwi-wto/imf/2006/06eurodadimfwb.pdf>.

Instituto Nacional Estadistica Geograffa e Informatica *Personal ocupado en la industria maquiladora de exportacion segun tipo de ocupacion*, online: <www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=emp75&c=1811>.

Johnson, Doug & Tristan Zajonc. “Can Foreign Aid Create an Incentive for Good Governance? Evidence from the Millennium Challenge Corporation” (Center for International Development, Harvard University Graduate Student Working Paper and Postdoctoral Fellow Working Paper No. 11, 11 April 2006), accessed 13/05/2011 online: <http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/student-fellows/wp/011.pdf>.

Oxfam. *Kicking the Habit: How the WB and the IMF are still addicted to attaching economic policy conditions to aid* **(**Oxfam Briefing Paper No. 96, November 2006), accessed 31/12/2008 online: <http://www.oxfam.org/sites/www.oxfam.org/files/Kicking%20the%20Habit.pdf>.

Pakistan’s External Debt and liabilities, accessed 18/05/2011 online: <http://www.sbp.org.pk/ecodata/pakdebt.pdf>.

Pakistan Sugar Mills Association <http://www.psmaonline.com/acquia-drupal/node/8>.

Polaski, Sandra. *Mexican Employment, Productivity, and Income a Decade after NAFTA* (Carnegie Endowment for International Peace, brief submitted to the Canadian Standing Senate Committee on Foreign Affairs, 25 February 2004).

“Privatization in Poland: An Interview with Jeffrey Sachs” (1992) 15:2 Suffolk Transnat’l L.J. 441, accessed 2/07/2011 online: <http://heinonline.org/HOL/Page?handle=hein.journals/sujtnlr15&id=447&collection=journals&index=journals/sujtnlr>.

“Privatizing State-Owned Companies” (Prosperity Papers Series, Prosperity Paper 3, June 1, 2004) accessed 24/02/2012 online: <http://www.cipe.org>.

Suranyi, Gyorgy. “Restructuring the Banking Sector in Hungary” (mimeo, National Bank of Hungary October, 1998), accessed 17/12/2012 online: <http://www.hnb.hr/dub-konf/7-konferencija-radovi/szapary-banking-sector-reform.pdf>.

Wiesbrot, Mark, David Rosnick & Dean Baker, *Getting Mexico to Grow with NAFTA: The World Bank Analysis* (Center for Economic Policy Research, 20 September 2004), online: <www.cepr.net/publications/nafta_2004_10.htm>.