

Democratic Decentralization and the Judiciary

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Democratic Decentralization and the Judiciary

Tariq Banuri

Abstract

The main thesis of the paper is that democratic decentralization is impossible without strong and effective judicial institutions at the local level. In order to make this argument the paper reviews theoretical and empirical views on decentralization and participation. This is followed by description of the systems of governance in four selected countries: Pakistan, India, the United States, Britain, and Japan, with a specific focus on centralization versus decentralization. Three themes emerge: a) the variety of models of national governance; b) the tension between administrative and judicial powers; and c) historical continuity. The third section draws upon the experience of these countries to discuss obstacles in the path of decentralization in Pakistan, especially the prior need for judicial reform. The author delineates practical institutional solutions to overcome these obstacles.

A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty. Town meetings are to liberty what primary schools are to science; they put it within the reach of people, they teach men how to use and how to enjoy it.

Alexis de Tocqueville, Democracy in America

The state comes into existence to ensure life; but once in existence, its objective must be to ensure the good life.

Aristotle, Nicomachean Ethics

In his story, "Servants of the Queen", Rudyard Kipling shows how everyone in British society obeys their superiors' orders: the mules in the battery obey the soldiers who ride them; the colonels the brigadiers, the brigadiers the viceroy, and the viceroy Queen Victoria. When the queen gives an order, all move in unison and go off to conquest. The protagonist of the story says to a native who is watching a parade, "Because you cannot do likewise, you are our subjects".

At one time it was believed that collective decision making and societal coordination were possible only through formal and centralized bureaucratic organization. Many post-colonial countries have spent the last forty years trying to introduce these organizational forms into their societies. Belatedly, we are learning that there are other paths leading to the square. The most important of these paths is that of decentralization and participation.

Decentralization and participation are ideas whose time has come. Increasingly, they are being seen as essential ingredients in the construction of the good society. In Pakistan, the last decade has witnessed the emergence of a remarkable convergence of fashion on the issue across the political and philosophical spectrum.

The recent election manifestos of almost all major political parties included promises of institutional reform in this direction. This is not sheer electoral rhetoric; a growing number of the nation's top policy makers, politicians as well as technocrats, repeatedly emphasize the importance of local institutions in

national decision making; and some of the proposals have already been incorporated in attempts by provincial governments, particularly in NWFP and the Punjab, to strengthen systems of local decision making.

More specifically, in 1982, the Local Government Commission (the Fakhar Imam Commission, henceforward LGC) solicited the views of intellectuals, social activists, politicians, bureaucrats, local councilors, and local government functionaries; it found a remarkable consensus about the need for decentralization of authority in favour of local councils, the transfer of a number of functions to elected or participatory local bodies, the need for training and upgrading local personnel and functionaries, establishment of local police, enhancement of the powers of local conciliation courts, transfer of revenues or taxation powers, institution of systems of accountability, and improvement of prospects and autonomy of local personnel (GOP 1982: 1-15, *et passim*).

In the academic world as well, while decentralization and participation have always had their advocates, recent years have witnessed a surge in enthusiasm and a convergence of opinion from a number of quite different streams of literature. This includes the literature on macroeconomic management and governance (see Banuri 1990, Amadeo and Banuri 1991, Fishlow 1985, Killick 1983); on rural development (Chambers 1983, Khan 1985); on participatory democracy, rural democracy, democratic development, and *panchayati raj* (Mathur 1991, Zamora 1990, Berger 1976, Poggi 1978, Macpherson 1983); on the informal sector (de Soto 1990, Nadvi 1991, Tripp 1988, Schmitz 1988, 1990); on sustainable development (Agarwal and Narain 1990, WCED 1987, NCS 1991, Banuri and Apffel Marglin 1990); on new approaches to industrial development, particularly the lessons from Italy, Germany, and Japan, as in the model of flexible specialization (Piore and Sabel 1986, Schmitz 1988, 1990, Aoki 1989); on human resource development (Haq 1998, Gran 1983, Hirschman 1984); and the growing concerns over problems created by urban congestion.

Clearly, this enthusiasm is not restricted to Pakistan, since many of the references cited above are international. Internationally, three factors have influenced the growing respectability of decentralization, all of which reflect an awareness that the earlier trend towards centralization may have reached the limits of its possibilities. These factors pertain to the nature of management of the national economy and polity, to humans' relationship to nature and natural resources, and to the organization and management of production:

1. The most important factor, in our ideologically charged climate, is the collapse of the socialist pattern of national organization, the world's major experiment with centralized political and economic management (Kornai 1990).
2. The global environmental crisis, and the threat that it poses to human survival, has vindicated a number of searching critiques of centralized ways of managing the natural environment. Here, centralization refers to the nature of social organization as well as to its underlying system of knowledge (Banuri and Apffel Marglin 1989).
3. The model of industrialization based on a centralized system, namely mass production, came under severe stress during the recent global economic crisis. Regions or countries which had less centralized arrangements---such as the flexible specialization model in some regions of Europe---showed sustained dynamism and excellent economic performance during the crisis years (Piore and Sabel 1986, Schmitz 1988).¹

1 This refers to economies with relatively decentralized forms of production--Third Italy, Baden-Wurttemberg in Germany, Japan--or with relatively small size--Taiwan, Singapore, Scandinavia, Switzerland, Austria. See Piore and Sabel (1986) and Rowthorn and Glyn (1989).

In his classic work, *A Study of History*, Arnold Toynbee observed that the progress of empires could be summarized in two words, "rout and rally". In the first stage, as empires become progressively stronger, larger and larger regions fall into line, the lives of more and more people become inter-dependent, and the activities of these growing groups are coordinated by centralized authorities. But as the centralization gets close to perfection and completion, the rout begins, first at the periphery, gradually moving inward, until the centre itself is destroyed (Toynbee 1961). Perhaps we are witnessing the rout of the global empire.²

This paper is divided into four sections. Decentralization, section 3 takes up the experience of other countries with both centralized and decentralized arrangements. Section 4 then uses the conceptual and theoretical conclusions which emerge from this experience to provide policy suggestions for Pakistan.

The Arguments for Decentralization

Several arguments have emerged in recent years to support the idea of decentralization and participation. Before we proceed to list these, it may be useful to clarify a few terms. The term decentralization is often confusing, because it generally includes *bureaucratic decentralization*, i.e., a bureaucratic delegation of authority to local officials, and *political decentralization*, i.e., the reform of the political structures to transfer administrative, financial, and legislative functions, concurrently or exclusively, to locally elected officials or the local community acting collectively. In practice, even the latter form has often had elements of the former, as central governments have sought to maintain direct financial and administrative authority over elected local governments.

Participation or community development can be defined as an arrangement where members of a community are *directly* involved in the making of those collective decisions which affect their lives. Clearly, decentralization is not a sufficient condition for political participation. However, given that direct participation is not possible in large groups (Olson 1965), it must be accompanied by a significant degree of decentralization.

Theoretical Arguments

The theoretical arguments for decentralization begin with a critique of conventional wisdom which favored "hard" states and dictatorial forms of decision making in post-colonial societies. This is part of a broader perspective which views the distinct characteristic of "underdevelopment" not as lack of resources or technology, but rather as the inability to make and implement collective decisions; indeed, the successful economic performance of a number of East Asian countries has derived from their superior ability to implement collective policies and decisions (Amadeo and Banuri 1991, Alam 1989).

The preference for "hard" states is derived at least in part from Gunnar Myrdal's seminal work on development, in which he praised Japanese and Chinese societies because they had "hard" states which were willing and able to impose social discipline, and contrasted them with South Asian societies which had "soft" and ineffective states. Myrdal went on to suggest, in tones reminiscent of Kipling, that softness was a characteristic of underdevelopment which South Asians would have to overcome to modernize themselves. (See Myrdal 1968: ch. 18, sects. 13-14; ch. 19, sects. 3-4; app. 2, sect. 20.) This heuristic

2 The insight is not original to Toynbee. Six centuries earlier, the great historian, Ibn-e-Khaldun, had traced a similar cycle both in the rise and fall of dynasties (Ibn Khaldun 1967: 141-2, 250-9) and in the archetypal conflict between the tribe and the city (ibid: 285-6).

argument was also bolstered by what can only be called a misuse of Kenneth Arrow's celebrated "impossibility theorem". Arrow's theorem states that there is no democratic method of collective decision making (i.e. voting) which will aggregate individual preferences in a consistent manner (Arrow 1983). Dictatorship, whether legitimate or not, could produce consistent results, as could custom or convention, but not voting.

Today, there is a growing recognition of the importance and effectiveness of alternative ways of coordinating the actions of large groups. The arguments favoring decentralization and participation are critical of the state-centred view of the world; as well as the assumption from decision theory built into the analysis. Being an economist, Arrow naturally defined participation to mean voting on the basis of inviolate and unchanging individual preferences; hence his discomfort even with legitimate delegation of authority, and his failure to mention perhaps the most common tools of collective decision making: persuasion and consensus. Notwithstanding the impossibility theorem, well functioning societies manage to make collective decisions in a reasonably coherent fashion, many of them without exclusive resort to dictatorship. Admittedly, some societies rely extensively on vesting authority on quasi-dictatorial offices, but others combine voting, representation, legitimation and delegation of authority, custom and convention, coercion, and participation and consensus in a delicate blend. Another criticism comes from a well established result in decision theory: that small groups with face-to-face interaction are better at reaching collective decisions than large groups; indeed, large groups require the (voluntary or involuntary) surrender of authority to a smaller number of decision makers (Olson 1965).

The trick then is to find the right organizational form for a society, in which the decision making unit is small or decentralized enough to enable the formation of legitimate collective decisions, and large enough to permit the exploitation of scale economies and interdependencies. Since this will almost certainly differ from society to society, a blueprint approach is not possible. The Italian sociologist Antonio Gramsci may have had this in mind when he defined the state as the "area of optimal hegemonic compromise"; optimal in the sense of being small enough for the hegemonic consensus to circumscribe a significant fraction of social activity, and large enough to encompass as many of the interdependent groups as possible.

Empirical Arguments

In addition to these theoretical concerns, several empirical arguments have been used to support decentralization. Perhaps the most compelling argument is that the existing centralized state apparatus is so overburdened with detailed decisions that the implementation of fundamental government policies and actions has become weak and ineffective. Recognition of this point has led to calls for divestiture of the state's functions.

An alternative, and somewhat paradoxical, argument for decentralization and participation comes from the need to overcome extreme dualism and polarization in society. Many writers have noted the centrifugal consequences of what Benedict Anderson has termed "official nationalism", namely the aggressive drive of centralized governments to create a homogeneous nation (see Anderson 1983). Such "official nationalism" has generally been divisive rather than unifying. In post-colonial societies like Pakistan, "official nationalism" is a continuation of a colonial way of thinking and the consequence of colonial rule---particularly a social division between Anglophile and vernacular classes. Among other things, this divide has led to the disenfranchisement of a majority of the country's population; the establishment of a dualistic system of education---school versus *madrassa*, English medium versus Urdu medium; and the alienation of the educational system is designed to produce technicians rather than

citizens. In our view, this divide is a significant reason for the growing ethnic and ideological polarization in the country. Decentralization can often help in ameliorating the worst consequences of this divide. It can help in the reenfranchisement of local communities so that they can control immediate decisions, in influencing systems of cultural reproduction, and in contributing to the evolution of synthetic forms of understanding.

A third argument for decentralization comes from concerns about rural poverty. Despite a respectable growth rate of national income, the benefits of development have failed to reach the majority of the rural population. The experience of several earlier programmes of rural uplift suggests that rural democratization---i.e., the direct involvement of rural people in decisions affecting them and in the provision and monitoring of the services they need---is an integral, and perhaps a prior, component of rural uplift (Chambers 1983, Khan 1985). This, however, is not possible unless the rural people can organize themselves through appropriate social institutions. If the people are not organized, they are simply a bunch of individuals, without voice or will. In order for the people to be empowered, the people have to undergo a process of collective organization. The success of experiments like AKRSP in the Northern Areas suggests that such institutions can be promoted through policy support.

A fourth argument for decentralization comes from an issue which has emerged in developmental discussions under various titles: basic needs, quality of life, and lately "human resource development". Traditionally, the broader objective of HRD was divided into number of quantitative targets---literacy rates, infant mortality rates, life expectancy, employment, status of women, income distribution, school enrollments, hospital beds, primary health care facilities, piped water supply, sanitation facilities, targeted uplift programmes, and so forth. These targets, however, have often obscured the all important qualitative dimensions of the issue. While the need to remedy this failing without sacrificing the momentum in meeting quantitative targets is widely recognised, the pursuit of qualitative targets through existing centralized arrangements has proven to be quite impractical. (See Haq 1988, Hirschman 1984, Gran 1983.)

Related to the issue of human resource development is the problem of urban growth and urban congestion. The rapid growth of urban populations in Third World countries, because of high national population growth as well as rural-urban migration, has created mega-cities. Rural-urban migration has resulted, in part, from the centralization of powers, prestige, wealth, opportunity, and facilities in urban areas, thus dragging people out of the villages to the cities. It has strained administrative capacity to the limit and led to a decline in civic services and the quality of life. The cycle does not end there: the inability to manage the growing problems is also the result of the extreme centralization of public administration. Thus, the argument is that decentralization will both reduce the flow of people from villages to cities and improve urban management.

The centralization of powers impairs the management of local problems in more than one way. Not only does it deprive local areas of badly needed talent, it also produces an in-built bias against local problems. If any programme requires the coordination of the actions of more than one agency, as many local programmes must, it will be difficult to implement it through centralized arrangements. At the national level, effective coordination between powerful and independent ministries can be achieved only through high-level intervention. Since this may not be possible for every single local problem, given that national public officials may have different priorities, many local issues will suffer from neglect or discrimination. This is particularly true of such recent initiatives as human resource development or environmental conservation.

Somewhat surprisingly, an argument for decentralization has also emerged in discussions of industrial policy. In the Third World, scholarly and policy attention has focussed on the potential combination of small scale enterprises, new organizational forms (flexible specialization), and new information and computer technologies, with informal sector entrepreneurship. (See e.g., Piore and Sabel 1986, Schmitz 1988, 1989, Aoki 1989.) The dynamism of this model is underwritten by the existence of vibrant local communities with direct personal commitment to each other. The mass-production model of work organization, which was exported from Western countries (particularly the US) to post-colonial countries, is believed by these writers to have been superseded by new organizational models emanating from former periphery countries: Italy, Japan, Taiwan. The new "flexible specialization" model combines worker participation, long-term job commitment, possibilities of self-employment, and improved responsiveness to changes in demand and supply conditions. This also echoes the demands made for worker participation in industrialized countries.

Finally, considerations of resource management have also led some thinkers to advocate decentralization. A major constraint on governmental action in most Third World countries is the inability to raise resources. Taxation is difficult because of tax evasion, corruption, and poor administration. More importantly, taxation lacks social legitimacy, since it is not linked in people's minds to the provision of social services. Possible solutions are built around various forms of decentralization. One possibility is to create direct linkages between revenues and services, such as the channeling of gasoline tax directly into highway construction. Decentralization of taxation powers to provinces and localities is another solution. There may be no rationale for income tax collection to be the sole privilege of the federal government. Other examples may be given.

All these are, as it were, managerial concerns. The broader case for decentralization and participation, however, comes from a different tradition and is couched in different language, namely one of democratization, empowerment, and human rights. What the "managerial" arguments have accomplished is to provide the democratic arguments with hard-nosed respectability.

"Democratic" arguments for decentralization and participation are several. First, only through direct participation can society create independent and free "citizens" who are committed to the pursuit of the collective weal. Moreover, it is the surest guarantee of order and tranquility. It is also the preferred means for a society to determine and define the rights and duties of citizenship. In addition, public action provides a vent for the passions, feelings, and ambitions of countless people, which might otherwise remain forever thwarted. And finally, direct participation is a ritual observance which continuously renews the spirit of patriotism.

Arguments Against Democratic Decentralization

This review should not, however, lead us into thinking that democratic decentralization is universally accepted as a panacea. "But although the existence of townships is coeval with that of man", says de Tocqueville, "its freedom is an infrequent and fragile thing" (de Tocqueville 1835: 62). Not only are there several counter-arguments, there are a number of obstacles to be kept in view while planning a decentralization programme. The most important of these is a practical one: the question is not how to run participatory democracy but how to achieve it. To use Macpherson's words, "This becomes the question: What roadblocks have to be removed, i.e., what changes in our present society and the now

prevailing ideology are prerequisite or co-requisite conditions for reaching a participatory democracy?" (Macpherson 1983: 579) Numerous examples exist of well-functioning decentralized, democratic, and participatory communities in various parts of the world; there are equally numerous examples of failure in *introducing* such arrangements elsewhere. As the simple minded villager put it when told that *pul-e-siraat* (the bridge to paradise) was sharper than a sword, finer than a hair, and softer than water, "Ah! I see. Paradise exists, but there is no path to it!"

Several obstacles have been noted in the literature, some more valid than others. Let us start with participation, where the problems are quite straightforward: First, countries are too large today, and there is no way in which the entire population can be involved in decision making directly. The implication is that any realistic proposal for institutional reform must be based on, say, a cascading structure with several levels of government, in which there is direct participatory democracy at the base and representative democracy at the higher levels. This, however, will not only have to be worked out in detail, but also be implemented with a certain degree of goodwill. The problem is that no matter how elaborately defined in a constitution, there is no guarantee of effective democratic participation. C. B. Macpherson rightly warns us that the Soviet Union's democratic centralism was precisely such a scheme which did not work (Macpherson 1983: 584).

There is also the special problem of the cities, where the scope for collective public action is seen to be the most limited. Ibn Khaldun raised this point over 600 years ago when he said that there is an absence of group feeling (*asabiyyah*) in cities (Ibn Khaldun 292-4). However, while the general statement about the lack of group feeling is undoubtedly true, at least in a comparative sense, the inference that only centralized action is possible in cities does not necessarily follow; indeed, there is sufficient evidence of collective action even in Pakistani cities in the work of urban NGOs, such as OPP, Shehri, Baldia, and others in Karachi, "Khuda ki Basti" in Hyderabad, and a number of others in the rest of the country.

The existence of strong divisions along class or ethnic lines within local communities is also believed to militate against the possibility of participatory democracy. Political polarization means that the lines of responsibility between upper and lower elected levels will be compromised. As we shall argue later, one method of addressing this issue is the strengthening of the judicial system. But this too will have problems.

Fourth, there is the problem of apathy. If the people at the base are apathetic, as has often been argued, the participatory system will not work. This apathy is said to be highest in urban areas. However, whether such apathy is the consequence of the absence of local institutions or the result of an intractable psychological or cultural make-up is an empirical question. In Pakistan, for example, it seems to be the former: the degree of participation in elections and other mass demonstrations of political intent has always been quite high; moreover, as indicated by the experiments in urban as well as rural areas--the Northern Areas and in Orangi Township respectively---the potential for involving people in day to day management of community activities can be tapped effectively.

Yet another argument against decentralization is that societies have become so interdependent that the scope for truly autonomous local action has become severely limited if not non-existent. Most officials see coordination to mean only coordination through administrative authority. This is partly because the bureaucracy has experience only in administrative coordination, but also because alternative systems of management and coordination require alternative sets of institutions, which too are very weak. This raises fears that decentralization will only lead to inefficiency, incompetence, corruption, and wastage of resources.

It is often said, for example, that people in rural areas in particular, and in all but the most elite local communities in general, are illiterate and ignorant, and therefore not capable of assuming collective societal responsibilities. The inference is that they need centralized management by enlightened experts for their own good. While there is a clear strain of "colonial" thinking in this argument---the natives are not ready for self-rule---it is not to be dismissed lightly. For one, it is a fact that compared to the nation as a whole, a village or a small town will possess far fewer people whose talents and aptitude will equip them for the effective management of societal affairs. The township, to quote that champion of local democracy, Alexis de Tocqueville, again, "is composed of coarser materials, which are less easily fashioned by the legislator....[The result is that] the difficulty of establishing its independence rather augments than diminishes with the increasing intelligence of the people. A highly civilized community can hardly tolerate a local independence, is disgusted at its numerous blunders, and is apt to despair of success before the experiment is completed" (de Tocqueville 1835: 62).

A related argument is that some form of centralization is necessary to safeguard the rights of the individuals and smaller groups against local communities. In other words, to prevent local oppression, the nation-state should be given powers to oversee the functioning of local agencies.

It is also claimed that the problems being faced by the nation state today are too urgent, too complex, and too important to be left to amateurs, or to allow us the liberty of experimenting with alternative forms of societal management. It is true that the objectives of poverty eradication, economic development, and structural transformation are quite complex. However, only a handful of the protagonists of decentralization argue that absolutely everything should be transferred into the hands of small local communities. Even these groups do not envisage an immediate transfer of responsibilities to these communities. Moreover, the four decades of limited success of conventional development policies suggest that the foregone opportunities in shifting to a decentralized strategy are not very significant.

It is also argued that a decentralized system will be inefficient, corrupt, and wasteful. Such fears were expressed, for example, in the opinion surveys conducted by the LGC, even by local councilors (see GOP 1982). Presumably the argument is not that the existing centralized system is the paragon of efficiency or honesty. It is rather that while we know how to control inefficiency and corruption, however ineffectively, through administrative means, we do not have similar experience with these problems when they arise in autonomous organizations. In particular, it is very important to keep in mind de Tocqueville's observation that the transfer of powers to elected bodies must go hand in hand with making the elected officials subject to judicial review. Second, it is important to ensure that elected officials are continuously subject to the electors' supervision. This brings us back to the argument that direct political participation is an essential prerequisite or co-requisite of decentralization.

Finally, there are political concerns as well. It is argued that existing powerful groups such as politicians and bureaucrats will not willingly cede power to local functionaries or will not tolerate the emergence of alternate centres of power. It is necessary that this argument be kept in view.

What these counter-arguments suggest is that proposals for institutional reform in the direction of decentralisation and participation will have to tread carefully between the dangers of ineffectiveness and in-feasibility. None of the counter-arguments is unanswerable, but the answer will be in the doing, as it were. The following analysis will try to bring out those practical features of historical experience which have been helpful in sustaining decentralized and participatory structures in various places.

Another implication of the above discussion is that the arguments for and against decentralization and participation have acquired a managerial and pragmatic character. Whereas earlier the argument was between those who advocated efficient and professional management and those who believed in empowerment and enfranchisement, today the argument is also between people who think that decentralized management is (or can be) more effective, more efficient, and more just than centralized management. This changes the issue from an ideological to an empirical one: Are there examples of effective decentralized management? What are their prerequisites? What are the obstacles? This can best be discussed by looking at historical evidence on the functioning of centralized and decentralized systems.

Historical Experience

The following is a brief description of systems of governance in various countries, including Pakistan, India, the United States, Britain, and Japan. This is intended to be a selective rather than exhaustive description, which will concentrate primarily on the issue of centralization versus decentralization and refer to other aspects of governance only when necessary. In order to keep the analysis manageable we have relied only on limited number of sources. Three relevant themes emerge.

First, there are a number of models of national governance. Following Poggi (1978), the following three categories can be suggested: a) feudal, i.e. a system of decentralized rule ordered by personal authority and personal linkages, as in medieval Europe and medieval Japan; b) the "standestaat" system of autonomous estates (or townships) operating within a larger political grouping, such as an empire or a republic, as in the nineteenth century (and possibly even contemporary) United States, and until recently in Europe; and c) absolutist, i.e., one in which a central authority rules through an elaborate bureaucracy, as in modern Europe and post-Mughal India. Pre-colonial India and modern Japan seem to lie somewhere between the absolutist and standestaat models; in other words, they manifest a combination of local autonomy and centralized rule.

Three points need to be noted here. All successful models of governance must involve the delegation of authority to local functionaries; the only question is whether such delegation is governed by bureaucratic rules of enforcing compliance, or by a functioning system of local political autonomy. It is not necessary that a country follows only one principle; there is great scope for pluralism in societal arrangements. However, all models of decentralization invite the kinds of criticism enumerated above: the fear of anarchy, the necessity of coordinating the actions of various local agencies, enforcing compliance with rules and laws, ensuring responsibility and accountability, protecting the rights of individuals and smaller groups, and the need to establish mechanisms for dealing with official negligence, waste, corruption, and misuse of powers.

This set of issues is the subject of the second general theme which emerges from the historical experience described below. This is a subtle point raised by Alexis de Tocqueville, who wrote in his description of the American system of government in the nineteenth century that "the extension of judicial power in the political world ought to be in the exact ratio of the extension of elective power; if these institutions do not go hand in hand, the state must fall into anarchy or servitude" (de Tocqueville 1835: 77). The argument proceeds as follows: societies in general have come up with two methods for ensuring the proper execution of delegated functions: either through discretionary *administrative* power placed in the hands of political or bureaucratic officials to direct others and to punish or remove them in case of disobedience; or

through *judicial* powers in the hands of the courts of justice to inflict legal penalties on offenders (de Tocqueville 1835: 76).

But these two methods are not always available. In particular, elected personnel cannot be cashiered or promoted by administrative authority without violating the rights of the elector. De Tocqueville's analysis here is worthy of being cited without commentary:

The communities in which secondary officials of the government are elected are inevitably obliged to make great use of judicial penalties as a means of administration....This is not evident at first sight; for those in power are apt to look upon the institution of elective officials as one concession and the subjection of elected [officials] to the judges of the land as another. They are equally averse to both these innovations; and as they are more pressingly solicited to grant the former than the latter, they accede to the election of the [official] and leave him independent of the judicial power. Nevertheless, the second of these measures is the only thing that can possibly counterbalance the first; and it will be found that an elective authority that is not subject to judicial control will sooner or later either elude all control or be destroyed.... (de Tocqueville 1835: 76-7).

The third point is that of historical continuity. All successful models were based on continuity with the past. In Japan, which has historically made the most concerted effort to learn from others---first from China and then from the West---all political and social innovations have a degree of continuity with historical practices and beliefs. In this respect, the major exception is provided by colonial societies, where the perhaps unconscious acceptance of theories of racial and cultural superiority of the colonial rulers has produced a clear and unbridgeable divide between the past and the future in the minds even of post-independence populations and thinkers. This has created serious obstacles in the pursuit of governance.

Pakistan

The pre-independence history of local institutions in the region which is now Pakistan is very ancient and elaborate. The earliest historic sources show the Indian village to be a self-sufficient and autonomous miniature republic. In the pre-Mughal as well as the Mughal period, there are records of village administration by an unofficial council of elders, and a number of village functionaries, headed by a headman, assisted by an accountant and a clerk, and including a watchman, a veterinary doctor, couriers, sanitation workers, and a horse-trainer. The officials were given land free of rent and taxes, but were not allowed to alienate it. The main responsibilities of the village council were village defense, settlement of disputes, collection of taxes for the government, organization of works for public utility, managing common village property, and acting as a trustee for minors. (See GOP 1982: 24; Zamora 1990:13-7, and the various references therein.)

On the judicial function, while in many periods justice was administered by royal officials with the help of the village council (or assembly), often the assembly sat alone in judgement. While there may have been exceptional incidents, the general rule was that the functionaries of the imperial state---*qazis*, *mohtasibs*, *kotwals*---always supported the decisions of the village council.

At the advent of British rule, in the 18th and early 19th centuries, we still find this autonomy. The *Imperial Gazetteer of India* gives the following description of a "typical" Indian village:

The inhabitants of [a typical Indian village] pass their life in the midst of these simple surroundings, welded together in a little community with its own organization and government, which differ in character in the various types of villages, its body of detailed customary rules, and its little staff of functionaries, artisans, and traders (VLO. vi., p. 279, as cited in Zamora 1990: 18).

While the actual number and description of village functionaries, artisans, and traders differed from region to region, and indeed from village to village, a general idea can be obtained from the following list of functionaries in a Madras village from the report of a Select Committee of the House of Commons, issued in 1812:

1. The headman---who supervises village affairs, settles disputes, supervises the police and collects revenues within his village.
2. The accountant---who keeps accounts of cultivation and registers everything connected with it.
3. The watchmen---of two kinds: the superior and the inferior. Superior watchmen gather information about crimes and offenses and escort and protect persons who go to other villages. Inferior watchmen guard crops and assist in measuring them within the village.
4. The boundary-man---who preserves village limits or gives evidence respecting them in cases of conflict.
5. The superintendent of tanks and water--courses---who distributes water for agriculture.
6. The priest---who performs village worship.
7. The schoolmaster---who teaches children to read and write in the sand.
8. The astrologer---who proclaims lucky or unpropitious periods for sowing and threshing.
9. The smith and carpenter---who manufactures agricultural implements and builds dwellings of *ryot*.
- 10-16. The potter, washerman, barber, cowkeeper, doctor, dancing-girl, musician-poet (cited in Zamora 1990: 18-9).

During the British colonial period a number of changes were introduced in this system. First, under the centralized colonial administration, the traditional village headman and accountant became paid government servants. The land revenue collection which was till then vested in village councils was allowed to lapse in favour of direct dealing with tenants. The local leaders were thenceforth recognized only as individuals---either as low-paid government servants or as parasites of the state---and not as representatives of the integrity of the local community (ibid.: 20).

Second, the colonial system of judicial administration refused to enforce the local *panchayat* courts' decisions. Even though the newly established regular courts took local customs and practices into account in rendering their decisions, these usages became, as it were, museumified and rigid. Once written in the "Village Red Book", the customary usages regulating the conduct and rights of the members of the community became static and often oppressive, whereas earlier they were constantly though unconsciously modified to suit changing conditions (ibid.: 21).

The earliest reforms were introduced during Viceroy Ripon's administration in 1882. These were based on four principles:

1. a recognition of political education as the primary aim of local governments;
2. the establishment of rural local government institutions in the shape of district boards;
3. non-official chairmanship of municipal and district boards; and
4. a minimum of two-thirds representation of non-official interests (GOP 1982: 25).

Over the next sixty-five years of British rule, a variety of local bodies were established or reformed---municipal corporations, municipal committees, notified area committees, cantonment boards, district boards, *taluka* boards, and finally, in the 1920s, village *panchayats* (ibid). Yet, report after report recognized the failure in introducing local autonomy. For example, the Royal Commission on Decentralization (1907), one of the many unsuccessful attempts by the British government to reform local government,³ admitted that Indian villages "formerly possessed a large degree of autonomy":

This autonomy has now disappeared, owing to the establishment of local civil and criminal courts, the present revenue and police organization, the increase of communication, the growth of individualism, and the operation of the individual raiyatwari system... Nevertheless, the village functionaries--the headman, the accountant and the village watchman--are largely utilized and paid for by government, and there is a still a certain amount of common village feeling and interests (Government of India, 1909: 236).

The Report went on to recommend what can be called an administrative form of decentralization, namely one in which the *panchayat* would be under the administrative control of the district authorities, headed by the (appointed) village headman, and comprised of an elected or appointed council. It could then undertake such local functions as adjudication of petty cases, village sanitation and minor civil works, construction and maintenance of school buildings and some local control of school management, management of small fuel and fodder reserves, and management of the village cattle pond and local markets. In the spirit of its recommendation, the report suggested that the revenue of the *panchayat* should come mainly from grants by district authorities, or from assignment of a portion of land cess; two purely local, though minor, revenue sources were receipts from cattle ponds or markets and fees on civil suits filed before the *panchayat* (ibid: 241-2). Some of these recommendations were implemented through the Village Panchayat Act 1920, but the consensus appears to be that this initiative did not succeed in producing the desired results.

Post-independence governments in Pakistan also supported the idea of local autonomy; they abolished nominated membership of boards and committees and established councils for villages with 2,000 to 10,000 people. Yet local authorities were continually bypassed in development work, and many local councils were disbanded, their functions transferred to bureaucratic administrators.

An important initiative undertaken during the Ayub regime was the introduction of the Basic Democracies (BD) system, namely a hierarchy of councils with direct elections to the lowest tier of union councils and committees, and indirect elections from each tier to the next higher council. The national parliament and the President were also to be elected by the local councilors, the Basic Democrats. However, only the lowest tier of union councils, union committees, and town committees had elected chairpersons. Higher levels were presided over by bureaucrats.

From 1961, the local institutions were integrated into development administration at the local level. This transferred a significant degree of power to the local institutions. However, the BD system was tainted from the beginning because of its association in the popular mind with Ayub Khan's desire to manipulate the electoral process in his favour. This probably explains the subsequent unpopularity of a programme with a number of strong points.

3 For the many other attempts to revive local government by the British administrators in India, see Matthai (1915: 162-198).

An important initiative during this period was the establishment of the Pakistan Academy for Rural Development in Comilla, East Pakistan (now Bangladesh), under the leadership of a pioneer of rural development, Akhtar Hameed Khan. This experiment, which can justifiably be said to have spawned a majority of the numerous NGO initiatives in community development in Pakistan and Bangladesh--AKRSP, OPP, BRAC Grameen Bank, to name only the most prominent--was built around the idea of organizing local communities to assume collective responsibilities and to undertake development projects of a productive nature. This was done by providing help to the communities on productive projects of their choice. These experiments have been extensively studied, both within the country and abroad. (For the basic philosophy, see Khan 1985.)

During the parliamentary period, 1971-77, support for local government was introduced directly into the constitution. Article 32 of the 1973 Constitution enjoins that the state "shall encourage local government institutions, composed of elected representatives of the area concerned, and in such institutions special representation will be given to peasants, workers, and women." This was also a period when new local government legislation was introduced by provincial governments, a programme for integrated rural development (IRDP) was launched to incorporate the best features of the Comilla experience, and a Peoples' Works Programme was initiated to transfer funds to local areas. Although the developmental support to local areas increased, their political development suffered a setback: this was also the time when many local elections and councils were suspended frequently, and a return was made to the practice of appointive rather than elected offices.

In the martial law period, Local Government Ordinances were enacted by the four provinces, Federal Capital territory, Tribal Areas, Northern Areas, and the State of Azad Jammu and Kashmir, on broadly similar lines. Urban, district, and union councils were elected that year throughout the country and were permitted to elect their own mayors and chairpersons.

Despite all these changes, the basic pattern of local councils in Pakistan is fairly unchanged. Rural areas have a two tier structure of district and union councils. Urban areas are administered by a metropolitan corporation in the case of Karachi, and elsewhere by a municipal corporation, a municipal committee, or a town committee according to the size and status of the habitat. Exceptions to the pattern are the cantonment boards, accountable to Defence Ministry, and the Federal Capital Territory. However, the local institutions are still far from autonomous or effective. They depend upon the provincial governments for the bulk of their finances, they are subject to supervision by provincial departments of local government, and their powers of making and implementing laws are virtually non-existent.

The judicial system has not been directly involved in coordinating or other functions pertaining to local governments. The review and supervision of the actions of local officials are subject to provincial administrative authority. This is partly because of the overburdened nature of the judicial system in the country, and partly because the judicial and executive powers at the local level are not clearly distinct.

India

After independence, the Indian government maintained an explicit commitment to the establishment of "*panchayat raj*". A provision was included in the Indian Constitution that the "State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to

enable them to function as units of self-government". While pre-independence reforms had focused on the system of local administration, the post-independence discussions were increasingly couched in the language of economic planning and grassroots development.

The *panchayat* institutions in all states of India are corporate or statutory bodies established under a special act. The membership of the bodies is, generally speaking, restricted to popularly elected peoples' representatives, the method of election differing from one body to another and one state to another. Generally speaking, village *panchayats* act as executive agencies for higher tiers of government. Some states (Rajasthan, Punjab, Andhra Pradesh) concentrate more powers, functions, and resources at the block level, while others (e.g., Maharashtra, Gujarat, Tamil Nadu) use the district level as the main body in a three tier structure.

Besides these structural differences, there are many similarities. All *panchayats* receive (from state and central governments, higher bodies, and autonomous organizations) "tied" financial assistance--grants, grants-in-aid, loans, and subsidies--for specific schemes and projects; the overall and the particular norms and standards are prescribed in minute detail. These schemes are executed through technical personnel, who are generally employed by the state and deputed to various local institutions for specific periods; technical supervision over the deputed officials is maintained by their parent departments.

As soon as a *panchayat* decides to undertake a scheme (out of a list transferred to it) it must first ensure its technical feasibility through technical officials. The councilors can suggest only alternative sites or specific factors which may affect technical feasibility. Once the scheme is approved, they have to select the location and spread or coverage of the scheme. Then the technical officials take over the scheme to execute it according to government standards, procedures, and instructions. Besides the general supervision of the local councilors, the schemes are subject to supervision by a state-level department which supervises the *panchayati* institutions themselves.

In other words, local institutions are executing agencies for state governments. The autonomy of these institutions is restricted and compromised by the need to: adhere to governmental administrative procedures; adhere to the economic policies and priorities of higher tiers of government; rely on tied financial assistance; depend upon deputed technical staff; and adhere to technical and administrative instructions and orders of a government department or inspection agency.

Financial dependence on the central and state governments is partly voluntary, since *panchayats* have been reluctant to raise their own resources through the unpopular measure of taxation (Mathur 1991: 66). Autonomy is also compromised by the fact that participatory institutions, such as the *Gram Sabha*, never really took off. Lastly, *panchayat* leaders are seen mainly as clever manipulators of local factions and not as true leaders of their communities. Yet these leaders have acquired status and esteem in their own communities and in the nation as a whole, in part because of their enhanced ability to dole out patronage (ibid.: 67-8).

United States

In the United States, the nature of local governments and their relationships with state and federal governments are extremely varied. Following James Q. Wilson, however, a broad generalization can be made between "Jacksonian" and "Progressive" models, where the former refers to a radical decentralization in favour of local levels of authority; and within this level, to the diffusion of power

among a host of elected representatives, and ultimately to the general assembly of the entire community. The progressive model, by contrast, refers to a professional local government in which the chief executive or an appointed city manager has considerable authority, administrative appointments are based on merit rather than elections or patronage, and elections are often nonpartisan in nature (Wilson 1988: 619-22).

In 1982, the local government system in the United States included 3,044 county governments, 18,517 municipal governments, 16,991 townships, 15,781 school districts, and 23,885 special districts (Wilson: 1988: 626). Although initially the system granted maximum autonomy to local governments, this autonomy has eroded over the years. Today, many writers have looked to this creeping centralization as the reason for many social and political problems (e.g., Berger and Neuhaus, 1984).

Although the tenth amendment to the constitution grants only residual powers to the federal government, in practice the Supreme Court has almost invariably refused to restrict the exercise of federal powers just because they intrude upon the rights of the states. (See Wilson 1988: 622.) Thus, state and local governments are obliged to comply with all laws passed by the federal government. Even in these cases, however, the lower governments can choose how to implement federal policy. In general also, local authorities are free to enforce stricter laws than the federal government.

Although local authorities have fewer exclusive powers than they once had, they still have many powers that, although shared with the federal government, remain within their jurisdiction. In general the states can do anything that is not prohibited by the Constitution or preempted by federal policy. As a practical matter the most important activities of state and local governments involve public education, law enforcement and criminal justice, health and hospitals, roads and highways, public welfare, and control over the use of land.

While the existence of states is guaranteed by the constitution, cities, towns, and counties enjoy no such protection. In most places, they exist at the pleasure of state governments. Cities are created by charters from the state government.⁴ Most charters are restrictive, in the sense that they allow the city to undertake only those activities specifically granted to it. In many cities, however, especially the larger ones, there are "home rule charters", which allow the government to do anything not expressly prohibited by the charter or by state law.

In addition to states and cities, other levels of local government are counties, towns, and special districts. Counties are generally administrative units, but most have an elected board of supervisors or commissioners; some even have a county executive who functions like a mayor. Special districts are local institutions created for a specific purpose, such as the management of public schools, ports, sewage treatment, or water supply. Where the progressive tradition is strong, these districts rely on professional managers for running the organization; where the Jacksonian tradition is dominant, the emphasis is on elected councilors becoming deeply involved in the management process.

For our purposes, the most interesting institution is that of towns and townships. Independent town governments exist almost exclusively in New England and New York, and have done so since the colonial period, when they were villages (some are still called that). This history is significant; it means that the towns did not receive their powers from the central authority, but on the contrary, they relinquished a portion of their independence to the state.

4 These are of two types: special charters (for a particular city), or general charters applying to a particular class of cities (say, one for cities over 100,000 population, and another for 50,000 to 99,999).

Governmental business in townships is conducted by an annual gathering of all citizens eligible to vote; these citizens pass on proposals and choose officials to discharge public functions and to handle matters between town meetings.⁵ Every inhabitant is required, on pain of being fined, to undertake these different functions, which, however, are almost all paid, in order that the poorer citizens may give time to them without loss. In general, each official position has its wage, and the officers are remunerated in proportion to what they have done. "For in the United States it is believed, and with truth, that patriotism is a kind of devotion which is strengthened by ritual observance" (ibid: 70)

De Tocqueville lists nineteen principal offices in a township: assessors to rate the township; collectors to receive the tax; a constable to keep the peace, to watch the streets, and to execute the laws; a town clerk to record the town votes, orders, and grants; a treasurer to keep the funds; an overseer of the poor to carry out the poor laws; committee men to attend to the schools and public instruction; and surveyors of the highways, to take care of the greater and lesser roads of the townships (de Tocqueville 1835: 66). In addition, there were minor functionaries: a parish committee, to audit the expenses of public worship; fire wardens, to direct the affairs of the citizens in the case of fire; tithing men; hog-reeves; fence viewers; timber measurers; and sealers of weights and measures (ibid).

Thus, the practice seems to be to involve the citizen as much as possible in running the commonwealth. There are several advantages of this system, the most significant one being the strengthening of the spirit of citizenship and civic responsibility. We have to return to de Tocqueville to get a flavour of the argument:

He [the native of New England] takes a part in every occurrence in the place; he practices the art of government in the small sphere within his reach; he accustoms himself to those forms without which liberty can only be advanced by revolutions; he imbibes their spirit; he acquires a taste for order, comprehends the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights (ibid.: 71).

This could not have been accomplished without free and independent towns. "The New Englander is attached to his township not so much because he was born in it, but because it is a free and strong community, of which he is a member, and which deserves the care spent in managing it... Without power and independence, a town may contain good subjects, but it can have no active citizens" (ibid: 68).

This has implications for social reform and social progress as well as for the accommodation of individual desires--and presumably for rural to urban migration also. To quote de Tocqueville, once again: "The township, at the centre of ordinary relations of life, serves as a field for the desire of public esteem, the want of exciting interest, and the taste for authority and popularity; and the passions that commonly embroil society change their character when they find a vent so near the domestic hearth and the family circle" (ibid: 69-70).

The New England township has often been cited as a classic example of participatory democracy at work. This example is useful, among other things, because it can tell us what safeguards are necessary to cope with some of the obstacles and difficulties mentioned in Section 2. The two most significant ones are the need for coordination and the importance of accountability and responsibility.

5 Some towns tried to retain the tradition even when they became cities by having representative town meetings.

Since all the officers are elected from the local area, it becomes difficult to establish the rules of a hierarchy or authorities. The officers cannot be punished, rewarded, or cashiered except by the electorate. Clearly, this can lead to a lack of coordination between different functions, inadequate discharge of responsibility, or misuse of authority for personal gain. There are a variety of mechanisms to forestall these possibilities, the most important one being that of judicial review. According to de Tocqueville, this is absolutely essential for the functioning of democracy:

The courts of justice are the only possible medium between the central power and the administrative bodies; they alone can compel the elected functionary to obey, without violating the rights of the elector. The extension of judicial power in the political world ought to be in the exact ratio as the extension of elective power; if these institutions do not go hand in hand, the state must fall into anarchy or into servitude (de Tocqueville 1835: 76-7).

However, since the township was too small to contain a system of judicial institutions, the county became the first center of judicial action. While county officials have administrative functions as well, these are only in relation to county business; but when administration of the township is brought before a county court, it acts as a judicial body and only in some cases as an administrative body. In many ways the New England county is similar to the Pakistani district. Counterparts of the important county institutions--court of justice, a sheriff to execute its decrees, a prison for criminals, and county commissioners for limited and exceptional authority in certain predetermined cases--exist at the district level in Pakistan. Also, both are administrative rather than political units. In Massachusetts, there is no assembly that directly or indirectly represents the county; in other words, the county has, properly speaking, no political existence.

The township, taken as a whole, and in relation to the central government, is only an individual. The towns of New England buy and sell, sue and are sued, augment or diminish their budgets, and no administrative authority ever thinks of offering any opposition.

The judicial system in the US is divided between state courts and federal courts. The bulk of litigation comes before the former. In the states, trial courts presided over by single judges are competent to hear both civil and criminal cases. All states have supreme courts of appeal, and over half have intermediate appeals courts as well. Similarly, there are 91 federal district courts, from whom appeals can go to 12 circuit courts, and from there in many cases to the US Supreme Court. The latter can in limited cases also review decisions of the state courts (Farnsworth 1988: 33-40).

There is no career judiciary in US. Judges are drawn mostly from the bar and, less frequently, from government service. In a few state courts and in the federal courts, the judges are appointed for life. Other state court judges are generally appointed for a term, typically four, six, or eight years. Whether appointed for a term or for life, a judge is removable only for gross misconduct and only through formal proceedings. Federal judges are appointed by the president subject to approval by the Congress, while state court judges are most commonly appointed through elections. The independence of the judiciary is also enhanced by the fact that a judge incurs no civil liability for judicial acts, even if guilty of fraud and corruption (ibid.: 26-28).

Britain

The British experience is useful to the extent that it reveals the obstacles to local government reform. Great Britain has historically had a fairly centralized system of administration. However, this is not because of the absence of local institutions. In 1982, there were, in addition to the Great London Council (which was later disbanded by the Thatcher government), 6 metropolitan councils, 47 other county councils, 369 district councils, 32 London borough councils, and the City of London. Local councils are still responsible for a quarter of all public spending, but their powers to govern are strictly limited, caught up in a confused relationship with the central government (See Sampson 1982: 199.)

British local government institutions, such as county courts, used to be fairly powerful in the Middle Ages and up to the nineteenth century, but began to lose power to the central government with the institution of a period of social reform, beginning with the Poor Law Act of 1834 and the Public Health Act of 1848. Other contributing causes were colonialism, which drew the best talents away from local areas; increasing government grants to local bodies which gradually concentrated powers in the hands of the central government; nationalization, which came later and expanded the mandate of the central government; and the desire of both the leading political parties to control local governments in order to pursue their political agenda, be it social justice or efficiency and competitiveness. More importantly throughout much of this century, political leaders on both sides assumed that bigger units would be more efficient. The result is that all attempts at reforms, however well meaning, led to greater and greater centralization.

Today, local governments have no powers independent of the central government; they can only implement policies decided at the national level. If local councilors step outside their area they can be taken to court--and can be made to pay personally for unauthorized spending. Yet they are responsible for many functions including civil works (e.g., all housing construction is done by local authorities) and much more importantly, law and order. The 47 chief constables of police (with the exception of the London police) are, at least theoretically, responsible to the local police authority made up of councilors and magistrates.

Major problems in the many attempts to reform local government have been centralization within local governments themselves, namely shifts towards bigger and less participatory units and the fact that a growing share of local finances now comes from the central government. By 1982, 65 per cent of local budgets came as grants from central sources. The result is that control over local government has become important for macroeconomic management: budget tightening is impossible as long as local governments do not cooperate.

Japan

The following description of the Japanese political system is entirely from Reischauer (1988). As mentioned earlier, we shall look only at those aspects of the system that are relevant to local self-government.

For purposes of local government, Japan is divided into prefectures, which are subdivided into cities, towns and villages, the largest cities being further subdivided into wards. Villages have fewer than 30,000 inhabitants, towns fewer than 50,000, and cities more than 50,000. All villages are made up of a large number of small natural population clusters called *buraku* or hamlets. In 1988, there were 47 prefectures in the country, including one metropolis (Tokyo), one circuit prefecture (Hokkaido), two municipal prefectures (Osaka and Kyoto), and 43 regular ones.

Even before the second world war, prefectures, cities, city wards, towns, and villages all had elected assemblies, and the mayors of cities, towns, and villages were elected officials. But the central government appointed prefectural governors, controlled the police, and exercised close supervision over all local government. After the war, however, the system of local self-government was strengthened, partly under American pressure: governors as well as mayors were to be appointed through elections, the powers of elected assemblies were considerably expanded, including the control over police and the educational system, the latter through elected educational boards. The experiment of transferring the two latter functions, however, had to be abandoned: "Municipally divided police forces proved impractical in so compact a land, and therefore,... powers of coordination were restored to the central Police Agency" (Reischauer 1988: 256). Likewise, the educational boards were made appointive instead of elective and partly reverted to the authority of the Ministry of Education (ibid.).

A serious flaw in the system of devolution of powers to local authority was the failure to provide them with an adequate tax base. Up to 70 per cent of the local budget comes from the central government, and with it a corresponding degree of control. The result is that each prefectural government maintains a large liaison office in Tokyo, and governors and mayors spend a considerable part of their time at the capital, negotiating with the central government. However, as local issues of environment and the quality of life began to take precedence in the 1970s, the importance of local government has been enhanced (ibid: 256-7).

The modern Japanese judicial system was built up during the Meiji restoration in the nineteenth century. This system, although tied closely to social realities, was based first on the French and then the German model and was perfected only by 1899. Despite the authoritarian trends of the time, the judiciary maintained high standards of efficiency, honesty, and independence even during the stressful years of the war and foreign occupation.

After the war, the chief innovation of the new constitution was the creation of a Supreme Court, in which all judicial power is vested, which nominates the judges of the lower courts and which has the right to determine the constitutionality of all laws--even though the latter power has not been exercised in practice. The justices of the Supreme Court are appointed by the Prime Minister, but once appointed they and the judges of the lower courts cannot be removed except by formal impeachment procedures, or, in the case of Supreme Court justices, by popular vote, since their names appear on the ballot at the first election following their appointment and then every ten years thereafter.⁶ As Reischauer remarks, the last provision has proved to be a dead letter, since Supreme Court justices are not well enough known to stir up more than a trifling opposition vote (Reischauer 1988: 257).

While the Supreme Court has refused to assume an activist role in interpreting the constitution, or on abstract constitutional issues, it has proved vigilant in the protection of individual rights. For instance the "polluter pay principle" to protect the environment and the quality of life was established in Japan through a series of landmark judicial decisions rather than through administrative fiat (ibid.: 257-60).

Conclusions

What can we learn from this brief detour into institutional conditions in various countries? Throughout the essay, our assumption has been that the potential for decentralized collective action in Pakistan has

6 This, the so-called "Missouri Plan", is followed in eight American states. (See Wilson 1988: 635).

been somewhat neglected. As such, instead of reiterating the arguments for decentralization, it might be better to ask how the experience of other countries can help us avoid the obstacles in the path of decentralization.

It appears that a number of conclusions are possible. First, it seems that many well meaning reform measures are hamstrung because of a desire for uniformity. It is quite clear that conditions--population concentration, levels of education and political involvement, history of local participation, support of local initiatives by provincial elites--in various parts of the country are varied enough to admit of many possibilities. For instance in the US, each state has its own laws for incorporating local bodies; there is even a distinction between special charters for big cities and general charters for other areas.

The problems of large urban conglomerations--Karachi, Lahore, Hyderabad, Peshawar, Faisalabad, Rawalpindi--have become significant enough for the need to design special charters. In particular, these cities have to deal with massive amounts of urban pollution from industrial effluent, vehicular emissions, and human wastes, all of which require effective policing and legislative action. Similarly, other cities needing special treatment for a specific purpose, such as areas with large industrial concentrations, e.g. Kasur, Gujranwala, Kala Shah Kaku, can be treated separately.

As far as the formal structure of local bodies is concerned, the present arrangements could be continued, with a few changes suggested here and further on. The major one is that of introducing some form of direct participation at the community level--the village or the town ward. Second, the introduction of open town meetings could be considered in all urban areas except the large cities. There are examples of successful functioning of these institutions.

The second obstacle to effective decentralization is well meaning reluctance to permit duplication. In principle, there may be no problem if all levels of government wish to deal with education, health, or research--at their own levels. In other words, strict separation of powers may not be either possible or necessary.

A third obstacle is the question of finances. It is clear that financial independence is an ideal not achieved by many local governments; indeed, the common assessment seems to be that British local institutions, which are far more effective and powerful than those in Pakistan or India, have suffered because of their financial dependence on central governments. Financial independence is essential so that a local government can develop that sense of responsibility which is the first requirement of a government. While we have not considered the Soviet Union or other socialist countries in this paper, it is well known that what the Hungarian economist Janos Kornai calls the "soft budget constraint"--i.e., the absence of a sense of financial responsibility in agencies and institutions controlled by the central government--is responsible, at least in part, for the gross mismanagement of the economy and society.

The question of possible sources of local government finances has been dealt with extensively in the LGC report (GOP 1982). Instead of repeating these findings, a few general points may be made. First, it is important to increase the share of total government expenditure which is made by local authorities; second, a shift should be introduced towards local self-sufficiency in place of reliance on grants from provincial governments; third, local taxes should be collected by the local authorities; fourth, tax rates should be increased where necessary. Some revenue could be generated by charging fees for some services. One possibility is to have the American practice of a two tier fee structure in public institutions, such as schools and colleges; the fee for local children would be low, while that for children from outside the area would be high enough to reflect the social cost of providing the education. Children from other

districts or other regions would come to the institutions only if their grades are not good enough to gain them admission in the local college or in the provincial or national elite institutions.

To facilitate direct revenue enhancement, some of the functions of tax collection could be transferred to local governments. To forestall the possibility of the local government's unwillingness to enact such an unpopular measure, it could be arranged that the provincial or federal government enact the actual tax legislation, and authorize local governments to collect and spend the taxes on their programmes. The local government could, of course, impose additional taxes with the consent of their electorate, but they would not be exempted from their responsibility to collect the taxes imposed by the higher levels of government. This brings in the question of the means of enforcement, which is the next on the agenda.

A fundamental issue, as Alexis de Tocqueville taught us 150 years ago, is that transfer of powers to elective officials must take place simultaneously with the transfer of powers to judicial officials. All "successful" societies have strong and independent judiciaries; and in particular, all societies with effective systems of local administration depend, more than anything else, on independent judiciaries. In Pakistan, this is not the case. Judges' salaries and prestige are low, as is the faith in their integrity and competence; judicial independence has been compromised through repeated experiments in authoritarian rule; judges are so overburdened that cases drag on for years; legal education is said to have deteriorated, and the system no longer attracts the best talents. Other structural features which have often caught the eye of observers is the combining of the judiciary and the executive at the local level and the protection given government officials against judicial proceedings except under criminal charges. Proposals for reforms must include, *inter alia*, the following:

1. Assurance of judicial independence. One possibility is to follow the Japanese model of an independent Supreme Court, whose judges cannot be removed or retired except through formal judicial procedures; lower judges would be appointed only by the judicial system. Alternatively, all judges above a certain level could be granted permanent tenure without possibility of transfer, except at their own request.
2. Reform of the system of legal education and in-service training.
3. Making all government action subject to judicial review at the request of any concerned citizen.
4. Making both local and higher public officials, whether elected or appointed, personally liable for their actions. In other words, the protection currently afforded to them by law should be removed.
5. Improving the pay and perquisites of judicial officers.
6. Granting the judiciary, rather than the executive, the power of judicial review, namely ensuring that local laws do not exceed their charter or militate against national or provincial laws.
7. Keeping the judiciary--with the exception of conciliation courts--firmly under the control of higher levels of the government.
8. Separating judicial and executive functions at the local level; and 8. possibly combining civil and criminal courts.
9. Increasing the number of courts.

A related issue is granting police powers to local governments. Although it would be appropriate for local governments to elect someone to supervise internal law and order, it is not clear in advance what specific police powers, besides local security, can be transferred to the local bodies. Perhaps this can wait on the enactment of enabling legislation by the local government itself. Some transfer of functions may, however, be appropriate at higher levels of local government, namely municipal institutions. For instance, a metropolitan government should certainly have the power to hire police, to investigate crimes, to prosecute criminals, and to enforce the laws of the land, including those enacted by itself. Even in non-

metropolitan areas, subjecting the police administration to supervision by elected local bodies may be considered. Practically speaking, amendments in the Criminal Procedure Code may be necessary for metropolitan police officers to be recognized in the legal system as "officers in-charge of a police station".

The larger issue of the appropriate functions of local governments has been much debated. The emerging consensus is towards the views expressed in the LGC Report, namely that the ideal is for the local councils to take comprehensive responsibility for providing services and promoting social and economic development in their areas (GOP 1982: 52). The following functions could be transferred to local authorities: rural roads, tree plantation, education, adult education, water supply, rural medical care, and rural electrification. For some of these functions, such as education, the possibility of establishing elected supervisory bodies may also be considered.⁷

A common objection to the transfer of functions to the rural population is their limited technical capacity. However, the model one should keep in mind is not that of someone who executes a project himself or herself, but of someone who supervises the execution of a project. People in the rural areas do, from time to time, supervise projects for their own purposes (such as building a house); this should be no more difficult.

However, this does bring up the question of the training needs of local officials and local institutions. The LGC report has addressed this question in detail. The only point we wish to add here is that training would be most effective if the attitude of the trainers (and other officials) towards the local community be as if the community were an independent country seeking technical assistance. This means that the training programme would depend upon the needs of the beneficiaries rather than upon imaginary needs in the mind of the bureaucrat concerned.

On procedural questions, there are a number of controversial issues. First is the length of tenure of local officials. Again, while this could be left to the discretion of individual communities, a simple rule could be helpful. The tenure of elected officials should be based on the size of the electoral community and the expected duration of their responsibilities. In small rural localities, where populations are small, and collective works do not take a long time, a tenure of one year, as in New England townships, would be adequate. In most cities, a tenure of two years may be appropriate, while in metropolitan areas, a longer term could be considered.

The other question is that of supervising the performance of local councils. Presently, a higher level of the government intervenes directly. This system violates both the self-confidence of the officials as well as the rights of the electors. It might be better to replace this system with dual supervision by electors and the judiciary. The electors, either directly in open assembly or through ward representatives, would be the ultimate arbiter of the fate of the councilors, while the judiciary would ensure that local authorities followed the law of the land.

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7 For example, a "mothers' committee" might be established to supervise rural schools. This would be consistent with the traditional educational responsibilities of mothers; it might encourage women to become school since they would not be supervised by men), and it would create a direct link between the educational system and the cultural values of society at large.

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